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Title: The Width of the Territorial Waters  
of the Bahama Islands Prior to  
Independence in July 1973

Requested by: James B. Ullman, Esquire  
Assistant U.S. Attorney, Miami, Florida

Prepared by: Philip A. Dales, III, Research Assistant  
Ocean Law Program

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THE WIDTH OF THE TERRITORIAL WATERS OF THE BAHAMA ISLANDS  
PRIOR TO INDEPENDENCE IN JULY 1973

I. There is no single document wherein the constitutional relationship between the government of the United Kingdom and its dependencies is spelled out. However, written references to governmental prerogative, duty, and constitutional relationship are made in official documents and Acts of Parliament from time to time from which it is possible to derive some "authority."

In regards to the question at hand, there is sufficient weight in the writings and Parliamentary acts cited to conclude that constitutionally or otherwise the Crown is ultimately responsible for the foreign affairs of the Bahamas and that the territorial waters of the Bahamas (before independence) was three miles.

II. The Bahama Islands and the territorial waters adjacent thereto are subject to the sovereignty of the Crown, 5HLE 3d 433, by virtue of having become a "dependency" by reason of settlement authorized by the Crown, 5 HLE 3d 544, wherein possession was taken in the name of the Crown. Until recently the main line of communication with a dependent territory was through the Secretary of State for the Colonies,<sup>1</sup> which is now the

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<sup>1</sup>Minty, 1928, Constitutional Laws of the British Empire, at 95.

Secretary of State for Commonwealth Affairs,<sup>2</sup> and the Crown had constitutional responsibility for the making of any treaty affecting the dependent territories.<sup>3</sup> A colony had no power to make a treaty with an independent Power which was binding on itself, much less on other dominions. Colonial legislatures are not to this extent sovereign law making bodies.<sup>4</sup> The government of the United Kingdom is still officially capable of contracting for the whole of the dependent territories, which lack independent personality in international law, and the Crown is responsible to foreign powers for any breach of international agreements; but as regards commercial treaties and international conventions the Crown normally seeks to provide that the Government of each territory is left free to adhere or withdraw as the interests of the territory require,<sup>5</sup> HLE 3d 446.\* In addition see attached photocopies numbered "a" and "b".

III. That the government of the United Kingdom is responsible for the foreign affairs of the Bahamas is specifically reflected

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<sup>2</sup> Secretary of State for Commonwealth Affairs Order 1966 SI 1966 No. 950.

<sup>3</sup> Wilson, International and Comparative Law of the Commonwealth, 1968, at 45.

<sup>4</sup> Minty, op cit, at 95.

\*Note: HLE is Halsbury's Laws of England and HSE is Halsbury's Statutes of England.

in the 1968 Report of the Bahamas Constitutional Conference by the Great Britain Colonial Office which is attached hereto and numbered "c", "d" and "e". It is stated therein that the Government of the United Kingdom will continue to be responsible for the external affairs on behalf of the Bahamas, but in addition describes in detail the extent to which some executive authority to conduct external affairs on behalf of the Government of the United Kingdom is delegated, namely in trade agreements, local negotiations, technical assistance agreements, and emmigration. Shipping is specifically reserved to the Crown.

Furthermore, section 43 of the Constitution of the Commonwealth of the Bahama Islands, (Bahama Islands Constitution Order 1969, which is attached hereto and numbered "f") states that the Governor, Her Majesty's Officer for the Islands, section 17, shall reserve for signification of Her Majesty's pleasure any legislative bill affecting external affairs. Section 71, attached hereto and numbered "g", states that the power of Her Majesty's government in the United Kingdom to regulate the external affairs of the Bahama Islands is not prejudiced although the Government of the Bahama Islands shall have authority to conduct external affairs as may from time to time be entrusted to the Government of the Bahama Islands by Her Majesty's Government in the United Kingdom.

I think it is safe to conclude on the strength of these

writings, documents, and act of Parliament that the United Kingdom (is) responsible for the "external affairs" of the Bahama Islands.

IV. The legislature of the Bahama Islands has not legislated on the width of her territorial waters; in fact, it is unlikely that it could constitutionally do so without specific approval of Parliament, and in any event would be overridden by any Parliamentary act on the subject, Colonial Laws Validity Act 1865, 4 HSE 3d 476. <sup>\*</sup> The width of territorial seas has normally been a question of international law, and as such would be part of external affairs and prescribed for by Her Majesty's Government in the United Kingdom for all the territories of the Commonwealth. In fact, Parliament has so prescribed for Admiralty jurisdiction in the Territorial Waters Jurisdiction Act 1878 (see attached photocopies numbered "h" and "i" and note therein). The power of Parliament to legislate for the colonies is evidenced in that act by specific proviso and it is clearly intended that it apply to all territories. The Act is still good law and is listed amongst the Statutes of the Bahamas under "Laws of the United Kingdom Applying in the Colony Otherwise than by Enactment by the Legislature of the Colony." The Act describes the territorial waters of the United Kingdom and her territories as that sea...adjacent to the coast of her other dominions as is deemed

by international law to be within the territorial sovereignty of Her Majesty; but the jurisdiction of the Admiral is limited to one marine league, commonly known as the three mile limit. 41 & 42 Vict. c73 s7 (The Law Reports, Statutes Vol. XIII at 579).

V. The Act referred to has been recently interpreted in R v Kent Justices, Ex Parte Lye, QBD Divl Ct, 1 All English Law Reports 1967 560. In holding that a radio transmitter 4.9 miles from the mean low water mark on the coast but within 3 miles from exposed low tide elevation was subject to the jurisdiction of Kent County courts (question being one of which baseline to measure from) the court stated that although the 1878 Act did not lay down a definition of territorial waters for all purposes, section 7 of the Act meant territorial waters deemed by international law from time to time to be within the jurisdiction of Her Majesty. Furthermore, the court stated that "What is the territory of the Crown is a matter of which the Court takes judicial notice...Any definite statement from the proper representative of the Crown as to the territory of the Crown must be taken as conclusive and hence the territorial waters per the Act of 1878 was three miles." Lord Parker, CJ, at 564, stated that "this country has in general proceeded on the basis that territorial waters are limited to three nautical miles from the

low-water mark." The same statement is made in Post Office v Estuary Radio, Ltd., QBD & CA 3 AER 1967 663, 2 AER 1967 663, 2 AER 1968 444. (Attached numbered "j" )

I believe it is correct to assert on the basis of these statutes and authorities that the width of the territorial waters of the Bahamas was three miles, as the width recognized by Her Majesty's Government in the United Kingdom for Great Britain and the territories of the Commonwealth under international law prevailing at the time. See attached photocopy numbered "k" for a note on the problem of the width of the territorial seas in 31 HSE 619.

