

## SCHEDULES

### SECOND SCHEDULE

Section 2.

#### PROVISIONS OF DEFENCE (TRADING WITH THE ENEMY) REGULATIONS, 1940, PERMANENTLY ENACTED

- 1 In this Schedule "the principal Act" means the Trading with the Enemy Act, 1939.
- 2 (1) In subsection (1) of section one of the principal Act after the words " any person who trades with " there shall be inserted the words " or attempts to trade with ", and after paragraph (b) of subsection (2) of that section there shall be inserted the words " and any reference in this Act to an attempt to trade with the enemy shall be construed accordingly ".
- (2) In paragraph (ii) of the proviso to subsection (2) of the said section one for the words " had been performed before the commencement of the war by reason of which the person from whom the payment was received became an enemy " there shall be substituted the words " 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 ".
- (3) 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 United Kingdom having jurisdiction in the place where that person is for the time being.
- (4) The following subsection shall be inserted after subsection (3) of section one of the principal Act:—
- “(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.”
- 3 Subsection (1) of section two of the principal Act shall be amended as follows:—
- (a) at the end of paragraph (c) the word " or " shall be omitted and after paragraph (d) there shall be inserted the following words—
- “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 ;”;
- (b) for the words " does not include any person by reason only that he is an enemy subject " there shall be substituted the words " does not include any individual by reason only that he is an enemy subject "
- 4 After section three of the principal Act there shall be inserted the following section:  
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*Status: This is the original version (as it was originally enacted).*

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**“3A Power to control and wind up certain businesses.**

(1) Where any business is being carried on in the United Kingdom 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 Board of Trade to be associated with enemies, the Board of Trade, may, if they think it expedient so to do, make—

- (a) an order (hereafter 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 (hereafter 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 Board, if they think 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 Board of Trade 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 Board think 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 Board of Trade 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 seven of this Act (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 ;

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- (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 Board of Trade 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 them to be interested, by order grant the controller a release, and an order of the Board 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 Board 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 Board of Trade, but where the business is carried on by a company the Board of Trade 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 Board of Trade, 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”.

- 5        In the proviso to subsection (3) of section four of the principal Act for the words " a court of a State at war with His Majesty " there shall be substituted the words " a court having jurisdiction in enemy territory " .
- 6        (1) The rights, powers, duties and liabilities which may be conferred and imposed by the Board of Trade on custodians of enemy property under subsection (1) of section seven of the principal Act shall, where it appears to the Board that it is expedient that any business should be carried on or continue to be carried on in or from the United Kingdom, 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 Board, are necessary or expedient in order to enable that business so to be carried on.
- (2) The power of the Board of Trade 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.
- (3) Notwithstanding anything in the said section seven, a custodian shall, if the Treasury so directs, pay or transfer, to such persons as may be specified in the direction—
- (a) any money so specified which has been paid to the custodian as being money which, but for the existence of a state of war, would have been payable to or for the benefit of—
- (i) an individual resident in any enemy territory which is not under the sovereignty of a Power with whom Her Majesty is at war, or in any area in relation to which the provisions of the principal Act apply as they apply in relation to enemy territory,
- (ii) an individual or body of persons (whether corporate or unincorporate) carrying on business in any such territory or area, or
- (iii) any body of persons (whether corporate or unincorporate) carrying on business in any place, and controlled by any such individual or body of persons as is mentioned in subhead (i) or subhead (ii) of this head ;
- (b) any property so specified, being property which, or the right of transfer of which, has been vested in the custodian as being property belonging to, or held or managed on behalf of, any such individual or body of persons as is mentioned in subhead (i), subhead (ii) or subhead (iii) of head (a) of this sub-paragraph.
- (4) Notwithstanding anything in the said section seven, a custodian shall, if the Treasury so directs, pay or transfer to such person as may be specified in the direction, being a person who appears to the Treasury to exercise, in any of Her Majesty's dominions, in any other territory to which Her Majesty has power to extend the provisions of the principal Act, or in any territory of a Power allied with Her Majesty or of any other Power for the time being at war with any Power with whom Her Majesty is for the time being at war, the functions of a custodian of enemy property—
- (a) any moneys so specified which have been paid to the custodian on grounds other than those specified in head (a) of the last foregoing sub-paragraph ;
- (b) any property so specified, being property which, or the right of transfer of which, has been vested in the custodian on any grounds other than those specified in head (b) of the said sub-paragraph.

