STATUTORY INSTRUMENTS

1961 No. 1832

FOREIGN COMPENSATION

The Foreign Compensation (Roumania) Order, 1961

Made - - - -	*25th September*, 1961
Laid before Parliament	*29th September*, 1961
Coming into Operation	*2nd October*, 1961

At the Court at Buckingham Palace, the 25th day of September, 1961

Present

The Queen's Most Excellent Majesty in Council

Whereas Her Majesty is authorised to make provision by Order in Council under the Foreign Compensation Act, 1950(a), (hereinafter referred to as "the Act") for the determination by the Foreign Compensation Commission (hereinafter referred to as "the Commission") of claims to participate in compensation received under agreements with foreign governments, 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 Roumanian People's Republic on the tenth day of November, 1960, provides that the Roumanian Government shall pay to the United Kingdom Government the sum of £1,250,000 in full and final settlement of the obligations and claims mentioned in paragraph (1) of Article 1 of the Agreement:

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:

PART I

INTERPRETATION

1.—(1) The Interpretation Act, 1889(b), shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament, and as if this Order were an Act of Parliament.

(2) In this Order:—

"British national" means

(*a*) any individual who was at the relevant date, or who as regards any relevant date prior to the first day of January, 1949, would have been had the British Nationality Act, 1948(c), and the British Protectorates, Protected States and Protected Persons Orders in Council, 1949 to 1958(d), been in force at that date, a citizen of the United Kingdom and Colonies, a British subject by virtue of

(a) 14 Geo. 6. c. 12. (b) 52 & 53 Vict. c. 63. (c) 11 & 12 Geo. 6. c. 56.
(d) S.I. 1949/140, 1952/457, 1953/1773, 1958/259, 590 (1949 I, p. 522; 1952 I, p. 437; 1953 I, p. 188; 1958 I, pp. 245, 246).

Section 2 of that Act, a British subject without citizenship as defined in Section 13 of that Act, or a British protected person as defined in Section 32 of that Act; provided that, as regards any relevant date prior to the sixteenth day of May, 1948, the expression "British protected person" shall be deemed to include a person who was at that date a Palestinian citizen under the Palestinian Citizenship Orders, 1925 to 1942(a);

(*b*) any individual who was, or would have been had the Citizenship of Rhodesia and Nyasaland and British Nationality Act, 1957, been in force at the relevant date, a citizen of Rhodesia and Nyasaland;

(*c*) any individual who was, or would have been had the Singapore Citizenship Ordinance, 1957, been in force at the relevant date, 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 were on the tenth day of November, 1960, responsible.

"Predecessor in title" means, subject to Article 12 of this Order, any person from whom a person making application under this Order has succeeded, whether by assignment or otherwise, to the property, right or interest to which the claim relates.

"Roumanian national" means

(*a*) any individual possessing Roumanian citizenship;

(*b*) any corporation, firm or association incorporated or constituted under Roumanian law.

"Rules of the Commission" means the Foreign Compensation Commission Rules, 1956(b), and any amendments thereto.

"Trustee" includes a personal representative of a deceased person or a nominee.

"United Nations" means France and any Power which on the fifteenth day of September, 1947, was a member of the United Nations and whose diplomatic relations with Roumania were broken off during the war.

PART II

THE FUND

2. The Commission shall pay into a fund to be called the Roumanian 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.

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

(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.

4. 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 Exchequer.

(a) S.R. & O. 1925/777, 1931/671, 1939/863, 1941/1121, 1942/1177 (1925, p. 474; 1931, p. 467; 1939 II, p. 1658; 1941 I, p. 356; 1942 I, p. 216).
(b) S.I. 1956/962 (1956 I, p. 1021).

PART III

GENERAL PROVISIONS CONCERNING THE ESTABLISHMENT OF CLAIMS

5. The Commission shall, in accordance with the provisions of this Order hereinafter contained, assess the amount of each claim established under this Order, and shall dismiss each claim which is not so established.

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

7.—(1) Save with the leave of not less than two members of the Commission an application shall not be entertained by the Commission for the purposes of this Order unless it has reached the Commission on or before the first day of October, 1962.

(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.

8. Nothing in this Order shall enable the Commission to entertain any application for the purpose of establishing a claim

(1) by any of the persons listed in the Schedule to this Order, their successors or assigns, in so far as the claim arises from Article 24 of the Treaty of Peace with Roumania(a) or from the application of any of the Roumanian measures referred to in Article 18 of this Order to any property, rights and interests, including debts, connected with direct ownership of or participation in oil companies in Roumania ; or

(2) by any person in respect of a debt arising out of a contract of insurance or treaty or contract of re-insurance concluded on or before the fifteenth day of February, 1941, and claimed to be due or owing by any insurance company, broker or agent, or by any bank, being a Roumanian national, to any insurance company, underwriter, broker or agent, being a British national.

