

C.S.

L E G A L.

(Ordinances & Acts.)

WAR/W2H/4#18

19 40.

No. 139/40.

Secretary of State.

SUBJECT.

19 40.

5th June.

THE TREACHERY ACT, 1940.

Previous Paper.

MINUTES.

1-2.

S. of S. Circ. despatch of 5/6/40

G.E.

(3)
My advice is "not yet". The model regⁿ. 27 covers acts to "assist the enemy or to prejudice the public safety, the defence of the Colony or the efficient prosecution of the war". In our own Def. Reg^{ns}. it is in no. 25.

AB 16/11/40

(4)
I agree

|||||

17/8/40

P.A

5. Circular saving telegram from S. of S. of 5/11/40.

(6).

G.E.

In view of the arguments in para 3 of (5) I think we should now amend.

KB
30/3

Subsequent Paper.

(7)

L.A.
H.F. wd be grateful for your views as to whether
we should amend or not.

KB.
2/3

(8)

H. B. S.

Section 1 of the Treasury Act, 1940 covers the
same ground as our Regulation 25 except
that "any act which is likely to assist the
enemy" in our Regs., is qualified by "any
act which is designed or likely to give
assistance to the conduct, military or air
operations of the enemy" in the Act.

Agree that the anomaly to which the
S.O.S. refers in Para. 3 of Part 5 should not
be allowed to continue. I think we should
amend Reg. 25 accordingly.

2/4/43.

Ab.
L.A.

(9)

G.F.
As advised?

KB.
2/4

Yes Ab. 6/14/43

(16)

L.A.

Could I have a draft for ~~it~~ please.

KB.
8/4

H. B. S.

Herewith

(11)

12-4-43.

Ab.
L.A.

12.

(13)

G.F.

Order submitted for signature.

KB.
13/4

Ab.

C.S.O. No. 139/40.

Inside Minute Paper.

Sheet No. 2.

14. Minute to Registrar - General of 19/6/43.
15. Despatch, No. 32 to S. of S. of 19.6.43.

P.H.

CIRCULAR (2)

Downing Street,

5th June, 1940.

Sir,

I have the honour to transmit to you for your information copies of the Treachery Act, 1940 (3 and 4, Geo. VI, Chapter 21). The Act imposes the death penalty for treachery and provides, in certain circumstances, for trial before a Court Martial.

2. I have to invite your attention in particular to Section 4 of the Act, which provides inter alia that the Act shall apply to anything done by a British subject elsewhere than in a Dominion, India, Burma or Southern Rhodesia. If a British subject commits an offence under the Act in a Colonial Dependency, he would be liable to be tried under the Act in the United Kingdom if he is subsequently found there. If a British subject or an alien commits an offence of the kind specified in the Act in a Colonial Dependency, he would at present be guilty of an offence against the Colonial Defence Regulation corresponding to the model Colonial Defence Regulation No. 27. The maximum penalty under that regulation is imprisonment for life. If, having regard to local conditions, you consider that it is necessary that the death penalty should be provided for such offences, I see no objection to the repeal of your Colonial Defence Regulation

The Officer Administering
the Government of

corresponding to the model Colonial Defence Regulation No. 27, and the enactment in its place of a regulation following the wording of Section 1 of the Treachery Act. It will not, however, be possible to provide, by a Defence Regulation, for the trial in a Colonial Dependency of such offences by Courts Martial, in view of the provisions of Section 1(5) of the Defence Act, 1939.

I have the honour to be,

Sir,

Your most obedient, humble servant,

LLOYD.

(1)

Treachery Act, 1940.

3 & 4 GEO. 6. CH. 21.

ARRANGEMENT OF SECTIONS.

Section.

1. Death penalty for treachery.
2. Prosecution, trial and punishment of offences.
3. Joinder of charges and place of trial of offences.
4. Extent of Act.
5. Interpretation.
6. Duration.
7. Application to Scotland and to Northern Ireland.
8. Short title.

SCHEDULE.—Amendments to Naval Discipline Act,
Army Act and Air Force Act.



CHAPTER 21.

An Act to make further provision for the trial and punishment of treachery. [23rd May 1940.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. If, with intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of felony and shall on conviction suffer death. Death
penalty for
treachery.

2.—(1) Subject as hereinafter provided, persons charged with offences against this Act shall be prosecuted upon indictment, and if convicted shall be dealt with in like manner as persons convicted on indictment of murder: Prosecu-
tion, trial
and punish-
ment of
offences.