1006. *Information services in London.* The Colonial Office has a general library and a separate legal library; the Commonwealth Relations Office also has general and law libraries in respect of the territories controlled by the Secretary of State for Commonwealth Relations (s). The Annual Report on the colonial territories, which is presented to Parliament by the Secretary of State for the Colonies, and published as a Command paper, reviews developments in the Colonial Office and Colonial Service, and political, economic, and financial developments, social services, research projects and international relations in the dependencies. Annual reports on most of the dependencies are also published in the Colonial Office series.

1007. *Representation of the dependent territories in England.* The Crown Agents for the Colonies act as commercial and financial agents for all the dependencies controlled by the Secretary of State for the Colonies and some others, receiving instructions direct, but subject to the supervision of the Secretary of State.

Northern Rhodesia, Nyasaland, the Gold Coast, Nigeria and Cyprus all have Commissioners in London; the East African dependencies jointly have a Commissioner, whose office is one of the scheduled services administered by the East Africa High Commission. The Sudan has a Government Agency. In addition to the Trade Commission for the West Indies, British Guiana and British Honduras, there is an information bureau for the Bahamas and an information office for Bermuda. Malta has a Commissioner-General, Hong Kong has a Government Office, and the Federation of Malaya and Singapore have a joint Commissioner.

## Part 2. The Constitutions and Governments of the Members of the Commonwealth

### SECT. 1. THE EVOLUTION OF INDEPENDENT STATUS

#### SUBSECT. (1). *Autonomy in Internal Affairs*

1008. *Responsible government.* In 1839 Lord Durham recommended responsible government as the solution to the difficulties that had arisen in the working of representative institutions in Lower and Upper Canada. The two colonies were to be re-united as Canada, and the Governor was to be required to act, in matters of internal concern, on the advice of heads of departments who could command the support of a majority in the Assembly and who were to vacate office when they could no longer command such support. Within a decade the main recommendations of the Durham Report had been implemented in relation to Canada and other North American colonies, and the system of responsible government was extended to the Australian colonies, New Zealand and later South Africa (1).

The Durham Report had recommended that the Imperial Government should retain control over constitutional change, foreign relations, the regulation of external trade and the disposal of public lands. During the course of the nineteenth century, however, the reserve powers of the Imperial Government were gradually relinquished, and control over land policy, tariffs, shipping, local defence forces, immigration, and in large measure

(1) These libraries are all open to visitors from 10 a.m. to 5 p.m. on Mondays to Fridays, and 10 a.m. to noon on Saturdays. The legal libraries have available for each territory the instruments establishing the Constitution (Orders in Council, Letters Patent, and Royal Instructions) and a full series of local laws, together with an index.

(2) See Keith's *Responsible Government in the Dominions* (1928), Part 1.

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constitutional amendment, was conceded to the colonies possessing responsible government. Although relaxation of imperial control over the external political relations of the Dominions (a) proceeded more slowly (a), it was possible to declare by 1936 that the United Kingdom and the Dominions were "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations" (b).

1009. *Former restrictions on full autonomy in internal affairs.* Nevertheless, in 1926 there remained vestiges of a formal inferiority of the Dominions in relation to the United Kingdom, the removal of which called for the enactment of binding constitutional conventions or, in some cases, the enactment of legislation by the United Kingdom Parliament. The status of a Governor-General in relation to his Ministers was equivocal and was regarded in some quarters as establishing an inequality of status between the United Kingdom and the Dominions. Moreover, bills passed by Dominion Parliaments might in certain circumstances be reserved for the signature of His Majesty's pleasure; and in deciding whether to assent to a bill the Sovereign acted on the advice of the United Kingdom Government, which was not conclusively obliged to tender its advice in accordance with the views of the Dominion Government concerned (c). Dominion Acts were subject to disallowance by the Crown acting on the advice of the United Kingdom Government; but there had been no case of disallowance of Dominion legislation since 1873 (d). To the extent that Dominion legislation was repugnant to the provisions of any United Kingdom Act or order or regulation made thereunder, extending to the Dominion, it was void and inoperative (e). There were thought to be restrictions upon the competence of a Dominion to legislate with extra-territorial effect (f). It was held that, as a result of the rules concerning repugnant and extra-territorial legislation, a Dominion legislature had no power to abrogate the appeal by special leave from the courts of the Dominion to the Judicial Committee of the Privy Council (g). The United Kingdom Parliament could so legislate as to alter the law of a Dominion; Dominion Parliaments had no corresponding power in relation to United Kingdom law. Part of the constitutions of some of the Dominions could not be amended except by the United Kingdom Parliament.

These limitations upon Dominion autonomy were largely removed as a result of the resolutions of the Imperial Conferences of 1926 (h) and 1930 (i) (the latter approving the Report of the Conference on the Operation of Dominion Legislation (k)), and the enactment of the Statute of Westminster in 1931 (l).

(a) See Cd. 3523 (1907), pp. 75-83, for a discussion of the term "Dominions".

(b) See pp. 453 *et seq.*, *post*.

(c) Cd. 2764, p. 14.

(d) *Whare's Statute of Westminster and Dominion Status* (5th Edn.) 69-70.

(e) Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation (O. D. 1, Report) (Cd. 3479), para. 22.

(f) Colonial Laws Validity Act, 1863 (28 & 29 Vict. c. 63), s. 2.

(g) See pp. 475, 476, *post*.

(h) *Madon v. R.*, [1926] A. C. 482, P. C. That the rule concerning extra-territorial legislation is relevant in this context is disputed in *Woolborth (New Zealand), Ltd. v. Wynne*, [1952] N. Z. L. R. 496, at pp. 521 *et seq.*, where the authorities are reviewed.

(i) See Cd. 3717.

(j) See Cd. 3479.

(k) See Cd. 3479.

(l) 22 & 23 Geo. 5 c. 4.

Dominion is not defined to include The Bahamas, which are a dependency, a crown colony, part of Her Majesty's dominion generally



1182. Trust territories, formerly mandates. The trust territories (formerly mandates), like protectorates and protected states, are not British territory (*f*). Mandates for Tanganyika, part of the Cameroons and Togoland, Palestine including Transjordan, and Iraq (*m*) were acquired by the Crown by agreement of the principal allied and associated Powers over former colonial territories placed at their disposal by Germany under Article 119 of the Treaty of Versailles (*o*), and of the principal allied Powers in respect of territories formerly belonging to the Turkish Empire (*p*).