9. Where any amount which is material to the determination of an application made under this Order is expressed in a unit of foreign currency, the value in sterling of that amount shall be determined in accordance with the following provisions:—

(1) Where any amount which is material to the determination of an application made under Part IV of this Order or which is taken into account under the provisions of Article 17 of this Order is expressed in a unit of Roumanian or any other foreign currency, the value in sterling of that amount shall be determined—

(*a*) in the case of loss assessed under paragraph (1), (2), (3), (4) or (6) of Article 14, at the rate of exchange obtaining on the fifteenth day of February, 1941 ;

(*b*) in the case of loss assessed under paragraph (5) of Article 14, at the rate of exchange, subject to the provisions of paragraph (3) of this Article, obtaining on the fifteenth day of September, 1947, or at the date on which payment was initially due, whichever is the later ;

(*c*) in the case of loss assessed under paragraph (7) or (8) of Article 14, or in the case of an amount which is to be taken into account under the provisions of Article 17, at the rate of exchange, subject to the provisions of paragraph (3) of this Article, obtaining on the fifteenth day of September, 1947, or at the date of payment, whichever is the later.

(a) Treaty Series No. 55 (1948), Cmd. 7486.

(2) The value in sterling of any property in respect of which an application is entertained under Part V of this Order shall be determined at the rate of exchange obtaining on the fifteenth day of February, 1941, except that—

(*a*) where the property consists of a debt or obligation expressed in a foreign currency and the sum is due or 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 ;

(*b*) where the property consists of a debt or obligation expressed in a foreign currency and created after the fifteenth day of February, 1941, the rate of exchange shall, subject to the provisions of subparagraph (*a*) of this paragraph and of paragraph (3) of this Article, be that prevailing on the fifteenth day of September, 1947, or that on the day immediately preceding the date of loss, whichever is the later.

(3) Where the amount of a claim expressed in Roumanian lei relates to a debt or obligation which arose between the fifteenth day of February, 1941, and the fourteenth day of August, 1947, that amount shall first be converted into "stabilised" lei by applying the conversion factor of 20,000 lei=one "stabilised" lei.

(4) For the purposes of this Article the rate of exchange between the foreign currency and sterling on any of the said dates shall be deemed to be the middle rate for telegraphic transfers ruling in the London market on that date or, if there was no such rate, such rate as the Treasury may determine.

10. In assessing the amount of any claim established under this Order, the Commission shall have regard to any compensation or recoupment in respect of that claim that the person making the application or any trustee for him, or, if he is a trustee, the person for whom he is a trustee, has received or may, if he exercises diligence, be reasonably expected to receive from any source other than the Fund established under this Order, including any payment made under the Treasury Directions dated the twenty-sixth day of July, 1954, to the Administrator of Roumanian Property in the United Kingdom, Channel Islands and the Isle of Man, given pursuant to Article 1 (7) of the Treaty of Peace (Roumania) Order, 1948(a), or by an Administrator of Roumanian Property in Colonial territory (as defined in the said Treasury Directions).

PART IV

CLAIMS UNDER THE TREATY OF PEACE WITH ROUMANIA

11. Under this Part of the Order, the Commission shall entertain only such claims as are notified to the Commission by Her Majesty's Principal Secretary of State for Foreign Affairs as being claims by British nationals which have arisen out of Article 24 of the Treaty of Peace with Roumania and in respect of which an application is made to the Commission.

12. To establish a claim to which this part of the Order applies, the applicant shall first be required to establish to the satisfaction of the Commission

(1) either that on the tenth day of November, 1960, he was a British national, or that he has on or after that date succeeded to the claim under Article 24 of the Treaty of Peace with Roumania of a person

(a) Cmd. 9228.

who, on the tenth day of November, 1960, was a British national, or that he is a trustee for a person so qualified ;

(2) that on and between the twelfth day of September, 1944, and the fifteenth day of September, 1947, the property, right or interest to which the claim relates was directly or indirectly owned continuously by the applicant or by his predecessor in title who was then either

(*a*) an individual who was a national of any of the United Nations ; or

(*b*) a corporation, firm or association incorporated or constituted under the laws of any of the United Nations ;

(3) that on the date of the injury, loss or damage which is the subject matter of the claim, the property, right or interest to which the claim relates was owned directly or indirectly by an individual who was a national of any of the United Nations or by a corporation, firm or association incorporated or constituted under the laws of any of the United Nations.

