

Memorandum for Cabinet by the Hon. Minister
of Works and Housing

Measures for Winding Up the War Damage Commission

It is felt that after eighteen years since the end of the last war, measures should be taken to wind up the Department set up with the purpose of reconstructing war damage.

In order to provide a clear picture of the present position of the War Damage Commission, a brief account of the various forms in which claims for compensation under Part I of the War Damage Ordinance have been submitted to the Commission since its inception in 1943 and the methods adopted for the authorization of payments since then is being given together with the legislative and other measures that the Commission feel should be taken with a view to settling all War Damage Claims.

1. Claims under Part I of the War Damage Ordinance - "Buildings"

(i) Claims on "Bills" system. From the inception of the Commission in April, 1943 up to February, 1946, claims were submitted in the form of bills relating to works actually carried out and payments of compensation were made on account, accordingly. Up to March, 1956, the Commission could not close in full and final settlement claims lodged under this system unless they were notified that all war damage in respect of the tenement forming the subject of the claim had been made good. In virtue of Government Notice No. 395 of 1955, claimants who failed to complete works or to submit a comprehensive schedule of works showing works carried out and works outstanding, by the 31st March, 1956, forfeited any further rights for compensation.

Claims lodged in this form and still unassessed are being assessed and closed by the Commission in terms of the above quoted Government Notice, and no subsidiary legislation is therefore required in this regard. It is, however, pointed out that the assessment of these claims involves the checking of works mainly carried out between 1943 and 1946. The lapse of time, as well as the change of owners brought about by transfers of property since that year resulting from emigration, deaths and sales render the Commission's work difficult both from the technical aspect and from the legal aspect. The number of outstanding claims under this system is 442.

(ii) Claims on "Unpriced or Descriptive" schedule system. Under this system, which was in operation between February, 1946, and March, 1948, claimants were bound to furnish the Commission with descriptive schedules of works showing the extent of the damage sustained and the specifications and quantities of works required to make it good.

It was also laid down that no compensation would be authorised by the Commission for works taken in hand after the 15th March, 1946, unless these were previously inspected by an Engineer of the Commission. Payments on account continued to be paid against bills submitted by claimants who had complied with the above and later on against "mandati" or warrants submitted by their private architects on the latter's financial responsibility. Claimants, whose claims were lodged in this form were bound by Government Notice No. 301 of 1958 to submit

/all bills

all bills and documents requisite for final settlement or alternatively, a priced schedule comprising works carried out and works outstanding, by the 16th July, 1958.

All claims which number 51, still open under this category, as is the case with those under the "Bills" system, relate to works already carried out and their assessment and final settlement is being effected by the Commission in terms of the existing law and regulations.

(iii) Claims on "Priced" schedule system. As from the 15th March, 1948, all claimants had to support their claims by detailed priced schedules of works, including plans of the proposed layout when alterations were envisaged. This enabled the Commission to assess the amount of compensation required to make good the war damage and to fix the relative "permissible amount" accordingly. The "permissible amount" is equal to the cost of works required to make good the reinstatement of war damage and is based on rates prescribed from time to time by the Building Costs Board.

Several claims under this system which have not yet been dealt with by the Commission were originally lodged under (1) or (2) above and later made to conform with the "Priced" Schedule System in terms of Government Notice No. 395 of 1955 or 301 of 1958. The total compensation claimed under the three systems mentioned is roughly £300,000 of which £190,000 is in respect of Priced Schedules.

2. Reasons withholding assessment of Claims and recommendations thereon. The reasons preventing the assessment of outstanding claims are various, the following being the most important:-

(i) Failure by claimants to establish the exact extent of their property with the consequential submission of incorrect or doubtful plans resulting in the overlapping of plans on those of adjacent tenements.

(ii) Absence of satisfactory proof showing that certain items included in the schedule of works actually existed at the time of the occurrence of war damage.

(iii) Evidence that works carried out and included in schedules were started before 15th March, 1946 and this in cases affected by the new procedure adopted by the Commission and published in Government Gazette No. 9398 of the 15th January, 1946.

