STATUTORY INSTRUMENTS

1973 No. 1226

SOUTHERN RHODESIA

The Southern Rhodesia (Distribution to Creditors) Order 1973

Made - - - -	16*th July* 1973
Laid before Parliament	17*th July* 1973
Coming into Operation	
Articles 1, 2 *and* 16 -	20*th July* 1973
Remainder - -	*On a day to be appointed under Article* 1(2)

At the Court at Buckingham Palace, the 16th day of July 1973

Present,
The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 2 of the Southern Rhodesia Act 1965(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:—

Citation and Commencement

1.—(1) This Order may be cited as the Southern Rhodesia (Distribution to Creditors) Order 1973.

(2) This Article and Articles 2 and 16 of this Order shall come into operation on 20th July 1973; and the other provisions of this Order shall come into operation on a day to be appointed by a Secretary of State by notice published in the London Gazette (in this Order referred to as "the appointed day").

Temporary prohibition regarding use of certain moneys

2.—(1) So long as this Article is in operation, no person having possession in the United Kingdom of any moneys of the Crown in right of the Government of Southern Rhodesia shall, without the consent of a Secretary of State, use those moneys for the purpose of satisfying, in whole or in part, a liability of the Crown arising in respect of that Government to make a payment to another person; and the provisions of this paragraph shall have

(a) 1965 c. 76.

effect notwithstanding any judgment given after this Article comes into operation in civil proceedings in any part of the United Kingdom to the effect that any moneys in the United Kingdom are moneys of the Crown in right of that Government available in the United Kingdom to satisfy any such liability as aforesaid.

(2) Any person who has possession in the United Kingdom of moneys of the Crown in right of the Government of Southern Rhodesia shall give notice in writing of the amount or nature of those moneys to the Secretary of State for Foreign and Commonwealth Affairs.

(3) The provisions of this Article shall expire on the appointed day.

Certain proceedings not to be instituted

3.—(1) So long as this Article is in operation, no proceedings to which this Article applies shall be instituted ; but any such proceedings commenced before the appointed day may be continued, and for the purposes of this paragraph a proceeding by petition of right shall be deemed to be commenced on the date when the petition is presented.

(2) This Article applies to such civil proceedings as, apart from this Order, might be taken in any part of the United Kingdom against the Crown or any other person for the purpose of obtaining a judgment that the Crown is under a liability arising in respect of the Government of Southern Rhodesia to make a payment to another person.

(3) A certificate of a Secretary of State to the effect that any alleged liability of the Crown arises in respect of the Government of Southern Rhodesia shall, for the purposes of this Order, be conclusive as to the matter so certified.

Use of certain moneys

4. If a judgment is given on or after 20th July 1973 in civil proceedings in any part of the United Kingdom to the effect that any moneys in the United Kingdom are moneys of the Crown in right of the Government of Southern Rhodesia available in the United Kingdom to satisfy any liability such as is mentioned in Article 2(1) of this Order, then those moneys shall not be used to satisfy, in whole or in part, any such liability except in accordance with the following provisions of this Order.

Payment of moneys to the Foreign Compensation Commission

5.—(1) When any judgment given and having effect as mentioned in Article 4 of this Order becomes final the moneys to which it relates shall be paid or transferred to the Foreign Compensation Commission constituted by the Foreign Compensation Act 1950(a) (hereinafter referred to as " the Commission ").

(2) For the purposes of paragraph (1) of this Article a judgment shall be regarded as having become final when any time prescribed or allowed for giving notice of appeal therefrom or for applying for leave to appeal therefrom has expired or for any other reason an appeal does not lie or no longer lies from that judgment.

(a) 1950 c. 12.

(3) Where on or after the appointed day any person has possession in the United Kingdom of moneys to which no judgment given and having effect as mentioned in Article 4 of this Order relates and in relation to which no proceedings for the purpose of obtaining such a judgment have been instituted, he shall, if those moneys are moneys of the Crown in right of the Government of Southern Rhodesia available by law to satisfy, in whole or in part, a liability of the Crown arising in respect of that Government to make a payment to another person, pay or transfer those moneys to the Commission.

Establishment of a fund

6.—(1) The Commission shall establish a fund to be called the Southern Rhodesia Fund (hereinafter referred to as " the Fund ") into which shall be paid all moneys received by the Commission under Article 5 of this Order (including the proceeds of sale of shares or securities so received).

