

Made by me
ALFRED SAVAGE,
 Governor.
 29th December, 1953.

ORDINANCE No. 24 OF 1953.

AN ORDINANCE to make provision for compensation in respect of A.D. 1953.
 action taken on behalf of Her Majesty in the exercise of certain
 Emergency Powers, and for purposes in connection there-
 with.

[31st December, 1953]

ENACTED by the Governor of British Guiana in accordance
 with the provisions of Part III of the British Guiana (Constitu-
 tion) (Temporary Provisions) Order in Council, 1953.

1. This Ordinance may be cited as the Compensation Short title
 (Emergency Order) Ordinance, 1953.

2. (1) In this Ordinance —

“agricultural land” does not include the garden of a house or building, or land within the curtilage of a house or building; Interpre-
tation.

“aircraft” has the same meaning as in any Order in
 in Council for the time being in force under Part
 I of the Air Navigation Acts, 1920 and 1936;

“the emergency” means the emergency that was the
 occasion of the passing of this Ordinance;

“emergency powers” means any power conferred by the provisions of the Emergency Order prepared in accordance with section 5 of the British Guiana (Emergency) Order in Council, 1953;

“exercise” includes purported exercise;

“fair wear and tear” in relation to any property possession of which is taken or requisitioned on behalf of Her Majesty means such fair wear and tear as might have been expected to occur but for the fact that possession of the property was so taken or that the property was so requisitioned, as the case may be;

“land” includes land covered with water, and parts of houses or buildings;

“owner” means —

(a) in relation to land, the person who is receiving the rackrent of the land, whether on his own account or as agent or trustee for any other person, or who would so receive the rackrent of the land if it were let at a rackrent, or

(b) in relation to any property other than land, the person entitled to sell the property, it being assumed not to be subject to any mortgage, pledge, lien or other similar obligation; and in this definition the expression

“rackrent” means a rent which is not less than two-thirds of the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant’s rates and taxes, and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the same in a state to command such rent;

“prescribed” means prescribed by rules made by the Financial Secretary;

“requisition” means, in relation to any property, take possession of the property or require the property to be placed at the disposal of the requisitioning authority.

(2) For the purposes of this Ordinance, the doing of work shall, in relation to any land, be deemed to include the demolition, pulling down, destruction or rendering useless of anything placed in, on or over that land the maintenance of any work or thing in, on or over the land, and the removal from the land of anything so placed, demolished or pulled down in the exercise of emergency powers.

Right to, and measure of, compensation

Compensation for action taken in the exercise of

3. (1) Where, in the exercise of emergency powers during the period beginning with the eighth day of October, nineteen hundred and fifty-three, and ending with such day as the Governor may by Order declare to be the day on which the emergency came to an end,—

- (a) the possession of any land has been taken on behalf of Her Majesty, or emergency powers.
- (b) any property other than land has been requisitioned or acquired on behalf of Her Majesty, or
- (c) any work has been done on any land on behalf of Her Majesty,

then, subject to the following provisions of this Ordinance, compensation assessed in accordance with those provisions shall be paid, out of moneys provided by the Legislative Council, in respect of the taking possession of the land, the requisition or acquisition of the property, or the doing of the work, as the case may be.

(2) For the purposes of this section, a requirement that any space or accommodation in a ship or an aircraft be placed at the disposal of any authority shall be deemed to be a requisition of property.

4. (1) The compensation payable under this Ordinance in respect of the taking possession of any land shall be the aggregate of the following sums, that is to say, — Compensation in respect of taking possession of land.

- (a) a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the land, during the period for which possession of the land is retained in the exercise of emergency powers, under a lease granted immediately before the beginning of that period, whereby the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent, and
- (b) a sum equal to the cost of making good any damage to the land which may have occurred during the period for which possession thereof is so retained (except in so far as the damage has been made good during that period by a person acting on behalf of Her Majesty), no account being taken of fair wear and tear, and
- (c) in a case where the land is agricultural land, a sum equal to the amount, (if any) which might reasonably have been expected to be payable in addition to rent by an incoming tenant, in respect of things previously done for the purpose of the cultivation of the land, and in respect of seeds, tillages, growing crops and other similar matters, under a lease of the land granted immediately before possession thereof was taken in the exercise of emergency powers, and
- (d) a sum equal to the amount of any expenses reasonably incurred, otherwise than on behalf of Her Majesty, for the purpose of compliance with any directions given on behalf of Her Majesty in connection with the taking of the land:

Provided that —

- (i) in computing for the purposes of paragraph (a) of

this subsection the rent which might reasonably be expected to be payable in respect of any land, and in computing for the purposes of paragraph (c) of this subsection any amount which might reasonably have been expected to be payable in addition to rent by an incoming tenant, no account shall be taken of any appreciation of values due to the emergency; and

- (ii) there shall not, by virtue of paragraph (b) of this subsection, be payable in respect of damage to any land a sum greater than the value of the land at the time when possession thereof was taken in the exercise of emergency powers, no account being taken of any appreciation in the value thereof due to the emergency.

