

MEMORANDUM FOR THE CABINET

by the Hon. Minister of Justice and Parliamentary Affairs and by the Hon. Minister of Trade, Industry and Agriculture on the Bill relating to the Agricultural Leases (Reletting) Act, 1967.

1. The above Bill is intended to replace by legislation of a permanent character the Agricultural Leases (Restriction of Rent) Emergency Regulations, 1943, which have been so far kept in force by yearly amendments of the Expiring Laws Continuance Act, 1948.

2. The Bill, while it reproduces some of the fundamental provisions in the said regulations improving their legal form, introduces some new provisions which have been suggested by experience or have been rendered necessary by the fact that the matter is no longer going to be governed by temporary provisions of an emergency nature.

3. The protection which the Bill grants to the tenant is extended to some members of his family who, being the tenant's lineal ascendants, lineal descendants, or the tenant's widow or widower, son-in-law, or widowed daughter-in-law while not remarried, are in any of the following circumstances:-

- a) if they are sub-tenants or assignees of the lease;
- b) if they are in the actual enjoyment of the lease, by the tenant's express or tacit consent.

After the tenant's death, if there are no members of the family in the above position, the protection granted by the Bill is extended to members of the tenant's family, within the above degree of relationship -

- c) who are either legatees of the lease, or
- d) during the last year preceding the tenant's death were living with him or have been working the land with him or for him, or
- e) are the tenant's heirs.

The order of enumeration under (a), (b), (c), (d) and (e), above, establishes also the order of preference between two or more persons qualifying for the tenancy.

4. The regulations being repealed enabled the Board to disallow the increase of the rent or the imposition of more onerous conditions than in the last preceding lease, if such increase or imposition would have been only justified in the light of improvements of a permanent character carried out by the tenant himself or members of his family without their having been obliged to do so or if such increase or imposition would not have been equitable by comparison with the terms of lease of agricultural land in the same area.

The Bill is adding another circumstance in which the Board would not be enabled to allow the imposition of a higher rent or of more onerous conditions, -

namely, where such imposition would only be justified in the light of improvements of a permanent character carried out by the lessor in the agricultural land by means of funds provided to him by the Government in the form of a grant (not involving repayment).

5. The reasons which under the regulations prevented the lessor from resuming possession of the agricultural land on termination of the lease were, briefly stated, the following:-

a) where the lessor required the agricultural land to be used for agricultural purposes by himself personally or by any member of his family for not less than four consecutive years;

b) in the case of unauthorised subletting other than to a co-tenant or a member of the tenant's family;

c) if, during the last two years of the preceding lease, the tenant did not take proper care of the agricultural land or habitually disregarded the conditions of the lease or was not punctual in the payment of the rent.

In addition to the above reasons, the regulations included "any other good reasons". This allowed too much discretion to the Board and it has not been deemed proper to reproduce such indefinite reason in a law of permanent character. However, the Bill, besides including the reasons under (a) (b) and (c), above, has added the following reasons which are suggested by past experience, namely:-

(i) where the lessor requires the agricultural land for the construction thereon of buildings for dwelling, business or industrial purposes; or

(ii) the lessor being the Government, if the land is required -

for any purpose connected with the industrial or touristic development of the Island; or

for the purpose of archaeological excavations or the preservation of archaeological discoveries; or

for the construction of new streets, squares, public gardens or other public amenities.

However, provision is made in the Bill so that, where only part of the agricultural land is required for any of the said purposes and the remaining part exceeds one tumolo in area, the tenant may continue to retain on lease the remaining part.

A new principle has been introduced in the Bill in that, even where the lessor requires the agricultural land to be used for agricultural purposes by himself personally or by a member of his family, the Board would not allow him to resume possession of such land, where it constitutes an important source of livelihood for the tenant and for the tenant's family and where the Board is satisfied that the tenant, if deprived of the land, would suffer a greater hardship than the lessor.

6. The Constitution of the Board, now called the Rural Lenses Control Board, has been fundamentally changed in that its Chairman is no longer going to be the Director of Agriculture but a Magistrate of Judicial Police or an advocate with seven years private practice. This is particularly necessary now that the right of appeal to Her Majesty's Court of Appeal, which did not exist under the regulations, has been introduced on any decision involving a point of law and on any decision implying eviction of the tenant from the agricultural land.

