

CHAPTER 89.

An Act to impose penalties for trading with the enemy, to make provision as respects the property of enemies and enemy subjects, and for purposes connected with the matters aforesaid.

[5th September 1939.]

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 :—

Trading with the Enemy and matters relating thereto.

Penalties for trading with the enemy.

1.—(1) Any person who trades with the enemy within the meaning of this Act shall be guilty of an offence of trading with the enemy, and shall be liable—

(*a*) on conviction on indictment, to penal servitude for a term not exceeding seven years or to a fine or to both such penal servitude and a fine, or

(*b*) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine;

and the court may in any case order that any goods or money in respect of which the offence has been committed shall be forfeited.

(2) For the purposes of this Act a person shall be deemed to have traded with the enemy—

(*a*) if he has had any commercial, financial or other intercourse or dealings with, or for the benefit of, an enemy, and, in particular, but without prejudice to the generality of the foregoing provision, if he has—

(i) supplied any goods to or for the benefit of an enemy, or obtained any goods from an enemy, or traded in, or carried, any goods consigned to or from an enemy or destined for or coming from enemy territory, or

(ii) paid or transmitted any money, negotiable instrument or security for money to or for the benefit of an enemy or to a place in enemy territory, or

(iii) performed any obligation to, or discharged any obligation of, an enemy, whether the obligation was undertaken before or after the commencement of this Act; or

(*b*) if he has done anything which, under the following provisions of this Act, is to be treated as trading with the enemy:

Provided that a person shall not be deemed to have traded with the enemy by reason only that he has—

(i) done anything under an authority given generally or specially by, or by any person authorised in that behalf by, a Secretary of State, the Treasury or the Board of Trade, or

(ii) received payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the person receiving payment had been performed before the commencement of the war by reason of which the person from whom the payment was received became an enemy.

(3) Any reference in this section to an enemy shall be construed as including a reference to a person acting on behalf of an enemy.

(4) A prosecution for an offence of trading with the enemy shall not be instituted in England or Northern

Ireland except by, or with the consent of, the Director of Public Prosecutions or the Attorney General for Northern Ireland, as the case may be:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of a prosecution for the offence has not been obtained.

Definition of enemy.

2.—(1) Subject to the provisions of this section, the expression "enemy" for the purposes of this Act means—

(*a*) any State, or Sovereign of a State, at war with His Majesty,

(*b*) any individual resident in enemy territory,

(*c*) any body of persons (whether corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this section, is an enemy, or

(*d*) any body of persons constituted or incorporated in, or under the laws of, a State at war with His Majesty;

but does not include any person by reason only that he is an enemy subject.

(2) The Board of Trade may by order direct that any person specified in the order shall, for the purposes of this Act, be deemed to be, while so specified, an enemy.

Inspection and supervision of businesses.

3.—(1) The Board of Trade, if they think it expedient for securing compliance with section one of this Act so to do, may by written order authorise a specified person (hereafter in this section referred to as "an inspector") to inspect any books or documents belonging to, or under the control of, a person named in the order, and to require that person and any other person to give such information in his possession with respect to any business carried on by the named person as the inspector may demand, and for the purposes aforesaid to enter on any premises used for the purposes of that business.

(2) If, on a report made by an inspector as respects any business, it appears to the Board of Trade that it is expedient, for securing compliance with section one of this Act, that the business should be subject to supervision, the Board may appoint a person (hereafter in this section referred to as "a supervisor") to supervise the business, with such powers as the Board may determine.

(3) If any person, without reasonable cause, fails to produce for inspection, or furnish, to an inspector or a supervisor any document or information which he is duly requested by the inspector or supervisor so to produce or furnish, that person shall be liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(4) If any person, with intent to evade the provisions of this section, destroys, mutilates or defaces any book or other document which an inspector or a supervisor is or may be authorised under this section to inspect, that person shall be liable—

(*a*) on conviction on indictment, to penal servitude for a term not exceeding five years or to a fine or to both such penal servitude and a fine, or

(*b*) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

Transfer of negotiable instruments and choses in action by enemies.

4.—(1) No assignment of a chose in action made by or on behalf of an enemy shall, except with the sanction of the Treasury, be effective so as to confer on any person any rights or remedies in respect of the chose in action; and neither a transfer of a negotiable instrument by or on behalf of an enemy, nor any subsequent transfer thereof, shall, except with the sanction of the Treasury, be effective so as to confer any rights or remedies against any party to the instrument.