Iraq achieved formal independence by admission to the League of Nations on 3rd October 1932. Transjordan became independent in 1946 (*q*) and the mandate in Palestine was terminated on 15th May 1948 (*r*). In the remaining territories the mandate system has been superseded by the trusteeship system of the United Nations (*s*). Trust territories are subject to some international supervision, exercised by the General Assembly and the Trusteeship Council (*t*). Some constitutions provide that local legislation is subject to the terms of the mandate or trust agreement (*u*).

#### SECT. 2. THE STATUS OF AND CONSTITUTION-MAKING POWER IN THE BRITISH OVERSEAS DEPENDENCIES

##### SUBSECT. (1). Status

1183. International affairs. The Government of the United Kingdom is capable of contracting for the whole of the dependent territories, which lack independent personality in international law. Thus a declaration of war or peace by the British Government binds all colonies, and all other dependent

(1) See p. 435, ante, as regards the continuance of existing laws, see p. 692, *post*.  
(2) The Council of the League of Nations, on 29th September 1924, accepted the British Treaty with Iraq and British assurances of securing performance of the obligations of the mandatory system as conforming with the terms of art. 22 of the Covenant of the League of Nations (Cmd. 2300).  
(3) Dated 28th June 1932.

(4) Covenant of the League of Nations (Cmd. 2300), art. 22; and see the United Nations Charter (Cmd. 7015), Chapters XII and XIII, arts. 76, 77.

(5) See Treaty of Alliance in 1946 between His Majesty in respect of the United Kingdom and His Highness the Amir of Transjordan (Cmd. 6916). Historic Decision of the Declaration of Transjordan a Fully Independent State, and the Proclamation of His Majesty Abdulrahman al-Husain, King of the Hashemite Kingdom of Transjordan, 25th May 1946 (Transjordan Legislation, 1946), 28.

(6) See the Palestine Act, 1948 (11 & 12 Geo. 6 c. 27), s. 1. All jurisdiction of His Majesty in Palestine then determined and His Majesty's Government in the United Kingdom ceased to be responsible for the government of Palestine (*ibid.*, s. 1). Evacuations ceased to apply or extend to Palestine accordingly (*ibid.*, s. 3(2)).

(7) See the Mandated and Trust Territories Act, 1947 (11 & 12 Geo. 6 c. 81); and see Cmd. 1794 (1922); 2 Oppenheim's International Law (7th Edn.) 203 *et seq.*; H. Duncan Hall's Mandates, Dependencies and Trusteeship (1948).

(8) United Nations Charter (Cmd. 7015), arts. 87, 88.  
(9) See, e.g., the Togoland under United Kingdom Trusteeship Order in Council, 1949, S.I. 1949 No. 1697 (as amended by S.I. 1950 No. 2096), ss. 6, 7; the Gold Coast (Constitution) Order in Council, 1950, S.I. 1950 No. 2094, s. 50; both these sections provide that laws repugnant to the Trusteeship Agreement shall be void. Cf. *Perrvalden-Jaffa District Governor v. Sultanwar Murra*, [1926] A. C. 321, P. C., and Palestine Royal Instructions dated 1st January 1932, cl. XIX.

(10) The Royal Instructions to the Governor of Nigeria dated 27th November 1951, cl. 10, provide that the Governor must reserve any bill the provisions of which appear to him to be inconsistent with the obligations imposed upon Her Majesty by treaty or other international agreement, including the Trusteeship Agreement, and the Nigeria (Supplemental Provision) Order in Council, 1951, S.I. 1951 No. 1957, s. 12, states that, subject to the provisions of the Trusteeship Agreement, the Cameroons shall be administered in such manner as may be provided by Order of Her Majesty in Council. In the Royal Instructions to the Governor of Tanganyika dated 31st August 1950, cl. XVII (6), reservation applies simply to Ordinances "the provisions of which shall appear inconsistent with the obligations imposed upon Us by Treaty."

#### SECT. 3] STATUS AND CONSTITUTION-MAKING POWER

territories provided the intention to bind them is clearly expressed (*a*). The Crown is also responsible to foreign powers for any breach of international obligations incurred in international agreements. The power to contract is regularly exercised in great international conventions (*b*), but as regards commercial treaties and international conventions the Crown normally seeks to provide that the Government of each territory is left free to adhere or withdraw as the interests of the territory require (*c*).

1184. Federation. In internal matters each colony forms normally a distinct entity, for political federation has so far produced only the Leeward Islands Federation (*d*), the Federation of Malaya (*e*), and the Federation of Rhodesia and Nyasaland (*f*), though federation has been agreed upon for the island colonies of the Caribbean (*g*). The Windward Islands are connected only through the Governor.

A movement towards federation or closer association of neighbouring territory is apparent in many other overseas dependencies. A measure of judicial federation has sometimes accompanied political association as in Malaya (*h*); sometimes it has proved a prelude to federation or closer association, as in the Rhodesia and Nyasaland Federation (*i*); more frequently it has outstripped political association. Thus the West African Court of Appeal (*k*) is shared by the Gold Coast, Nigeria, Sierra Leone and the Gambia, while more limited political association is provided by the West African Territorial Conference (*l*), with its permanent secretariat, and economic association by the West African Air Transport Authority (*m*). In East Africa the Court of Appeal (*n*) hears appeals from Kenya, Tanganyika, Uganda, Somaliland, Zanzibar, Seychelles and Aden, whilst politically only

(6) *The Arctic Ships* (1855), 2 *Exc. & Ad.* 212.

(7) Southern Rhodesia, which is almost self-governing in domestic affairs, and falls within the sphere of the Commonwealth Relations Office, is, for example, not separately a member of the United Nations, but is a member in her own right of the World Health Organisation and of the International Trade Organisation (Interim Committee). Responsibility for external affairs has now passed to the Federation of Rhodesia and Nyasaland. In regard to the two condominium territories of the Sudan and the New Hebrides, the power and responsibility of the Crown is somewhat attenuated by international agreements.

(8) E.g. the Crown ratified the Warsaw Convention of 1929 on the international carriage of persons or goods by air bringing the convention into force in respect of Great Britain on 15th May 1931, of various dependencies on 31st March 1953, and other dependencies in various dates thereafter; see the various instruments cited in *Wiley Civil Aviation*, pp. 206, 208, *ante*; and see J. E. S. Fawcett's *Treaty Relations of British Overseas Territories*, British Yearbook of International Law, 1949.

(9) See p. 625, *post*.

(10) The colony involved is Southern Rhodesia, Northern Rhodesia and Nyasaland are Protectorates; see p. 389, *post*.

(11) See p. 629, *post*, and see the article by S. S. Ramphal in 2 *International and Comparative Law Quarterly* 1952.

(12) A Supreme Court was established for the Federation by the Federation of Malaya Order in Council, 1948, S.I. 1948 No. 108, see p. 667, *post*.

