

1962. No. 187

[C]

CONTROL OF BORROWING

ORDER, DATED 23RD OCTOBER, 1962, MADE BY THE MINISTRY OF FINANCE UNDER SECTION 2 OF THE LOANS GUARANTEE AND BORROWING REGULATION ACT (NORTHERN IRELAND), 1946.

The Ministry of Finance (hereinafter referred to as "the Ministry") in the exercise of the powers conferred upon it by section two of the Loans Guarantee and Borrowing Regulation Act (Northern Ireland), 1946(a), and of all other powers enabling it in that behalf hereby makes the following Order:—

PART I**GENERAL EXTENT OF CONTROL***Borrowing in Northern Ireland*

1.—(1) Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Ministry, borrow money in Northern Ireland where the aggregate of the amount of money borrowed and of any other amounts borrowed in Northern Ireland by that person in the previous twelve months (including any period before the coming into force of this Order) exceeds ten thousand pounds.

(2) This Article shall not apply to:—

- (a) borrowing by any person, other than a local authority, if the borrowing is in the ordinary course of his business and is from a person carrying on a banking undertaking;
- (b) borrowing by any person, other than a local authority, where the money borrowed is repayable on demand or not more than six months after demand and the loan is wholly unsecured or is secured only by a bill of exchange payable on demand or at a fixed period not exceeding six months after the date of the borrowing or after sight or by a promissory note payable not more than six months after the date of the borrowing;
- (c) borrowing by a local authority for the sole purpose of defraying expenditure (including the payment of sums due by them to meet the expenses of other authorities) pending the receipt of revenues receivable by them in respect of the period of account in which that expenditure is chargeable, so long as—
 - (i) the expenditure is not capital expenditure; and
 - (ii) the money is repayable not later than one month after the termination of that period of account; and
 - (iii) the amount outstanding at any one time does not exceed one half of the total revenues received or receivable in respect of that period of account;
- (d) acceptance by a person carrying on a banking undertaking or a member of the London Discount Houses Committee of moneys to be placed to the credit of a current or deposit account, whether or not any security is given;

- (e) borrowing by the personal representative of a deceased person in his capacity as such for the purpose of paying death duties payable by reason of the death of the deceased;
- (f) borrowing from a department of Her Majesty's Government in the United Kingdom, or a department of the Government of Northern Ireland.

For the purposes of this paragraph a loan in respect of which a guarantee is given is not an unsecured loan.

Making of certain arrangements to be treated as borrowing

2.—(1) In this Order references to the borrowing of money include:—

- (a) references to the making of any arrangement to provide any guarantee or to mortgage or charge any property to secure the payment of any sum which is already due when the arrangement is made or is payable not later than six months after the arrangement is made; and
- (b) references to the making of any arrangement by which the price of any property except the price of goods sold by a person in the ordinary course of his business is allowed to remain unpaid either for a fixed period or indefinitely but charged on any property;

but do not include references to the making of any other arrangement by which a sum which would otherwise be payable at any date is payable at a later date; and references to loans shall be construed accordingly.

(2) 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 this Article 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.

Raising money by issue of shares

3.—(1) Subject to the exemptions contained in Part II of this Order, a body corporate shall not, without the consent of the Ministry, raise money in Northern Ireland by the issue, whether in Northern Ireland or elsewhere, of any shares in that body corporate.

(2) This Article shall not apply to money raised by the issue of shares to the subscribers of a memorandum of association where the total consideration for the issue of all those shares issued to the said subscribers does not exceed five hundred pounds.

(3) This Article shall not apply to money raised by the issue by a private company of shares to the vendors or the nominees of the vendors of any undertaking sold to the company if—

- (a) the shares are all fully paid; and
- (b) the money raised is cash forming part of the assets of the undertaking or cash which has been paid to the vendors as or as part of the purchase price of the undertaking.

Issues of partly paid shares and other issues of shares and other securities

4.—(1) Subject to the exemptions contained in Part II of this Order, a body corporate shall not, without the consent of the Ministry, issue partly paid shares, if either the body corporate is incorporated under the law of Northern Ireland or the shares are or are to be registered in Northern Ireland.

