CHAPTER 41.

An Act to amend the Landlord and Tenant (War Damage) 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:—

Short Tenancies.

Provisions as to short tenancies.

1.—(1) Section four of the principal Act (which empowers tenants to disclaim leases or to retain them on altered terms) shall not apply to any short tenancy as hereinafter defined, and the references in Part II of the said Act to a lease, underlease, sub-lease, interest in the term created by a lease, tenant, sub-tenant, or person having an interest in or derived out of the term created by a lease (except the references in section seven to an underlease or to a person having an interest in the land comprised in a lease) shall be construed as not including references to a short tenancy or, as the case may be, to a tenant holding under a short tenancy.

(2) Where for any period any land let on a short tenancy 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 tenancy in respect of that period.

(3) Where any such land as aforesaid, or any part thereof, is occupied by the tenant while the land is unfit by reason of war damage, there shall be payable by the tenant in respect of the period of such occupation such rent as may be agreed between him and the landlord or, in default of agreement, as may be fixed by the court.

(4) For the purposes of this section, a dwelling-house let on a short tenancy which has been rendered unfit by war damage shall be deemed at any time to be fit if it has been repaired to such extent as is reasonably practicable at that time, having regard to the circumstances prevailing in the locality, and as is sufficient to render the dwelling-house reasonably capable of being used for housing purposes, and continues to be in that state of repair:

Provided that, if a dwelling-house is deemed to be fit by virtue of this subsection, but the extent of the accommodation therein has been substantially diminished as the result of the damage, the rent payable by the tenant in respect of the period during which the accommodation is so diminished shall be reduced to such extent as may be agreed between him and the landlord or, in default of agreement, as may be fixed by the court.

(5) If the local authority in whose area any such dwelling-house is situated issue a certificate that the dwelling-house has been repaired to the extent mentioned in the last foregoing subsection, the production of the certificate shall, as respects any period during which the certificate is in force, be sufficient evidence that the house was fit for the purposes of this section during that period, unless the contrary is proved:

Provided that the local authority shall, on the application of the tenant made not less than three months after the issue of the certificate or after his last application, inspect the dwelling-house, and if they are satisfied that—

(*a*) further repairs have become reasonably practicable since the issue of the certificate and have not been carried out; or

(*b*) the works of repair carried out before the issue of the certificate have not been maintained in a reasonably efficient state;

they shall revoke the certificate and serve a notice of the revocation on the tenant and on the landlord, and, as from the date of the service of the notice, the certificate shall cease to have effect except as respects any period before the said date; and, as respects any period after the said date and before the date of the issue of a new certificate under this subsection, the production of the notice shall be sufficient evidence that the dwelling-house was unfit by reason of war damage during that period, unless the contrary is proved.

The functions of a local authority under this subsection may be exercised on their behalf by such officers as may be authorised in writing by the authority, and, for the purposes of this subsection, an instrument purporting to be such a certificate as aforesaid and to be signed by an officer of a local authority shall, without further proof, be deemed to be a certificate duly issued, unless the contrary is proved.

(6) Where the court is satisfied, on the application of the landlord of any land let on a short tenancy which has been rendered unfit by war damage, that—

(*a*) the land is fit:

(*b*) a period of not less than three months has elapsed since the land was rendered fit, and during the whole of that period the tenant has not been in occupation of the land either in whole or in part and has not paid any rent in respect of that period or any part thereof; and

(*c*) the landlord has made all reasonable efforts to communicate with the tenant and has failed to do so;

the court may, if it thinks fit, determine the tenancy and give immediate possession of the tenant's interest in the land and, where the tenant has sub-let the whole or any part of the land, the court may give directions preserving the rights of the sub-tenant or determining those rights, either immediately or after the landlord has complied with such requirements as may be specified.

(7) The landlord or tenant of any land let on a short tenancy may at any time apply to the court to determine whether the land is or was at any time unfit by reason of war damage or any other question arising under this section in relation to the tenancy.

(8) For the purposes of this section, a tenant shall not be deemed to be in occupation of any land which is unfit by reason of war damage by reason only—

(*a*) that furniture or other goods belonging to or used by him remain on the land;

(*b*) that he visits the land 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 any buildings or works situated on the land;

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

(9) Where, under the principal Act, a notice of disclaimer has been served, or a notice of retention has been or is deemed to have been served, before the passing of this Act, in relation to any short tenancy, this section shall not, unless the notice is of no effect, apply to that tenancy.

