STATUTORY INSTRUMENTS

1963 No. 1626

AFRICA

The Basutoland, Bechuanaland and Swaziland (High Commissioner) Order 1963

Made - - - -	*27th September* 1963
Laid before Parliament	*3rd October* 1963
Coming into Operation	*4th October* 1963

At the Court at Balmoral, the 27th day of September 1963

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act 1890(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, commencement and revocation.

1.—(1) This Order may be cited as the Basutoland, Bechuanaland and Swaziland (High Commissioner) Order 1963.

(2) This Order shall come into operation on 4th October 1963.

(3) The Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council 1959(b), the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) (Amendment) Order in Council 1960(c) and the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) (Amendment No. 2) Order in Council 1960(d) are revoked.

Interpretation.

2.—(1) In this Order, unless the context otherwise requires—

"the High Commissioner" means the High Commissioner for the Territories;

"Southern Africa" means the Republic of South Africa and the Territories;

"the Territories" means Basutoland, the Bechuanaland Protectorate and Swaziland.

(2) Where by this Order a power is conferred upon Her Majesty or any other 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

(a) 53 & 54 Vict. c. 37. (b) S.I. 1959/1620 (1959 I, p. 281).
(c) S.I. 1960/441 (1960 I, p. 323). (d) S.I. 1960/2417 (1960 I, p. 325).

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.

(3) In this Order, 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 discharge the functions of that office.

(4) References in this Order to any other Order of Her Majesty in Council include references to any Order amending or replacing that Order.

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

The High Commissioner.

3.—(1) There shall be a High Commissioner for the Territories who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) Every person appointed to the office of High Commissioner shall before assuming the functions of his office make oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the schedule to this Order.

High Commissioner's powers and duties.

4. It shall be the duty of the High Commissioner to promote the good government and orderly development of the Territories and the High Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law for the time being in force in any of the Territories and such other powers and duties as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Order and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him; but the question whether he has in any matter complied with such instructions shall not be enquired into by any court.

The Deputy High Commissioner.

5.—(1) There shall be a Deputy High Commissioner for the Territories who shall be appointed by the High Commissioner in pursuance of instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy High Commissioner is vacant or the Deputy High Commissioner is discharging the functions of the office of High Commissioner under section 6 of this Order or is absent from the Territories or is for any reason unable to perform the functions of his office, then the High Commissioner may appoint a person to act as Deputy High Commissioner and any such person shall continue to act until his appointment is revoked by the High Commissioner.

Discharge of High Commissioner's functions in case of vacancy, absence, etc.

6.—(1) Whenever the office of High Commissioner is vacant or the High Commissioner is absent from Southern Africa or is for any other cause unable to discharge the functions of his office—

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

(*a*) such person as may for the time being be designated in that behalf by instructions given by Her Majesty through a Secretary of State; or

(*b*) if there is no person so designated or the person so designated is absent from Southern Africa or is unable to discharge the functions of the office of High Commissioner, the Deputy High Commissioner,

shall, during Her Majesty's pleasure, discharge the functions of the office of High Commissioner.

(2) Before any person assumes the functions of the office of High Commissioner under this section, he shall make the oaths or affirmations directed by section 3 (2) of this Order to be made by the High Commissioner.

(3) No person shall continue to discharge the functions of the office of High Commissioner under this section after the High Commissioner or some other person having a prior right to discharge those functions has notified him that he is about to assume or resume those functions.

(4) The High Commissioner or, if any person has entered upon the discharge of the functions of the High Commissioner under this section, that person may, if he has occasion to be absent from Southern Africa for a period that in his opinion will be of short duration, direct by notice published in the High Commissioner's Official Gazette that, notwithstanding his absence from Southern Africa, he will continue to discharge those functions.

