

Serial Number 1941/246.



THE WAR DAMAGE REGULATIONS 1941.

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

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this 19th day of
December, 1941.

Present :

THE RIGHT HON. P. FRASER PRESIDING IN COUNCIL.

PURSUANT to the War Damage Act, 1941, 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 War Damage Regulations 1941.

2. In these regulations, unless the context otherwise requires,—

“The Act” means the War Damage Act, 1941 :

“Month” means one of the twelve named calendar months :

“Mortgage” means a deed, memorandum of mortgage, instrument, or agreement whereby security for the payment of any moneys or for the performance of any contract is granted over any property ; and includes any statutory or other charge on any property other than a charge for land-tax or income-tax, or for rates under the Rating Act, 1925 ; and also includes an agreement for the sale and purchase of land and a hire-purchase agreement affecting any property other than land :

“Mortgagee” means the person entitled to the benefit of the security of a mortgage ; and includes the vendor under an agreement for sale and purchase or under a hire-purchase agreement :

“Mortgagor” means the owner of the property that is subject to a mortgage, or, in relation to any property that is subject to an agreement for sale and purchase or to a hire-purchase agreement, means the purchaser thereunder :

Expressions defined in the Act have the meanings so defined.

APPLICATION OF SECTION 14 OF THE ACT.

3. Where any property is insured under any contract of fire insurance made in respect of any period commencing between the commencement of the Act and the 1st day of March, 1942, section 14 of the Act shall not apply with respect to that property in relation to that contract.

4. Section 14 of the Act shall not apply except in respect of tangible property.

5. (1) Where any tangible property is insured under any contract of fire insurance made in respect of any period commencing on or after the 1st day of March, 1942, section 14 of the Act shall not apply with respect to that property in relation to that contract unless the contract is embodied in or forms the basis of—

- (a) A fire policy ; or
- (b) An earthquake fire policy ; or
- (c) A householder's comprehensive policy ; or
- (d) A houseowner's comprehensive policy ; or
- (e) A baggage policy ; or
- (f) A motor-vehicle comprehensive policy ; or
- (g) An all risks policy ; or
- (h) A policy of any other class for the time being determined by the Commission.

(2) Where in respect of any period any tangible property is insured under two contracts to which this regulation for the time being applies, and one contract relates to earthquake fire and the other to fire exclusive of earthquake fire, section 14 of the Act shall not apply with respect to that property in relation to the later of those contracts to be made, except to the extent to which that later contract insures to a greater amount than the earlier contract or relates to a different period from that to which the earlier policy relates.

CONDITIONS OF INSURANCE.

6. The insurance of any property against war damage, whether by virtue of section 14 of the Act or under a contract made under section 15 of the Act, shall be subject to the provisions of the Act and of these regulations and to the conditions and stipulations set out in the Schedule hereto.

WAR DAMAGE PREMIUMS.

7. (1) The rate of the premium payable in respect of the insurance of any property against war damage to any amount for any period, whether by virtue of section 14 of the Act or under a contract made under section 15 of the Act,—

- (a) Where the period is one year, shall be 5s. for every £100 or part of £100 of that amount ; and
- (b) In the case of any other period, shall be 5d. for every £100 or part of £100 of that amount for every month or part of a month comprised in that period.

(2) No such premium shall be less than 2s. 6d.

8. The rate of the premium payable in respect of any contract of indemnity made by the Commission under section 17 of the Act shall be such rate as the Commission in any case determines.

PAYMENT OF PREMIUMS BY INSURANCE COMPANIES.

9. (1) The amount of the war damage premiums for which any insurance company becomes liable under section 14 of the Act in any month shall be paid by the company to the Commission as follows:—

- (a) Not less than one-half of the amount shall be paid within one month after the close of that month :
- (b) The balance shall be paid within two months after the close of that month.

