STATUTORY INSTRUMENTS

1962 No. 2177

ADEN

The Aden (Constitution) Order in Council 1962

Made - - - -	*2nd October* 1962
Laid before Parliament	*8th October* 1962
Coming into Operation	*9th October* 1962

At the Court at Balmoral, the 2nd day of October 1962

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 and commencement.

1.—(1) This Order may be cited as the Aden (Constitution) Order in Council 1962.

(2) This Order shall, except as otherwise provided, come into operation on 9th October 1962.

Interpretation.

2.—(1) In this Order—

"the appointed day" means such day after the commencement of this Order as the Governor, in his discretion, may by notice published in the Gazette appoint;

"the existing Orders" means the Orders in Council specified in schedule 1 to this Order;

"the existing Legislative Council" means the Legislative Council established by the existing Orders;

"the Constitution" means the Constitution set out in schedule 2 to this Order;

"the Governor" means the Governor as defined for the purposes of the existing Orders.

(2) Unless the context otherwise requires, expressions used in sections 1 to 10 of this Order and in schedule 3 to this Order have the same meaning as in the Constitution and the provisions of section 79 of the Constitution shall apply for the purpose of interpreting those sections and that schedule as they apply for the purpose of interpreting the Constitution.

Revocation.

3. With effect from the appointed day the Orders in Council mentioned in the second column of schedule 1 to this Order are revoked.

Establishment of the Constitution.

4. Subject to the provisions of this Order, the Constitution shall come into effect in Aden on the appointed day.

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

Existing laws.

5.—(1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the existing Orders, have effect after the appointed day as if they had been made in pursuance of this Order and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(2) The High Commissioner may, by order published in the Gazette, at any time within six months after the appointed day, provide that any existing law shall be read and construed with such adaptations and modifications as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions; and any existing law shall have effect accordingly from such date as may be specified in the order.

(3) An order made under this section may be amended, revoked or replaced by a further order so made or, in relation to any law or instrument affected thereby, by the authority having power to amend, repeal or revoke that law or instrument.

(4) For the purposes of this section, the expression "the existing laws" means all Ordinances, laws, rules, regulations, orders and other instruments made in pursuance of, or kept in force by, the existing Orders, and having effect as part of the law of Aden immediately before the appointed day.

Holders of existing offices.

6.—(1) Persons who immediately before the appointed day are holding or acting in offices established by or under the existing Orders shall, on and after that day, continue to hold or to act in their respective offices as if they had been appointed thereto by or under the Constitution and had made any oaths or affirmations required by or under the Constitution.

(2) The reference in subsection (1) of this section to offices established by or under the existing Orders does not include a reference to the office of Governor, Speaker of the Legislative Council, Chief Secretary, member of the Executive Council or member of the Legislative Council.

High Court proceedings.

7. All proceedings commenced or pending immediately before the appointed day before the Supreme Court established by the existing Orders shall be carried on before the Supreme Court established by the Constitution.

Council of Ministers.

8. Notwithstanding the revocation by this Order of the existing Orders, the Executive Council established by those Orders—

(*a*) shall continue to exist until such time as the Council of Ministers established by the Constitution has been constituted; and

(*b*) shall, until that time, perform its functions and be consulted by the Governor in accordance with the provisions of the existing Orders.

Legislative Council.

9.—(1) Any person who immediately before the appointed day was the Speaker or a Nominated Member of the existing Legislative Council shall be deemed to have been appointed under the Constitution as the Speaker or a Nominated Member, as the case may be, of the Legislative Council established by the Constitution, and the provisions of the Constitution shall apply to him accordingly.

(2) Any person who immediately before the appointed day is an Elected Member of the existing Legislative Council shall, with effect from the appointed day, be deemed to be an Elected Member of the Legislative Council established by the Constitution and to have been returned thereto in accordance with the provisions of the Constitution by the electoral division by which he was returned to the existing Legislative Council, and the provisions of the Constitution shall apply to him accordingly.

(3) During the period between the commencement of this Order and the appointed day—

(*a*) the existing Legislative Council shall include four Specially Elected Members in addition to the Members provided for in the existing Orders who shall be elected in accordance with the provisions of schedule 3 to this Order and, save in so far as they are inconsistent with the provisions of this paragraph and schedule 3 to this Order, the provisions of the existing Orders shall apply to the Specially Elected Members as they apply to the Elected Members of the Council; and

(*b*) section 23A (2) of the Aden Colony (Amendment) Order 1944(a) shall have effect as if the words "five years" were substituted for the words "four years".

(4) (*a*) During the period between the appointed day and the first dissolution of the Legislative Council established by the Constitution, four of the Elected Members of that Council shall, notwithstanding the provisions of the Constitution but subject to paragraph (*b*) of this subsection, be persons elected as such in accordance with the provisions of schedule 3 to this Order and the said schedule 3 shall apply for the purposes of any such elections with such adaptations and modifications as are necessary to bring it into conformity with the provisions of this subsection and in particular as if—

(i) the references therein to the existing Legislative Council, the Specially Elected Members of that Council, the Speaker and Deputy Speaker of that Council and the Governor were references, respectively, to the Legislative Council established by the Constitution, the four Elected Members aforesaid of that Council, the Speaker and Deputy Speaker of that Council and the High Commissioner;

(ii) the definition of "bye-election" in paragraph 1 were deleted; and

(iii) for the words "As soon as practicable after the commencement of this Order and whenever a bye-election becomes necessary" in paragraph 4 there were substituted the words "Whenever there is occasion after the appointed day to elect any Member or Members of the Legislative Council in accordance with the provisions of this schedule".

(*b*) Any person who immediately before the appointed day is a Specially Elected Member of the existing Legislative Council shall, with effect from the appointed day, be deemed to be an Elected

(a) S.R. & O. 1944/1316 (Rev. I, p. 11: 1944 I, p. 1). The relevant amending instruments are S.I. 1955/1654, 1958/1747 (1955 I, p. 46; 1958 I, p. 57).

Member of the Legislative Council established by the Constitution and to have been elected thereto under paragraph (*a*) of this subsection.

(*c*) Save in so far as they are inconsistent with the provisions of this subsection and schedule 3 to this Order as applied by this subsection the provisions of the Constitution shall apply to the four Elected Members aforesaid of the Legislative Council established by the Constitution (including persons who, by virtue of paragraph (*b*) of this subsection are deemed to have been elected as such Members) as they apply to the other Elected Members of that Council.

(5) The rules and orders of the existing Legislative Council as in force immediately before the appointed day shall, as from the appointed day and until it is otherwise provided under section 44 of the Constitution, continue to be the rules and orders of the Legislative Council established by the Constitution, but shall be construed with such modifications and adaptations, if any, as may be necessary to bring them into conformity with the Constitution.

(6) The period of five years mentioned in section 57 (2) of the Constitution shall in relation to the Legislative Council as first constituted under the Constitution and this Order be deemed to have commenced on the date when the existing Legislative Council first met after the last general election of members thereto.

10. Nothing in this Order shall affect the power of Her Majesty in Council to make laws from time to time for the peace, order and good government of Aden. Power reserved to Her Majesty.

W. G. Agnew.

SCHEDULE 1 TO THE ORDER Section 2 (1).

THE EXISTING ORDERS

References	Short Title
S.R. & O. 1936/1031 (Rev. I, p. 7: 1936,p. 1).	The Aden Colony Order 1936.
S.R. & O. 1944/1316 (Rev. I, p. 11: 1944 I, p. 1).	The Aden Colony (Amendment) Order 1944.
S.R. & O. 1947/2778 (Rev. I, p. 18: 1947 I, p. 1).	The Aden Colony (Amendment) Order 1947.
S.I. 1955/1654 (1955 I, p. 46).	The Aden Colony (Amendment) Order 1955.
S.I. 1956/996 (1956 I, p. 51).	The Aden Colony (Amendment) Order 1956.
S.I. 1958/1747 (1958 I, p. 57).	The Aden Colony (Amendment) Order 1958.
S.I. 1958/2185 (1958 I, p. 67).	The Aden Colony (Amendment) (No. 2) Order 1958.
S.I. 1959/1297 (1959 I, p. 57).	The Aden Colony (Amendment) Order 1959.
S.I. 1955/1396 (1955 I, p. 58).	The Aden Colony (Electoral Provisions) Order in Council 1955.

