STATUTORY INSTRUMENTS

1963 No. 1628

AFRICA

The Bechuanaland Protectorate (Constitution) (Amendment) 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, construction and commencement.

1.—(1) This Order may be cited as the Bechuanaland Protectorate (Constitution) (Amendment) Order 1963 and shall be construed as one with the Bechuanaland Protectorate (Constitution) Order in Council 1960(b).

(2) This Order and the Bechuanaland Protectorate (Constitution) Order in Council 1960 may be cited together as the Bechuanaland Protectorate (Constitution) Orders 1960 and 1963.

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

Amendment of s. 1 of Order of 1960.

2. In section 1(1) of the Bechuanaland Protectorate (Constitution) Order in Council 1960 (in this Order referred to as "the principal Order")—

(*a*) the definitions of "the Gazette", "High Commissioner", "President" and "Resident Commissioner" are deleted and the following definitions are substituted: —

> "the Gazette" means the Bechuanaland Government Gazette;
>
> "the High Commissioner" means the High Commissioner for Basutoland, Bechuanaland and Swaziland;
>
> "Speaker" includes any other member of the Legislative Council presiding for the time being in the Council;
>
> "the Commissioner" means Her Majesty's Commissioner for Bechuanaland;".

(a) 53 & 54 Vict. c. 37. (b) S.I. 1960/2416 (1960 I, p. 327).

Insertion of new Part in Order of 1960.

3. The following new Part is inserted immediately after Part I of the principal Order—

"PART IA

Commissioner.

2A. (1) There shall be a Commissioner for Bechuanaland who shall be styled Her Majesty's Commissioner for Bechuanaland and 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) Before entering on the duties of his office, the Commissioner shall make oaths of allegiance and for the due execution of the office of Commissioner in the forms set out in the Second and Sixth Schedules to this Order.

(3) The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law 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 in any court.

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

2B. (1) Whenever the office of Commissioner is vacant or the Commissioner is absent from Bechuanaland or is for any other reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be discharged by—

(*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 in Bechuanaland so designated or the person so designated is absent from Bechuanaland or is unable to discharge the functions of the office of Commissioner, the Chief Secretary.

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

(3) No person shall continue to discharge the functions of the office of Commissioner after the 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 Commissioner or any other person as aforesaid shall not, for the purposes of this section, be regarded as absent from Bechuanaland or as unable to discharge the functions of the office of Commissioner at any time when there is in Bechuanaland a person appointed as deputy under the next following section.

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

Deputy to Commissioner.

2C. (1) Whenever the Commissioner—

(*a*) has occasion to be absent from the seat of government but not from Bechuanaland; or

(*b*) has occasion to be absent from Bechuanaland for a period that he has reason to believe will be of short duration; or

(*c*) is suffering from any illness that he has reason to believe will be of short duration,

he may by instrument under the public seal appoint any person to be his deputy and in that capacity to perform on his behalf such of the functions of the office of Commissioner as may be specified in that instrument.

(2) The powers and authority of the Commissioner shall not be abridged, altered or in any way affected by the appointment of a deputy under this section and a deputy shall comply with all instructions that the Commissioner may from time to time address to him, but the question whether a deputy has in any matter complied with such instructions shall not be enquired into in any court.

(3) Any appointment under this section may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Commissioner by instrument under the public seal and, subject thereto, a person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed.

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

(5) In subsection (1) of this section the reference to any functions of the office of Commissioner does not include a reference to any functions conferred upon the 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 or the Emergency Powers Order in Council 1939(a).

Commissioner's powers of pardon.

2D. The Commissioner may in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant to any person concerned in the commission of any offence for which he may be tried by any court established for Bechuanaland or to any person convicted of any offence by such a court, 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 by such a court;

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

(a) *See* S.I. 1952 I, at p. 621.

(*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 such a court.

Public seal.

2E. The Commissioner shall keep and use the public seal of Bechuanaland.

Power to constitute offices and make appointments, etc.

2F. (1) The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for Bechuanaland as may be lawfully constituted by Her Majesty and may abolish any office so constituted by him.

(2) Subject to the provisions of this Order and of any other law for the time being in force in Bechuanaland, the Commissioner may—

(*a*) make appointments, to be held during Her Majesty's pleasure, to any office constituted by him in the name of and on behalf of Her Majesty ; and

(*b*) dismiss, or suspend from the exercise 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.".

Amendment of Order of 1960.

4.—(1) The principal Order is amended as follows :—

(*a*) section 3 is amended by the deletion of paragraph 2(i) and subsection (3) ;

(*b*) section 4 is replaced by the following new section—

"Ex-officio Members.

4. The Ex-officio Members of the Executive Council shall be the Chief Secretary, the Attorney-General and the Financial Secretary." ;

(*c*) section 11 is revoked ;

(*d*) in section 12(1) the words "the authority of the Commissioner" are substituted for the words "the authority of the High Commissioner or of the Resident Commissioner" ;

(*e*) section 14 is replaced by the following new section—

"Presiding in Executive Council.