(2) Every such payment shall be made into the Public Account to the credit of the War Damage Fund, and forthwith after it is made the company shall forward to the Commission a duplicate of the bank receipt, accompanied, in the case of a payment to which paragraph (b) of the last preceding subclause applies, by a statutory declaration by the manager, secretary, or agent of the company, stating that, according to the books thereof, and to the best of his knowledge and belief, the payment is correct.

10. (1) The amount of every such payment, and all such statutory declarations, and all information obtained and all extracts made in order to verify such declarations, shall be kept secret by the Commission and every member thereof, and by every officer and person appointed thereby.

(2) Nothing in this regulation shall be construed to prohibit the publication of the gross amount of the war damage premiums received by the Commission from all insurance companies during or in respect of any period.

11. Every insurance company shall at all times keep in safe custody all records of contracts of fire insurance in respect of which it becomes liable to pay a war damage premium under section 14 of the Act, including full particulars of each contract and the amount of the war damage premium and the date of its payment to the Commission.

12. For the purpose of ascertaining whether all war damage premiums for which any insurance company is liable under section 14 of the Act have been paid and whether the provisions of the Act and of these regulations have been complied with, the Commission may from time to time require the Audit Office or any auditor to examine the books and accounts of the company, and it shall be the duty of the Audit Office or that auditor to make an examination accordingly and to report the result thereof to the Commission, and the company shall forthwith on demand submit its books and accounts accordingly to any duly authorized officer of the Audit Office or of that auditor.

MORTGAGED PROPERTY.

13. (1) Where any property is insured against war damage by virtue of section 14 of the Act or is insured to its full insurable value under a contract of war damage insurance made under section 15 of the Act, and at the time of the making of the contract of fire insurance or war damage insurance, as the case may be, the property is subject to a mortgage or to two or more mortgages, the following provisions shall apply as between the mortgagor and the mortgagee or mortgagees:—

- (a) One-half of the war damage premium shall be payable by the mortgagor :

- (b) One-half of the war damage premium shall be payable by the mortgagee or mortgagees ; and where there are two or more mortgages an equal proportion shall be payable by the mortgagee under each mortgage :
- (c) If the mortgagor or any mortgagee pays to the insurance company or to the Commission any part of the war damage premium in excess of the proportion payable by him under this regulation he may recover the excess as a debt from any other person or persons liable under this regulation to pay any part of the premium, to the extent to which they are respectively so liable :
- (d) Any amount recoverable as a debt by the mortgagor under paragraph (c) of this regulation may be deducted by him from any moneys at any time payable by him to the person from whom the amount is recoverable :
- (e) Any amount so recoverable by any mortgagee from the mortgagor shall, until it is paid, be deemed to be added to the moneys secured by the mortgage, but no interest shall be payable thereon.
- (2) Nothing in this regulation shall be construed to affect the liability of any person to pay to the insurance company or to the Commission the full amount of any war damage premium for which he may be liable under section 14 or section 15 of the Act.

PAYMENT OF CLAIMS.

14. The Commission shall have power at its discretion to pay or allow at any time the amount of any claim or claims that have been duly formulated by or on behalf of the insured person to the satisfaction of the Commission.

TRAVELLING-ALLOWANCES.

15. (1) The Travelling-allowance Regulations 1941* shall apply to and be deemed to be incorporated in these regulations so as to relate to the Commission and its members.

(2) The rate of the subsistence allowance referred to in clause 4 of the Travelling-allowance Regulations 1941 shall be £1 10s. for every day or part of a day.

(3) The rate of the mileage-allowance referred to in clause 11 of the Travelling-allowance Regulations 1941 for journeys performed in a motor-vehicle shall—

- (a) Where the horse-power of the vehicle does not exceed $9\frac{1}{2}$, be $4\frac{1}{2}$ d. for every mile or part of a mile :
- (b) Where the horse-power exceeds $9\frac{1}{2}$ but does not exceed $14\frac{1}{2}$, be 5d. for every mile or part of a mile :
- (c) Where the horse-power exceeds $14\frac{1}{2}$, be $5\frac{1}{4}$ d. for every mile or part of a mile.