(13) The Rhodesia and Nyasaland Court of Appeal was established in 1948; see the Rhodesia and Nyasaland (Court of Appeal) Order in Council, 1948, S.I. 1948 No. 109, and the Rhodesia and Nyasaland (Court of Appeal) Order in Council, 1954, S.I. 1954 No. 314, as amended by S. R. & O. 1959 No. 52; and S. R. & O. 1947 No. 1486, arts. 30, 31; the Rhodesia and Nyasaland Court of Appeal Ordinance (Res. Laws, 1949) Edn. 51(N. Rhod.); and the Criminal Procedure Code (Res. Laws, 1946, v. 29) (Nyasaland), ss. 375, 377.

(14) This preceded the establishment of the Central African Court in 1951, P. 465, *post*. This Court made by the Federation of Rhodesia and Nyasaland (Constitution) Order in Council, 1951, S.I. 1951 No. 1194, *ante*, art. 44.  
(15) This was reconstituted in 1948 by the West African Court of Appeal Order in Council, 1948, S.I. 1948 No. 1330; see p. 660, *post*.

(16) This preceded the West African Council in June 1951; see p. 660, *post*.

(17) See the Eastern African Court of Appeal Order in Council, 1950, S.I. 1950 No. 1968; and p. 661, *post*.



1968 Bahamas Constitutional Conference

Party

Party of the Opposition

T.D., Legal Adviser to United Bahamian Party

Party

President of the Senate

House of Assembly

ator for the Independent Senators

ry-General

ANNEX B

Commonwealth Office,  
London, S.W. 1.

BAHAMAS

(Date)

1. I have the honour, in accordance with the undertaking given at the Constitutional Conference held in London in September, 1968, to address you on the subject of the external affairs of the Bahama Islands.

2. It was recognised at the Conference that the United Kingdom Government must continue to be responsible for the external relations of the Bahama Islands. In carrying out their general responsibility, however, the United Kingdom Government will of course seek the fullest consultation with the Bahamas Government and will at all times have special regard to the interests of that Government. In addition, subject to the stipulations set out in paragraph 4 of this despatch, the United Kingdom Government hereby delegate to the Bahamas Government, with effect from the date specified in paragraph 5 of this despatch, executive authority to conduct external relations on behalf of the United Kingdom Government as follows:

- (a) Authority to negotiate and conclude trade agreements with other countries, whether bilateral or multilateral, relating solely to the treatment of goods.
- (b) Authority to arrange or permit visits of up to thirty days for trade or commercial purposes by representatives or residents of the Bahama Islands to any other country, and by representatives or residents of any other country to the Bahama Islands (but questions relating to the establishment of permanent or temporary representation of other countries in the Bahamas or of the Bahamas in other countries will continue to be determined by the United Kingdom Government after consultation with the Government of the Bahama Islands).
- (c) Authority to negotiate and conclude agreements of purely local concern with any independent member of the Commonwealth or any Associated State or British dependent territory or the United States of America or such other authorities as the Bahamas Government may request and the United Kingdom Government may approve.
- (d) Authority to negotiate and conclude agreements for technical assistance or of a cultural or scientific nature with any independent member of the Commonwealth or the United States of America or such other authorities as the Bahamas Government may request and the United Kingdom Government may approve.
- (e) Authority to negotiate and conclude agreements with other countries, whether bilateral or multilateral, relating to emigration from the Bahama Islands to those countries and to emigrant labour schemes.

In addition the United Kingdom Government will give sympathetic consideration to any request by the Bahamas Government for authority to take action on individual questions of external relations not covered by this despatch.

## '68 Bahamas Constitutional Conference

3. The authority conferred by paragraph 2 above does not extend to the negotiation and conclusion of trade agreements relating to establishment matters (i.e., those affecting the rights of persons and companies of the contracting parties) or agreements relating to civil aviation and shipping, which will continue to be dealt with in accordance with the present practice whereby the United Kingdom Government engages in the fullest consultation with the Bahamas Government. The United Kingdom will also consider the inclusion of a representative of the Bahamas Government, either as an adviser or as an observer or in some similar capacity, in any United Kingdom Delegation attending international discussions about civil aviation, shipping or finance in which the interests of the Bahamas are materially involved.

4. In view of the general responsibility of the United Kingdom Government for the external affairs of the Bahama Islands, it will be necessary for the Bahamas Government to inform the United Kingdom Government in advance of any proposal for the exercise of the authority to conduct negotiations delegated to the Bahamas Government by paragraph 2(a), (c), (d) and (e) of this despatch and to keep the United Kingdom Government informed of the progress of any such negotiations. The United Kingdom Government will inform the Bahamas Government if it should appear that the actions or proposal of the Bahamas Government in this field conflict with, or are likely to lead to conflict with, the international commitments, responsibilities or policies of the United Kingdom Government. In that event it will of course be necessary for the Bahamas Government to abide by the decision of the United Kingdom Government.

5. I should be grateful if you would acknowledge the receipt of this despatch and confirm that the Bahamas Government accept the authority delegated in paragraph 2 of this despatch subject to the understandings and stipulations set out in paragraphs 3 and 4 in relation to such delegation, which shall become effective on the date of receipt in the Commonwealth Office of your acknowledgement and confirmation of acceptance.

I have the honour etc.

### SPEECH BY THE SF

THE RT. HON. GEORGE  
Gentlemen: I should like to accept the invitation to come to the Bahamas, but I have not yet had an opportunity of State, but I know that you greatly enjoyed his visit recently of accompanying the General Council of the Mauritius.

I am delighted to be here in Marlborough House. Our Commonwealth and Constitutional Conference foundations of the present arrangements then agreed in Council in 1964, conferred a wide and established for the period. I am glad to find that it

As you know, it was were made in the new Government's desire for changes. As a first step in January and held representatives of the Government would for and that a representative convenient.

We have now received constitutional change have also had the benefit of the other parties representatives will form the basis of those around this political parties and we will rapidly be able to on the changes that about

Now, Mr. Premier, I details to the Bahamas parties on them. There and which I think may

# Statutory Instruments 1969 No. 590 Bahama Islands (Constitution) Order 1969

## The Schedule to the Order

### The Constitution of the Commonwealth of the Bahama Islands

#### Part III

#### The Legislature

(3) The determination by an Election Court of any question referred to in subsection (1) of this section shall be final.

(4) Proceedings for the determination of any question referred to in subsection (1) of this section shall not be instituted except with the leave of a judge of the Supreme Court.

(5) An appeal shall lie to the Court of Appeal on a point of law from the decision of a judge of the Supreme Court granting or refusing leave to institute proceedings in accordance with this section; but, subject as aforesaid, that decision shall be final.

