ADEN

1958 No. 1747

The Aden Colony (Amendment) Order, 1958

Made - - - -	*22nd October*, 1958
Laid before Parliament	*28th October*, 1958
Coming into Operation	*18th November*, 1958

At the Court at Buckingham Palace, the 22nd day of October, 1958

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts, 1887 and 1945(a), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, construction and commencement

1.—(1) This Order may be cited as the Aden Colony (Amendment) Order, 1958, and shall be construed as one with the Aden Colony Orders, 1936 to 1956(b).

(2) The Aden Colony Orders, 1936 to 1956, and this Order may be cited together as the Aden Colony Orders, 1936 to 1958.

(3) This Order shall be published in the Gazette, and shall come into operation on such day as the Governor shall, by Proclamation in the Gazette, appoint, which day shall not be earlier than the day after the day on which this Order shall have been laid before both Houses of Parliament.

Amendment of the Aden Colony Order, 1936

2. Section 8 of the Aden Colony Order, 1936 (as substituted by section 2 of the Aden Colony (Amendment) Order, 1944 (hereinafter referred to as "the Order of 1944")), is revoked and the following section substituted therefor:

"8.—(1) Whenever the office of Governor is vacant, or the Governor is absent from the Colony or is from any other cause prevented from, or incapable of, performing the functions of his office, the Government of the Colony shall, during Her Majesty's pleasure, be administered by—

(*a*) such person as Her Majesty may appoint in that behalf by Commission under Her Sign Manual and Signet; or

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.

(b) S.R. & O. 1936/1031 (Rev. I, p. 7: 1936 I, p. 1), 1944/1316 (Rev. I, p. 11: 1944 I, p. 1), 1947/2778 (Rev. I, p. 18: 1947 I, p. 1); S.I. 1955/1654, 1956/996 (1955 I, p. 46; 1956 I, p. 51).

(*b*) if there be no person in the Colony so appointed and capable of discharging the duties of administration, the person who holds the substantive appointment of Chief Secretary; or

(*c*) if the substantive appointment of Chief Secretary be vacant, or the person holding such appointment be absent from the Colony or be from any other cause prevented from, or incapable of, performing the functions of such appointment, such person as Her Majesty may designate in that behalf by instructions through the Secretary of State; or

(*d*) if there be no person in the Colony so designated and capable of discharging the duties of administration, the senior of the following officers who is in the Colony and so capable, namely—

(i) the person who holds the substantive appointment of Attorney General;

(ii) the person who holds the substantive appointment of Financial Secretary.

(2) For the purposes of this section the officers referred to in subparagraph (*d*) of subsection (1) of this section shall take seniority in the order in which their respective offices are mentioned therein.

(3) Before assuming the administration of the Government any such person as aforesaid shall take, in the form and manner in this Order prescribed, the Oaths directed by this Order to be taken by the Governor; which being done, such person is hereby authorised, empowered and commanded, subject, if he is appointed as aforesaid under Her Majesty's Sign Manual and Signet, to the terms of his appointment, during Her Majesty's pleasure to do all things that belong to the office of Governor as provided in this Order.

(4) Any such person as aforesaid shall not continue to administer the Government after the Governor or some other person having a prior right to administer the same has notified him that he is about to assume, or resume, the administration.

(5) The Governor or any other person as aforesaid shall not be regarded as absent from the Colony or prevented from, or incapable of, performing the functions of his office for the purposes of this section when he is in the Protectorate of Aden or during his passage from one place in the Colony or Protectorate of Aden to another place in the said Colony or Protectorate, or when there is a subsisting appointment of a Deputy under section 9 of this Order."

3. The following sections are inserted immediately after section 11 of the Aden Colony Order, 1936:—

"11A.—(1) In the formulation of policy and in the exercise of the functions conferred upon him by or under this Order or any other law the Governor shall, subject to subsections (3) and (4) of this section, consult the Executive Council except in cases—

(*a*) which are of such a nature that, in his judgment, Her Majesty's service would sustain material prejudice if the Council were consulted thereon;

(*b*) in which the matters to be decided are, in his judgment, too unimportant to require the advice of the Council; or

(*c*) in which, in his judgment, the urgency of the matter requires him to act before the Council can be consulted.