Section 2 (1). SCHEDULE 2 TO THE ORDER

THE CONSTITUTION OF ADEN

ARRANGEMENT OF SECTIONS

PART I

Protection of Fundamental Rights and Freedom of the Individual

Section

1. Fundamental rights and freedoms of the individual.
2. Protection of right to life.
3. Protection of right to personal liberty.
4. Protection from slavery and forced labour.
5. Protection from inhuman treatment.
6. Protection from deprivation of property.
7. Protection for privacy of home and other property.
8. Provisions to secure protection of law.
9. Protection of freedom of conscience.
10. Protection of freedom of expression.
11. Protection of freedom of assembly and association.
12. Protection of freedom of movement.
13. Protection from discrimination on the grounds of race, etc.
14. Enforcement of protective provisions.
15. Provisions for periods of public emergency.
16. Interpretation and savings.

PART II

The Council of Ministers

17. Council of Ministers.
18. Exercise of High Commissioner's powers.
19. Appointment of Ministers.
20. Tenure of office of Ministers.
21. Leave of absence for Ministers.
22. Performance of functions of Chief Minister.
23. Oath to be taken by Ministers, etc.
24. Presiding in Council of Ministers.
25. Council of Ministers may transact business notwithstanding vacancies, etc.
26. Summoning of Council of Ministers and quorum.
27. Proposal of business for transaction in the Council of Ministers.
28. Assignment of responsibility to Ministers, and responsibility of High Commissioner for certain matters.

PART III

Legislative Council

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30. The Speaker.
31. The Deputy Speaker.
32. Elected Members.
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34. Qualifications for election.
35. Disqualifications for Nominated and Elected Members.

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36. Tenure of office of Nominated and Elected Members.
37. Vacation of seat on sentence.
38. Temporary Members.
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40. Law as to elections.
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PART IV

Legislation and Procedure of Legislature

42. Power to make laws.
43. Royal Instructions.
44. Rules and orders.
45. Privileges of Legislative Council and its members.
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47. Presiding in the Legislative Council.
48. Legislative Council may transact business notwithstanding vacancies.
49. Quorum.
50. Voting.
51. High Commissioner may address Legislative Council.
52. Introduction of Bills, etc.
53. High Commissioner's reserved powers.
54. Assent to Bills.
55. Disallowance of laws.
56. Sessions.
57. Prorogation and dissolution.
58. General elections.

PART V

The Supreme Court

59. Constitution of Supreme Court.
60. Tenure of office of judges.
61. Acting Chief Justice.
62. Temporary Puisne Judges.
63. Salaries of judges.
64. Oaths to be taken by judges.

PART VI

The Public Service

65. Public officers.
66. Public Service Commission.
67. Public Service Commission to advise High Commissioner.
68. Public Service Commission to advise other officers.
69. Regulations regarding Public Service Commission.
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72. Application of Section 69 to Police Service Commission.
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PART VII

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75. Disposal of land.
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79. Interpretation.

SCHEDULE TO THE CONSTITUTION.—Forms of Oaths and Affirmations.

PART I

Protection of Fundamental Rights and Freedoms of the Individual

Fundamental rights and freedoms of the individual.

1. Whereas every person in Aden is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Part shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

2.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Aden of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection of right to personal liberty.

3.—(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say—

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons ; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of movement.

12.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Aden, the right to reside in any part of Aden, the right to enter Aden and immunity from expulsion from Aden.

(2) Any restriction on a person's freedom of movement that is involved in any deprivation of his personal liberty that is permitted by section 3 of this Constitution shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for the imposition of restrictions, by order of a court, on the movements or residence within Aden of any person either in consequence of his having been found guilty of a criminal offence under the law of Aden or for the purpose of ensuring that he appears before a court at a later date for trial for such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Aden ;

(*b*) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health on the movement or residence within Aden of persons generally, or any class of persons, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society ;

(*c*) for the imposition of restrictions on the freedom of movement of any person who is not a person to whom this section applies ;

(*d*) for the imposition of restrictions on the acquisition or use by any person of land or other property in Aden ;

(*e*) for the imposition of restrictions upon the movement or residence within Aden of public officers ; or

(*f*) for the removal of a person from Aden to undergo imprisonment in some other country or territory in execution of the sentence of a court in respect of a criminal offence under the law of Aden of which he has been convicted.

(4) This section applies to any person who is a British subject or a British protected person and—

(*a*) who was born in Aden or whose father was born in Aden ; or

(*b*) who has obtained the status of a British subject by reason of the grant by the High Commissioner of a certificate of naturalization under the British Nationality and Status of Aliens Act 1914(**a**) or the British Nationality Act 1948(**b**) ; or

(*c*) who is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of a court or a deed of separation ; or

(*d*) who is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any of the foregoing paragraphs applies ; or

(*e*) who is a member of any other class of persons that may be prescribed by any law enacted under this Constitution.

Protection from discrimination on the grounds of race etc.

13.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression " discriminatory " means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) for the appropriation of public revenues or other public funds ;

(*b*) with respect to persons who are not persons to whom this section applies ;

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law ;

(*d*) for the application in the case of members of a particular race of customary law with respect to any matter to the exclusion of any law with respect to that matter that is applicable in the case of other persons ; or

(**a**) 4 & 5 Geo. 5. c. 17. (**b**) 11 & 12 Geo. 6. c. 56.

(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property—

(*a*) in satisfaction of any tax, rate or due;

(*b*) by way of penalty for breach of the law of Aden, whether under civil process or after conviction of a criminal offence;

(*c*) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(*d*) by way of the vesting or administration of trust property, enemy property or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up;

(*e*) in the execution of judgments or orders of courts;

(*f*) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

(*g*) in consequence of any law with respect to the limitation of actions; or

(*h*) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—

(i) of work of soil conservation or the conservation of other natural resources; or

(ii) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse refused or failed, to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than public moneys.

Protection for privacy of home and other property.

7.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(*b*) that is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(*c*) that authorises an officer or agent of the Government of Aden, or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work

connected with any property that is lawfully on those premises and that belongs to the Government of Aden, that authority or that body corporate, as the case may be ;

(*d*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order ;

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown to be reasonably justifiable in a democratic society.

Provisions to secure protection of law.

8.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty ;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged ;

(*c*) shall be given adequate time and facilities for the preparation of his defence ;

(*d*) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice ;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution ; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge ;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of

which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(*b*) may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) paragraph (*a*) of subsection (2) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) paragraph (*e*) of the said subsection (2) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(*c*) subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section—

"criminal offence" means a criminal offence under the law of Aden;

"legal representative" means, in relation to a court or other adjudicating authority, a person entitled to appear before that court or authority as an advocate.

Protection of freedom of conscience.

9.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

(*a*) in the interests of defence, public safety, public order, public morality or public health ; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression.

10.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ;

(*b*) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, the publication of written or pictorial matter, public exhibitions or public entertainments ; or

(*a*) in execution of the sentence or order of a court, whether established for Aden or some other country or territory or elsewhere, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Aden;

(*f*) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into Aden, or for the purpose of effecting the expulsion, extradition or lawful removal of that person from Aden or for the purpose or restraining that person while he is being conveyed through Aden in the course of his extradition or his removal as a convicted prisoner from one country or territory to another; or

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Aden or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Aden in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Aden,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Protection from slavery and forced labour.

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(*d*) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

Protection from inhuman treatment.

5.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Aden immediately before the coming into effect of this Constitution.

Protection from deprivation of property.

6.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say —

(*a*) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit; and

(*b*) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by section 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorized by sections 7 (2), 9 (5), 10 (2), 11 (2) or section 12 (3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) This section applies to any person who is a British subject or a British protected person and—

(*a*) who was born in Aden or whose father was born in Aden; or

(*b*) who has obtained the status of a British subject by reason of the grant by the High Commissioner of a certificate of naturalization under the British Nationality and Status of Aliens Act 1914 or the British Nationality Act 1948; or

(*c*) who is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of a court or a deed of separation; or

(*d*) who is the child, stepchild, or child adopted in a manner recognized by law under the age of eighteen years of a person to whom any of the foregoing paragraphs applies; or

(*e*) who is a member of any other class of persons that may be prescribed by any law enacted under this Constitution.

Enforcement of protective provisions.

14.—(1) Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 1 to 13 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to a superior court.

(2) A superior court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such

writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of sections 1 to 13 (inclusive) of this Constitution to the protection of which the person concerned is entitled:

Provided that the court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) Any person aggrieved by any determination of a superior court under this section may appeal therefrom to such court as may be prescribed by any Order of Her Majesty in Council.

(4) No appeal shall lie from any determination under this section that any application is merely frivolous or vexatious.

(5) During the period of one year beginning with the commencement of this Constitution, nothing contained in any law made before that commencement shall be held to be inconsistent with any of the provisions of this Part other than sections 2, 3, 4, 5, 8 and 13 of this Constitution; and nothing done during that period under the authority of any such law shall be held to be done in contravention of any of those sections.

Provisions for periods of public emergency.

