

## CHAPTER 42. No. 7.

## TRADING WITH THE ENEMY.

AN ORDINANCE 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.

Ordinances  
Ch.42. No.6-  
1940.  
R.G.—  
26.9.1940.  
17.4.1941.  
18.9.1943.

[3rd September, 1939.]

Commence-  
ment.

1. (1) This Ordinance may be cited as the Trading with the Enemy Ordinance. Short title.

(2) This Ordinance shall be deemed to have come into operation on the 3rd of September, 1939:

Provided that a person shall not, by virtue of this subsection, be liable to any penalty in respect of anything done by him before the date of the passing of this Ordinance which if it had been done in England, would not have been unlawful at Common Law.

2. (1) In this Ordinance the following expressions have the meanings hereby respectively assigned to them:— Interpre-  
tation.

“ 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.

R.G. 26.9.40.

(1A) The Governor may by order direct that the provisions of this Ordinance shall apply in relation to any area specified in the order as they apply in relation to enemy territory, and the said provisions shall apply accordingly.

(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 Ordinance, be conclusive evidence of the facts stated in the certificate.

(3) In considering for the purposes of any of the provisions of this Ordinance 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 Ordinance.

(4) For the purposes of this Ordinance, 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 Ordinance 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 this Ordinance 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.

Definition  
of enemy.  
R.G. 26.9.40.

3. (1) Subject to the provisions of this section, the expression "enemy" for the purposes of this Ordinance, 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,

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

(e) as respects any business carried on in enemy territory, any individual or body of persons (whether corporate or unincorporate) carrying on that business;

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

(2) The Governor, with the prior approval of the Secretary of State, may by order direct that any person specified in the order shall, for the purposes of this Ordinance, be deemed to be, while so specified, an enemy.

(3) Without prejudice to the provisions of subsection (2) of this section, any person specified in an order to which this subsection relates, made by the Board of Trade in pursuance of the powers conferred by subsection (2) of section 2 of the Trading with the Enemy Act, 1939, shall, for the purposes of this Ordinance, be deemed to be, while so specified, an enemy. The orders made by the Board of Trade to which this subsection relates are orders whensoever made in respect of which the Custodian has caused to be published in the *Royal Gazette* a notification to the effect that copies of them are available for public inspection in his office. Any such inspection shall be given free of charge. R.G. 18.9.43.

*Trading with the Enemy and matters relating thereto.*

4. (1) Any person who trades with or attempts to trade with the enemy within the meaning of this Ordinance shall be guilty of an offence of trading with the enemy, and shall be liable— Penalties for trading with the enemy. R.G. 26.9.40

(a) on conviction on indictment, to imprisonment for seven years or to a fine or to both such imprisonment and a fine, or

(b) on summary conviction, to imprisonment for twelve months or to a fine not exceeding two thousand four hundred dollars, or to both such imprisonment and such fine;

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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 Ordinance 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 Ordinance; or

R.G. 26.9.40.

(b) if he has done anything which, under the following provisions of this Ordinance, is to be treated as trading with the enemy, and any reference in this Ordinance to an attempt to trade with the enemy shall be construed accordingly:

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 in England, or the Board of Trade, or the Governor of the Colony, or

R.G. 17.4.41.

(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 already been performed when the payment was received and had been performed at a time when the person from whom the payment was received was not an enemy.

or ed (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.

11 (3A) In any proceedings for an offence of trading with the enemy, the fact that any document has been despatched addressed to a person in enemy territory shall, unless the contrary is proved, be evidence, as against any person who was a party to the despatch of the document, that the person to whom the document was despatched was an enemy.

(4) A prosecution for an offence of trading with the enemy shall not be instituted except by or with the consent of the Attorney General:

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.

(5) Proceedings in respect of an offence of trading with the enemy alleged to have been committed by any person may be taken before the appropriate Court in the Colony having jurisdiction in the place where that person is for the time being.

5. (1) The Governor, if he thinks it expedient for securing compliance with section 4 of this Ordinance 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.

Inspection and supervision of businesses.

