

1917-18-19.

THE PARLIAMENT OF THE COMMONWEALTH

HOUSE OF REPRESENTATIVES

Read 1° 16th July, 1919.

(Brought in by the Honorable L. E. Groom for the Honorable W. A. Watt,
Acting Prime Minister.)

A BILL

FOR

AN ACT

To continue in force certain Regulations intituled
the War Precautions (Moratorium) Regulations
and the War Precautions (Active Service
Moratorium) Regulations.

WHEREAS during the existence of the war with Germany and for Preamble.
the purpose of the more effectual prosecution of the war it
became and was, in the opinion of the Governor-General, necessary
and expedient to restrict temporarily certain of the rights possessed by
5 mortgagees, vendors and others against mortgagors, purchasers and
others, some of whom are or were and some of whom are or were not
members of the Commonwealth Naval or Military Forces, or dependants
of members of those Forces :

And whereas certain Regulations known as the War Precautions
10 (Moratorium) Regulations and the War Precautions (Active Service
Moratorium) Regulations, having for their object the temporary
restriction of certain of those rights, were duly made under the *War
Precautions Act 1914-1916* :

And whereas it is essential, in order to obviate serious financial
15 dislocation in the Commonwealth, that the removal of the restrictions
imposed by the War Precautions (Moratorium) Regulations should
operate gradually :

[C.139]—825/16.7.1919.—F.8896.

And

And whereas it is likewise essential, in order to continue for limited periods the protection afforded to persons who are or have been members of those Forces, or dependants of members of those Forces, against the enforcement of rights possessed by mortgagees, vendors and others, that certain of the War Precautions (Active Service Moratorium) Regulations should continue in force until all Expeditionary Forces serving outside Australia at the commencement of this Act have been substantially demobilized, and that the remaining Regulations comprised in the War Precautions (Active Service Moratorium) Regulations should continue in force so long as there is any mortgage or agreement for the purchase of land, to which the Regulations apply :

Be it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Moratorium Act 1919*. 15
2. This Act is divided into Parts, as follows :—
- Part I.—Preliminary.
- Part II.—The General Moratorium.
- Part III.—The Active Service Moratorium. 20
- Part IV.—Miscellaneous.
3. In this Act, unless the contrary intention appears—
- “the War Precautions (Active Service Moratorium) Regulations” means the Regulations set forth in the Second Schedule to this Act, being Statutory Rules 1916 No. 163, as amended by Statutory Rules 1916 No. 283, by Statutory Rules 1917 No. 271, by Statutory Rules 1918 Nos. 81, 238 and 314, and by Statutory Rules 1919 Nos. 112, 128 and 173; 25
- “the War Precautions (Moratorium) Regulations” means the Regulations set forth in the First Schedule to this Act, being Statutory Rules 1916 No. 284, as amended by the following Statutory Rules, namely :—Statutory Rules 1916 No. 324 ; Statutory Rules 1917 Nos. 13, 76 and 253 ; Statutory Rules 1918 Nos. 28 and 191 ; and Statutory Rules 1919 Nos. 36, 140 and 172 ; and 30
- “the prescribed date” means the thirtieth day of June, One thousand nine hundred and twenty. 35

PART II.—THE GENERAL MORATORIUM.

- 4.—(1.) Subject to this section, the War Precautions (Moratorium) Regulations shall continue in force until the prescribed date, and thereafter until such time as the Governor-General notifies by proclamation that he is satisfied that any extended period allowed by a Court upon application made under regulation fourteen of those Regulations has expired : 40

Provided

Provided that after the prescribed date the War Precautions (Moratorium) Regulations shall apply only to mortgages in respect of which a Court has in pursuance of regulation fourteen of those Regulations made an order extending the date for repayment.

5 (2.) During such continuance the War Precautions (Moratorium) Regulations shall have the force of law.

(3.) During the continuance of the War Precautions (Moratorium) Regulations, the Governor-General may make regulations, not inconsistent with this Part, prescribing all matters which are
10 necessary or convenient to be prescribed for carrying out or giving effect to this Part, and in particular for repealing, altering or adding to any of the War Precautions (Moratorium) Regulations :

15 Provided that nothing in this sub-section shall authorize the making of a regulation extending, or empowering the extension of, the time for repayment of the principal sum secured by a mortgage, for more than twelve months after the prescribed date.

(4.) Nothing in this Part shall abridge the time which has, before the commencement of this Act, been allowed by any Court, in pursuance of the War Precautions (Moratorium) Regulations, for repayment of the principal sum secured by a mortgage.
20

PART III.—THE ACTIVE SERVICE MORATORIUM.

5.—(1.) Subject to this section, regulations one to eleven (inclusive) of the War Precautions (Active Service Moratorium) Regulations shall continue in force so long as there remains in force any
25 mortgage or agreement for the purchase of land to which those Regulations apply, and shall during such continuance have the force of law.

Continuance of
the War
Precautions
(Active Service
Moratorium)
Regulations.

(2.) Subject to this section, regulations twelve to eighteen (inclusive) of the War Precautions (Active Service Moratorium) Regulations shall continue in force until all Expeditionary Forces serving
30 outside Australia at the commencement of this Act have been substantially demobilized, and shall during such continuance have the force of law.

(3.) During the continuance of any of the War Precautions (Active Service Moratorium) Regulations, the Governor-General may
35 make regulations, not inconsistent with this Part, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Part, and in particular for repealing, altering or adding to any of the War Precautions (Active Service Moratorium) Regulations :

40 Provided that nothing in this sub-section shall authorize the making of a regulation extending, or empowering the extension of, the time for any payment of principal money secured by a mortgage or any payment of purchase money under an agreement for the purchase of land.

(4.) The

(4.) The Prime Minister shall, as soon as practicable after all Expeditionary Forces serving outside Australia at the commencement of this Act have been substantially demobilized, cause notification of that fact to be published in the *Gazette*, and thereupon regulations twelve to eighteen (inclusive) of the War Precautions (Active Service Moratorium) Regulations, and any Regulations made in pursuance of this Part of this Act, altering or adding to any of those Regulations, shall expire. 5

PART IV.—MISCELLANEOUS.

Offences and
procedure.

6.—(1.) Any person who contravenes, or fails to comply with, any provision of the War Precautions (Moratorium) Regulations, of the War Precautions (Active Service Moratorium) Regulations, or of any regulation made in pursuance of this Act, shall be guilty of an offence against this Act. 10

Penalty: One hundred pounds, or imprisonment for six months, or both. 15

(2.) An offence against this Act shall not be prosecuted without the written consent of the Attorney-General or the Minister for Defence, or a person authorized in writing by the Attorney-General or the Minister for Defence. 20

(3.) For the purpose of the trial of a person for an offence against this Act, the offence shall be deemed to have been committed either at the place in which it actually was committed or at any place in which the person is.

Effect of
expiration of
regulations.

7. The expiration of any of the regulations comprised in the War Precautions (Moratorium) Regulations or the War Precautions (Active Service Moratorium) Regulations, or of any regulation made in pursuance of this Act, shall not— 25

(a) affect any right, privilege, obligation or liability acquired, accrued or incurred under any such regulation; or 30

(b) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any such regulation; or

(c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, as aforesaid; 35

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the regulation had not expired.

THE SCHEDULES.

THE FIRST SCHEDULE.

THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS.

- 1. These Regulations may be cited as the War Precautions (Moratorium) Regulations. Short title.
 - 2. In these Regulations, unless the contrary intention appears— Definitions.
 - “Mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of moneys or for the performance of any contract is granted over land or chattels or any interest therein respectively, and includes an equitable mortgage by deposit of title deeds, and any document by which the duration of a mortgage is extended;
 - “Mortgagor” means the person liable under the provisions of a mortgage, or entitled to redeem a mortgage, and includes any person who has guaranteed the payment of any money the payment of which is secured by a mortgage or the performance by the mortgagor of any covenant, condition, or agreement expressed or implied in the mortgage, whether such guarantee is expressed in the mortgage or in any other instrument; Amended by 1917, No. 78.
 - “Mortgagee” means the person entitled to the benefit of the security of any mortgage;
 - “Prescribed date for repayment” means the date fixed by regulation 13 of these Regulations as the date upon which the principal sum secured by a mortgage or agreement to which these regulations apply shall be repayable. Added by 1919, No. 140.
 - “Prescribed month for repayment” means the month in which the prescribed date for repayment occurs. Added by 1919, No. 140.
 - “Supreme Court” means the Supreme Court of a State;
 - “The Court” means the High Court or the Supreme Court of a State, or in the case of a mortgage in which the principal sum does not exceed Two thousand pounds, a County or District Court or a Local Court consisting of a Special or Stipendiary Magistrate;
 - “The rate provided in the mortgage” means the rate of interest provided in the mortgage, or, where there is provided in the mortgage a reduced rate of interest in the case of punctual payment, the reduced rate; and shall not in any case be construed to refer to any increased rate of interest stipulated to be paid in any contingency.
 - 3. These Regulations shall not apply to any fluctuating advance exceeding Two thousand pounds which is made by way of bank overdraft secured by a mortgage unless the High Court or the Supreme Court, upon the application of the mortgagor, determines that having regard to the matters mentioned in sub-regulation (5) of regulation 4 of these Regulations it is desirable that these Regulations should apply. Regulations not to apply to certain fluctuating advances. Amended by 1916, No. 324.
 - 4. (1) A mortgagee shall not, without leave of the Court— Limitation of rights of mortgagees.
 - (a) call up or demand payment from any mortgagor of any part of the principal sum secured by the mortgage;
 - (b) exercise any power of sale;
 - (c) commence any action or proceeding, or continue any action or proceeding commenced after the twentieth day of September, One thousand nine hundred and sixteen, for breach of any covenant, agreement, or condition expressed or implied in any mortgage other than a covenant, agreement, or condition for—
 - (i) the payment of interest, or
 - (ii) the insurance, maintenance, or cultivation of the mortgage property, or the payment of rates, taxes and other charges, or the doing of any acts for the preservation of the security;
 - (d) commence any action or proceeding, or continue any action or proceeding commenced after the twentieth day of September, One thousand nine hundred and sixteen, for interest at any rate higher than the rate provided in the mortgage or the rate payable under sub-regulation (7) of this regulation, as the case may be; or
 - (e) take any steps for obtaining an order for foreclosure or for possession or occupation;
- Provided that where interest is in arrear for not less than three months or the mortgagor fails to observe the provisions of any covenant, agreement, or condition expressed or implied in the mortgage for any of the matters specified in sub-paragraph
- THE Added by 1917, No. 13. Amended by 1917, Nos. 76 and 252.

THE FIRST SCHEDULE—*continued.*THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—*continued.*

(ii) of paragraph (c) of sub-regulation (1) of the regulation, nothing in this paragraph shall preclude the mortgagee from entering into possession of the mortgaged property, but in any such case the mortgagor may at any time within two months after the mortgagee has entered into possession apply to the Court for an order requiring the mortgagee to vacate the mortgaged property, and in the event of the application being granted by the Court the mortgagee shall vacate the mortgaged property in accordance with the order of the Court.

Substituted by
1917, No. 13.
Amended by
1917, Nos. 76
and 253.

(2) Applications for the leave of the Court, other than applications for the leave of a Local Court, may be made on summons which must be served on, or by motion which must be notified to, such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable; and applications for the leave of a Local Court may be made on summons, which must be served on all persons affected by the application at least seven clear days before the day appointed for the hearing of the application.

Omitted by
1917, No. 253.
Amended by
1917, No. 13.

(3) * * * * *

(4) In dealing with any application for leave under this regulation, the Court may, subject to this regulation—

(a) grant the application on such terms and conditions (if any) as the Court thinks fit; or

(b) refuse the application:

Added by 1917,
No. 13.

Provided that the Court shall not grant any application for leave to commence or continue proceedings for the recovery of a mortgage or any part of the principal sum secured by mortgage, or for foreclosure, unless the Court is satisfied that, having regard to all relevant circumstances, including the ability of the mortgagor to redeem the property out of his own moneys, it would be unjust and inequitable not to grant it.

Amended by
1917, Nos. 13
and 253.

(5) In any case where, after the date fixed by the mortgage for repayment of the principal sum, the principal sum or any part thereof remains unpaid, and the mortgagor satisfies the Court that he is unable to redeem the property, or to repay a portion of the principal sum, as the case may be, from his own moneys, the Court shall not grant leave to take any proceedings for such redemption or repayment unless the Court is satisfied—

(a) that, by reason of the wasting nature of the security, the continuance of the mortgage would seriously affect the security; or

(b) that the conduct of the mortgagor has, in respect of any breaches by him of the covenants of the mortgage, or in respect of any matter affecting the rights or remedies of the mortgagee, or in respect of dealings with the mortgagee, been such as to render him undeserving of the benefit or protection of these Regulations.

Omitted by
1917, No. 253.
Amended by
1917, No. 253.

