1956 No. 617

The Foreign Compensation (Poland) (Debts) Order, 1956

Made - - - -	*24th April*, 1956
Laid before Parliament	*28th April*, 1956
Coming into Operation	*30th April*, 1956

At the Court at Buckingham Palace, the 24th day of April, 1956

Present,

The Queen's Most Excellent Majesty in Council

Whereas the Foreign Compensation Act, 1950(a) (hereinafter referred to as "the Act"), provides for the constitution for the purpose of the Act of a Commission, to be called the Foreign Compensation Commission (hereinafter referred to as "the Commission"):

And Whereas by Section 3 of the Act Her Majesty is authorised, if Her Majesty's Government in the United Kingdom (hereinafter referred to as "Her Majesty's Government") enter into or contemplate an agreement with the government of any foreign country providing for the payment of compensation by the latter government, to make provision by Order in Council for the determination by the Commission of claims to participate in such compensation, and for the distribution by the Commission of any sums paid to them by Her Majesty's Government, being sums received under the agreement:

And Whereas by Sub-section (2) of Section 9 of the Act it is provided that the expression "compensation" includes any payment made in respect of any debt or claim on which there has been a default:

And Whereas an Agreement (hereinafter referred to as "the Agreement") entered into between Her Majesty's Government and the Government of Poland on the eleventh day of November, 1954(b), provides that the sum of £2,800,000 shall be paid by the Government of Poland to Her Majesty's Government in settlement of debts due to the United Kingdom or to British nationals, the payment of which had been guaranteed by the Polish Government, and of other pre-war banking and commercial debts:

And Whereas in Exchange of Notes No. 2 annexed to the Agreement it is recorded that out of the aforesaid sum of £2,800,000 sterling to be paid to Her Majesty's Government by the Polish Government under the Agreement there will be allocated as compensation two sums of £75,000 each in respect, first, of pre-war banking debts and, secondly, of pre-war commercial debts, arising from contracts existing on the first day of September, 1939, and due to British nationals who were at the time ordinarily resident or ordinarily

(a) 14 Geo. 6. c. 12. (b) "Treaty Series No. 77 (1954)," Cmd. 9343.

carrying on business in the United Kingdom from Polish debtors who were at the time ordinarily resident or ordinarily carrying on business in Polish territory:

And Whereas by Sub-Section (1) of Section 4 of the Act, Her Majesty is authorised by Order in Council to prescribe the number of members of the Commission for the determination on their behalf of applications under the Act:

And Whereas by Sub-Section (1) of Section 7 of the Act, Her Majesty is authorised by Order in Council to make provision (*inter alia*) for the management and investment of any moneys in the hands of the Commission and for the disposal of any sums in the hands of the Commission which it is not practicable to distribute:

And Whereas it is now deemed expedient that provision should be made in pursuance of the afore-mentioned provisions of Sections 3, 4, 7 and 9 of the Act:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in that behalf by the Act 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:

1.—(*a*) The Commission shall pay into a fund, to be called the Polish Debts 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 in settlement of debts due to Her Majesty's Government or British nationals, the payment of which had been guaranteed by the Polish Government, and of other pre-war banking and commercial debts.

(*b*) The Fund shall consist of three parts:—

(i) a part into which there shall be paid any sums representing compensation allocated in respect of debts guaranteed by the Polish Government or directly due from the Polish Government or from an enterprise owned, managed or controlled by the Polish Government;

(ii) a part into which there shall be paid any sums representing compensation allocated in respect of pre-war banking debts for the settlement of which provision was made in Exchange of Notes No. 2 annexed to the Agreement;

(iii) a part into which there shall be paid any sums representing compensation allocated in respect of pre-war commercial debts for the settlement of which provision was made in the Exchange of Notes No. 2 annexed to the Agreement.

2.—(*a*) Any sum standing to the credit of any part of the Fund may be temporarily invested by the Commission in such manner as the Treasury may authorise.

