

Serial Number 1940/82.



THE SMALL FARMS ACT REGULATIONS 1940.

GALWAY, Governor-General.

ORDER IN COUNCIL.

At the Government House at Wellington, this 14th day of May, 1940.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

PURSUANT to the Small Farms Act, 1932-33, and amendments, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS.

REGULATION 1.—TITLE.

These regulations may be cited as the Small Farms Act Regulations 1940.

REGULATION 2.—COMMENCEMENT.

These regulations shall come into force on the day following their publication in the *Gazette*.*

REGULATION 3.—INTERPRETATION.

In these regulations, unless the context otherwise requires, the following words shall have the meanings given to them in this regulation :—

“Principal Act” means the Small Farms Act, 1932-33 :

“Board” means the Small Farms Board :

“Commissioner” means the Commissioner of Crown Lands for the land district in which is situated the land affected by the subject-matter, and includes his deputy :

“Receiver of Land Revenue” means the Receiver of Land Revenue for the land district in which is situated the land affected by the subject-matter :

“Minister” means the Minister of Lands.

* See end note.

REGULATION 4.—REVOCATION.

(1) The several regulations made by Order in Council dated the 19th day of June, 1933, and published in the *Gazette* of the 22nd day of June, 1933, by Order in Council dated the 28th day of August, 1933, and published in the *Gazette* of the 31st day of August, 1933, and by Order in Council dated the 10th day of June, 1937, and published in the *Gazette* of the 24th day of June, 1937, and contained in the Statutory Regulations under Serial number 1937/187, are hereby revoked.

(2) Notwithstanding the revocation of the regulations referred to in clause (1) of this regulation, all provisions thereof relating to leases, mortgages, and other rights granted thereunder and to the lessees, mortgagors, instruments, and grantees thereof shall, so far as they apply to the land so leased or mortgaged and other rights so granted and to the lessees, mortgagors, and grantees thereof, continue in full force and effect.

REGULATION 5.—APPLICATION OF REGULATIONS.

These regulations shall apply with respect to Crown lands subject to the principal Act.

REGULATION 6.—ELIGIBILITY OF APPLICANTS.

(1) The following classes of persons and no others shall be qualified to receive leases—namely, persons who in the opinion of the Board are suitable for engagement in rural occupations, and in respect of whom the Board is satisfied that they are not in regular employment or that they have not sufficient capital to acquire land under the Land Act, 1924, or the Land for Settlements Act, 1925.

(2) Every application for land under the principal Act from a qualified person shall be made on the special form provided and shall be accompanied by such declaration as may be required, and shall be lodged with the Commissioner. Such form and declaration may be determined from time to time by the Board.

(3) Applications for any land that may become available for disposal under the principal Act and these regulations shall be considered by the Commissioner acting under the instructions of the Board, and the Commissioner, with the approval of the Board, shall determine which of the applicants is most suitable to occupy the land and shall allot the land accordingly.

REGULATION 7.—LEASES.

Every lease issued pursuant to the principal Act shall be in such form as may be approved by the Board not inconsistent with the principal Act or these regulations, and shall include provisions, with such modifications as the Board may deem necessary in special cases, to the following effect:—

(1) *Term of Lease.*—The term of the lease shall be thirty-three years from the 1st day of January or July next following the date of the lease, and shall include the period from the date of the lease to the said 1st day of January or July.

(2) *Rental.*—The annual rental payable under the lease shall be an amount equal to $4\frac{1}{2}$ per cent. of the amount determined by the Board to be the unimproved value of the land comprised in the lease as at the commencement of the term of the lease.

(3) *Rebate.*—(a) The lessee, not being in arrear with any instalment of rent under his lease or any other payment or payments due to the lessor, shall be entitled to a rebate not exceeding one-ninth of each half-yearly instalment of rent which is paid within one month after the day appointed for the payment thereof.

(b) Any rebate under this clause may be deducted and retained by the lessee from the full amount of the instalment when making the payment.