(6) * * * * *

(7) In any case where after the due date for repayment of the principal sum or any part thereof, the principal sum or part remains unpaid, the time for repayment of the principal sum or part shall, unless and until an application for leave is dealt with by the Court under this regulation, be by force of these Regulations extended upon the terms that interest shall continue to be payable at the close of the same intervals of time as are provided by the mortgage with respect to the interest thereby secured, or, if no provision is so made, then quarterly, and at the following rate:—

(a) in the case of a mortgage of which the principal sum or unpaid part does not exceed Two thousand pounds—the rate provided in the mortgage, or the rate of six per centum per annum, whichever is the less; and

(b) in the case of a mortgage of which the principal sum or unpaid part exceeds Two thousand pounds—the rate provided in the mortgage, or six per centum per annum, whichever is the greater:

Provided that—

(ii) in the former case the Court may, on the application of the mortgagee, fix a higher rate, not being higher than the rate provided in the mortgage or six per centum per annum, whichever is the greater; and

(ii) in the latter case the Court may, on the application of the mortgagor, fix a lower rate, not being lower than the rate provided in the mortgage or six per centum per annum, whichever is the less.

THE FIRST SCHEDULE—continued.

THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—continued.

5. In every action or proceeding by a mortgagee for the recovery of any sum for interest secured by a mortgage, the Court hearing the action or proceeding may, if in its discretion and in the circumstances of the case it deems it just and expedient, in lieu of giving judgment for immediate payment, give judgment for payment at a date to be fixed, or by instalments payable at such times as the Court in its discretion determines, and for this purpose the Court shall have jurisdiction to cause judgment to be entered in such form as it deems best to give full effect to the intent of these Regulations, and to direct the method of enforcement of the judgment.

Jurisdiction of Court in actions for recovery of interest secured by mortgage.

6. Where by the terms of a mortgage payment is provided by a series of regular instalments and the rate of interest is not fixed in the mortgage or the instalments are expressed to be for principal only and interest is stated not to be payable the instalments shall for the purposes of these Regulations be deemed to include interest at such rate as is assessed by the Court.

Where mortgage repayable by instalments.

7. Where a mortgage for a specific amount provides for the payment of the principal sum on demand, and a demand has not at the commencement of these Regulations been made, the principal sum shall for the purpose only of these Regulations be deemed to be payable immediately after the commencement of these Regulations.

Mortgages payable on demand.

Amended by 1916, No. 324.

8. (1) Notwithstanding anything contained in the preceding regulations, any mortgagee in possession, who entered into possession on or before the twentieth day of September, 1916, may exercise all his powers under the mortgage without leave of the Court: Provided that, on the application of the mortgagor, the Court may, if in all the circumstances it thinks it just and equitable so to do, forbid the mortgagee from exercising any power of sale or of foreclosure, and may otherwise make such order in the premises as it thinks fit.

Mortgagees in possession.

(2) The provisions of sub-regulations (2), (3), (4) and (6) of regulation 4 of these Regulations shall apply to any such application in like manner as they apply to applications for the leave of the Court under regulation 4.

8A. The costs of any application under these Regulations to the Court shall be in the discretion of the Court.

Costs.

Inserted by 1917, No. 13.

Amended by 1917, No. 253. Jurisdiction of Court—how exercisable.

8B. The jurisdiction conferred on a Court by these Regulations may be exercised by a Justice or Judge of the Court sitting either in Court or in Chambers, or, in the case of a local Court, by a Special or Stipendiary Magistrate.

Inserted by 1917, No. 253.

8c. Any determination decision judgment direction order or assessment made or given by any Court in any matter arising under these Regulations shall be final and conclusive and without appeal.

Decisions of Court final.

Inserted by 1917, No. 253.

9. (1) When a mortgagor is entitled to the benefit or protection of these Regulations, he may consent to the exercise by the mortgagee of any power, but such consent shall not take away the necessity of the leave of the Court, unless the consent is in writing and witnessed by a solicitor of the High Court or the Supreme Court, who certifies in writing that the consent is given by his advice.

Consent by mortgagor to exercise of powers by mortgagee.

(2) If consent is given and certified, the leave of the Court shall, so far as the consent extends, be unnecessary.

10. (1) The provisions of these Regulations shall extend and apply, *mutatis mutandis*, to agreements for sale and purchase of land (including exchange), and to leases of land containing an optional or compulsory purchasing clause.

Extension of Regulations to agreements for sale and purchase of land and to leases containing a purchasing clause.

(2) For the purposes of these Regulations an agreement for sale and purchase of land shall be deemed to be a mortgage of such land to secure payment of the unpaid purchase-money and interest thereon, and fulfilment of the conditions set forth in the agreement.

(3) For the purposes of these Regulations a lease of land containing a purchasing clause shall be dealt with in all respects as if the lessee had already notified his exercise of an option to purchase under an optional purchasing clause, and as if the lessor were mortgagee and the lessee were mortgagor of the land, and as if the rent reserved by the lease were interest and the agreed purchase-money were principal-moneys secured. The term of the lease shall, if necessary, be extended for the purpose of giving effect to this provision.

THE FIRST SCHEDULE—*continued.*THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—*continued.*

Agreements for sale and purchase of land where purchaser makes default.
 Inserted by 1917 No. 253.

10A.—(1) Notwithstanding anything contained in these Regulations, if the purchaser of any land under an agreement for the sale and purchase of land—

- (a) is in arrear, for a period of twelve months, in respect of any payment of principal or interest due by him under the agreement, and
- (b) makes, during any period of six months, no payment in respect of any portion of the amount due by him under the agreement,

the vendor may forward, by registered post, to the purchaser, addressed to his last known place of address, a notice intimating that he proposes, after the expiration of a period of one month from the date when in the ordinary course of post the notice should be delivered to the purchaser, to exercise any or all of his rights under the agreement for sale and purchase of the land.

(2) After the expiration of the period specified in the last preceding sub-regulation the vendor may, unless the Court upon application made by the purchaser within the period so specified otherwise directs, exercise any or all of his rights under the agreement as if the provisions of these Regulations had not extended and applied to the agreement.

Non-application of Regulations to certain mortgages.

Amended by 1916, No. 324, and by 1917, No. 253.

Added by 1919, No. 38.

Added by 1919, No. 140.

11. Notwithstanding anything contained in these Regulations these Regulations shall not apply to—

- (a) any mortgage, or an agreement for sale and purchase, or any lease containing an optional or compulsory purchasing clause, which is executed after the twentieth day of September, One thousand nine hundred and sixteen, if the mortgage agreement or lease contains a condition or covenant expressly excluding the provisions of these Regulations; or
- (aa) any lease containing an optional purchasing clause, if the Attorney-General, by notice in writing, declares that he is satisfied that the lessee has no *bonâ fide* intention of exercising the option to purchase;
- (ab) Any mortgage where the due date for repayment of the principal sum secured thereby is a date after the date of the termination of the war as declared by Proclamation; or
- (b) any agreement for the sale and purchase of leasehold interests in land only, whether such agreement was entered into before or after the twentieth day of September, One thousand nine hundred and sixteen; but this provision shall not extend so as to exclude from the provisions of these Regulations agreements for the sale and purchase of land partly freehold and partly leasehold; or
- (c) any transaction in relation to which any member of the Forces or a female dependant is entitled to any benefit or protection under the provisions of Statutory Rules 1916, No. 163, as amended by any subsequent regulations; or
- (d) any mortgage to secure the repayment of a loan granted by a registered building or friendly society to one of its members; or
- (da) any mortgage to secure the repayment of a loan granted by a registered Friendly Society to a person who is not a member of the society, if the Attorney-General, by notice in writing, declares that the mortgage is one, or one of a class specified by him, to which it is undesirable that these Regulations should apply; or
- (e) any loan made by a life assurance company on the security of one or more of its policies, other than an industrial policy, provided the rate of interest payable on the loan is not greater than—
 - (i) the rate of interest usually charged by the company before the commencement of the present state of war for a similar loan, or
 - (ii) seven per centum per annum,
 whichever is the less.

Added by 1918, No. 191.

Added by 1917, No. 253.

Relief in certain cases of non-payment of rent.

Added by 1916, No. 324.

11A. (1) Notwithstanding anything contained in the last preceding regulation, if, for the purpose of legislation enacted in consequence of the war, restrictions are placed upon the marketing of any produce, and the producer is thereby rendered unable to meet, out of the proceeds of the land, any payment of rent falling due, or which has since the fifth day of December, One thousand nine hundred and sixteen, fallen due, upon any land used by him for the purpose of or in connexion with the production of the produce the right of the lessor to recover the rent or possession of the land, notwithstanding that proceedings may have been commenced prior to the commencement of this regulation, shall be postponed until with respect to any specified period the producer has received the proceeds of his produce, or until, with respect

THE

THE FIRST SCHEDULE—continued.

THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—continued.

to that particular class of produce, the Attorney-General by notice published in the *Gazette* declares that as regards that specified period the producers have received a substantial part of the proceeds of their produce, whichever first happens.

(2) Where any payment of rent is postponed in accordance with this regulation, interest at the rate of five per centum per annum shall be payable by the producer to the lessor in respect of the period of postponement.

11B. (1) Where any Court has made an order for the payment by any person to any other person of a sum of money and the Court is satisfied that immediate payment of the whole or part of the money would inflict great hardship on the person ordered to pay the money by reason of the operation of these Regulations or the War Precautions (Active Service Moratorium) Regulations upon his property or investments, or upon the realization thereof, the Court may, upon the application of the person ordered to pay the money, in its discretion, if in all the circumstances it thinks it desirable so to do, order that the payment of the whole or part of the sum of money in question shall be deferred until such time and upon such conditions as the Court thinks fit.

Court may grant relief against judgments in certain cases.
Inserted by 1917, No. 253.

(2) An order may be made under this regulation in respect of the payment of money made by any Court before the commencement of this regulation as well as in respect of orders made after the commencement of this regulation.

11C. The Registrar of Titles of any State may, upon the submission to him for registration in accordance with the law of the State of a transfer of property on sale by the mortgagee thereof, require such evidence as he deems necessary that the sale sought to be given effect to by the transfer does not contravene any provision of these Regulations and may refuse to register the transfer until such evidence is submitted to him.

Transfers of land on sales by mortgagees.
Added by 1918, No. 28.

12. Regulation 15 of the War Precautions (Supplementary) Regulations (Statutory Rules 1916, No. 250, as amended by Statutory Rules 1916, Nos. 254 and 271) is hereby repealed.

Repeal of S.R. 1916, No. 250, as amended by S.R. 1916, Nos. 254 and 271.

13. (1) Notwithstanding anything contained in these Regulations, the time for repayment of the principal sum secured by a mortgage to which these Regulations apply, the due date for repayment of which would but for these Regulations have been a date within one of the periods specified in the first column of the following table, shall be, by force of this regulation, extended to a date within the month which is specified in the second column of the said table opposite to such period.

Dates for repayment of principal moneys.
Added by 1919, No. 140.

<i>First Column.</i>	<i>Second Column.</i>
Period within which, apart from these Regulations, the principal sum secured by a mortgage to which these Regulations apply is due for repayment.	Prescribed Month for Repayment.
Period before 1st January, 1915	August, 1919
Period between 1st January, 1915, and 30th June, 1915, both dates inclusive	September, 1919
Period between 1st July, 1915, and 31st December, 1915, both dates inclusive	October, 1919
Period between 1st January, 1916, and 30th June, 1916, both dates inclusive	November, 1919
Period between 1st July, 1916, and 31st December, 1916, both dates inclusive	December, 1919
Period between 1st January, 1917, and 30th June, 1917, both dates inclusive	January, 1920
Period between 1st July, 1917, and 31st December, 1917, both dates inclusive	February, 1920
Period between 1st January, 1918, and 30th June, 1918, both dates inclusive	March, 1920
Period between 1st July, 1918, and 31st December, 1918, both dates inclusive	April, 1920
Period between 1st January, 1919, and 30th June, 1919, both dates inclusive	May, 1920
Period between 1st July, 1919, and the date of the termination of the war as declared by Proclamation, both dates inclusive	June, 1920

(2) The prescribed date for repayment shall be that day in the prescribed month for repayment which corresponds to the day of the month which would but for these Regulations be or have been the due date for repayment :

THE

THE FIRST SCHEDULE—*continued.*THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—*continued.*

Provided that where there is no day so corresponding the prescribed date for repayment shall be the last day of the prescribed month for repayment.

(3) The prescribed date for repayment of the principal sum secured by a mortgage to which these Regulations apply shall, if the principal sum—

- (a) is payable on demand, or
- (b) is by virtue of Regulation 7 of these Regulations deemed to be payable immediately after the commencement of these Regulations,

be the thirty-first day of August, 1919.

(4) Where by the terms of a mortgage to which these Regulations apply the principal sum secured by the mortgage is payable only upon notice, notice in accordance with the mortgage may be given by the mortgagee at any time after the thirty-first day of August, 1919, and the date specified in that notice as the date fixed for payment shall for the purposes of these Regulations be deemed to be the prescribed date for repayment.

(5) Until the prescribed date for repayment the rate of interest, and the intervals of time at which it is payable, shall be such rate and intervals as are prescribed by or fixed under these Regulations.