(*b*) 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 any part of the Fund shall be paid into the appropriate part of the Fund.

3.—(*a*) The Commission shall make payments out of the appropriate part of the Fund to every person who has made application and established a claim under this Order and who applies to the Commission for payment.

(*b*) If any person who has made application and established a claim under this Order shall have died before the amounts payable to him under

Articles 4 and 5 of this Order have been paid to him, such payments or the balance thereof shall be made to his legal personal representatives if they apply to the Commission for payment.

(*c*) If any person who has made application and established a claim under this Order is an infant at the date when the amounts payable to him under Articles 4 and 5 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 five hundred pounds, into the County Court for the district in which the infant resides, under the provisions of the Trustee Act, 1925(**a**).

4.—(*a*) The payment in respect of each claim established under this Order shall be a fraction of the distributable amount of the appropriate part of the Fund equal to the proportion which the assessed amount of the claim bears to the total of the amounts assessed with respect to all claims established under this Order against that part of the Fund.

(*b*) The distributable amount, in respect of each part of the Fund, shall be the total of all sums paid into that part of the Fund, after the deduction of any payments made therefrom into the Exchequer in accordance with any Order in Council made under Sub-section (2) of Section 7 of the Act.

5.—(*a*) Whether or not all claims under this Order against the Fund, or any part thereof, have been finally determined, the Commission may, at such time or times as they may decide, make from the appropriate part of the Fund interim payments to any of the persons referred to in Article 3 of this Order. For this purpose the Commission may vary the amount which, under the rules regulating the procedure of the Commission made under Section 4 of the Act (hereinafter referred to as "the rules for the time being of the Commission") has been provisionally awarded in respect of any claim, either by increasing or decreasing the amount.

(*b*) Interim payments made under the provisions of this Article shall be made:

(i) on account of future payments to be made under Article 4 of this Order, and

(ii) at a uniform rate, relating to the part of the Fund out of which the payment is made, upon the amount at which the claim has been assessed in accordance with the provisions of this Article.

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 that part of the Fund from which the interim payment is to be made.

6. When it appears to the Secretary of State that all payments to be made into all three parts of the Fund have been made and that all payments which it is practicable to make out of all the three parts 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 Exchequer.

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

(i) Her Majesty's Government and the Government of any territory for the international relations of which Her Majesty's Government are responsible;

(a) 15 & 16 Geo. 5. c. 19.

(ii) individuals, corporations, firms and associations who, on the eleventh day of November, 1954, were British nationals as defined in paragraph (*c*) of this Article;

(iii) individuals, corporations, firms and associations who, after the eleventh day of November, 1954, have succeeded to the rights of British nationals as aforesaid in relation to the debt to which the claim relates.

(*b*) An application under this Order may be made by a trustee if he is qualified under paragraph (*a*) of this Article, or by a beneficiary if so qualified. An application by a trustee shall, however, be entertained by the Commission only in so far as the beneficial interests in the debt to which the application relates is owned by a British national as defined in paragraph (*c*) of this Article.

(*c*) For the purposes of this Order, the expression "British nationals" means individuals who are (or would have been had the British Nationality Act, 1948(**a**), been in force at the relevant date) citizens of the United Kingdom and Colonies, British subjects without citizenship, or British protected persons as defined in Section 32 of the British Nationality Act, 1948: and corporations, firms and associations incorporated or constituted under the laws in force in the United Kingdom or in any territory for whose international relations Her Majesty's Government are (or were at the relevant date) responsible.

8. Nothing in this Order shall enable any application to be made to the Commission with respect to the claim of Henckel von Donnersmarck Beuthen Estates Limited referred to in Exchange of Notes No. 4 annexed to the Agreement.

9.—(*a*) An application shall not be entertained by the Commission for the purposes of this Order unless

(i) it has reached the Commission on or before the 24th of April, 1957, and

(ii) it is made in accordance with the rules for the time being of the Commission.