14. The Commissioner shall, so far as practicable, attend and preside at all meetings of the Executive Council, and in his absence the senior Ex-officio Member present shall preside ; and for the purpose of this section the Ex-officio Members shall take seniority in the order in which they are mentioned in section 4 of this Order." ;

(*f*) section 15 is revoked ;

(*g*) section 19 is replaced by the following new section—

"Commissioner may act in opposition to Executive Council.

19. (1) In any case where the Commissioner is required to consult the Executive Council he may act in opposition to the advice given to him by the Council if he considers it right to do so, and if he so acts the Commissioner shall, at the first convenient opportunity, report the matter to Her Majesty through a Secretary of State and to the High Commissioner with the reasons for such action.

(2) Whenever the Commissioner acts against the advice of the Executive Council any Member of the Council may require that there shall be recorded upon the minutes any advice or opinion he may give upon the question at issue and the reasons therefor.";

(*h*) section 22 is amended by the deletion of paragraph 2(*a*) and the substitution of the following paragraph—

"(*a*) the Speaker;";

(*i*) the following section is inserted after section 22—

"The Speaker.

22A.—(1) The Speaker shall be appointed by the Commissioner by instrument under the public seal.

(2) The office of the Speaker shall become vacant—

(*a*) if he shall, by writing under his hand addressed to the Commissioner, resign his office;

(*b*) at such time as may be specified in the instrument by which he is appointed; or

(*c*) if the Commissioner so directs by instrument under the public seal.

(3) The Commissioner may grant the Speaker leave of absence from his duties."

(*j*) section 23 is amended by the substitution of the words "the Chief Secretary, the Attorney-General and the Financial Secretary" for the words "the Government Secretary, the Finance Secretary and the Assistant Attorney-General";

(*k*) section 30 is amended—

(i) by the deletion of paragraphs (1)(*a*) and (2)(*a*) and the substitution in each case of the following paragraph—

"(*a*) if he is appointed to the office of Speaker;";

(ii) by the substitution for the word "President" wherever it occurs of the word "Speaker";

(*l*) section 32 is revoked;

(*m*) section 34(2) is amended by the deletion of the words "for the High Commission Territories";

(*n*) section 39 is replaced by the following new section—

"Presiding in Legislative Council.

39. There shall preside at any sitting of the Legislative Council—

(*a*) the Speaker;

(*b*) in the absence of the Speaker, such member of the Council as the Council may elect for that purpose.";

(*o*) section 40 is amended by the insertion after the words "High Commissioner" the words "or the Commissioner";

(*p*) sections 41, 42 and 44 are amended by the deletion of the word "President" wherever it occurs and the substitution of the word "Speaker";

(*q*) section 61(2) is amended by the deletion of the words "with the prior approval of the High Commissioner";

(*r*) the words "the Commissioner" are substituted for the following expressions wherever they occur, that is to say, "the High Commissioner or the Resident Commissioner, as the case

may be", "the High Commissioner or the Resident Commissioner", "the High Commissioner or Resident Commissioner", "the Resident Commissioner or High Commissioner" and "the High Commissioner through the Resident Commissioner".

(2) Subject to the foregoing provisions of this section, references to the Resident Commissioner in the principal Order, except in section 63(2), shall be construed as references to the Commissioner.

(3) Subject to the foregoing provisions of this section, references in the principal Order, except in sections 2(1), 24(4), 37(2), 40, 48(2), 59(2), 62(4), 63(2), 74(1) and 75(2), to the High Commissioner shall be construed as references to the Commissioner.

(4) The following new Schedule is inserted in the principal Order immediately after the Fifth Schedule—

"Section 2A (2).

SIXTH SCHEDULE

OATH FOR THE DUE EXECUTION OF THE OFFICE OF COMMISSIONER

I, do swear (or do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors in the office of Her Majesty's Commissioner for the Bechuanaland Protectorate."

Adaptation of existing laws.

5.—(1) The Commissioner may by order published in the Gazette at any time within six months after the commencement of this Order make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the principal Order as amended by this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(2) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(3) For the purposes of this section, the expression "any existing law" means any Law, Proclamation, rule, regulation, order or other instrument made in pursuance of, or kept in force by, the principal Order, and having effect as part of the law of Bechuanaland immediately before the commencement of this Order.

Transitional provisions.

6.—(1) Where, immediately before the commencement of this Order, any person was holding or acting in any office by virtue of having been appointed thereto by the High Commissioner or by the Resident Commissioner under the principal Order and the principal Order as amended by this Order provides that appointments to that office shall be made by the Commissioner, that person shall, as from the commencement of this Order, be deemed to have been appointed to hold or to act in that office by the Commissioner under the principal Order as so amended and to have made any oath or affirmation required by the principal Order as so amended.

(2) Any office that was constituted for Bechuanaland by the High Commissioner under section 11 of the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in

Council 1959(a) and was subsisting immediately before the commencement of this Order shall with effect from the commencement of this Order be deemed to have been constituted by the Commissioner under section 2F of the principal Order as amended by this Order.

W. G. Agnew.

EXPLANATORY NOTE

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

This Order constitutes the office of Her Majesty's Commissioner for Bechuanaland and makes consequential amendments to the Bechuanaland Protectorate (Constitution) Order in Council 1960.

(a) S.I. 1959/1620 (1959 I, p. 281).