1971 No. 2104

FOREIGN COMPENSATION

The Foreign Compensation (Egypt) Order 1971

Made - - - -	*22nd December* 1971
Laid before Parliament	*31st December* 1971
Coming into Operation	*1st February* 1972

At the Court at Buckingham Palace, the 22nd day of December 1971

Present,

The Queen's Most Excellent Majesty in Council

Whereas Her Majesty is authorised to make provision by Order in Council under section 3 of the Foreign Compensation Act 1950(**a**) (hereinafter referred to as " the Act of 1950 ") as amended by section 2(1) of the Foreign Compensation Act 1969(**b**) (hereinafter referred to as " the Act of 1969 ") for the determination by the Foreign Compensation Commission (hereinafter referred to as " the Commission ") of claims to participate in compensation received under an agreement with the Government of any other country, and for the distribution by the Commission of such compensation:

And Whereas an Agreement (hereinafter referred to as " the Agreement ") entered into between Her Majesty's Government and the Government of the Arab Republic of Egypt on 13th September 1971 provides that the Government of the Arab Republic of Egypt shall pay the Government of the United Kingdom the sum of £2,100,000 in settlement of claims for compensation in respect of British nationalised property (subject to a deduction of £200,000 in settlement of all liabilities of entitled British claimants to the Government of the Arab Republic of Egypt, and to other authorities and banks in the Arab Republic of Egypt):

Now, therefore, Her Majesty, by virtue and in exercise of the powers in that behalf by the Acts of 1950 and 1969 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

Citation, Commencement and Interpretation

1. This Order may be cited as the Foreign Compensation (Egypt) Order 1971 and shall come into operation on 1st February 1972.

2.—(1) The Interpretation Act 1889(**c**) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) In this Order:—

" Egyptian measure " means any of the laws promulgated by the Government of the Arab Republic of Egypt in respect of expropriation or nationalisation during the years 1960 to 1964, including Agrarian Reform

(a) 1950 c. 12. (b) 1969 c. 20. (c) 1889 c. 63.

Laws No. 127 of 1961 and No. 15 of 1963 but not including Law No. 150 of 1964.

" Material time " means any time or date at which it is material for the purposes of this Order to determine whether or not a person is a United Kingdom national.

" Predecessor in title " means any person from whom, whether directly or indirectly, a person making application under this Order (including a trustee) has succeeded, whether by assignment or otherwise, to the property or claim to which the application relates. For the purpose of considering any question of succession, every claim shall be deemed (i) to have arisen at the relevant date but no claim shall be barred by any lapse of time thereafter, and (ii) to have been capable of transfer and transmission in the same manner as the property to which it relates.

" Property " includes all rights and interests of any kind in property and any claim in respect of property.

" Relevant date " means the date of publication of the Egyptian measure by or under which the property to which the claim relates was affected, or, if such measure was first applied to the property on a date other than the date of publication of the measure, the date on which the applicant, or his predecessor in title, was deprived of title to or enjoyment of the property.

" Rules of the Commission " means rules made by the Commission with the approval of the Lord Chancellor under section 4(2) of the Act of 1950 regulating the procedure of the Commission in determining applications made under this Order.

" Trustee " includes a personal representative of a deceased person or a nominee ; and " beneficiary " shall have a corresponding meaning.

" United Kingdom national " means—

(*a*) any individual who was at the material time a citizen of the United Kingdom and Colonies, a British subject by virtue of section 2, 13 or 16 of the British Nationality Act 1948(**a**) or the British Nationality Act 1965(**b**), or a British protected person within the meaning of the said Act of 1948 ;

(*b*) any individual who was at the material time a citizen of Southern Rhodesia or a citizen of Rhodesia and Nyasaland ;

(*c*) any individual who as regards any material time prior to 17th September 1963 was a citizen of Singapore ;

(*d*) any corporation, firm or association incorporated or constituted under the laws in force in the United Kingdom or in any territory for whose international relations Her Majesty's Government in the United Kingdom were, at the material time, responsible.

PART II

The fund

3. The Commission shall pay into a fund to be called the Egyptian Nationalised Property Compensation Fund (hereinafter referred to as " the Fund ") all such sums as may be paid to them by Her Majesty's Government, being sums received under the Agreement.

4.—(1) Any sums standing to the credit of the Fund may be temporarily invested by the Commission in such manner as the Treasury may authorise.

(**a**) 1948 c. 56. (**b**) 1965 c. 34.

(2) All interest, dividends and other sums received by the Commission as a result of any investment made by them of any sum standing to the credit of the Fund shall be paid into the Fund.

5. When it appears to the Secretary of State that all payments to be made into the Fund have been made and that all payments which it is practicable to make out of the Fund have been made, he may direct that the Fund shall be wound up and that any sum remaining therein shall be paid into the Consolidated Fund.

PART III

Provisions concerning the establishment of claims

6.—(1) An application shall not be entertained by the Commission for the purposes of this Order unless it has reached the Commission on or before 31st August 1972.

(2) An application shall not be entertained by the Commission for the purposes of this Order unless it is made in accordance with the Rules of the Commission.

