



# Buildings Restrictions (War-Time Contraventions) Act 1946

1946 CHAPTER 35 9 and 10 Geo 6

An Act to make provision as respects works on land carried out during the war period, and uses of land begun during that period, which do not comply with building laws or planning control. [26th March 1946]

## Textual Amendments

- F1** Act repealed (E.W.) by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, [Sch. 1 Pt. II](#)  
Act repealed (S.)(27.5.1997) by [1997 c. 11, s. 3, Sch. 1 Pt. II](#) (with s. 5, Sch. 3)

## Modifications etc. (not altering text)

- C1** The whole Act as it relates to building laws repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), s. 1(1), [Sch. 1 Pt. VII](#)

## 1 Enforcement after end of war period of building laws and planning control.

- (1) . . . . .<sup>F2</sup>
- (2) Where during the war period works on land not complying . . .<sup>F3</sup> with planning control have been carried out, or a use of land not complying with planning control has been begun, by or on behalf of the Crown, and at any time after the end of the war period there subsists in the land a permanent or long-term interest which is neither held by or on behalf of the Crown nor subject to any interest or right to possession so held, the . . .<sup>F3</sup> planning control, . . .<sup>F3</sup> shall, so long as such a permanent or long-term interest subsists in the land, be enforceable in respect of the said works or use of land notwithstanding that the works were carried out or the land used by or on behalf of the Crown and notwithstanding the subsistence in the land of any interest held by or on behalf of the Crown in reversion (whether immediate or not) expectant on the termination of the said permanent or long-term interest.

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*Changes to legislation:* There are currently no known outstanding effects for the Buildings Restrictions (War-Time Contraventions) Act 1946. (See end of Document for details)

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- (3) In this section the expression “permanent or long-term interest” means in relation to any land the fee simple therein, a tenancy thereof granted for a term of more than ten years and not subject to a subsisting right of the landlord to determine the tenancy at or before the expiration of ten years from the beginning of the term, or a tenancy granted for a term of ten years or less with a right of renewal which would enable the tenant to prolong the term thereof beyond ten years.
- (4) For the purposes of this section, the question whether at any time a tenancy is or was subject to a subsisting right of the landlord to determine the tenancy at or before the expiration of ten years from the beginning of the term shall, if—
- (a) whether by virtue of the <sup>M1</sup>Validation of War-Time Leases Act 1944, or otherwise the tenancy is or was subject to a right of the landlord to determine the tenancy at or before the expiration of any period from the happening of any such event as is mentioned in subsection (2) of section one of the said Act of 1944, and
  - (b) the event in question has or had not happened at the said time,
- be determined as if the event had happened immediately before the said time.
- (5) In this section the expression “tenancy” includes a tenancy under an under-lease and a tenancy under an agreement for a lease or under-lease, but does not include an option to take a tenancy and does not include a mortgage.

#### Textual Amendments

**F2** S. 1(1) repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. VII

**F3** Words repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. VII

#### Marginal Citations

**M1** 1944 c. 34.

## 2 Power to sanction war-time non-compliance with planning control.

- (1) At any time before the expiration of five years from the end of the war period, a person entitled to make an application under this subsection with respect to any land may apply to an authority responsible for enforcing any . . . <sup>F4</sup> planning control for a determination under this section with respect to works on the land carried out, or a use of the land begun, during the war period.
- (2) Upon an application being made to them under the last foregoing subsection, the authority shall determine whether the works or use fail to comply with any . . . <sup>F4</sup> planning control which they are responsible for enforcing, and if so shall specify the . . . <sup>F4</sup> control in question.
- (3) Where the authority determine that works or a use fail to comply as aforesaid they shall further determine whether having regard to all relevant circumstances the works or use shall, notwithstanding the failure, be deemed so to comply, either unconditionally or subject to such conditions as to the time for which the works or use may be continued, the carrying out of alterations, or other matters, as the authority think expedient.
- (4) An application under subsection (1) of this section may be made with respect to any land by the owner or occupier thereof, or by any person who proves that he has or intends to acquire an interest in the land which will be affected by a determination

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given on such an application or that he has borne any of the cost of carrying out works on the land during the war period.