(2) Subject to the exemptions contained in Part II of this Order, a body corporate incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any shares where the whole or any part of the consideration for the issue is the transfer of any property, unless the property consists of, or forms part of, the assets of an undertaking which is being sold to the body corporate, being a private company.

(3) Subject to the exemptions contained in Part II of this Order, a body corporate incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any shares if the purposes or effects of the transaction consist of or include—

- (a) the raising or borrowing of money outside Northern Ireland, unless the borrowing is in the ordinary course of its business and is from a person carrying on a banking undertaking, and the money is made available in the scheduled territories; or
- (b) the exchanging or substituting of new securities for redeemable securities already issued by the body corporate, unless such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

(4) Subject to the exemptions contained in Part II of this Order, a body corporate not incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any shares which are or are to be registered in Northern Ireland if the purposes or effects of the transaction consist of or include—

- (a) the raising or borrowing of money outside Northern Ireland; or
- (b) the exchanging or substituting of new securities for redeemable securities already issued by the body corporate, unless such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

(5) Subject to the exemptions contained in Part II of this Order, a body corporate incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any shares where the whole or any part of the consideration for the issue is the discharge of any capital liability in respect of any such borrowing as is mentioned in paragraph (2) of Article 1 of this Order.

(6) A body corporate incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any redeemable shares if the purposes or effects of the transaction consist of or include the capitalisation of profits or reserves.

(7) Subject to the exemptions contained in Part II of this Order, a body corporate shall not, without the consent of the Ministry, for any purpose issue any securities, other than shares, if either the body corporate is incorporated under the law of Northern Ireland or the securities are, or are to be, registered in Northern Ireland.

(8) The last foregoing paragraph shall not apply to—

- (a) securities issued by any body corporate for the sole purpose of securing money borrowed by the body corporate in Northern Ireland, if the borrowing is in the ordinary course of its business and is from a person carrying on a banking undertaking;
- (b) securities issued by a body corporate, being a body corporate incorporated under the law of Northern Ireland, for the sole purpose of

securing money borrowed by the body corporate outside Northern Ireland, if the borrowing is in the ordinary course of business and is from a person carrying on a banking undertaking, and the money is made available in the scheduled territories; and

- (c) securities issued by any body corporate for the sole purpose of exchanging or substituting new securities for redeemable securities already issued by the body corporate, if such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

Government securities

5. Subject to the exemptions contained in Part II of this Order, no securities of any government other than Her Majesty's Government in the United Kingdom or the Government of Northern Ireland which are or are to be registered in Northern Ireland shall be issued for any purpose without the consent of the Ministry.

Prospectuses, etc.

6. Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Ministry, circulate in Northern Ireland any offer for subscription or sale of—

- (a) any securities of any body corporate not incorporated under the law of Northern Ireland or under the law of England or Scotland; or
 (b) any securities of any government other than Her Majesty's Government in the United Kingdom, or the Government of Northern Ireland;

if the offer is a public offer or an offer to existing holders of securities of the body corporate or government in question or to existing holders of securities of any body corporate specified in the offer.

Unit trusts

7.—(1) Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Ministry—

- (a) raise money in Northern Ireland for the purposes of a unit trust scheme by the issue of any unit under the scheme; or
 (b) issue any units under a unit trust scheme if the purposes or effects of the transaction consist of or include the raising of money outside Northern Ireland, and either the scheme is governed by the law of Northern Ireland or the units are, or are to be, registered in Northern Ireland:

Provided that this paragraph shall not apply to the issue, or to the raising of money by the issue, of any unit or sub-unit under a unit trust scheme if the issue does not cause the total number of issued units or sub-units to exceed the total number outstanding on the twelfth day of May, nineteen hundred and forty-one, including units or sub-units which at the said date the trustees could be required by the managers of the trust to issue.

(2) Article 6 of this Order shall apply in relation to units under a unit trust scheme not governed by the law of Northern Ireland as it applies in relation to securities of a body corporate not incorporated under the law of Northern Ireland.

