

Borrowing (Control and Guarantees) Act 1946 ^{F1}(repealed)

1946 CHAPTER 58 9 and 10 Geo 6

An Act to provide for the regulation of the borrowing and raising of money, the issue of securities, and the circulation of offers of securities for subscription, sale or exchange, to enable the Treasury to guarantee loans in certain circumstances, and for the purposes connected with the matters aforesaid. [12th July 1946]

Textual Amendments

F1 Act repealed (11.2.1991) by [Government Trading Act 1990 \(c. 30\)](#), s. 4(2), [Sch. 2 Pt. I](#); S.I. 1991/132, [art. 2](#)

Modifications etc. (not altering text)

C1 Act extended by [Transport Act 1968 \(c. 73\)](#), s. 12(6)

1 Treasury control of borrowing,etc.

- (1) The Treasury may make orders for regulating, subject to such exemptions as may be specified in the orders, all or any of the following transactions, that is to say—
- (a) the borrowing of money in Great Britain where the aggregate of the amount of money borrowed under the transaction and of any of the other amounts so borrowed by the same person in the previous twelve months (including any period before the passing of this Act) exceeds ten thousand pounds;
 - (b) the raising of money in Great Britain by the issue, whether in Great Britain or elsewhere, by any body corporate, of any shares in that body corporate;
 - (c) the issue for any purpose—
 - (i) by any body corporate of any shares in or debentures or other securities of that body corporate, if either the body corporate is incorporated under the law of England or Scotland or the shares, debentures or other securities are or are to be registered in England or Scotland: or

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- (ii) By any Government, other than His Majesty’s Government in the United Kingdom, of any securities of that government which are or are to be registered in England or Scotland;
- (d) the circulation in Great Britain of any offer for subscription, sale or exchange of—
 - (i) any shares in or debentures or other securities of any body corporate not incorporated under the law of England or Scotland; or
 - (ii) any securities of any Government other than His Majesty’s Government in the United Kingdom:
Provided that paragraph (a) of this subsection shall not apply to the borrowing of money by any person . . . ^{F2} in the ordinary course of his business from a person carrying on a banking undertaking.
- (2) The provisions of this section shall apply in relation to units under a unit trust Scheme as they apply in relation to shares in a body corporate, but as if—
 - (a) any reference to the issue of shares in a body corporate by that body corporate where a reference to an issue of units for the purpose of the scheme; and
 - (b) any reference to shares in a body corporate incorporated, or not incorporated, under the law of England or Scotland were a reference to units issued under a scheme governed or not governed, by the law of England or Scotland.
- (3) The provisions of the Schedule to this Act (which relate to enforcement and penalties) shall have effect in relation to orders made under this section but the rights of the persons concerned in any transaction shall not be affected by the fact that the transaction was in contravention of any such orders.

Textual Amendments
F2 S. 1 (1) (d) words repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81: 1\)](#) , s. 194 (2), 195 (2), Sch. 12 Pt. I

2 ^{F3}

Textual Amendments
F3 S. 2 repealed by [Industrial Expansion Act 1968, \(c. 32\), Sch. 4](#) except as repeals any loan for which a guarantee under that section is in force at 30. 5. 1968.

3 Provisions as to orders.

- (1) Any order made under this Act shall be laid before Parliament as soon as may be after it is made, and if either House of Parliament within the period of forty days beginning with the day on which any order is laid before it, resolves that the order be annulled, the order shall cease to have effect, but without prejudice to anything previously done thereunder or to the making of a new order.
- (2) ^{F4}
- (3) ^{F4}

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- (4) An order made under this Act may be varied or revoked by a subsequent order.

Textual Amendments

F4 Ss. 4, 5 repealed by Statute Law (Repeals) Act 1986 (c. 12), s. 1(1), Sch. 1 Pt. XII

4 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say—

“issue” includes reissue;

“local authority” means any authority being within the meaning of the ^{M1}Local Loans Act, 1875, or the ^{M2}Local Authorities Loans (Scotland) Act, 1891, an authority having power to levy a rate;

“registered”, in relation to any security, includes inscribed, “registered in England or Scotland” means, in relation to securities, registered in a register in England or Scotland, and “a register” includes any book in which securities are registered;

“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, (described whether 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.

- (2) Any reference in this Act to the borrowing of money—

- (a) includes a reference to the making of any arrangement by which a sum which would otherwise be payable at any date is payable at a later date, and includes in particular the making of any arrangement by which the whole or any part of the price of any property is allowed to remain unpaid either for a fixed period or indefinitely, but
- (b) does not include a reference to the acceptance by a person carrying on a banking undertaking of moneys to be placed to the credit of a current or deposit account.

- (3) A person shall be deemed for the purposes of this Act to borrow or raise money in Great Britain if the money is made available in Great Britain, or, in any such case as is mentioned in subsection (2) of this section, if the money would, but for the arrangement in question, have been payable in Great Britain, and, without prejudice to the preceding provisions of this subsection, a person shall also be deemed for the

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purposes of this Act to borrow money in Great Britain if the money is borrowed on the security of property in Great Britain.

- (4) An arrangement to provide any guarantee, or to mortgage or charge any property, to secure the repayment of any sum borrowed before the arrangement is made, being a sum which is already due when the arrangement is made or which is payable not later than six months, or such longer or shorter period as may be prescribed by order of the Treasury, after the arrangement is made, shall be deemed for the purposes of the two last preceding subsections to be an arrangement by which that sum is payable at a date later than it would otherwise have been payable.
- (5) 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 the three last preceding subsections 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.

