

LAND RENT AND RATES (DEFERMENT)

No. 5 of 1970

An Ordinance to provide for the Deferment of Payment of Land Rent and Rates.

Short title.

1. This Ordinance may be cited as the *Land Rent and Rates (Deferment) Ordinance 1970*.*

Interpretation.

2.—(1.) In this Ordinance, unless the contrary intention appears—

“determination” means a determination made under section 3 of this Ordinance;

“lease” means a lease of land for a term of years granted by or in the name of the Commonwealth;

“Magistrate” means a person holding office as a Stipendiary Magistrate or Special Magistrate under the *Court of Petty Sessions Ordinance 1930-1969*;

“owner”, in relation to a parcel of land, means—

(a) in the case of a parcel of land held under a lease, the lessee of the parcel of land or, in a case where two or more persons are lessees of the parcel of land, whether as joint tenants or tenants in common, each of those persons; and

(b) in the case of a parcel of land which is held in fee simple, the person in whom the fee simple is vested or in a case where the fee simple is vested in two or more persons, whether as joint tenants or tenants in common, each of those persons;

“pensioner” means—

(a) a person to whom or in respect of whom—

(i) there is being paid an age or invalid pension under Part III., or a widow's pension under Part IV., of the *Social Services Act 1947-1969*; or

(ii) such a pension would be payable if the person were not in receipt of a rehabilitation allowance under section 135D of that Act, other than such a person to whom or in respect of whom such a pension would not be payable if any

* Made on 16 February 1970; notified in the *Commonwealth Gazette* and commenced on 26 February 1970.

amendment of the *Social Services Act* 1947-1968, being an amendment alleviating the operation of the means test in relation to that person, made after the date of commencement of the *Social Services Act* 1968 had not been made;

- (b) a person to whom or in respect of whom there is being paid a sheltered employment allowance under Part VIIA. of that Act or an allowance under the *Tuberculosis Act* 1948 and who, but for the payment of that allowance, would be eligible to receive a pension of a kind referred to in the last preceding paragraph other than such a person who would not be eligible to receive such a pension if any amendment of the *Social Services Act* 1947-1968, being an amendment alleviating the operation of the means test in relation to that person, made after the date of commencement of the *Social Services Act* 1968 had not been made;
- (c) a person to whom or in respect of whom there is being paid a service pension under Part III. of the *Repatriation Act* 1920-1969 other than such a person to whom or in respect of whom such a pension would not be payable if—
 - (i) any amendment of the *Repatriation Act* 1920-1968, being an amendment alleviating the operation of the means test in relation to that person, made after the date of commencement of the *Repatriation Act* 1968 had not been made; and
 - (ii) any amendment of the *Social Services Act* 1947-1968, being an amendment alleviating the operation of the means test in relation to that person, made after the date of commencement of the *Social Services Act* 1968 had not been made; or
- (d) a person to whom or in respect of whom a pension, in accordance with Table A in the Third Schedule to the *Repatriation Act* 1920-1968, that is payable under that Act, under the *Repatriation (Far East Strategic Reserve) Act* 1956-1966, or under the *Repatriation (Special Overseas Service) Act* 1962-1968, by reason of the person being the widow of a deceased member of the Forces or having been recognized as the wife of a deceased member of the Forces though not legally married to him;

“the Rates Ordinance” means the *Rates Ordinance* 1926-1967.

(2.) For the purposes of the definition of “pensioner” in subsection (1.) of this section, a reference to an amendment alleviating

the operation of the means test shall be read as a reference to the meaning that that term has in sub-section (1.) of section 83A of the *Social Services Act* 1947-1969 or in sub-section (6.) of section 123A of the *Repatriation Act* 1920-1969, as the case requires.

(3.) A reference in this Ordinance to a person to whom a determination relates or a person to whom a determination related shall, in a case where a determination relates or related to two or more persons, be read as a reference to those persons.

(4.) A reference in this Ordinance to the amount for which a person to whom a determination relates or related is or became indebted to the Commonwealth under this Ordinance shall be read as including a reference to the amount payable by that person by way of interest under sub-section (3.) of section 4 or under section 16 of this Ordinance.

Determinations
under this
Ordinance.

3.—(1.) Subject to this section, the Minister shall, if he is satisfied, on an application made for the purpose by the owner or the owners of a parcel of land—

- (a) that the owner is a pensioner or all the owners are pensioners; or
- (b) in the case of an application made by a person other than a pensioner or by two or more persons any one of whom is not a pensioner, that payment of the total amount of rent due or to become due under the lease of the land or the rates due or to become due in respect of the land under the Rates Ordinance or both is likely to cause substantial hardship to the applicant or to the applicants,

make a determination under this section.