#### *Powers and Procedure*

42. Subject to the provisions of this Constitution, the Legislature may make laws for the peace, order and good government of the Bahama Islands.

43.—(1) Subject to the provisions of sections 51 and 52 of this Constitution, the power of the Legislature to make laws shall be exercised by bills passed by both chambers, either without amendment or with such amendments only as are agreed to by both chambers, and assented to by Her Majesty or by the Governor on behalf of Her Majesty.

(2) When a bill is presented to the Governor for assent, he shall signify that he assents or that he withholds assent or that he reserves the bill for the signification of Her Majesty's pleasure:

Provided that, unless he has been authorised by a Secretary of State to assent thereto, the Governor shall reserve for the signification of Her Majesty's pleasure any bill which appears to him, acting in his discretion—

(a) to be inconsistent with any subsisting obligation imposed on Her Majesty by any treaty, convention or agreement or arrangement relating to any country or international or similar organisation outside the Bahama Islands;

(b) to be likely to prejudice the Royal prerogative;

(c) to be in any way repugnant to or inconsistent with the provisions of this Constitution;

(d) to be inconsistent with any subsisting obligation (other than an obligation relating to the entry of persons into or the maintenance of internal security in the Bahama Islands) contained in any agreement entered into by the Government of the Bahama Islands under authority especially conferred on the Government for the purpose by a law enacted by the Legislature;

(e) to affect external affairs, defence, internal security or the Police Force.

(3) A bill assented to by Her Majesty shall become a law when the Governor has signified such assent by proclamation published in the Gazette.

(4) In every bill presented to the Governor for assent, other than a bill presented under section 51 or 52 of this Constitution, the words of enactment shall be as follows:—

"Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of

Assembly of the Commonwealth of the Bahama Islands, and by the authority of the same, as follows:—"

(5) In every bill presented to the Governor for assent under section 51 or section 52 of this Constitution the words of enactment shall be as follows:—

"Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of the Commonwealth of the Bahama Islands in accordance with the provisions of section 51 (or section 52, as the case may be) of the Constitution of the Commonwealth of the Bahama Islands, and by the authority of the same, as follows:—"

(6) Any alteration of the words of enactment of a bill in consequence of the provisions of subsection (5) of this section shall not be deemed to be an amendment of the bill.

44.—(1) Subject to the provisions of this Constitution, each chamber of the Legislature may from time to time make, amend or revoke Rules of Procedure for the regulation and orderly conduct of its own proceedings and the despatch of business, and the passing, intituling and numbering of bills and the presentation of the same to the Governor for assent.

(2) The Legislature may provide that any resolution for the suspension, amendment or revocation of any Rule of Procedure of a chamber of the Legislature shall not be passed unless it is supported by the votes of all, or a specified number or proportion, of the members of the chamber present and voting on the resolution.

45. No member of either chamber of the Legislature shall be permitted to take part in the proceedings of that chamber (other than proceedings necessary for the purposes of this section) until he has made and subscribed before that chamber an oath or affirmation of allegiance in the form set out in the Schedule to this Constitution:

Provided that the election of a President of the Senate or the election of a Speaker of the House of Assembly may take place before the members of the Senate or the House of Assembly, as the case may be, have made such oath or affirmation.

46. A chamber of the Legislature shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the chamber is first constituted or is reconstituted at any time), and any proceedings therein shall be valid notwithstanding that some person who was not entitled so to do sat or voted in the chamber or otherwise took part in the proceedings.

47.—(1) The President of the Senate or, in his absence, the Vice-President or, if they are both absent, a Senator (not being a Minister or Parliamentary Secretary) elected by the Senate for that sitting shall preside at each sitting of the Senate.

(2) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a Representative (not being a Minister or Parliamentary Secretary) elected by the House for that sitting shall preside at each sitting of the House.

Rules of Procedure

Oath of allegiance

Validity of proceedings

Presiding in the Senate and House of Assembly

1969  
Constitution

Part IV  
The Executive

Whenever the Prime Minister is absent from the Bahama Islands or unable by reason of illness to perform the functions conferred on him by this Constitution, the Governor may, by directions in writing, authorise any other Minister who was appointed from among the Ministers to perform the functions conferred on him by subsection (2) of this section and that member shall perform those functions until his authority is revoked by the Governor.

Whenever a Minister other than the Prime Minister is absent from the Bahama Islands or unable by reason of illness to perform the functions conferred on him by this Constitution, the Governor may, in writing, appoint a person who is a member of the Legislature as that Minister to be a Minister.

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(b) the discharge by the courts of the Bahama Islands of their judicial functions;

(c) the initiation, conduct and discontinuance of criminal proceedings;

(d) the audit of the accounts of the Bahama Islands;

(e) the making of appointments (including appointments on promotion, appointments on transfer and the confirmation of appointments) to public offices, the removal or disciplinary control (including the withholding of increments of salary) of persons holding or acting in such offices and the grant of any benefits in relation to pensions and gratuities in pursuance of section 113 of this Constitution.

(4) For the purposes of subsection (3)(e) of this section, the office of a judge of the Supreme Court or Court of Appeal or a member of the personal staff of the Governor shall be deemed to be a public office.

(5) Subject to the provisions of this Constitution, where any Minister has been charged with the responsibility for a matter or department of government in pursuance of this section, he shall exercise general direction and control over the work relating to that matter and over that department and, subject to such direction and control by the Minister, the work and the department shall be under the supervision of a public officer (in this Constitution referred to as a permanent secretary) appointed for the purpose:

Provided that for the purposes of this subsection a permanent secretary may be appointed to supervise the work relating to several matters and departments.

71.— (1) Without prejudice to the powers of Her Majesty's Government in the United Kingdom to regulate the external affairs of the Bahama Islands, the Government of the Bahama Islands shall have such authority to conduct external affairs as may from time to time be entrusted to the Government of the Bahama Islands by Her Majesty's Government in the United Kingdom.

Authority of Government of Bahama Islands to conduct external affairs.

(2) The scope of the authority that is entrusted to the Government of the Bahama Islands under subsection (1) of this section shall be such as may be defined by, and that authority shall be exercised in accordance with, the terms of such communications as may from time to time be made to the Government of the Bahama Islands by Her Majesty's Government in the United Kingdom, and every communication made in pursuance of this subsection shall be published in the Gazette.

72. The Governor, acting in his discretion, shall be responsible for the following matters—

Governor's special responsibility for external affairs and defence.

(a) such matters relating to external affairs as may be specified in any instructions given to him by Her Majesty under Her Sign Manual and Signet or through a Secretary of State; and

(b) defence, including the armed forces.

