

Serial Number 1942/92



**THE EMERGENCY SHELTER REGULATIONS 1942,
AMENDMENT NO. 1**

C. L. N. NEWALL, Governor-General.

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this 31st day of
March, 1942.

Present :

THE HON. D. G. SULLIVAN PRESIDING IN COUNCIL.

PURSUANT to the Emergency Regulations Act, 1939, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS.

1. These regulations may be cited as the Emergency Shelter Regulations 1942, Amendment No. 1, and shall be read together with and deemed part of the Emergency Shelter Regulations 1942* (hereinafter referred to as the principal regulations).

2. Regulation 3 of the principal regulations is hereby amended by adding the following new subclause :—

“(7) In any case where a local authority has prior to raising a loan pursuant to subclause (6) of this regulation applied any other moneys (including moneys lawfully borrowed by way of overdraft) for any purpose for which such loan is to be raised, the application of such other moneys shall not affect its power to raise such loan, and the proceeds thereof may to any necessary extent be used in repayment, or otherwise in reimbursement to the local authority, of the other moneys applied as aforesaid :

“ Provided that such power of repayment or reimbursement shall not at any time after the expiration of two years from the date of the application of such other moneys as aforesaid be exercised without the prior consent of the Local Government Loans Board.”

3. Regulation 5 of the principal regulations is hereby amended by adding to subclause (1) the following words : “ All moneys received by such responsible authority pursuant to these regulations shall be credited by the responsible authority towards expenditure incurred by it under these regulations or otherwise in respect of the scheme.”

* Statutory Regulations 1942, Serial number 1942/1, page 1.

4. (1) Regulation 6 of the principal regulations is hereby amended by adding to subclause (1) the following proviso :—

“ Provided that if any land usually used solely for the purpose of gaining access to premises is designated under this regulation for use only as a public access-way or right-of-way it shall be sufficient if such notice is served on any one or more of the occupiers of that land.”

(2) Regulation 6 of the principal regulations is hereby further amended by inserting after subclause (1) the following new subclause :—

“(1A) No notice under subclause (1) of this regulation shall be invalid by reason only of the failure to specify therein for which of the several purposes aforesaid the premises are or may be required.”

5. The principal regulations are hereby further amended by revoking Part IV, and substituting the following new Part :—

“ PART IV.—SHELTERS FOR BUSINESS PREMISES.

“ 14. In this part of these regulations, unless the context otherwise requires,—

“ ‘ Annual value ’ means, in relation to any premises, the rent at which the premises might reasonably be expected to be let for a period of one year if the tenant undertook to pay all usual tenant’s rates and taxes and to bear the cost of the repairs and insurance and other expenses, if any, necessary to maintain the premises in a state to command that rent, such adjustments being made as appear necessary to eliminate any appreciation or depreciation due to the present war or to conditions directly or indirectly created thereby :

“ ‘ Diminution in the annual value ’ means, in relation to the impairment of the usefulness of any premises by reason of the execution of works, the amount by which the annual value of the premises is less than it would be if the works had not been executed :

“ ‘ Lease ’ includes an agreement for a lease, if the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage ; and the expression ‘ lessee ’ shall be construed accordingly.

“ 15. (1) Any local authority or emergency precautions service authorized by the Minister to exercise the powers conferred by Part III of these regulations may serve on the owner of any business premises a notice in writing requiring him to provide an emergency shelter for all or any of the persons working or residing in the premises.

“ (2) The notice shall specify, with such particularity as the local authority or emergency precautions service thinks reasonably necessary, the nature and situation of the shelter (including the details and standard of construction) or shall indicate the general location within which the shelter is to be provided, and in either case shall require the owner to construct a shelter to accommodate all the persons who work or reside in the premises or, as the case may be, the number of persons specified in the notice :

“ Provided that if the notice specifies in respect of the persons who work or reside in the premises a greater number than the number of persons who so work or reside, the shelter shall be constructed to accommodate the number of persons who so work or reside.