(2) Any compensation under paragraph (a) of the preceding subsection shall be considered as accruing due from day to day during the period for which the possession of the land is taken in the exercise of emergency powers, and be apportionable in respect of time accordingly, and shall be paid to the person who for the time being would be entitled to occupy the land but for the fact that possession thereof is retained in the exercise of such powers; but this subsection shall not operate so as to require the making of payments at intervals of less than three months.

For the exercise of the enactments relating to income tax any compensation under the said paragraph (a) shall be deemed to be rent payable for the land, the Crown shall be deemed to pay it as tenant occupier, and the person receiving it shall be deemed to receive it as landlord.

(3) Any compensation under paragraph (b) of subsection (1) of this section shall accrue due at the end of the period for which possession of the land is retained in the exercise of emergency powers, and shall be paid to the person who is then the owner of the land.

(4) Any compensation under paragraph (c) of subsection (1) of this section shall accrue due at the time when possession of the land is taken in the exercise of emergency powers, and shall be paid to the person who, immediately before that time, was the occupier of the land.

(5) Any compensation under paragraph (d) of subsection (1) of this section shall accrue due at the time when the expenses in respect of which the compensation is payable are incurred, and shall be paid to the person by whom or on whose behalf those expenses were incurred.

Compensation in respect of the doing of work on land.

5. (1) Compensation under this Ordinance in respect of the doing of any work on any land shall be payable only if the annual value of the land is diminished by reason of the doing of the work.

(2) The compensation payable under this Ordinance in respect of the doing of any work on any land shall, in the first instance, be a sum calculated by reference to the diminution of the annual value of the land ascribable to the doing of the work, and

shall be paid in instalments, quarterly in arrear, to the person who for the time being is entitled to occupy the land.

Any compensation under this subsection shall be considered as accruing due from day to day, and shall be apportionable in respect of time accordingly.

(3) If, at any time after compensation under the preceding subsection has become payable by reason of the doing of any work on any land, a person acting on behalf of Her Majesty —

- (a) causes the land to be restored, so far as practicable, to the condition in which it would be but for the doing of the work, or
- (b) serves on the person for the time being entitled to occupy the land a written notice of intention to discharge the liability for the compensation by making, not earlier than a date specified in the notice, payment of a lump sum in accordance with the following provisions of this section,

the period in respect of which compensation is payable under the preceding subsection by reason of the doing of the work shall end with the date immediately preceding the date on which the restoration is completed or, as the case may be, the date specified in the notice.

(4) Where, by virtue of the operation of the last preceding subsection in relation to any work done on any land, the period in respect of which compensation under subsection (1) of this section is payable by reason of the doing of the work comes to an end, then if, at the expiration of that period, the value of any estate or interest which a person then has in the land is less than it would be but for the doing of the work, there shall be paid to him, by way of compensation under this Ordinance, a sum equal to the amount of the said depreciation in the value of the estate or interest; and that compensation shall be taken to accrue due at the expiration of the said period.

(5) As soon as may be after effecting any restoration or serving any notice in pursuance of subsection (3) of this section, the person by whom the restoration was effected or the notice was served shall cause the fact of the restoration or the contents of the notice, as the case may be, to be published in such manner as he thinks best adapted for informing persons affected.

(6) In determining for the purposes of this section whether the annual value of any land is diminished by reason of the doing of any work thereon, and in assessing any compensation under this section in respect of the doing of any work on any land, it shall be assumed that the land cannot be restored to the condition in which it would be but for the doing of the work.

(7) For the purposes of this section, no account shall be taken of any diminution or depreciation in value ascribable only to loss of pleasure or amenity.

(8) No compensation under this section shall, in relation to any land, be payable in respect of any period for which possession of that land is taken on behalf of Her Majesty in the exercise of emergency powers.

(9) In this section —

- (a) the expression “annual value” means, in relation to any land, the rent at which the land might reasonably be expected to let from year to year, if the tenant undertook to pay all usual tenant’s rates and taxes and to bear the costs of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent; and
- (b) the expression “diminution of the annual value” means, in relation to the doing of any work on any land, the amount by which the annual value of the land is less than it would be if the work had not been done.

Compensation in respect of taking space or accommodation in ships and aircraft.

