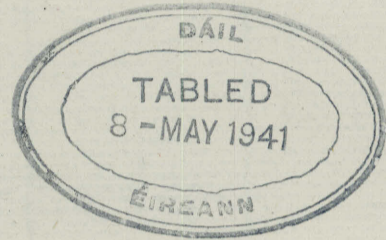


4756

~~Draft of~~



O R D E R

entitled

Emergency Powers (No. 83) Order,
1941.

~~To be~~ Made by -
The Government

The Government, in exercise of the powers conferred on them by section 2 of the Emergency Powers Act, 1939 (No.28 of 1939), and of every and any other power them in this behalf enabling, hereby order as follows, that is to say:-

PART I.

Preliminary.

1. This Order may be cited as the Emergency Powers (No. 83) Order, 1941.

2. In this Order -

the expression "the Minister" means the Minister for Industry and Commerce;

the word "employ" means employ under a contract of service (whether the contract is express or implied or ^{is} ~~in~~ oral or in writing) or a contract of apprenticeship, and cognate words shall be construed accordingly;

the word "remuneration" includes -

(a) remuneration paid either for time-work or piece-work, and

(b) remuneration paid for overtime, and

(c) remuneration consisting wholly or partly of commission calculated on a percentage or other basis.

PART II.

Restrictions on increase of
remuneration.

3. In this Part of this Order the expression "the operative date" means, save as otherwise provided by this Part of this Order, the date on which this Order is made.

4. (1) Each of the following employments shall be a scheduled employment for the purposes of this Part of this Order, that is to say:-

(a) subject to the operation of an order made by the Minister under paragraph (2) of this Article, each employment specified in the Schedule to this Order,

(b) any employment declared by an order made by the Minister under paragraph (3) of this Article and for the time being in force to be a scheduled employment for the purposes of this Part of this Order,

and the expression "scheduled employment" shall in this Part of this Order be construed accordingly.

(2) The Minister may, whenever and so often as he thinks fit, by order under this paragraph declare that any employment specified in the Schedule to this Order shall cease to be a scheduled employment for the purposes of this Part of this Order, and upon the coming into force of any order under this paragraph the employment to which that order relates shall cease to be a ~~scheduled~~ employment for the said purposes.

(3) The Minister may, whenever and so often as he thinks fit, by order under this paragraph, declare that any employment (defined in such manner and by reference to such things as he thinks fit) shall be a scheduled

employment for the purposes of this Part of this Order.

(4) For the purposes of the Schedule to this Order, each of the following bodies shall be deemed to be a local authority, that is to say:-

(a) a council of a county, a ~~cor~~poration of a county or other borough, a council of an urban district, the commissioners of a town,

(b) a committee or joint committee or board or joint board appointed (whether before or after the operative date) by or under statute to perform the functions or any of the functions of one or more of the bodies mentioned in the immediately preceding sub-paragraph of this paragraph, and the expression "local authority" shall in the said Schedule be construed accordingly.

5. (1) In this Part of this Order, the word "employee" means any person of the age of fourteen years or upwards who is employed in any scheduled employment, other than a person so employed who belongs to an excluded class within the meaning of this Article.

(2) The Minister may whenever and so often as he thinks fit, by order declare that any particular class (defined in such manner and ~~as~~^{by} reference to such things as the Minister thinks fit) of persons employed in any scheduled employment shall be an excluded class, and whenever any such order is made the class of persons to which the order relates shall be an excluded class for the purposes of this Article.

(3) A person who is a director of a company, whether he is or is not employed by that company in any other capacity, shall be deemed for the purposes of this Article not to be employed by that company.

6. (1) Subject to the provisions of this Article, no employer shall, on or after the operative date, pay to an employee who is in his employment on the operative date -

(a) in case the minimum rate of remuneration of such employee is on the operative date fixed by or under statute, remuneration at a rate higher than whichever of the following rates is the greater, that is to say:-

(i) the said minimum rate,

(ii) the rate at which the remuneration of such employee was payable on the operative date,

or

(b) in case the remuneration of such employee is on the operative date fixed by an agreement registered under Section 50 of the Conditions of Employment Act, 1936, (No.2 of 1936), remuneration at a rate

higher than whichever of the following rates is the greater, that is to say:-

- (i) the rate so fixed,
 - (ii) the rate at which the remuneration of such employee was payable on the operative date,
- or

(c) in any other case, remuneration at a rate higher than the rate at which the remuneration of such employee was payable on the operative date.