“ (3) If the notice indicates the general location within which the shelter is to be provided but does not specify with particularity as aforesaid the nature and situation of the shelter, the owner shall within three days after the service of the notice submit to the local authority or emergency precautions service for approval a scheme plan showing how the shelter can be provided within the general location indicated in the notice with the least possible inconvenience to the occupiers having due regard to economic construction, and in any such case, notwithstanding anything to the contrary in the notice, the time referred to in subclause (4) of this regulation shall begin to run from the expiration of ten days after the service of the notice, and the time within which the owner and any other person may appeal under Regulation 17A (1) hereof shall be ten days from the service of the notice.

“ (4) The notice shall also state that the shelter is to be provided within such time as shall be specified in the notice, and that the time will begin to run from the expiration of seven days after the service of the notice or, if an appeal is brought against the notice, from the date of the determination or abandonment of the appeal.

“ (5) Where a notice is served under subclause (1) of this regulation on the owner of business premises who is not the occupier of the whole of the premises, he shall, within three days from the date of the service of the notice on him, serve a copy thereof—

“ (a) On every lessee of the whole or any part of the premises whose lease is immediately derived from the estate or interest of the owner; and

“ (b) On the occupier of the premises or, where different parts of the premises have different occupiers, on each of those occupiers.

“ 16. (1) In any case where it appears to the local authority or emergency precautions service that any business premises are suitable for the provision therein of additional emergency shelter for use by persons working or residing in neighbouring business premises or by the public, the local authority or emergency precautions service may, in any notice under Regulation 15, require the owner of the premises to construct the shelter to accommodate other persons in addition to those who work or reside in the premises.

“ (2) In any such case the local authority or the responsible authority in relation to the emergency precautions scheme, as the case may be, shall pay to the owner in respect of such additional accommodation—

“ (a) A sum bearing to the total expenses of the owner in complying with the notice the same proportion as the number of additional persons bears to the total number of persons the shelter is constructed to accommodate; and

“ (b) Annual amounts bearing the same proportion as aforesaid to any diminution in the annual value of the premises ascribable to an impairment of the usefulness thereof by reason of the execution of the works.

“(3) Any moneys paid under subclause (2) of this regulation shall be in addition to any contribution payable by the local authority or responsible authority aforesaid pursuant to any scheme for subsidizing the cost of shelters constructed by the owners of business premises to accommodate persons working or residing therein.

“(4) If any dispute arises as to the amounts to be paid to the owner under subclause (2) hereof, the matter shall be referred to the Minister, whose decision shall be final.

“(5) For the purposes of this regulation the expression ‘expenses’ in relation to a notice means the expenses reasonably incurred by the owner in providing shelter in pursuance of the notice together with the amounts referred to in paragraphs (a) and (b) of Regulation 17B (8) hereof.

“(6) In any case where the owner of any business premises provides an emergency shelter to accommodate a greater number of persons than work or reside in the premises, he may reserve portion of the shelter, to be approved by the local authority or the emergency precautions service, for the use of the persons who work or reside in the premises and indicate such portions by notices in the shelter.

“17. (1) Subject to the provisions of these regulations as to appeals and notices, in any case where the owner of any business premises desires to do any work in the premises for the purposes of or in relation to the provision of any emergency shelter in pursuance of a notice given by or an agreement with any local authority or emergency precautions service, he may enter upon any part of the premises and do the work notwithstanding that he is not in occupation of that part of the premises and notwithstanding any agreement or restrictive covenant to the contrary, and the owner shall not be liable to pay damages for anything done by him which is reasonably necessary for the due performance of the work except as provided by Regulation 17B hereof.

“(2) Not less than seven days before commencing any such work the owner shall serve on any lessee of any part of the premises where any such work is to be done whose lease is immediately derived from the estate or interest of the owner, and on any occupier of any such part of the premises, a notice specifying with such particularity as the owner thinks reasonably necessary the nature and situation of the shelter and specifying the number of persons that the shelter is to be constructed to accommodate and when the owner intends to commence the work :

“Provided that an owner shall not be required to serve any such notice on any lessee or occupier in any case where a notice has previously been served on the owner under Regulation 15 hereof and a copy of the notice has been served on the lessee or the occupier, as the case may be, under subclause (5) of the said Regulation 15 if the notice previously served shows that the shelter will be situated in the premises in which it is proposed to commence the work.