(5) For the purposes of subsection (1) of this section—

(*a*) no person shall be regarded as absent from Southern Africa or as unable to discharge the functions of the office of High Commissioner by reason of the fact that he is in passage from one part of Southern Africa to another;

(*b*) the High Commissioner shall not be regarded as absent from Southern Africa so long as any direction given by the High Commissioner under subsection (4) of this section is in force;

(*c*) when any person has entered upon the discharge of the functions of the office of High Commissioner under subsection (1) of this section he shall not be regarded as absent from Southern Africa so long as any direction given by that person under subsection (4) of this section is in force.

(6) In this section "the High Commissioner" means the person holding the office of High Commissioner.

Discharge of High Commissioner's functions by Deputy High Commissioner.

7.—(1) The High Commissioner may by writing under his hand authorize the Deputy High Commissioner to exercise for and on behalf of the High Commissioner and subject to such exceptions and conditions as the High Commissioner may from time to time specify any or all of the functions of the office of High Commissioner.

(2) The powers and authority of the High Commissioner shall not be affected by any authority of the Deputy High Commissioner under subsection (1) of this section otherwise than as Her Majesty may from time to time think proper to direct and the Deputy High Commissioner shall conform to and observe such instructions relating to

the discharge by him of any of the functions of the office of High Commissioner as the High Commissioner may from time to time address to him for his guidance.

(3) Any authority given under subsection (1) of this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the High Commissioner by writing under his hand.

(4) In this section "the High Commissioner" means the person holding the office of High Commissioner and includes any person discharging the functions of that office under section 6 of this Order.

(5) In subsection (1) of this section the reference to any functions of the office of High Commissioner does not include a reference to any functions conferred upon the High Commissioner by any Act of Parliament or by any Order of Her Majesty in Council or other instrument made under any Act of Parliament other than this Order, the Basutoland (Constitution) Order in Council 1959(a), the Bechuanaland Protectorate (Constitution) Order in Council 1960(b), the Swaziland Order in Council 1903(c) or the Emergency Powers Order in Council 1939(d).

High Commissioner may constitute offices and make appointments, etc.

8.—(1) For the purpose of assisting the High Commissioner in the performance of his functions there shall be such officers as the High Commissioner may think fit, whose offices shall be constituted by the High Commissioner in the name and on behalf of Her Majesty and may likewise be abolished by him.

(2) The High Commissioner may make appointments, to be held during Her Majesty's pleasure, to any office constituted by him in the name and on behalf of Her Majesty and may dismiss or suspend from the performance of the functions of his office any person holding or acting in any such office or take such other disciplinary action as he may think fit with respect to such a person.

High Commissioner may convene conferences.

9. The High Commissioner may, whenever he considers that the proper performance of the functions of his office so requires, convene and preside over conferences of Her Majesty's Commissioner for the Bechuanaland Protectorate and Her Majesty's Commissioner for Swaziland for the purpose of transacting such business as he may propose; and he may invite to attend any such conference such persons or authorities as he may see fit.

Transitional.

10. The person who immediately before the commencement of this Order was holding the office of High Commissioner established by the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council 1959 shall be deemed to have been appointed at the commencement of this Order to hold the office of High Commissioner established by this Order and to have made the oaths or affirmations required by section 3 (2) of this Order.

W. G. Agnew.

(a) S.I. 1959 II, p. 3308. (b) S.I. 1960/2416 (1960 I, p. 327).
(c) S.R. & O. 1903/531 (Rev. VIII, p. 360: 1903, p. 781).
(d) *See* S.I. 1952 I, at p. 621.

Section 3 (2)

SCHEDULE

Oath or Affirmation of Allegiance

I, do swear (*or* solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs and Successors according to law. (So help me God.)

Oath or Affirmation for the due execution of the office of High Commissioner

I, do swear (*or* solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors in the office of High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland. (So help me God.)

EXPLANATORY NOTE

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

This Order constitutes the offices of High Commissioner and Deputy High Commissioner for Basutoland, Bechuanaland and Swaziland.