(2) Where an employer takes an employee into his employment after the operative date, such employer shall not pay to such employee remuneration at a rate higher than the maximum rate at which remuneration was paid on the operative date to a person who was on the operative date employed, under conditions similar to those obtaining in the case of such employee, in performing work analogous to that to be performed by such employee in the employment of such employer.

(3) Where the remuneration of an employee consists in part of a bonus, varying with the cost of living and calculated by reference to a figure representing or purporting to represent the cost of living, the employer of such employee shall not, in respect of any period commencing after the operative date, pay to such employee, in respect of such bonus a sum greater than the sum which would be payable if such bonus were calculated by reference to the figure representing or purporting to represent the cost of living at the operative date.

(4) Where -

(a) an employer, in accordance with a contract of employment or established practice pays the income tax chargeable on the remuneration of an employee, and

(b) the standard rate of income tax for any income-tax year (in this paragraph referred to as a

future year) ending on or after the 5th day of April 1942 exceeds the standard rate for the income-tax year (in this paragraph referred to as the year 1940-41) which ended on the 5th day of April 1941,

then, notwithstanding such contract or practice or anything contained in paragraph (5) of this Article, the said employer shall not pay for the said employee in respect of income tax chargeable for any future year on the remuneration of the said employee any greater sum than the sum he would have paid if the standard rate of income tax for such future year had been that in force for the year 1940-41.

(5) Subject to paragraph (4) of this Article, nothing in this Article shall be construed as rendering unlawful -

(a) the payment of annual or other increases under contracts of employment or established practice existing at the operative date, or

(b) the payment of increased pay on promotion, or

(c) the payment of extra pay for extra work.

(6) Whenever the Minister makes an Order under paragraph (3) of Article 4 of this Order declaring a particular employment to be a scheduled employment for the purposes of this Part of this Order, references in the preceding paragraphs of this Article to the operative date shall as respects employees in such employment be construed as references to the date on which the order so made by the Minister comes into operation.

7. (1) The Minister may, whenever and so often as he thinks fit by order (in this Article referred to as a records order) require employers or any class of employers to keep such records in relation to employees as the Minister thinks fit.

(2) The Minister may under this Article make different records orders in respect of different classes of employers.

(3) The Minister may, if he so thinks fit, by any order made under this Article prescribe the place or places where the records prescribed by such order are to be kept.

(4) No employer who is required by a records order to keep a record shall wilfully make in such record any entry which is false or misleading in any material respect.

(5) Every employer who is required by a records order to keep a record is hereby required from time to time -

(a) to produce at the request of an inspector such record and to permit such inspector to inspect such record and take copies of entries in such record.

(b) to afford to such inspector any information which such inspector may reasonably require with respect to any entries in such record.

(6) In this Article the word "inspector" means a person appointed by the Minister to be an Inspector for the purposes of this Article.

8. (1) So much of section 4 of the Trade Boards Act, 1909, as amended by section 3 of the Trade Boards Act, 1918, as requires or authorises a Trade Board to fix, cancel, or vary minimum rates of wages is hereby suspended, but any minimum rates of wages, fixed by a Trade Board under the said section 4, as so amended, which are obligatory immediately before the operative date shall continue in force.

(2) No rules in relation to the minimum rates of wages (other than wages for overtime) or the minimum rates of wages for overtime shall be made by an apprenticeship committee under section 8 of the Apprenticeship Act, 1931 (No.56 of 1931), on or after the operative date, but any such rules so made which are in force immediately before the operative date shall continue in force.

(3) No agreement shall be registered, under section 50 of the Conditions of Employment Act, 1936 (No.2 of 1936), in the Wages Agreements Register on or after the operative date.