Provided that—

(a) the provisions of the Naval Discipline Act, the Army Act, and the Air Force Act, relating to offences punishable by ordinary law shall, in relation to persons subject to those Acts, apply to offences against this Act, and the provisions of those Acts specified in the first

column of the Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule :

- (b) any enemy alien may, if the Attorney-General so directs, be prosecuted for an offence against this Act before a court martial, and upon such a direction being given with respect to an enemy alien the Army Act shall apply for the purpose of his custody, trial, sentence, and punishment as if he were, and had been at the time when the offence is alleged to have been committed, a person subject to military law :
- (c) if upon representations made to him, it appears to the Secretary of State that any person sentenced to death after being convicted on indictment of an offence against this Act was, at the time of the commission of the offence, a member of the armed forces of the Crown or of the armed forces of any foreign power, including an enemy power, the Secretary of State may direct that, instead of being dealt with in like manner as a person sentenced to death after being convicted on indictment of murder, he shall be dealt with under the Naval Discipline Act, the Army Act, or the Air Force Act, or in the case of a person not subject to those Acts under whichever of those Acts the Secretary of State considers to be appropriate, in like manner as a person upon whom sentence of death by shooting has been passed by a court martial.

(2) No prosecution in respect of any offence against this Act shall be instituted, otherwise than by way of proceedings for a trial by court martial, except by, or with the consent of, the Attorney-General :

Provided that this subsection shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of any offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained.

(3) Where in accordance with the provisions of proviso (b) to subsection (1) of this section a direction is given by the Attorney-General for the trial by court martial of any person charged with an offence against this Act, that person, if not in military custody, may be transferred to military custody in accordance with such directions as may be given by the Secretary of State, and the Secretary of State may by order provide for discharging or varying any order which may have been made by a justice of the peace as to the remand or committal for trial of that person.

3.—(1) Notwithstanding any rule of law or practice, charges for any offences, except treason, may be joined with a charge for any offence against this Act in the same indictment or charge-sheet, if those charges are founded on the same facts, or form, or are a part of, a series of offences of the same or a similar character.

Joinder of charges and place of trial of offences.

(2) Where any person is charged with an offence against this Act before a court martial and charges for other offences are joined in the same charge-sheet in accordance with the provisions of the last foregoing subsection, the court shall have jurisdiction to try and to punish the person charged with those offences notwithstanding that they may be offences for which that person would not otherwise be triable by court martial, and the Naval Discipline Act, the Army Act and the Air Force Act shall apply in relation thereto accordingly.

(3) A person charged with an offence against this Act who is in the United Kingdom may, whether or not the offence was committed in the United Kingdom or in any British ship or aircraft, be taken in custody to any county or place in the United Kingdom, and may be proceeded against, indicted, tried and punished in any county or place in the United Kingdom, as if the offence had been committed in that county or place, and for all purposes incidental to or consequential on the trial or punishment of the offence it shall be deemed to have been committed in that county or place :

Provided that nothing in this subsection shall be construed as preventing the trial of any person by court martial in any place in which he could apart from this subsection be so tried.

Extent of Act.

- 4. This Act shall apply to anything done—
 - (a) by a British subject elsewhere than in a Dominion, India, Burma, or Southern Rhodesia;
 - (b) by any person subject to the Naval Discipline Act, to military law or to the Air Force Act, in any place whatsoever; or
 - (c) by any person in the United Kingdom, or in any British ship or aircraft, not being a Dominion ship or aircraft.

Interpretation.

5.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

22 & 23 Geo. 5. c. 4.

- “Dominion” means any Dominion within the meaning of the Statute of Westminster, 1931, except Newfoundland, and includes any territory administered by His Majesty’s Government in a Dominion;
- “Dominion ship or aircraft” means a British ship or aircraft registered in a Dominion, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty’s Government in the United Kingdom;
- “Enemy” means the enemy in any war in which His Majesty may be engaged;
- “Enemy alien” means a person who possesses the nationality of a state at war with His Majesty, not being either a British subject or a person certified by a Secretary of State to be a British protected person.

(2) For the purposes of this Act, any ship or aircraft registered in India, Burma, or Southern Rhodesia, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty’s Government in the United Kingdom, shall be treated as if it were a Dominion ship or aircraft.

(3) The functions of the Attorney-General under this Act may, in the event of a vacancy in the office or in the event of the Attorney-General being unable to act owing to illness or absence, be exercised by the Solicitor-General.

6. No person shall be guilty of an offence under this Act by reason of anything done after such day as His Majesty may by Order in Council declare to be the date on which the emergency which was the occasion of the passing of this Act came to an end. Duration.

7.—(1) In the application of this Act to Scotland, section two shall have effect as if for the reference in subsection (1) thereof to the Attorney-General there were substituted a reference to the Lord Advocate, and as if subsection (2) and subsection (3) thereof were omitted. Application to Scotland and to Northern Ireland.

(2) This Act shall in its application to Northern Ireland have effect as if for references therein to the Attorney-General there were substituted references to the Attorney-General for Northern Ireland, and as if for the reference therein to the Solicitor-General there were substituted a reference to the deputy appointed under section two of the Office of Attorney-General Act (Northern Ireland), 1923, to act as Attorney-General for Northern Ireland.