(6) In the case of a mortgage or agreement for the sale and purchase of land to which these Regulations apply and which provides for payment by instalments, the date for payment of any instalment, which would, apart from these Regulations have been due and payable on or before the date of the termination of the war as declared by Proclamation, shall be determined in the same manner as if that instalment were the principal sum secured by a mortgage to which these Regulations apply; but nothing in these Regulations shall affect the date for payment of any instalment due and payable after the date of the termination of the war as declared by Proclamation.

(7) Upon or after the prescribed date for repayment the mortgagee may exercise all his powers under the mortgage without leave of the Court.

(8) Nothing in this regulation shall abridge the time which is ordered or allowed by any Court, in pursuance of these Regulations, for repayment of the principal sum secured by a mortgage.

14. (1) Notwithstanding anything contained in the last preceding regulation, the Court may, upon the application of the mortgagor made not less than one month before the prescribed date for repayment, make an order, on such terms and conditions (if any) as the Court thinks fit, extending the date for repayment for a period not more than twelve months after the prescribed date for repayment, and may fix the intervals of time and rate at which interest is payable during such extended period.

(2) An application under this regulation may be made in the same manner as an application for leave of the Court under Regulation 4 of these Regulations.

(3) An application under this regulation shall not be granted unless the Court is satisfied—

- (a) that the obligation to repay the principal sum by the prescribed date for repayment would involve serious hardship to the mortgagor;
- (b) that the conduct of the mortgagor in respect of dealings with the mortgagee has not been such as to render him undeserving of the benefit or protection of this regulation; and
- (c) that the granting of the application would not seriously embarrass the mortgagee.

15. Where the principal sum secured by a mortgage is paid upon, or within seven days before, the prescribed date for repayment, or, where the Court in pursuance of the last preceding regulation has extended the date for repayment, upon or within seven days before such extended date, the mortgagee shall not be entitled to receive any payment by way of interest in lieu of notice.

16. (1) In the case of a lease of land in force at the commencement of this regulation—

- (a) which contains an optional purchasing clause by the terms of which the last date for exercise of the option is a date not later than the thirty-first day of December, 1919; and
- (b) which is under these Regulations treated as if the lessee had already notified his exercise of the option; and

Substituted by
1919 No. 72.

Power to
extend date for
repayment in
cases of
hardship.

Added by 1919,
No. 140.

Mortgagee not
entitled to
notice where
Mortgagor pays
within time
allowed.

Added by 1919,
No. 140.

Leases of land
containing
optional
purchasing
clause.

Added by 1919
No. 140.

THE FIRST SCHEDULE—*continued.*THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—*continued.*

- (c) in respect of which the lessee has not in fact notified, prior to the commencement of this regulation, his exercise of the option,

the lessee may, notwithstanding anything contained in the lease, notify, at any time during the currency of the lease and up till the thirty-first day of December, 1919, his exercise of the option :

Provided that where, by the terms of any such lease, the date of the expiry of the lease is a date after the commencement of this regulation and on or before the thirty-first day of December, 1919, the lessee may, before the date of expiry of the lease, notify the lessor that it is probable that he will, on or before a date specified by him, not being later than the said thirty-first day of December, notify his exercise of the option, and if the lessee so notifies the lessor the term of the lease shall, by force of this regulation, be extended until—

- (a) the date specified by the lessee ; or
(b) the said thirty-first day of December, 1919,

whichever first happens :

Provided further that, where the term of a lease is so extended, the extension shall be upon the same terms and conditions as those prevailing immediately before the date upon which, but for this regulation, the lease would have expired.

(2) Regulation 13 of these Regulations shall not apply to any lease of land containing an optional purchasing clause.

(3) Regulation 10 of these Regulations shall not apply to any lease of land, containing an optional purchasing clause by the terms of which the last date for the exercise of the option is a date later than the thirty-first day of December, 1919.

THE SECOND SCHEDULE.

THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS.

1. These Regulations may be cited as the War Precautions (Active Service Moratorium) Regulations 1916.

2. (1) In these Regulations, unless the contrary intention appears—

“Female Dependant” means any female who is wholly or partly dependent for her support upon the pay, or upon a pension payable in consequence of the incapacity or death of a person who is or has been a member of the Forces, and includes the wife of a person who has been a member of the Forces but who, having been discharged without receiving a pension, is receiving, from the Army Medical Corps, medical treatment of such a nature as to prevent him either wholly or partly from engaging in his occupation ;

“Farming or dairying pursuits” includes agriculture, fruit-growing, bee-farming, poultry-farming, stock-raising, or any kindred pursuit ;

“Land” includes messuages, tenements, and hereditaments, and houses and buildings, and also includes any estate or interest in land (legal or equitable), and any easement, right, power, or privilege over, in, or in connexion with land ;

“Parent” means a parent who is wholly or partly dependent on the pay or pension of a person who is or has been a member of the Forces.

(2) In these Regulations, other than Regulations 12, 13, 14, 15, 17 and 18, the expression “Member of the Forces” means a member of the Commonwealth Naval or Military Forces enlisted or appointed for or employed on active service outside Australia or employed on a ship of war, or enlisted or appointed for service in connexion with naval or military preparations or operations, and includes a member of the Army Medical Corps Nursing Service who is accepted or appointed by the Director-General of Medical Services for service outside Australia, but does not include any person serving in the Citizen Forces in pursuance of a proclamation under section sixty of

Short title.

Amended by
1916, No. 283.
Definitions.

Amended by
1916, No. 283 ;
1917, No. 271 ;
1918, No. 314 ;
and 1919, No.
112.

Inserted by
1918, No. 238.

Inserted by
1919, No. 128.

Added by 1917.
No. 271.

THE

THE SECOND SCHEDULE—*continued.*THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued.*

the *Defence Act 1903-1915*; and in Regulations 12, 13, 14, 15, 17 and 18 the expression "Member of the Forces" means a member of the Commonwealth Naval or Military Forces enlisted or appointed for or employed on active service outside Australia or employed on a ship of war, and includes a member of the Army Medical Corps Nursing Service who is accepted or appointed by the Director-General of Medical Services for service outside Australia.

Postponement of due date of principal secured by mortgage.

Amended by 1916, No. 283; and by 1919, No. 173.

3. Subject to these Regulations, the time for any payment of principal money secured by a mortgage (legal or equitable) of land, contracted by a member or the female dependant of a member before the date on which he became a member of the Forces or before the first day of January, 1916, whichever last happens, is hereby postponed so that such payment shall fall due upon the expiration of six months after the cessation of the present state of war as declared by the Governor-General by proclamation, or upon the expiration of six months after the discharge of the member of the Forces, or his death before discharge, whichever last happens.

Postponement of due date of purchase-money.

Amended by 1916, No. 283; and by 1919, No. 173.

4. (1) Subject to these Regulations, the time for any payment of purchase-money (whether the whole or an instalment thereof) under an agreement for the purchase of land, entered into by a member or the female dependant of a member before the date on which he became a member of the Forces or before the first day of January, 1916, whichever last happens, which payment has fallen due since the first day of May, One thousand nine hundred and sixteen, or hereafter falls due, is hereby postponed so as to fall due upon the expiration of the period of six months next after the day on which it fell due or would fall due if these Regulations had not been made or upon the expiration of six months after the cessation of the present state of war as declared by the Governor-General by proclamation, or upon the expiration of six months after the discharge of the member of the Forces, or his death before discharge, whichever last happens.

(2) This regulation shall not apply to any amount payable as interest, and when an instalment includes interest as well as principal, and the agreement neither states the rate of interest nor indicates what parts of the instalment are principal and interest respectively, then, for the purposes of this regulation, the rate of interest shall be deemed to be 5 per centum per annum.

Repealed by 1916, No. 283.

Interest to be payable in respect of period of postponement.

Sub-regulations (2) to (4) omitted and fresh sub-regulations (2) and (3) inserted by 1916, No. 283.

5. * * * * *

6. (1) When a mortgagor or purchaser avails himself of the right conferred by these Regulations to postpone the payment of any sum, interest shall be payable on such sum in respect of the period of postponement.

(2) The rate of interest payable at any time by virtue of this Regulation shall, unless the rate thereof is hereafter agreed upon by the parties before the interest falls due, be—

(a) six per centum per annum.

(b) the rate payable on the date when such sum would have been payable if these Regulations had not been made,

whichever is the lower rate: Provided that, if the rate of interest payable under any mortgage or agreement is thereby fixed by reference to rates current, in the case of some specified class of transactions, at the times when the sums of interest respectively fall due or are paid (as the case may be), the rates payable by virtue of this regulation shall, at the option of the mortgagee or vendor, be as so fixed or as fixed by this regulation, but so that the rate shall not in any case exceed 6 per centum per annum.

(3) Interest payable by virtue of this regulation shall be payable at the close of the same intervals of time as are provided by the mortgage or agreement with respect to the interest thereby secured, or, if no provision is so made, then quarterly.

(4) * * * * *

(5) In the case of a payment which fell due on or before the date of these Regulations, the period of postponement shall, for the purposes of this regulation, be deemed to have commenced on the day immediately following the date of these Regulations.

When one instalment postponed, subsequent instalments to be postponed for like periods.

7. When, under any mortgage or agreement to which these Regulations apply, the principal or purchase-money is to be repaid or paid by instalments, and the mortgagor or purchaser avails himself of the right conferred by these Regulations to postpone the payment of any of such instalments, then, notwithstanding that in other

THE

THE SECOND SCHEDULE—continued.

THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—continued.

respects these Regulations may have ceased to operate, the times when the subsequent instalments respectively fall due shall each be postponed for a period equal to the period of postponement effected by these Regulations with respect to the first-mentioned instalment; but the interest to be paid with such subsequent instalments shall, if these Regulations have so ceased to operate, be at the rate fixed by the mortgage or agreement.

8. (1) These Regulations shall operate as a stay of all proceedings, whether by action or any other means and whether in any Court or otherwise, heretofore commenced to enforce the payment or in respect or in consequence of the non-payment of any principal or purchase-money to which Regulation 3 or 4 applies, and of all remedies for the recovery thereof; but shall not otherwise prejudice or affect any such proceeding or remedy, or alter or affect the rights or obligations of any party, except so far as may be necessary to give effect to the provisions of these Regulations.

Proceedings stayed, but rights not otherwise prejudiced.

(2) Upon the termination of the postponement effected by these Regulations, all proceedings so stayed may be continued, and all such remedies may be pursued, as if the period of postponement had not intervened.

(3) In particular, but without limiting the effect of this regulation, it is hereby provided that the period of postponement effected by these Regulations shall not be taken into account in calculating the time, as fixed by any Statute of Limitations or other Act or State Act, within which any action for the recovery of any postponed sum is to be commenced, or any other remedy for that purpose is to be pursued.

9. (1) Notwithstanding anything contained in these Regulations, any Justice of the High Court or Judge of the Supreme Court of a State shall have power, with respect to any mortgage or agreement, to order that these Regulations shall not apply thereto, if he is of opinion that, in the special circumstances of the case, the postponement effected by these Regulations is not necessary in the interest of the mortgagor or purchaser, or would cause hardship or loss to the mortgagee or vendor (as the case may be), or to any person towards whom, with respect to such mortgage or agreement, he stands in the position of trustee.

Provision for cases of great hardship.

(2) The application for an order under this regulation shall be made by motion with notice to such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable.

Substituted by 1916, No. 283.

(3) * * * * *

Repealed by 1916, No. 283.

(4) A Justice or Judge may make all such interlocutory and final orders in the matter of any such motion, including any orders as to costs, as, having regard to the objects of these Regulations and the circumstances of the case, he deems proper: Provided that the costs of the application shall be borne by the applicant unless, from the circumstances of the case, the Justice or Judge thinks fit to order otherwise.

Amended by 1916, No. 283.

(5) The order of a Justice or Judge determining any such motion shall be final; and no order or direction, whether interlocutory or final, in the matter of any such motion, and no other proceeding under this regulation, shall be appealed against, questioned, or reviewed in any manner whatsoever, or be restrained or removed by prohibition, injunction, *certiorari*, or otherwise howsoever.

Amended by 1916, No. 283.

10. These Regulations shall not be held to prevent, or to alter the effect of—

(a) any contract, made after the date of these Regulations, concerning any mortgage or agreement to which Regulation 3 or 4 of these Regulations applies; or

(certain contracts and instruments not affected.

(b) any instrument made or thing done in pursuance of any such contract.

11. The provisions of the preceding regulations shall apply to any mortgage or agreement contracted or entered into by a member of the Forces or the female dependant of a member of the Forces jointly with a person who is not a member of the Forces or a female dependant of a member of the Forces in like manner as they apply to a mortgage or agreement contracted or entered into by a member of the Forces only or a female dependant only, as the case may be.

Mortgages and agreements to which member of Forces or female dependant is a party jointly with other person.

THE inserted by 1916, No. 283.

THE SECOND SCHEDULE—*continued.*THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued.*

Protection from distress, &c., of means of livelihood, &c., of female dependants of soldiers.

Inserted by 1916, No. 283.

Amended by 1917, No. 271; and by 1919, No. 112.