One of the members of the Board, however, except where the Government is a party to the proceedings before the Board, shall be a person holding a degree or diploma in any branch of agriculture, in the employment of the Government.

7. The Bill finally provides for the holding of a new trial where the Board's decision was determined by the bad faith of any of the parties, and grants the right to claim damages and the payment of a penalty before Her Majesty's Civil Court, First Hall, in favour of the party who has suffered prejudice from the other party's bad faith.

8. A "proviso" in the regulations in terms of which "the occupation on payment of compensation by or on behalf of Her Majesty's Forces of the whole or part of a field" would not constitute subletting or would not otherwise be a good reason to deprive the tenant of the agricultural land which he has allowed to lie fallow because of such occupation, has not been reproduced in the Bill since it would not be justifiable at present as it was in 1943 when the regulations were made.

9. Hon. Ministers are asked to agree that the Bill be presented to Parliament.

10th February, 1967.

A B I L L
entitled

AN ACT to regulate the reletting of agricultural land and to provide for matters connected therewith and ancillary thereto.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the House of Representatives of Malta, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title
and commencement.

1. (1) This Act may be cited as the Agricultural Leases (Reletting) Act, 1967.

(2) This Act shall come into force on the first day of March, 1967.

Interpretation.

2. In this Act, unless the context otherwise requires -

"agricultural land" means any land which is mainly arable and which is used for the growing of crops and for cognate agricultural purposes and includes any farmhouse or other building let as an integral part of such land, but does not include grazing grounds, orchards, vineyards and land mainly used for the growing of trees or vines;

"assignee of the lease" includes a sub-tenant and, where there is neither a person to whom the lease has been assigned nor a sub-tenant, the person who is in the actual enjoyment of the lease by the tenant's express or tacit consent, and "assignment" shall be construed accordingly;

"Board" means the Rural Leases Control Board established under section 5 of this Act;

"conditions" includes the rent payable in respect of a lease;

"date of termination" means the last day on which the period of the lease whose conditions the lessor proposes to change or which the lessor does not intend to renew expires;

"member of the family" means a lineal ascendant, a lineal descendant, a widow or a widower, a son-in-law, and a widowed daughter-in-law while not remarried, of the tenant;

"lease"/....

"lease" means a lease for an agreed total period not exceeding sixteen years for a rent in money or other consideration payable yearly in one or more instalments and includes a lease tacitly renewed from year to year or renewed by a decision of the Board under this Act, but does not include either an emphyteusis or an agreement of lease in virtue of which the produce is to be apportioned between the lessor and the tenant; it also includes "sub-lease" in relation to sub-lessor and sub-tenant;

"lessor" includes a sub-lessor in relation to a sub-tenant;

"Malta" means the Island of Malta and the Islands of Gozo and Comino;

"tenant" includes any member of the family who is an assignee of the lease and, after the tenant's death, where there is no such member, it includes in order of preference any member of the family who is a legatee of the lease or who, during the last year immediately preceding the tenant's death, was living with the tenant or has been working the agricultural land with him or for him or is the tenant's heir; it includes also, in relation to a sub-lessor, a sub-tenant, which expression shall be deemed in such relation to have the same meaning as tenant in its full extent.

Change of
conditions of
lease.

3. (1) Subject to the provisions of this Act, any change of the conditions of a lease, on the expiration of its term, shall be null unless notice of the proposed new conditions has been given by the lessor to the tenant by means of an official letter served on the tenant at least three months before the date of termination.

(2) Where the tenant does not intend to accept the new conditions notified to him according to the last preceding subsection, he shall, not later than one month before the date of termination, apply to the Board for the rejection of such new conditions and the Board shall allow the tenant's application if he proves that -

(a)/....

- (a) such new conditions would be justified only in view of improvements of a permanent character carried out in the agricultural land, during the period of eight years immediately preceding the date of termination, by the tenant himself or by a member of the family, without their having been under any obligation to effect those improvements; or
- (b) such new conditions would be justified only in view of improvements of a permanent character carried out in the agricultural land by the use of funds provided by the Government or on behalf of the Government in the form of a grant or in any other form which, subject to compliance with the conditions governing the provision of such funds, does not involve repayment; or
- (c) such new conditions would not be equitable by comparison with conditions of lease prevailing in comparable fields in the same part of the Island, having regard principally to the average quality and depth of the soil, the nature of the subsoil, the direction in which sloping agricultural land is facing the accessibility to the road and its distance from the closest village.