(3) An application shall not be entertained by the Commission for the purposes of this Order if

(i) the application relates to property owned by a United Kingdom national on 28th February 1959 and referred to in Annex E to the Agreement concerning Financial and Commercial Relations and British Property in Egypt of 28th February 1959 (hereinafter referred to as " the Financial Agreement ") as amended by the Exchange of Notes of 7th August 1962 supplementary to that Agreement ; or

(ii) the application relates to property which was sequestrated by the Government of the Arab Republic of Egypt in accordance with the provisions of Proclamation No. 5 of 1956 and which was neither the subject of an application for release, nor established as British property, in accordance with the Financial Agreement and the Exchange of Notes of 7th August 1962 supplementary to that Agreement.

7. Each application made under this Order shall be determined by not less than two members of the Commission, provided that one member of the Commission may provisionally determine any application which is not the subject of an oral hearing unless it is determined that such application be dismissed wholly or in part or the aggregate amount of the assessed loss thereon exceeds £10,000.

8.—(1) The following persons shall be qualified to make application to the Commission for the purpose of establishing claims under this Order:—

(*a*) any person who was a United Kingdom national on 13th September 1971 ;

(*b*) any person who after 13th September 1971 has succeeded, whether by assignment or otherwise, to the claim of any person qualified under sub-paragraph (*a*) of this paragraph ;

(*c*) a trustee for any person qualified under sub-paragraph (*a*) or (*b*) of this paragraph.

(2) An application under this Order may be made by a trustee qualified under paragraph (1) of this Article or by a beneficiary so qualified. An application by a trustee (other than a nominee) shall, however, be entertained by the Commission only in so far as the beneficial interest in the property or in the claim to which the application relates was, on the relevant date and on 13th September 1971, owned by a United Kingdom national.

(3) If applications under this Order are made by a trustee and by a beneficiary in relation to the same claim, and both the trustee and the beneficiary are qualified under paragraph (1) of this Article, the Commission may entertain the application made by the trustee in preference to that made by the beneficiary, or entertain the application made by the beneficiary in preference to that made by the trustee. The Commission shall dismiss the application by the trustee or by the beneficiary, as the case may be, which it has decided not to entertain.

9.—(1) To establish a claim under this Order, any person making application to the Commission shall be required to establish to the satisfaction of the Commission:—

(*a*) that he is a person qualified under Article 8 of this Order to make such application;

(*b*) that the property to which his application relates was British at the relevant date;

(*c*) that where any succession in respect of his claim (whether legal or beneficial and whether by assignment, inheritance on death or otherwise) has occurred between the relevant date and 14th September 1971, the property was British immediately before and immediately after the date of such succession; and

(*d*) that by or under any Egyptian measure he or his predecessor in title (or, if he is a trustee, the person for whom he is a trustee or the predecessor in title of such person) has before 13th September 1971 been deprived of title to or enjoyment of the property, and has suffered loss thereby.

(2) Property shall be deemed to be British property to the extent that it was owned or held, whether beneficially or as nominee, by a United Kingdom national.

(3) A person holding shares in The Anglo-Egyptian Oilfields Limited or The Egyptian Delta Land and Investment Company Limited shall be deemed to have been deprived of the enjoyment of those shares to the extent that he can establish that the value of his shares depreciated as a direct result of the application of any Egyptian measure to that company.

10.—(1) Subject to the provisions of this Order the Commission shall assess the amount of loss with respect to each claim which is established under this Order as may seem just and equitable to them having regard to all the circumstances and shall dismiss each claim which is not so established.

(2) In assessing the amount of loss in respect of each claim established under this Order the Commission shall have regard to:—

(*a*) any valuation of property concerned which was published in accordance with the relevant Egyptian measure, unless the person making the application establishes to the satisfaction of the Commission that this would lead to an unjust or inequitable result having regard to all the circumstances;

(*b*) any compensation recoupment or payment in respect of that loss from any source other than the Fund that the person making the application or his predecessor in title or any trustee for such person or predecessor in title, or, if the person making the application is a trustee, any beneficiary or any predecessor in title of any beneficiary (i) has received or (ii) may, if he exercises diligence, be reasonably expected to receive or (iii) might, if he had exercised diligence, reasonably have been expected to receive.

(3) Where any amount which is material to the assessment of the amount of loss with respect to any claim established under this Order is expressed in Egyptian currency, the value in sterling of that amount shall be calculated in accordance with the rate of exchange used for official transactions on 13th September 1971 by Her Majesty's Embassy in Cairo, namely 1·040 Egyptian pounds = 1 pound sterling.

PART IV

Payments out of the Fund

11.—(1) The Commission shall make payments out of the Fund to every person who has established a claim under this Order and who applies to the Commission for payment.

