SUPPLIED FOR THE PUBLIC SERVICE



CHAPTER 58.

An Act to provide for the regulation of the borrowing and raising of money, the issue of securities, and the circulation of offers of securities for subscription, sale or exchange, to enable the Treasury to guarantee loans in certain circumstances, and for purposes connected with the matters aforesaid.

[12th July 1946.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Treasury control of borrowing, etc.

1.—(1) The Treasury may make orders for regulating, subject to such exemptions as may be specified in the orders, all or any of the following transactions, that is to say—

(*a*) the borrowing of money in Great Britain where the aggregate of the amount of money borrowed under the transaction and of any other amounts so borrowed by the same person in the previous twelve months (including any period before the passing of this Act) exceeds ten thousand pounds;

(*b*) the raising of money in Great Britain by the issue, whether in Great Britain or elsewhere, by any body corporate, of any shares in that body corporate;

(*c*) the issue for any purposes—

(i) by any body corporate of any shares in or debentures or other securities of that body corporate, if either the body corporate is incorporated under the law of England or Scotland or the shares, debentures or other securities are or are to be registered in England or Scotland: or

(ii) by any Government, other than His Majesty's Government in the United Kingdom, of any securities of that Government which are or are to be registered in England or Scotland;

(*d*) the circulation in Great Britain of any offer for subscription, sale or exchange of—

(i) any shares in or debentures or other securities of any body corporate not incorporated under the law of England or Scotland; or

(ii) any securities of any Government other than His Majesty's Government in the United Kingdom:

Provided that paragraph (*a*) of this subsection shall not apply to the borrowing of money by any person (other than a local authority) in the ordinary course of his business from a person carrying on a banking undertaking.

(2) The provisions of this section shall apply in relation to units under a unit trust scheme as they apply in relation to shares in a body corporate, but as if—

(*a*) any reference to the issue of shares in a body corporate by that body corporate were a reference to an issue of units for the purposes of the scheme; and

(*b*) any reference to shares in a body corporate incorporated, or not incorporated, under the law of England or Scotland were a reference to units issued under a scheme governed, or not governed, by the law of England or Scotland.

(3) The provisions of the Schedule to this Act (which relate to enforcement and penalties) shall have effect in relation to orders made under this section but the rights of the persons concerned in any transaction shall not be affected by the fact that the transaction was in contravention of any such orders.

Power of the Treasury to guarantee loans.

2.—(1) The Treasury may, if satisfied that it is expedient in the public interest so to do for the purpose of facilitating the reconstruction or development of an industry or part of an industry in Great Britain, guarantee any loan:

Provided that the aggregate capital amount of the loans in respect of which guarantees are issued in any one financial year under this section (excluding any part of that amount which is guaranteed neither as to principal nor as to interest) shall not exceed fifty million pounds.

(2) Any guarantee given under this section may be given in such form and manner and on such terms and subject to such conditions as the Treasury think fit.

(3) Any moneys required for fulfilling a guarantee given under this section shall be charged on and issued out of the Consolidated Fund or the growing produce thereof, and any moneys paid in or towards repayment of any sum issued out of the Consolidated Fund under this section shall be paid into the Exchequer.

(4) The Treasury shall lay before both Houses of Parliament—

(*a*) a statement of any guarantee given under this section as soon as may be after it is given; and

(*b*) within one month after the end of any financial year in which any guarantees given under this section are in force, an account of the total sums, if any, which during that year have been either issued out of the Consolidated Fund under this section or paid in or towards repayment of any money so issued.

(5) In this section, references to the guaranteeing of a loan shall be construed as references to guaranteeing, whether wholly or in part and whether solely or jointly with other guarantors, the payment either of the interest, or of both the interest and the principal, of the loan, and the expression "guaranteed" shall be construed accordingly, and references to an industry shall be construed as including references to the undertakings for the time being engaged in the provision of any description of supplies or services.

Provisions as to orders.

3.—(1) Any order made under this Act shall be laid before Parliament as soon as may be after it is made, and if either House of Parliament within the period of forty days beginning with the day on which any such order is laid before it, resolves that the order be annulled, the order shall cease to have effect, but without prejudice to anything previously done thereunder or to the making of a new order.

(2) In reckoning any such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days.

(3) Notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893, an order made under this Act shall be deemed not to be, or to contain, a statutory rule to which that section applies. 56 & 57 Vict. c. 66.

(4) An order made under this Act may be varied or revoked by a subsequent order.

Interpretation.

4.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:—

"issue" includes reissue;

"local authority" means any authority being within the meaning of the Local Loans Act, 1875, or the Local 38 & 39 Vict. c. 85.

54 & 55 Vict. c. 34.

Authorities Loans (Scotland) Act, 1891, an authority having power to levy a rate;

"registered", in relation to any security, includes inscribed, "registered in England or Scotland" means, in relation to securities, registered in a register in England or Scotland, and "a register", in relation to securities, includes any book in which securities are registered;

"security" includes shares, bonds, notes, debentures, debenture stock and units under a unit trust scheme;

"share" includes stock and any perpetual debenture or perpetual debenture stock;

"unit trust scheme" means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever;

"unit" means, in relation to a unit trust scheme, any right or interest, (described whether as a unit or otherwise) which may be acquired under the scheme, being a right or interest created or issued for the purpose of raising money for the purposes of the scheme or a right or interest created or issued in substitution (whether directly or indirectly) for any right or interest so created or issued.