15.—(1) Nothing contained in or done under the authority of any law to which this section applies shall be held to be inconsistent with or in contravention of section 3, section 6 (1) (*a*), any provision of section 8 other than subsection (4) thereof, or any provision of sections 7, 9, 10, 11, 12 or 13 of this Constitution to the extent that the law in question makes in relation to any period of public emergency provision, or authorizes the doing during any such period of anything that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance only of such a law as is referred to in subsection (1) of this section so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) This section applies to such laws as may be prescribed by any Order of Her Majesty in Council.

Interpretation and savings.

16.—(1) In this Part, unless the context otherwise requires—

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law established for Aden, but except in sections 2 and 4 of this Constitution, does not include a court established by a disciplinary law;

" disciplinary law " means a law regulating the discipline—

(*a*) of any disciplined force ; or

(*b*) of persons serving prison sentences ;

" disciplined force " means—

(*a*) a naval, military or air force ;

(*b*) a police force ; or

(*c*) a prison service ;

" member ", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Part " a period of public emergency " means—

(*a*) any period during which a state of war exists ; or

(*b*) such other period as may be defined by any Order of Her Majesty in Council.

(3) In relation to any person who is a member of a disciplined force raised under a law enacted by any legislature in Aden, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part other than sections 2, 4 and 5.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Aden nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part.

PART II

THE COUNCIL OF MINISTERS

Council of Ministers.

17.—(1) There shall be a Council of Ministers in and for Aden which shall consist of—

(*a*) not less than seven Ministers who shall be members of the Legislative Council ; and

(*b*) the Attorney-General, who shall be an ex-officio member of the Council.

(2) Of the Ministers one, who shall be styled the Chief Minister, shall be appointed in accordance with the provisions of subsection (1) of section 19 of this Constitution and the others shall be appointed in accordance with the provisions of subsection (2) of that section.

Exercise of High Commissioner's powers.

18.—(1) Subject to the provisions of this section and save as otherwise provided by any Instructions given under Her Majesty's Sign Manual and Signet, the High Commissioner shall consult with the Council of Ministers in the formulation of policy and in the exercise of all powers conferred on him by this Constitution or by any other law for the time being in force in Aden.

(2) The High Commissioner may, but shall not be obliged to, consult with the Council of Ministers in the exercise—

(*a*) of any power that in his opinion relates to external affairs, defence, internal security or the police ;

(*b*) of any power conferred on him by this Constitution which he is empowered or directed by this Constitution to exercise on or in accordance with the recommendation or advice of, or after consultation with, any person or authority other than the Council;

(*c*) of any power conferred on him by this Constitution or any other law which he is empowered or directed by this Constitution or such law to exercise in his discretion;

(*d*) of any power conferred on him by any law other than this Constitution which that other law, either expressly or by implication, empowers him to exercise without consulting the Council.

(3) Subject to subsection (8) of this section the High Commissioner shall act in accordance with the advice of the Council of Ministers in exercising any power in the exercise of which he is obliged by this section to consult with the Council.

(4) Where the High Commissioner is directed by this Constitution to exercise any power on or in accordance with the recommendation or advice of any person or authority he shall exercise the power in accordance with that recommendation or advice.

(5) Where the High Commissioner is directed by this Constitution to exercise any power after consultation with any person or authority other than the Council of Ministers he shall not be obliged to exercise that power in accordance with the advice of that person or authority.

(6) Where the High Commissioner is directed by this Constitution to exercise any power in accordance with the recommendation or advice of, or after consultation with, any person or authority, the question whether he has so exercised that power shall not be enquired into by any court.

(7) The High Commissioner shall not be obliged to consult with the Council of Ministers in any case in which, in his judgment, the urgency of the matter requires him to act before the Council can be consulted or the question for discussion is too unimportant to require their advice; but in any such case of urgency he shall, as soon as practicable, communicate to the Council the measures that he has adopted and the reasons therefor.

(8) If in any case in which he is, in pursuance of this section, obliged to consult with the Council of Ministers, the High Commissioner shall consider it expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Aden as a territory within the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer) that he should not act in accordance with the advice of the Council, then—

(*a*) he may, with the prior approval of the Secretary of State, act against that advice; or

(*b*) if, in his judgment, urgent necessity so requires, he may act against that advice without such prior approval, but shall, without delay, report the matter to a Secretary of State with the reasons for his action.

(9) Nothing in subsection (1) of this section shall be construed as applying to matters for which provision is made by section 53 of this Constitution.

Appointment of Ministers.

19.—(1) Whenever there shall be occasion for the appointment of a Chief Minister, the High Commissioner, in his discretion, shall appoint as Chief Minister the member of the Legislative Council who appears to him most likely to command the support of the majority of the members of the Legislative Council and who is willing to be appointed.

(2) The Ministers other than the Chief Minister shall be such persons as the High Commissioner, acting in accordance with the advice of the Chief Minister, shall appoint from among the members of the Legislative Council:

Provided that such appointments shall be made so that at any one time there shall be a majority of Ministers (including the Chief Minister) consisting of Elected Members of the Legislative Council.

(3) If occasion arises for the appointment of a Chief Minister or of any other Minister while the Legislative Council is dissolved, a person who was a member of the Legislative Council immediately before the dissolution may be appointed as Chief Minister or as any other Minister.

(4) Appointments made under this section shall be made by instrument under the public seal.

Tenure of office of Ministers.

20.—(1) Whenever it appears to the High Commissioner, in his discretion, that the Chief Minister has ceased to command the support of the majority of the members of the Legislative Council the High Commissioner, after consultation with the Chief Minister shall, unless he dissolves the Legislative Council, revoke the appointment of the Chief Minister by instrument under the public seal.

(2) The Chief Minister shall also vacate his office—

(*a*) when, after any dissolution of the Legislative Council, he is informed by the High Commissioner, in his discretion, that the High Commissioner is about to re-appoint him as Chief Minister or to appoint another person as Chief Minister;

(*b*) if for any reason other than a dissolution of the Legislative Council he ceases to be a member of the Legislative Council; or

(*c*) upon receipt by the High Commissioner of the Chief Minister's resignation tendered to the High Commissioner in writing under the Chief Minister's hand.

(3) A Minister other than the Chief Minister shall vacate his office—

(*a*) whenever the High Commissioner appoints or re-appoints any person to be Chief Minister;

(*b*) if, for any reason other than a dissolution of the Legislative Council, he ceases to be a member of that Council;

(*c*) upon receipt by the High Commissioner of the Minister's resignation tendered to the High Commissioner in writing under the Minister's hand;

(*d*) if his appointment is revoked by the High Commissioner, acting on the recommendation of the Chief Minister, by instrument under the public seal; or

(*e*) if he is absent from Aden without having obtained the written permission of the High Commissioner, acting on the recommendation of the Chief Minister.

(4) For the purposes of subsection (3) of this section, a Minister shall not be regarded as absent from Aden when he is in the

Protectorate, or during his passage from Aden to the Protectorate or from one part of the Protectorate to another.

Leave of absence for Ministers.

21.—(1) The High Commissioner, in his discretion, may grant leave of absence from his duties to the Chief Minister.

(2) The High Commissioner, acting on the recommendation of the Chief Minister, may grant leave of absence from his duties to a Minister other than the Chief Minister.

Performance of functions of Chief Minister.

22.—(1) Whenever the office of Chief Minister is vacant or the Chief Minister is unable, by reason of his illness or absence from his duties on leave of absence from Aden and the Protectorate, to perform the functions of his office, the High Commissioner may, by instrument under the public seal, authorise any other Minister to perform the functions conferred on the Chief Minister by this Constitution (other than the functions conferred on the Chief Minister by subsection (2) of this section) and any Minister so authorised may perform those functions until his authority is revoked by the High Commissioner by instrument under the public seal.

(2) The powers conferred upon the High Commissioner by this section shall be exercised by him in his discretion if the office of Chief Minister is vacant or if, in his judgment, it is impracticable to obtain the Chief Minister's advice owing to his illness or absence, and in any other case shall be exercised in accordance with the recommendation of the Chief Minister.

Oath to be taken by Ministers, etc.

23. Before entering upon the functions of his office every Minister shall take and subscribe before the High Commissioner, or some person authorized in that behalf by the High Commissioner, in his discretion, an oath or affirmation for the due execution of his office in the form set out in the schedule to this Constitution.

Presiding in Council of Ministers.

24.—(1) The High Commissioner shall, so far as practicable, attend and preside at all meetings of the Council of Ministers.

(2) In the absence of the High Commissioner there shall preside at any meeting of the Council such member of the Council as the High Commissioner may appoint.

Council of Ministers may transact business notwithstanding vacancies, etc.

25. Subject to the provisions of section 26 (2) of this Constitution, the Council of Ministers shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy when the Council is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled to do so took part in those proceedings.

Summoning of Council of Ministers and quorum.