(2) If any person who has established a claim under this Order shall have died before the amounts payable to him under Articles 12 and 13 of the Order have been paid to him, such payments or the balance thereof shall be made to his personal representatives if they apply to the Commission for payment, provided that, if the Commission are satisfied that no grant of administration of his estate has been made in the United Kingdom and that the assets of his estate (including the amount payable under this Order) do not exceed £500 in value, the Commission may at their discretion and subject to such conditions as the Commission think proper, make such payment either to any person who has taken out administration in any other part of the Commonwealth, or to the person who shall appear to the Commission to be the person who, being a widower, widow, child, father, mother, brother or sister of the deceased person, would, under the law of England, have the prior right to a grant of administration of the estate of the deceased person if such deceased person had died intestate domiciled in England.

(3) If any person whose claim has been established under this Order is an infant at the date when the amounts payable to him under Articles 12 and 13 of this Order are due to be paid, the Commission may make payment thereof into the Supreme Court, or, if the amount thereof does not exceed £5,000, into the County Court for the district in which the infant resides, under the provisions of the Trustee Act 1925(a), or, if the amount does not exceed £50, may place the same on deposit in the name of the Commission in any bank for such time as the person remains an infant.

12.—(1) The payment in respect of each claim established under this Order shall be a fraction of the distributable amount of the Fund equal to the proportion which the assessed amount of the claim bears to the total of the amount assessed with respect to all claims established under the Order, less such sum (if any) as the Secretary of State for Foreign and Commonwealth Affairs shall notify in writing to the Commission as an appropriate deduction in respect of any ex gratia loan made to the applicant or his predecessor in title by Her Majesty's Government.

(2) If it shall appear to the Secretary of State for Foreign and Commonwealth Affairs that any sum notified by him in writing to the Commission as a deduction pursuant to paragraph (1) of this Article was in excess of the sum which in all the circumstances it was appropriate to deduct, he may at any time thereafter notify in writing some lesser sum as an appropriate deduction in lieu of the sum previously notified, and the Commission shall thereupon adjust the amount of the payment and (if the case requires) make an additional payment accordingly.

(a) 1925 c. 19.

(3) Where the Foreign Compensation Commission has made a deduction in accordance with paragraphs (1) and (2) of this Article in respect of a loan to the applicant or his predecessor in title made by Her Majesty's Government, the Commission shall pay to the Secretary of State for Foreign and Commonwealth Affairs from the Fund a sum equal to the amount of that deduction.

(4) The distributable amount shall be the total of all sums paid into the Fund, after the deduction of any payments made therefrom into the Consolidated Fund in accordance with any Order in Council made under section 7(2) of the Act of 1950 as originally enacted and as applied by section 3(3) of the Foreign Compensation Act 1962(**a**).

13.—(1) Whether or not all claims under this Order have been finally determined, the Commission may, at such time or times as they may decide, make from the Fund interim payments to any of the persons who have established claims under the Order.

(2) Interim payment made under the provisions of this Article shall be made—

(*a*) on account of payments to be made in accordance with Article 12 of this Order, and

(*b*) at a uniform rate upon the assessed amount of the claim, except that any deduction in accordance with paragraph (1) of Article 12 of this Order shall be made as soon as possible, and the amount deducted shall be paid by the Commission to the Secretary of State for Foreign and Commonwealth Affairs. The uniform rate of payment shall be determined by the Commission ; for this purpose the Commission shall estimate the total liability likely to fall upon the Fund.

(3) For the purposes of this Article—

(*a*) a claim shall be deemed to be established under this Order even though the determination thereof may be provisional and subject to review under the Rules of the Commission.

(*b*) the assessed amount of the claim shall be deemed to be the amount so provisionally determined subject to review unless before the date of payment the Commission shall have made a final determination on review.

14.—(1) Subject to the provisions of paragraph (2) of this Article, the Commission shall, as a condition of the making of any payment to any person under this Order, require him to surrender to the Commission all available documents of title, if any, relating exclusively to the claim to which the payment relates, and shall require him to sign and deliver to the Commission a document in such form as the Commission may determine declaring that he renounces all those claims which he has established under the Order.

(2) If the person for whose benefit a payment is to be made is an infant, the Commission shall, as a condition of the making of any payment into Court or placing the same on deposit under Article 11(3) of this Order, require the person who, in accordance with the Rules of the Commission, has made an application for payment on the infant's behalf to surrender to the Commission the documents of title, if any, under his control relating exclusively to the claim, and to sign and deliver to the Commission a

(**a**) 11 & 12 Eliz. 2. c. 4.

document in such form as the Commission may determine declaring that the infant renounces all claims to which the payment relates; and that the document so signed shall operate as a valid surrender by the infant of all such claims.

(3) The Commission shall retain all documents which are delivered to them under paragraphs (1) and (2) of this Article, and shall dispose of them in accordance with instructions to be given by the Secretary of State for Foreign and Commonwealth Affairs.

W. G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order provides—

(i) for the determination by the Foreign Compensation Commission of claims to participate in the compensation received by Her Majesty's Government from the Government of the Arab Republic of Egypt under the Agreement between the two Governments of 13th September 1971 regarding Compensation for British Property Rights and Interests affected by Arab Republic of Egypt Measures of Nationalization (Cmnd. 4853); and

(ii) for the distribution of the aforesaid compensation by the Commission to applicants who have established claims under the Order.

The Agreement has not yet been ratified.

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