ANNUAL VOLUME

OF

STATUTORY INSTRUMENTS 1972

CORRECTION

In Part I, Section I

for pages 345 and 346 *substitute* the following

STATUTORY INSTRUMENTS

1972 No. 126

ATOMIC ENERGY AND RADIOACTIVE SUBSTANCES

The Nuclear Installations (Hong Kong) Order 1972

Made	*4th February* 1972
Coming into Operation	*15th March* 1972

At the Court at Buckingham Palace, the 4th day of February 1972

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 28(1) of the Nuclear Installations Act 1965(**a**) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Nuclear Installations (Hong Kong) Order 1972 and shall come into operation on 15th March 1972.

(2) The Interpretation Act 1889(**b**) shall apply with the necessary adaptations for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

(3) In the Schedule to this Order any reference to a provision of the Nuclear Installations Act 1965 shall be construed as a reference to that provision as it has effect in Hong Kong under this Order.

2. Sections 10 to 17, inclusive, 21, 26 and 30 of the Nuclear Installations Act 1965, modified and adapted as in the Schedule hereto, shall extend to Hong Kong.

W. G. Agnew

(**a**) 1965 c. 57 (**b**) 1889 c. 63

SCHEDULE

Provisions of the Nuclear Installations Act 1965 *(as amended) as extended to Hong Kong*

Duty of certain foreign operators

10. In the case of any nuclear matter which is not excepted matter and which—

(*a*) is in the course of carriage on behalf of a relevant operator; or

(*b*) is in the course of carriage to such an operator's relevant installation with the agreement of that operator from a place outside the relevant territories; or

(*c*) having been on such an operator's relevant installation or in the course of carriage on behalf of such an operator, has not subsequently been on any relevant carriage or (except in the course of relevant carriage) within the territorial limits of a country which is not a relevant territory,

it shall be the duty of that operator to secure that no occurrence taking place wholly or partly within the territorial limits of Hong Kong causes injury to any person or damage to any property of any person other than that operator, being injury or damage arising out of or resulting from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of that nuclear matter.

Duty of other persons causing nuclear matter to be carried.

11. Where any nuclear matter, not being excepted matter, is in the course of carriage within the territorial limits of Hong Kong on behalf of any person (hereafter in this section referred to as "the responsible party") and the carriage is not relevant carriage, it shall be the duty of the responsible party to secure that no occurrence involving that nuclear matter causes injury to any person or damage to any property of any person other than the responsible party, being injury or damage incurred within the said territorial limits and arising out of or resulting from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of that nuclear matter.

Right to compensation by virtue of s. 10

12.—(1) Where any injury or damage has been caused in breach of a duty imposed by section 10 of this Act—

(*a*) subject to sections 13(1), 15, 16(2) and 17(1) of this Act, compensation in respect of that injury or damage shall be payable wherever the injury or damage was incurred;

(*b*) subject to subsections (3) and (4) of this section and to section 21(2) of this Act, no other liability shall be incurred by any person in respect of that injury or damage.

(2) Subject to subsection (3) of this section, any injury or damage which, though not caused in breach of such a duty as aforesaid, is not reasonably separable from injury or damage so caused shall be deemed for the purposes of subsection (1) of this section to have been so caused.

(3) Where any injury or damage is caused partly in breach of such a duty as aforesaid and partly by an emission of ionising radiations which does not constitute such a breach, subsection (2) of this section shall not affect any liability of any person in respect of that emission apart from this Act, but a claimant shall not be entitled to recover compensation in respect of the same injury or damage both under this Act and otherwise than under this Act.

(4) Subject to section 13(2) of this Act, nothing in subsection (1)(*b*) of this section shall affect—

(*a*) the operation of the carriage of Goods by Sea Ordinance of Hong Kong(**a**); or

(**a**) Laws of Hong Kong (Rev. Ed. 1964) Vol. 3, c. 46.

(*b*) the operation of the Carriage by Air Act 1961(**a**) or the Carriage by Air (Supplementary Provisions) Act 1962(**b**) as extended or applied to Hong Kong by the Carriage by Air (Overseas Territories) Order 1967(**c**) and the Carriage by Air Acts (Application of Provisions) (Overseas Territories) Order 1967(**d**).

Exclusion, extension or reduction of compensation in certain cases.