26.—(1) The Council of Ministers shall not be summoned except by the authority of the High Commissioner, in his discretion:

Provided that the High Commissioner shall summon the Council if the Chief Minister so recommends.

(2) No business shall be transacted at any meeting of the Council of Ministers if there are less than four members of the Council present and any member of the Council present at the meeting has objected to the transaction of business on that account.

Proposal of business for transaction in the Council of Ministers.

27.—(1) Subject to subsection (2) of this section, the High Commissioner shall decide what business is to be proposed from time to time for transaction in the Council of Ministers.

(2) If the Chief Minister requests in writing that there should be submitted to the Council of Ministers for their consideration any question relating to a matter on which the High Commissioner is required to consult the Council of Ministers, then the High Commissioner shall submit such question to the Council for their consideration.

Assignment of responsibility to Ministers, and responsibility of High Commissioner for certain matters.

28.—(1) The High Commissioner, acting on the recommendation of the Chief Minister, may assign to any Minister responsibility for any business of the Government of Aden, including the administration of any department of government other than that of the Attorney-General.

(2) Nothing in this section shall authorize the High Commissioner to assign to any Minister responsibility for—

(*a*) external affairs, defence, internal security or the police ;

(*b*) the institution, conduct and discontinuance of prosecutions for criminal offences ; or

(*c*) any power vested in the High Commissioner by this Constitution that he is authorized to exercise in his discretion :

Provided that the High Commissioner, in his discretion, may, by directions in writing, authorize any Minister to exercise or to perform on the High Commissioner's behalf, but subject to his control, any power or duty relating to any of the matters referred to in paragraph (*a*) or paragraph (*c*) of this subsection.

PART III

LEGISLATIVE COUNCIL

Establishment of Legislative Council.

29.—(1) There shall be a Legislative Council in and for Aden, constituted in accordance with the provisions of this Constitution.

(2) Subject to the provisions of this Constitution, the Legislative Council shall consist of—

(*a*) a Speaker ;

(*b*) sixteen Elected Members ;

(*c*) six Nominated Members ; and

(*d*) the Attorney General.

The Speaker.

30.—(1) The Speaker shall be a person who is not an Elected Member or a Nominated Member of the Legislative Council, or the Attorney-General, and he shall be appointed by the High Commissioner, in his discretion, by instrument under the public seal.

(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 High Commissioner, resign his office.

The Deputy Speaker.

31.—(1) The High Commissioner, in his discretion, may from time to time, by instrument under the public seal, appoint a person to be Deputy Speaker of the Legislative Council.

(2) If any person appointed to be Deputy Speaker is not at the date of his appointment a member of the Legislative 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 Constitution, for such period as may be specified in the instrument by which he is appointed.

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

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

(*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; or

(*c*) if he resigns his office by writing under his hand addressed to the High Commissioner.

Elected Members.

32. The Elected Members of the Legislative Council shall be persons qualified for election in accordance with the provisions of this Constitution and elected in the manner provided by, or in pursuance of, any law for the time being in force in Aden.

Nominated Members.

33. Subject to the provisions of section 35 of this Constitution, the Nominated Members of the Legislative Council shall be persons of the age of twenty-one or upwards and they shall be appointed by the High Commissioner, in his discretion, by instrument under the public seal.

Qualifications for election.

34. Subject to the provisions of section 35 of this Constitution, a person shall be qualified to be elected a member of the Legislative Council and shall not be qualified to be so elected unless he—

(*a*) (i) is a British subject born in Aden, or

(ii) not being born in Aden, is a British subject or British protected person and has resided in Aden for a period of seven years out of the ten years immediately before the date of his nomination for election; and

(*b*) is a male person of not less than twenty-one years of age; and

(*c*) (i) is the owner of immovable property in Aden of a value of not less than one thousand five hundred shillings, or

(ii) has been, for twelve months out of the twenty-four months immediately preceding the date of his nomination for election, in occupation of residential or business premises in Aden of an annual value of not less than two hundred and fifty shillings, or

(iii) has been in receipt of an average monthly income of not less than one hundred and fifty shillings during the twelve months immediately before the date of his nomination for election.

Disqualifications for Nominated and Elected Members.

35.—(1) No person shall be qualified to be appointed as a Nominated Member or elected as an Elected Member of the Legislative Council who—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state; or

(*b*) in the case of an Elected Member, holds, or is acting in, any public office;

(*c*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth ;

(*d*) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Aden ;

(*e*) is under sentence of death imposed on him by a court in any part of the Commonwealth, or under sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court ;

(*f*) in the case of an Elected Member, is disqualified for election by any law for the time being in force in Aden by reason of his holding or acting in, any office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election, or

(ii) any responsibility for the compilation or revision of any electoral register ; or

(*g*) is disqualified for membership of the Legislative Council by any law for the time being in force in Aden relating to offences connected with elections.

(2) For the purpose of paragraph (*e*) of the last foregoing subsection two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Tenure of office of Nominated and Elected Members.

36.—(1) Subject to the provisions of this Constitution, a Nominated Member of the Legislative Council shall hold his seat in the Council during Her Majesty's pleasure.

(2) An Elected Member, or a Nominated Member of the Legislative Council shall vacate his seat—

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

(*b*) if, being an Elected Member, he resigns his seat by writing under his hand addressed to the Speaker, or, being a Nominated Member, he resigns his seat by writing under his hand addressed to the High Commissioner ;

(*c*) if he is appointed to be Speaker ;

(*d*) if, being an Elected Member, he accepts appointment as a Nominated Member, or, being a Nominated Member, he accepts nomination as a candidate for election to the Legislative Council ;

(*e*) if he is absent from three consecutive meetings of the Legislative Council without having obtained before the termination of any of such meetings from the Speaker, or other person presiding, if he is an Elected Member, or from the High Commissioner, if he is a Nominated Member, permission to be or to remain absent therefrom ;

(*f*) if any circumstances arise that, if he were not a member of the Legislative Council, would cause him to be disqualified for election or appointment thereto by virtue of paragraphs (*a*), (*b*), (*c*), (*d*), (*f*) or (*g*) of subsection (1) of the last foregoing section ;

(*g*) if in the case of an Elected Member he shall cease to have the qualifications specified in section 34 (*c*) of this Constitution.

Vacation of seat on sentence.

37.—(1) Subject to the provisions of this section, if an Elected Member or a Nominated Member of the Legislative Council is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term of or exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the Council signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Legislative Council shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Legislative Council.

(3) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Temporary members.

38.—(1) Whenever a Nominated Member of the Legislative Council is unable, because he is ill, or absent from Aden, or for any other reason, to perform his functions as a member of the Council, the High Commissioner, in his discretion, may, by instrument under the public seal, appoint to be temporarily a member of the Council a person qualified for appointment as a Nominated Member.

(2) A person appointed under this section to be temporarily a member of the Legislative Council—

(*a*) shall hold his seat in the Council during Her Majesty's pleasure;

(*b*) shall vacate his seat when he is informed by the High Commissioner that the member in whose place he was appointed is again able to perform his functions as a member of the Council, or when the seat of the member in whose place he was appointed becomes vacant.

(3) Subject to the provisions of this section, the provisions of this Constitution shall apply in relation to a person appointed to be temporarily a member of the Legislative Council as they apply in relation to the Nominated Member in whose place he was appointed.

Determination of questions as to membership.

39.—(1) Any question whether—

(*a*) a person has been validly elected an Elected Member of the Legislative Council; or

(*b*) an Elected Member of the Legislative Council has vacated his seat therein or is required under section 37 of this Constitution to cease to perform his functions as a member,

shall be determined by the Supreme Court.

(2) Any question whether—

(*a*) a person has been validly appointed a Nominated Member of the Legislative Council ; or

(*b*) a Nominated Member of the Legislative Council has vacated his seat therein or is required under section 37 of this Constitution to cease to perform his functions as a member,

shall be determined by the High Commissioner, in his discretion.

(3) A law enacted under this Constitution may make provision with respect to the persons who may apply for the determination of any question under this section, the circumstances and manner in which and the conditions on which any such application may be made, and the powers, practice and procedure of the Supreme Court in relation to any such application in respect of an Elected Member of the Legislative Council.

Law as to elections.

40. Subject to the provisions of this Constitution, a law enacted under this Constitution may provide for the election of members of the Legislative Council, and in particular, and without prejudice to the generality of the foregoing power, may provide for—

(*a*) the qualifications and disqualifications of electors ;

(*b*) the registration of electors ;

(*c*) the ascertainment of the qualifications of candidates for election and of electors ;

(*d*) the establishment of electoral districts (by whatever name called) for the purpose of elections and the division of electoral districts for any purpose connected with elections ;

(*e*) the holding of elections ;

(*f*) the determination of any question whether any person has been validly elected a member of the Legislative Council or whether a member of the Legislative Council has vacated his seat therein ;

(*g*) the definition and trial of offences connected with elections and the imposition of penalties therefor, including disqualification for membership of the Legislative Council, or for registration as an elector, or for voting at elections, of any person concerned in any such offence ; and

(*h*) the disqualification for election as members of the Legislative Council of persons holding, or acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

Persons to be treated as holding public offices.