(c) For the purposes of this clause an instalment of rent shall be deemed to have been paid within the aforesaid period of one month if within that period it is in course of transmission by post to the Receiver of Land Revenue, though not actually received by him.

(4) *Renewal.*—The lessee shall have a right of renewal for a further term of thirty-three years from the expiry of the said term, subject in all respects to the same reservations, conditions, and provisions as are contained in the original lease, including the right of renewal, save that the rent shall be determined at the first and each subsequent renewal in the following manner:—

(a) Not earlier than three years and not later than two years before the expiry of the lease the Board shall determine the then unimproved value of the land and the value of any improvements on the land at that date:

(b) The annual rental for the new term shall be fixed by the Board at $4\frac{1}{2}$ per cent. of the unimproved value determined as aforesaid:

(c) Not later than eighteen months before the expiry of the lease the Commissioner shall deliver to the lessee a notice in writing requiring him to elect whether he will accept a renewed lease at the rent so fixed as aforesaid, and the notice shall contain particulars as to unimproved value of the land and the value of improvements as determined by the Board:

(d) Within six months after the receipt of the notice referred to in the preceding paragraph, notice in writing shall be given to the Commissioner by the lessee to the effect either—

(i) That he accepts the offer of a renewed lease at the rental so fixed; or

(ii) That he does not desire a renewed lease, and agrees to the value of improvements as determined by the Board; or

(iii) That he does not desire a renewed lease, but requires the value of the improvements to be determined by arbitration; or

(iv) That he desires a renewed lease, but requires the unimproved value of the land and the value of the improvements to be determined by arbitration:

(e) If the lessee omits to give to the Commissioner within the time limited therefor the notice referred to in the last preceding clause, he shall be deemed to have agreed to accept a renewed lease at the rental mentioned in the notice of the Commissioner and to have agreed to the values contained or referred to in the notice:

- (f) If the Board omits to determine the aforesaid values or the Commissioner fails to give the notice hereinbefore referred to within the proper time therefor, such determination may be made and notice may be given at any time thereafter so long as the lessee remains in possession of the land, whether the term of his lease has or has not already expired, and his right to a renewal of the lease shall not be affected by any such omission or delay :
- (g) The determination of the arbitrators as to the value of the land and of the improvements shall be final and conclusive, and shall be binding on the parties, and the lessee shall have a right to a renewal of the lease at the unimproved value so fixed by the arbitrators :
- (h) The lessee shall, within two months after receiving notice of the determination of the arbitrators, elect whether he will accept a renewed lease at the unimproved value so fixed by the arbitrators and give notice of his election to the Commissioner. If he fails to give such notice within the time aforesaid he shall be deemed to have elected to accept a renewed lease at the said unimproved value :
- (j) Any such election to accept a renewed lease shall amount to a binding agreement to accept such lease :
- (k) If the lessee fails without reasonable excuse to execute a lease accordingly within one month after the same has been presented to him for execution, the Board may declare that his right of renewal is forfeited and his right shall thereupon determine.
- (5) *Procedure where Renewal not accepted.*—(a) If the lessee refuses or omits to accept a renewed lease or forfeits his right to obtain the same, the Board may offer to any person eligible under these regulations a new lease at the rental fixed as aforesaid and subject to the purchase by the incoming lessee of the improvements at the valuation determined by the Board or by arbitration as aforesaid.
- (b) The incoming lessee shall pay to the Receiver of Land Revenue before he is admitted into possession such amount as may be fixed by the Board, being not less than the value of the improvements on the land as so determined, less any amount owing to the Board by the outgoing lessee in respect of the said improvements, and shall execute a mortgage to the Crown to secure the balance of the purchase-money for the said improvements, such mortgage being in the form and subject to the terms and conditions prescribed in Regulation 11 of these regulations.
- (c) Notwithstanding anything in the last preceding subclause, the Board may, subject to the approval of the Minister, from time to time reduce the value of the improvements if a purchaser cannot be found by reason of the aforesaid value being deemed excessive, and shall, where any such reduction is made, endeavour to find a new purchaser.
- (d) The lessee shall have no claim against His Majesty or the Board or any other body or person whomsoever by reason of any such reduction in the value of the improvements or in respect of any delay in disposing of the land to a new purchaser.