8. This Act may be cited as the Treachery Act, 1940. Short title.

Section 2.

SCHEDULE.

AMENDMENTS TO THE NAVAL DISCIPLINE ACT, ARMY ACT, AND AIR FORCE ACT.

The Naval Discipline Act.

Section forty-five of the Naval Discipline Act. After the word "death" there shall be inserted the following paragraph :—
 " If he shall be guilty of an offence under the Treachery Act, 1940, he shall suffer death : "

The Army Act and the Air Force Act.

Section forty-one of the Army Act and of the Air Force Act. After paragraph (2) there shall be inserted the following paragraph :—
 " (2A) If he is convicted of an offence under the Treachery Act, 1940, he liable to suffer death ; and "

Section fifty-seven of the Army Act and of the Air Force Act. In subsection (1) and in subsection (2) after the word "murder" there shall be inserted the words "or for an offence under the Treachery Act, 1940."

Printed by EYRE AND SPOTTISWOODE LIMITED

FOR

SIR WILLIAM RICHARD CODLING, C.B., C.V.O., C.B.E., the King's Printer of
Acts of Parliament

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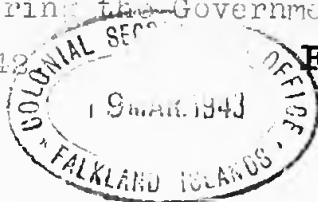
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(5)

from the Secretary of State for the Colonies.

To the Officer Administering the Government of

Date .. 5th November, 1942



FALKLAND ISLANDS

No. Saving.

Circular Saving Telegram

Recd 2

I desire to refer to Lord Lloyd's circular (2) despatch of the 5th of June, 1940, in which attention was invited to Section 1 of the Treachery Act, 1940, which provides for the imposition of the death penalty for acts of treachery, and to section 4 which applies the Act to offences committed by British subjects elsewhere than in a Dominion, India, or Southern Rhodesia. At the same time, you were asked to consider the advisability of repealing your Colonial Defence Regulation equivalent to the model Colonial Defence Regulation No.27 if, in your opinion, local conditions necessitated the death penalty for such offences.

2. The war has so extended during recent months that it now affects directly several Colonial territories which in June, 1940, were not visualised as even potential theatres of operations. These changed circumstances appear to make it desirable that those Colonial Governments which did not act on the circular despatch mentioned above should again review the questions raised therein.

3. I am, of course, prepared to leave this decision to your discretion, but I would observe that recent experience has shown that circumstances in which the existence of the extreme penalty would be salutary may arise unexpectedly. Moreover, it appears to me anomalous that a person committing an offence in a Colonial Dependency should, if tried in the United Kingdom, be liable to a much more severe punishment than would be within the powers of the Court if he were tried locally.

Order by His Excellency the Governor amending the Defence Regulations, 1939.

(Sgd.) A. W. CARDINALL

No. 4 of 1943.

Governor.

Under the authority of the Emergency Powers (Defence) Act of the United Kingdom, 1939, His Excellency the Governor is pleased to order and it is hereby ordered as follows :-

(1) Regulation 25 of the Defence Regulations, 1939, is revoked and replaced by the following regulation.

Death penalty for treachery.

25. If, with intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of felony and shall on conviction suffer death.

Dated this 17th day of May, 1943.

By Command,

(Sgd.) L. W. Aldridge
Colonial Secretary.

No. 9/10/77.

MINUTE.

14

(It is requested that, in any reference to this minute, the above Number and the date may be quoted).

19th Aug, 19 43.

From The Colonial Secretary,

To The Registrar-General,

St. Helena.

Stanley, Falkland Islands.

I should be glad, see insertion in your files, authenticated

copies of Regulations, Nos. 1, 2 and 3 of 1943, and Orders, Nos.

4 and 5 of 1943.

(Sd) G. BRADLEY
Colonial Secretary.

GOVERNMENT HOUSE,
STANLEY,
19th June, 1943.

PAKLAND ISLANDS.
No. 32.

Sir,

I have the honour to forward herewith six copies each of the under-mentioned legislation :-

- King Edward VII Memorial Hospital Regulations, No. 1 of 1943, dated 17th May, 1943.
- Lighting Control (Amendment) Regulations, No. 2 of 1943, dated 17th May, 1943.
- Stanley Rating Regulations, No. 3 of 1943, dated 17th May, 1943.
- Order, No. 3 of 1943, requisitioning certain cattle, dated 10th May, 1943.
- Order, No. 4 of 1943, Amending the Defence Regulations, 1939, dated 17th May, 1943.
- Pakland Islands Defence (Port) Order. No. 5 of 1943 of 26th May, 1943.

I have the honour to be,
Sir,
Your most obedient
humble servant,

(Sgd.) A. W. CARDINALL

THE RIGHT HONOURABLE
G. F. C. STANLEY, P.C., M.P.,
SECRETARY OF STATE FOR THE DOMINIONS.