(4) The actual garage expenses referred to in clause 11 of the Travelling-allowance Regulations 1941 shall not exceed 2s. 6d. for every night.

* Statutory Regulations 1941, Serial number 1941/149, page 484.

OFFENCES.

16. (1) Every person commits an offence against these regulations who—

- (a) Without lawful excuse acts in contravention of or fails to comply in any respect with any provision of these regulations :
- (b) With intent to deceive, makes any false or misleading statement or any material omission in any communication to the Commission or any other person (whether in writing or otherwise) for the purposes of these regulations :
- (c) Wilfully destroys or mutilates or renders illegible any entry in any record, book, or account required to be kept for the purposes of these regulations, or wilfully makes a false or fraudulent entry in or omission from any such record, book, or account :
- (d) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under these regulations.

(2) Nothing in this regulation shall be construed to relieve any person from any liability under any other enactment, but no person shall be punished twice for the same offence.

17. Every person who commits an offence against these regulations shall be liable on summary conviction to a fine not exceeding £50, and (if the offence is a continuing one) to a further fine not exceeding £5 for every day during which the offence continues.

SCHEDULE.

CONDITIONS OF INSURANCE.

Misdescription, Misrepresentation, and Concealment.

1. If there is or has been on the part of the insured person (whether to the Commission or its agents or, in the case of insurance by virtue of section 14 of the Act, to the insurance company) any wilful and material misdescription of any of the insured property or of any building or place in which the property is situated, or any misrepresentation as to any fact material for the purpose of estimating the value of the property, or any omission to state any such fact, the Commission shall not be liable in respect of any property affected by any such misdescription, misrepresentation, or omission.

Insurance otherwise than under the Act.

2. Insurance of any property against war damage otherwise than under the Act shall invalidate any claim made by the insured person against the Commission in respect of the destruction or damage of that property occurring during the period of that other insurance.

Risks not covered.

3. The insurance does not cover loss by theft during or after the occurrence of war damage.

Risks not covered unless expressly included.

4. Unless otherwise expressly provided in the contract of war damage or (in the case of property insured by virtue of section 14 of the Act) in the contract of fire insurance, the insurance does not cover—

- (a) Bullion or unset precious stones :
- (b) Any curiosity or work of art for an amount exceeding £20 :
- (c) Manuscripts, plans, drawings, designs, patterns, models, or moulds :
- (d) Securities, obligations, or documents of any kind, stamps, coined or paper money, cheques, books of account, or other business books :
- (e) Explosives.

Cancellation of the Insurance.

5. The insurance may be cancelled at any time at the request of the insured person on terms approved by the Commission.

Occurrence of War Damage.

6. On the occurrence of any loss or damage the insured person shall forthwith give notice thereof to the Commission, and shall within thirty days after the occurrence thereof, or within such further time as the Commission may in writing allow in that behalf, at his own expense deliver to the Commission—

(a) A claim in writing for the loss and damage, including as particular an account as may be reasonably practicable of all the several articles or items of property destroyed or damaged, and of the respective amounts claimed in respect thereof, having regard to their value at the time of the occurrence of the loss or damage, not including profit of any kind :

(b) Particulars of all other insurances, if any.

7. The insured person shall also at all times at his own expense produce, procure, and give to the Commission all such further particulars, plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proof, and information with respect to the claim and the origin and cause of the loss or damage, and the circumstances under which the loss or damage occurred, and any matter touching the liability as may be reasonably required, together with a statutory declaration of the truth of the claim and of any matter connected therewith.

8. The Commission may appoint any person (including an insurance company) as its agent to receive any such notices and to inquire into claims, but no settlement may be effected without the authority of the Commission. With the authority of the Commission, all expenses incurred by any such agent shall be payable by the Commission.