6. (1) The compensation payable under this Ordinance in respect of any requirement that any space or accommodation in a ship or an aircraft be placed at the disposal of any authority shall be the aggregate of the following sums, that is to say —

- (a) a sum equal to the amount which might reasonably be expected to be payable for the use of that space or accommodation during the period for which it is at the disposal of the authority by virtue of that requirement, no account being taken of any appreciation of values due to the emergency; and
- (b) a sum equal to the amount of any expenses reasonably incurred, otherwise than on behalf of Her Majesty, for the purpose of compliance with any directions given on behalf of Her Majesty in connection with the said requirement.

(2) Any compensation payable under paragraph (a) of the preceding subsection shall be considered as accruing due from day to day during the period for which the space or accommodation remains at the disposal of the authority at whose disposal it was required to be placed, and be apportionable in respect of time accordingly, and shall be paid to the person who, at the time when the compensation accrues due, is the owner of the ship or aircraft; but this subsection shall not operate so as to require the making of any payment before the end of the said period.

(3) Where, on the day on which any compensation accrues due by virtue of paragraph (a) of subsection (1) of this section, a person other than the owner of the ship or aircraft is, by virtue of a subsisting charter or contract of hiring, entitled to possession of, or to use, the ship or aircraft, or is, by virtue of a subsisting contract, the person who would be entitled to use the space or accommodation but for the requirement in respect of which the compensation is payable, the person to whom the compensation is paid shall be deemed to receive it as a trustee for the first mentioned person.

(4) Any compensation payable under paragraph (b) of subsection (1) of this section shall accrue due at the time when the expenses in respect of which the compensation is payable are incurred, and shall be paid to the person by whom or on whose behalf those expenses were incurred.

7. (1) Subject to the provisions of the next following subsection, the compensation payable under this Ordinance in respect of the requisition or acquisition of any goods other than ships and aircraft shall be a sum equal to the price which the person who, immediately before the requisition or acquisition was the owner of the goods might reasonably have been expected to obtain upon a sale of the goods then effected by him, regard being had to the condition of the goods at the time and no account being taken of any appreciation in the value of the goods due to the emergency.

(2) Any compensation under the preceding subsection shall not —

- (a) in a case where the owner of the goods immediately before the requisition or acquisition, was a person who had produced the goods with a view to the sale thereof, exceed the aggregate of —
 - (i) the cost reasonably incurred by that person in producing the goods, and
 - (ii) the profit which he might reasonably have been expected to make on a sale of the goods effected by him immediately before the requisition or acquisition, or
- (b) in a case where the owner of the goods, immediately before the requisition or acquisition, was some person other than the producer of the goods, and the goods had been bought by that person with a view to the sale thereof, exceed the aggregate of —
 - (i) the price which it was reasonable for him to pay for the goods when they were so bought by him, and
 - (ii) the profit which he might reasonably have been expected to make on a sale of the goods effected by him immediately before the requisition or acquisition,

and, in assessing such compensation in any other case, no account shall be taken of any profit which might be expected to be made on a sale of the goods:

Provided that if, at the time when any goods are requisitioned or acquired on behalf of Her Majesty in the exercise of emergency powers, the price or maximum price at which such goods may be sold is fixed by law, this subsection shall not be taken to authorise the assessment, by way of compensation under the preceding subsection in respect of the requisition or acquisition, a sum exceeding that price or maximum price, as the case may be.

In the preceding provisions of this subsection the reference to a person who had produced the goods with a view to the sale thereof, and the reference to the producer of the goods, shall be construed as including a reference to his personal representative or any person carrying on business in succession to him by virtue of any assignment or transmission by operation of law.

(3) The compensation payable under this Ordinance in respect of the requisition or acquisition of any goods shall include a sum equal to the amount of any expenses reasonably incurred,

Compensation in respect of requisition or acquisition of goods other than ships and aircraft.

otherwise than on behalf of Her Majesty, for the purpose of compliance with any directions given on behalf of Her Majesty in connection with the requisition or acquisition.

(4) Any compensation under subsection (1) of this section shall accrue due at the time of the requisition or acquisition of the goods, and shall, subject to the following provisions of this Ordinance, be paid to the person who is then the owner of the goods.

(5) Any compensation under subsection (3) of this section shall accrue due at the time when the expenses in respect of which the compensation is payable are incurred and shall be paid to the person by whom or on whose behalf those expenses were incurred.

Tribunals for determining disputes.

8. Any dispute as to whether any compensation is payable under this Ordinance, or as to the amount of any compensation so payable, shall, in default of agreement, be referred to, and determined by, the tribunal constituted under the following provisions of this Ordinance, and the decision of the tribunal shall be final:

Provided that at any stage in proceedings before it the tribunal may, and, if so directed by the Supreme Court, shall, state in the form of a special case for the opinion of that Court any question of law arising in the course of the proceedings.