12. (1) No person shall, under a bill of sale, or writ of execution or other process issued by a Court, or by way of distress, or under the provisions of a hire-purchase agreement made prior to the first day of June, 1916, or to the enlistment of a member of the Forces, whichever last happens, seize or take possession of—

(a) any chattels which are used by any female dependant of that member of the Forces to support or assist in supporting herself or any of the family of the member; or

(b) any furniture or wearing apparel belonging to any such member or female dependant:

Provided that if the furniture and wearing apparel belonging to the member and his female dependants exceed in value £100, any articles may be seized and taken possession of under due authority of law if the articles remaining are not less in value than £100.

(1A) In this regulation "hire-purchase agreement" includes a letting of goods with an option to purchase, an agreement for the payment of goods by instalments, and any other agreement for the purchase of goods whether or not the property in the goods passes, on delivery, to the purchaser, and any goods the subject of any hire-purchase agreement shall, for the purposes of this regulation, be deemed to belong to the purchaser.

(2) In any prosecution for an offence against this regulation an order may be made for the return of any articles seized or taken possession of in contravention of this Regulation, or for payment of their value.

Writs and process against soldiers and female dependants.

Inserted by 1916, No. 283.

13. (1) No writ of action or other legal process shall without leave of the High Court or the Supreme Court be issued out of any Court in respect of any liability of any member of the Forces or a female dependant under any contract or agreement (not being a contract or agreement to which the provisions of any of the preceding regulations apply), where the contract or agreement was entered into on or before the twentieth day of September, One thousand nine hundred and sixteen.

Provided that if the Court is satisfied that having regard to all the circumstances of the case it would be inequitable to the other party to the contract or agreement to give to the member or female dependant, as the case may be, the benefit or protection of this regulation, and that it would not inflict hardship on the member or female dependant, as the case may be, the Court shall grant leave to the party making the application.

(2) Application for the leave of the Court under this regulation may be made by motion, with notice to such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable.

(3) Any such application may be made to and disposed of by a Justice or Judge in Chambers.

(4) The leave may be granted on such terms and conditions (if any) as the Court thinks fit.

Power of superior Courts to prohibit issue of process in certain cases.

Added by 1917, No. 271.

14. Where it appears to the High Court or the Supreme Court on motion made by or on behalf of any member of the Forces or female dependant that any writ of action or other legal process issued or proposed to be issued out of any Court in respect of any liability of any member of the Forces or a female dependant under any contract or agreement (not being a contract or agreement to which the provisions of any of the preceding regulations apply), that the contract or agreement is, so far as the member or female dependant is concerned, harsh and unconscionable, the Court may make such order upon such terms and conditions as it thinks fit prohibiting or suspending the issue of the process, or if the process has already been issued prohibiting or suspending further proceedings in pursuance of the process.

Re-opening of transactions between members of Forces and others.

Added by 1917, No. 271.

15. If in relation to any transaction entered into whether after the commencement of the present state of war and before the commencement of this regulation, or after the commencement of this regulation, it appears to the High Court or the Supreme Court (or, where the matter at issue does not exceed in value the sum of Five hundred pounds, to a County or District Court or a Local Court of Full Jurisdiction), on motion made by or on behalf of a member of the Forces or female dependant, that the transaction is harsh and unconscionable to the member or female dependant, or is such that a court of equity would give relief, the Court may re-open the transaction and take an account between the member or female dependant and the other party to the transaction, and make such order as it thinks just as regards the transaction, and as regards any property affected by the transaction, and any such order shall be of full force and effect, and shall be complied with by the parties to the transaction.

THE

THE SECOND SCHEDULE—continued

THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—continued.

16. Any matter arising under either of the last two preceding regulations may be disposed of by a Justice or Judge in Chambers.

Exercise of jurisdiction in Chambers.

17. (1) The owner of any dwelling-house to which this regulation applies which is tenanted by a member of the Forces or a parent or female dependant of a member shall not, without the leave of a Court of Summary Jurisdiction, increase the rent charged to that member or parent or female dependant in respect of the dwelling-house, and any increase made in contravention of this regulation shall, notwithstanding any agreement to the contrary, be irrecoverable:—

Added by 1917, No. 271.

Rental of dwelling-houses by members of the Forces, parents or female dependants.

Provided that—

Added by 1917, No. 271;

amended by 1918, No. 31.

- (a) where the owner incurs expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs) an increase of rent at a rate not exceeding 8 per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this regulation;
- (b) any transfer to a tenant of any burden or liability previously borne by the owner shall for the purposes of this regulation be treated as an alteration of rent, and where as the result of such a transfer the terms on which the dwelling-house is held are on the whole less favorable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased;
- (c) any increase of rent in respect of any transfer to the owner of any burden or liability previously borne by the tenant where as the result of the transfer the terms on which the dwelling-house is held are on the whole more favorable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this regulation;
- (d) where the owner pays the rates chargeable on the occupier of any dwelling-house an increase of the rent of the dwelling-house payable for any period shall not be deemed to be an increase for the purposes of this regulation if the amount of the increase does not exceed the increase in the amount payable by the owner in respect of the rates during the same period and for the purposes of this paragraph the expression "rates" includes water rates and charges.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this regulation applies require from any member of the Forces, or parent or female dependant of any member of the Forces, the payment of any fine, premium or other like sum in addition to the rent.

Amended by 1918, No. 31.

(3) No order for the recovery of possession of any dwelling-house to which this regulation applies, from a member of the Forces or a parent or female dependant of a member of the Forces, or for the ejection therefrom of a tenant (being a member of the Forces or a parent or female dependant of a member of the Forces) shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this regulation and performs the other conditions of the tenancy, unless—

Substituted by 1918, No. 31.

- (a) the tenant has committed waste, or has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers, or the premises are reasonably required by the landlord for the occupation of himself or some person in his employ or in the employ of some tenant from him, or on some other ground which is deemed satisfactory by the Court making the order, and
- (b) the Court is satisfied that in all the circumstances of the case and in the interest of justice it is desirable that the order for recovery or ejection should be made.

(4) Any member of the Forces or parent or female dependant of a member of the Forces may, if he or she thinks fit, require the owner of a dwelling-house to which this regulation applies, which is vacant or is about to become vacant, to let the dwelling-house to him or her at a reasonable rental, and the owner shall, unless he has reasonable cause for refusing so to do, let the dwelling-house accordingly.

(5) For the purposes of this regulation a reasonable rental shall be the equivalent of such weekly rental as represents the average weekly rental received in respect of the property during the period in which it has been occupied during the twelve months preceding the date of the commencement of this regulation, or, in the event of rent not having been received in respect of the property, either at all or for any period

THE

THE SECOND SCHEDULE—*continued.*THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued.*

more than three months during the said period of twelve months, such rental as is determined by the judicial or other authority or person thereto authorized in writing by the Minister (in this regulation referred to as "the authority") :

Provided that where any improvement or structural alteration of a dwelling-house (not including decoration or repairs) has taken place, an allowance for the value of such improvement or alteration, to an extent not exceeding 8 per centum per annum or the amount expended thereon, shall be taken into consideration in determining the reasonable rental of the dwelling-house.

(6) This regulation shall apply to a house or part of a house let as a separate dwelling (or as a dwelling and shop) where the letting does not include any land other than the site of the house and a garden or other premises within the curtilage of the house and where the rateable value of the house or part of the house—

- (a) if based on rental value does not exceed Seventy pounds per annum ; and
- (b) if based on unimproved value does not exceed Three hundred and fifty pounds ;

and every such house or part of a house shall be deemed to be a dwelling-house to which this regulation applies.

Rental of shops, farms, &c., by members of the Forces, parents or female dependants
Added by 1917, No. 271 ; amended by 1918, No. 81.

18. (1) The owner of any shop which is leased to a member of the Forces, or a parent or female dependant of a member solely for business purposes and the owner of any land which is leased to a member of the Forces or a parent or female dependant of a member for the purpose of carrying on farming or dairying pursuits, shall not, without the leave of a Court of Summary Jurisdiction, if the rent payable does not exceed Seventy pounds per annum, or of a County or District Court, or a Local Court of Full Jurisdiction, if the rent payable exceeds Seventy pounds per annum, increase the rent charged to that member or parent or female dependant in respect of the shop or land, as the case may be, and any increase made in contravention of this regulation shall, notwithstanding any agreement to the contrary, be irrecoverable :

Provided that—

- (a) where the owner incurs expenditure on the improvement of the shop or land, or the structural alteration of the shop or of any building erected on the land, as the case may be (not including expenditure on decoration or repairs) an increase of rent at a rate not exceeding 8 per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this regulation ;
- (b) any transfer to a tenant of any burden or liability previously borne by the owner shall for the purposes of this regulation be treated as an alteration of rent, and where as the result of such a transfer the terms on which the shop or land is held are on the whole less favorable to the tenant than the previous terms the rent shall be deemed to be increased whether or not the sum periodically payable by way of rent is increased ;
- (c) any increase of rent in respect of any transfer to the owner of any burden or liability previously borne by the tenant where as the result of the transfer the terms on which the shop or land is held are on the whole more favorable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this regulation ;
- (d) where the owner pays the rates chargeable on the occupier of any shop or land an increase of the rent of the shop or land payable for any period shall not be deemed to be an increase for the purposes of this regulation if the amount of the increase does not exceed the increase in the amount payable by the owner in respect of the rates during the same period and for the purposes of this paragraph the expression "rates" includes water rates and charges.

Amended by 1918, No. 81.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any shop or land require from any member of the Forces or parent or female dependant of a member of the Forces the payment of any fine, premium or other like sum in addition to the rent.

Substituted by 1918, No. 81.

(3) No order for the recovery of a shop or land from a member of the Forces or a parent or female dependant of a member of the Forces or for the ejectment therefrom

THE

THE SECOND SCHEDULE—*continued.*THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued.*

of a tenant (being a member of the Forces or a parent or female dependant of a member of the Forces) shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this regulation and performs the other conditions of the tenancy, unless—

- (i) the tenant has committed waste, or has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers, or the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ or in the employ of some tenant from him, or on some other ground which is deemed satisfactory by the Court making the order, and
- (ii) the Court is satisfied that in all the circumstances of the case and in the interests of justice it is desirable that the order for recovery or ejection should be made.

19. The Registrar of Titles of any State may, upon submission to him of a notification of re-entry by a lessor for registration in accordance with the law of the State, require such evidence as he deems necessary that the re-entry does not contravene any provision of these Regulations and may refuse to register the notification until such evidence is submitted to him.

**Added
by 1918, No. 81.**



THIS Bill originated in the House of Representatives ; and, having this day passed, is now ready for presentation to the Senate for its concurrence.

WALTER A. GALE,
Clerk of the House of Representatives.

House of Representatives,
Melbourne, 7th August, 1919.

A BILL

FOR

AN ACT

To continue in force certain Regulations intituled the War Precautions (Moratorium) Regulations and the War Precautions (Active Service Moratorium) Regulations.

WHEREAS during the existence of the war with Germany and for the purpose of the more effectual prosecution of the war it became and was, in the opinion of the Governor-General, necessary and expedient to restrict temporarily certain of the rights possessed by mortgagors, vendors and others against mortgagors, purchasers and others, some of whom are or were and some of whom are or were not members of the Commonwealth Naval or Military Forces, or dependants of members of those Forces : Preamble.

10 And whereas certain Regulations known as the War Precautions (Moratorium) Regulations and the War Precautions (Active Service Moratorium) Regulations, having for their object the temporary restriction of certain of those rights, were duly made under the *War Precautions Act 1914-1916* :

15 And whereas it is essential, in order to obviate serious financial dislocation in the Commonwealth, that the removal of the restrictions imposed by the War Precautions (Moratorium) Regulations should operate gradually :

[C.139]—75/8.8.1919.—F.8896.

And

And whereas it is likewise essential, in order to continue for limited periods the protection afforded to persons who are or have been members of those Forces, or dependants of members of those Forces, against the enforcement of rights possessed by mortgagees, vendors and others, that certain of the War Precautions (Active Service Moratorium) Regulations should continue in force until all Expeditionary Forces serving outside Australia at the commencement of this Act have been substantially demobilized, and that the remaining Regulations comprised in the War Precautions (Active Service Moratorium) Regulations should continue in force so long as there is any mortgage or agreement for the purchase of land, to which the Regulations apply :

Be it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

- Short title. 1. This Act may be cited as the *Moratorium Act* 1919. 15
- Parts. 2. This Act is divided into Parts, as follows :—
 Part I.—Preliminary.
 Part II.—The General Moratorium.
 Part III.—The Active Service Moratorium. 20
 Part IV.—Miscellaneous.
- Definitions. 3. In this Act, unless the contrary intention appears—
 “ the War Precautions (Active Service Moratorium) Regulations ” means the Regulations set forth in the Second Schedule to this Act, being Statutory Rules 1916 No. 163, as amended by Statutory Rules 1916 No. 283, by Statutory Rules 1917 No. 271, by Statutory Rules 1918 Nos. 81, 238 and 314, and by Statutory Rules 1919 Nos. 112, 128, 173 and 25
 “ the War Precautions (Moratorium) Regulations ” means the Regulations set forth in the First Schedule to this Act, being Statutory Rules 1916 No. 284, as amended by the following Statutory Rules, namely :—Statutory Rules 1916 No. 324 ; Statutory Rules 1917 Nos. 13, 76 and 253 ; Statutory Rules 1918 Nos. 28 and 191 ; and Statutory Rules 1919 Nos. 36, 140, 172 and 30
 “ the prescribed date ” means the thirty-first day of July, One thousand nine hundred and twenty. 35

PART II.—THE GENERAL MORATORIUM.

