
3. Custodian of Enemy Property

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| (1) <i>Order of 1939, as amended.</i> | (5) <i>Foreign Currency Accounts,</i>
p. 183. |
| (2) <i>Modifications of the 1939</i>
<i>Order, p. 144.</i> | (6) <i>Insolvency, p. 184.</i> |
| (3) <i>Order of 1945, as amended,</i>
p. 174. | (7) <i>Insurance, p. 186.</i> |
| (4) <i>Order of 1946, as amended,</i>
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(1) Order of 1939, as amended

THE TRADING WITH THE ENEMY (CUSTODIAN) ORDER, 1939,
DATED SEPTEMBER 16, 1939, MADE BY THE BOARD OF
TRADE UNDER SECTION 7 OF THE TRADING WITH THE
ENEMY ACT, 1939 (2 & 3 GEO. 6. C. 89).

1939 No. 1198

[*This Order (S.R. & O. 1939, II, p. 3202) is printed as amended by Orders,*
dated January 23, 1940 (S. R. & O. 1940 (No. 94) I, p. 1050); May 16,

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1940 (S.R. & O. 1940 (No. 734) I, p. 1050); May 30, 1941 (S.R. & O. 1941 (No. 765) I, p. 1138); February 26, 1942 (S.R. & O. 1942 (No. 342) I, p. 818); August 10, 1944 (S.R. & O. 1944 (No. 914) I, p. 1026.).]

The Board of Trade in exercise of the powers conferred upon them by Section 7 of the Trading with the Enemy Act, 1939, (hereinafter called "the Act") and of all other powers, enabling them in that behalf do hereby make the following Order:—

1.—(i) Any 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, and any money which is to be deemed for the purposes of the Act to be money which would, but for the existence of a state of war, be so payable, shall be paid to the Custodian

(ii) Without prejudice to the generality of the foregoing paragraph, there shall be paid to the Custodian in particular any 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, by way of:

- (a) dividends, bonus or interest, in respect of any shares, stock, debentures, debenture stock, bonds or other securities, issued by any company or government, or any municipal or other authority;
- (b) payment of any securities which have become payable on maturity or by being drawn for payment or otherwise;
- (c) interest or other payment in respect of any loan or deposit whether secured or unsecured;
- (d) profits or share of profits in any business, syndicate or other mercantile enterprise or adventure;
- (e) debt, including money in the possession of any bankers, whether on deposit or current account or whether held in trust or in custody for or for the benefit of an enemy;
- (f) money due under or in respect of any policy of assurance;
- (g) rent or other payment reserved out of or payable in respect of freehold or leasehold property or any interest in land or any manor;
- (h) payment in respect of any requisitioned property;
- (i) payment arising under any trust, will or settlement.

(iii) Any money which would, but for the provisions of Section 4 or Section 5 of the Act, be payable to any purported assignee, transferee or allottee, shall be paid to the Custodian.

(iv) Any money required to be paid under the foregoing paragraphs of this Article to the Custodian, shall be paid:

- (a) within fourteen days after the coming into force of this Order, if the money has become payable or would, but for the existence of a state of war, have become payable before the coming into force of this Order; or
- (b) within fourteen days after the day on which a person becomes an enemy, if the money is required to be paid to the Custodian by reason of that person being an enemy and the money has become

payable or would, but for the existence of a state of war, have become payable before the day on which that person becomes an enemy; or

- (c) in any other case, within fourteen days after the day on which the money becomes payable or would, but for the existence of a state of war, become payable.
- (d) in cases in which money would, but for the existence of a state of war, be payable in a foreign currency to or for the benefit of a person who is an enemy (other than cases in which money is payable under a contract in which provision is made for a specified rate of exchange), in English currency at the middle official rate of exchange fixed by the Bank of England on the date on which the payment became due to that person, or the middle rate of exchange for telegraphic transfers in London on that date, or if there was no such rate on that date at such rate as the Treasury may determine as appropriate for ascertaining the value in English currency of the money payable on that date.(a)

Provided that if the money would be payable in a foreign currency (not being enemy currency) and the person by whom the money is payable to the Custodian is able to make immediate payment in that foreign currency (otherwise than in notes or coin), payment shall be made either in that foreign currency or in English currency converted at the official buying rate of exchange fixed by the Bank of England as the Custodian may require.

In this sub-paragraph (i) the expression “foreign currency” means any currency other than English currency and (ii) the expression “enemy currency” means the currency of 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 currency as is for the time being declared by an Order of the Treasury to be “enemy currency”(b)

(v) Nothing in the foregoing provisions of this Article shall be taken to require payment to the Custodian of any money, the payment of which is authorised:

- (a) to some other person, 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
- (b) to a Clearing Office, under any order made under Section 1 of the Debts Clearing Offices and Import Restrictions Act, 1934. Provided that the provisions of this paragraph shall not affect any obligation of the Clearing Office to make payment to the Custodian of any money which is to be deemed for the purposes of the 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.