(10) In this section the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"dwelling-house" means a house or a part of a house let as a separate dwelling and does not exclude a house or part of a house so let by reason only that part of the

premises is used as a shop or office or for business, trade or professional purposes;

"local authority" means the Common Council of the City of London, the council of a metropolitan borough, the council of a county borough or the council of a county district;

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

"short tenancy" means any tenancy or sub-tenancy which the tenant is entitled to determine at any time by a notice expiring not later than the end of the next complete quarter or the next complete period of three months of the tenancy, and, in a case where a person is holding over any land, which he previously held under a short tenancy, by virtue of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the Courts (Emergency Powers) Acts, 1939 to 1941, or the Liabilities (War-Time Adjustment) Act, 1941, he shall be deemed to be holding the land under a short tenancy.

4 & 5 Geo. 6. c. 24.

Amendments of principal Act consequent upon War Damage Act, 1941.

Conditional notice of retention.

2.—(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

4 & 5 Geo. 6. c. 12.

(*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

(*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.

Leases comprising separate hereditaments.

3.—(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.

Effect of certain determinations of War Damage Commission.

4. 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.

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

5.—(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.

Provisions where tenant retains lease and value payment is made.

6.—(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.

Modification of lease after reinstatement or reconstruction.

7. 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.

Notification by War Damage Commission of determinations, &c.

8.—(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.

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

9.—(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 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.

Miscellaneous.

Application of principal Act to ground leases.

10.—(1) The principal Act shall apply to ground leases in like manner as it applies to other leases, and accordingly sections thirteen and fourteen of that Act shall cease to have effect.

(2) A notice of disclaimer, a notice of retention, or a notice to elect may be served under section four of the principal Act in respect of war damage to land comprised in a ground lease, whether the damage occurred before or after the passing of this Act.

(3) The following provisions shall apply with respect to notices served before, or proceedings pending at, the passing of this Act:—

(*a*) a notice of disclaimer, a notice of retention or a notice to elect served before the passing of this Act in relation to any lease shall not be deemed to be of no effect on the ground that the lease is a ground lease, unless the court has so determined before the passing of this Act under section fourteen of the principal Act, or the parties have so agreed (whether expressly or impliedly) before the passing of this Act, and in that case the serving of the said notice shall be without prejudice to the serving of a new notice;

(*b*) where proceedings under section thirteen or section fourteen of the principal Act are pending at the passing of this Act they shall be discontinued upon such terms as the court thinks just, and, in the case of proceedings under the said section fourteen relating to a notice of disclaimer or a notice to elect, the court may extend the period allowed under the principal Act within which

a notice to avoid disclaimer may be served by the landlord, or, as the case may be, the notice to elect is to be complied with by the tenant, to such date as the court may fix;

but nothing in this section shall affect any order of the court made before the passing of this Act under section thirteen of the principal Act, and the court shall not exercise its powers under paragraph (*a*) of subsection (1) of section nine of the principal Act—

(i) in a case where a notice of disclaimer in respect of a lease which the court is satisfied is a ground lease has been served before the passing of this Act, so as to make the surrender of the lease, or of any sub-lease derived out of the term created by the lease, take effect on a date earlier than the date when the notice was served; or

(ii) in a case where a notice of disclaimer is served after the passing of this Act in respect of such a lease as aforesaid, so as to make the surrender of the lease or of any such sub-lease take effect on a date prior to the passing of this Act.

Relief from obligation to insure against war damage.

11. Any express obligation to insure land against war damage shall be void and be deemed always to have been void, and any obligation to insure land against fire or other risks shall be construed as not including, and as never having included, an obligation to insure against war damage, and any proceedings pending at the passing of this Act relating to any such obligation to insure land against war damage shall be discontinued upon such terms as the court thinks just:

Provided that the foregoing provision shall not affect the exercise before the passing of this Act of any right or remedy arising in consequence of a failure to perform an obligation to insure against war damage, but the court may, on the application of any person prejudiced by the exercise of any such right or remedy, grant such relief as it thinks just.

Powers of entry of landlord and tenant of damaged land.

12.—(1) Where any building or works on land comprised in a lease is or are unfit by reason of war damage, and urgent repairs to the building or works are necessary to prevent deterioration and are not being executed, any person who has the fee simple in the land or a lease of the land or is a mortgagee of the fee simple or a lease, or any person authorised by any such person as aforesaid may, if he cannot obtain permission to enter upon the building or works from the person having control thereof, or cannot obtain such permission without unreasonable delay, enter upon the building or works for the purpose of executing the necessary repairs, and may use such force as is reasonably necessary for effecting entry.

(2) Any tenant of any land which is unfit by reason of war damage shall be entitled, notwithstanding that he has served a notice of disclaimer, to enter upon the land for the purpose of taking any measures necessary to preserve or remove any furniture or other goods belonging to or used by him.

Apportionment of rent in case of war damage to leased premises.