“(3) In any case where the owner of any business premises has provided or proposes to provide an emergency shelter in any part of the premises of which he is not the occupier, the occupier of that part of the premises may, after the work is commenced and before the expiration of one month from the completion of the work, by notice served on his lessor terminate the lease under which he is the occupier :

“ Provided that nothing in this subclause shall authorize any person who is the lessee of the whole of any business premises to terminate the lease thereof.

“ 17A. (1) Where a notice is served under Regulation 15 (1) or Regulation 17 (2) hereof, any person who has been served with the notice and also any other person who is, under the provisions herein-after contained, liable to an increase of rent in respect of the expenses of the owner in providing the shelter may, within seven days from the service of the notice, appeal to the Minister on the ground that—

“ (a) The proposals or requirements of the notice are not appropriate, or are not those most appropriate to the circumstances of the case ; or

“ (b) It is not reasonable to require the provision of any emergency shelter.

“ (2) In so far as an appeal relates to the provision of an emergency shelter for the persons working or residing in any business premises the Minister, in considering the appeal, shall not take into account the existence in the locality of any shelter available for use by members of the public.

“ (3) The Minister may dismiss the appeal, or he may allow the appeal, and either vary the terms of the notice in such manner as he thinks fit, or cancel the notice, and he may cancel or vary the terms of any agreement to such extent as may be necessary to give effect to his determination.

“ 17B. (1) Where works are, by virtue of this Part of these regulations, executed by the owner of any business premises in any part thereof of which he is not the occupier, the occupier of that part of the premises shall be entitled to recover from the owner such compensation for any damage he has sustained by reason of any interference with his use of that part of the premises during the execution of the work as may be agreed to by the occupier and the owner with the approval of the local authority or emergency precautions service or, in default of agreement, as may be fixed as hereinafter provided.

“ (2) Where the usefulness of any part of any business premises is impaired by reason of the execution therein of any works by virtue of this Part of these regulations by the owner of the premises, then, unless it is otherwise agreed in connection with, or after, the provision of the shelter, the rent payable under every lease derived from the estate or interest of the owner, being a lease in existence at the date of the completion of the works and comprising the part of the premises the usefulness of which is so impaired or being a renewal of any such lease granted pursuant to a right to have an extension of the term at the same rental, shall be decreased to the extent and for the period hereinafter specified.

“ (3) The decrease of rent referred to in subclause (2) of this regulation shall be of such amount as will in one year equal the diminution of the annual value of the part of the premises ascribable to the impairment, ascertained at the date of the completion of the works.

“ (4) Where a notice has been served under the foregoing provisions of this Part of these regulations by or on the owner of any business premises who is not the occupier of the whole of the premises and the

owner has incurred expenses in providing shelter in pursuance of the notice, then, unless the notice has been cancelled on appeal or otherwise, the rent payable under every lease derived from his estate or interest, whether directly or indirectly (being a lease in existence at the date of the completion of the works or being a renewal of any such lease granted pursuant to a right to have an extension of the term at the same rental), shall, unless it is otherwise agreed in connection with, or after, the provision of the shelter, be increased to the extent and for the period hereinafter specified.

“(5) The increase of rent referred to in subclause (4) of this regulation shall be of such amount as will produce in one year a sum equal to the total of the two following amounts, that is to say :—

“(a) One-tenth of the expenses of the owner after deducting therefrom such amounts as may be paid or payable or owing to the owner by any person or authority in respect thereof otherwise than as a lessee ; and

“(b) Any diminution in the annual value of any part of the premises ascribable to an impairment of the usefulness thereof by reason of the execution of the works, ascertained as at the date of the completion of the works, less such amounts as may be paid or payable or owing to the owner by any person or authority in respect thereof otherwise than as a lessee :

“Provided that, in the case of a lease of part of any business premises, the increase shall not be the whole of the said total, but shall be an amount bearing thereto the same proportion as the annual value of the part of the premises at the date of the completion of the works bears to the annual value of the whole of the premises at that date.