13.—(1) If a claim notified to the Commission under Article 11 of this Order is a claim made by a trustee, an application under this Part of the Order may be made either by the trustee, if he fulfils the conditions of paragraph (1) of Article 12 of this Order, or by a beneficiary if he is so qualified.

(2) An application by a trustee shall, however, be entertained by the Commission only in so far as the beneficial interest in the claim to which the application relates was between the twelfth day of September, 1944, and the fifteenth day of September, 1947, and at the tenth day of November, 1960, the interest of a British national.

(3) If an application under this Part of the Order is 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.

14. If the applicant has satisfied the requirements of Article 12 of this Order, the Commission in assessing the amount of the claim shall determine the amount of the loss suffered by the applicant or his predecessor in title

(1) by reason of injury or damage to property in Roumania as the result of the war ;

(2) by reason of injury or damage as the result of the war to the property in Roumania of a corporation or association in which the applicant or his predecessor in title held directly or indirectly an ownership interest, but which was not itself incorporated or constituted under the laws of any of the United Nations ;

(3) by reason of the non-restoration of property which was in Roumania on the fifteenth day of September, 1947, or of any right or interest as it existed in Roumania on the fifteenth day of September, 1947 ;

(4) by reason of loss or damage (other than a loss of profit) due to special measures which were applied to the property, right or interest during the war, and which were not applicable to Roumanian property ;

(5) by reason of failure to pay an amount specified in a requisitioning order, or failure to pay, where property was requisitioned, the same

amount as was paid in respect of the requisitioning of similar property to Roumanian nationals ;

(6) by reason of encumbrances or charges to which the property, right or interest may have become subject as the result of the war ;

(7) by reason of the payment of any exceptional tax, levy or impost imposed on the capital assets in Roumania of the applicant by the Roumanian Government or any Roumanian authority between the twelfth day of September, 1944, and the fifteenth day of September, 1947, for the specific purpose of meeting charges arising out of the war or of meeting the cost of occupying forces or of reparation payable to any of the United Nations ;

(8) by reason of any reasonable expenses (including the assessment of loss or damage) incurred in Roumania by the applicant in establishing a claim under Article 24 of the Treaty of Peace with Roumania.

15. In determining any application to which this Part of the Order relates, the Commission shall estimate the value of the property, right or interest which is the subject matter of the claim by reference to its value on or immediately prior to the first day of September, 1939, without taking into account any subsequent change in values of property, rights or interests.

16. For the purposes of this Part of the Order the duration of the war shall be deemed to be the period between the first day of September, 1939, and the entry into force of the Treaty of Peace with Roumania on the fifteenth day of September, 1947.

17. If an application made under this Part of the Order and an application entertained by the Commission under Part V of this Order relate to the same property, both applications shall be determined by the Commission as an application under Part V of this Order ; but it shall be deemed that prior to nationalisation the property had been restored to complete good order and returned to the applicant freed of all encumbrances and charges to which it had become subject as the result of the war, and any damage suffered by the property as the result of the war shall be taken into account only to the extent that the applicant or his predecessor in title has paid for any repairs made necessary by such damage.

PART V

CLAIMS IN RESPECT OF MEASURES OF NATIONALISATION, EXPROPRIATION, STATE ADMINISTRATION, LIQUIDATION, OR OTHER SIMILAR MEASURES

18. For the purposes of this Part of the Order :—

"Property" means property of any kind, movable or immovable, whether owned or held directly or through a trustee.

"Interest in property" means shares or stock in a company incorporated in Roumania ; and if any such company had at the material time an interest in property within the meaning of this Article the property in which such interest is held shall for the purposes of this Part of the Order be deemed to be property owned or held by the company to the extent of that interest.

"Roumanian measure" means any measure of nationalisation, expropriation, state administration, liquidation or other similar measure taken by the Roumanian Government.

"The relevant date" means the date of publication of the Roumanian measure by or under which the property or interest in property was affected; or, if such Roumanian measure was first applied to the property or interest in property to which the claim relates on a date other than the date of publication of the measure, the date on which the person making application, or his predecessor in title, was deprived of title to or enjoyment of the property to which his claim relates or, if the claim relates to an interest in property, the date on which the corporation which owned or held the property was deprived of title to or enjoyment of that property.

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

(*a*) Her Majesty's Government and the Government of any territory for the international relations of which Her Majesty's Government were on the tenth day of November, 1960, responsible;

(*b*) persons who were British nationals on the tenth day of November, 1960;

(*c*) persons who on the tenth day of November, 1960, were the heirs or personal representatives of deceased persons who were British nationals at the relevant date and at the date of death;

(*d*) persons who after the tenth day of November, 1960, have succeeded to the rights of persons qualified under sub-paragraphs (*b*) or (*c*) of paragraph (1) of this Article in relation to the claim to which the application relates;

(*e*) trustees for persons qualified under sub-paragraphs (*b*), (*c*) or (*d*) of paragraph (1) of this Article.