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- (5) An order made under the said section seven may empower a custodian, acting under a general or special direction given by the Treasury or by the Board of Trade with the sanction of the Treasury, to reduce or remit any of the fees required to be paid to him under any such order.
- (6) The Board of Trade may, if in their opinion it is expedient in the national interest so to do, direct—
- (a) that a custodian in exercising any power conferred on him to sell any shares in, or stock or other securities of, any body corporate may sell the shares, stock or securities to a person notwithstanding that he has not made the highest offer therefor; and
  - (b) that a custodian in exercising any such powers as aforesaid shall sell any such shares, stock or securities as aforesaid to a person specified in the direction or to a person who is one of a class of persons so specified, without seeking any other offers for the shares, stock or securities,
- and, notwithstanding anything in the said section seven, the sale shall be effected accordingly.
- (7) A custodian in exercising any power conferred on him to transfer or to sell any shares in, or stock or other securities of, a body corporate which, or the right to transfer which, have been vested in him shall not be bound by any provision in any article of association, byelaw or other rule governing the body corporate which restricts the right to transfer shares, stock or other securities or imposes any conditions as to the price at which, or the persons to whom, shares, stock or other securities are to be offered or sold, and where a custodian in exercise of that power executes a transfer (including a transfer by way of sale) of shares, stock or other securities, the body corporate shall, upon the receipt of the transfer, do all things necessary to give effect thereto notwithstanding any such provision as aforesaid and notwithstanding that the custodian is not in possession of the certificate, scrip or other document of title relating to the shares, stock or securities.
- 7 (1) Where under the principal Act the right to transfer any securities registered or inscribed in a register, branch register or other book kept in the United Kingdom has been vested in a custodian of enemy property on the grounds that the securities belonged to, or were held or managed on behalf of.—
- (a) an individual resident in any enemy territory which is not under the sovereignty of a Power with whom Her Majesty is at war, or in any area in relation to which the provisions of the principal Act apply as they apply in relation to enemy territory,
  - (b) an individual or body of persons (whether corporate or unincorporate) carrying on business in any such territory or area, or
  - (c) any body of persons (whether corporate or unincorporate) carrying on business in any place and controlled by any such individual or body of persons as is mentioned in head (a) or (b) of this sub-paragraph,
- and the right to transfer the securities has been exercised so as to vest the securities in the custodian or any person acting under his directions, the Board of Trade may by order direct that this paragraph shall apply to the securities.
- (2) The Board of Trade shall forthwith give notice of the making of an order under the last foregoing sub-paragraph to the company or other body in whose book the securities in question are registered or inscribed, and thereupon—

- (a) the securities shall by virtue of this paragraph and without more vest in the person who would have been entitled thereto but for the vesting in the custodian of the right to transfer the securities ;
  - (b) the said company or other body shall cause the securities to be registered or inscribed in the name of the person in whose name they were registered or inscribed immediately before the exercise by the custodian of his right to transfer the securities :
  - (c) notwithstanding anything in head (b) of this sub-paragraph, where the person mentioned therein is not the same as the person in whom the securities are vested by virtue of this paragraph, and before the securities have been registered or inscribed in pursuance of head (b) of this sub-paragraph the person in whom they are so vested has submitted to the said company or body proof to their satisfaction of his title thereto, the company or body may cause the securities to be registered or inscribed in his name.
- (3) The vesting, registration or inscription of any securities in pursuance of this paragraph shall be without prejudice to any lien or charge to which they were subject immediately before the time at which the order in question was revoked, and shall not affect anything done before that time.
- (4) In this paragraph the expression " securities " means annuities, stock, shares, bonds, debentures or debenture stock.
- 8       After subsection (1) of section fifteen of the principal Act there shall be inserted the following subsection:—
- “(1A) The Board of Trade may by order direct that the provisions of this Act 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.”
- 9       (1) Where after the commencement of this Act any area ceases to be enemy territory as defined in the principal Act (whether by reason of the occupation thereof by Her Majesty or a Power allied with Her Majesty or by reason of its no longer being in the occupation of a Power with whom Her Majesty is at war, or for any other reason) that area shall, for the purposes of sections three A, four, five and seven of the principal Act (which relate to the control and winding up of businesses, negotiable instruments and choses in action, the transfer and allotment of securities, and the collection of enemy debts and custody and release of enemy property) and, save as expressly provided by any such order, for the purposes of any order made under the said section seven, be treated as if, until such time as the Board of Trade may by order specify, there had been no such Cessation.
- (2) The foregoing provisions of this paragraph shall apply in relation to any area which ceased to be enemy territory, as defined in the principal Act, on or after the twenty-second day of July, nineteen hundred and forty-three, but before the commencement of this Act (other than an area which, on the twenty-eighth day of September, nineteen hundred and forty-four, was an area under the sovereignty of a Power with whom His late Majesty was then at war) as they apply to any area ceasing to be enemy territory, as so defined, after the commencement of this Act.
- (3) Where under subsection (1a) of section fifteen of the principal Act (which empowers the Board of Trade by order to direct that the principal Act shall apply in relation to any area specified in the order as it applies in relation to enemy territory) an order has been made applying to any area and that order is, whether before or after the commencement of this Act, revoked or varied so that it no longer applies to that

area, the foregoing provisions of this paragraph shall, with the necessary adaptations, apply in relation to that area as if, on the revocation, or, as the case may be, the variation, of the order, the area had ceased to be enemy territory as defined in the principal Act.

- 10 (1) Any order or direction made or given under any provision of Regulations four, four A and six of the Defence (Trading with the Enemy) Regulations, 1940, which is in force at the commencement of this Act shall continue in force and have effect as if it had been made or given under the corresponding provision of this Schedule, and any order made, estimate prepared, certificate issued or petition presented by virtue of Regulation three A of the said Regulations which is in force at the commencement of this Act shall continue in force and have effect as if it had been made, prepared, issued or presented by virtue of paragraph 4 of this Schedule.
- (2) Any document referring to the Defence (Trading with the Enemy) Regulations, 1940, or any provision thereof shall be construed as referring to this Schedule or the corresponding provision, if any, of this Schedule.