(3) The Board may, instead of rejecting the new conditions proposed by the lessor, modify and approve them to the extent justified by the application of the provisions contained in paragraphs (a), (b) and (c) of the last preceding subsection:

Provided that in no case shall such conditions be less favourable to the lessor than those of the last preceding lease.

Non-renewal
of lease.

4. (1) Subject to the provisions of this Act, the lessor shall not be entitled at the expiration of a lease to resume possession of the agricultural land unless he has notified the tenant that he does not intend to renew the lease, by means of a judicial letter served on the tenant at least three months before the date of termination.

(2) Where the tenant intends to resist the notice of the lessor given under the last preceding subsection, he shall, not later than one month before the date of termination, apply to the Board for a decision ordering the renewal of the lease and the Board shall only disallow the tenant's application if the lessor proves that -

- (a) he requires the agricultural land to be used for agricultural purposes by himself personally or by any member of the family personally for a period of not less than four consecutive years starting immediately following the date of termination; or
- (b) he requires the agricultural land for the construction thereon of buildings for dwelling, business or industrial purposes; or
- (c) the agricultural land was sublet or the lease thereof transferred without the consent of the lessor to any person other than a co-tenant thereof or a member of the family; or
- (d) during the two years immediately preceding the date of termination, the field was allowed to lie fallow for at least twelve consecutive calendar months; or
- (e) during the two years immediately preceding the date of termination, the tenant has failed, in respect of two or more terms, to pay the rent, on each occasion, within fifteen days from the day on which the lessor has called upon him for payment;
- (f) during the two years immediately preceding the date of termination, the tenant, being bound to repair and maintain the walls of the agricultural land, failed to fulfil such obligation or habitually disregarded any other conditions of the lease or deliberately or through negligence caused or allowed to be caused damage, other than damage of small importance, to any fruit trees in the agricultural land:

Provided/....

Provided that the circumstance mentioned under paragraph (a) of this subsection shall not be a sufficient reason to disallow the tenant's application, if he proves that the agricultural land, in respect of which the application is made, is an important source of his and his family's livelihood and if the Board is satisfied that the tenant would suffer a greater hardship than the lessor were the tenant's application to be disallowed.

(3) If the agricultural land belongs to or is administered by the Government, the Board shall disallow the tenant's application referred to in the last preceding subsection also in any of the following cases -

- (a) where the Government requires such land for any purpose connected with the industrial or touristic development of the Island; or
- (b) where the Government requires such land for the purpose of archaeological excavations or the preservation of archaeological discoveries; or
- (c) where the Government requires such land for the construction of new streets, squares, public gardens or other public amenities;

(4) Where only part of the agricultural land is required for any of the purposes mentioned in paragraph (a) or paragraph (b) of subsection (2) of this section or in the last preceding subsection and the area of remaining part of such land exceeds one tumulo, the tenant may ask the Board and the Board shall order that the lease be renewed in respect of such remaining part of the agricultural land, under such conditions as the Board, having regard to the conditions of the last preceding lease, may deem fair to establish.

Rural leases
Control Board.

5. (1) For the purposes of this Act, there shall be constituted a Board, to be styled the Rural Leases Control Board, which shall consist of a Chairman and two other members appointed by the Prime Minister from year to year:

Provided that the Prime Minister may confirm any appointment from year to year and he may direct, on making any new appointment, that the outgoing member
of the/....

of the Board may continue to sit in any case whereof he has already taken cognizance before the termination of his appointment, until such case is disposed of.

(2) The Chairman of the Board shall be a Magistrate of Judicial Police or a person who has practised as an advocate in Malta or Gozo for a period of, or periods amounting in the aggregate to, not less than seven years.

(3) One member of the Board, except where the Government is a party to the proceedings before it, shall be a person holding a degree or diploma in any branch of agriculture, in the employment of the Government, and the other member shall be a person holding the local warrant of Architect and Civil Engineer whom the Prime Minister shall appoint after consultation with the organizations, if any, which in his opinion represent the interest of farmers.