73. (1) Responsibility for internal security and all matters relating to the Police Force is vested in the Governor; but the Governor shall by instrument under his hand (in this section referred to as "the instrument of entrustment") entrust the designated Minister with authority to discharge that responsibility.

Governor's special responsibility for internal security and the Police Force and entrustment thereof.

580 CH. 73. *Territorial Waters Jurisdiction Act, 1878.* 41 & 42 V.

certificate of the Secretary of State or Governor, as is required by this Act has been given, and the fact of the same having been so shall be presumed unless disputed by the defendant at the trial, and the production of a document purporting to be signed by the Principal Secretaries of State as respects the United Kingdom, and by the Governor as respects any other part of Her Majesty's dominions, and containing such consent and certificate, shall be sufficient evidence for all the purposes of this Act.

Proceedings before a justice of the peace or other magistrate previous to the committal of an offender for trial or to the detention of the justice or magistrate that the offender is to be tried upon his trial shall not be deemed proceedings for the trial of an offence committed by such offender for the purposes of the said consent and certificate under this Act.

5. Nothing in this Act contained shall be construed to deprive or derogate of any rightful jurisdiction of Her Majesty, her heirs or successors, under the law of nations, or to affect or prejudice any jurisdiction conferred by Act of Parliament or now by law existing in relation to foreign ships or in relation to persons on board such ships.

6. This Act shall not prejudice or affect the trial in man-of-war heretofore in use of any act of piracy as defined by the law of nations, or affect or prejudice any law relating thereto; and where any act of piracy as defined by the law of nations is also any such offence as is declared by this Act to be within the jurisdiction of the Admiral, such offence may be tried in pursuance of this Act, or in pursuance of any other Act of Parliament, law, or custom relating thereto.

7. In this Act, unless there is something inconsistent in the context, the following expressions shall respectively have the meanings hereinafter assigned to them: that is to say,

"The jurisdiction of the Admiral," as used in this Act, includes the jurisdiction of the Admiralty of England and Ireland, or either of such jurisdictions as used in any Act of Parliament: and for the purpose of arresting any person charged with an offence declared by this Act to be within the jurisdiction of the Admiral, the territorial waters adjacent to the United Kingdom, or any other part of Her Majesty's dominions, shall be deemed to be within the jurisdiction of any judge, magistrate, or officer having power within such United Kingdom, or other part of Her Majesty's dominions, to issue warrants for arresting or to arrest persons charged with offences committed within the jurisdiction of such judge, magistrate, or officer:

"United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands:

"The territorial waters of Her Majesty's dominions," in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty: and

1878. *Territorial Waters Jurisdiction Act, 1878.* Ch. 73, 74.

within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions:

"Governor," as respects India, means the Governor General or the Governor of any presidency; and where a British possession consists of several constituent colonies, means the Governor General of the whole possession or the Governor of any of the constituent colonies: and as respects any other British possession, means the officer for the time being administering the government of such possession; also any person acting for or in the capacity of Governor shall be included under the term "Governor":

"Offence" as used in this Act means an act, neglect, or default of such a description as would, if committed within the body of a county in England, be punishable on indictment according to the law of England for the time being in force:

"Ship" includes every description of ship, boat, or other floating craft:

"Foreign ship" means any ship which is not a British ship.

CHAPTER 74.

An Act for making better provision respecting Contagious and Infectious Diseases of Cattle and other Animals; and for other purposes. [16th August 1878.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.—GENERAL.

1. This Act may be cited as the Contagious Diseases (Animals) Short title Act, 1878.

2.—(1.) This Act shall, except as otherwise expressed, commence and have effect from and immediately after the thirtieth day of September one thousand eight hundred and seventy-eight, which time is in this Act referred to as the commencement of this Act.

(2.) But on and after the passing of this Act any Order of Council and Order in Council necessary or proper for bringing this Act into operation at the commencement thereof, and any order or regulation of a local authority authorised by any such Order of Council or in Council, may be made so that the same do not take effect before the commencement of this Act; and on and after the passing of this Act any committee and any inspector or other officer may be appointed to act under this Act as from the commencement thereof.

3. This Act is divided into parts, as follows:

- Part I.—General.
- Part II.—England.
- Part III.—Scotland.

"United Kingdom"

"Territorial waters of Her Majesty's dominions"

"Jurisdiction of the Admiral"

"Definitions"

"Saving as to piracy"

"Saving as to jurisdiction"

Commencement of Act

Division of Act into parts.

United Kingdom, the words "ship" means the officer or crew of the ship, being administered by the government of such possession, also any person acting for or in the capacity of Governor shall be included under the term "Governor."

5. Saving as to jurisdiction

Nothing in this Act contained shall be construed to be in derogation of any rights of jurisdiction of Her Majesty, her heirs or successors, under the law of nations, or to affect or prejudice any jurisdiction conferred by Act of Parliament or any law existing in relation to foreign ships or in relation to persons on board such ships.

6. Saving as to piracy

This Act shall not prejudice or affect the trial in manner hitherto in use of any act of piracy as defined by the law of nations, or affect or prejudice any law relating thereto, and where any act of piracy as defined by the law of nations is also an offence as defined by this Act to be within the jurisdiction of the Admiral, such offence may be tried in pursuance of this Act, or in pursuance of any other Act of Parliament law, or custom relating thereto.

NOTE

Piracy, as the meaning of the word is explained, see to R. Manly's Laws of England.

7. Interpretation

In this Act, unless there is something inconsistent in the context, the following expressions shall respectively have the meanings hereinafter assigned to them; that is to say:

The jurisdiction of the Admiral, as used in this Act, includes the jurisdiction of the Admiralty of England and Ireland, or either of such jurisdictions as used in any Act of Parliament, and for the purpose of arresting any person charged with an offence declared by this Act to be within the jurisdiction of the Admiral, the territorial waters adjacent to the United Kingdom, or any other part of Her Majesty's dominions, shall be deemed to be within the jurisdiction of any judge, magistrate, or officer having power within such United Kingdom, or other part of Her Majesty's dominions, to issue warrants for arresting or to arrest persons charged with offences committed within the jurisdiction of such judge, magistrate, or officer.

United Kingdom includes the Isle of Man, the Channel Islands, and other adjacent islands.

The territorial waters of Her Majesty's dominions, in reference to the sea, mean such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offence declared by this Act to be within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast measured from low-water mark shall be deemed to be upon sea within the territorial waters of Her Majesty's dominions.

Governor, as respects India, means the Governor General, and as respects a British possession which consists of several constituent

British possession, means the officer or crew of the ship, being administered by the government of such possession, also any person acting for or in the capacity of Governor shall be included under the term "Governor."