(2) The preceding subsection shall apply in relation to any transfer of any coupon or other security transferable by delivery, not being a negotiable instrument, as it applies in relation to any assignment of a chose in action.

(3) If any person by payment or otherwise purports to discharge any liability from which he is relieved by this section, knowing the facts by virtue of which he is so relieved, he shall be deemed to have thereby traded with the enemy:

Provided that in any proceedings for an offence of trading with the enemy which are taken by virtue of this subsection it shall be a defence for the defendant to prove that at the time when he purported to discharge the liability in question he had reasonable grounds for believing that the liability was enforceable against him by order of a competent court, not being either a court having jurisdiction in the United Kingdom or a court of a State at war with His Majesty, and would be enforced against him by such an order.

(4) Where a claim in respect of a negotiable instrument or chose in action is made against any person who has reasonable cause to believe that, if he satisfied the claim, he would be thereby committing an offence of trading with the enemy, that person may pay into the High Court or Court of Session any sum which, but for the provisions of subsection (1) of this section, would be due in respect of the claim, and thereupon that sum shall, subject to rules of court, be dealt with according to any order of the court, and the payment shall for all purposes be a good discharge to that person.

(5) Nothing in this section shall apply to securities to which the next following section applies.

Transfer and allotment of securities.

5.—(1) If—

(*a*) any securities to which this section applies are transferred by or on behalf of an enemy, or

(*b*) any such securities, being securities issued by a company within the meaning of the Companies Act, 1929, or any corresponding enactment in force in Northern Ireland, are allotted or transferred to, or for the benefit of, an enemy subject without the consent of the Board of Trade;

19 & 20 Geo. 5. c. 23.

then, except with the sanction of the Board of Trade, the transferee or allottee shall not, by virtue of the

transfer or allotment, have any rights or remedies in respect of the securities; and no body corporate by whom the securities were issued or are managed shall take any cognisance of, or otherwise act upon, any such transfer except under the authority of the Board.

(2) No share warrants, stock certificates or bonds, being warrants, certificates or bonds payable to bearer, shall be issued in respect of any securities to which this section applies, being securities registered or inscribed in the name of an enemy or of a person acting on behalf of, or for the benefit of, an enemy.

(3) Any person who contravenes the provisions of this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(4) This section applies to the following securities, that is to say, annuities, stock, shares, bonds, debentures or debenture stock registered or inscribed in any register, branch register or other book kept in the United Kingdom.

Purchase of enemy currency.

6.—(1) Purchasing enemy currency shall be treated as trading with the enemy.

(2) In this section the expression "enemy currency" means any such notes or coins as circulate as currency in any area under the sovereignty of a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a Power allied with His Majesty, or any such other notes or coins as are for the time being declared by an order of the Treasury to be enemy currency.

Property of Enemies and Enemy Subjects.

Collection of enemy debts and custody of enemy property.

7.—(1) With a view to preventing the payment of money to enemies and of preserving enemy property in contemplation of arrangements to be made at the conclusion of peace, the Board of Trade may appoint custodians of enemy property for England, Scotland and Northern Ireland respectively, and may by order—

(*a*) require the payment to the prescribed custodian of money which would, but for the existence of a state of war, be payable to or for the

benefit of a person who is an enemy, or which would, but for the provisions of section four or section five of this Act, be payable to any other person;

(*b*) vest in the prescribed custodian such enemy property as may be prescribed, or provide for, and regulate, the vesting in that custodian of such enemy property as may be prescribed;

(*c*) vest in the prescribed custodian the right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the order to be, vested in the custodian :

(*d*) confer and impose on the custodians and on any other person such rights, powers, duties and liabilities as may be prescribed as respects—

(i) property which has been, or is required to be, vested in a custodian by or under the order,

(ii) property of which the right of transfer has been, or is required to be, so vested,

(iii) any other enemy property which has not been, and is not required to be, so vested, or

(iv) money which has been, or is by the order required to be, paid to a custodian;

(*e*) require the payment of the prescribed fees to the custodians in respect of such matters as may be prescribed and regulate the collection of and accounting for such fees;

(*f*) require any person to furnish to the custodian such returns, accounts and other information and to produce such documents, as the custodian considers necessary for the discharge of his functions under the order;

and any such order may contain such incidental and supplementary provisions as appear to the Board of Trade to be necessary or expedient for the purposes of the order.

(2) Where any requirement or direction with respect to any money or property is addressed to any person by a custodian and accompanied by a certificate

of the custodian that the money or property is money or property to which an order under this section applies, the certificate shall be evidence of the facts stated therein, and if that person complies with the requirement or direction, he shall not be liable to any action or other legal proceeding by reason only of such compliance.