13.—(1) The duty imposed by section 10 or 11 of this Act—

(*a*) shall not impose any liability on the person subject to that duty with respect to injury or damage caused by an occurrence which constitutes a breach of that duty if the occurrence, or the causing thereby of the injury or damage, is attributable to hostile action in the course of any armed conflict, including any armed conflict within Hong Kong; but

(*b*) shall, subject to section 16(2) of this Act, impose such a liability where the occurrence, or the causing thereby of the injury or damage, is attributable to a natural disaster, notwithstanding that the disaster is of such an exceptional character that it could not reasonably have been foreseen.

(2) Where, in the case of an occurrence which constitutes a breach of the duty imposed by section 10 of this Act, a person other than the person subject to that duty makes any payment in respect of injury or damage caused by that occurrence and—

(*a*) the payment is made in pursuance of any of the following five international Conventions, that is to say, the draft Convention (setting out rules relating to bills of lading) of the International Conference on Maritime Law held at Brussels in October 1922, as amended in October 1923, the Convention for the Unification of Certain Rules Relating to International Carriage by Air concluded at Warsaw on 12th October 1929, the Warsaw Convention as amended at The Hague 1955, the Convention Supplementary to the Warsaw Convention held at Guadalajara in 1961 for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier and the Convention on the Contract for the International Carriage of Goods by Road signed at Geneva on 19th May 1956, or

(*b*) the injury or damage was incurred in a country which is not a relevant territory and the payment is made by virtue of a law of that country and by a person who has his principal place of business in a relevant territory or is acting on behalf of such a person,

the person making the payment may make the like claim under this Act for compensation of the like amount, if any, not exceeding the amount of the payment made by him, as would have been available to him, if the injury in question had been suffered by him or, as the case may be, the property suffering the damage in question had been his.

(3) The amount of compensation payable to or in respect of any person under this Act in respect of any injury or damage caused in breach of the duty imposed by section 10 of this Act may be reduced by reason of the fault of that person if, but only if, and to the extent that, the causing of that injury or damage is attributable to any act of that person committed with the intention of causing harm to any person or property or with reckless disregard for the consequences of his act.

(**a**) 1961 c. 27.
(**b**) 1962 c. 43.
(**c**) S.I. 1967/809 (1967 II, p. 2384).
(**d**) S.I. 1967/810 (1967 II, p. 2402).

Protection for ships and aircraft.

14. A claim under this Act in respect of any occurrence such as is mentioned in section 10 or 11 of this Act which constitutes a breach of a person's duty under section 10 or 11 of this Act shall not give rise to any lien or other right in respect of any ship or aircraft; and section 3(3) and (4) of the Administration of Justice Act 1956(**a**), as extended to Hong Kong by the Admiralty Jurisdiction (Hong Kong) Order in Council 1962(**b**) (which relates to the bringing of actions in rem against ships or aircraft) and section 503 of the Merchant Shipping Act 1894(**c**) (which relates to the limitation of the liability of shipowners) shall not apply to that claim.

Time for bringing claims under ss. 10 and 11.

15.—(1) Subject to subsection (2) of this section but notwithstanding anything in any other enactment, a claim by virtue of section 10 or 11 of this Act may be made at any time before, but shall not be entertained if made at any time after, the expiration of ten years from the relevant date, that is to say, the date of the occurrence which gave rise to the claim or, where that occurrence was a continuing one, the date of the last event in the course of that occurrence to which the claim relates.

(2) Notwithstanding anything in subsection (1) of this section, a claim in respect of injury or damage caused by an occurrence involving nuclear matter stolen from, or lost, jettisoned or abandoned by, the person whose breach of a duty imposed by section 10 of this Act gave rise to the claim shall not be entertained if the occurrence takes place after the expiration of the period of twenty years beginning with the day when the nuclear matter in question was so stolen, lost, jettisoned or abandoned.

Satisfaction of claims by virtue of s. 10.

16.—(1) A relevant operator shall not be required by virtue of section 10 of this Act to make any payment by way of compensation in respect of an occurrence—

(*a*) when the occurrence involves nuclear matter in the course of carriage and the claim is in respect of damage to the means of transport being used for that carriage, unless the relevant law otherwise provides;

(*b*) to the extent that the amount required for the satisfaction of the claim is not required to be available by the relevant law and has not been made available by means of a relevant contribution.