13. Where—

(*a*) any lease is deemed to have been surrendered by virtue of section eight of the principal Act (which relates to the effect of a notice of disclaimer); or

(*b*) the rent payable under any lease ceases to be payable for any period by virtue of section ten or section eleven of the principal Act (which relate to the effect of a notice of retention and a notice to avoid disclaimer respectively), or, in the case of a short tenancy to which section one of this Act applies, by virtue of that section;

the rent payable in respect of the period during which the surrender takes effect or the rent ceases to be payable as aforesaid shall be apportionable, whether the rent under the lease is payable in advance or otherwise, and any rent paid by the tenant in respect of that period in excess of the amount apportionable to the part of the period preceding the date on which the surrender takes effect or the rent ceases to be payable, as the case may be, shall be recoverable by him.

Determination of disputes as to whether premises have been rendered fit.

14. Where—

(*a*) the land comprised in any lease has been rendered unfit by war damage and a notice of retention or a notice to avoid disclaimer has been served in respect of the lease; and

(*b*) repairs have been carried out to the land;

either the landlord or the tenant may apply to the court to determine whether the land has been rendered fit and, if so, the date on which it was rendered fit.

Provision in case where land sustains damage other than war damage.

15.—(1) Where—

(*a*) any land comprised in a lease has been reinstated or redeveloped under this Act, or has otherwise been rendered fit in pursuance of an obligation imposed under the principal Act;

(*b*) the cost of reinstatement, of redevelopment or of rendering the land fit has been increased by reason of any damage or dilapidation occurring to the land, not being war damage or ordinary wear and tear; and

(*c*) the person by whom the land was reinstated, redeveloped or rendered fit would have been entitled, but for section one of the principal Act, to require any person, being his landlord or tenant under any lease comprising the

land, to make good the said damage or dilapidation or any part thereof, or to indemnify him in respect of the cost of making good the said damage or dilapidation or any part thereof;

the first-mentioned person shall be entitled to recover from his said landlord or tenant the amount by which the said cost has been so increased, or, as the case may be, such part of the said increase as is attributable to the said part of the damage or dilapidation.

(2) Any person from whom any sum has been recovered under this section shall have the like right (if any) to recover that sum or any part thereof from any person, being his landlord or tenant under any lease comprising the land, as if he himself had reinstated, redeveloped or rendered fit the land.

14 Geo. 3. c. 78.

(3) Nothing in this section shall be taken to affect any right, whether under the Fires Prevention (Metropolis) Act, 1774, or otherwise, in respect of money payable under a policy of insurance in respect of any such damage or dilapidation as aforesaid, or any right to damages for a failure to insure land in respect thereof, but any amount recovered by any person, or made available for the reinstatement, redevelopment or rendering fit of the land by any person, by virtue of any such right, shall be deducted from the amount recoverable by that person under this section in respect of that damage or dilapidation.

Proceedings transferred to High Court to be assigned to special judges.

16. Where any proceedings under this Act or under the principal Act are transferred into the High Court, they shall, so far as is practicable and subject to rules of court and to any power of transfer from one judge to another, be heard and determined in the first instance by one of the judges nominated under section ninety-four of the War Damage Act, 1941.

Interpretation. 2 & 3 Geo. 6. c. 72.

17.—(1) In this Act the expression "the principal Act" means the Landlord and Tenant (War Damage) Act, 1939.

(2) In this Act and in the principal Act 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 the principal Act as it applies for the purposes of the War Damage Act, 1941; and the definition of the said expression in the principal Act shall cease to have effect.

(3) It is hereby declared for the removal of doubt that the expression "landlord", as defined by section twenty-four of the principal Act includes, in relation to any lease, a mortgagee of the lessor's interest who is in possession of that interest or has appointed a receiver of the rents and profits thereof.

(4) In subsection (2) of section ten of the principal Act (which defines the expression "rent"), for the words "any periodical sum payable by the tenant in connection with the occupation of the land comprised in the lease" there shall be substituted the words "any periodical sum payable by the tenant to the landlord in connection with his tenancy", and the references to the definition of the said expression in sections eleven and twelve of the principal Act shall be construed accordingly.

(5) Where the land comprised in a lease as respects which a conditional notice of retention is served is part of a hereditament within the meaning of Part I of the War Damage Act, 1941, any reference in this Act to a payment made under Part I of that Act in respect of the war damage to the land shall be construed as a reference to so much of any payment made in respect of the war damage to the hereditament as is attributable to the war damage to the land.

(6) References in this Act to buildings or works on land shall be construed as including references to buildings or works under and over land.

Provision as to Northern Ireland.

18. The power of the Parliament of Northern Ireland, conferred by section twenty-five of the principal Act and extended by this Act, to make laws for purposes similar to the purposes of the principal Act and this Act, shall include power to make the like provision with respect to the War Damage Commission and the like modification of certain provisions of the War Damage Act, 1941, as is made by this Act.