(2) In every case falling within paragraph (*c*) of the last foregoing subsection the Governor shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons therefor.

(3) Subsection (1) of this section shall not apply to the exercise by the Governor of—

(*a*) any function which he is by or under this Order or any other law or any Instructions under Her Majesty's Sign Manual and Signet empowered, required or directed to exercise in his discretion, or is required to exercise in pursuance of instructions from Her Majesty;

(*b*) any function conferred upon him by any law other than this Order in respect of which it is expressly provided that he shall not be obliged to consult the Executive Council in the exercise thereof;

(*c*) any function (other than a function expressed, in whatever terms, to be exercisable by the Governor in Executive Council) conferred upon the Governor by any law of the Legislature of the Colony or instrument made thereunder that is in force on the date of the commencement of the Aden Colony (Amendment) Order, 1958, so long as such function continues to be exercisable by virtue of such law or instrument; or

(*d*) the power referred to in the next following subsection.

(4) In the exercise of the power to pardon or reprieve any offender who has been condemned to suffer death by the sentence of any civil court in the Colony, the Governor shall consult the Executive Council in accordance with the directions contained in any Instructions under Her Majesty's Sign Manual and Signet addressed to the Governor in that behalf.

(5) The question whether the Governor has consulted the Executive Council in any case in which he is required so to do shall not be enquired into in any court.

11B. In any case in which the Governor is required by subsection (1) of the last foregoing section to consult the Executive Council he may act in opposition to the advice given to him by the Council if he considers it right to do so; but in any such case he shall report the matter to the Secretary of State at the first convenient opportunity with the reasons for his action."

4. The following section is inserted immediately after section 25 of the Aden Colony Order, 1936:—

"25A. The powers conferred upon the Governor by sections 9, 22, 23, 24 and 25 of this Order shall be exercised by him in his discretion."

Amendment of Order of 1944

5. Section 4 of the Order of 1944 (as amended by section 2 of the Aden Colony (Amendment) Order, 1955 (hereinafter referred to as "the Order of 1955")) is further amended by the deletion of subsection (2) and the substitution of the following subsection:—

"(2) Subject to the provisions of subsection (2) of section 4B of this Order, the Council shall consist of a Speaker, five ex officio Members, twelve Elected Members and six Nominated Members."

6. The following sections are inserted immediately after section 4 of the Order of 1944 :—

"The Speaker.

4A.—(1) The Speaker shall be a person who is not a member of the Council and he shall be appointed by the Governor, acting in his discretion, by Instrument under the Public Seal of the Colony.

(2) The Speaker shall hold office during Her Majesty's pleasure and, subject thereto, for such period as may be specified in the Instrument by which he is appointed, and shall not vacate his office by reason of a dissolution of the Council :

Provided that the Speaker may, by writing under his hand addressed to the Governor, resign his office; and upon receipt of such resignation by the Governor the office of Speaker shall become vacant.

(3) The Governor, acting in his discretion, may grant leave of absence from his duties to the Speaker.

The Deputy Speaker.

4B.—(1) The Governor, acting in his discretion, may from time to time, by Instrument under the Public Seal of the Colony, appoint a person to be Deputy Speaker of the Council.

(2) If any person appointed to be Deputy Speaker is not at the date of his appointment a member of the Council, he shall, by virtue of his appointment, be a member of the Council.

(3) The Deputy Speaker shall hold office during Her Majesty's pleasure and, subject thereto and to the provisions of this Order, for such period as may be specified in the Instrument by which he is appointed.

(4) The Deputy Speaker may, by writing under his hand addressed to the Governor, resign his office; and upon receipt of such resignation by the Governor the office of Deputy Speaker shall become vacant.

(5) A person shall vacate the office of Deputy Speaker—

(*a*) on a dissolution of the Council; or

(*b*) in the case of a Deputy Speaker appointed from among the members of the Council, if he ceases to be a member of the Council otherwise than by reason of a dissolution of the Council."

7. Section 5 of the Order of 1944 is revoked and the following section substituted therefor :—

"Ex officio Members.