(2.) A determination under this section—

- (a) shall, in the case of land held under a lease, defer the obligation of the person to whom it relates to pay all or any of the following:—
 - (i) part of the total amount of the rent (including any additional rent) due at the date of the making of the determination or part of each amount of rent to become due, under the lease of the land; and
 - (ii) part of the total amount of rates (including any additional amount payable by way of penalty) due at the date of the making of the determination, or part of each amount of rates to become due in respect of the land, under the Rates Ordinance; and
- (b) shall, in the case of land held in fee simple, defer the obligation of the person to whom it relates to pay part of the total amount of rates due, or part of each amount of rates to become due in respect of the land under the Rates Ordinance.

(3.) The Minister shall cause a copy of a determination made under this section to be delivered to the person to whom the determination relates.

(4.) The Minister shall not make a determination under this section unless, in the case of a parcel of land held under a lease—

- (a) the lease contains a covenant that the land will be used for residential purposes only; and
- (b) the applicant is, or the applicants are, ordinarily resident on the land.

(5.) The Minister shall not make a determination under this section unless, in the case of land held in fee simple—

- (a) the land is used only for residential purposes; and
- (b) the applicant is, or the applicants are, ordinarily resident on the land.

(6.) Notwithstanding paragraph (b) of sub-section (4.) of this section or paragraph (b) of the last preceding sub-section, the Minister may make a determination under this section on an application made by **one or more of the joint owners of a parcel of land but not by all the joint owners of the parcel of land if—**

- (a) the person or persons by whom the application is made is or are ordinarily resident on the land;
- (b) the other joint owner or the other joint owners of the land is or are not ordinarily resident on the parcel of land; and
- (c) the Minister is satisfied that, in all the circumstances of the case, it is appropriate that a determination under this section should be made.

4.—(1.) Where the obligation of the person to whom a determination relates—

Effect of the making of a determination.

- (a) to pay part of the rent due under the lease of land referred to in the determination on the date of the determination; or
- (b) to pay part of the rates in respect of the land due under the Rates Ordinance on that date,

or to pay part of the rent so due and part of the rates so due is deferred, the obligation of the person to whom the determination relates to pay the rent due under the lease of the land on that date or rates in respect of the land due under the Rates Ordinance on that date, or both, as the case may be, shall, immediately after the making of the determination, be, by force of this section, reduced in accordance with the determination, and the person to whom the determination relates becomes indebted to the Commonwealth under this Ordinance for an amount equal to the amount by which his obligation to pay the rent or rates, or both, as the case may be, is reduced.

(2.) Where the obligation of the person to whom a determination relates—

- (a) to pay part of each amount of rent that is to become due under the lease of the land referred to in the determination while the determination is in force; or
- (b) to pay part of each amount of rates that is to become due in respect of the land under the Rates Ordinance while the determination is in force,

or to pay part of each amount of rent, and part of each amount of rates, that is to become so due is deferred, the obligation of the person to whom the determination relates to pay each amount of rent or each amount of rates, or both, as the case may be, shall, immediately after each amount of rent or rates or both, as the case may be, becomes due, be, by force of this section, reduced in accordance with the determination, and the person to whom the determination relates becomes or become indebted to the Commonwealth under this Ordinance for an amount equal to the amount by which his obligation to pay rent or rates, or both, as the case may be, is reduced.

(3.) There is payable to the Commonwealth, in respect of each amount the payment of which is deferred by reason of the making of a determination, interest at the rate of five per centum per annum on the amount so deferred calculated from and including the date as from which the payment of that amount is deferred to and including the date on which payment of an amount equal to that amount is made to the Commonwealth or the date of revocation of the determination, whichever is the earlier.

(4.) For the purposes of the last preceding sub-section, a reference to the date as from which payment of an amount of rent or an amount of rates is deferred shall be read as a reference to—

- (a) in the case of an amount due on the date of the making of the determination—that date; and
- (b) in the case of an amount deferred after the making of the determination—the date on which, if the determination had not been made, an amount as additional rent would have become payable under the lease of the land, or an additional amount by way of penalty for non-payment of rates would have become payable under the Rates Ordinance, as the case may be, by reason of the non-payment of the amount deferred.

5. The Minister shall, as soon as practicable after a determination is made, cause notice of the making of the determination in accordance with Form 1 to be presented in duplicate to the Registrar of Titles for registration under the *Real Property Ordinance* 1925-1970.

Notice of
determination
to be presented
to the
Registrar of
Titles for
registration.