Rights of Commission as to Salvage.

9. On the occurrence of any loss or damage to any of the insured property, the Commission or its agent may—

(a) Enter and take and keep possession of the building or premises where the loss or damage has occurred :

(b) Take possession of or require to be delivered to it any of the insured property situated in that building or on those premises at the time of the loss or damage :

(c) Keep possession of any such property, and examine, sort, arrange, remove, or otherwise deal with it :

(d) Sell any such property or dispose of it on account of whom it may concern.

10. The powers conferred by clause 9 hereof may be exercised at any time until notice is given to the Commission by the insured person that he makes no claim under the insurance or, if any claim is made, until the claim is finally determined or withdrawn. The Commission shall not by any act done in the exercise or purported exercise of its powers under that clause incur any liability to the insured person or diminish its right to rely on any of the conditions of the insurance in answer to any claim.

11. If the insured person or any person on his behalf does not comply with the requirements of the Commission or hinders or obstructs the Commission in the exercise of its powers under clause 9 hereof, all benefit under the insurance shall be forfeited.

12. The insured person shall not in any case be entitled to abandon any property to the Commission, whether or not possession of it is taken by the Commission.

Forfeiture.

13. If any claim is in any respect fraudulent, or if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the insured person or any one acting on his behalf to obtain any benefit under the insurance, or if any loss or damage is occasioned by the wilful act or with the connivance of the insured person, or if any claim is made and rejected and an action or suit is not commenced within three months after the rejection or (in the case of an arbitration) within three months after the making of the award, all benefit under the insurance shall be forfeited.

Reinstatement.

14. The Commission may at its option reinstate or replace the property destroyed or damaged or any part thereof, instead of paying the amount of the loss or damage, but the Commission shall not be bound to reinstate or replace exactly or completely, but only as circumstances permit and in a reasonably sufficient manner, and in no case shall the Commission be bound to expend more in reinstatement or replacement than it would have cost to reinstate or replace the property as it was at the time of the occurrence of the loss or damage, nor more than the sum insured by the Commission thereon.

15. If the Commission so elects to reinstate or replace any property or wishes to consider whether it shall so elect, the insured person shall furnish the Commission with such plans, specifications, measurements, quantities, and other particulars as the Commission may require. No acts done or caused to be done by the Commission with a view to reinstatement or replacement shall be deemed to be an election by the Commission to reinstate or replace.

16. If in any case the Commission is unable or does not elect to reinstate or replace the insured property, the Commission shall not be pecuniarily liable for more than it would have cost to reinstate or replace the property as it was at the time of the occurrence of the loss or damage, nor more than the sum insured by the Commission thereon.

Subrogation of Rights.

17. The insured person shall at the expense of the Commission, and whether before or after the Commission makes good any loss or damage under the insurance, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Commission for the purpose of enforcing any rights and remedies, or of obtaining any relief or indemnity from other persons, to which the Commission is or would upon its making good any such loss or damage be entitled or subrogated.

Mitigation.

18. The insured person shall at all times take due precautions for the safety of the insured property, having regard to the nature thereof; and, in particular, if at any time any part of the insured property or any premises in which any part thereof is situated are destroyed or damaged by war damage, the insured person shall take all reasonable steps to preserve the insured property from further damage or from damage, as the case may be.

Arbitration.

19. If any difference arises between the Commission and the insured person as to the amount of any loss or damage the difference shall, independently of all other questions, be referred to two arbitrators, one to be appointed by the Commission and one by the insured person, under the Arbitration Act, 1908, and the obtaining of an award shall be a condition precedent to any right of action or suit upon the insurance.

Notices.

20. Every notice or other communication to the Commission required under these conditions shall be in writing.

T. R. AICKIN,
Acting Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 19th day of December, 1941.

These regulations are administered in the Office of the War Damage Commission.