Marginal Citations

- M1** 38 & 39 Vict. c. 83
M2 54 & 55 Vict. c. 34

5 Expenses.

Any expenses incurred by the Treasury in the administration of this Act shall be paid out of the moneys provided by Parliament.

6 Northern Ireland.

- (1) The provisions of this Act . . . ^{F5} shall not extend to Northern Ireland.
- (2) ^{F6}

Textual Amendments

- F5** s. 6(1) words repealed by Northern Ireland Constitution Act 1973 (c. 36), **Sch. 6 Pt. I**
F6 S. 6(2) repealed by Northern Ireland Constitution Act 1973 (c. 36), **Sch. 6 Pt. I**

7 Short title.

This Act may be cited as the Borrowing (Control and Guarantees) Act 1946.

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SCHEDULE

Section 1

PROVISIONS AS TO ENFORCEMENT AND PENALTIES

- 1 Any person who contravenes any provision of any order made under this Act shall be liable —
- (a) On summary conviction to imprisonment for not more than three months or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine; or
 - (b) on conviction on indictment to imprisonment for not more than two years or to a fine not exceeding whichever is the highest of the following amounts—
 - (i) five hundred pounds; or
 - (ii) the amount of any money borrowed or raised by the transaction in question; or
 - (iii) the nominal or market value, whichever is the greater, of any securities to the issue, sale or other disposal of which (whether actual or projected) the transaction in question relates,or to both such imprisonment and such fine.
- 2 —:
- (1) The Treasury may give to any person directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to them, or to any person designated in the directions as a person authorised to require it, any information in his possession or control which the Treasury or the person so authorised, as the case may be, may require for the purpose of securing compliance with, or detecting evasion of, any order made under this Act:
Provided that if a person required to give any information under this paragraph objects to the giving thereof on the ground that it might tend to incriminate [^{F7}him, he]^{F7}[that person or the husband or wife of that person] shall not be bound to give that information.
Nothing in this paragraph shall be taken to require any person who has acted as counselor or solicitor for any person to disclose any privileged communication made to him in that capacity.
- (2) The Treasury may give to any person directions requiring him, within such time and in such manner as may be specified in the directions, to produce such books, accounts or other documents (herein after referred to as “documents”) in his possession or control as may be required for the purpose of securing compliance with, or detecting evasion of, any order made under this Act by the Treasury or by any person designated in the directions as a person authorised to require them and any documents produced by a person in compliance with any such requirements may be given in evidence against him notwithstanding that they may tend to incriminate him.

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Nothing in this paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

- (3) If a justice of the peace is satisfied by information on oath given by an officer of the Treasury or with the authority of the Treasury that there is reasonable ground for suspecting that there are at any premises any documents which a person ought to have produced under the last preceding sub-paragraph but has failed or refused to produce, he may grant a search warrant authorising any constable, together with any other persons named in the warrant and any other constables, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) at any time within one month from the date of the warrant, and to search the premises and take possession of any documents appearing to be such documents as aforesaid or take in relation thereto any other steps which may appear necessary for preserving them and preventing interference therewith.

In this sub-paragraph the expression “a justice of the peace”, in Scotland includes the sheriff.

- (4) Any person who—
- (a) fails or refuses to comply with any requirement to furnish information or produce documents imposed on him by or under this paragraph; or
 - (b) with intent to evade the provisions of this paragraph or of any order made under this Act destroys, mutilates, defaces, secretes or removes any documents; or
 - (c) obstructs any person exercising any powers conferred on him by or under this paragraph,

shall be liable, on summary conviction, to imprisonment for not more than three months or to a fine not exceeding [^{F8}level three on the standard scale] or to both such imprisonment and such fine.

Textual Amendments

- F7** [Sch. para. 2\(1\)](#): In the proviso, words from “that” to “that person” substituted (E.W.) for words “him, he” by [Civil Evidence Act 1968 \(c. 64, SIF 47\)](#) , s. 17 (3) , Sch.
- F8** [Sch. 2 para. 2 \(4\)](#) words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and (s.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), 289F, 289G

- 3 (1) No proceedings for an offence under this Act shall be instituted in England except by or with the consent of the Director of Public Prosecutions.
- (2) Any proceedings which may be taken against any person under this Act may be taken at any time not later than twelve months from the date of the commission of the alleged offence or within three months from the date on which evidence sufficient in the opinion of the Treasury to justify the proceedings comes to the knowledge of the Treasury, or, where the person in question was outside Great Britain at that date, within twelve months from the date on which he first lands in Great Britain thereafter whichever of the said periods last expires.

For the purposes of this sub—paragraph, a certificate of the Treasury as to the date on which such evidence as aforesaid came to the knowledge of the Treasury shall be conclusive evidence thereof.

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This sub—paragraph shall, in its application to Scotland, have effect as if for the references to evidence sufficient to justify a prosecution there were substituted references to evidence sufficient to justify a report to the Lord Advocate with a view to consideration of the question of prosecution.

- (3) Proceedings against any person in respect of an offence under this Act may be taken before the appropriate court in Great Britain having jurisdiction in the place where that person is for the time being.
- (4) Where an offence under this Act has been committed by a body corporate (other than a local authority), every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

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