5. The ex officio Members shall be an officer on the staff of, and nominated by writing under his hand by, the Senior Officer of Her Majesty's Regular Forces for the time being stationed in the Colony and in command of those Forces therein; the persons for the time being lawfully discharging the functions of the respective offices of Chief Secretary, Attorney General and Financial Secretary of the Colony; and the person for the time being lawfully discharging the functions of such other public office as the Governor, acting in his discretion, may from time to time specify by Proclamation in the Gazette."

8. Sections 6 and 7 of the Order of 1944 (as amended by sections 3 and 4 respectively of the Order of 1955) are revoked and the following section is substituted for section 7 :—

"Nominated Members.

7. The Nominated Members shall be persons of the age of twenty-one or upwards and, subject to the provisions of section 8 of this Order, they shall be appointed by the Governor, acting in his discretion, by Instrument under the Public Seal of the Colony."

9. Section 7B of the Order of 1944 (as inserted by section 5 of the Order of 1955) is amended—

(*a*) by the deletion from sub-paragraph (iii) of paragraph (*c*) of the words "two hundred" and the substitution therefor of the words "one hundred and fifty", and by the deletion of the word "and" at the end of the last line; and

(*b*) by the deletion of paragraph (*d*).

10. Section 7C of the Order of 1944 (as inserted by section 5 of the Order of 1955) is amended :—

(*a*) by the deletion therefrom and from the marginal note of the word "Unofficial"; and

(*b*) by the deletion of paragraph (*b*).

11. Section 8 of the Order of 1944 (as substituted by section 6 of the Order of 1955) is amended—

(*a*) by the insertion in paragraph (*b*) of subsection (3) after the word "Governor," of the words "in the case of a Nominated Member, and the Speaker, in the case of an Elected Member,";

(*b*) by the deletion from subsection (3) of paragraph (*i*);

(*c*) by the deletion from subsection (3) of paragraph (*j*) and the substitution therefor of the following paragraph :—

"(*j*) if, in the case of an Elected Member, he shall be appointed permanently to any office of emolument under the Crown in the Colony."

(*d*) by the deletion from subsection (4) of the words "a Nominated Unofficial or" and the substitution of the word "an";

(*e*) by the deletion of subsections (5) and (6); and

(*f*) by the deletion of subsection (7) and the substitution therefor of the following subsection :—

"(7) A Nominated or Elected Member may, by writing under his hand addressed to the Speaker, resign his seat in the Council, and upon receipt of such resignation by the Speaker or, in his absence, the Deputy Speaker, the seat of such Member shall become vacant."

12. Subsection (1) of section 8A of the Order of 1944 (as inserted by section 6 of the Order of 1955) is amended by the insertion of the words "acting in his discretion" after the word "Governor" at the end of that subsection.

13. The following sections are inserted immediately after section 8A of the Order of 1944 (as inserted by section 6 of the Order of 1955) : —

"Governor to notify Speaker of appointments.

8B. The Governor shall, by writing under his hand, notify the Speaker or, in his absence, the Deputy Speaker of every appointment of a person to be a Nominated Member of the Council.

Speaker to report vacancies.

8C. Whenever it appears to the Speaker or, in his absence, the Deputy Speaker that the seat of an Elected or Nominated Member has become vacant under the provisions of subsection (3) or (7) of section 8 of this Order, he shall, by writing under his hand, report such vacancy to the Governor."

14. Section 9 of the Order of 1944 (as amended by section 7 of the Order of 1955) is further amended as follows : —

(*a*) by re-numbering the existing section as subsection (1) of the section ;

(*b*) by the addition thereto of a new subsection (2) as follows : —

"(2) The powers conferred upon the Governor by this section shall be exercised by him in his discretion."

15. Section 9A of the Order of 1944 (as inserted by section 8 of the Order of 1955) is amended as follows : —

(*a*) by re-numbering the existing section as subsection (1) of the section ;

(*b*) by the addition thereto of a new subsection (2) as follows : —

"(2) The powers conferred upon the Governor by this section shall be exercised by him in his discretion."