(4) No rules shall be made by the Shops Wages Board under section 46 or 47 of the Shops (Conditions of Employment) Act, 1938 (No. 4 of 1938), on or after the operative date, but any such rules which are in force immediately before the operative date shall continue in force.

9. (1) The provisions of the Trade Disputes Act, 1906, shall not apply to any act done in contemplation or furtherance of a strike which is designed or calculated to cause an employer to contravene (whether by act or omission) Article ⁶4 of this Order, and any such act shall be deemed, for the purpose of the Conspiracy and Protection of Property Act, 1875, and the said Trade Disputes Act, 1906, not to be done in contemplation or furtherance of a trade dispute.

(2) In this Article the word "strike" means the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment.

10. Every reference in section 8 of the Housing (Financial and Miscellaneous Provisions) Act, 1932 (No. 19 of 1932), as amended by section 7 of the Housing and Labourers Act, 1937 (No. 42 of 1937), or in section 5 of the last-mentioned Act, or in any regulation made by the Minister for Local Government and Public Health for the purposes of either of the said sections 8 and 5 or in any undertaking entered into as a condition of obtaining a grant under either of the said Acts, to the appropriate rates of wages generally recognised by trade unions at the commencement of any work on a house (including the erection of such house) shall, in relation to any work done on a house (including the erection of such house) on or after the operative date, be construed as a reference to the appropriate rates of wages generally so recognised on the operative date, with such increases in such wages as are made under contracts of employment or established practice existing at the operative date.

PART III

Restrictions on companies.

11. In this Part of this Order -

the word "company" means a company which is a company within the meaning of the Companies Acts, 1908 to 1924 (other than a private company within the meaning of those Acts or a company not having a share capital) or a company incorporated by any Act or by charter;

the expression "accounting period" means in relation to a company any period for which the accounts of that company have been or are made up;

the expression "ordinary share capital" means, in relation to a company, the whole of that company's issued share capital, other than share capital carrying the right to dividends at a fixed rate payable in priority to all the dividends on some other class of share capital, whether or not it also carries the right to some further participation in profits;

the expression "share capital" shall be construed on the basis that the word "share" includes stock other than stock carrying the right to interest at a fixed rate.

12. (1) There shall be established a body (in this Part of this Order referred to as the Tribunal) to be called and known as the Reference Tribunal to fulfil the functions assigned to it by this Part of this Order.

(2) The Tribunal shall consist of such number of members as the Minister, with the concurrence of the Minister for Finance, may determine.

(3) Each member of the Tribunal shall be nominated by and hold office during the pleasure of the Minister.

(4) The Chairman of the Tribunal shall be such one of the members of the Tribunal as the Minister may appoint to be chairman thereof.

(5) There may be paid to any member of the Tribunal such remuneration and such allowance for expenses as the Minister for Finance may sanction.

(6) The Minister, with the consent of the Minister for Finance, may appoint such and so many persons as he shall consider necessary to be officers of the Tribunal and such persons shall hold office upon such terms and be remunerated at such rates as the Minister for Finance shall direct.

(7) Subject to the provisions of this Part of this Order, the Tribunal may regulate their own procedure.

13. (1) The Minister may, whenever and so often as he thinks fit, by order do the following things, that is to say:-

(a) apply the order either, as he thinks fit, to companies generally or to any particular class or classes (defined in such manner and by reference to such things as he thinks proper) of companies;

(b) appoint a date, which may be a date not earlier than the 7th day of May, 1941, to be the appointed date for the purposes of the order;

(c) prohibit any company to which the order applies from distributing, by way of ordinary dividend for any accounting period (in this paragraph referred to as a post-appointed-date accounting period) ending after the appointed date, an amount, which if added to the amount (if any) previously so distributed by such company for that post-appointed-date accounting period, would exceed whichever is the greatest of the following amounts, that is to say:-

(i) the highest amount distributed by such company by way of ordinary dividend for any accounting period (in this paragraph referred to as a pre-appointed-date accounting period) ended within the period of three years ended on the appointed date,