(2) Any moneys standing to the credit of the Fund may be temporarily invested in such manner as the Treasury may authorise; and where the Commission has received moneys consisting of shares or securities they may, with the authority of the Treasury, hold them as if they had been invested under this paragraph.

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

Applications in respect of debts

7.—(1) Subject to the provisions of this Order, any person may make application to the Commission for the purpose of establishing a claim in respect of any debt due to him to which this Article applies.

(2) This Article applies to debts of the following kind, that is to say, any liability of the Crown arising in respect of the Government of Southern Rhodesia—

(*a*) to make any payment of capital, or of any interest, which has become due before the appointed day or 31st July 1974 (whichever is the later) in respect of any stock to which the Colonial Stock Act 1877(**a**) applies;

(*b*) to make payment of any sum due by virtue of any judgment given in civil proceedings in any part of the United Kingdom.

(3) This Article also applies, as if the sum were a debt due to the Crown in right of the Government of the United Kingdom, to—

(*a*) any sum which has become due before the date mentioned in paragraph (2)(*a*) of this Article to the Government of the United Kingdom or any officer or department thereof from the Government of Southern Rhodesia, being a sum described in Schedule 1 to this Order; and

(*b*) any sum due to the Government of the United Kingdom or any officer or department thereof in respect of costs and expenses incurred by the Crown or its officers or agents in defending on behalf of the Government of Southern Rhodesia any civil proceedings taken as mentioned in Article 3(2) of this Order;

and an application to the Commission in respect of any such sum may be made under this Article on behalf of the Government of the United Kingdom or the officer or department concerned by any person duly authorised for the purpose.

(**a**) 1877 c. 59.

(4) A Secretary of State may by order direct that this Article shall apply to any such additional liability of the Crown arising in respect of the Government of Southern Rhodesia as may be specified in the order, being a liability to make payment of a liquidated sum which has become due before the date mentioned in paragraph (2)(*a*) of this Article, and this Article shall apply to the debt concerned accordingly.

(5) An order made under paragraph (4) of this Article shall, for the purposes of the Statutory Instruments Act 1946(**a**), be a statutory instrument within the meaning of that Act and shall be subject to annulment in pursuance of a resolution of either House of Parliament; and any such order may be revoked or varied by a subsequent order.

(6) 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 and has reached the Commission by 31st October 1974 or by the date which is one year after the appointed day, whichever date is the later.

Determination of applications

8.—(1) The Commission shall, subject to the provisions of this Order, determine whether or not each claim in respect of which an application is made is established and, when a claim is established, the amount thereof.

(2) Where an applicant shows that he is entitled to the benefit of a subsisting judgment given in civil proceedings in any part of the United Kingdom to the effect that the Crown is under any liability arising in respect of the Government of Southern Rhodesia to make any payment, the Commission shall determine that the claim in respect of the liability concerned is established in the amount specified in that judgment unless it appears to them that the liability concerned has, in whole or in part, been discharged or satisfied.

(3) In determining whether a claim is established and the amount thereof the Commission shall treat any payment made since 11th November 1965 by or under the purported authority of any person or body of persons in Southern Rhodesia claiming to be the Government of that country or a Minister or Officer of the Government thereof and purporting to be made in discharge or satisfaction, in whole or in part, of the liability concerned as if it had been lawfully so made.

(4) Each application 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 claim exceeds £10,000.

Payments out of the Fund

9.—(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) The reference in paragraph (1) of this Article to a person who has established a claim under this Order includes a reference to any person who has become entitled to the payment of the debt to which the claim relates, or any part of it, in consequence of the death of the claimant or of any

(**a**) 1946 c. 36.

devolution in law from the claimant or of any assignment or transfer of the debt and who produces such evidence of his title as may be reasonably required by the Commission; and in determining whether a person has become entitled to the payment of a debt such as is mentioned in Article 7(2)(*a*) of this Order the Commission shall act after consultation with the registrar of the stock concerned.

Amount of Payments

10.—(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 amount of the claim, as determined by the Commission, bears to the total of the amounts so determined with respect to all claims established under this Order.

(2) The distributable amount of the Fund shall be the total of all sums constituting the Fund on such date as the Commission may determine after the deduction of any payments made or to be made therefrom into the Consolidated Fund in accordance with any Order in Council made under section 7(2) of the Foreign Compensation Act 1950(**a**) (as applied by this Order).