24 & 25 Geo.
5. c. 31.

(a) Sub-para. (d) added by S. R. & O. 1940 No. 94.

(b) Proviso added by S. R. & O. 1944 No. 914.

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(vi) Any person by whom any money is payable to the Custodian under this Order shall, unless he has previously done so, communicate the fact in writing to the Custodian for that part of the United Kingdom in which he resides or carries on business on or before the 24th day of June, 1941, or if the money becomes so payable after such date within fourteen days of the date on which the money is payable, and shall furnish such Custodian with such returns, accounts and other information and produce for his inspection such documents in relation thereto as the said Custodian may require.(a)

(vii) The Custodian shall have power to sue for and recover any moneys payable to him under this Order.(a)

(viii) Proceedings may be taken by the Custodian in the name of the Custodian of Enemy Property and no action brought shall abate or be affected by any change in the person nominated as Custodian.(a)

2.—(i) The Board of Trade, in any case where it appears to them to be expedient to do so, may by order vest in the Custodian such enemy property as may be prescribed or the right to transfer such other enemy property as may be prescribed. Any order so made by the Board of Trade is hereinafter referred to as “Vesting Order”.

(ii) The Custodian shall, except in so far as may be otherwise prescribed by the Vesting Order, have such powers with regard to the enemy property or the right to transfer enemy property vested in him by a Vesting Order as are prescribed by this Order.

15 & 16 Geo.
5. c. 19.

(iii) A Vesting Order as respects property of any description shall be of the like purport and effect as a vesting order as respects property of the same description made by the High Court under the Trustee Act, 1925, and shall be sufficient to vest in the Custodian any property or the right to transfer any property as provided by the Vesting Order without the necessity of any further conveyance, assurance or document.

7 Edw. 7.
c. 29.

(iv) If the benefit of an application made by or on behalf or for the benefit of an enemy or enemy subject for any patent is by order made under the Act vested in the Custodian, the patent may be granted to the Custodian as patentee and may, notwithstanding anything in Section 12 of the Patents and Designs Act, 1907, be sealed accordingly by the Comptroller General of Patents, Designs and Trade Marks, and any patent so granted to the Custodian shall be deemed to be property vested in him by such order as aforesaid.

3.—(i) The Custodian shall, subject to the provisions of the next succeeding paragraph and except in so far as the Board of Trade either generally or in any specific case may otherwise direct or order, hold any money paid to him under this Order and any property or the right to transfer any property vested in him under any Vesting Order until the termination of the present war, and shall thereafter deal with the same in such manner as the Board of Trade shall direct.

(ii) The Custodian, acting under a general or special direction of the Board of Trade, may at any time pay over any particular money paid

(a) Sub-paras. (vi) (vii) and (viii) added by S. R. & O. 1941 No. 765.

to him under this Order or transfer any particular property in respect of which a Vesting Order has been made to or for the benefit of a person who would have been entitled thereto but for the operation of the Act or any Order made thereunder or to any person appearing to the Custodian to be authorised by such person to receive the same.

(iii) Any money paid to the Custodian under this Order and any property in respect of which a Vesting Order has been made shall not be liable to be attached or otherwise taken in execution.

(iv) The receipt of the Custodian or any person duly authorised by him to sign receipts on his behalf for any money paid to him under this Order shall be a good discharge to the person paying the same.

4. No person shall, without the consent of the Board of Trade, save as directed by this Order transfer, part with or otherwise deal with the property of any enemy.

5.—(i) Any person who holds or manages for or on behalf of an enemy any property shall, within fourteen days after the coming into force of this Order (or, if the property comes into his possession or under his control after the coming into force of this Order or the person for or on behalf of whom property is held or managed, becomes an enemy after that date, then within fourteen days after the time when the property comes into the possession or under the control of the first mentioned person or the person for or on behalf of whom the property is held or managed becomes an enemy, as the case may be), by notice in writing communicate the fact to the Custodian, and shall furnish the Custodian with such returns, accounts and other information, and produce for inspection such documents in relation thereto, as the Custodian may require.

(ii) Any enemy subject who holds or manages any property or any person who holds or manages any property for or on behalf of an enemy subject shall furnish the Custodian with such returns, accounts and other information, and produce for inspection, such documents in relation thereto, as the Custodian may require.

(iii) Every company incorporated in the United Kingdom and every company which though not incorporated in the United Kingdom has a share transfer or share registration office in the United Kingdom shall, within fourteen days after the coming into force of this Order, by notice in writing communicate to the Custodian full particulars of all shares, stocks, debentures and debenture stock, bonds or other securities issued by the company which are held by or for the benefit of an enemy; and, if any shares, stock, debentures or debenture stock, bonds or other securities issued by any such company as aforesaid are held by or for the benefit of any person who becomes an enemy after the coming into force of this Order, the company shall, within fourteen days after the day on which that person becomes an enemy, by like notice communicate to the Custodian the like particulars in regard to that person.