(2) A relevant operator shall not be required by virtue of section 12(1)(*a*) or section 13(1)(*b*) of this Act to make any payment by way of compensation in respect of an occurrence if he would not have been required to have made that payment if the occurrence had taken place in his home territory and the claim had been made by virtue of the relevant law.

Jurisdiction, shared liability and foreign judgments.

17.—(1) No court in Hong Kong shall have jurisdiction to determine any claim or question under this Act certified by the Governor to be a claim or question which, under any relevant international agreement, falls to be determined by a court or some other relevant territory; and any proceedings to enforce such a claim which are commenced in any court in Hong Kong shall be set aside.

(2) Where under the foregoing subsection the Governor certifies that any claim or question falls to be determined by a court of a relevant territory, that certificate shall be conclusive evidence of the jurisdiction of that court to determine that claim or question.

(3) Where by virtue of section 10 of this Act and any relevant law liability in respect of the same injury or damage is incurred by two or more persons, then, for the purpose of any proceedings in Hong Kong relating to that injury or damage, including proceedings for the enforce-

(**a**) 1956 c. 46. (**b**) S.I. 1962/1547 (1962 II, p. 1669). (**c**) 1894 c. 60.

ment of a judgment registered under the Foreign Judgments (Reciprocal Enforcement) Ordinance of Hong Kong(a) both or all of those persons shall be treated as jointly and severally liable in respect of that injury or damage: provided that where such liability is incurred as a result of an occurrence involving nuclear matter in the course of carriage in one and the same means of transport the maximum total amount for which such persons shall be liable, apart from payments in respect of interests or costs, shall not exceed the highest amount required to be available by the relevant law, together with such amounts, if any, as fall to be made available by means of relevant contributions.

(4) The Foreign Judgments (Reciprocal Enforcement) Ordinance of Hong Kong(a) shall apply to any judgment obtained in a court outside Hong Kong which is certified by the Governor to be a relevant foreign judgment for the purposes of this Act, whether or not it would otherwise have so applied, and shall have effect in relation to any judgment so certified as if in section 6 of that Ordinance subsections (1)(*a*)(ii), (2) and (3) were omitted.

(5) It shall be sufficient defence to proceedings in Hong Kong against any person for the recovery of a sum alleged to be payable under a judgment given in a country outside Hong Kong for that person to show that—

(*a*) the sum in question was awarded in respect of injury or damage of a description which is the subject of a relevant international agreement; and

(*b*) the country in question is not a relevant territory; and

(*c*) the sum in question was not awarded in pursuance of any of the international Conventions referred to in the enactments mentioned in section 12(4) of this Act.

(6) Where, in the case of any claim by virtue of section 10 of this Act, the relevant operator is the government of a relevant territory, then, for the purposes of any proceedings brought in a court in Hong Kong to enforce that claim, that government shall be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution against the property of that government.

Supplementary provisions with respect to cover for compensation in respect of carriage.

21.—(1) Where, in the case of an occurrence involving nuclear matter in the course of carriage, a claim in respect of damage to the means of transport being used for that carriage is duly established against any person by virtue of section 10 of this Act, then, no payment towards the satisfaction of that claim shall be made out of funds which are required to be available for the purpose by the relevant law or which have been made available by means of a relevant contribution, such as to prevent the satisfaction out of those funds up to an aggregate amount equivalent to £2,100,000 sterling of all claims which have been or may be duly established against the same person in respect of injury or damage caused by that occurrence other than damage to the said means of transport.

(2) Where, in the case of an occurrence involving nuclear matter in the course of carriage, a claim in respect of damage to the means of transport being used for that carriage is duly established against a relevant operator by virtue of section 10 of this Act, but by virtue of section 16(1)(*a*) thereof that operator is not required to make a payment in satisfaction of the claim, section 12(1)(*b*) of this Act shall not apply to any liability of that operator with respect to the damage in question apart from this Act.

(a) Laws of Hong Kong (Rev. Ed. 1965) Vol. XIII, c. 319.

(3) Where any nuclear matter is to be carried by, or on behalf or with the agreement of, a relevant operator in such circumstances that he may incur liability by virtue of section 10 of this Act and that operator has, pursuant to the relevant law provided the carrier with a document, issued by or on behalf of the person by whom there falls to be provided the funds required by the relevant law to be available to satisfy any claim in respect of the carriage in question and containing the name and address of that operator and particulars of those funds, none of the contents of that document shall be disputed in any court by the person by whom or on whose behalf it was issued.

