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CABINET

EXCHANGE CONTROL BILL

MEMORANDUM BY THE SOLICITOR-GENERAL

I think it right to draw the attention of my colleagues to certain features of the above Bill. It is much more drastic than any Act which at present forms part of our legislation, but at the same time it is designed to be watertight in its operation and would be useless if it does not achieve this purpose. I have with the Chancellor of the Exchequer and his advisers examined each Clause, and a very strong case can be put up with regard to each Clause in its present form that anything less drastic would be ineffective.

2. I set out some examples to show the drastic nature of the Bill :—

(a) Clause 4 provides, *inter alia*, that "except with the permission of the Treasury no person shall . . . in the United Kingdom . . . make any payment to or for the credit of a person who is resident outside the scheduled territories." This Clause would make it an offence to pay a bus fare for an American friend or to pay bridge winnings to an American friend in this country. Clause 1, sub-section 2, provides that "A person shall comply with such conditions as to the use to which" foreign currency "may be put as may from time to time be notified to him by the Treasury." This enables the Treasury in the case of the £75 that a tourist is able to export, to say precisely what he is to do with it; for example, that he must not purchase souvenirs or expend it in any particular way, *e.g.*, in buying the literature of a particular political party.

(b) Clause 41 (5) provides that "the obligations and prohibitions imposed by this Act shall . . . apply to all persons notwithstanding that they are not in the United Kingdom and are not British subjects, in other words, to anybody in any part of the world. Paragraph 1 of Part II of the Fifth Schedule provides that "any person in or resident in the United Kingdom who contravenes any requirement imposed on him by or under this Act . . ." shall be guilty of an offence punishable under the Act. Clause 40, sub-section 2, provides that "the Treasury may give directions declaring that for all or any of the purposes of this Act a person is to be treated as resident or not resident in such territories as may be specified in the directions." The combination of these sections leads to the result, on their strict reading in any event, that an American subject in America is liable to comply with the requirements of the Act, and the Treasury are given power to declare that any such person is resident for the purposes of the Act in the United Kingdom, with the result that he could be prosecuted if he should come to this country in the event of his having in the United States failed to comply with any provision of the Act. The effect of this may be considered in connection with Clause 1, sub-section 1, which provides, *inter alia*, that "no person resident in the United Kingdom other than an authorised dealer shall outside the United Kingdom buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorised dealer." An American, therefore, who lent a million dollars in the United States to a person other than an authorised

dealer could theoretically, if the Treasury had given a direction with regard to him that he should be deemed to be resident in the United Kingdom, be prosecuted in respect of this loan. He could then, under Part II of Schedule V, paragraph 1, sub-paragraph 3, be prosecuted summarily and imprisoned for not more than three months and fined £500. He could also by the Court of Summary Jurisdiction be ordered to forfeit the million dollars.

- (c) Clause 6 provides that "no person resident in the United Kingdom shall outside the United Kingdom make any payment to or for the credit of a person resident in the scheduled territories . . . . in association with . . . . the acquisition by any person, of property which is outside the scheduled territories." Theoretically, if an American in the United States paid to his broker a million dollars to acquire American shares for his wife he would be liable, if the Treasury had given a direction that he and his broker should be regarded as resident in this country, to be prosecuted summarily under the Act if he should come to England.

3. The instances given are, of course, theoretical in the sense that they are possible if the Treasury exercise their powers unreasonably. On the other hand, cases are bound to arise in which the Treasury may desire to go to some lengths in this direction. The control cannot operate unless the Treasury have a power to control the transactions of Americans who, for example, spend part of their time in this country and part of their time abroad, *e.g.*, questions might arise with Americans who spend part of the year in Scotland, or American business men who frequently travel between the United States and this country. It is, of course, always possible that foreign countries may retaliate by passing legislation which would give them similar powers over British subjects.

4. Many clauses in the Bill are of necessity moreover purposely phrased in such a way as to be wide in their scope, with the result that there must be considerable uncertainty as to their effect. I have already mentioned the words "in association with" in Clause 6. Clause 11 is a further example. It provides, "Except with the permission of the Treasury no person resident in the United Kingdom shall do any act which is calculated to secure, or forms part of a series of acts which together are calculated to secure, that capital moneys payable on a security registered in the United Kingdom are paid outside the United Kingdom." It would be difficult to predicate in a great many cases whether any act comes within this description.

5. I call attention to the above features of the Act because, quite apart from the protest which its stringency will call forth from the Opposition and the Conservative Press, the Courts will not like this type of legislation and will attempt to whittle it down. Moreover, in the House of Lords there may be very determined opposition to it. I have, however, examined it clause by clause with the experts on exchange control in the Treasury and I feel that they do establish their case that anything less stringent would not meet the purpose intended to be achieved, and indeed would be useless and easy to circumvent. Personally, therefore, whilst there are amendments in detail which I feel we should concede in Committee, I am prepared to defend the Bill in the House of Commons, since I feel nothing less will be adequate to accomplish the obviously necessary purpose of the Bill. The White Paper which I understand is to be published should, I think, be very explicit as to the manner in which it is proposed that the Treasury will operate the Bill.

F. S.

*Law Officers' Department,*  
31st October, 1946.

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