(iv) Every partner of every firm, any partner of which has, at any time before the coming into force of this Order, become an enemy, or to which money has been lent for the purpose of the business of the firm by a person who so became an enemy, shall, within fourteen days after

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the coming into force of this Order, by Notice in writing communicate to the Custodian full particulars as to any share of profits or interest due to such enemy; and every partner of every firm, any partner of which becomes an enemy after the coming into force of this Order, or which a person who becomes an enemy has lent money for the purpose aforesaid before the day on which that person becomes an enemy, shall, within fourteen days after the day on which the partner or person concerned becomes an enemy, by like notice communicate to the Custodian the like particulars in regard to that partner or person.

6.—(i) Where, in exercise of the powers conferred upon him, the Custodian purposes to sell any share or stock forming part of the capital of any company, or any securities issued by the company, in respect of which a Vesting Order has been made, then any law or any regulation of the company to the contrary notwithstanding, the company may, with the consent of the Board of Trade, purchase the shares, stock or securities, and any shares, stock or securities so purchased may from time to time be re-issued by the company.

(ii) Where the Custodian executes a transfer of any shares, stock or securities which he is empowered to transfer by a Vesting Order, the company or other body in whose books the shares, stock or securities are registered shall, upon the receipt of the transfer so executed by the Custodian and upon being required by him so to do, register the shares, stock or securities in the name of the Custodian or other transferee notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the Custodian is not in possession of the certificate, script or other document of title relating to the shares, stock or securities transferred; but such registration shall be without prejudice to any lien or charge in favour of the company or other body, or any other lien or charge of which the Custodian has notice.

7. There shall be paid out of the monies paid to the Custodian in respect of any particular enemy to or retained by the Custodian in respect of his general administrative expenses fees equal to 2 per centum of

- (a) the amount of monies paid to him, and
- (b) the value of any property which is vested in him or of which the right of transfer is vested in him.

The value of any property for the purpose of assessing the fees shall be the price which in the opinion of the Board of Trade such property would fetch if sold in the open market. The fees in respect of such property may be retained out of any proceeds of the sale or transfer thereof or out of any income accrued therefrom.

Provided that the Custodian acting under a general or special direction of the Treasury or the Board of Trade with the sanction of the Treasury may reduce or remit any of the fees which are required to be paid to or retained by the Custodian under this paragraph.(a)

(a) Para. 7 as amended by S. R. & O. 1940 No. 732 and 1942 No. 342.

8.—(i) Any payment required to be made under this Order to the Custodian shall be made to the Custodian for that part of the United Kingdom in which the person making the payment resides or carries on business, and if in any case any doubt should arise, then to such Custodian as the Board of Trade shall direct.

(ii) Where any property or the right to transfer any property has been vested in the Custodian for any part of the United Kingdom, the Board of Trade may direct:

(a) the transfer of the property to the Custodian of another part of the United Kingdom;

(b) the payment to the Custodian of another part of the United Kingdom of the dividend or other income which has arisen or may thereafter arise from any such property.

(iii) Where any money has been paid to the Custodian for any part of the United Kingdom, the Board of Trade may direct the payment over of such money to the Custodian for another part of the United Kingdom.

9.—(i) The Interpretation Act, 1889, shall apply to this Order as if it were an Act of Parliament. 52 & 53 Vict.
c. 63.

(ii) In this Order the expression “enemy” has the same meaning as that assigned to it in the Act and the expressions “enemy property”, “property” and “Prescribed” have the same meanings as those assigned to them in Section 7 of the Act, and references to “the Custodian” shall be construed as references to such Custodian of enemy property for any part of the United Kingdom as prescribed by this Order or any Vesting Order.

10.—(i) In the application of this Order to Scotland—

(a) any reference to rent or other payment reserved out of or payable in respect of freehold or leasehold property or any manor shall be construed as a reference to any rent or other payment payable under or stipulated for in a lease or any sum payable by virtue of any feu contract, disposition, contract of ground annual or other deed constituting a burden or heritable property;

(b) for any reference to a vesting order made by the High Court under the Trustee Act, 1925, there shall be substituted a reference to a warrant to complete title granted under section twenty-two of the Trusts (Scotland) Act, 1921; and 11 & 12 Geo.
5. c. 58.

(c) “attached or otherwise taken in execution” means arrested in execution or in security or otherwise affected by diligence.

(ii) In the application of this Order to Northern Ireland the reference to the Trustee Act, 1925, shall be construed as a reference to the Trustee Act, 1893. 56 & 57 Vict.
c. 53.

11. This Order may be cited as the Trading with the Enemy (Custodian) Order, 1939, and shall come into force on the 18th day of September, 1939.

Dated the 16th day of September, 1939.

W. B. Brown,

Secretary of the Board of Trade.