6. The amount for which a person is for the time being indebted to the Commonwealth under this Ordinance by reason of the making of a determination is not, whilst the determination is in force, recoverable by the Commonwealth.

Deferred amounts not recoverable while determination is in force.

7. The Minister may, at any time, vary a determination by increasing the amounts deferred under the determination if the Minister is satisfied that it is necessary to do so to avoid hardship to the person to whom the determination relates or by reducing the amount deferred under the determination if the Minister is satisfied that the variation is not likely to cause substantial hardship to the person to whom the determination relates.

Variation of determination.

8. Where the Minister varies, under the last preceding section, a determination, a reference in this Ordinance to a determination shall be read as a reference to the determination as so varied.

Effect of variation of determination under section 7.

9. The Minister shall, by instrument in writing, forthwith revoke a determination—

Minister to revoke determination if amount deferred paid to the Commonwealth or on request of the person to whom the determination relates.

- (a) if an amount equal to the amount of the indebtedness to the Commonwealth under this Ordinance of the person to whom the determination relates is paid to the Commonwealth in discharge of that indebtedness; or
- (b) on the written request of the person to whom the determination relates.

10.—(1.) For the purposes of this section, each of the following is a prescribed ground for the revocation of a determination:—

Procedure to be followed before revocation of determination in cases other than those referred to in section 9.

- (a) that, in a case where the person or each of the persons to whom the determination relates was, at the time the determination was made, a pensioner, that person or each of those persons has ceased to be a pensioner;
- (b) that, in a case where—
 - (i) the determination relates to two or more persons;
 - (ii) each of those persons was, at the time the determination was made, a pensioner; and
 - (iii) one or more but not all of those persons has or have ceased to be pensioners,

the revocation of the determination is not likely to result in substantial hardship to those persons;

- (c) that, in a case where the determination relates to a person who was not, at the time the determination was made, a pensioner or the determination relates to persons all of whom were not, at that time, pensioners, the revocation of the determination is not likely to result in substantial hardship to the person or those persons;

- (d) that the person or a person to whom the determination relates has failed to comply with a requirement made under sub-section (2.) of section 19 of this Ordinance;
- (e) that the person to whom the determination relates or all of the persons to whom the determination relates who were ordinarily resident on the land referred to in the determination on the date of the application for the determination has or have ceased to be ordinarily resident on the land; and
- (f) that the person or the persons to whom the determination relates has or have ceased, whether by death or otherwise, to be the owner or the owners of the land referred to in the determination.

(2.) Subject to sub-section (4.) of this section, where the Minister has reason to believe that a prescribed ground for the revocation of a determination exists, the Minister may, by notice in writing served on the person to whom the determination relates, give notice of his intention to revoke the determination.

(3.) A notice under the last preceding sub-section shall—

- (a) specify the prescribed ground which the Minister believes to exist for the revocation of the determination;
- (b) if the Minister considers that, in the circumstances of the case, it is reasonable, to avoid substantial hardship to the person to whom the determination relates, to permit the payment by instalments of the amount for which that person has become indebted to the Commonwealth under this Ordinance, contain proposals for the payment of that amount by instalments; and
- (c) contain a statement that the person to whom a determination relates may, within a period specified in the notice, being a period of not less than twenty-one days after service of the notice, apply to a Magistrate for an order authorized to be made under the next succeeding section.

(4.) Where a determination relates to a husband and his wife as owners of a parcel of land as joint tenants or tenants in common and either the husband or the wife dies, the Minister shall not give notice of his intention to revoke the determination under sub-section (2.) of this section unless and until one of the prescribed grounds is or becomes applicable to or in relation to the survivor.

(5.) A person on whom a notice under sub-section (2.) of this section is served may, within the time specified in the notice, lodge with the Clerk of Petty Sessions an application for an order under the next succeeding section.

(6.) Where an application is made under the last preceding sub-section, the Minister shall not make an order for the revocation of the determination unless—

- (a) the Magistrate has made an order referred to in paragraph (b) of sub-section (1.) of the next succeeding section; or
- (b) the application is withdrawn.

(7.) The Minister may, by instrument in writing under his hand, cancel a notice given under sub-section (2.) of this section, but the cancellation of such a notice does not prevent the Minister giving a subsequent notice under that sub-section.

11.—(1.) Where an application has been made under sub-section (5.) of the last preceding section, a Magistrate shall, unless the application has been withdrawn or the Minister has cancelled the notice of his intention to revoke the determination, hold an inquiry into the relevant facts and circumstances and—

Powers of
Magistrate.

- (a) if satisfied that the prescribed ground for the revocation of the determination does not exist—the Magistrate shall make an order that the determination be not revoked; or
- (b) is satisfied that the prescribed ground specified in the notice for the revocation of the determination exists—the Magistrate shall make an order dismissing the application.