- Continuance of War Precautions (Moratorium) Regulations. 4.—(1.) Subject to this section, the War Precautions (Moratorium) Regulations shall continue in force until the prescribed date, and thereafter until such time as the Governor-General notifies by proclamation that he is satisfied that any extended period allowed by a Court upon application made under regulation fourteen of those Regulations has expired : 40

Provided

Provided that after the prescribed date the War Precautions (Moratorium) Regulations shall apply only to mortgages in respect of which a Court has in pursuance of regulation fourteen of those Regulations made an order extending the date for repayment.

5 (2.) During such continuance the War Precautions (Moratorium) Regulations shall have the force of law.

(3.) During the continuance of the War Precautions (Moratorium) Regulations, the Governor-General may make regulations, not inconsistent with this Part, prescribing all matters which are
10 necessary or convenient to be prescribed for carrying out or giving effect to this Part, and in particular for repealing, altering or adding to any of the War Precautions (Moratorium) Regulations :

Provided that nothing in this sub-section shall authorize the making of a regulation extending, or empowering the extension of,
15 the time for repayment of the principal sum secured by a mortgage.

(4.) Nothing in this Part shall abridge the time which has, before the commencement of this Act, been allowed by any Court, in pursuance of the War Precautions (Moratorium) Regulations, for repayment of the principal sum secured by a mortgage.

20 PART III.—THE ACTIVE SERVICE MORATORIUM.

5.—(1.) Subject to this section, regulations one to eleven (inclusive) of the War Precautions (Active Service Moratorium) Regulations shall continue in force so long as there remains in force any mortgage or agreement for the purchase of land to which those Regulations apply, and shall during such continuance have the force of law.
25

(2.) Subject to this section, regulations twelve to eighteen (inclusive) of the War Precautions (Active Service Moratorium) Regulations shall continue in force until all Expeditionary Forces serving outside Australia at the commencement of this Act have been
30 substantially demobilized, and shall during such continuance have the force of law.

(3.) During the continuance of any of the War Precautions (Active Service Moratorium) Regulations, the Governor-General may make regulations, not inconsistent with this Part, prescribing all
35 matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Part, and in particular for repealing, altering or adding to any of the War Precautions (Active Service Moratorium) Regulations :

Provided that nothing in this sub-section shall authorize the making of a regulation extending, or empowering the extension of,
40 the time for any payment of principal money secured by a mortgage or any payment of purchase money under an agreement for the purchase of land.

(4.) The

Continuance of
the War
Precautions
(Active Service
Moratorium)
Regulations.

(4.) The Prime Minister shall, as soon as practicable after all Expeditionary Forces serving outside Australia at the commencement of this Act have been substantially demobilized, cause notification of that fact to be published in the *Gazette*, and thereupon regulations twelve to eighteen (inclusive) of the War Precautions (Active Service Moratorium) Regulations, and any Regulations made in pursuance of this Part of this Act, altering or adding to any of those Regulations, shall expire. 5

PART IV.—MISCELLANEOUS.

Offences and procedure.

6.—(1.) Any person who contravenes, or fails to comply with, any provision of the War Precautions (Moratorium) Regulations, of the War Precautions (Active Service Moratorium) Regulations, or of any regulation made in pursuance of this Act, shall be guilty of an offence against this Act. 10

Penalty : One hundred pounds, or imprisonment for six months, or both. 15

(2.) An offence against this Act shall not be prosecuted without the written consent of the Attorney-General or the Minister for Defence, or a person authorized in writing by the Attorney-General or the Minister for Defence. 20

(3.) For the purpose of the trial of a person for an offence against this Act, the offence shall be deemed to have been committed either at the place in which it actually was committed or at any place in which the person is.

Effect of expiration of regulations.

7. The expiration of any of the regulations comprised in the War Precautions (Moratorium) Regulations or the War Precautions (Active Service Moratorium) Regulations, or of any regulation made in pursuance of this Act, shall not— 25

(a) affect any right, privilege, obligation or liability acquired, accrued or incurred under any such regulation; or 30

(b) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any such regulation; or

(c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, as aforesaid; 35

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the regulation had not expired.

THE SCHEDULES.

THE FIRST SCHEDULE.

THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS.

1. These Regulations may be cited as the War Precautions (Moratorium) Regulations. Short title.
2. In these Regulations, unless the contrary intention appears— Definitions.
- “Mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of moneys or for the performance of any contract is granted over land or chattels or any interest therein respectively, and includes an equitable mortgage by deposit of title deeds, and any document by which the duration of a mortgage is extended;
- “Mortgagor” means the person liable under the provisions of a mortgage, or entitled to redeem a mortgage, and includes any person who has guaranteed the payment of any money the payment of which is secured by a mortgage or the performance by the mortgagor of any covenant, condition, or agreement expressed or implied in the mortgage, whether such guarantee is expressed in the mortgage or in any other instrument; Amended by 1917, No. 78.
- “Mortgagee” means the person entitled to the benefit of the security of any mortgage;
- “Prescribed date for repayment” means the date fixed by regulation 13 of these Regulations as the date upon which the principal sum secured by a mortgage or agreement to which these regulations apply shall be repayable. Added by 1919, No. 140.
- “Prescribed month for repayment” means the month in which the prescribed date for repayment occurs. Added by 1919, No. 140.
- “Supreme Court” means the Supreme Court of a State;
- “The Court” means the High Court or the Supreme Court of a State, or in the case of a mortgage in which the principal sum does not exceed Two thousand pounds, a County or District Court or a Local Court consisting of a Special or Stipendiary Magistrate; Amended by 1917, No. 13.
- “The rate provided in the mortgage” means the rate of interest provided in the mortgage, or, where there is provided in the mortgage a reduced rate of interest in the case of punctual payment, the reduced rate; and shall not in any case be construed to refer to any increased rate of interest stipulated to be paid in any contingency.
3. These Regulations shall not apply to any fluctuating advance exceeding Two thousand pounds which is made by way of bank overdraft secured by a mortgage unless the High Court or the Supreme Court, upon the application of the mortgagor, determines that having regard to the matters mentioned in sub-regulation (5) of regulation 4 of these Regulations it is desirable that these Regulations should apply. Regulations not to apply to certain fluctuating advances. Amended by 1916, No. 334.
4. (1) A mortgagee shall not, without leave of the Court— Limitation of rights of mortgagees.
- (a) call up or demand payment from any mortgagor of any part of the principal sum secured by the mortgage;
- (b) exercise any power of sale;
- (c) commence any action or proceeding, or continue any action or proceeding commenced after the twentieth day of September, One thousand nine hundred and sixteen, for breach of any covenant, agreement, or condition expressed or implied in any mortgage other than a covenant, agreement, or condition for—
- (i) the payment of interest, or
- (ii) the insurance, maintenance, or cultivation of the mortgage property, or the payment of rates, taxes and other charges, or the doing of any acts for the preservation of the security;
- (d) commence any action or proceeding, or continue any action or proceeding commenced after the twentieth day of September, One thousand nine hundred and sixteen, for interest at any rate higher than the rate provided in the mortgage or the rate payable under sub-regulation (7) of this regulation, as the case may be; or
- (e) take any steps for obtaining an order for foreclosure or for possession or occupation;
- Provided that where interest is in arrear for not less than three months or the mortgagor fails to observe the provisions of any covenant, agreement, or condition expressed or implied in the mortgage for any of the matters specified in sub-paragraph
- THE Added by 1917, No. 13. Amended by 1917, Nos. 78 and 253.

THE FIRST SCHEDULE—*continued.*THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—*continued.*

(ii) of paragraph (c) of sub-regulation (1) of the regulation, nothing in this paragraph shall preclude the mortgagee from entering into possession of the mortgaged property, but in any such case the mortgagor may at any time within two months after the mortgagee has entered into possession apply to the Court for an order requiring the mortgagee to vacate the mortgaged property, and in the event of the application being granted by the Court the mortgagee shall vacate the mortgaged property in accordance with the order of the Court.

Substituted by
1917, No. 13.
Amended by
1917, Nos. 76
and 253.

(2) Applications for the leave of the Court, other than applications for the leave of a Local Court, may be made on summons which must be served on, or by motion which must be notified to, such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable; and applications for the leave of a Local Court may be made on summons, which must be served on all persons affected by the application at least seven clear days before the day appointed for the hearing of the application.

Omitted by
1917, No. 253.
Amended by
1917, No. 13.

(3) * * * * *

(4) In dealing with any application for leave under this regulation, the Court may, subject to this regulation—

- (a) grant the application on such terms and conditions (if any) as the Court thinks fit; or
- (b) refuse the application:

Added by 1917,
No. 13.

Provided that the Court shall not grant any application for leave to commence or continue proceedings for the recovery from a mortgagor of any part of the principal sum secured by mortgage, or for foreclosure, unless the Court is satisfied that, having regard to all relevant circumstances, including the ability of the mortgagor to redeem the property out of his own moneys, it would be unjust and inequitable not to grant it.

Amended by
1917, Nos. 13
and 253.

(5) In any case where, after the date fixed by the mortgage for repayment of the principal sum, the principal sum or any part thereof remains unpaid, and the mortgagor satisfies the Court that he is unable to redeem the property, or to repay a portion of the principal sum, as the case may be, from his own moneys, the Court shall not grant leave to take any proceedings for such redemption or repayment unless the Court is satisfied—

- (a) that, by reason of the wasting nature of the security, the continuance of the mortgage would seriously affect the security; or
- (b) that the conduct of the mortgagor has, in respect of any breaches by him of the covenants of the mortgage, or in respect of any matter affecting the rights or remedies of the mortgagee, or in respect of dealings with the mortgagee, been such as to render him undeserving of the benefit or protection of these Regulations.

Omitted by
1917, No. 253.
Amended by
1917, No. 253.

(6) * * * * *

(7) In any case where after the due date for repayment of the principal sum or any part thereof, the principal sum or part remains unpaid, the time for repayment of the principal sum or part shall, unless and until an application for leave is dealt with by the Court under this regulation, be by force of these Regulations extended upon the terms that interest shall continue to be payable at the close of the same intervals of time as are provided by the mortgage with respect to the interest thereby secured, or, if no provision is so made, then quarterly, and at the following rate:—

- (a) in the case of a mortgage of which the principal sum or unpaid part does not exceed Two thousand pounds—the rate provided in the mortgage, or the rate of six per centum per annum, whichever is the less; and
- (b) in the case of a mortgage of which the principal sum or unpaid part exceeds Two thousand pounds—the rate provided in the mortgage, or six per centum per annum, whichever is the greater:

Provided that—

- (i) in the former case the Court may, on the application of the mortgagee, fix a higher rate, not being higher than the rate provided in the mortgage or six per centum per annum, whichever is the greater; and
- (ii) in the latter case the Court may, on the application of the mortgagor, fix a lower rate, not being lower than the rate provided in the mortgage or six per centum per annum, whichever is the less.

THE

THE FIRST SCHEDULE—continued.

THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—continued.

5. In every action or proceeding by a mortgagee for the recovery of any sum for interest secured by a mortgage, the Court hearing the action or proceeding may, if in its discretion and in the circumstances of the case it deems it just and expedient, in lieu of giving judgment for immediate payment, give judgment for payment at a date to be fixed, or by instalments payable at such times as the Court in its discretion determines, and for this purpose the Court shall have jurisdiction to cause judgment to be entered in such form as it deems best to give full effect to the intent of these Regulations, and to direct the method of enforcement of the judgment.

Jurisdiction of Court in actions for recovery of interest secured by mortgage.

6. Where by the terms of a mortgage payment is provided by a series of regular instalments and the rate of interest is not fixed in the mortgage or the instalments are expressed to be for principal only and interest is stated not to be payable the instalments shall for the purposes of these Regulations be deemed to include interest at such rate as is assessed by the Court.

Where mortgage repayable by instalments.

7. Where a mortgage for a specific amount provides for the payment of the principal sum on demand, and a demand has not at the commencement of these Regulations been made, the principal sum shall for the purpose only of these Regulations be deemed to be payable immediately after the commencement of these Regulations.

Mortgages payable on demand.

Amended by 1918, No. 324.

8. (1) Notwithstanding anything contained in the preceding regulations, any mortgagee in possession, who entered into possession on or before the twentieth day of September, 1916, may exercise all his powers under the mortgage without leave of the Court: Provided that, on the application of the mortgagor, the Court may, if in all the circumstances it thinks it just and equitable so to do, forbid the mortgagee from exercising any power of sale or of foreclosure, and may otherwise make such order in the premises as it thinks fit.

Mortgagees in possession.

(2) The provisions of sub-regulations (2), (3), (4) and (6) of regulation 4 of these Regulations shall apply to any such application in like manner as they apply to applications for the leave of the Court under regulation 4.

8A. The costs of any application under these Regulations to the Court shall be in the discretion of the Court.

Costs. Inserted by 1917, No. 13.