(4) The requirements of the Motor Vehicles Insurance (Third Party Risks) Ordinance of Hong Kong(a) (which relates to compulsory insurance or security against third-party risks of users of motor vehicles) shall not apply in relation to any injury to any person for which any person is liable by virtue of section 10 of this Act.

Interpretation.

26.—(1) In this Act, except where the context otherwise requires, the following expressions have the following meanings respectively, that is to say—

"excepted matter" means nuclear matter consisting only of one or more of the following, that is to say—

(*a*) isotopes prepared for use for industrial, commercial, agricultural, medical or scientific purposes;

(*b*) natural uranium;

(*c*) any uranium of which isotope 235 forms not more than 0·72 per cent.;

(*d*) nuclear matter of such other description, if any, as may be excluded from the operation of the relevant international agreement by the relevant law;

"Governor" means:

(*a*) the Governor of Hong Kong;

(*b*) the Acting Governor of Hong Kong; and

(*c*) to the extent to which a deputy to the Governor of Hong Kong is authorised to perform on behalf of the Governor any functions of the Governor, the Deputy to the Governor;

"home territory", in relation to a relevant operator, means the relevant territory in which, for the purposes of a relevant international agreement, he is the operator of a relevant installation;

"injury" means personal injury and includes loss of life;

"nuclear matter" means, subject to any exceptions which may be prescribed—

(*a*) any fissile material in the form of uranium metal, alloy or chemical compound (including natural uranium), or of plutonium metal, alloy or chemical compound, and any other fissile material which may be prescribed; and

(*b*) any radioactive material produced in, or made radioactive by exposure to the radiation incidental to, the process of producing or utilising any such fissile material as aforesaid;

"occurrence", in sections 16(1) and (2) and the proviso to section 17(3) of this Act, means in the case of a continuing occurrence the whole of that occurrence;

"prescribed" means prescribed by regulations made by the Governor in Council;

(a) Laws of Hong Kong (Rev. Ed. 1964) Vol. X, c. 272.

" relevant carriage ", in relation to nuclear matter, means carriage on behalf of—

(*a*) a relevant operator ; or

(*b*) a person authorised to operate a nuclear reactor which is comprised in a means of transport and in which the nuclear matter in question is intended to be used ;

" relevant contribution ", in relation to any claim, means any sums falling by virtue of any relevant international agreement to be paid by the government of any relevant territory towards the satisfaction of that claim ;

" relevant foreign judgment " means a judgment of a court of a relevant territory other than Hong Kong which, under a relevant international agreement, is to be enforceable anywhere within the relevant territories ;

" relevant installation " means an installation to which a relevant international agreement applies ;

" relevant international agreement " means an international agreement with respect to third-party liability in the field of nuclear energy to which the United Kingdom or Her Majesty's Government therein are party, other than an agreement relating to liability in respect of nuclear reactors comprised in means of transport ;

" relevant law " means the law of a relevant territory regulating in accordance with a relevant international agreement matters falling to be so regulated and, in relation to a particular relevant operator, means the law such as aforesaid of his home territory ;

" relevant operator " means a person who, for the purposes of a relevant international agreement, is the operator of a relevant installation in a relevant territory ;

" relevant territory " means a country for the time being bound by a relevant international agreement ;

" territorial limits " includes territorial waters.

(2) References in this Act to the carriage of nuclear matter shall be construed as including references to any storage incidental to the carriage of that matter before its delivery at its final destination.

(3) Any question arising under this Act as to whether—

(*a*) any person is a relevant operator ; or

(*b*) any law is the relevant law with respect to any matter ; or

(*c*) any country is for the time being a relevant territory,

shall be referred to and determined by the Governor.

(4) Save where the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

Short title and commencement.

30.—(1) This Act may be cited as the Nuclear Installations Act 1965.

(2) This Act, except for section 17(5) shall come into force on 15th March 1972 and section 17(5) shall come into force on such later date as the Governor may by order appoint.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order extends to Hong Kong with adaptations and modifications, certain provisions of the Nuclear Installations Act 1965, as amended, which relate to the duty in respect of the carriage of nuclear matter, to the right to compensation for breach of that duty and to the bringing and satisfaction of claims and certain ancillary provisions.

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