(2) An application under this Part of the 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 shall, however, be entertained by the Commission only in so far as the beneficial interest in the claim to which the application relates was at the relevant date and at the tenth day of November, 1960, owned by a British national.

(3) If application under this Part of the Order is 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.

20. To establish a claim under this Part of the Order, any person making application to the Commission shall be required to establish to the satisfaction of the Commission—

(1) that he is a person qualified under paragraph (1) of Article 19 of this Order to make such application;

(2) that the property or interest in property to which his application relates was British (as provided in Article 21 of this Order) at the relevant date;

(3) that by or under any Roumanian measure he or his predecessor in title has before the tenth day of November, 1960, been deprived

of title to or enjoyment of such property or that any person for whom he is a trustee and who would himself be qualified to make an application under Article 19 of this Order has before the said date been deprived of enjoyment of such property; or, if the claim relates to an interest in any property owned or held by a company to which the definition of "interest in property" in Article 18 of this Order applies, that by or under such Roumanian measure, the company has before the said date been deprived of title to or enjoyment of that property;

(4) that he or his predecessor in title has suffered loss as a result of such deprivation or, if he is a trustee, that the person for whom he is a trustee and who is qualified as provided in paragraph (3) of this Article has suffered a loss as the result of such deprivation;

Provided that, if the property to which paragraph (3) of this Article applies consists of a debt, it shall be necessary for the person making the application to prove that he or his predecessor in title has by any Roumanian measure or by action taken under the authority thereof been deprived of the legal right to recover the debt.

21. Property or an interest in property shall be deemed to be British if, legally or beneficially, the property was owned or held by, or the interest was the interest of, a British national; provided that property or an interest in property owned or held by a trustee shall be deemed to be British only to the extent to which at the relevant date it was owned or held by the trustee on behalf of any person who was at that date a British national.

22. If any transfer of property, or of any interest in property, to which a claim relates was effected in Roumania between the fifteenth day of February, 1941, and the twelfth day of September, 1944, that transfer shall be deemed for the purposes of this Part of the Order to have been null and void if it was effected under fraud or duress or without the consent of the person to whom the property or interest in property belonged at the date of such transfer.

23. The Commission shall assess the amount of loss with respect to each claim established under this Part of the Order and in determining any application thereunder shall estimate the value of the property by reference to its value on or immediately prior to the first day of September, 1939, without taking account of any subsequent change in property value; provided that if the claim relates to property in Northern Transylvania the Commission shall in assessing the amount of loss deduct the amount of loss, if any, in respect of the same property for which a claim has been or may be established under any other Order in Council made under the Act.

PART VI

PAYMENTS OUT OF THE FUND

24.—(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 25 and 26 of this 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.

(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 25 and 26 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).

25.—(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 amounts assessed with respect to all claims established under this Order.

(2) The distributable amount shall be the total of all sums paid into 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.

26.—(1) Whether or not all claims under this Order against the Fund 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 this Order.

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

(*a*) on account of payments to be made in accordance with Article 25 of this Order, and

(*b*) at a uniform rate upon the assessed amount of the claim. 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 the present 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.

27.—(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 this 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 under paragraph (3) of Article 24 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 document in such form

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

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

(3) All documents which are delivered to the Commission under paragraphs (1) and (2) of this Article shall remain in their custody until the first day of December, 1966, and the Commission shall then deliver them to Her Majesty's Principal Secretary of State for Foreign Affairs.

PART VII

FINAL PROVISIONS

28. This Order shall come into operation on the second day of October, 1961, and may be cited as the Foreign Compensation (Roumania) Order, 1961.

W. G. Agnew.

SCHEDULE

Phoenix Oil and Transport Company Limited,

Arbanash (Roumania) Oil Company Limited,

Dacia Romano Petroleum Syndicate Limited,

Executors of the late F. J. Nettlefold, Esq.,

Shell Petroleum Company Limited as successors in title to the Anglo-Saxon Petroleum Company Limited, and Shell Company (Hellas) Limited,

Kern Oil Company Limited,

Steaua Romana (British) Limited,

Spies Petroleum Company Limited,

Minerva (Roumania) Oil Company Limited.

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 received by Her Majesty's Government from the Roumanian Government under the Agreement between the two Governments of November 10, 1960, relating to the Settlement of Financial Matters (Cmnd. 1232); and

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