(e) The value of the improvements when paid by the aforesaid purchaser shall, subject to the approval of the Board, be paid by the Receiver of Land Revenue to the outgoing lessee or other person entitled, less any moneys due in respect of such land by the outgoing lessee to the Crown on any account whatsoever, and less also the amount of expenses incurred in recovering possession of the land and in respect of the sale or other disposal thereof.

(f) Save as provided in the last preceding subclause, no outgoing lessee shall have any right or claim against the Crown or the Board in respect of the value of any improvements to which he may be entitled; but such outgoing lessee may sue for the value of such improvements and take all proceedings for the recovery thereof in the name of the Receiver of Land Revenue on giving security against costs to the satisfaction of a Judge of the Supreme Court.

(6) *Pastures and Stocking.*—The lease shall contain such provision as the Commissioner considers necessary with regard to the maintenance of any permanent pasture on the demised land, and the proper stocking of the said land.

(7) *Residence.*—The lessee, with his family, must take up residence on the land comprised in the lease within such time as may be notified to him by the Commissioner, and thereafter throughout the term shall reside continuously:

Provided that the Board may, if the circumstances warrant such action, grant exemption from residence for any given period.

(8) *Transfer or other Disposition.*—The lessee shall hold and use the demised land *bona fide* for his own benefit, and shall not assign, transfer, sublet, mortgage, charge, or in any way part with possession of the demised land or any part thereof without the approval of the Minister and on the recommendation of the Board.

(9) *Maintenance of Land.*—The lessee shall farm the land diligently and in a husbandlike manner, and shall keep the land clear of noxious weeds and vermin, and shall keep open all creeks, drains, and water-courses, and shall pay all rates, taxes, and other assessments levied on the said land, and shall comply strictly with the Noxious Weeds Act, 1928, and the Rabbit Nuisance Act, 1928, and the amendments thereof.

(10) *Buildings and other Erections.*—The lessee shall repair, maintain, and keep in good and substantial repair, order, and condition all buildings, fences, and erections on the demised land.

(11) *Insurance.*—The lessee shall insure and keep insured all buildings on the demised land to their full insurable value in the name of the lessor in some reputable insurance office approved by the Commissioner, and shall deliver the policy of insurance to the Commissioner for custody and shall pay all premiums on due date.

(12) *Forfeiture.*—If the lessee makes default for not less than twenty-one days in the payment of rent or other payments or in the observance or performance of any of the conditions implied or expressed in his lease, the Board may, with or without inquiry, by resolution declare his lease or license to be forfeited.

REGULATION 8.—MORTGAGE TO OUTGOING LESSEE.

An outgoing lessee may, with the consent of the Board, agree with any purchaser to secure by way of mortgage, subject, however, to any prior mortgages or charges in favour of the Crown, the repayment of the value of any improvements to which he is entitled.

REGULATION 9.—SETTING APART CROWN LAND.

(1) The Minister may from time to time set aside for settlement under section 6 of the principal Act any area of Crown land which, in the opinion of the Board, is suitable for settlement under the principal Act.

(2) Crown lands so set aside shall be deemed to have been acquired under the principal Act.

(3) Such setting-aside of Crown land for the aforesaid purpose may be revoked at any time by the Minister.

REGULATION 10.—PROVISIONS OF LAND ACT APPLIED.

(1) The following provisions of the Land Act, 1924, shall, *mutatis mutandis*, so far as applicable and except as may be otherwise provided in the principal Act or in these regulations, apply to Crown lands subject to the principal Act—the Land Act, 1924 : Sections 56, 80, 81, 82, 83, 86, 88 (a), (c), (d), (e), (f), 89, 90 (1), (c), (d), (e), and (2), 92, 93, 96, 98, 99 (1), (2), (3), and (4), 100, 101, 102, 105, 109, 118, 119, 120, 121, 122, 124, 125, 129, 135, 147, 149, 151, 157, and 206.