Citation and construction.

19. This Act may be cited as the Landlord and Tenant (War Damage) (Amendment) Act, 1941, and shall be construed as one with the principal Act, and this Act and that Act may be cited together as the Landlord and Tenant (War Damage) Acts, 1939 and 1941.

Section 2.

SCHEDULE.

Modifications of section 6 of the principal Act.

In subsection (1), after the words " notice of disclaimer " there shall be inserted the words " or a notice of retention ".

In subsection (4), after the word " section " there shall be inserted the words " in respect of a notice of disclaimer or a notice to elect ".

In subsection (5), after the words " notice of disclaimer " there shall be inserted the words " a notice of retention ".

Section 15 of the principal Act as modified.

Provisions as to leases comprising two or more separate tenements.

15.—(1) In relation to a multiple lease section six of this Act shall not apply and the other provisions of this Part of this Act shall have effect subject to the modifications specified in this section.

(2) Where a notice of disclaimer, a notice of retention or a notice to elect is served with respect to the lease—

(*a*) the person serving the notice or the person on whom it is served; or

(*b*) any other person having an interest in or derived out of the term created by the lease, or having an interest in the reversion immediately expectant on the determination of the lease;

may apply to the court, within one month from the service of the notice, to determine the question whether the tenant should be allowed to exercise the right of disclaimer or retention, either as respects the lease as a whole or as respects one or more of the separate tenements comprised therein, or should not be allowed to exercise that right at all.

(3) If on such an application the court is satisfied that, having regard to the extent of the war damage suffered by the land comprised in the lease as a whole and all the circumstances of the case (including any offers made by the landlord for an extension of the term of the lease or for an alteration of the rent reserved thereby or for any other modification of the terms of the lease) it is equitable to allow the tenant to exercise the said right in respect of the lease as a whole, the court shall give a direction accordingly, and any notice of disclaimer or retention already served shall have effect under this Part of this Act, and the court—

(*a*) in a case where a notice of disclaimer has been served (whether in compliance with a notice to elect or not) may extend to such date as it may fix the period allowed under this Act within which a notice to avoid disclaimer may be served by the landlord; or

(*b*) in a case where a notice to elect has been served and has not been complied with, may extend to such date as it may fix the period allowed under this Act within which the notice to elect must be complied with.

(4) If on such an application the court, having regard to the matters referred to in the last foregoing subsection, is not satisfied that it is equitable to allow the tenant to exercise the right of disclaimer or retention as respects the lease as a whole, but is satisfied that it is equitable to allow him to exercise the said right as respects one or more of the separate tenements comprised therein (hereafter referred to as " the disclaimable tenements "), the court—

(*a*) shall order that the lease shall be treated as if it were two separate leases, one comprising the disclaimable tenement or tenements, and the other comprising the remainder of the tenements ; and

(*b*) shall give such consequential directions as to the apportionment of the rent and otherwise as it thinks just, including directions as respects any sub-lease comprising a disclaimable tenement and a tenement which is not disclaimable ; and

(*c*) shall order that the tenant shall be at liberty to serve a notice of disclaimer or retention as respects the lease comprising the disclaimable tenement or tenements but not as respects the other lease ; and

(*d*) where a notice of disclaimer or retention has been served (whether in compliance with a notice to elect or not), shall order that the notice shall be of no effect ; and

(*e*) where a notice to elect has been served, may extend to such date as it may fix the period allowed under this Act within which the notice to elect must be complied with ; and

(*f*) may empower the landlord, if the tenant serves a notice of disclaimer as respects the lease comprising the disclaimable tenement or tenements, to enter upon the land comprised in the other lease for the purpose of doing work on the land comprised in the disclaimed lease.

(5) If on such an application the court, having regard to the matters referred to in subsection (3) of this section, is not satisfied that it is equitable to allow the tenant to exercise the right of disclaimer or retention as respects the lease as a whole or as respects one or more of the separate tenements comprised therein, the court shall direct that the land comprised in the lease shall not be deemed to be unfit for the purposes of this Part of this Act and that any notice of disclaimer, notice of retention or notice to elect relating thereto shall cease to have effect :

Provided that the court may, if having regard to the extent of the war damage suffered by the land it considers it equitable to do so, order that the rent reserved by the lease shall, until the war damage is made good, be reduced to such extent as may be specified.

(6) Unless an application is made to the court under this section with respect to a notice of disclaimer, a notice of retention or a notice to elect served with respect to a multiple lease, the land comprised in the lease shall be deemed for the purpose of any proceedings pursuant to the notice to have been unfit by reason of war damage at the time when the notice was served.

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