41.—(1) A person shall not be treated as holding, or acting in, a public office for the purpose of this Part of this Constitution—

(*a*) if he is on leave of absence pending relinquishment of a public office ;

(*b*) by reason only that he—

(i) is receiving any remuneration or allowance from the revenues of Aden as Minister or member of the Legislative Council,

(ii) is receiving a pension or other like allowance from the Crown.

(2) If it is provided in any law for the time being in force in Aden that an office shall not be a public office for all or any of the purposes of this Part of this Constitution, the provisions of this Part shall have effect accordingly.

PART IV

LEGISLATION AND PROCEDURE OF LEGISLATURE

Power to make laws.

42. Subject to the provisions of this Constitution, the High Commissioner, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of Aden.

Royal Instructions.

43. Subject to the provisions of this Constitution, the High Commissioner and the Legislative Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions given under Her Majesty's Sign Manual and Signet which may from time to time be addressed to the High Commissioner in that behalf.

Rules and orders.

44. Subject to the provisions of this Constitution and of any Instructions given under Her Majesty's Sign Manual and Signet, the Legislative Council may from time to time make, amend and revoke rules and orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills and for the presentation thereof to the High Commissioner for assent; but no such rules and orders or amendment or revocation thereof shall have effect until they have been approved by the High Commissioner, in his discretion.

Privileges of the Legislative Council and its members.

45. A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Legislative Council and its members but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland or of its members.

Oath or affirmation of allegiance.

46. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purpose of this section) until he has made before the Council an oath or affirmation of allegiance in the form set out in the schedule to this Constitution.

Presiding in the Legislative Council.

47. The person who shall preside at the sittings of the Legislative Council shall be—

(*a*) the Speaker; or

(*b*) in his absence, or if the office of Speaker is vacant, the Deputy Speaker; or

(*c*) in their absence or if the offices of Speaker and Deputy Speaker are both vacant or if one of such officers is absent and the office of the other is vacant, a member of the Legislative Council elected by the Council for the sitting.

Legislative Council may transact business notwithstanding vacancies.

48. The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy among the members thereof including any vacancy not filled when the Council 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 Council or otherwise took part in the proceedings.

Quorum.

49. If at any sitting of the Legislative Council objection is taken by any member present that there are present less than six members besides the Speaker, Deputy Speaker or other member presiding and, after such interval as may be prescribed in the rules and orders of the Council, the Speaker, Deputy Speaker or other member presiding ascertains that that number of members is still not present, he shall thereupon adjourn the Council.

Voting.

50.—(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting.

(2) The Speaker, and the Deputy Speaker if at the date of his appointment he was not a member of the Legislative Council, shall have neither an original nor a casting vote.

(3) Subject to the last foregoing subsection the Deputy Speaker or any other member shall, when presiding, have an original vote but no casting vote.

(4) If upon any question before the Legislative Council the votes are equally divided, the motion shall be declared lost.

High Commissioner may address the Legislative Council.

51. The High Commissioner, in his discretion, may attend and address the Legislative Council at any time, and may for that purpose require the attendance of members.

Introduction of Bills, etc.

52.—(1) Subject to the provisions of this Constitution and to the rules and orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to the Council, and the Bill, motion or petition shall be debated and disposed of according to the rules and orders of the Council.

(2) Except on the recommendation of the High Commissioner the Legislative 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 or of the Attorney-General—

(i) makes provision for imposing or increasing any tax, rate or duty, for imposing or increasing any charge on the revenues or other funds of Aden, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Aden;

(ii) effects 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; or

(iii) affects any matter relating to external affairs, defence, internal security or the police, or any matter relating to the Attorney-General's power to initiate, conduct, or discontinue prosecutions for criminal offences under the provisions of any law in force in Aden;

(*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 or of the Attorney-General, is that provision should be made for any of the purposes aforesaid ; or

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

(3) The High Commissioner, in his discretion, may—

(*a*) send by message to the Speaker the draft of any Bill or motion which he considers should be introduced or proposed in the Legislative Council ; and

(*b*) in the same or a later message require that the Bill or motion shall be introduced or proposed not later than a date specified in the message ;

and if that requirement is not complied with, the Bill or motion shall be deemed for all purposes to have been introduced or proposed in the Council on the date so specified.

High Commissioner's reserved powers.

53.—(1) If the High Commissioner 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 Aden as a territory within the Commonwealth, 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 Legislative Council should have effect, then, if the Council fail to pass such Bill or to carry the motion within such time and in such form as the High Commissioner may think reasonable and expedient, the High Commissioner at any time that he thinks fit may, notwithstanding any provisions of this Constitution or of any 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 High Commissioner shall think fit which have been moved or proposed in the Council or in any committee thereof ; and the Bill or motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) The High Commissioner shall forthwith report to a 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 Legislative Council objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the High Commissioner 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 High Commissioner as soon as practicable to a Secretary of State.

(4) Any such declaration, other than a declaration relating to a Bill, may be revoked by a Secretary of State, and the High Commissioner 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 section 38 (2) of the Interpretation Act 1889(a) shall apply to such revocation as they apply to the repeal of an Act of Parliament.

Assent to Bills.

54.—(1) A Bill shall not become a law until—

(*a*) the High Commissioner has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent; or

(*b*) Her Majesty has given Her assent to it through a Secretary of State and the High Commissioner has signified Her assent by proclamation published in the Gazette.

(2) When a Bill is presented to the High Commissioner for his assent, he shall, in his discretion, but subject to the provisions of this Constitution and of any Instructions given under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the High Commissioner shall reserve for the signification of Her Majesty's pleasure—

(*a*) any Bill which appears to the High Commissioner, in his discretion, to be in any way repugnant to, or inconsistent with the provisions of this Constitution; and

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

unless he has been authorised by a Secretary of State to assent to it.

(3) A law assented to by the High Commissioner shall come into operation on the date of its publication in the Gazette without prejudice, however, to any provisions of that law or any other law postponing its operation or giving it retrospective effect.

Disallowance of laws.

55.—(1) Any law assented to by the High Commissioner may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by Her Majesty the High Commissioner shall cause notice of the disallowance to be published in the Gazette, and the law shall be annulled with effect from the date of publication of the notice.

(3) On the annulment of any law under this section any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made; but save as provided in the foregoing provisions of this subsection the provisions of section 38 (2) of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

Sessions.

56. The sessions of the Legislative Council shall be held at such places and begin at such times as the High Commissioner from time to time by proclamation published in the Gazette shall appoint; but a period of twelve months shall not elapse between the date when the Legislative Council last sat in one session and the date appointed for its first sitting in the next session.

Prorogation and dissolution.

57.—(1) The High Commissioner may at any time, by proclamation published in the Gazette, prorogue or dissolve the Legislative Council.

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

(2) The High Commissioner shall dissolve the Legislative Council at the expiration of five years from the date when the Council first meets after any general election if it is not sooner dissolved.

General elections.

58. There shall be a general election at such time, within three months after every dissolution of the Legislative Council, as the High Commissioner shall by Proclamation published in the Gazette appoint.

PART V

THE SUPREME COURT

Constitution of Supreme Court.

59.—(1) There shall be in and for Aden a Supreme Court which shall be a superior court of record with such jurisdiction and power as may be prescribed by any law for the time being in force in Aden.

(2) The judges of the Supreme Court shall be a Chief Justice and such number of Puisne Judges as may from time to time be appointed under the next following subsection:

Provided that the office of judge of the Supreme Court shall not, without his consent, be abolished during his continuance in office.

(3) The Chief Justice and Puisne Judges of the Supreme Court shall be persons qualified for appointment under subsection (4) of this section and shall be appointed by the High Commissioner by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(4) A person shall not be qualified to be appointed a judge of the Supreme Court unless—

(*a*) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court; or

(*b*) he is qualified to practise as an advocate in any such court and has been qualified for not less than five years to practise as an advocate or solicitor in such a court.

(5) For the purposes of subsection (4) of this section a person shall be treated as qualified to practise as an advocate or solicitor in any such court during any period in which, after becoming so qualified, he holds or acts in any office the holder of which is precluded from so practising, being an office under the Government of, or connected with a court in, some part of the Commonwealth or the Republic of Ireland.

(6) The Supreme Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of any judge of that Court.

Tenure of office of judges.

