

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Borrowing (Control and Guarantees) Act 1946 (repealed). (See end of Document for details)*

## 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 [<sup>F1</sup>him, he]<sup>F1</sup>[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, secrets 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 [<sup>F2</sup>level three on the standard scale] or to both such imprisonment and such fine.

#### **Textual Amendments**

- F1** [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.
- F2** [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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