Some claims have been assessed, but the relative "Credits" cannot be opened at the Treasury as claimants have so far failed to prove their title of ownership thereto. Reinstatement works relating to these latter claims, although assessed, cannot therefore be taken in hand.

The War Damage Commission has suggested that in all these cases a period of six months from the publication of the relative Government Notice should be given for the submission of the necessary documents or proof. Section 34 of the War Damage Ordinance provides for the issue of regulations in this regard.

3. Recommendations regarding Claims in respect of which a "Credit" has been opened at the Treasury : It will be appreciated, however, that the ultimate aim of the exercise is not merely the assessment of claims or the opening of the relative "Credits" at the Treasury, but their closing in full and final settlement. It is to be noted that the total sum of

/"Open Credits"

"Open Credits" at the Treasury amounts to about £450,000. This sum which has been accumulating since 1948 has not been availed of by beneficiaries (owners or duly authorised persons) who are not legally bound by any time-limit for the carrying out of reinstatement work. It is felt that after eighteen years since the end of hostilities, it would not be unfair to give owners a limited time within which they have to complete outstanding works. A closing date for the execution of war repairs should therefore be fixed. In this regard, it is felt that one calendar year from publication of the relative Government Notice should be given to claimants to carry out reinstatement works in cases where the relevant "Open Credits" already issued at the time of publication does not exceed £1,500 and a period of two years in all other cases. Beneficiaries in whose names an "Open Credit" is authorised after date of publication of the said Government Notice will be given, at the discretion of the Commission, specified time-limits within which they will have to make good the outstanding damage.

4. Measures proposed regarding claims still unsettled after the lapsing of the suggested time limits : It is envisaged that notwithstanding the fixing of the suggested time-limits there will be quite a number of claimants who, through their own fault or otherwise, will not be in a position either to produce the documents and/or proof required by the Commission or to reinstate their property within the time-limits to be set. Where for any reason whatsoever the required documents and/or proof are not produced to the Commission or reinstatement work will not be completed within the times set, it is suggested that the Commission be empowered by the publication of the necessary legislation to close the claim in any manner and at any date at their discretion.

The adoption of the following measures is suggested :-

i) Claims which are not substantiated by the necessary documents or evidence by the specified date to be cancelled or alternatively the tenements to which they relate to be reconstructed in terms of the Developed Tenements (Compulsory Repairs) Act, 1948.

ii) Claims in respect of which a "Credit" is opened at the Treasury but no reinstatement works will have been taken in hand on the expiry of the time-limit to be converted into a "value" payment.

iii) Claims in respect of which reinstatement will have been started but not brought to completion by the said closing date to be converted into a "hybrid" payment.

5. Termination of the Risk Period : To render measures suggested above really effective for the early settlement and disposal of all outstanding claims accepted by the Commission, it is advisable that legislation for the termination of the risk period be enacted. His Excellency the Governor is empowered under Section 77 of the War Damage Ordinance to specify the date in the Government Gazette. The desirability of this step has already been agreed to in Parliament by me in October, 1962.

6. Non-Consideration of Claims relating to Latent Damage :

Under Section 24 (1) (b) of the War Damage Ordinance a claim may be re-opened in respect of "latent damage" even years after it has been closed in full and final settlement. In order therefore not to leave open the door for additional claims the Commission is of the opinion that this Section should be amended to exclude further consideration of latent damage. After more than 18 years since the cessation of hostilities, it is considered that ample time has been given to claimants for any war damage to have become manifest. This is also essential as it is becoming increasingly difficult, year by year, to distinguish between genuine war damage and ordinary dilapidation through lack of maintenance.

7. Suggestions regarding claims which fall under the exemption clauses in Government Notice No. 301/58 : The termination of the 'risk' period and the fixing of a closing date for the consideration of claims in respect of "latent" damage, together with the closing of all accepted claims will not complete the task of the winding up of the work of the Commission as, in view of the exemptions mentioned in Government Notice No. 301/1958 claims will continue to trickle in indefinitely. To prepare the stage for the winding up of the work of the Commission and at the same time to have to accept new claims indefinitely will render the position of the Commission more or less anomalous, the more so when it is considered that the balance of the War Damage funds will not suffice to meet all accepted legitimate claims.