(*b*) The provisions of paragraph (*a*) of this Article shall not prevent the Commission from requiring an application to be resubmitted in the name of another applicant or from receiving any amendment or addition to an application which has been submitted within the time limit specified in paragraph (*a*) of this Article.

(*c*) If an application has been received by the Commission under the Foreign Compensation (Poland) (Nationalisation Claims) Order, 1956(**b**), which, in their opinion, should have been made under this Order, the Commission may treat it as so made.

10. Each application made under this Order shall be determined by not less than two members of the Commission.

11. To establish a claim under this Order, any person making application to the Commission for that purpose shall be required to establish to the satisfaction of the Commission—

(*a*) that he is a person qualified under Article 7 (*a*) of this Order to make such application; *and*

(*b*) that his application relates to a debt as defined in Article 13 of this Order; *and*

(a) 11 & 12 Geo. 6. c. 56. (b) S.I. 1956/618 (p. 1043 below).

(*c*) (i) in the case of a debt arising on a bill or note guaranteed by the Polish Government, that on the eleventh day of November, 1954, the person making application, or his predecessor in title who was then a British national, was the holder of such a bill or note;

(ii) in the case of a debt arising out of a bond, that on the eleventh day of November, 1954, the person making application, or his predecessor in title who was then a British national, was the holder of a bond which was a Polish internal issue and carried a guarantee of the Polish Government;

(iii) in the case of any other debt, that both on the date on which the debt became due and payable and on the eleventh day of November, 1954, the debt was due and payable to the person making application, or to his predecessor in title who was then a British national.

Where the application is made by a beneficiary qualified under Article 7 (*b*) of this Order whose trustee is not so qualified, paragraph (*c*) of this Article shall not apply, but the beneficiary shall be required to establish that on the eleventh day of November, 1954, he was the owner of a beneficial interest in the debt to which the application relates.

12. In this Order, the expression "predecessor in title" means any person from whom a person making application under this Order has succeeded, whether by assignment or otherwise, to the debt to which the claim relates.

13.—(*a*) In this Order the expression "debt" means:

(i) a debt arising out of a contract existing on the first day of September, 1939, to which a British national was a party, and which is a debt the payment of which has been guaranteed by the Polish Government; or

(ii) a debt arising out of a bill or note guaranteed by the Polish Government; or

(iii) a debt arising out of a contract existing on the first day of September, 1939, between a British national and the Polish Government, or between a British national and an enterprise which was on that date owned, managed or controlled by the Polish Government; or

(iv) a debt arising out of a bond which was a Polish internal issue and which carried, on the first day of September, 1939, a guarantee of the Polish Government; or

(v) a banking debt or a commercial debt (as defined, respectively, in paragraph (*b*) of this Article) arising from a contract existing on the first day of September, 1939, which was (*a*) a debt due to a British national who was on that date ordinarily resident or ordinarily carrying on business in the United Kingdom; and (*b*) a debt due from a Polish debtor (other than the Polish Government or an enterprise owned, managed or controlled on that date by the Polish Government) who on that date was ordinarily resident or ordinarily carrying on business in territory which was, at that date, Polish territory.

(*b*) For the purpose of sub-paragraph (v) of paragraph (*a*) of this Article:

"*a commercial debt*" means a debt (including any sum deposited in a Polish bank by a Polish debtor but not transferred) in respect of:

(i) the sale of goods;

(ii) payments for buying, selling or agency commission, freight, storage, insurance, and other charges connected with the sale of goods;

(iii) a contract of insurance or a contract or treaty of reinsurance, including bank and agency balances.

"*a banking debt*" means a debt which arose from an advance, loan, acceptance, credit or other facility originally granted on or before the first day of September, 1939, by a British national carrying on a banking business, and which was outstanding on the eleventh day of November, 1954.