60.—(1) Subject to the following provisions of this section, each judge of the Supreme Court shall hold office until he attains the age of 62 years:

Provided that the High Commissioner may permit a judge who has attained that age to continue in office for the purpose of giving judgment or otherwise in relation to proceedings heard by him before he attained that age.

(2) A judge of the Supreme Court may at any time resign his office by writing under his hand addressed to the High Commissioner.

(3) A judge of the Supreme Court may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be removed except in accordance with the next following subsection.

(4) A judge of the Supreme Court shall be removed from office by the High Commissioner by order under the public seal if the question of the removal of that judge from office has, at the request of the High Commissioner, made in pursuance of the next following subsection, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833(a) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If the High Commissioner considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(*a*) the High Commissioner shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the High Commissioner from among persons who hold or have held high judicial office;

(*b*) that tribunal shall inquire into the matter and report on the facts thereof to the High Commissioner and recommend to the High Commissioner whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and

(*c*) if the tribunal so recommends, the High Commissioner shall request that the question should be referred accordingly.

(6) The provisions of sections 6 and 8, section 9 (other than the words "not inconsistent with their commission" and "subject only to the terms of their commission"), sections 10 to 15 inclusive, and section 17 of the Commissions of Inquiry Ordinance(b), as in force at the commencement of this Constitution, shall apply in relation to a tribunal appointed under the last foregoing subsection as they apply in relation to commissioners appointed under that Ordinance, and for that purpose those provisions shall have effect as if they formed part of this Constitution.

(7) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under subsection (5) of this section the High Commissioner may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the High Commissioner and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the High Commissioner that he should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or

(*b*) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(8) The powers conferred upon the High Commissioner by this section shall be exercised by him in his discretion.

(a) 3 & 4 Will. 4. c. 41. (b) Laws of Aden, 1955 Chapter 28 (Vol. 1, p. 340).

Acting Chief Justice.

61. If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to, or has been appointed to act in, and has assumed the functions of, that office, or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such one of the Puisne Judges or such other person qualified for appointment as a judge of the Supreme Court as the High Commissioner may, in his discretion, appoint for that purpose:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-two years.

Temporary Puisne Judges.

62.—(1) If the office of any Puisne Judge is vacant, or if any Puisne Judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office, the High Commissioner, after consultation with the Chief Justice, may appoint a person qualified for appointment as a judge of the Supreme Court to be temporarily a Puisne Judge of that Court:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-two years.

(2) Any person appointed under this section to be temporarily a Puisne Judge of the Supreme Court shall hold office until his appointment is revoked by the High Commissioner after consultation with the Chief Justice:

Provided that any such person may at any time resign his office by writing under his hand addressed to the High Commissioner.

Salaries of judges.

63. There shall be charged on the revenues of Aden and paid thereout to the Chief Justice, to the acting Chief Justice, if any, to any Puisne Judge and to any person appointed to be temporarily a Puisne Judge, such salaries and allowances as may be, respectively, prescribed by any law for the time being in force in Aden:

Provided that the salary of any judge and his conditions of service other than allowances shall not be altered to his disadvantage during his continuance in office.

Oaths to be taken by judges.

64. Before entering upon the functions of his office, every judge of the Supreme Court shall make and subscribe before the High Commissioner, or some other person authorized in that behalf by the High Commissioner, oaths or affirmations of allegiance and for the execution of his office in the form set out in the schedule to this Constitution.

PART VI

THE PUBLIC SERVICE

Public officers.

65.—(1) Subject to the provisions of this section, the appointment, promotion, transfer, termination of appointment, dismissal and disciplinary control of public officers is hereby vested in the High Commissioner, acting in his discretion.

(2) The High Commissioner, in his discretion, may by regulations published in the Gazette delegate to, or provide for the delegation to, any public officer, subject to such exceptions, qualifications and

conditions as may be prescribed in any such regulations, any of the powers vested in the High Commissioner by subsection (1) of this section.

(3) The provisions of this section shall not apply to any police officers, not being above the rank of Chief Inspector, to the extent that the Commissioner of Police or some other officer of the Aden Police Force is empowered by any law for the time being in force in Aden to exercise powers of appointment, promotion, termination of appointment, dismissal or disciplinary control in respect of such persons.

(4) The provisions of this section shall be subject to the provisions of any Instructions that may be issued by Her Majesty under Her Sign Manual and Signet or through a Secretary of State, and any power conferred by this section or delegated under this section shall be exercised in accordance with the provisions of such Instructions.

Public Service Commission.

66.—(1) There shall be, in and for Aden, a Public Service Commission, and, subject to the provisions of subsection (3) of this section, the Commission shall consist of such person or persons as may be appointed by the High Commissioner by instrument under his hand:

Provided that if the High Commissioner shall appoint a Commission consisting only of one member, such member shall be styled the "Public Service Commissioner" and he may exercise all the powers and shall perform all the duties conferred or imposed upon the Commission by this Constitution.

(2) The High Commissioner may terminate the appointment of any member of the Public Service Commission at any time, and subject as aforesaid, a member of the Commission shall hold office upon such terms and conditions as may be prescribed by regulations made under section 69 of this Constitution.

(3) No person shall be qualified to be appointed as a member of the Public Service Commission if he is—

(*a*) a member of the Council of Ministers;

(*b*) a member of the Legislative Council other than the Speaker;

(*c*) an officer of any society or association which the High Commissioner is satisfied is of a political nature; or

(*d*) a person, whether in the public service or not, who is a member of any staff association or of any trade union or of any body (other than the Police Service Commission or the Municipal Service Commission of Aden) as to which the High Commissioner is satisfied that its object, or one of its objects, is to control or influence salaries, wages, pensions or conditions of service of any class of employed person.

(4) The powers conferred on the High Commissioner by this section shall be exercised by him in his discretion.

Public Service Commission to advise High Commissioner.

67.—(1) The High Commissioner, in his discretion, may refer to the Public Service Commission for their advice any question which relates to the appointment, promotion, transfer, or termination of appointment, dismissal or other disciplinary control of public officers, and any other question which, in his opinion, affects the public service:

Provided that—

(i) the High Commissioner shall not refer to the Commission any question that, in his opinion, affects solely the police force or any member of it;

(ii) the provisions of this subsection shall not apply in relation to any of the following—

(*a*) a judge of the Supreme Court;

(*b*) the Attorney-General;

(*c*) the Director of Audit;

(*d*) members of the High Commissioner's personal staff; or

(*e*) the Clerk or Clerk Assistant of the Legislative Council.

(2) It shall be the duty of the Public Service Commission to advise the High Commissioner on any question that he refers to them under this section, but the High Commissioner shall not be obliged to act in accordance with their advice.

Public Service Commission to advise other officers.

68.—(1) The High Commissioner, in his discretion, may by regulations published in the Gazette require or permit any public officer to whom he delegates any power under section 65 (2) of this Constitution, to refer to the Public Service Commission for their advice, on such conditions as may be prescribed in such regulations, any question relating to the exercise of that power.

(2) It shall be the duty of the Public Service Commission to advise any public officer on any question which he refers to them in accordance with the provisions of this section, and the officer shall act in accordance with the advice given to him by the Commission unless the High Commissioner, in his discretion, authorizes him to act otherwise.

Regulations regarding Public Service Commission.

69. Subject to the provisions of this Constitution, the High Commissioner, in his discretion, may make regulations and give instructions for giving effect to sections 65, 66 and 67 of this Constitution, and in particular and without prejudice to the generality of the foregoing power may by such regulations and instructions provide for all or any of the following matters relating to the Public Service Commission—

(*a*) the membership of the Commission;

(*b*) the tenure of office and terms of service of members of the Commission;

(*c*) the protection and privileges of members of the Commission in respect of the performance of their duties and the privilege of communications to and from the Commission or members of the Commission in case of legal proceedings;

(*d*) the organization of the work of the Commission;

(*e*) the consultation by the Commission with persons other than members of the Commission;

(*f*) the appointment, tenure of office and terms of service of staff to assist the Commission in performing their functions;

(*g*) the delegation to any member of the Commission of all or any of the functions of the Commission;

(*h*) the definition and trial of offences connected with the functions of the Commission and the imposition of penalties for such offences :

Provided that no such penalty shall exceed a fine of 4,000 shillings and imprisonment for a term of one year ; and

(*i*) requiring persons to attend before the Commission to answer questions relating to any inquiry held by the Commission or to any business or duties of the Commission.

Police Service Commission.

70.—(1) There shall be, in and for Aden, a Police Service Commission, and, subject to the provisions of subsection (3) of this section, the Commission shall consist of such person or persons as may be appointed by the High Commissioner, in his discretion, by instrument under his hand :

Provided that if the High Commissioner shall appoint a Commission consisting only of one member, such member shall be styled the "Police Service Commissioner" and he may exercise all the powers and shall perform all the duties conferred and imposed upon the Commission by this Constitution.