Interim Payments

11.—(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 in respect of any of the claims established under this Order to persons entitled to payments under Article 9 of this Order.

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

(*a*) on account of payments to be made under Article 10 of this Order; and

(*b*) so that an equal proportion is paid of the amount of the claims concerned, being a proportion that in the opinion of the Commission will not exceed that likely to be payable under Article 10 of this Order.

(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; and

(*b*) the amount of a 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.

Effect of payments on debts

12. A payment from the Fund in respect of any claim established under this Order shall reduce the amount of the debt concerned by the amount of the payment but shall not affect the liability of the Crown in respect of the Government of Southern Rhodesia with regard to any remaining amount of the debt.

Additional provisions relating to stock

13.—(1) Where a claim is established under this Order in respect of any stock mentioned in Article 7(2)(*a*) of this Order and a certificate of title or proprietorship has been issued in respect of that stock and has not previously been surrendered or cancelled, the Commission shall, as a condition of the making of any payment in respect of that claim, require the person to whom payment is to be made to forward that certificate to the Commission.

(**a**) 1950 c. 12.

(2) Where a claim is established under this Order in respect of any stock mentioned in Article 7(2)(*a*) of this Order and a stock certificate to bearer (within the meaning of the Colonial Stock Act 1877(**a**)) has been issued and is outstanding in respect of that stock (whether or not the certificate has ceased to be transferable by delivery) the Commission shall, as a condition of the making of any payment in respect of that claim, require the person to whom payment is to be made to surrender to the Commission such certificate and any coupons attached thereto.

(3) Where any payment is made from the Fund in respect of any capital or interest due in respect of any stock mentioned in Article 7(2)(*a*) of this Order, the Commission shall send to the registrar of the stock any certificate surrendered under paragraph (1) of this Article and shall give notice in writing of the payment to the registrar; and thereupon the registrar shall note particulars of the payment on any such certificate and, except in the case of stock in respect of which a certificate to bearer has been surrendered under paragraph (2) of this Article, shall enter the particulars contained in the notice in the register of the stock.

(4) When the registrar has noted particulars of the payment on any certificate in accordance with paragraph (3) of this Article he shall return the certificate to such person as the Commission may direct.

(5) A notice given under paragraph (3) of this Article shall include particulars of the person to whom the payment is made, of the stock in respect of which the payment is made, of the amount of the payment and of any certificate and coupons surrendered under paragraph (2) of this Article and shall state whether the payment has been made in respect of capital or interest and, when it is made in respect partly of capital and partly of interest, the amounts paid in respect of capital and interest respectively.

(6) When the Commission are satisfied that no further payment will be made from the Fund in respect of any stock for which a certificate has been surrendered under paragraph (2) of this Article they shall send the certificate and any coupons attached thereto to the registrar of the stock for cancellation; and, in so far as any stock to which the certificate relates has not been redeemed by payment of capital from the Fund, the registrar shall enter the holder thereof in the register as the proprietor of the stock, and shall also enter therein particulars of any interest due to the holder in respect of coupons attached to the certificate and which has not been paid from the Fund.

Calculation of time limits

14. In calculating the period prescribed by or under any enactment or rule of law for bringing or taking any step in any proceedings no account shall be taken in relation to any proceedings to which Article 3 of this Order applies of any period beginning on the appointed day and ending when that Article ceases to be in operation.

Application of certain enactments

15. The enactments mentioned in column 1 of Schedule 2 to this Order shall apply in relation to the Commission and its functions under this Order and for that purpose shall have effect as if modified in the manner specified in column 2 of that Schedule.

(**a**) 1877 c. 59.

Interpretation

16.—(1) In this Order the following expressions have the meanings hereby respectively assigned to them, that is to say—

" interest ", in relation to any stock, includes any dividend on such stock ;

" judgment " includes any order or declaration ;

" moneys " includes shares and other securities.

(2) The Interpretation Act 1889(**a**) 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.