16. Section 10 of the Order of 1944 (as substituted by section 9 of the Order of 1955) is amended as follows : —

(*a*) in subsection (1)—

(i) by the deletion from paragraph (*a*) of the words "or a Nominated Official Member" ;

(ii) by the deletion from the last line of paragraph (*h*) of the word "or" ;

(iii) by the deletion of paragraph (*i*) ; and

(iv) by the deletion of the words "the Governor may be an instrument under the Public Seal" and the substitution therefor of the words "the Governor may, in his discretion, by an Instrument under the Public Seal".

(*b*) by the deletion of subsection (2) and the substitution therefor of the following subsection : —

"(2) Every person so appointed shall, so long as his appointment shall subsist, be to all intents and purposes a Nominated Member, and subject to the provisions of this section, the provisions of sections 8, 9 and 9A of this Order shall apply accordingly :

Provided that, in the case of a vacancy in the number of persons sitting in the Council as ex officio Members, the person so appointed shall not be regarded as a Nominated Member in reckoning the number of such Members for the purposes of subsection (2) of section 4 of this Order."

17. Subsection (1) of section 11 of the Order of 1944 is amended by the deletion of the words " may be revoked by the Governor " and the substitution therefor of the words " may be revoked by the Governor, acting in his discretion,".

18. Section 12 of the Order of 1944 (as amended by section 11 of the Order of 1955) is revoked.

19. Section 13A of the Order of 1944 (as inserted by section 12 of the Order of 1955) is revoked and the following section substituted therefor :—

" Quorum.

13A. If objection is taken by any Member present that there are present less than six Members besides the Speaker or Deputy Speaker or Member presiding and, after such interval as may be prescribed in the Standing Rules and Orders of the Council, the Speaker or Deputy Speaker or Member presiding ascertains that that number of Members is still not present, he shall thereupon adjourn the Council."

20. Section 14 of the Order of 1944 is revoked and the following section substituted therefor :—

" Presiding in the Council.

14. The Speaker or, in his absence, the Deputy Speaker shall preside at the sittings of the Council. In the absence of both the Speaker and the Deputy Speaker from any sitting, such Member as the Council may elect for that purpose shall preside."

21. In section 15 of the Order of 1944 the words " Subject to the provisions of this Order, it " are substituted for the word " It ".

22. Section 16 of the Order of 1944 is revoked and the following section substituted therefor:—

" Voting.

16.—(1) Save as otherwise provided in this Order, all questions proposed for decision in the Council shall be determined by a majority of the votes of the Members present and voting; and if, upon any question before the Council, the votes of the Members shall be equally divided the motion shall be lost.

(2) The Speaker, and the Deputy Speaker if not at the date of his appointment a Member of the Council, shall have neither an original nor a casting vote. In any other case, the Deputy Speaker, or Member presiding, shall have an original vote but no casting vote."

23. The following section is inserted immediately after section 16 of the Order of 1944 :—

"Governor's reserved power.

16A.—(1) If the Governor shall consider that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of the Colony as

a territory within the British Commonwealth of Nations, and all matters pertaining to the creation or abolition of any public office or to the appointment, salary or other conditions of service of any public officer) that any Bill introduced or any motion proposed in the Council should have effect, then, if the Council fail to pass such Bill or motion within such time and in such form as the Governor may think reasonable and expedient, the Governor at any time in his discretion may, notwithstanding any provisions of this Order or of any Standing Rules or Orders of the Council, declare that such Bill or motion shall have effect as if it had been passed or carried by the Council, either in the form in which it was so introduced or proposed or with such amendments as the Governor shall think fit which have been moved or proposed in the Council or in any Committee thereof; and thereupon the said Bill or motion shall have effect as if it had been so passed or carried, and, in the case of any such Bill, the provisions of this Order relating to assent to Bills and disallowance of laws shall apply accordingly.

(2) The Governor shall forthwith report to the Secretary of State every case in which he shall make any such declaration as is mentioned in subsection (1) of this section and the reason therefor.

(3) If any Member of the Council objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting; and a copy of such statement shall, if furnished by such Member, be forwarded by the Governor as soon as practicable to the Secretary of State.