(*c*) Nothing in this Order shall enable the Commission to entertain an application in respect of a debt arising out of a bond which was a Polish external issue.

14.—(*a*) The assessable amount of a claim in respect of a debt shall be:—

(i) in the case of a bill or note containing no express mention of interest, the face value thereof;

(ii) in the case of a bill or note on which express provision is made for the payment of interest on the principal sum, simple interest at the rate stated from the date of issue up to and including the thirty first day of August, 1939;

(iii) in the case of a bond, the nominal capital value of the bond on the first day of September, 1939;

(iv) in the case of any other debt, the principal amount due and outstanding on the eleventh day of November, 1954, and, if the contract expressly provided for the payment of interest, simple interest at the rate stated in the contract up to and including the thirty first day of August, 1939.

(*b*) Where the assessable amount of a claim consists of or comprises a sum expressed in a unit of foreign currency, the value in sterling of that sum shall be determined in accordance with the following provisions:

(i) where the sum is due and payable under a contract in which provision is made for a specified rate of exchange, its value in sterling shall be determined in accordance with the rate of exchange so specified;

(ii) where the rate of exchange is not specified in the contract, the value in sterling of any sum, or any part thereof, shall be determined at the rate of exchange obtaining on the first day of August, 1939.

(*c*) For the purposes of sub-paragraph (ii) of paragraph (*b*) of this Article, the rate of exchange between a foreign currency and sterling on the first day of August, 1939, shall be deemed to be the middle rate for telegraphic transfers ruling in the London market for that currency on that date, or if there was no such rate on that date the rate which the Treasury may determine for ascertaining the value in sterling of a sum payable in that foreign currency on that date.

15. In assessing the amount of any claim established under this Order, the Commission shall have regard to any compensation or recoupment that the person making the application has received or may, if he exercises diligence, be reasonably expected to receive from any source other than the Funds established under this Order and under the Foreign Compensation (Poland) (Nationalisation Claim) Order, 1956.

16.—(*a*) Subject to the provisions of paragraph (*b*) 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

documents of title, if any, relating exclusively to the debt to which his claim relates and, if he is unable to produce such documents of title, shall require him to execute and deliver to the Commission a document in such form as the Commission may determine declaring that he renounces all claims in respect of the debt in question.

(*b*) If the person for whose benefit payment is to be made is an infant, the Commission, shall, as a condition of the making of any payment into court under paragraph (*c*) of Article 3 of this Order, require the person who, in accordance with the rules for the time being 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, in so far as such documents are not available, to execute and deliver to the Commission a document in such form as the Commission may determine declaring that the infant renounces all claims in respect of the debt in question ; and a document so surrendered or executed and delivered to the Commission shall operate as a valid surrender or renunciation, as the case may be, by the infant of all such claims.

17. All documents with respect to the renunciation of any claim, which are delivered to the Commission under Article 16 of this Order shall remain in their custody until the final payment with respect to that claim has been made out of the appropriate part of the Fund, or until the Fund has been wound up, whichever is the earlier, and the Commission shall then deliver those documents to the Secretary of State.

18.—(*a*) This Order may be cited as the Foreign Compensation (Poland) (Debts) Order, 1956.

(*b*) The Interpretation Act, 1889(a), shall apply for the purpose of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

(*c*) This Order shall come into operation on the 30th day of April, 1956.

And the Right Honourable Selwyn Lloyd, Her Majesty's Principal Secretary of State for Foreign Affairs, is to give the necessary directions herein.

W. G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order provides:

(i) for the determination by the Foreign Compensation Commission of claims to participate in the compensation, in respect of debts due to the United Kingdom Government or British nationals from the Polish Government or Polish nationals, provided for by the Anglo-Polish Agreement of November 11, 1954, regarding the Settlement of Financial Matters and Exchange of Notes No. 2 annexed to that Agreement;

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

(a) 52 & 53 Vict. c. 63.