(ii) an amount calculated at the rate of six per cent. per annum on all paid-up ordinary share capital of such company at the end of the post-appointed-date accounting period for which the distribution is to be made,

(iii) such an amount as would, if added to the amount of the distribution (if any) made by way of ordinary dividend by such company for any previous

post-appointed date accounting periods, be equal to the sum of the following -

- (I) an amount, in respect of each previous post-appointed-date accounting period, calculated at the rate of 6 per cent. per annum on all paid up ordinary share capital of such company at the end of such previous post-appointed-date accounting period, and
 - (II) an amount calculated at the rate of 6 per cent. per annum on all paid up ordinary share capital of such company at the end of the post-appointed-date accounting period for which the distribution is to be made;
- (d) prohibit any company to which the order applies from capitalising any portion of the assets of such company by the creation of shares or debentures or debenture stock of such company (wholly or partly paid up by such capitalisation);
- (e) prohibit any company to which the order applies from doing, without the previous approval of the Tribunal, any of the following things, that is to say:-
- (i) the taking of any steps to alter its memorandum or articles of association where such alteration affects in any manner whatsoever the share capital of such company or the rights attached to any shares in the capital of such company,
 - (ii) the taking of any steps, by resolution or otherwise, to reduce the paid up capital of such company,

(iii) the taking of any steps, by resolution or otherwise, to apply any assets of such company in satisfaction of any uncalled liability in respect of any share capital of such company;

(f) do, in respect of any company to which the order applies and which has had a pre-appointed-date accounting period, the following things, that is to say -

(i) prohibit such company from paying, by way of fees or otherwise howsoever by way of remuneration for any post-appointed-date accounting period, to any director, who was a director of such company on the date (in this paragraph referred to as the ending date) on which the last pre-appointed-date accounting period of such company ended, an amount, which if added to the amount (if any) previously so paid to such director for that post-appointed-date accounting period, would exceed in rate the highest amount paid or payable to such director by such company by way of fees or otherwise howsoever by way of remuneration for any pre-appointed-date accounting period,

(ii) prohibit such company from paying, by way of fees or otherwise howsoever by way of remuneration for any post-appointed-date accounting period, to any person who is a director of such company but was not a director of such company on the ending date -

(I) in case such person was appointed to fill the place of a former director, an amount, which if added to the amount or

the amounts (if any) previously so paid for that post-appointed-date accounting period to such person and to such former director and to any predecessor of such former director, would exceed in rate the highest amount paid or payable by such company by way of fees or otherwise howsoever by way of remuneration to such former director and any predecessor of such former director for any pre-appointed-date accounting period,

(II) in any other case, any amount unless and until the proposed amount has, on the application of such company, been approved by the Tribunal;

(g) prohibit any company to which the order applies and which has not had a pre-appointed-date accounting period from paying by way of fees or otherwise howsoever by way of remuneration to any director of such company any amount unless and until the proposed amount has, on the application of such company, been approved by the Tribunal.

(2) Whenever the Minister makes an order under paragraph (1) of this Article, he may by such order -

(a) define (in such manner and by reference to such things as he thinks proper) what shall constitute, for the purposes of the order, the amount distributed by way of ordinary dividend by a company;

(b) provide for the making, for the purposes of the order, of adjustments in the case of a company whose accounting periods vary in duration or whose paid-up ordinary capital ranking for dividend is increased or reduced during an accounting period;

- (c) provide for requiring any company to which the Order relates, if so requested by the Minister or any person authorised by him, to make such returns relating to the company as may be mentioned or described in the request;
- (d) provide for requiring every person (being a director, manager, secretary or other officer of a company to which the order applies), if so requested by any person authorised by the Minister, to produce for inspection any books or documents kept by the company;
- (e) provide for all such supplemental, incidental or ancillary matters as appear to him to be necessary or expedient for giving full effect to any provision inserted in the order under the powers conferred on him by the foregoing provisions of this Article.

(3) The provisions of any order made under this Article shall be in addition to and not in derogation of the provisions of any Act limiting or providing for limiting the dividends of any company.