(4) Any such declaration, other than a declaration relating to a Bill, may be revoked by the Secretary of State, and the Governor shall notify such revocation in the Gazette; and from the date of such notification any motion which shall have had effect by virtue of the declaration revoked shall cease to have effect; and the provisions of subsection (2) of section 38 of the Interpretation Act, 1889(a), shall apply to such revocation as they apply to the repeal of an Act of Parliament."

24. Section 17 of the Order of 1944 (as amended by section 13 of the Order of 1955) is further amended by the insertion of the following proviso to subsection (2):—

" Provided that the Governor shall reserve for the signification of Her Majesty's pleasure—

(*a*) any Bill by which any provision of this Order is revoked or amended or which is in any way repugnant to, or inconsistent with, the provisions of this Order; and

(*b*) any Bill which determines or regulates the privileges, immunities or powers of the Council or its Members,

unless he shall have been authorised by the Secretary of State to assent thereto."

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

25. Section 21 of the Order of 1944 (as amended by section 15 of the Order of 1955) is further amended—

(*a*) by the deletion of the words " before the Governor, or some person authorised by the Governor in that behalf " and the substitution therefor of the words " before the person presiding " ; and

(*b*) by the deletion of the words " through the Governor or, as occasion may require, through the Member presiding " and the substitution therefor of the words " through the person presiding ".

26. Section 22 of the Order of 1944 is revoked and the following section substituted therefor: —

" Introduction of Bills, etc.

22.—(1) Subject to the provisions of this Order and of the Standing Rules and Orders of the Council, any Member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the same shall be debated and disposed of according to the Standing Rules and Orders.

(2) Except on the recommendation or with the consent of the Governor, acting in his discretion, the Council shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council, would dispose of or charge any public revenue or public funds of the Colony, or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty ;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision should be made for any of the purposes aforesaid ;

(*c*) receive any petition which, in the opinion of the person presiding in the Council, requests that provision be made for any of the purposes aforesaid ;

(*d*) proceed upon any Bill or motion (including any amendment to a Bill or motion, as the case may be) which, in the opinion of the person presiding in the Council, would effect any alteration in the salary, allowances or conditions of service (including leave, passages and promotion) of any public officer or in the law, regulations or practice governing the payment of pensions, gratuities or other like benefits to any public officer or former public officer or his widow, children, dependants or personal representatives."

27. Section 23 of the Order of 1944 is amended by the deletion of the words " at such times and places " and the substitution therefor of the words " in such place and shall begin at such time ".

28. In subsection (2) of section 23A of the Order of 1944 (as inserted by section 16 of the Order of 1955) the word " four " is substituted for the word " three ".

29. Section 23E of the Order of 1944 (as inserted by section 16 of the Order of 1955) is revoked and the following section substituted therefor :—

"Laws as to elections. 23E. Subject to the provisions of this Order, provision may be made by or in pursuance of any law for the time being in force in the Colony for the election of twelve persons as Elected Members of the Council to represent electoral districts in the Colony."

30. Section 24 of the Order of 1944 (as substituted by section 17 of the Order of 1955) is amended—

(*a*) by the deletion from subsection (1) of the definitions of "Council of the Aden Municipality", "Elected Member" and "Nominated Member";

(*b*) by the insertion in that subsection of the following definitions—

'"public office" means any office of emolument in the public service;

"public officer" means the holder of any public office and includes any person appointed to act in any such office;

"the public service" means the service of the Crown in respect of the Government of the Colony;'; and

(*c*) by the insertion in subsection (5) of the following new paragraphs immediately after paragraph (*b*) :—

"(*c*) as if subsection (1) of section 1 of the Pakistan (Consequential Provision) Act, 1956(a), applied to it in the same way as that subsection applies to laws in force on the date mentioned in that subsection; and

(*d*) as if subsection (1) of section 2 of the Federation of Malaya Independence Act, 1957(b), applied to it in the same way as that subsection applies to existing laws as defined by subsection (4) of that section."

W. G. Agnew.

EXPLANATORY NOTE

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

This Order amends the provisions of the Aden Colony Orders, 1936 to 1956, relating to the composition of the Legislative Council and provides for the appointment of a Speaker. It also makes provision regarding consultation by the Governor with the Executive Council.

(a) 4 & 5 Eliz. 2. c. 31. (b) 5 & 6 Eliz. 2. c. 60.