"Offence" as used in this Act means an act neglect or default of such a description as would, if committed within the body of a county in England, be punishable on indictment according to the law of England for the time being in force.

"Ship" includes every description of ship, boat, or other floating craft.

"Foreign ship" means any ship which is not a British ship.

NOTES

The words omitted were repealed and the words in square brackets were substituted by the Government of India (Adaptation of Acts of Parliament Order 1937, S.R. & O. 1937, No. 239, Schedule, Part I).

United Kingdom. In general this means only Great Britain and Northern Ireland; see the Royal and Parliamentary Titles Act 1927, s. 2 (2), Vol. 6, p. 320.

Territorial waters of Her Majesty's dominions. In R. v. Kent Justices, Ex parte particular of s. 5, ante, and the definition of "territorial waters" in this section, the reference in the second limb of the definition to the three-mile limit from low-water mark was added, for the purpose of the particular jurisdiction conferred by this Act, and the limits of territorial waters remained those recognised by international law. Accordingly, it was held that this Act did not preclude the exercise of the prerogative by the Territorial Waters Order in Council 1904, 23 Halsbury's Statutory Instruments, title Waters and Water-courses, which lays down base-lines from which the three miles are to be measured. See further, in this connection, the note "Territorial waters," to the Foreign Embassment Act 1879, s. 2, p. 182, ante.

India. India is now a republic within the Commonwealth; see the India (Consequential Provisions) Act 1949, Vol. 4, p. 330. Thus the reference to India in the definition of "Governor" is spent.

THE PROSECUTION OF OFFENCES ACT 1879

(42 & 43 Vict. c. 22)

ARRANGEMENT OF SECTIONS

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An Act for more effectually providing for the Prosecution of Offences in England, and for other purposes [3rd July 1879]

Prosecution of Offences Acts 1879 to 1908. By the Prosecution of Offences Act 1908, s. 3 (2), p. 239, post, the following Acts may be cited together by this collective title:—The Prosecution of Offences Act 1879 (this Act); the Prosecution of Offences Act 1884, p. 220, post; and the Prosecution of Offences Act 1908, p. 238, post. Northern Ireland. This Act does not apply.

1. Short title

This Act may be cited as the Prosecution of Offences Act, 1879.

2. Duties of Director of Public Prosecutions

It shall be the duty of the Director of Public Prosecutions, under the



1964. He was compelled to do so by the decision of the Divisional Court in *R. v. Red Sand Tower*, *Ex p. Taylor* (1955), which was binding on him, and the question whether Red Sand Tower was within an area claimed by the Crown as internal waters territorial sea in 1949 was not debated before him. It is open to this court to review the decision of the Divisional Court, and counsel for the respondents has endeavoured to persuade us that the Divisional Court erred in law. His Lordship succeeded, the Post Office would have sought to establish that on the other hand Red Sand Tower was also within the area claimed by the Crown as territorial sea in 1949; but we have not gone into this for we think that the Divisional Court was clearly right.

It still lies within the prerogative power of the Crown to extend its sovereignty and jurisdiction to areas of land or sea over which it has not previously claimed, or exercised sovereignty or jurisdiction. For such extension the authority of Parliament is not required. The Queen's Courts, on being informed by Order in Council or by the appropriate minister or law officer of the Crown's claim to sovereignty or jurisdiction over any place, must give effect to it and are bound by it. (*See The Progress* (16).) So, when any Act of Parliament refers to the United Kingdom or to the territorial waters adjacent thereto those expressions must prima facie be construed as referring to such area of land or sea as may from time to time be formally declared by the Crown to be subject to its sovereignty and jurisdiction as part of the United Kingdom or the territorial waters of the United Kingdom, and not as confined to the precise geographical area of the United Kingdom or its territorial waters at the precise moment at which the Act received the royal assent. The area comprised within the United Kingdom and its territorial waters varies in any event from time to time by natural process as parts of the coastline change by erosion or accretion. The accretion along the bank at Dunbar is no Alsatis in which a citizen enjoys immunity from the law of the land. The area to which an Act of Parliament of the United Kingdom applies may vary too as the Crown, in the exercise of its prerogative, extends its claim to areas subject to the coast of the United Kingdom in which it did not previously assert its sovereignty. On the construction of the Wireless Telegraphy Act, 1949, we agree with the majority judgments of the Divisional Court in *R. v. Kerst Jetties*, *Ex p. Kay* (12).

Accordingly this appeal falls to be decided on the basis adopted by the judge to wit, whether Red Sand Tower is situated within the area claimed by the Crown after 1964 as comprising the internal waters and the territorial sea of the United Kingdom. The information as to what that area is to be found in the Territorial Waters Order in Council 1964. It was promulgated to give effect to the Convention of 1958, to which we have already referred, which was ratified by the United Kingdom on Mar. 14, 1960, and came into force on Sept. 10, 1964, fifteen days before the Order in Council was made. The Order in Council, although it contains no express reference to the Convention, is not easily intelligible without it. Save in its title it does not use the term "territorial waters"; all it purports to do is to specify (17)

"... the baseline from which the breadth of the territorial sea adjacent to the United Kingdom, the Channel Islands and the Isle of Man is measured ..."

There is no reference to "internal waters" and no statement as to the breadth of the territorial sea. It is not disputed, however, that, construing the Order in Council in the light of the Convention and the law as it was before the Order in Council came into operation, the Crown, in the exercise of its prerogative power, was thereby asserting a claim which the courts are constitutionally bound to recognize, to incorporate within the United Kingdom that area of the sea which lies on the landward side of the baseline (that is, internal waters) and within

(15) [1967] 1 All E.R. 560; [1967] 3 Q.B. 153.  
(16) [1967] 1 P. 311.

(17) See art. 3 (1).

three nautical miles on the seaward side of the baseline (that is, the territorial sea).

The Post Office claims first that Red Sand Tower is in a part of the sea which lies on the landward side of the baseline drawn across a "bay" in the Thames estuary and therefore is in internal waters; alternatively, that if there is no such "bay", Red Sand Tower is in a part of the sea within three nautical miles of the seaward side of the baseline along the coast of Sheppey at Kent and therefore in the territorial sea.

We deal first with the claim that it is in internal waters. While recognizing that the Order in Council in the document which we have to construe, it is convenient to look first at the Convention for a number of reasons. The subject-matter of the Order in Council, as already suggested, is not readily intelligible without knowledge of the Convention. Secondly, the Order in Council was promulgated to give effect to the Convention so far as the United Kingdom was concerned. Thirdly, and in this respect it differs from an international convention which requires legislation for its implementation, it deals with a subject-matter which lies within the prerogative power of the Crown, viz. to assert a claim to exercise territorial sovereignty over an area of the sea adjacent to our shores.