(4) The Prime Minister may also make any necessary appointments for the purpose of surrogating any member of the Board who is, for any reason, unable to carry out his functions.

(5) The members of the Board, with the exception of the Chairman if he is a Magistrate of Judicial Police, shall, before entering upon their office, take before the Crown Advocate-General the oath to examine and decide any matter referred to them with equity and impartiality.

(6) The Chairman or any member of the Board may abstain or may be challenged by any of the contending parties for any of the causes mentioned in section 735 of the Code of Organization and Civil Procedure and any question arising in regard to or in connection with any cause of challenge or abstention shall be decided by the Chairman of the Board.

Power of the Board.

8. (1) The Board shall have all such powers as are by the Code of Organization and Civil Procedure vested in Her Majesty's Civil Court, First Hall.

(2) Any warrant or order issued by the Board shall be signed by the Chairman and certified by the Registrar.

(3)/....

(3) The enforcement of the decisions of the Board, in the manner prescribed in the Code of Organization and Civil Procedure, shall vest in the Board itself.

Registry of the Board and place where sittings are to be held.

7. (1) In regard to any proceedings which concern land situated in the Island of Malta, the Board shall hold its sittings in the Superior Courts of Malta and the Registry of those Courts shall be the Registry of the Board.

(2) In regard to any proceedings which concern land situated in the Island of Gozo or Comino, the Board shall hold its sittings in the Court of Magistrates of Gozo and the Registry of that Court shall be the Registry of the Board.

Appearance before Board.

8. The parties may appear before the Board in person or may be assisted by an Advocate or Legal Procurator.

Decisions of the Board.

9. (1) The decisions of the Board shall be delivered in open Court.

(2) Any question which is a question of law alone shall be decided by the Chairman of the Board.

(3) All other decisions of the Board shall be taken by a majority of votes.

Right of appeal.

10. (1) There shall only lie appeal from a decision of the Board -

(a) in all cases where the decision is given on an application made under section 4 of this Act;

(b) in all other cases, on a point of law only.

(2) The appeal shall be brought before Her Majesty's Court of Appeal by means of an application filed in the Registry of that Court within fifteen days from the day on which the decision of the Board is delivered.

(3) The Board established under section 30 of the Code of Organization and Civil Procedure may make rules concerning appeals to Her Majesty's Court of Appeal under this section.

Service of
judicial
letter and
proceedings
before the
Board.

11. (1) The notices referred to in sections 3 and 4 of this Act shall be deemed to have been properly given if the judicial letter has been directed to and served on the tenant from whom the lessor has last received the rent before the judicial letter was filed in the Registry of the Court, or, in the case of an assignment which has been notified in writing by the tenant to the lessor before the filing of the judicial letter, if such letter has been addressed to and served on the assignee.

(2) The proceedings before the Board for the purpose of sections 3 and 4 of this Act shall be brought by application.

(3) The Board may at any time allow any amendment to be made in the application which is intended to make it clearer.

(4) If the applicant fails to appear at the hearing of the application, the Board, unless it is satisfied that there is a good reason for such default, shall dismiss the application and order the costs to be borne by the applicant:

Provided that the applicant may, within ten days of such decision, apply to the Board for a re-trial of his application and the Board shall grant such application if he justifies his default to the satisfaction of the Board.

Costs of
proceedings
before the
Board.

12. The costs of the proceedings before the Board shall be borne by the parties or by any of the parties as the Board may direct.

New trial.

13. (1) Any party to proceedings held under the provisions of this Act may, by application, ask the Board for, and the Board shall grant, a new trial if -

- (a) the applicant proves to the satisfaction of the Board that its decision in the proceedings has been determined by a misrepresentation of facts or a false statement made by the other party to the proceedings; or
- (b) the applicant proves to the satisfaction of the Board that the lessor, having resumed possession of the agricultural land by

virtue/....

virtue of a decision of the Board based on paragraph (a) or paragraph (b) of subsection (2) of section 4 of this Act, has failed to apply the agricultural land to the purpose which had determined the Board's decision.

(2) If the Board reverses the decision which has formed object of a new trial, the party in whose favour such decision has been reversed shall have an action before Her Majesty's Civil Court, First Hall, for the recovery of damages from the other party and for the payment by such other party of a penalty to be fixed by the Court in a sum not exceeding five hundred pounds:

Provided that where the lessor, by disposing of the agricultural land or otherwise, has placed himself in a position which makes him unable to conform with the Board's decision in the new trial, the said penalty shall not be less than two hundred pounds.