The exemption clauses in virtue of which claims may still be submitted for the consideration of the Commission fall under the following headings :

i) Latent Damage

A suggestion for the fixing of a time limit has already been made earlier in this memorandum.

ii) Tenements affected by re-alignment

These claims relate to war damaged property which, whether already reinstated or not, is declared by the Public Works Department to be affected by a new street alignment. In virtue of the Demolition Clearance Ordinance the Commission has to pay for the demolition of parts of buildings and the consequential works connected with their re-erection on a new alignment. New alignments are still being imposed to the present day affecting buildings which might have already been completely reinstated out of war damage funds years ago. Such a liability which during the current financial year is estimated at £11,395 is a burden which the fund can no longer bear. It is suggested in this regard that the Demolition and Clearance Ordinance be abrogated, and Government Notice No. 3 of 1955 relating to war damaged buildings affected by re-alignment be revoked, compensation in respect of new alignment becoming a total liability of the Public Works Department as is the case with similar tenements which never sustained war damage.

iii) Tenements not issued with a Building Control Board Licence (now Planning Areas Permits Board)

These claims relate to tenements regarding which no Building Control Board Licence, though applied for, had been issued by the 28th February, 1957.

iv) Tenements acquired under the Land Acquisition (Public Purposes) Ordinance.

Claims for compensation may still be lodged with the Commission regarding war-damaged buildings which at any time between the 1st March, 1957 and the 16th July, 1958, were held by a Competent Authority for the possession and use thereof or which were declared in the Government Gazette as required for a "public purpose" under the said Ordinance.

v) Tenements affected by Clearance Rights

The Commission never considered claims for compensation in respect of tenements acquired by Government under any title except when these were later released for re-erection. The same procedure has all along been followed with regard to property acquired by the Services. The question of tenements affected by Clearance Rights has engaged the attention of previous administrations but to date no policy has been pronounced in their regard. The Commission feel that the question of tenements affected by Clearance Rights should fall outside its competence.

vi) Other Exemptions

These refer to claims in respect of tenements which in terms of the Code of Police Laws or the Special Development Areas Act, 1956, or under any other law, could not be repaired or reconstructed between the 1st March, 1957 and the 16th July, 1958.

It is desirable that the settlement of all future claims that might arise as a result of the release of property at present exempted from any time-limit under one of the last three headings enumerated in para. 7 should become the responsibility of another Government Department to which War Damage Commission staff would be transferred as occasion demands.

8. Claims under Part II of the War Damage Ordinance "Goods" Business Equipments and Private Chattels : The Commission no longer accept claims under Part II of the War Damage Ordinance. However, quite a few claimants have hitherto proved unable or unwilling to satisfy the requirements of the Commission and these could not therefore be settled. It is suggested that the same Government Notice which it is intended to be published to give claimants under Part I a limited time for the submission of documents/proof be made applicable to claims under Part II.

The Commission wish to point out that all payments except two under Part II have been effected on grounds of hardship in terms of Section 46 (2a) (ii). The time is now ripe for Regulations to be issued under paragraph 1 of the same Section, which states that payment on Part II claims may be made "at such times as may be specified in Regulations made by the Governor". The time when payments under the two schemes - Private Chattels and Business Equipment - may commence should be the date of the publication of the said Regulations in the Malta Government Gazette.

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9. In conclusion, it is considered to be opportune to point out at this stage that a substantial encroachment is still being made on the war damage fund by debiting it with the payment of compensation for "Rents of Lands and Buildings" which amounts to over £96,000 a year. If this Compensation continues to be charged to the war damage fund, it is envisaged that by the end of the next financial year - 1963-64 - no funds from the amount made available for compensation under the War Damage Ordinance will probably remain to provide for the issue of further Open Credits or authorizations for the direct payment of compensation.

It is thought that it would be useful if Government's intentions with regard to the closing and disposal of claims be extensively publicized before legislative measures are enacted, so as to ensure that the attention of all interested persons is drawn to the measures which Government intends taking for the winding up of the work of the Commission.

Hon. Ministers are asked to agree that the measures suggested above be implemented.

28th March, 1963.