(2) Any reference in any of the aforesaid sections of the Land Act, 1924, to “the Board” shall be deemed to be a reference to the Small Farms Board, and any reference to the Land Act shall be deemed to be reference to the principal Act; and any reference to Crown lands shall be deemed to be a reference to Crown lands subject to the principal Act.

REGULATION 11.—SECURITY FOR ADVANCES.

(1) With regard to any moneys deemed to have been advanced by the Board to a lessee in respect of improvements on the land comprised in any lease issued pursuant to the principal Act or to section 8 of the Small Farms Amendment Act, 1935, or in respect of advances made pursuant to section 7 of the Small Farms Amendment Act, 1935, or to any moneys advanced for the effecting of further improvements, in any such case all such advances shall be secured by way of mortgage to the Crown over the lessee's interest in the land in such form and for such term as may be approved by the Board, and at such interest as may be approved by the Minister of Finance.

(2) If any such advance is secured by an instalment mortgage and the lessee (not being in arrears with any previous instalment or other payment due to the lessor) pays an instalment on or before its due date or within one month after the due date of such instalment, he shall be entitled to a rebate of one-tenth of so much thereof as consists of interest.

(3) Any rebate under this clause may be deducted and retained by the lessee from the full amount of the instalment when making the payment.

(4) For the purposes of this clause an instalment shall be deemed to have been paid within the aforesaid period of one month if within that period it is in course of transmission by post to the Receiver of Land Revenue, though not actually received by him.

REGULATION 12.—ADVANCES FOR STOCK AND CHATTELS.

Where money is advanced for the purpose of purchasing stock, implements, or chattels, the money so advanced shall be secured by mortgage over the lessee's interest in the land, and by a collateral bill of sale over the stock, implements, or chattels in such form as may be approved by the Board.

REGULATION 13.—PREPARATION OF MORTGAGES AND OTHER DOCUMENTS.

The Board shall arrange for the preparation of any mortgage or other document required under these regulations and also for any discharge, renewal or variation thereof, and shall fix the fees payable for their preparation, which fees shall be payable by the mortgagor.

REGULATION 14.—PAYMENT OF ADVANCES.

For the purpose of the administration of the provisions contained in these regulations, the Board may authorize the Commissioner or any other officer of the Department of Lands and Survey to pay advances, and any such authority shall be deemed to be an authority to advance and readvance moneys on current account so that the total indebtedness, exclusive of interest, of the person to whom such advance is made shall not at any time exceed the amount so authorized.

REGULATION 15.—RESTRICTION ON MORTGAGES OR OTHER CHARGES.

So long as any moneys are due by the lessee to the Crown the lessee shall not mortgage or charge to or in favour of any other person or persons his lease or any stock, implements, or chattels over which the Crown has security without the prior consent in writing of the Board.

REGULATION 16.—POWERS EXERCISABLE BY COMMISSIONER OF CROWN LANDS.

(1) All the powers conferred upon the mortgagee by any mortgage to secure repayment of moneys advanced under these regulations and all the powers conferred upon the mortgagee by any law may be exercised on behalf of the Crown in his own name by the Commissioner, and all actions and proceedings for the recovery of moneys advanced or interest thereon may be taken on behalf of the Crown by the Commissioner in his own name.

(2) The Commissioner may sign for and on behalf of His Majesty the King all instruments in relation to the execution, discharge, or assignment of any mortgage given by the lessee as security for any advances.

REGULATION 17.—REGISTRATION FEES.

No registration fee shall be payable in respect of any memorandum or deed of mortgage or any bill of sale given as security for an advance made under the authority of these regulations or in respect of any bailment of stock or chattels, or in respect of the discharge or variation of the terms of any such memorandum or deed of mortgage or bill of sale or bailment, or in respect of any caveat lodged to protect any interest acquired by His Majesty the King pursuant to these regulations or to the principal Act or to Part I of the Unemployment Amendment Act, 1932.

C. A. JEFFERY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 16th day of May, 1940.

These regulations are administered in the Lands and Survey Department.

(L. and S. 13/170.)