(2) The High Commissioner, in his discretion, may terminate the appointment of any member of the Police Service Commission at any time and, subject as aforesaid, a member of the Commission shall hold office upon such terms and conditions as may be prescribed by regulations made under section 69 of this Constitution as applied by section 72 of this Constitution.

(3) No person shall be qualified to be appointed as a member of the Police Service Commission if he is—

(*a*) a person referred to in paragraph (*a*), (*b*) or (*c*) of section 66 (3) of this Constitution ; or

(*b*) a person, whether in the public service or not, who is a member of any staff association or of any trade union or of any body (other than the Public Service Commission or the Municipal Service Commission of Aden) as to which the High Commissioner, in his discretion, is satisfied that its object, or one of its objects, is to control or influence salaries, wages, pensions or conditions of service of any class of employed person.

Police Service Commission to advise High Commissioner.

71.—(1) Subject to the provisions of this section, the High Commissioner, in his discretion, may refer to the Police Service Commission for their advice any question which relates to the appointment, promotion, transfer or termination of appointment, dismissal or other disciplinary control of any police officers and any other question which, in his opinion, affects the police force.

(2) The provisions of this section shall not apply in relation to any police officers, not being above the rank of Chief Inspector, to the extent that the Commissioner of Police or some other officer of the Aden Police Force is empowered by any law for the time being in force in Aden to exercise powers of appointment, promotion, termination of appointment, dismissal or disciplinary control in respect of such persons.

(3) It shall be the duty of the Police Service Commission to advise the High Commissioner on any questions which he refers to them under this section, but the High Commissioner shall not be obliged to act in accordance with their advice.

Application of section 69 to Police Service Commission.

72. Section 69 of this Constitution shall apply in relation to the Police Service Commission as if references in that section to the Public Service Commission were references to the Police Service Commission and as if the references in that section to sections 66 and 67 were references, respectively, to sections 70 and 71.

Interpretation of regulations.

73. The Interpretation and General Clauses Ordinance(a) of Aden, as amended from time to time, shall apply to any regulations made under the provisions of this Part of this Constitution as it applies to regulations made under the provisions of an Ordinance of Aden.

Salaries and allowances of members of Public Service Commission and Police Service Commission.

74. There shall be charged on the general revenues of Aden and paid out therefrom to members of the Public Service Commission and the Police Service Commission such salaries and allowances as the High Commissioner, in his discretion, may prescribe by order under his hand.

PART VII

MISCELLANEOUS

Disposal of land.

75.—(1) Subject to the provisions of any law for the time being in force in Aden and of any instructions from time to time given to the High Commissioner by Her Majesty, the High Commissioner, in Her Majesty's name and on Her Majesty's behalf may, in his discretion, make and execute grants and dispositions of lands or other immovable property within Aden, which may lawfully be granted or disposed of by Her Majesty.

(2) (*a*) The powers conferred upon the High Commissioner by this section may be exercised on behalf of the High Commissioner by any person so authorized, whether by name or by reference to an office, by the High Commissioner by notice published in the Gazette.

(*b*) Any such authority shall be subject to such conditions and restrictions (if any) as may be specified in the notice by which it is conferred, and may be varied or revoked by the High Commissioner by notice published in the Gazette.

Public seal.

76. The High Commissioner shall keep and use the public seal for sealing all things whatsoever that shall pass the said seal.

Power to constitute offices and make appointments, etc.

77. The High Commissioner, in his discretion, and in the name and on behalf of Her Majesty may constitute such offices as may lawfully be constituted by Her Majesty and subject to the provisions of this Constitution and of any other law for the time being in force in Aden, the High Commissioner may likewise—

(*a*) make appointments, to be held during Her Majesty's pleasure to any office so constituted ; and

(*b*) dismiss any person so appointed or take such other disciplinary action in relation to him as the High Commissioner may, in his discretion, think fit.

High Commissioner's powers of pardon, etc.

78. Subject to the provisions of any Instructions given under Her Majesty's Sign Manual and Signet, the High Commissioner, in his discretion, may, in Her Majesty's name and on Her Majesty's behalf—

(a) Cap. 83, Laws of Aden (1955 Revision) Vol. 11, p. 1395.

(*a*) grant to any person concerned in the commission of any offence for which he may be tried in Aden or to any person convicted of an offence in any court in Aden a pardon, either free or subject to lawful conditions;

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person in any court in Aden;

(*c*) substitute a less severe form of punishment for that imposed by any sentence of any such court; or

(*d*) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence in respect of which a person has been convicted by any court in Aden.

Interpretation.

79.—(1) In this Constitution, unless the context otherwise requires—

"Aden" means the territory that immediately before the commencement of this Constitution was comprised in the Colony of Aden, excluding Perim and the Kuria Muria Islands;

"the Gazette" means the Gazette of Aden;

"the High Commissioner" means the High Commissioner for Aden and the Protectorate of South Arabia;

"meeting" in relation to the Legislative Council, means all sittings of the Council commencing when the Council first meets after being summoned at any time, and terminating when the Council is adjourned *sine die*, or at the conclusion of a session;

"police officer" means any member of the Aden Police Force;

"the Protectorate" means the Protectorate of South Arabia;

"public office" means an office of emolument in the public service;

"public officer" means the holder of a public office or a person appointed to act in a public office;

"the public seal" means the public seal of Aden;

"the public service" means the service of the Crown in respect of the government of Aden;

"session" in relation to the Legislative Council, means the sittings of the Council commencing when the Council first meets after being constituted under this Constitution, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or is dissolved without having been prorogued;

"sitting" in relation to the Legislative Council, means a period during which the Council is sitting continuously without adjournment, and includes any period during which the Council is in committee;

"shillings" means shillings in the currency of Aden.

(2) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(3) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding

that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

(4) In this Constitution any reference to defence, shall, without prejudice to its generality, be construed as including the organization, discipline, control and use of the armed forces of the Crown and the control and use of any land, establishments, installations and equipment appertaining thereto and the appropriation of land for the use and occupation of the said armed forces.

(5) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office includes, to the extent of his authority, any person who is for the time being authorized to perform the functions of that office.

(6) For the purposes of this Constitution the resignation of a member of any body or a holder of any office that is required to be addressed to any person shall be deemed to have effect from the time at which it is received by that person.

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

SCHEDULE TO THE CONSTITUTION

Sections 23 and 46.

Forms of Oaths and Affirmations

1. *Oath of Allegiance*

I.....do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. *Affirmation of Allegiance*

I.....do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. *Oath for due execution of office*

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (*here insert the description of the office*). So help me God.

4. *Affirmation for due execution of office*

I.....do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (*here insert the description of the office*).

Section 9. SCHEDULE 3 TO THE ORDER

Procedure for election of Specially Elected Members

Interpretation.

1. In this schedule unless the context otherwise requires—

"bye-election" means an election to fill a vacancy among the Specially Elected Members of the Legislative Council occurring after their first election under the provisions of this schedule;

" the Clerk " means the Clerk to the Legislative Council ;

" prescribed form " means such form as may be prescribed by the Speaker by directions in writing.

Functions of the Speaker.

2. If the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, the functions of the Speaker under this schedule shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is unable to perform the functions of his office, by such person as may be appointed by the Governor, in his discretion.

Conduct of elections.

3. Subject to the provisions of this schedule, elections shall be conducted by the Speaker and in such manner as he shall direct.

Appointment of nomination day, etc.

4. As soon as practicable after the commencement of this Order, and whenever a bye-election becomes necessary, the Speaker shall by notice in the Gazette—

(*a*) appoint a day, not being less than ten days after the notice is so published, as nomination day for an election to fill the vacancy or vacancies among the Specially Elected Members and prescribe the hours between which nomination papers shall be delivered on that day ;

(*b*) appoint a day, not being less than two days after the day appointed as nomination day, on which, and prescribe a place at which and the hours between which, the ballot will be held if the election is contested.

Nominations.

5.—(1) Each candidate for election shall be nominated by a separate nomination paper delivered at the Speaker's office on nomination day within the time allowed for such delivery.

(2) The nomination paper shall—

(*a*) be in the prescribed form and state the full name and place of residence of the candidate ;

(*b*) be signed by two persons who are members of the Legislative Council, or are qualified to be elected as members of the Council, as proposer and seconder.

(3) Every proposer and seconder who is not a member of the Legislative Council shall, in the prescribed form, make a statutory declaration that he is duly qualified to be elected as a member of the Legislative Council and he shall cause the declaration to be delivered at the Speaker's office at the time of the delivery to that office of the nomination paper of the candidate concerned.