Amended by 1917, No. 253. Jurisdiction of Court—how exercisable.

8B. The jurisdiction conferred on a Court by these Regulations may be exercised by a Justice or Judge of the Court sitting either in Court or in Chambers, or, in the case of a local Court, by a Special or Stipendiary Magistrate.

Inserted by 1917, No. 253.

8c. Any determination decision judgment direction order or assessment made or given by any Court in any matter arising under these Regulations shall be final and conclusive and without appeal.

Decisions of Court final.

Inserted by 1917, No. 253.

9. (1) When a mortgagor is entitled to the benefit or protection of these Regulations, he may consent to the exercise by the mortgagee of any power, but such consent shall not take away the necessity of the leave of the Court, unless the consent is in writing and witnessed by a solicitor of the High Court or the Supreme Court, who certifies in writing that the consent is given by his advice.

Consent by mortgagor to exercise of powers by mortgagee.

(2) If consent is given and certified, the leave of the Court shall, so far as the consent extends, be unnecessary.

10. (1) The provisions of these Regulations shall extend and apply, *mutatis mutandis*, to agreements for sale and purchase of land (including exchange), and to leases of land containing an optional or compulsory purchasing clause.

Extension of Regulations to agreements for sale and purchase of land and to leases containing a purchasing clause.

(2) For the purposes of these Regulations an agreement for sale and purchase of land shall be deemed to be a mortgage of such land to secure payment of the unpaid purchase-money and interest thereon, and fulfilment of the conditions set forth in the agreement.

(3) For the purposes of these Regulations a lease of land containing a purchasing clause shall be dealt with in all respects as if the lessee had already notified his exercise of an option to purchase under an optional purchasing clause, and as if the lessor were mortgagee and the lessee were mortgagor of the land, and as if the rent reserved by the lease were interest and the agreed purchase-money were principal-moneys secured. The term of the lease shall, if necessary, be extended for the purpose of giving effect to this provision.

THE FIRST SCHEDULE—*continued.*THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—*continued.*

Agreements for sale and purchase of land where purchaser makes default.
 Inserted by 1917 No. 253.

10A. (1) Notwithstanding anything contained in these Regulations, if the purchaser of any land under an agreement for the sale and purchase of land—

- (a) is in arrear, for a period of twelve months, in respect of any payment of principal or interest due by him under the agreement, and
- (b) makes, during any period of six months, no payment in respect of any portion of the amount due by him under the agreement,

the vendor may, forward, by registered post, to the purchaser, addressed to his last known place of address, a notice intimating that he proposes, after the expiration of a period of one month from the date when in the ordinary course of post the notice should be delivered to the purchaser, to exercise any or all of his rights under the agreement for sale and purchase of the land.

(2) After the expiration of the period specified in the last preceding sub-regulation the vendor may, unless the Court upon application made by the purchaser within the period so specified otherwise directs, exercise any or all of his rights under the agreement as if the provisions of these Regulations had not extended and applied to the agreement.

Non-application of Regulations to certain mortgages.

Amended by 1916, No. 324, and by 1917, No. 253.

Added by 1918, No. 36.

Added by 1919, No. 140.

11. Notwithstanding anything contained in these Regulations these Regulations shall not apply to—

- (a) any mortgage, or an agreement for sale and purchase, or any lease containing an optional or compulsory purchasing clause, which is executed after the twentieth day of September, One thousand nine hundred and sixteen, if the mortgage agreement or lease contains a condition or covenant expressly excluding the provisions of these Regulations; or
- (aa) any lease containing an optional purchasing clause, if the Attorney-General, by notice in writing, declares that he is satisfied that the lessee has no *bona fide* intention of exercising the option to purchase;
- (ab) Any mortgage where the due date for repayment of the principal sum secured thereby is a date after the date of the termination of the war as declared by Proclamation; or
- (b) any agreement for the sale and purchase of leasehold interests in land only, whether such agreement was entered into before or after the twentieth day of September, One thousand nine hundred and sixteen; but this provision shall not extend so as to exclude from the provisions of these Regulations agreements for the sale and purchase of land partly freehold and partly leasehold; or
- (c) any transaction in relation to which any member of the Forces or a female dependant is entitled to any benefit or protection under the provisions of Statutory Rules 1916, No. 163, as amended by any subsequent regulations; or
- (d) any mortgage to secure the repayment of a loan granted by a registered building or friendly society to one of its members; or
- (da) any mortgage to secure the repayment of a loan granted by a registered Friendly Society to a person who is not a member of the society, if the Attorney-General, by notice in writing, declares that the mortgage is one, or one of a class specified by him, to which it is undesirable that these Regulations should apply; or
- (e) any loan made by a life assurance company on the security of one or more of its policies, other than an industrial policy, provided the rate of interest payable on the loan is not greater than—
 - (i) the rate of interest usually charged by the company before the commencement of the present state of war for a similar loan, or
 - (ii) seven per centum per annum,
 whichever is the less.

Relief in certain cases of non-payment of rent.

Added by 1916, No. 324.

11A. (1) Notwithstanding anything contained in the last preceding regulation, if, for the purpose of legislation enacted in consequence of the war, restrictions are placed upon the marketing of any produce, and the producer is thereby rendered unable to meet, out of the proceeds of the land, any payment of rent falling due, or which has since the fifth day of December, One thousand nine hundred and sixteen, fallen due, upon any land used by him for the purpose of or in connexion with the production of the produce the right of the lessor to recover the rent or possession of the

THE

THE FIRST SCHEDULE—continued.

THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—continued.

land, notwithstanding that proceedings may have been commenced prior to the commencement of this regulation, shall be postponed until with respect to any specified period the producer has received the proceeds of his produce, or until, with respect to that particular class of produce, the Attorney-General by notice published in the *Gazette* declares that as regards that specified period the producers have received a substantial part of the proceeds of their produce, whichever first happens.

(2) Where any payment of rent is postponed in accordance with this regulation, interest at the rate of five per centum per annum shall be payable by the producer to the lessor in respect of the period of postponement.

11b. (1) Where any Court has made an order for the payment by any person to any other person of a sum of money and the Court is satisfied that immediate payment of the whole or part of the money would inflict great hardship on the person ordered to pay the money by reason of the operation of these Regulations or the War Precautions (Active Service Moratorium) Regulations upon his property or investments, or upon the realization thereof, the Court may, upon the application of the person ordered to pay the money, in its discretion, if in all the circumstances it thinks it desirable so to do, order that the payment of the whole or part of the sum of money in question shall be deferred until such time and upon such conditions as the Court thinks fit.

Court may grant relief against judgments in certain cases.

Inserted by 1917, No. 253.

(2) An order may be made under this regulation in respect of the payment of money made by any Court before the commencement of this regulation as well as in respect of orders made after the commencement of this regulation.

11c. The Registrar of Titles of any State may, upon the submission to him for registration in accordance with the law of the State of a transfer of property on sale by the mortgagee thereof, require such evidence as he deems necessary that the sale sought to be given effect to by the transfer does not contravene any provision of these Regulations and may refuse to register the transfer until such evidence is submitted to him.

Transfers of land on sales by mortgagees.

Added by 1918, No. 28.

12. Regulation 15 of the War Precautions (Supplementary) Regulations (Statutory Rules 1916, No. 250, as amended by Statutory Rules 1916, Nos. 254 and 271) is hereby repealed.

Repeal of S.R. 1916, No. 250, as amended by S.R. 1916, Nos. 254 and 271.

13. (1) Notwithstanding anything contained in these Regulations, the time for repayment of the principal sum secured by a mortgage to which these Regulations apply, the due date for repayment of which would but for these Regulations have been a date within one of the periods specified in the first column of the following table, shall be, by force of this regulation, extended to a date within the month which is specified in the second column of the said table opposite to such period.

Dates for repayment of principal moneys.

Added by 1918, No. 140.

<i>First Column.</i>	<i>Second Column.</i>
Period within which, apart from these Regulations, the principal sum secured by a mortgage to which these Regulations apply is due for repayment.	Prescribed Month for Repayment.
Period before 1st January, 1915	February, 1920
Period between 1st January and 31st December, 1915, both dates inclusive	March, 1920
Period between 1st January and 31st December, 1916, both dates inclusive	April, 1920
Period between 1st January and 31st December, 1917, both dates inclusive	May, 1920
Period between 1st January and 31st December, 1918, both dates inclusive	June, 1920
Period between 1st January, 1919, and the date of the termination of the war as declared by Proclamation, both dates inclusive	July, 1920

(2) The prescribed date for repayment shall be that day in the prescribed month for repayment which corresponds to the day of the month which would but for these Regulations be or have been the due date for repayment :

THE

THE FIRST SCHEDULE—*continued.*THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—*continued.*

Provided that where there is no day so corresponding the prescribed date for repayment shall be the last day of the prescribed month for repayment.

(3) The prescribed date for repayment of the principal sum secured by a mortgage to which these Regulations apply shall, if the principal sum—

- (a) is payable on demand, or
- (b) is by virtue of Regulation 7 of these Regulations deemed to be payable immediately after the commencement of these Regulations,

be the twenty-ninth day of February, 1920.

(4) Where by the terms of a mortgage to which these Regulations apply the principal sum secured by the mortgage is payable only upon notice, notice in accordance with the mortgage may be given by the mortgagee at any time after the twenty-ninth day of February, 1920, and the date specified in that notice as the date fixed for payment shall for the purposes of these Regulations be deemed to be the prescribed date for repayment.

(5) Until the prescribed date for repayment the rate of interest, and the intervals of time at which it is payable, shall be such rate and intervals as are prescribed by or fixed under these Regulations.

(6) In the case of a mortgage or agreement for the sale and purchase of land to which these Regulations apply and which provides for payment by instalments, the date for payment of any instalment, which would, apart from these Regulations have been due and payable on or before the date of the termination of the war as declared by Proclamation, shall be determined in the same manner as if that instalment were the principal sum secured by a mortgage to which these Regulations apply; but nothing in these Regulations shall affect the date for payment of any instalment due and payable after the date of the termination of the war as declared by Proclamation.

(7) Upon or after the prescribed date for repayment the mortgagee may exercise all his powers under the mortgage without leave of the Court.

(8) Nothing in this regulation shall abridge the time which is ordered or allowed by any Court, in pursuance of these Regulations, for repayment of the principal sum secured by a mortgage.

14. (1) Notwithstanding anything contained in the last preceding regulation, the Court may, upon the application of the mortgagor made not less than one month before the prescribed date for repayment, make an order, on such terms and conditions (if any) as the Court thinks fit, extending the date for repayment for a period not more than twelve months after the prescribed date for repayment, and may fix the intervals of time and rate at which interest is payable during such extended period.

(2) An application under this regulation may be made in the same manner as an application for leave of the Court under Regulation 4 of these Regulations.

(3) An application under this regulation shall not be granted unless the Court is satisfied—

- (a) that the obligation to repay the principal sum by the prescribed date for repayment would involve serious hardship to the mortgagor;
- (b) that the conduct of the mortgagor in respect of dealings with the mortgagee has not been such as to render him undeserving of the benefit or protection of this regulation; and
- (c) that the granting of the application would not seriously embarrass the mortgagee.

15. Where the principal sum secured by a mortgage is paid upon, or within seven days before, the prescribed date for repayment, or, where the Court in pursuance of the last preceding regulation has extended the date for repayment, upon or within seven days before such extended date, the mortgagee shall not be entitled to receive any payment by way of interest in lieu of notice.

16. (1) In the case of a lease of land in force at the commencement of this regulation—

- (a) which contains an optional purchasing clause by the terms of which the last date for exercise of the option is a date not later than the thirty-first day of December, 1919; and
- (b) which is under these Regulations treated as if the lessee had already notified his exercise of the option; and

Substituted by
1919 No. 172.

Power to
extend date for
repayment in
cases of
hardship.

Added by 1919,
No. 140.

Mortgagee not
entitled to
notice where
Mortgagor pays
within time
allowed.

Added by 1919,
No. 140.

Leases of land
containing
optional
purchasing
clause.

Added by 1919
No. 140.

THE FIRST SCHEDULE—continued.

THE WAR PRECAUTIONS (MORATORIUM) REGULATIONS—continued.

(c) in respect of which the lessee has not in fact notified, prior to the commencement of this regulation, his exercise of the option, the lessee may, notwithstanding anything contained in the lease, notify, at any time during the currency of the lease and up till the thirty-first day of December, 1919, his exercise of the option :

Provided that where, by the terms of any such lease, the date of the expiry of the lease is a date after the commencement of this regulation and on or before the thirty-first day of December, 1919, the lessee may, before the date of expiry of the lease, notify the lessor that it is probable that he will, on or before a date specified by him, not being later than the said thirty-first day of December, notify his exercise of the option, and if the lessee so notifies the lessor the term of the lease shall, by force of this regulation, be extended until—

- (a) the date specified by the lessee ; or
(b) the said thirty-first day of December, 1919,

whichever first happens :

Provided further that, where the term of a lease is so extended, the extension shall be upon the same terms and conditions as those prevailing immediately before the date upon which, but for this regulation, the lease would have expired.