W. G. Agnew.

Article 7(3)(*a*) SCHEDULE 1

Sums due to the Government of the United Kingdom, or an officer or department thereof, to which Article 7 applies

1. Any sum due (including interest thereon at such rate as may be fixed in accordance with section 1(3)(*e*) of the Colonial Loans Act 1949(**b**)) for the repayment of any sum issued on account of default by the Government of Southern Rhodesia out of the Consolidated Fund in fulfilment of any guarantee given as mentioned below by the Treasury in pursuance of the Colonial Loans Acts 1949 to 1962(**c**)—

(*a*) the guarantee given in respect of a loan to Southern Rhodesia by an agreement between the United Kingdom and the International Bank for Reconstruction and Development dated 27th February 1952 ;

(*b*) the guarantee given in respect of a loan to the Federal Power Board of the Federation of Rhodesia and Nyasaland by an agreement between the United Kingdom and the International Bank for Reconstruction and Development dated 21st June 1956 ;

(*c*) the guarantee given in respect of a loan to the Federation of Rhodesia and Nyasaland by an agreement between the United Kingdom and the International Bank for Reconstruction and Development dated 16th June 1958 ;

(*d*) the guarantee given in respect of a loan to the Federation of Rhodesia and Nyasaland by an agreement between the United Kingdom and the International Bank for Reconstruction and Development dated 1st April 1960 ;

(*e*) the guarantee given in respect of a loan to the Central African Power Corporation of Northern Rhodesia and Southern Rhodesia by an agreement between the United Kingdom and the International Bank for Reconstruction and Development dated 2nd October 1964.

For the purposes of this Order the repayment of any sum issued as mentioned in this paragraph shall be regarded as having become due on the date that sum was issued.

2. Sums due on Promissory Notes issued by the Government of Southern Rhodesia in respect of liabilities of that Government resulting from the apportionment by section 16(1)(*c*) of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963(**d**) of liabilities of the Federation incurred under an agreement known as the United Kingdom-Federation of Rhodesia and Nyasaland Credit Agreement 1962.

(**a**) 1889 c. 63. (**b**) 1949 c. 50. (**c**) 1949 c. 50; 1952 c. 1; 1962 c. 41.
(**d**) S.I. 1963/2085 (1963 III, p. 4477).

3. Any sum due in respect of instalments of the purchase price of military aircraft and associated equipment sold by the Government of the United Kingdom to the Government of the Federation of Rhodesia and Nyasaland and allocated, together with liabilities or obligations relating thereto, to the Government of Southern Rhodesia on or in consequence of the dissolution of the Federation.

4. Any sum due by way of interest on, or in repayment of, any loan made to the Government of Southern Rhodesia under section 2 of the Colonial Development and Welfare Act 1959(**a**).

SCHEDULE 2 Article 15

Enactment	*Modification*
The following provisions of the Foreign Compensation Act 1950(**b**)—	
Section 4(2)	The omission of the first five words, and the substitution of a reference to this Order for the reference to the Act.
Section 4(3)	The substitution of a reference to this Order for the reference to an Order in Council made under section 2 of the Act, and the omission of the last sixteen words.
Section 5	——
Section 7(2)	The substitution of a reference to this Order for the reference to the Act.
Section 8	——
Subsections (1) to (11) of section 3 of the Foreign Compensation Act 1969(**c**).	In subsection (1) the substitution of a reference to this Order for the reference to an Order in Council made under section 3 of the Foreign Compensation Act 1950. In subsection (9) the substitution of a reference to this Order for the reference to the Foreign Compensation Act 1950.

(**a**) 1959 c. 71. (**b**) 1950 c. 12. (**c**) 1969 c. 20.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for an equitable distribution by the Foreign Compensation Commission to certain creditors of the Government of Southern Rhodesia of moneys of that Government that are or may be found to be available in the United Kingdom to satisfy its debts.

Article 2, which comes into operation on 20th July 1973 and will expire on the coming into operation of the other provisions of the Order on a day to be appointed, prohibits a person possessing such moneys from using them to satisfy such a debt without the consent of a Secretary of State.

Article 3 provides that proceedings may not be commenced after the appointed day for the purpose of establishing the existence of a Southern Rhodesian Government debt. Articles 4, 5 and 6 provide for available moneys of the Government of Southern Rhodesia to be transferred to a Fund established by the Foreign Compensation Commission. Article 7 provides for the making of claims to the Commission in respect of certain debts, including sums due in respect of stocks to which the Colonial Stock Act 1877 applies and certain sums due to the Government of the United Kingdom. Articles 8 to 11 deal with the determination of claims by the Commission, the making of payments from the Fund and the effect of such payments on the debts concerned. Article 13 contains additional provisions relating to stock, including provision for the surrender of certificates and noting by the registrar of particulars of payments, and Article 14 deals with the calculation of time limits for bringing proceedings to which Article 3 applies.

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