(4) If such a statutory declaration is not delivered as required by the immediately preceding sub-paragraph the nomination of the candidate concerned shall be deemed to be void.

Consent to nomination.

6.—(1) A person shall not be validly nominated unless his consent to nomination signed by him is delivered at the Speaker's office on nomination day within the time allowed for the delivery of nomination papers.

(2) The consent to nomination shall be in the prescribed form and shall contain a declaration that the candidate is not disqualified by law.

Speaker may hold nominations invalid.

7.—(1) The Speaker shall be entitled to hold a nomination invalid but only on one of the following grounds, that is to say—

(*a*) that the nomination paper or the consent of the candidate is not in the prescribed form ;

(*b*) that the particulars of the candidate are not as required by the provisions of this schedule ;

(*c*) that the nomination paper or the consent of the candidate is not signed by the persons required by the provisions of this schedule ; or

(*d*) that the nomination paper or the candidate's consent was not delivered as required by the provisions of this schedule.

(2) Any decision of the Speaker as to the validity of any nomination shall be final and shall not be questioned in any proceedings.

Withdrawal of candidature.

8. A candidate in respect of whom a nomination paper and a consent to nomination has been delivered at the Speaker's office within the time allowed for the delivery of nomination papers may withdraw his candidature if notice in writing signed by him is delivered to the Speaker's office not later than the expiration of the time allowed for the delivery of nomination papers.

Procedure on conclusion of nomination.

9.—(1) If, at the expiration of the time allowed for the delivery of nomination papers, the number of person remaining validly nominated is more than the number of vacancies in the Legislative Council to be filled at the election, the persons to fill the vacancies shall be elected from among the candidates so nominated by the votes of the members of the Council which shall be taken by ballot in accordance with the provisions of this schedule.

(2) If, at the expiration of the time allowed for the delivery of nomination papers, the number of persons remaining validly nominated is equal to or less than the number of vacancies in the Legislative Council to be filled at the election, the Speaker shall declare those persons to be duly elected.

(3) If, after declaring the persons remaining validly nominated to be elected in accordance with sub-paragraph (2) of this paragraph, any vacancy or vacancies remain unfilled, the vacancy or vacancies shall be filled at a further election.

Statement of candidates in contested election.

10.—(1) Where at an election it is necessary for a ballot to be taken (hereinafter referred to as a contested election) the Clerk shall prepare a statement showing the persons who, at the expiration of the time allowed for the delivery of nomination papers, remain validly nominated, and any other persons who have been nominated with the reasons why they no longer remain nominated. The statement shall show the names of the persons nominated, as given in their nomination papers, together with the names of the persons signing those papers.

(2) The Speaker shall cause a copy of the statement prepared in accordance with this paragraph to be exhibited in a prominent place in the Legislative Council building and to remain so exhibited until the contested election is concluded.

Death of candidate before ballot.

11. Where in a contested election a candidate in respect of whom a ballot is to be held dies before the commencement of the ballot the ballot shall be held in respect of the candidates remaining validly nominated on such day and between such hours as the Speaker may direct:

Provided that, if by reason of the death of such candidate, the number of candidates remaining validly nominated is equal to or less than the number of vacancies to be filled, the Speaker shall countermand the ballot and declare the candidates remaining validly nominated to be elected.

Ballot papers.

12. The ballot of a member of the Legislative Council shall consist of a ballot paper, in the prescribed form, containing the names of the persons remaining validly nominated at the election, as given in their nomination papers, and opposite the name of each person a blank space in which the vote of a member of the Council may be recorded.

Ballot box.

13.—(1) The Clerk shall provide at the time and place prescribed for the taking of a ballot a ballot box and such number of ballot papers as are necessary for the holding of a ballot.

(2) The ballot box shall be so constructed that the ballot papers can be inserted therein when the box is closed, but cannot be withdrawn without the box being opened.

Commencement of ballot.

14.—(1) Immediately before the commencement of a ballot, the Clerk shall cause the ballot box, empty and opened, to be shown to the members of the Legislative Council who are present at the place appointed for the holding of a ballot, and shall then lock it and place it in the view of the Speaker for the receipt of ballot papers.

(2) At all times during the holding of a ballot the ballot box shall be kept locked and in view of the Speaker or, if the Speaker is absent, of the Clerk.

Delivery of ballot papers.

15.—(1) The Clerk shall deliver a ballot paper to each member of the Legislative Council who applies therefor in person at the place and during the hours prescribed for the holding of the ballot, and shall immediately before delivery—

(*a*) sign or otherwise mark the ballot paper in such a manner as to distinguish it clearly from any undelivered ballot paper;

(*b*) enter the name of the member to whom the ballot paper is to be delivered on the list of the members of the Council taking part in the election.

(2) A member of the Legislative Council, on receiving a ballot paper, shall mark the paper by placing the mark "X" (and no other mark or writing) in the space opposite the name of the candidates or candidate for whom he wishes to vote, and shall then fold the paper so as to conceal his vote and proceed to the ballot box and insert the paper so folded into the box.

(3) A member of the Legislative Council shall be entitled to cast the number of votes equivalent to the number of vacancies to be filled.

(4) A member of the Legislative Council shall not cast more than one vote for any one candidate in any ballot.

Disabled voters.

16. A member of the Legislative Council who, by reason of blindness or other physical cause, is unable to mark a ballot paper delivered to him may request the assistance of the Speaker (but no other person) in casting his vote and the Speaker shall, if so requested, mark the ballot paper in the manner directed by the member.

Spoilt ballot papers.

17. A member of the Legislative Council who, having received a ballot paper, inadvertently deals with it in such a manner that it cannot be used as a ballot paper may, on returning it to the Clerk, obtain another ballot paper in its place, and the Clerk shall immediately cancel the ballot paper so returned.

Conclusion of the ballot.

18. At the conclusion of the hours prescribed for the holding of the ballot the Speaker shall make an announcement accordingly:

Provided that if at that hour a member of the Legislative Council to whom a ballot paper has been delivered has not inserted the ballot paper in the ballot box, the Speaker shall extend the hours for the holding of the ballot for such time as he considers necessary in order to afford the member a reasonable opportunity of voting and shall thereafter announce that the ballot is closed.

Counting of votes.

19. Immediately after the close of a ballot the votes shall be counted by the Clerk in the presence of the Speaker and those members of the Legislative Council who are present.

Votes not to be counted.

20.—(1) A ballot paper shall be void and shall not be counted if—

(*a*) it is not signed or marked by the Clerk as required by sub-paragraph (1) of paragraph 15 of this schedule ;

(*b*) there appears on it any writing, sign or mark by which the voter can be identified ;

(*c*) there are recorded on it more votes than one for any candidate ; or

(*d*) there are recorded on it more votes than the voter is entitled to cast in the ballot under the provisions of paragraph 15 of this schedule.

(2) The Clerk shall present to the Speaker for rejection any ballot paper which appears to the Clerk to be void and the Speaker's decision as to whether any ballot paper is void shall be final.

(3) The Clerk shall endorse the word " Rejected " on any ballot paper rejected by the Speaker.

Declaration of result of ballot.

21.—(1) When the result of the ballot has been ascertained, the Speaker shall cause to be prepared a list showing the candidates in order according to the number of votes received by each of them, the candidate or candidates who received the highest number of votes being placed first and those who received any lower number of votes being placed in descending order, those who received no votes being omitted from the list.

(2) The Speaker shall declare as elected the candidates who stand in the first and each successive place on the list until the number of vacancies in respect of which the ballot was taken are filled.

(3) Where—

(*a*) by reason of an equality of votes between them, the number of candidates in any place on the list who would otherwise fall to be declared elected under sub-paragraph (2) of this paragraph exceed the number of vacancies to be filled ; or

(*b*) any vacancies remain unfilled by reason that votes were given for a less number of candidates than the number of vacancies,

the Speaker shall declare that a further ballot shall be held to fill those vacancies.

Further ballot.

22.—(1) Where it is necessary to hold a further ballot the ballot shall be held on such day in such place and between such hours as may be appointed by the Speaker.

(2) The provisions of this schedule which apply in relation to a first ballot shall, except as otherwise provided, apply in relation to every further ballot in an election.

23. References in this schedule to members of the Legislative Council are references to the members of the Council other than the Specially Elected Members, but do not include references to the Speaker or, if the Deputy Speaker was not a member of the Council at the time of his appointment, to the Deputy Speaker.

References to members of the Council, the Speaker and Deputy Speaker.

EXPLANATORY NOTE

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

This Order revokes the Orders in Council set out in schedule 1 and makes new constitutional provision for Aden. The Executive Council is replaced by a Council of Ministers, changes are made in the constitution of the Legislative Council, and a Public Service Commission and a Police Service Commission are established.