9. (1) For the purpose of determining disputes as to the payment of compensation under this Ordinance, there shall be a Claims Tribunal (hereinafter referred to as "the tribunal") consisting of not less than three persons appointed by the Governor of whom one shall be a judge of the Supreme Court.

(2) There shall be paid out of moneys provided by the Legislature —

- (a) to any member of the tribunal such remuneration (if any) as the Governor may determine in his case, and
- (b) the amounts necessary to defray such expenses of the tribunal as the Governor may approve.

10. (1) The tribunal shall have the following powers, that is to say —

- (a) to make rules prescribing the procedure for notifying, presenting and hearing claims and all matters incidental thereto;
- (b) to order persons to attend and give evidence and to produce and give discovery and inspection of documents, in like manner as in proceedings in the Supreme Court;
- (c) to award and assess, or direct the assessment of, such sums by way of costs as the tribunal in its discretion thinks just, and in particular to award costs to an unsuccessful claimant where such an award appears to the tribunal to be justified on the merits of the case;

Deter-
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tribunal.

Incidental
powers of
the
tribunal.

- (d) to call in the aid of one or more assessors specially qualified, and hear any claim wholly or partly with their assistance;
- (e) to appoint any expert or experts to report on any matter material to the hearing of any claim;
- (f) to determine, subject to the approval of the Financial Secretary, the remuneration, if any, of such assessors and experts.

(2) Rules made in pursuance of paragraph (a) of the preceding subsection may contain provisions authorising the tribunal to take into consideration any matter which the tribunal considers relevant to the subject of the enquiry before it, notwithstanding that the matter is not admissible in evidence under the law relating to evidence.

(3) The Supreme Court shall have, for the purposes of and in relation to any proceedings under this Ordinance, the same power of making orders in respect of any of the matters specified in paragraph (b) of subsection (1) of this section as it has for the purpose of and in relation to an action or matter in that Court.

General and Supplementary Provisions.

11. No claim for any compensation under this Ordinance shall be entertained unless notice of the claim has, in such form and manner as may be prescribed, been given to the prescribed authority within the period of six months, or such longer period as the Financial Secretary may, either generally or in relation to any particular claim or class of claims, allow, beginning in either case with the date on which the compensation accrues due or the date of the commencement of this Ordinance, whichever is the later.

Limitation of time for claiming compensation.

12. No compensation shall, by virtue of this Ordinance, be payable to any person in respect of any loss of, or damage to, property, if and so far as that person has become entitled, apart from the provisions of this Ordinance, to recover any sum by way of damages or indemnity in respect of that loss or damage or is, at the time of the occurrence of the loss or damage, required under any contract with the Crown to be insured in respect thereof.

Exclusion of compensation.

13. In a case where any property in respect of the requisition or acquisition of which compensation is required by the preceding provisions of this Ordinance to be paid to the person who is the owner of the property immediately before the requisition or acquisition, is then in the possession of some other person by virtue of a hire-purchase agreement, that person may, by a notice given in the prescribed form and manner to the prescribed authority, within the period limited by this Ordinance in relation to the making of any claim by the owner for payment of the compensation, make a claim to have apportioned to him such part of the compensation as may be specified in his claim, and, in default of agreement between the parties, the last-mentioned claim shall be referred to the tribunal and thereupon the tribunal may apportion the compensation between the owner and the other person in such manner as appears to it to be just.

Provisions as to property subject to hire-purchase agreements.

Provisions as to property subject to mortgages, pledges, etc.

14. Where any sum by way of compensation is paid in accordance with any provisions of this Ordinance requiring compensation to be paid to the owner of any property, then, if at the time when the compensation accrues due, the property is subject to any mortgage, pledge, lien or other similar obligation, the sum so paid shall be deemed to be comprised in that mortgage, pledge, lien or other obligation.

Compensation payable apart from the Ordinance.

15. The provisions of this Ordinance shall be without prejudice to any agreement for the making of any payment (whether by way of compensation or otherwise) in respect of the doing of anything on behalf of Her Majesty in the exercise of emergency powers; but, where compensation in respect of the doing of anything as aforesaid, would, apart from this section, be payable both under this Ordinance and under some other enactment or rule of law, then, subject to any such agreement as aforesaid, the compensation shall be payable in accordance with this Ordinance and not otherwise.

Service of notices.

16. Any notice which by this Ordinance is required or authorised to be served on any person may be served by post.

Commencement.

17. This Ordinance shall be deemed to have come into operation on the eighth day of October, nineteen hundred and fifty-three.