Clause or condition depriving the tenant of any benefit conferred by the Act.

14. Any clause or condition depriving the tenant of any benefit conferred by this Act, whether such clause or condition has been stipulated prior to the commencement of this Act or after such commencement, shall be null and void.

Provisions as to language (Act No. XXXIII of 1955).

15. The provisions of sections 2, 4, 5, 6 and 7 of the Judicial Proceedings (Use of Language) Act, 1965 shall apply in regard to any judicial act filed for the purposes of this Act and to any proceedings of the Board, and any reference in any of those provisions to the Court shall be construed as a reference to the Board.

Free legal aid.

16. The provisions of Title X of Book Third of the Code of Organization and Civil Procedure (Chapter 15) relating to free legal aid shall apply to parties to proceedings before the Board, being poor persons within the meaning of those provisions.

Expenditure of administration of Board.

17. The expenses in connection with the administration of the Board, including the fees payable to the member or members of the Board not in the employment of the Government, shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

18. (1))/....

Regulations.

18. (1) The Minister responsible for Justice may make regulations governing the proceedings of the Board and, without prejudice to the generality of the foregoing, may make regulations -

- (a) prescribing the contents of an application to the Board and the procedure for the service thereof on the party having an interest to oppose the application;
- (b) prescribing the procedure for the fixing by the Board of the date of hearing of an application and for the giving notice of such date to the parties concerned;
- (c) prescribing the payments, including the payment of a Registry fee to be fixed by the said Minister, which are to be made with the filing of an application to the Board;
- (d) prescribing what part of the Registry fee is to be refunded if an application is abandoned and the procedure of refund;
- (e) prescribing the fee payable to an Advocate or Legal Procurator for an application to the Board and enabling the Board to fix, within limits established by the said Minister, the fee payable to an Advocate or Legal Procurator in respect of proceedings before the Board;
- (f) prescribing the procedure for the transmission to the Board of all applications which on the coming into force of this Act are pending before the Agricultural Leases Control Board, established by the regulations referred to in subsection (1) of section 19 of this Act;
- (g) prescribing any other matter that may be necessary for the better carrying out of the functions of the Board.

(2) Any regulations made under this section shall be laid before the House of Representatives as soon as may be after they are made, and if, within the next twenty days beginning with the day on which such regulations are so laid before it, the House of Representatives resolves that the regulations be annulled, they shall henceforth be void, but without prejudice/....

prejudice to anything previously done thereunder or to the making of any new regulations:

Provided that there shall not be included in the computation of the said twenty days any period of four or more consecutive days intervening between any two consecutive sittings of the House of Representatives.

Repeal of the Agricultural Leases (Restriction of Rent) Emergency Regulations, 1943 and transitory provisions.

19. (1) The Agricultural Leases (Restriction of Rent) Emergency Regulations, 1943, are repealed without prejudice, however, to anything lawfully done thereunder.

(2) Any judicial letter or application, which has been filed under the said regulations before the coming into force of this Act, shall be deemed to have been filed under the provisions of this Act and shall be dealt with by the Board accordingly.

(3) Any applications pending "sine die" before the Agricultural Leases Control Board established under the said regulations shall be dealt with, if re-appointed, as if they had been filed under the provisions of this Act.

Civil Code: non-applicability of section 1680 and amendment of section 1683.

20. (1) The provision of section 1680 of the Civil Code shall not apply in respect of the renewal of a lease of agricultural land.

(2) Section 1683 of the Civil Code shall be amended by the deletion of paragraph (c).

Objects and Reasons

The object of this Bill is to replace by legislation of a permanent nature the Agricultural Leases (Restriction of Rent) Emergency Regulations, 1943.

The Bill controls and governs the lessor's right, on termination of the lease, to increase the rent and modify the conditions of the lease or to resume possession of the agricultural land, by setting out, in the event of the tenant being unwilling to accept the lessor's terms or to give up the lease of agricultural land, the circumstances under which the Rural Leases Control Board would allow the lessor to exercise any of the said rights.

The Bill also extends the notion of tenant to certain members of the tenant's family in specified circumstances.