

## BECHUANALAND PROTECTORATE.

No. 40 OF 1939.

(Promulgated 8th September, 1939.)

By HIS EXCELLENCY THE HIGH COMMISSIONER  
Entitled the Bechuanaland Protectorate Trading with  
the Enemy Proclamation, 1939.

Whereas it is expedient to make provision prohibiting persons resident, carrying on business or being in the Bechuanaland Protectorate (hereinafter referred to as "the Territory" from trading or having commercial, financial or other intercourse with the enemy:

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

### TRADING WITH THE ENEMY AND MATTERS RELATING THERETO.

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

*Penalties for trading with the enemy. Penalties amended Proc 17/41*

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

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

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

(2) For the purposes of this Proclamation 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 Proclamation; or

*amended by  
Proc 17/41*

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

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

- (i) done anything under an authority given generally or specially by, or by any person authorised in that behalf by, the High Commissioner,
- (ii) received payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the person receiving payment had been performed before the commencement of the war by reason of which the person from whom the payment was received became an enemy.

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

(4) A prosecution for an offence of trading with the enemy shall not be instituted in the Territory except by or with the consent of the Attorney General for His Majesty's High Commission Territories:

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.

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

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

*amended by  
Proc 17/41*

- (b) any individual resident in enemy territory,
- (c) any body of persons (whether corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this section, is an enemy, or
- (d) any body of persons constituted or incorporated in, or under the laws of, a State at war with His Majesty;

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

(2) The High Commissioner with the prior approval of the Secretary of State may by Notice in the *Gazette* direct that any person specified in the Notice shall, for the purposes of this Proclamation, be deemed to be, while so specified, an enemy.

3. (1) The Resident Commissioner, if he thinks it expedient for securing compliance with section *one* of this Proclamation 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  
supervisor  
of  
businesses.

(2) If, on a report made by an inspector as respects any business, it appears to the Resident Commissioner that it is expedient, for securing compliance with section *one* of this Proclamation, that the business should be subject to supervision, the Resident Commissioner may appoint a person (hereafter in this section referred to as "a supervisor") to supervise the business, with such powers as the Resident Commissioner 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 conviction before a Subordinate Court, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

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

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

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

*for sect 30(1) see Procs 41*

Transfer of negotiable instruments and choses in action by enemies.

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

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

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

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

(4) Where a claim in respect of a negotiable instrument or chose in action is made against any person who has reasonable cause to believe that, if he satisfied the claim, he would be thereby committing an offence of trading with the enemy, that person may pay into the High Court 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.

5. (1) If—

- (a) any securities to which this section applies are transferred by or on behalf of an enemy, or
- (b) any such securities, being securities issued by a joint-stock company within the meaning of the Cape Joint-Stock Companies Limited Liability Act (No. 23 of 1861) are allotted or transferred to, or for the benefit of, an enemy subject without the consent of the High Commissioner;

Transfer  
and  
allotment  
of  
securities.

then, except with the sanction of the High Commissioner, 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 High Commissioner.

(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 conviction before a Subordinate Court, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

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

Purchase  
of enemy  
currency.

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

(2) In this section the expression "enemy currency" means any such notes or coins as circulate as currency in any area under the sovereignty of a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a Power allied with His Majesty, or any such other notes or coins as are for the time being declared by an order of the Treasury to be enemy currency. *For sect 6 also see*

*Proc 27/40*

GENERAL AND SUPPLEMENTARY  
PROVISIONS.

False  
statements  
and  
obstruc-  
tion.

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

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

Offences by  
corpora-  
tions.

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

Expenses  
of and  
exercise of  
powers by  
the High  
Com-  
missioner or  
Resident  
Com-  
missioner.

9. (1) The expenses incurred for the purposes of this Proclamation by the High Commissioner shall be defrayed out of the revenues of the Protectorate.

(2) Anything required or authorised under this Proclamation to be done by, to or before the High Commissioner or Resident Commissioner may be done by, to or before any person authorised in that behalf by the High Commissioner or Resident Commissioner, as the case may be.

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

Evidence of authority or sanction of Secretary of State, High Commissioner, or Resident Commissioner.

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

Interpretation.

“ enemy subject ” means—

- (a) an individual who, not being either a British subject or a British protected person, possesses the nationality of a State at war with His Majesty, or
- (b) a body of persons constituted or incorporated in, or under the laws of, any such State; and

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

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

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

(4) For the purposes of this Proclamation, 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 Proclamation relating to offences by bodies corporate, a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of that body act:

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

(5) Any power conferred by the preceding provisions of this Proclamation to make an order shall be construed as including a power, exercisable in the like manner, to vary or revoke the order.

Saving of  
rights of  
Crown.

12. This Proclamation shall be without prejudice to the exercise of any right or prerogative of the Crown.

Short title,  
commence-  
ment and  
repeal.

13. (1) This Proclamation may be cited as the Bechuanaland Protectorate Trading with the Enemy Proclamation, 1939, and shall have force and take effect from the fourth day of September, 1939.

Provided that a person shall not, by virtue of this sub-section, be liable to any penalty in respect of anything done by him before the date of commencement of this Proclamation which, if it had been done in England, would not have been unlawful in common law.

(2) The Proclamations mentioned in the Schedule to this Proclamation and the notices issued thereunder are hereby repealed.

GOD SAVE THE KING.

Given under my Hand and Seal at Capetown this Fourth day of September, One thousand Nine hundred and Thirty-nine.

W. H. CLARK,  
High Commissioner.

By Command of His Excellency  
the High Commissioner.

H. E. PRIESTMAN,  
Administrative Secretary.

SCHEDULE.

PROCLAMATIONS REPEALED.

1914.

No. 69..... The Bechuanaland Protectorate Trading with the  
Enemy Proclamation, 1914.

No. 88..... The Bechuanaland Protectorate Trading with the  
Enemy (Turkey) Proclamation, 1914.

1915.

No. 12..... The Bechuanaland Protectorate Trading with the  
Enemy (Occupied Territory) Proclamation, 1915.

No. 23..... The Bechuanaland Protectorate Trading with the  
Enemy (Amending) Proclamation, 1915.

No. 35..... The Bechuanaland Protectorate Trading with the  
Enemy (Amending) Proclamation, 1915.

No. 48..... The Bechuanaland Protectorate Trading with the  
Enemy (Bulgaria) Proclamation, 1915.

1919.

No. 35..... The Bechuanaland Protectorate Trading with the  
Enemy (No. 1 Amending) Proclamation, 1919.

No. 36..... The Bechuanaland Protectorate Trading with the  
Enemy (No. 2 Amending) Proclamation, 1919.

No. 37..... The Bechuanaland Protectorate Trading with the  
Enemy (No. 3 Amending) Proclamation, 1919.

1923.

No. 62..... The Bechuanaland Protectorate Trading with the  
Enemy (Turkey) Proclamation, 1923.

## Lists of articles

- HCN 151/39. Warlike stores
- " 174/49 Bank Notes
- " 207/38 Gold
- " 125/40 Mose Raffin iron Millot
- " 157/40 Horses Hales
- " 10/41 Wattle Mats Minerals etc
- " 13/41 Import aluminium
- " 10/41 Turkey Spain etc.
- " 130/41 Films, Plans Maps.
- " 210/42 re exports of articles from B.P.T. etc
- " 179/43 goods by Parcel Post from U.K.
- " 253/42 " " " " " " " "