(3) Where, in pursuance of an order made under this section,—

(*a*) any money is paid to a custodian,

(*b*) any property, or the right to transfer any property, is vested in a custodian, or

(*c*) a direction is given to any person by a custodian in relation to any property which appears to the custodian to be property to which the order applies,

neither the payment, vesting or direction nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time—

(i) some person who was or might have been interested in the money or property, and who was an enemy or an enemy subject, had died or had ceased to be an enemy or an enemy subject, or

(ii) some person who was so interested, and who was believed by the custodian to be an enemy or an enemy subject, was not an enemy or an enemy subject.

(4) Any order under this section shall have effect notwithstanding anything in any Act passed before this Act.

(5) If any person pays any debt, or deals with any property, to which any order under this section applies, otherwise than in accordance with the provisions of the order, he shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine; and the payment or dealing shall be void.

(6) If any person, without reasonable cause, fails to produce or furnish, in accordance with the requirements of an order under this section, any document or information which he is required under the order to produce or

furnish, he shall be liable on summary conviction to a fine not exceeding ten pounds for every day on which the default continues.

(7) All fees received by any custodian by virtue of an order under this section shall be paid into the Exchequer of the United Kingdom.

(8) In this section—

(*a*) the expression "enemy property" means any property for the time being belonging to or held or managed on behalf of an enemy or an enemy subject;

(*b*) the expression "property" means real or personal property, and includes any estate or interest in real or personal property, any negotiable instrument, debt or other chose in action, and any other right or interest, whether in possession or not; and

(*c*) the expression "prescribed" means prescribed by an order made under this section.

General and Supplementary Provisions.

Provisions with respect to money payable to, or received by, a Clearing Office under 24 & 25 Geo. 5. c. 31.

8.—(1) Nothing in this Act shall affect the operation of section one of the Debts Clearing Offices and Import Restrictions Act, 1934, or of any order under that section, in so far as the said section or order relates to the payment to, and collection by, a Clearing Office of debts to which such an order applies; but—

(*a*) notwithstanding anything in subsection (6) of the said section or in any such order as aforesaid, any sum received by a Clearing Office by virtue of such an order, being—

(i) a sum which is so received at a time when the Sovereign Power of the country with respect to which the order has been made is at war with His Majesty, or

(ii) a sum which has been so received before the commencement of the war between that Power and His Majesty and has not, before the commencement of that war, ceased to be in the possession or under the control of the Clearing Office,

shall be retained by the Clearing Office, subject to any order which may be made under this Act

requiring the Clearing Office to pay that sum to a custodian of enemy property, and subject to the provisions of subsections (4) and (6) of the said section with respect to overpayments made to the Clearing Office; and

(*b*) any sum which a Clearing Office is required by paragraph (*a*) of this subsection to retain subject as aforesaid, shall, except in so far as it represents an overpayment made to the Clearing Office, be deemed for the purposes of this Act to be money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy.

(2) There may be retained by a Clearing Office out of any sum which, by virtue of any order under this Act, is payable by that office to a custodian of enemy property such reasonable commission, not exceeding two per cent. of that sum, as the Treasury think fit; and the amount of any commission so retained by a Clearing Office shall be paid into the Exchequer of the United Kingdom.

False statements and obstruction.

9.—(1) If any person, for the purpose of obtaining any authority or sanction under this Act, or in giving any information for the purposes of this Act or of any order made thereunder, knowingly or recklessly makes a statement which is false in a material particular, he shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(2) Every person who wilfully obstructs any person in the exercise of any powers conferred on him by or under this Act shall be liable on summary conviction to a fine not exceeding fifty pounds.

Offences by corporations.

10. Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

Expenses of, and exercise of powers by, Board of Trade.

11.—(1) The expenses incurred for the purposes of this Act by the Board of Trade shall be defrayed out of moneys provided by Parliament.

(2) Anything required or authorised under this Act to be done by, to or before the Board of Trade may be done by, to or before the President of the Board, any secretary, under-secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board.

Evidence of authority or sanction of Secretary of State, Treasury or Board of Trade.

12. Any document stating that any authority or sanction is given under any of the provisions of this Act by a Secretary of State, the Treasury or the Board of Trade, and purporting to be signed on behalf of the Secretary of State, the Treasury or the Board of Trade, or by a person who is empowered by this Act to do anything which may be done thereunder by the Board, shall be evidence of the facts stated in the document.