(4) Where -

- (a) an order has been made under this Article,
and

- (b) a company to which the Order applies,
in accordance with a contract
pays the income tax chargeable on the
remuneration of a director of the said
company, and
- (c) the standard rate of income tax for any
income tax-year (in this paragraph
referred to as a future year) ending on
or after the 5th day of April 1942
exceeds the standard rate for the income
tax-year (in this paragraph referred to
as the year 1940-41 which ended on the
5th day of April 1941.

then, notwithstanding such contract or anything
contained in paragraph (5) of this Article, the
said company shall not pay for the said director
in respect of income tax chargeable for any
future year on the remuneration of the said
director any greater sum than the sum the said
company would have paid if the standard rate of
income tax for such future year had been that
in force for the year 1940-41.

(5) Subject to paragraph (4) of this Article,
nothing in any order made under this Article
shall be construed as rendering unlawful any
increase, under a contract existing at the date
of the making of the order, in the remuneration
of a director of a company to which the order
applies.

(6) Where an order has been made under this Article, any payment by way of ordinary dividend by a company to which the order applies or any payment by way of fees or otherwise howsoever by way of remuneration by such company to any director of such company shall not be subject to the provisions of the order if such payment has been made before the date of the making of the order.

(7) In any proceedings before the Tribunal in relation to a company to which an order made under this Article applies the Tribunal shall hear the company and also any person, acting on behalf of a member of the Government, who applies to be heard.

SCHEDULE

Scheduled Employments.

1. Employment (otherwise than as the master or member of the crew of any sea-going vessel) in the service of a shipping company.
2. Employment in the service of any railway, air-transport, tramway or canal company or of any person carrying on a passenger road service, within the meaning of the Road Transport Act, 1932 (No. 2 of 1932), or of any person carrying on a merchandise road transport business, within the meaning of the Road Transport Act, 1933, (No. 8 of 1933).
3. Employment in the service of any person (other than a local authority or the Commissioners of Public Works in Ireland) in whom is vested by statute or otherwise the ownership, control, regulation or management of a harbour, within the meaning of the Harbours (Regulation of Rates) Act, 1934 (No. 2 of 1934).
4. Employment in the service of any person (other than a local authority) carrying on any undertaking for the supply of electricity or gas.
5. Employment in the service of any person carrying on the business of banking.
6. Employment in the service of any assurance company, within the meaning of the Insurance Act, 1936 (No. 45 of 1936).
7. Employment in the service of -
 - (1) the Currency Commission, or
 - (2) the Agricultural Credit Corporation, Limited,
or
 - (3) the Industrial Credit Company, Limited, or
 - (4) Comhlucht Siúicre Eireann, Teoranta, or
 - (5) Monarchana Alcoil na hEireann, Teoranta, or
 - (6) the Turf Development Board, Limited, or
 - (7) Cement, Limited, or
 - (8) the Tourist Board.

Irish

8. Employment, for the purposes of the business of the employer as such, in the service of a person who carries on wholly or mainly any one or more of the following businesses, that is to say:-

- (a) the manufacture of wearing apparel (including boots and shoes);
- (b) the production (otherwise than by way of agriculture) of any commodity which is used as food or drink by man;
- (c) the manufacture of tobacco;
- (d) the manufacture of textiles;
- (e) the manufacture of articles made wholly or mainly of textile material;
- (f) the manufacture of soap, candles, polishes, paints, distempers, varnishes or fertilisers;
- (g) the manufacture of articles made wholly or mainly of metal;
- (h) building or constructional work;
- (i) the manufacture of building materials;
- (j) the manufacture of leather;
- (k) the manufacture of articles made wholly or mainly of leather;
- (l) the manufacture of paper or cardboard;
- (m) the manufacture of articles made wholly or mainly of paper or cardboard;
- (n) printing;
- (o) saw-milling;
- (p) the manufacture of articles made wholly or mainly of wood;
- (q) the manufacture of glass or glassware or pottery;
- (r) the manufacture of articles made wholly or mainly of rubber;
- (s) coal-mining.

GIVEN under the Official Seal of the
Government this 7th day of May,
1941.

EAMON DE VALERA
TAEISEACH.