(2) Regulation 13 of these Regulations shall not apply to any lease of land containing an optional purchasing clause.

(3) Regulation 10 of these Regulations shall not apply to any lease of land containing an optional purchasing clause by the terms of which the last date for the exercise of the option is a date later than the thirty-first day of December, 1919.

THE SECOND SCHEDULE.

THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS.

1. These Regulations may be cited as the War Precautions (Active Service Moratorium) Regulations 1916.

Short title. Amended by 1916, No. 283. Definitions.

2. (1) In these Regulations, unless the contrary intention appears—

"Female Dependant" means any female who is wholly or partly dependent for her support upon the pay, or upon a pension payable in consequence of the incapacity or death of a person who is or has been a member of the Forces, and includes the wife of a person who has been a member of the Forces but who, having been discharged without receiving a pension, is receiving, from the Army Medical Corps, medical treatment of such a nature as to prevent him either wholly or partly from engaging in his occupation ;

Amended by 1916, No. 283 ; 1917, No. 271 ; 1918, No. 314 ; and 1919, No. 112.

"Farming or dairying pursuits" includes agriculture, fruit-growing, bee-farming, poultry-farming, stock-raising, or any kindred pursuit ;

Inserted by 1918, No. 238.

"Land" includes messuages, tenements, and hereditaments, and houses and buildings, and also includes any estate or interest in land (legal or equitable), and any easement, right, power, or privilege over, in, or in connexion with land ;

"Parent" means a parent who is wholly or partly dependent on the pay or pension of a person who is or has been a member of the Forces.

Inserted by 1919, No. 128.

(2) In these Regulations, other than Regulations 12, 13, 14, 15, 17 and 18, the expression "Member of the Forces" means a member of the Commonwealth Naval or Military Forces enlisted or appointed for or employed on active service outside Australia or employed on a ship of war, or enlisted or appointed for service in connexion with naval or military preparations or operations, and includes a member of the Army Medical Corps Nursing Service who is accepted or appointed by the Director-General of Medical Services for service outside Australia, but does not include any person serving in the Citizen Forces in pursuance of a proclamation under section sixty of

Added by 1917. No. 271.

THE

THE SECOND SCHEDULE—continued.

THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—continued.

the *Defence Act* 1903-1915; and in Regulations 12, 13, 14, 15, 17 and 18 the expression "Member of the Forces" means a member of the Commonwealth Naval or Military Forces enlisted or appointed for or employed on active service outside Australia or employed on a ship of war, and includes a member of the Army Medical Corps Nursing Service who is accepted or appointed by the Director-General of Medical Services for service outside Australia.

Postponement of due date of principal secured by mortgage.

Amended by 1916, No. 283; and by 1919, No. 173.

3. Subject to these Regulations, the time for any payment of principal money secured by a mortgage (legal or equitable) of land, contracted by a member or the female dependant of a member before the date on which he became a member of the Forces or before the first day of January, 1916, whichever last happens, is hereby postponed so that such payment shall fall due upon the expiration of six months after the cessation of the present state of war as declared by the Governor-General by proclamation, or upon the expiration of six months after the discharge of the member of the Forces, or his death before discharge, whichever last happens.

Postponement of due date of purchase-money.

Amended by 1916, No. 283; and by 1919, No. 173.

4. (1) Subject to these Regulations, the time for any payment of purchase-money (whether the whole or an instalment thereof) under an agreement for the purchase of land, entered into by a member or the female dependant of a member before the date on which he became a member of the Forces or before the first day of January, 1916, whichever last happens, which payment has fallen due since the first day of May, One thousand nine hundred and sixteen, or hereafter falls due, is hereby postponed so as to fall due upon the expiration of the period of six months next after the day on which it fell due or would fall due if these Regulations had not been made or upon the expiration of six months after the cessation of the present state of war as declared by the Governor-General by proclamation, or upon the expiration of six months after the discharge of the member of the Forces, or his death before discharge, whichever last happens.

(2) This regulation shall not apply to any amount payable as interest, and when an instalment includes interest as well as principal, and the agreement neither states the rate of interest nor indicates what parts of the instalment are principal and interest respectively, then, for the purposes of this regulation, the rate of interest shall be deemed to be 5 per centum per annum.

Repealed by 1916, No. 283.

Interest to be payable in respect of period of postponement.

Sub-regulations (2) to (4) omitted and fresh sub-regulations (2) and (3) inserted by 1916, No. 283.

5. * * * * *

6. (1) When a mortgagor or purchaser avails himself of the right conferred by these Regulations to postpone the payment of any sum, interest shall be payable on such sum in respect of the period of postponement.

(2) The rate of interest payable at any time by virtue of this Regulation shall, unless the rate thereof is hereafter agreed upon by the parties before the interest falls due, be—

(a) six per centum per annum.

(b) the rate payable on the date when such sum would have been payable if these Regulations had not been made,

whichever is the lower rate: Provided that, if the rate of interest payable under any mortgage or agreement is thereby fixed by reference to rates current, in the case of some specified class of transactions, at the times when the sums of interest respectively fall due or are paid (as the case may be), the rates payable by virtue of this regulation shall, at the option of the mortgagee or vendor, be as so fixed or as fixed by this regulation, but so that the rate shall not in any case exceed 6 per centum per annum.

(3) Interest payable by virtue of this regulation shall be payable at the close of the same intervals of time as are provided by the mortgage or agreement with respect to the interest thereby secured, or, if no provision is so made, then quarterly.

(4) * * * * *

(5) In the case of a payment which fell due on or before the date of these Regulations, the period of postponement shall, for the purposes of this regulation, be deemed to have commenced on the day immediately following the date of these Regulations.

7. When, under any mortgage or agreement to which these Regulations apply, the principal or purchase-money is to be repaid or paid by instalments, and the mortgagor or purchaser avails himself of the right conferred by these Regulations to postpone the payment of any of such instalments, then, notwithstanding that in other

When one instalment postponed, subsequent instalments to be postponed for like periods.

THE

THE SECOND SCHEDULE—*continued.*THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued.*

respects these Regulations may have ceased to operate, the times when the subsequent instalments respectively fall due shall each be postponed for a period equal to the period of postponement effected by these Regulations with respect to the first-mentioned instalment; but the interest to be paid with such subsequent instalments shall, if these Regulations have so ceased to operate, be at the rate fixed by the mortgage or agreement.

8. (1) These Regulations shall operate as a stay of all proceedings, whether by action or any other means and whether in any Court or otherwise, heretofore commenced to enforce the payment or in respect or in consequence of the non-payment of any principal or purchase-money to which Regulation 3 or 4 applies, and of all remedies for the recovery thereof; but shall not otherwise prejudice or affect any such proceeding or remedy, or alter or affect the rights or obligations of any party, except so far as may be necessary to give effect to the provisions of these Regulations.

Proceedings stayed, but rights not otherwise prejudiced.

(2) Upon the termination of the postponement effected by these Regulations, all proceedings so stayed may be continued, and all such remedies may be pursued, as if the period of postponement had not intervened.

(3) In particular, but without limiting the effect of this regulation, it is hereby provided that the period of postponement effected by these Regulations shall not be taken into account in calculating the time, as fixed by any Statute of Limitations or other Act or State Act, within which any action for the recovery of any postponed sum is to be commenced, or any other remedy for that purpose is to be pursued.

9. (1) Notwithstanding anything contained in these Regulations, any Justice of the High Court or Judge of the Supreme Court of a State shall have power, with respect to any mortgage or agreement, to order that these Regulations shall not apply thereto, if he is of opinion that, in the special circumstances of the case, the postponement effected by these Regulations is not necessary in the interest of the mortgagor or purchaser, or would cause hardship or loss to the mortgagee or vendor (as the case may be), or to any person towards whom, with respect to such mortgage or agreement, he stands in the position of trustee.

Provision for cases of great hardship.

(2) The application for an order under this regulation shall be made by motion, with notice to such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable.

Substituted by 1916, No. 283.

(3) * * * * *

Repealed by 1916, No. 283.

(4) A Justice or Judge may make all such interlocutory and final orders in the matter of any such motion, including any orders as to costs, as, having regard to the objects of these Regulations and the circumstances of the case, he deems proper: Provided that the costs of the application shall be borne by the applicant unless, from the circumstances of the case, the Justice or Judge thinks fit to order otherwise.

Amended by 1916, No. 283.

(5) The order of a Justice or Judge determining any such motion shall be final; and no order or direction, whether interlocutory or final, in the matter of any such motion, and no other proceeding under this regulation, shall be appealed against, questioned, or reviewed in any manner whatsoever, or be restrained or removed by prohibition, injunction, *certiorari*, or otherwise howsoever.

Amended by 1916, No. 283.

9A. (1) Notwithstanding anything contained in these Regulations any Court may, upon the application of the mortgagor or purchaser made not less than one month before the date to which the payment of—

Extension of time in cases of hardship to mortgagor or purchaser.

(a) the principal money secured by a mortgage, or

(b) the purchase money (or any instalment thereof) payable under an agreement,

Inserted by 1919 No.

has been postponed under these Regulations (in this regulation referred to as "the prescribed date for payment") make an order, on such terms and conditions (if any) as the Court thinks fit, extending the date for payment of the principal money, purchase money, or instalment, as the case may be, for a further period of not more than twelve months, and may fix the intervals of time and rate at which interest is payable during such further period.

(2) In this regulation "the Court" means the High Court, or the Supreme Court of a State, or a County or District Court, or a Local Court consisting of a Special or Stipendiary Magistrate.

THE

THE SECOND SCHEDULE—*continued.*THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued.*

(3) An application under this regulation, other than an application to a Local Court, may be made on summons, which must be served on, or by motion, which must be notified to, such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable; and an application to a Local Court may be made on summons, which must be served on all persons affected by the application at least seven clear days before the day appointed for the hearing of the application.

(4) An application under this regulation shall not be granted unless the Court is satisfied—

- (a) that the obligation to repay the principal sum, purchase money or instalment, as the case may be, by the prescribed date for payment would involve serious hardship to the mortgagor or purchaser;
- (b) that the conduct of the mortgagor or purchaser in respect of dealings with the mortgagee or vendor has not been such as to render him undeserving of the benefit or protection of this regulation; and
- (c) that the granting of the application would not seriously embarrass the mortgagee or vendor.

(5) The jurisdiction conferred on the Court by this regulation may be exercised by a Justice or Judge of the Court sitting either in Court or in Chambers, or, in the case of a Local Court, by a Special or Stipendiary Magistrate.

(6) The Court may make all such orders in the matter of the application, including any order as to costs, as having regard to the objects of these Regulations and the circumstances of the case, it deems proper:

Provided that the costs of the application shall be borne by the applicant unless, from the circumstances of the case, the Court thinks fit to order otherwise.

(7) The order of the Court upon any such application shall be final; and no order or direction, whether interlocutory or final, in the matter of any such motion, and no other proceeding under this regulation, shall be appealed against, questioned, or reviewed in any manner whatsoever, or be restrained or removed by prohibition, injunction, *certiorari*, or otherwise howsoever.

(8) Where, in pursuance of this regulation, a Court has made an order extending for any period the date for payment of any instalment payable under any agreement, the Court may, by the same or a subsequent order, extend for a like period the date for payment of any subsequent instalment payable under that agreement, and fix the intervals of time and rate at which interest is payable during that period.

Certain contracts and instruments not affected.

10. These Regulations shall not be held to prevent, or to alter the effect of—

- (a) any contract, made after the date of these Regulations, concerning any mortgage or agreement to which Regulation 3 or 4 of these Regulations applies; or
- (b) any instrument made or thing done in pursuance of any such contract.

Mortgages and agreements to which member of Forces or female dependant is a party jointly with other person.

Inserted by 1916, No. 283.

Protection from distress, &c., of means of livelihood, &c., of female dependants of soldiers.

Inserted by 1916, No. 283.

Amended by 1917, No. 271; and by 1919, No. 112.

11. The provisions of the preceding regulations shall apply to any mortgage or agreement contracted or entered into by a member of the Forces or the female dependant of a member of the Forces jointly with a person who is not a member of the Forces or a female dependant of a member of the Forces in like manner as they apply to a mortgage or agreement contracted or entered into by a member of the Forces only or a female dependant only, as the case may be.

12. (1) No person shall, under a bill of sale, or writ of execution or other process issued by a Court, or by way of distress, or under the provisions of a hire-purchase agreement made prior to the first day of June, 1916, or to the enlistment of a member of the Forces, whichever last happens, seize or take possession of—

- (a) any chattels which are used by any female dependant of that member of the Forces to support or assist in supporting herself or any of the family of the member; or
- (b) any furniture or wearing apparel belonging to any such member or female dependant:

Provided that if the furniture and wearing apparel belonging to the member and his female dependants exceed in value £100, any articles may be seized and taken possession of under due authority of law if the articles remaining are not less in value than £100.

THE

THE SECOND SCHEDULE—*continued.*THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued.*

(1A) In this regulation "hire-purchase agreement" includes a letting of goods with an option to purchase, an agreement for the payment of goods by instalments, and any other agreement for the purchase of goods whether or not the property in the goods passes, on delivery, to the purchaser, and any goods the subject of any hire-purchase agreement shall, for the purposes of this regulation, be deemed to belong to the purchaser.