(2.) Where—

- (a) the notice of intention to revoke a determination contains proposals of the kind referred to in paragraph (b) of sub-section (3.) of the last preceding section; and
- (b) the Magistrate makes an order dismissing the application, the Magistrate, if satisfied that payment in accordance with those proposals of the amount for which the person to whom the determination relates has become indebted to the Commonwealth under this Ordinance will not cause substantial hardship to that person, shall include in the order a declaration to that effect but, if not so satisfied, shall include in the order dismissing the application a declaration specifying such other proposals for the payment of that amount by instalments, as in his opinion, will not cause substantial hardship to that person.

(3.) Where—

- (a) the notice of intention to revoke a determination does not include proposals of the kind referred to in paragraph (b) of sub-section (3.) of the last preceding section; and
- (b) the Magistrate makes an order dismissing the application, the Magistrate may, except in a case where the prescribed ground for the revocation of the determination is that the person to whom the determination relates has ceased, otherwise than by death, to be the owner of the land referred to in the determination, include in the order a declaration that it is reasonable, to avoid substantial hardship to the person to whom the determination relates, to permit the payment by specified instalments of the amount for which that person has become indebted to the Commonwealth under this Ordinance.

(4.) In conducting an inquiry under this Part, a Magistrate—

(a) is not bound by the rules of evidence; and

(b) shall give to the applicant and to the Minister an opportunity of being heard.

(5.) An inquiry by a Magistrate under this section shall be held in private.

(6.) The Minister and an applicant may be represented at an inquiry by a barrister or a solicitor or by an agent appointed for the purpose.

Revocation
where
application
is not made to
a Magistrate
for an order
under section 11.

12. Where—

(a) the Minister has given notice of his intention to revoke a determination and has not cancelled the notice; or

(b) an application under sub-section (5.) of section 10 of this Ordinance for an order under the last preceding section is not made within the time specified in the notice or, if such an application has been so made, it has been withdrawn,

the Minister may, by instrument in writing, revoke the determination.

Revocation
after inquiry
by Magistrate.

13. Where, after the hearing of an application made under sub-section (5.) of section 10 of this Ordinance, the Magistrate by whom the application was heard has made an order under paragraph (b) of sub-section (1.) of section 11 of this Ordinance, the Minister may, by instrument in writing, revoke the determination.

Instalments
to be specified
in instrument
of revocation
in appropriate
cases.

14. Where—

(a) the Minister has, in the notice of intention to revoke a determination, specified proposals for the payment by instalments for the amount for which the person to whom the determination related had become indebted to the Commonwealth under this Ordinance and other proposals have not been specified by a Magistrate in an order under paragraph (b) of sub-section (1.) of section 11 of this Ordinance; or

(b) a Magistrate has, in such an order, included a declaration that payment of that amount be made in accordance with other specified instalments,

the Minister shall, in the instrument revoking the determination, specify that payment of the amount for which the person to whom the determination related has become indebted to the Commonwealth under this Ordinance be made—

(c) by the instalments specified in the notice of intention to revoke the determination; or

(d) if the Magistrate has specified that the amount be paid by other instalments, the instalments so specified,

as the case requires.

Recovery of
deferred
amounts.

15.—(1.) Subject to this section, the amount for which a person to whom a determination related has become indebted to the Commonwealth under this Ordinance is recoverable as a debt due to the

Commonwealth and payable on the day immediately after the day on which the determination is revoked.

(2.) Where, in the instrument revoking a determination, the Minister specifies the instalments for the payment of the amount for which the person to whom the determination related has become indebted to the Commonwealth under this Ordinance, an amount equal to the amount of each of the instalments so specified is recoverable as a debt due to the Commonwealth and payable on the day on which that instalment is required to be paid by the instrument revoking the determination.

(3.) Where—

- (a) in the instrument revoking a determination, the Minister specifies instalments for the payment of the amount for which the person to whom the determination related became indebted to the Commonwealth under this Ordinance; and
- (b) the person to whom the determination related ceases, otherwise than by death, to be the owner of the land referred to in the determination after the revocation of the determination,

so much of the amount for which the person to whom the determination related as remains unpaid on the date on which the person ceases to be the owner of the land is, notwithstanding the last preceding sub-section, recoverable as a debt due to the Commonwealth and payable on the day on which the person ceased to be the owner of the land.

(4.) Where a determination related to two or more persons, the liability of those persons for the payment of the amount for which they have become indebted to the Commonwealth under this Ordinance is joint and several.