“(6) The said increase shall operate in relation to a lease, notwithstanding that the rent payable thereunder is decreased under the provisions of subclause (2) of this regulation, and any such increase and any such decrease shall be set off against each other.

“(7) The rent on which any such increase or decrease as aforesaid operates is all rent payable under the lease in question in respect of any period after the date of the completion of the works :

“Provided that no increase or decrease shall operate in respect of more than ten years :

“Provided also that so much of any increase or decrease of rent as is attributable to any diminution in the annual value of any part of the premises by reason of the execution of any works shall cease on the restoration of that part of the premises to its previous condition.

“(8) In this regulation the expression ‘expenses’ in relation to a notice means the expenses reasonably incurred by the owner in providing shelter in pursuance of the notice together with—

“(a) The amount of any compensation properly paid by the owner under subclause (1) of this regulation ; and

“(b) Where the owner is the occupier of any part of the premises in which works were executed for the purpose of providing the shelter, the amount of the compensation which he would have been entitled to recover under that subclause from the owner of the premises if he himself had not been the owner thereof.

“ (9) A surety for the payment of any rent which is increased under this regulation shall not be discharged by reason of the increase, but shall not be liable in respect of the increase.

“ (10) The provisions of this regulation shall apply as well to premises subject to the Fair Rents Act, 1936, as to other parts of business premises.

“ 17c. (1) In any case where the owner of any business premises has not provided an emergency shelter for all or any of the persons working or residing in the premises to the satisfaction of any local authority or emergency precautions service authorized by the Minister to exercise the powers conferred by Part III of these regulations, the local authority or emergency precautions service may serve on the owner of the premises a notice in writing requiring him to pay to the local authority or, as the case may be, to the responsible authority in relation to the emergency precautions scheme an amount to be specified in the notice as the expenses incurred in providing an emergency shelter for those persons elsewhere and also such further amounts as may be specified in respect of any diminution in the annual value of the premises in which the shelter may be provided.

“ (2) In any such case the local authority or emergency precautions service shall specify the shelter which those persons may use and shall reserve sufficient portions of the shelter for use by those persons and indicate such portions by notices in the shelter.

“ (3) The expenses incurred in providing emergency shelter to be paid by the owner shall be an amount bearing the same proportion to the total expenses incurred in providing the shelter which is specified under subclause (2) hereof as the number of persons working or residing in the business premises bears to the total number which the shelter is constructed to accommodate, and the amounts to be paid in respect of the diminution in annual value aforesaid shall bear the same proportion to the total diminution in the annual value of the premises in which the shelter is provided.

“ (4) Where a notice is served under this regulation on the owner of any business premises, the owner may, within seven days of the service of the notice, appeal to the Minister against the notice, and the Minister may dismiss the appeal or he may allow the appeal and either vary the terms of the notice in such manner as he thinks fit or cancel the notice, and unless the notice is cancelled as aforesaid the owner shall be liable to pay the amounts specified in the notice in accordance with the terms thereof.

“ (5) The provisions of subclauses (4) to (10) of Regulation 17B hereof shall apply in relation to any sums for which the owner of any business premises becomes liable under any notice given under this regulation as if—

“ (a) The owner had provided shelter in pursuance of a notice duly served on him under Regulation 15 hereof (not being a notice cancelled on appeal or otherwise) and the said sums were expenses of the owner or diminution in annual value, as the case may be; and

“ (b) The date of the service of the notice were the date of the completion of the works.

“ 17D. (1) The owner of any premises may agree with any local authority or emergency precautions service to provide any shelter or to pay any moneys which the local authority or emergency precautions service could by notice under this Part of these regulations require the owner of any business premises to provide or pay.