(2) If, on a report made by an inspector as respects any business, it appears to the Governor that it is expedient for securing compliance with section 4 of this Ordinance, that the business should be subject to supervision, the

Governor may appoint a person (hereafter in this section referred to as "a supervisor") to supervise the business, with such powers as the Governor 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 of two hundred and forty dollars or to imprisonment for 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 imprisonment for five years or to a fine or to both such imprisonment and a fine, or

(b) on summary conviction, to imprisonment for twelve months or to a fine of four hundred and eighty dollars or to both such imprisonment and such fine.

Power to  
control and  
wind up  
certain  
businesses.  
R.G. 26.9.40.

5A. (1) Where any business is being carried on in the Colony by, or on behalf of, or under the direction of, persons all or any of whom are enemies or enemy subjects or appear to the Governor to be associated with enemies, the Governor may, if he thinks it expedient so to do, make—

(a) an order (hereinafter in this section referred to as a "restriction order") prohibiting the carrying on the business either absolutely or except for such purposes and subject to such conditions as may be specified in the order; or

(b) an order (hereinafter in this section referred to as a "winding-up order") requiring the business to be wound-up,

and the making of a restriction order as respects any business shall not prejudice the power of the Governor, if he thinks it expedient so to do, at any subsequent date to make a winding-up order as respects that business.

(2) Where an order under subsection (1) of this section is made as respects any business, the Governor may,

by that or a subsequent order, appoint a controller to control and supervise the carrying out of the order, and, in the case of a winding-up order, to conduct the winding-up of the business, and may confer on the controller any such powers in relation to the business as are exercisable by a liquidator in the voluntary winding-up of a company in relation to the company (including power in the name of the person carrying on the business or in his own name, and by deed or otherwise, to convey or transfer any property, and power to apply to the court to determine any question arising in the carrying out of the order), and may by the order confer on the controller such other powers as the Governor thinks necessary or convenient for the purpose of giving full effect to the order.

(3) Where a restriction order or a winding-up order is made as respects any business, the distribution of any assets of the business which are distributed while the order is in force shall be subject to the same rules as to preferential payments as are applicable to the distribution of the assets of a company which is being wound-up, and the said assets of the business shall, so far as they are available for discharging unsecured debts be applied in discharging unsecured debts due to creditors of the business who are not enemies in priority to unsecured debts due to any other creditors, and any balance, after providing for the discharge of all liabilities of the business, shall be distributed among the persons interested in the business in such manner as the Governor may direct:

Provided that the provisions of this subsection shall, in their application to the distribution of any money or other property which would, in accordance with those provisions, fall to be paid or transferred to an enemy, whether as a creditor or otherwise, have effect subject to the provisions of section 9 of this Ordinance (which relates to the collection of enemy debts and the custody of enemy property) and of any order made under that section.

(4) Where any business for which a controller has been appointed under this section has assets in enemy territory, the controller shall, if in his opinion it is practicable so to do, cause an estimate to be prepared—

(a) of the value of those assets;

(b) of the amount of any liabilities of the business to creditors, whether secured or unsecured, who are enemies;

(c) of the amount of the claims of persons who are enemies to participate, otherwise than as creditors of the business, in any distribution of assets of the business made while an order under subsection (1) of this section is in force as respects the business;

and, where such an estimate is made, the said liabilities and claims shall, for the purposes of this section, be deemed to have been satisfied out of the said assets of the business in enemy territory, or to have been satisfied thereout so far as those assets will go, and only the balance (if any) shall rank for satisfaction out of the other assets of the business.

(5) Where an estimate has been prepared under the last preceding subsection, a certificate of the controller as to the value or amount of any assets, claims or liabilities to which the estimate relates shall be conclusive for the purpose of determining the amount of the assets of the business available for discharging the other liabilities of the business and for distribution amongst other persons claiming to be interested in the business:

Provided that nothing in this subsection shall affect the rights of creditors of, and other persons interested in, the business against the assets of the business in enemy territory.