Application to Scotland.

13. In the application of this Act to Scotland, "chose in action" means "right of action or incorporeal moveable," "defendant" means "person accused," and "real or personal property" means "heritable or moveable property."

Extension of Act to colonies, &c.

14. His Majesty may by Order in Council direct that the provisions of this Act other than this section shall extend, with such exceptions, adaptations and modifications, if any, as may be prescribed by or under the Order—

(*a*) to the Isle of Man or any of the Channel Islands,

(*b*) to Newfoundland or any colony,

(*c*) to any British protectorate,

(*d*) to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom, and

(*e*) (to the extent of His Majesty's jurisdiction therein) to any other country or territory being a foreign country or territory in which for the time being His Majesty has jurisdiction.

Interpretation.

15.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them:—

"enemy subject" means—

(*a*) an individual who, not being either a British subject or a British protected person, possesses the nationality of a State at war with His Majesty, or

(*b*) a body of persons constituted or incorporated in, or under the laws of, any such State; and

"enemy territory" means any area which is under the sovereignty of, or in the occupation of, a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a Power allied with His Majesty.

(2) A certificate of a Secretary of State that any area is or was under the sovereignty of, or in the occupation of any Power, or as to the time at which any area became or ceased to be under such sovereignty or in such occupation shall, for the purposes of any proceedings under or arising out of this Act, be conclusive evidence of the facts stated in the certificate.

(3) In considering for the purposes of any of the provisions of this Act whether any person has been an enemy or an enemy subject, no account shall be taken of any state of affairs existing before the commencement of this Act.

(4) For the purposes of this Act, a person shall be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called; and, for the purposes of the provisions of this Act relating to offences by bodies corporate, a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of that body act:

Provided that a person shall not, by reason only that the directors of a body corporate act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(5) Any power conferred by the preceding provisions of this Act to make an Order in Council or an order

shall be construed as including a power, exercisable in the like manner, to vary or revoke the Order in Council or order.

Saving of rights of Crown.

16. This Act shall be without prejudice to the exercise of any right or prerogative of the Crown.

Short title, commencement and repeal.

17.—(1) This Act may be cited as the Trading with the Enemy Act, 1939.

(2) This Act shall, if His Majesty by Order in Council so directs, be deemed to have come into operation on such day as may be specified in the Order:

Provided that a person shall not, by virtue of an Order in Council under this subsection, be liable to any penalty in respect of anything done by him before the date of the passing of this Act which was not unlawful at common law.

(3) The enactments mentioned in the first and second columns of the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that (without prejudice to the operation of subsection (2) of section thirty-eight of the Interpretation Act, 1889) the repeal of the said enactments by this subsection shall not affect the operation of any Order in Council or rules made under section five of the Trading with the Enemy Amendment Act, 1914, and shall not be taken to affect the operation of those enactments as applied or amended by any Order in Council made under the Treaty of Peace Act, 1919, the Treaty of Peace (Austria and Bulgaria) Act, 1920, the Treaty of Peace (Hungary) Act, 1921, or the Treaty of Peace (Turkey) Act, 1924.

52 & 53 Vict. c. 63.

5 & 6 Geo. 5. c. 12.

9 & 10 Geo. 5. c. 33.
10 & 11 Geo. 5. c. 6.
11 & 12 Geo. 5. c. 11.
14 & 15 Geo. 5. c. 7.

Section 17.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
4 & 5 Geo. 5. c. 87.	The Trading with the Enemy Act, 1914.	The whole Act.
5 & 6 Geo. 5. c. 12.	The Trading with the Enemy Amendment Act, 1914.	The whole Act.
5 & 6 Geo. 5. c. 79.	The Trading with the Enemy Amendment Act, 1915.	The whole Act.
5 & 6 Geo. 5. c. 98.	The Trading with the Enemy (Extension of Powers) Act, 1915.	The whole Act.
5 & 6 Geo. 5. c. 105.	The Trading with the Enemy Amendment Act, 1916.	The whole Act.
6 & 7 Geo. 5. c. 32.	The Trading with the Enemy (Copyright) Act, 1916.	The whole Act.
6 & 7 Geo. 5. c. 52.	The Trading with the Enemy and Export of Prohibited Goods Act, 1916.	In section one the words from "any licence" to "obtaining" when it secondly occurs; section two.
8 & 9 Geo. 5. c. 31.	The Trading with the Enemy (Amendment) Act, 1918.	The whole Act.

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