(2) In any prosecution for an offence against this regulation an order may be made for the return of any articles seized or taken possession of in contravention of this Regulation, or for payment of their value.

13. (1) No writ of action or other legal process shall without leave of the High Court or the Supreme Court be issued out of any Court in respect of any liability of any member of the Forces or a female dependant under any contract or agreement (not being a contract or agreement to which the provisions of any of the preceding regulations apply), where the contract or agreement was entered into on or before the twentieth day of September, One thousand nine hundred and sixteen.

Writs and process against soldiers and female dependants.
Inserted by 1916, No. 283.

Provided that if the Court is satisfied that having regard to all the circumstances of the case it would be inequitable to the other party to the contract or agreement to give to the member or female dependant, as the case may be, the benefit or protection of this regulation, and that it would not inflict hardship on the member or female dependant, as the case may be, the Court shall grant leave to the party making the application.

(2) Application for the leave of the Court under this regulation may be made by motion, with notice to such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable.

(3) Any such application may be made to and disposed of by a Justice or Judge in Chambers.

(4) The leave may be granted on such terms and conditions (if any) as the Court thinks fit.

14. Where it appears to the High Court or the Supreme Court on motion made by or on behalf of any member of the Forces or female dependant that any writ of action or other legal process issued or proposed to be issued out of any Court in respect of any liability of any member of the Forces or a female dependant under any contract or agreement (not being a contract or agreement to which the provisions of any of the preceding regulations apply), that the contract or agreement is, so far as the member or female dependant is concerned, harsh and unconscionable, the Court may make such order upon such terms and conditions as it thinks fit prohibiting or suspending the issue of the process, or if the process has already been issued prohibiting or suspending further proceedings in pursuance of the process.

Power of superior Courts to prohibit issue of process in certain cases.
Added by 1917, No. 271.

15. If in relation to any transaction entered into whether after the commencement of the present state of war and before the commencement of this regulation, or after the commencement of this regulation, it appears to the High Court or the Supreme Court (or, where the matter at issue does not exceed in value the sum of Five hundred pounds, to a County or District Court or a Local Court of Full Jurisdiction), on motion made by or on behalf of a member of the Forces or female dependant, that the transaction is harsh and unconscionable to the member or female dependant, or is such that a court of equity would give relief, the Court may re-open the transaction and take an account between the member or female dependant and the other party to the transaction, and make such order as it thinks just as regards the transaction, and as regards any property affected by the transaction, and any such order shall be of full force and effect, and shall be complied with by the parties to the transaction.

Re-opening of transactions between members of Forces and others.
Added by 1917, No. 271.

16. Any matter arising under either of the last two preceding regulations may be disposed of by a Justice or Judge in Chambers.

Exercise of jurisdiction in Chambers.

THE **Added by 1917, No. 271.**

THE SECOND SCHEDULE—*continued*.THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued*.

Rental of dwelling-houses by members of the Forces, parents or female dependants.

Added by 1917, No. 271; amended by 1918, No. 81.

17. (1) The owner of any dwelling-house to which this regulation applies which is tenanted by a member of the Forces or a parent or female dependant of a member shall not, without the leave of a Court of Summary Jurisdiction, increase the rent charged to that member or parent or female dependant in respect of the dwelling-house, and any increase made in contravention of this regulation shall, notwithstanding any agreement to the contrary, be irrecoverable :

Provided that—

- (a) where the owner incurs expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs) an increase of rent at a rate not exceeding 8 per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this regulation ;
- (b) any transfer to a tenant of any burden or liability previously borne by the owner shall for the purposes of this regulation be treated as an alteration of rent, and where as the result of such a transfer the terms on which the dwelling-house is held are on the whole less favorable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased ;
- (c) any increase of rent in respect of any transfer to the owner of any burden or liability previously borne by the tenant where as the result of the transfer the terms on which the dwelling-house is held are on the whole more favorable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this regulation ;
- (d) where the owner pays the rates chargeable on the occupier of any dwelling-house an increase of the rent of the dwelling-house payable for any period shall not be deemed to be an increase for the purposes of this regulation if the amount of the increase does not exceed the increase in the amount payable by the owner in respect of the rates during the same period and for the purposes of this paragraph the expression "rates" includes water rates and charges.

Amended by 1918, No. 81.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this regulation applies require from any member of the Forces, or parent or female dependant of any member of the Forces, the payment of any fine, premium or other like sum in addition to the rent.

Substituted by 1918, No. 81.

(3) No order for the recovery of possession of any dwelling-house to which this regulation applies, from a member of the Forces or a parent or female dependant of a member of the Forces, or for the ejection therefrom of a tenant (being a member of the Forces or a parent or female dependant of a member of the Forces) shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this regulation and performs the other conditions of the tenancy, unless—

- (a) the tenant has committed waste, or has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers, or the premises are reasonably required by the landlord for the occupation of himself or some person in his employ or in the employ of some tenant from him, or on some other ground which is deemed satisfactory by the Court making the order, and
- (b) the Court is satisfied that in all the circumstances of the case and in the interest of justice it is desirable that the order for recovery or ejection should be made.

(4) Any member of the Forces or parent or female dependant of a member of the Forces may, if he or she thinks fit, require the owner of a dwelling-house to which this regulation applies, which is vacant or is about to become vacant, to let the dwelling-house to him or her at a reasonable rental, and the owner shall, unless he has reasonable cause for refusing so to do, let the dwelling-house accordingly.

(5) For the purposes of this regulation a reasonable rental shall be the equivalent of such weekly rental as represents the average weekly rental received in respect of the property during the period in which it has been occupied during the twelve months preceding the date of the commencement of this regulation, or, in the event of rent not having been received in respect of the property, either at all or for any period more than three months during the said period of twelve months, such rental as is determined by the judicial or other authority or person thereto authorized in writing by the Minister (in this regulation referred to as "the authority") :

THE

THE SECOND SCHEDULE—*continued.*THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—*continued.*

Provided that where any improvement or structural alteration of a dwelling-house (not including decoration or repairs) has taken place, an allowance for the value of such improvement or alteration, to an extent not exceeding 8 per centum per annum on the amount expended thereon, shall be taken into consideration in determining the reasonable rental of the dwelling-house.

(6) This regulation shall apply to a house or part of a house let as a separate dwelling (or as a dwelling and shop) where the letting does not include any land other than the site of the house and a garden or other premises within the curtilage of the house and where the rateable value of the house or part of the house—

- (a) if based on rental value does not exceed Seventy pounds per annum; and
- (b) if based on unimproved value does not exceed Three hundred and fifty pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this regulation applies.

18. (1) The owner of any shop which is leased to a member of the Forces, or a parent or female dependant of a member solely for business purposes and the owner of any land which is leased to a member of the Forces or a parent or female dependant of a member for the purpose of carrying on farming or dairying pursuits, shall not, without the leave of a Court of Summary Jurisdiction, if the rent payable does not exceed Seventy pounds per annum, or of a County or District Court or a Local Court of Full Jurisdiction, if the rent payable exceeds Seventy pounds per annum, increase the rent charged to that member or parent or female dependant in respect of the shop or land, as the case may be, and any increase made in contravention of this regulation shall, notwithstanding any agreement to the contrary, be irrecoverable :

Rental of shops, farms, &c., by members of the Forces, parents or female dependants.
Added by 1917, No. 271 ; amended by 1918, No. 81.

Provided that—

- (a) where the owner incurs expenditure on the improvement of the shop or land, or the structural alteration of the shop or of any building erected on the land, as the case may be (not including expenditure on decoration or repairs) an increase of rent at a rate not exceeding 8 per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this regulation ;
- (b) any transfer to a tenant of any burden or liability previously borne by the owner shall for the purposes of this regulation be treated as an alteration of rent, and where as the result of such a transfer the terms on which the shop or land is held are on the whole less favorable to the tenant than the previous terms the rent shall be deemed to be increased whether or not the sum periodically payable by way of rent is increased ;
- (c) any increase of rent in respect of any transfer to the owner of any burden or liability previously borne by the tenant where as the result of the transfer the terms on which the shop or land is held are on the whole more favorable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this regulation ;
- (d) where the owner pays the rates chargeable on the occupier of any shop or land an increase of the rent of the shop or land payable for any period shall not be deemed to be an increase for the purposes of this regulation if the amount of the increase does not exceed the increase in the amount payable by the owner in respect of the rates during the same period and for the purposes of this paragraph the expression "rates" includes water rates and charges.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any shop or land require from any member of the Forces or parent or female dependant of a member of the Forces the payment of any fine, premium or other like sum in addition to the rent.

Amended by 1918, No. 81.

(3) No order for the recovery of a shop or land from a member of the Forces or a parent or female dependant of a member of the Forces or for the ejection therefrom of a tenant (being a member of the Forces or a parent or female dependant of a member

Substituted by 1918, No. 81.

THE SECOND SCHEDULE—continued.

THE WAR PRECAUTIONS (ACTIVE SERVICE MORATORIUM) REGULATIONS—continued.

of the Forces) shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this regulation and performs the other conditions of the tenancy, unless—

- (i) the tenant has committed waste, or has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers, or the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ or in the employ of some tenant from him, or on some other ground which is deemed satisfactory by the Court making the order, and
- (ii) the Court is satisfied that in all the circumstances of the case and in the interests of justice it is desirable that the order for recovery or ejection should be made.

Added
by 1918, No. 81.

19. The Registrar of Titles of any State may, upon submission to him of a notification of re-entry by a lessor for registration in accordance with the law of the State, require such evidence as he deems necessary that the re-entry does not contravene any provision of these Regulations and may refuse to register the notification until such evidence is submitted to him.

1917-18-19.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

MORATORIUM BILL.

*(Amendment to be proposed by the Acting Attorney-General,
the Honorable L. E. Groom.)*

Page 3, clause 4, line 16, omit "for more than twelve months after
the prescribed date".



1917-18-19.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

MORATORIUM BILL 1919.

(Amendments to be proposed by the Acting Attorney-General, the
Honorable L. E. Groom, M.P.)

Page 13, The Second Schedule, after Regulation 9 insert the following Regulation :—

“ 9A.—(1.) Notwithstanding anything contained in these Regulations any Court may, upon the application of the mortgagor or purchaser made not less than one month before the date to which the payment of—

- (a) the principal money secured by a mortgage, or
- (b) the purchase money (or any instalment thereof) payable under an agreement,

has been postponed under these Regulations (in this regulation referred to as ‘ the prescribed date for payment ’) make an order, on such terms and conditions (if any) as the Court thinks fit, extending the date for payment of the principal money, purchase money, or instalment, as the case may be, for a further period of not more than twelve months, and may fix the intervals of time and rate at which interest is payable during such further period.

“(2.) In this regulation ‘ the Court ’ means the High Court, or the Supreme Court of a State, or a County or District Court, or a Local Court consisting of a Special or Stipendiary Magistrate.

“(3.) An application under this regulation, other than an application to a Local Court, may be made on summons, which must be served on, or by motion, which must be notified to, such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable; and an application to a Local Court may be made on summons, which must be served on all persons affected by the application at least seven clear days before the day appointed for the hearing of the application.

Extension of
time in cases
of hardship to
mortgagor or
purchaser.

Inserted by
S. R. 1919 No.

“(4.) An application under this regulation shall not be granted unless the Court is satisfied—

- (a) that the obligation to repay the principal sum, purchase money or instalment, as the case may be, by the prescribed date for payment would involve serious hardship to the mortgagor or purchaser ;
- (b) that the conduct of the mortgagor or purchaser in respect of dealings with the mortgagee or vendor has not been such as to render him undeserving of the benefit or protection of this regulation ; and
- (c) that the granting of the application would not seriously embarrass the mortgagee or vendor.

“(5.) The jurisdiction conferred on the Court by this regulation may be exercised by a Justice or Judge of the Court sitting either in Court or in Chambers, or, in the case of a Local Court, by a Special or Stipendiary Magistrate.

“(6.) The Court may make all such orders in the matter of the application, including any order as to costs, as having regard to the objects of these Regulations and the circumstances of the case, it deems proper :

Provided that the costs of the application shall be borne by the applicant unless, from the circumstances of the case, the Court thinks fit to order otherwise.

“(7.) The order of the Court upon any such application shall be final ; and no order or direction, whether interlocutory or final, in the matter of any such motion, and no other proceeding under this regulation, shall be appealed against, questioned, or reviewed in any manner whatsoever, or be restrained or removed by prohibition, injunction, *certiorari*, or otherwise howsoever.

“(8.) Where, in pursuance of this regulation, a Court has made an order extending for any period the date for payment of any instalment payable under any agreement, the Court may, by the same or a subsequent order, extend for a like period the date for payment of any subsequent instalment payable under that agreement, and fix the intervals of time and rate at which interest is payable during that period.”

(*On re-committal.*)

Page 2, clause 3, line 28, omit “ and 173,” insert “ 173 and ”

Page 2, clause 3, line 35, omit “ and 172,” insert “ 172 and ”

Page 2, clause 3, line 36, omit “ thirtieth day of June,” insert “ thirty-first day of July.”