- (5) In the case of land owned or occupied by or on behalf of the Crown, or leased to, or to a person acting on behalf of, the Crown, or land with respect to which it is proved that there is held, or intended to be acquired, by or on behalf of the Crown an interest in the land which will be affected as aforesaid or that any of such cost as aforesaid has been borne by the Crown, an application under subsection (1) of this section may be made by any person acting on behalf of the Crown.
- (6) An application under subsection (1) of this section shall be accompanied by such plans and other information as are necessary to enable the application to be determined.
- (7) The authority to whom an application under subsection (1) of this section is made shall within fourteen days from the receipt of the application publish notice thereof in one or more local newspapers circulating in the area in which the land is situated and serve notice thereof on any person appearing to the authority to be specially affected by the application, and shall take into consideration any representations made to them in connection with the application within fourteen days from the publication of the notice; and if within two months from the last day on which such representations may be made the authority have failed to determine the application, the applicant may serve notice on the authority that he appeals to [<sup>F5</sup>the Secretary of State], and thereupon the authority shall be deemed to have refused to entertain the application.
- (8) Where the applicant is aggrieved by a determination given by an authority under this section or by the refusal of an authority to entertain an application made thereunder, or where a person by whom representations have been made as mentioned in the last foregoing subsection is aggrieved by such a determination, he may within the period of twenty-eight days after he has notice of the determination or refusal, or such extended period as [<sup>F5</sup>the Secretary of State] may allow, appeal to [<sup>F5</sup>the Secretary of State], and [<sup>F5</sup>the Secretary of State] may give, in substitution for the determination, if any, given by the authority, such determination as appears to him to be proper having regard to all relevant circumstances, or, if he is satisfied that the applicant was not a person entitled to make the application, may decide that the application is not to be entertained: Provided that at any stage of the proceedings on such an appeal to him [<sup>F5</sup>the Secretary of State] may, and shall if so directed by the High Court, state in the form of a special case for the opinion of the High Court any question of law arising in connection with the appeal.
- (9) Subject as hereinafter provided and to any determination or decision of [<sup>F5</sup>the Secretary of State] on an appeal under the last foregoing subsection, any determination given by an authority under this section and any refusal of an authority to entertain an application for such a determination shall be final, and any such determination or decision of [<sup>F5</sup>the Secretary of State] shall be final: Provided that where a determination has been given under subsection (3) of this section that works on land or a use of land shall not be deemed to comply with a . . . <sup>F4</sup> planning control or shall be deemed to comply therewith subject to conditions, then if a person entitled to make an application under subsection (1) of this section with respect to the land satisfies the authority or on appeal [<sup>F5</sup>the Secretary of State] that there has been a material change of circumstances since the previous application was determined, he may make a subsequent application under the said subsection (1) and on such an application the authority or on appeal [<sup>F5</sup>the Secretary of State] may substitute for the determination such determination under subsection (3) of this section as appears proper having regard to all relevant circumstances.

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- (10) If it appears to [<sup>F6</sup>the Secretary of State] that it is expedient, having regard to considerations affecting the public interest, whether generally or in the locality concerned, that any application under subsection (1) of this section to an authority responsible for enforcing planning control, or any class or description of such applications, should instead of being determined by the authority be referred to [<sup>F5</sup>the Secretary of State] for decision, [<sup>F6</sup>the Secretary of State] may give directions to the authority requiring that application, or applications of that class or description, to be so referred, and this section shall apply to any such reference as if it were an appeal under subsection (8) of this section from a refusal of the authority to entertain the application.
- (11) [<sup>F6</sup>The Secretary of State] may give directions to any authority responsible for enforcing planning control requiring them to furnish him with such information with respect to applications under subsection (1) of this section received by them as he considers necessary or expedient in connection with the exercise of his functions under this section.
- (12) On any application or appeal under this section the applicant, or in the case of an application referred to [<sup>F5</sup>the Secretary of State] for decision or in the case of an appeal to [<sup>F5</sup>the Secretary of State] the applicant or the authority responsible for enforcing the . . . <sup>F4</sup> planning control in question, may require the authority or [<sup>F5</sup>the Secretary of State] by whom the application or appeal is to be determined to afford him or them an opportunity before the application or appeal is determined of appearing before and being heard by a person appointed by the authority or [<sup>F5</sup>the Secretary of State] for the purpose.