“(2) The provisions of subclauses (4) to (10) of Regulation 17B hereof shall apply to any expenses or sums which the owner of any business premises incurs or becomes liable to pay under any such agreement as if—

“(a) The owner had provided a shelter in pursuance of a notice duly served on him under this Part of these regulations (not being a notice cancelled on appeal or otherwise) and the said expenses or sums were expenses under that notice or, as the case may require, were the amount of diminution in the annual value ; and

“(b) The date of the agreement, in any case other than the provision of a shelter, were the date of the completion of the works.”

6. (1) All notices and agreements and generally all acts of authority that originated under any provisions of the principal regulations revoked by Regulation 5 hereof and are subsisting or in force at the commencement of these regulations shall enure for the purposes of the principal regulations as amended by these regulations as if they had originated under the corresponding provisions enacted by these regulations, and accordingly shall, where necessary, be deemed to have so originated.

(2) All matters and proceedings commenced under the provisions of the principal regulations revoked by Regulation 5 hereof and pending or in progress at the commencement of these regulations may be continued, completed, and enforced under the corresponding provisions enacted by these regulations.

7. Regulation 18 of the principal regulations is hereby amended by adding the following new subclause :—

“(3) In any case where a claim is made for an increase of rent under these regulations against any lessee or tenant and he proves that no notice or copy of any notice was served on him or on his predecessor in title under Regulation 15 (5) or Regulation 17 (2) hereof and that by reason thereof or because the expenses of the owner were expenses incurred pursuant to Regulation 17C or Regulation 17D hereof the lessee had no reasonable opportunity of appealing to the Minister, the Court may, notwithstanding the provisions of Regulation 17B hereof, make such reduction in the amount of the increase as seems just if it is satisfied that the lessee or tenant has suffered damage by reason of his or his said predecessor's inability to appeal.”

8. The principal regulations are hereby further amended by inserting after Regulation 19 the following new regulation :—

“ 19A. (1) For the purposes of or in relation to the provision of any emergency shelter or for the safeguarding of persons against injury, any local authority or emergency precautions service may with the approval of the Minister, and shall if directed by him so to do, by notice require the owner or occupier of any premises to remove any glass therein or to provide adequate protection against any injury that might be caused by the breaking and scattering of any such glass.

“(2) The Minister may at any time, if he deems it necessary or desirable so to do for the efficient prosecution of any war in which His Majesty may be engaged or for maintaining supplies and services essential to the life of the community, by notice require any person who is in possession or has control of any machinery, equipment, or goods to take such action as may be specified in the notice for the protection of the machinery, equipment, or goods against damage by war operations.”

9. Regulation 20 of the principal regulations is hereby amended by adding the following new subclause:—

“(3) For the purpose of providing an emergency shelter for any premises or of reducing emergency hazards in the premises, the owner of the premises may, pursuant to notice given by any local authority under Regulation 15 hereof, or with the approval of the local authority and subject to such conditions as it may impose for the protection of the public, construct any erection or make any entrance to the premises on or in or from any road or street vested in or under the control of the local authority.”

10. Regulation 22 of the principal regulations is hereby amended by adding the following new subclause:—

“(5) Any notice given under these regulations may be at any time varied or revoked by a subsequent notice:

“Provided that if there is a right under these regulations to appeal against the first notice there shall be a like right to appeal against any amending notice.”

11. The principal regulations are hereby further amended by inserting after Regulation 22 the following new regulation:—

“22A. Where pursuant to any notice purporting to be given under these regulations or by agreement with any local authority or emergency precautions service or with the approval or consent of any local authority or emergency precautions service any person in good faith provides any emergency shelter or does any act or pays any moneys or incurs any liability for any expenditure for the purposes of or in relation to the provision of any emergency shelter, the notice, agreement, approval, or consent shall be deemed to be valid and effective in all respects and for all purposes and the things so done shall be deemed to have been validly required or authorized under these regulations and if any premises to which the notice, approval, agreement, or consent relates have been in good faith described as or taken to be business premises they shall be deemed for the purposes of these regulations to be business premises accordingly.”

T. J. SHERRARD,
Acting Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette*: 1st day of April, 1942.

These regulations are administered in the National Service Department.