(2) Any reference in this Act to the borrowing of money—

(*a*) includes a reference to the making of any arrangement by which a sum which would otherwise be payable at any date is payable at a later date, and includes in particular the making of any arrangement by which the whole or any part of the price of any property is allowed to remain unpaid either for a fixed period or indefinitely, but

(*b*) does not include a reference to the acceptance by a person carrying on a banking undertaking of moneys to be placed to the credit of a current or deposit account.

(3) A person shall be deemed for the purposes of this Act to borrow or raise money in Great Britain if the money is made available in Great Britain, or, in any such case as is mentioned in subsection (2) of this section, if the money would, but for the arrangement in question, have been payable in Great Britain, and, without prejudice to the preceding provisions of this subsection, a person shall also be deemed for the purposes of this Act to borrow money in Great Britain if the money is borrowed on the security of property in Great Britain.

(4) An arrangement to provide any guarantee, or to mortgage or charge any property, to secure the repayment of any sum

borrowed before the arrangement is made, being a sum which is already due when the arrangement is made or which is payable not later than six months, or such longer or shorter period as may be prescribed by order of the Treasury, after the arrangement is made, shall be deemed for the purposes of the two last preceding subsections to be an arrangement by which that sum is payable at a date later than it would otherwise have been payable.

(5) A sum which, at the time of, or by virtue of, the making of any arrangement, is payable on demand or on the expiration of a fixed period after demand shall be deemed for the purposes of the three last preceding subsections to be payable at the time of the making of the arrangement, or, as the case may be, on the expiration of the fixed period after the making of the arrangement, notwithstanding that no demand has been made.

Expenses.

5. Any expenses incurred by the Treasury in the administration of this Act shall be paid out of moneys provided by Parliament.

Northern Ireland.

6.—(1) The provisions of this Act, other than the provisions of this section, shall not extend to Northern Ireland.

(2) It is hereby declared that the Parliament of Northern Ireland has power to make laws for purposes similar to the purposes of any of the provisions of this Act which do not extend to Northern Ireland.

Short title.

7. This Act may be cited as the Borrowing (Control and Guarantees) Act, 1946.

Section 1.

SCHEDULE.

PROVISIONS AS TO ENFORCEMENT AND PENALTIES.

1. Any person who contravenes any provision of any order made under this Act shall be liable—

(*a*) on summary conviction to imprisonment for not more than three months or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine; or

(*b*) on conviction on indictment to imprisonment for not more than two years or to a fine not exceeding whichever is the highest of the following amounts—

(i) five hundred pounds; or

(ii) the amount of any money borrowed or raised by the transaction in question; or

(iii) the nominal or market value, whichever is the greater, of any securities to the issue, sale or other disposal of which (whether actual or projected) the transaction in question relates,

or to both such imprisonment and such fine.

2.—(1) The Treasury may give to any person directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to them, or to any person designated in the directions as a person authorised to require it, any information in his possession or control which the Treasury or the person so authorised, as the case may be, may require for the purpose of securing compliance with, or detecting evasion of, any order made under this Act:

Provided that if a person required to give any information under this paragraph objects to the giving thereof on the ground that it might tend to incriminate him, he shall not be bound to give that information.

Nothing in this paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(2) The Treasury may give to any person directions requiring him, within such time and in such manner as may be specified in the directions, to produce such books, accounts or other documents (hereinafter referred to as "documents") in his possession or control as may be required for the purpose of securing compliance with, or detecting evasion of, any order made under this Act by the Treasury or by any person designated in the directions as a person authorised to require them and any documents produced by a person in compliance with any such requirements may be given in evidence against him notwithstanding that they may tend to incriminate him.

Nothing in this paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) If a justice of the peace is satisfied by information on oath given by an officer of the Treasury or with the authority of the Treasury that there is reasonable ground for suspecting that there are at any premises any documents which a person ought to have produced under the last preceding sub-paragraph but has failed or refused to produce, he may grant a search warrant authorising any constable, together with any other persons named in the warrant and any other constables, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) at any time within one month from the date of the warrant, and to search the premises and take possession of any documents appearing to be such documents as aforesaid or take in relation thereto any other steps which may appear necessary for preserving them and preventing interference therewith.

In this sub-paragraph the expression " a justice of the peace ", in Scotland, includes the sheriff.

(4) Any person who—

(*a*) fails or refuses to comply with any requirement to furnish information or produce documents imposed on him by or under this paragraph; or

(*b*) with intent to evade the provisions of this paragraph or of any order made under this Act destroys, mutilates, defaces, secretes or removes any documents; or

(*c*) obstructs any person exercising any powers conferred on him by or under this paragraph,

shall be liable, on summary conviction, to imprisonment for not more than three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

3.—(1) No proceedings for an offence under this Act shall be instituted in England except by or with the consent of the Director of Public Prosecutions.

(2) Any proceedings which may be taken against any person under this Act may be taken at any time not later than twelve months from the date of the commission of the alleged offence or within three months from the date on which evidence sufficient in the opinion of the Treasury to justify the proceedings comes to the knowledge of the Treasury, or, where the person in question was outside Great Britain at that date, within twelve months from the date on which he first lands in Great Britain thereafter whichever of the said periods last expires.

For the purposes of this sub-paragraph, a certificate of the Treasury as to the date on which such evidence as aforesaid came to the knowledge of the Treasury shall be conclusive evidence thereof.

This sub-paragraph shall, in its application to Scotland, have effect as if for the references to evidence sufficient to justify a prosecution there were substituted references to evidence sufficient to justify a report to the Lord Advocate with a view to consideration of the question of prosecution.

(3) Proceedings against any person in respect of an offence under this Act may be taken before the appropriate court in Great Britain having jurisdiction in the place where that person is for the time being.

(4) Where an offence under this Act has been committed by a body corporate (other than a local authority), every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

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