(6) The Governor may, on an application made by a controller appointed under this section, after considering the application and any objections which may be made by any person who appears to him to be interested, by order grant the controller a release, and an order of the Governor under this subsection shall discharge the controller from all liability in respect of any act done or default made by him in the exercise and performance of his powers and duties as controller; but any such order may be revoked by the Governor on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(7) If any person contravenes, or fails to comply with, the provisions of any order made under subsection (1) of this

section, he shall be guilty of an offence of trading with the enemy.

(8) Where an order under subsection (1) of this section has been made as respects a business carried on by any individuals or by a company, no bankruptcy petition, or petition for sequestration or summary sequestration against the individuals, or petition for the winding up of the company, shall be presented, or resolution for the winding up of the company passed, or steps for the enforcement of the rights of any creditors of the individuals or company taken, without the consent of the Governor, but where the business is carried on by a company the Governor may present a petition for the winding up of the company by the court, and the making of an order under this section shall be a ground on which the company may be wound up by the court.

(9) Where an order is made under this section appointing a controller for any business, any remuneration of, and any costs, charges and expenses incurred by, the controller, and any other costs, charges and expenses incurred in connection with the control and supervision of the carrying out of the order, shall, to such amount as may be certified by the Governor, be defrayed out of the assets of the business, and as from the date of the certificate, be charged on those assets in priority to any other charges thereon.

6. (1) No assignment of a thing in action made by or on behalf of an enemy shall, except with the sanction of the Governor, be effective so as to confer on any person any rights or remedies in respect of the thing 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 Governor, be effective so as to confer any rights or remedies against any party to the instrument.

Transfer of negotiable instruments and things in action by enemies.

(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 thing 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:

R.G. 17.4.41. 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 Colony or a court having jurisdiction in enemy territory, and would be enforced against him by such an order.

(4) Where a claim in respect of a negotiable instrument or thing 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 Supreme Court 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.

**7. (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 Ordinance, are allotted or transferred to, or for the benefit of, an enemy subject without the consent of the Governor,

then, except with the sanction of the Governor, 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 Governor.

(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 six months or to a fine of four hundred and eighty dollars 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 Colony.

8. (1) Purchasing enemy currency shall be treated as trading with the enemy. Purchase of enemy currency.

(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 Governor to be enemy currency.

*Property of enemies and enemy subjects.*

9. (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 Governor may appoint custodians of enemy property for the Colony, and may by order— Collection of enemy debts and custody of enemy property.

(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 6 or section 7 of this Ordinance, 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 Governor 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 Ordinance passed before this Ordinance

(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 six months or to a fine of four hundred and eighty dollars 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 of forty-eight dollars 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 Treasury.

(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 thing 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.

Provisions  
as to custo-  
dians.  
R.G. 26.9.40.

9A. (1) The rights, powers, duties and liabilities which may be conferred and imposed by the Governor on custodians of enemy property under subsection (1) of section 9 of this Ordinance shall, where it appears to the Governor that it is expedient that any business should be carried on or continue to be carried on in or from the Colony, include such rights, powers, duties and liabilities as respects the property and money mentioned in paragraph (d) of the said subsection (1) as, in the opinion of the Governor, are necessary or expedient in order to enable that business so to be carried on.

(2) The power of the Governor under the said subsection (1) shall include power, where a custodian dies or for any other reason ceases to hold office as such, by order to vest in his successor any property or right which was vested in the first mentioned custodian at the time of his dying or ceasing to hold office.

*Supplementary provisions.*

False state-  
ments and  
obstruction.

10. (1) If any person, for the purpose of obtaining any authority or sanction under this Ordinance, or in giving any information for the purposes of this Ordinance 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 six months or to a fine of four hundred and eighty dollars 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 Ordinance shall be liable on summary conviction to a fine of two hundred and forty dollars.

Offences by  
corporations.

11. Where any offence under this Ordinance 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.

12. (1) The expenses incurred for the purposes of this Ordinance shall be defrayed out of moneys provided by the Legislative Council.

Exercise of powers by the Governor.

(2) Anything required or authorised under this Ordinance to be done by, to or before the Governor may be done by, to or before any person authorised in that behalf by the Governor.

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

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

14. This Ordinance shall be without prejudice to the exercise of any right or prerogative of the Crown.

Saving of rights of Crown.