A "bay" is not a term of art in English law. In ordinary parlance it is an indentation or concave curvature in the coastline; but for the purposes of determining what are the areas of the sea over which a state is entitled to claim complete or qualified sovereignty in international law it is given a more precise meaning by the Convention. The Convention, although it did not specify the breadth of the territorial sea, a matter on which it proved impossible to achieve agreement, set out the agreed baselines from which the breadth of the territorial sea was to be measured, and provided specifically by art. 5 (1) that "waters on the landward side of the baseline of the territorial sea form part of the internal waters of the state". By art. 7 (2) of the Convention a "bay" was defined as follows:

"For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation."

From this definition it can be inferred that to constitute a "bay" an indentation must be well-marked, and in particular it must have an identifiable and measurable mouth, that is to say there must be identifiable points on the coastline at each side of the bay which constitute the two ends of the mouth. These identifiable points are referred to in the next paragraph of art. 7 as the "natural entrance points" of the bay. That paragraph reads as follows:

"For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shores of the indentation and a line joining the low-water marks of its natural entrance points."

I need read no more of that paragraph.

It follows from this definition that within a larger indentation which, because of the width of its mouth in proportion to its penetration, is not itself a "bay", there may be a smaller indentation which is itself a "bay" provided that there are identifiable points on either side of the mouth of the smaller indentation which can be properly described as its natural entrance points. Where this is so it is irrelevant that the sea on the seaward side of the bay itself lies on the landward side of the mouth of the larger indentation which, because of the width of the mouth in proportion to its penetration, is not a "bay".

If the line joining the low-water marks of the natural entrances to a bay exceeds twenty-four miles, the baselines on the landward side of which the internal

6) Regulation (Heavy exceptions) 7 and S.I. Oil Waters ons of S.I. 56 No. 897 (inter alia) ing, respect- 6 No. 427 is, 1 and 3 to British egulations ions 1967,

**Minister may designate.** By the Oil in Navigable Waters (Prohibited Sea Areas) Order 1967, S.I. 1967 No. 709, art. 2 and Sch. 2, made under sub-s. (5), the Board of Trade have designated the "area of the Atlantic Ocean adjacent to that specified in paragraph 2 (a) of Schedule 1 and lying within a line drawn from latitude 44° 20' north, longitude 40° west to latitude 42° north, longitude 40° west; thence to latitude 44° 20' north, longitude 30° west; thence to the point of commencement" as a prohibited sea area for the purpose of protecting the coasts and territorial waters of the United Kingdom against pollution by oil.

**Sub-s. (5): Territorial waters, etc.** The question of the extent of territorial waters is a much disputed question of international law and practice. There is, however, general agreement that the territorial waters of a country extend to at least three nautical miles (one marine league) from the shore, measured from low-water mark, and this is the rule to which the United Kingdom, in common with many other countries, adhered until recently for all purposes. In fact this limit measured from low-water mark has found its way into the definition of "the territorial waters of Her Majesty's dominions" in the Territorial Waters Jurisdiction Act 1878, s. 7, Vol. 8, p. 216. Its recognition also found expression in the Customs Consolidation Act 1876, s. 179 (repealed), and is now implicit in the provisions of the Customs and Excise Act 1952, ss. 75, 76 and 173 (3), Vol. 9, pp. 111, 112, 128, and s. 107 (4) of that Act, Vol. 17, p. 999. Some countries now claim greater limits, and in some cases there is the claim that the limit should be measured not from low-water mark, but from arbitrary base lines joining points on the coast (see *Anglo-Norwegian Fisheries Case*, [1951] International Court of Justice Reports 116), and note also the provisions of the Territorial Waters Order in Council 1964, dated 25th September 1964; 23 Halsbury's Statutory Instruments, Title Waters and Watercourses (baselines). It may be that for the purposes of the law relating to sea fishing, at any rate, the territorial waters of the United Kingdom now extend at least to the exclusive fishery limits laid down in the Fishery Limits Act 1964, s. 1, Vol. 13, p. 967, and possibly even cover the outer belt defined in that section. However, the Continental Shelf Act 1964, s. 1 (1), Vol. 22, p. 587, expressly recognises that the "continental shelf" of the United Kingdom lies outside its territorial waters, and there is recent authority for saying that the three-mile limit still generally applies; see *R. v. Kent Justices, Ex parte Iye*, [1967] 2 Q.B. 133; [1967] 1 All E.R. 301; *Post Office v. Estuary Radio, Ltd.*, [1968] 2 Q.B. 740; [1967] 3 All E.R. 663. C.A. It seems, therefore, that the reference in this section to the territorial waters of the United Kingdom must be construed in the light of the three-mile limit; cf. *Direct United States Cable Co. v. Anglo-American Telegraph Co. (1877)*, 2 App. Cas. 394. See also *The Fagerberg*, 1907, P. 311, C.A. (statement of appropriate officer of the Crown as to extent of territorial waters, conclusive).

**United Kingdom.** See the note to the Merchant Shipping Act 1894, s. 3, p. 76, *ante*.  
**Sub-s. (7): Prohibited zones.** These are set out in Annex A to the Convention of 1951 (Cmd. 9197). They may be varied to a certain extent under para. (3) of the Annex. Provision for the amendment of the Convention is made by Art. XVI thereof, and the Convention has been amended by the 1962 Conference of Contracting Governments to the Convention.

**Definitions.** For "oil", "outside the territorial waters of the United Kingdom", "sea" and "the Minister", see s. 22 (1), *post*, and the notes thereto; for "the Convention of 1951", the Preamble of this Act, *ante*; for "subsequent Convention", see s. 1 (5), *ante*.  
**Orders under this section.** The Oil in Navigable Waters (Prohibited Sea Areas) Order 1967, S.I. 1967 No. 709, as amended by S.I. 1967 Nos. 891, 1120 and 1625 and S.I. 1967 No. 585.

General provisions as to orders are contained in s. 20, *post*.

**3. Discharge of oil into United Kingdom waters**

(1) If any oil or mixture containing oil is discharged as mentioned in the following paragraphs into waters to which this section applies, then, subject to the provisions of this Act, the following shall be guilty of an offence under this section, that is to say—

- (a) if the discharge is from a vessel, the owner or master of the vessel, unless he proves that the discharge took place and was caused as mentioned in paragraph (b) of this subsection;
- (b) if the discharge is from a vessel but takes place in the course of a transfer of oil to or from another vessel or a place on land and is caused by the act or omission of a person in charge of any apparatus in that other vessel or that place, the owner or master of that other vessel or, as the case may be, the occupier of that place;

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