PART II

GENERAL EXEMPTIONS

Exemption where annual limit not exceeded

8.—(1) Subject to the provisions of this Article, the consent of the Ministry shall not be required to the carrying out by any such person as is mentioned in any of the provisions of Part I of this Order of any transaction mentioned in that provision if the amount involved in the transaction together with the amount involved in all previous transactions by the same person in the previous twelve months, being transactions which are to be taken into account in accordance with paragraph (2) of this Article, does not exceed fifty thousand pounds.

(2) The previous transactions to be taken into account for the purposes of this Article are—

- (a) any borrowing of money in Northern Ireland except such borrowing as is mentioned in paragraph (2) of Article 1 of this Order, whether or not the consent of the Ministry under this Order was required thereto; and
- (b) any other transaction to which the consent of the Ministry under this Order was required or would, apart from the provisions of this Part of this Order, have been required,

and include transactions effected before the coming into force of this Order to which the preceding provisions of this paragraph would have applied if this Order had then been in force:

Provided that—

- (i) where the effect of any of the said previous transactions consisting of the borrowing or raising of money was that any share or loan capital (other than loan capital raised by any such borrowing is mentioned in paragraph (2) of Article 1 of this Order), which was redeemed or repaid contemporaneously with, or not more than three months before that transaction, was replaced by other share or loan capital, the amount involved in that transaction shall be treated as reduced by the amount so redeemed or repaid; and
- (ii) where any of the said previous transactions consisted solely of the borrowing or raising of money which, subsequently to that borrowing or raising, was repaid in whole or in part, the amount involved in that transaction shall be treated as reduced by the amount repaid unless the repayment formed part of any other of the said previous transactions and the whole or part of the amount involved in that other transaction has been left out of account by virtue of proviso (i) of this paragraph.

(3) The exemption conferred by this Article shall not apply to any issue of redeemable shares or other redeemable securities if the purposes or effects of the transaction consist of or include the capitalisation of profits or reserves.

(4) The Ministry may at any time direct that the exemption conferred by this Article shall not apply to any person specified in the direction.

(5) Any direction given under the last foregoing paragraph may be revoked by a subsequent direction of the Ministry and any direction given by the Ministry under paragraph (4) of Article 8 of the Control of Borrowing Order (Northern Ireland), 1947(a), or by Her Majesty's Treasury under paragraph (3) of Article (8) of the Control of Borrowing Order, 1958(b), shall have effect as if it had been given under the last foregoing paragraph.

(a) S.R. & O. (N.I.) 1947, No. 78.

(b) S.I. 1958, No. 1208 (1958 I, p. 203).

(6) In this Article, the expression "the amount involved" means—

- (a) in relation to the borrowing of money, the amount of money to be borrowed;
- (b) in relation to the issue of securities or the raising of money by such an issue, the amount of the money to be raised or the total nominal value of the securities to be issued, or the value of any assets to be acquired in return for the securities, whichever is the greatest;
- (c) in relation to the circulation of an offer of securities
 - (i) in the case of an offer to existing holders of securities registered in Northern Ireland, the total price, under the offer, of the securities offered to such holders;
 - (ii) in any other case, the total price, under the offer, of all the securities offered;
- (d) in relation to an arrangement to provide any guarantee or to mortgage or charge any property to secure the payment of any sum, the amount of that sum;
- (e) in relation to an arrangement by which the price of any property is allowed to remain unpaid, the amount of that price.

(7) Paragraph (6) of this Article shall apply in relation to units under a unit trust scheme as it applies in relation to securities of a body corporate.

Building Societies and Industrial and Provident Societies

9. Nothing in Part I of this Order applies to any borrowing or raising of money by, or any issue of securities of—

- (a) a society incorporated under the Building Societies Acts (Northern Ireland), 1874 to 1940, or such an unincorporated society as is mentioned in section seven of the Building Societies Act, 1874(a), as that Act applies in Northern Ireland; or
- (b) a society registered under the Industrial and Provident Societies Act, 1893(b), whose business does not consist wholly or mainly in investing in land or securities.