(5.) If a person referred to in the last preceding sub-section pays to the Commonwealth more than his proportionate part of the amount, he may recover the excess by way of contribution from the other person, or the other persons liable, to pay the amount.

16.—(1.) Where any of the amount for which the person to whom a determination related became indebted to the Commonwealth under this Ordinance remains unpaid after the date of revocation of the determination, there is payable to the Commonwealth interest on the amount remaining unpaid calculated as provided in whichever of the succeeding sub-sections of this section is applicable.

Interest payable on amount unpaid after revocation of determination.

(2.) The interest shall, in respect of the amount remaining unpaid during the whole or any part of the period of one month commencing on the day immediately following the date of revocation of the determination, be calculated at the rate of five per centum per annum.

(3.) Where an instrument revoking a determination specifies instalments for the payment of the amount for which the person to whom the determination related has become indebted to the Commonwealth under this Ordinance, the interest shall, in respect of the amount remaining unpaid from time to time after the end of the period of one month

referred to in the last preceding sub-section, be calculated, subject to sub-section (5.) of this section, at the rate of five per centum per annum.

(4.) Where an instrument revoking a determination does not specify the instalments by which the amount for which the person to whom the determination related has become indebted to the Commonwealth under this Ordinance, the interest shall, in respect of the amount remaining unpaid from time to time after the end of the period of one month referred to in sub-section (2.) of this section, be calculated at the rate of eight per centum per annum.

(5.) Where, an instalment referred to in sub-section (3.) of this section is not paid as required by the instrument revoking a determination, interest on the amount of that instalment shall, while it remains unpaid after the date on which it became payable, be calculated at the rate of eight per centum per annum.

Remission of interest.

17. The Minister may, if satisfied that the circumstances of the case justify him so doing, remit or refund any amount of interest that has become payable under sub-section (3.) of section 4, or under section 16, of this Ordinance.

Memorandum in accordance with Form 2 to be presented to the Registrar of Titles.

18. The Minister shall, when an amount equal to the total of the amount for which the person to whom a determination related became indebted to the Commonwealth under this Ordinance is paid or when he is satisfied that circumstances exist that justify him so doing, cause to be presented to the Registrar of Titles for registration under the *Real Property Ordinance 1925-1970* a memorandum in accordance with Form 2 in the Schedule to this Ordinance.

Minister may require information.

19.—(1.) The Minister may require a person who has made application under section 3 of this Ordinance to furnish him with such information or further information in relation to the application as the Minister specifies.

(2.) While a determination is in force, the Minister may, from time to time, require a person to whom the determination relates to furnish to him such information regarding the property, means and income of the person as the Minister specifies.

Notice of revocation to be given.

20. Where the Minister revokes, under section 9, 12 or 13 of this Ordinance, a determination, the Minister shall cause a copy of the instrument of revocation to be served on the person to whom the determination related.

Notice of making of determination to be given to prior mortgagees or encumbrances.

21. The Minister shall, as soon as practicable after notice of the making of a determination has been registered under the *Real Property Ordinance 1925-1970*, cause notice of the registration to be served on each person who, on the date of the registration, is the proprietor of a mortgage or encumbrance, registered before the registration of the notice, of the land referred to in the notice.

22. A document required by this Ordinance to be served upon a person may be served on that person—

- (a) by delivering it to him personally; or
- (b) by sending it by pre-paid post as a letter to that person at his last known place of residence.

THE SCHEDULE

FORM 1

Section 5.

Land Rent and Rates (Deferment) Ordinance 1970

NOTICE OF DETERMINATION UNDER SECTION 3

I, _____, the Minister of State for the Interior,
 hereby give notice that, on the _____ day of _____ 19____,
 a determination relating to land, particulars of which are set out in the following Schedule,
 was made under section 3 of the *Land Rent and Rates (Deferment) Ordinance 1970*.

THE SCHEDULE

Determination No. _____.

Description of land—Block _____ Section _____

Division of _____

Register Book volume _____ folio _____.

Name of registered proprietor _____

Dated this _____ day of _____, 19____.

Minister of State for the Interior.

To the Registrar of Titles.

FORM 2

Section 18.

Land Rent and Rates (Deferment) Ordinance 1970

MEMORANDUM OF DISCHARGE

The charge created on the parcel of land comprised in Crown Lease granted the
 day of _____, 19____, [or in Certificate of Title] registered volume
 folio _____ by the registration of the notice of the determination made under section 3
 of the *Land Rent and Rates (Deferment) Ordinance 1970* registered volume _____ folio
 is hereby discharged.

Dated this _____ day of _____, 19____.

Minister of State for the Interior.