#### Textual Amendments

- F4** Words repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\), s. 1\(1\), Sch. 1 Pt. VII](#)
- F5** Reference to the Secretary of State substituted for references to the Minister of Health by virtue of [S.I. 1951/142](#) (1951 I, p. 1348) arts. 3(1), 5(2), Sch. Pt. I, 1951/1900 (1951 I, p. 1347), 1965/319, arts. 2(1), 10(1)(a), Sch. 1 Pt. I and 1970/1681, arts. 2(1), 6(3)
- F6** Reference to the Secretary of State substituted for references to the Minister of Town and Country Planning by virtue of [S.I. 1951/142](#) (1951 I, p. 1348), art. 2, 1951/1900 (1951 I, p. 1347), 1965/319, arts. 2(1), 10(1)(a), Sch. Pt. I and 1970/1681, arts. 2(1), 6(3)

#### Modifications etc. (not altering text)

- C2** [S. 2](#) amended (E.W. except Greater London) by [Local Government Act 1972 \(c. 70\), Sch. 16 para. 54](#)

### 3 Supplementary provisions as to enforcement.

- (1) Where during the period of five years beginning with the end of the war period any person proposes to take steps for enforcing a . . . <sup>F7</sup> planning control in the case of works on land not complying with the . . . <sup>F7</sup> control in question carried out during the war period, or a use of land not complying with the planning control in question begun during that period, then—
- (a) unless an application under the last foregoing section in relation to the land has been made which has not been finally determined, he shall serve on every owner and occupier of the land not less than twenty-eight days' notice of the proposal, and if within the said period of twenty-eight days any person makes an application under the last foregoing section in relation to the land and within seven days of the making thereof serves on the person proposing to take steps as aforesaid notice that the application has been made, no steps

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for enforcing the . . . <sup>F7</sup> control shall be taken until the final determination of the application;

- (b) if such an application has been made which has not been finally determined, no such steps shall be taken until the final determination thereof:

Provided that no notice shall be required under paragraph (a) of this subsection if steps for enforcing a . . . <sup>F7</sup> planning control in the case of any works on land are begun within twenty-eight days of the final determination of an application under the last foregoing section in relation to the land.

(2) . . . . . <sup>F8</sup>

- (7) For the purposes of this section, an application shall be treated as having been finally determined notwithstanding that under the proviso to subsection (9) of the last foregoing section a subsequent application may be made under subsection (1) thereof.

**Textual Amendments**

**F7** Words repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\), s. 1\(1\), Sch. 1 Pt. VII](#)

**F8** [S. 3\(2\)–\(6\)](#) repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\), s. 1\(1\), Sch. 1 Pt. VII](#)

**4 Limitation of time for enforcement, as respects war period, of building laws and planning control.**

- (1) Where any works on land carried out, or use of land begun, during the war period remain or continues after the expiration of five years from the end of that period, and no determination has been given under this Act whether the works or use fail to comply with any . . . <sup>F9</sup> planning control, the works or use shall by virtue of this section be treated for all purposes as complying therewith unless steps for enforcing the . . . <sup>F9</sup> control have been begun before the expiration of the said five years.

[<sup>F10</sup>(2) Where works on land not complying with planning control have been carried out at any time during the war period and before the commencement of the [<sup>F11M2</sup>Planning (Interim Development) Act (Northern Ireland) 1944], or a use of land not complying with planning control has been begun at any such time, and the land is in an area with respect to which a resolution to prepare or adopt a scheme under the [<sup>F11M3</sup>Planning and Housing Act (Northern Ireland) 1931] was in force at the time when the works were carried out or the use was begun, then if the authority responsible for enforcing planning control are satisfied, at any time before the expiration of five years from the end of the war period while such a resolution is in force with respect to the area and the works remain on the land or the use of the land continues, that it is necessary or expedient to exercise the powers conferred by this subsection having regard to the provisions then proposed to be included in the scheme, the said authority may by notice served on every owner and occupier of the land direct that subsection (1) of this section shall not, so far as concerns planning control, have effect in relation to the works or use of land.]

**Textual Amendments**

**F9** Words repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\), s. 1\(1\), Sch. 1 Pt. VII](#)

**F10** [S. 4\(2\)](#) repealed by [\(E.W.\) Town and Country Planning Act 1947 \(c. 51\), Sch. 9 Pt. II](#) and [\(S.\) Town and Country Planning \(Scotland\) Act 1947 \(c. 53\), Sch. 9 Pt. II](#)

**F11** Words substituted by s. 9(4) of this Act