Profit Sharing Schemes

10. Nothing in Part I of this Order applies to any issue of shares made in pursuance of a profit sharing scheme whereby a share in the net profits from time to time made by a body corporate falls to be distributed on a pre-determined basis among all the employees of that body corporate who are entitled to participate in the scheme (not being less than three-quarters of the total number of employees of that body corporate) in the form, either wholly or in part, of fully paid shares and such distribution is made in addition to the payment of such employees of wages at rates standard in the industry of which that body corporate forms part.

Exemption for transactions sanctioned by Her Majesty's Treasury

11. Where the consent of Her Majesty's Treasury under any Order made in pursuance of the Borrowing (Control and Guarantees) Act, 1946(c), has been given to the carrying out of any transaction to which that Order applies, then, so long as that consent remains in force and provided that any conditions attached to the consent are complied with, the consent of the Ministry under this Order shall not be required to the carrying out of that transaction.

(a) 37 & 38 Vict. c. 42.
(b) 56 & 57 Vict. c. 39.

(c) 9 & 10 Geo. 6. c. 58.

PART III

SUPPLEMENTAL

Provisions as to consent of the Ministry

12.—(1) Any consent granted by the Ministry under this Order—

(a) may be either general or special;

(b) may be revoked by the Ministry;

(c) may be absolute or conditional; and

(d) may be limited so as to expire at the end of a specified period unless renewed.

(2) Any consent granted by the Ministry under the Control of Borrowing Order (Northern Ireland), 1947(a), or by Her Majesty's Treasury under the Control of Borrowing Order, 1958(b), in respect of any issue of capital or other transaction in Northern Ireland, shall have effect as if it had been granted under the corresponding provision of this Order.

Definitions

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

“issue” includes re-issue;

“local authority” includes the council of any county, county or other borough, or urban or rural district, any authority, committee or board appointed wholly or partly by any such council or councils and any board, commissioners or other body authorised to supply water under any statutory provisions whether of a general or a special nature;

“registered” in relation to any security includes inscribed;

“registered in Northern Ireland” means in relation to securities registered in a register in Northern Ireland; and

“a register” in relation to securities includes any book in which securities are registered;

“the scheduled territories” has the meaning assigned to it by sub-section (3) of section 1 of the Exchange Control Act, 1947(c);

“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 (whether described 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.

(a) S.R. & O. (N.I.) 1947, No. 78.

(c) 10 & 11 Geo. 6. c. 14.

(b) S.I. 1958, No. 1208 (1958 I, p. 203).

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

Extent

14. This Order applies to the borrowing or raising of money in Northern Ireland in pursuance of authority conferred by an Order made under an Act of the Parliament of the United Kingdom or of the Parliament of Northern Ireland passed before the 29th day of August, 1946, being the date of the passing of the Loans Guarantee and Borrowing Regulation Act (Northern Ireland), 1946(a).

Revocation

15. The Control of Borrowing Order (Northern Ireland), 1947(b), the Control of Borrowing (Amendment of Exemption) Order (Northern Ireland), 1949(c), the Control of Borrowing (Amendment) Order (Northern Ireland), 1958(d), and the Control of Borrowing (Amendment) Order (Northern Ireland), 1959(e), are hereby revoked.

Short title and commencement

16. This Order may be cited as the Control of Borrowing Order (Northern Ireland), 1962, and shall come into force on the 2nd day of November, 1962.

Sealed with the Official Seal of the Ministry of Finance for Northern Ireland this 23rd day of October, nineteen hundred and sixty-two, in the presence of

(L.S.)

D. C. B. Holden,
Second Secretary

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order consolidates the Control of Borrowing Order (Northern Ireland), 1947, and the three amending Orders referred to in Article 15. It also makes a number of alterations of a minor nature to bring the control of borrowing in Northern Ireland into line with that in force in Great Britain.

A General Consent was granted under the Control of Borrowing Order (Northern Ireland), 1947, on 18th August, 1961, and a similar General Consent is being issued to take effect concurrently with this Order.

(a) 1946. c. 18.

(b) S.R. & O. (N.I.) 1947, No. 78.

(c) S.R. & O. (N.I.) 1949, No. 85.

(d) S.R. & O. (N.I.) 1958, No. 127.

(e) S.R. & O. (N.I.) 1959, No. 65.