1965 No. 134

AFRICA

The Bechuanaland Protectorate (Constitution) Order 1965

Made - - - -	*29th January* 1965
Laid before Parliament	*29th January* 1965
Coming into Operation	
The Order - -	*30th January* 1965
The Constitution -	*3rd March* 1965

At the Court at Buckingham Palace, the 29th day of January 1965

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers on 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 and commencement.

1.—(1) This Order may be cited as the Bechuanaland Protectorate (Constitution) Order 1965.

(2) This Order, except as otherwise provided, shall come into operation on 30th January 1965.

Interpretation.

2.—(1) In this Order—

" the appointed day " means such day after the commencement of this Order as the Commissioner may by notice in the Gazette appoint.

" the existing Orders " means the Bechuanaland Protectorate (Constitution) Order in Council 1960(b), the Bechuanaland Protectorate (Constitution) (Amendment) Order 1963(c) and the Bechuanaland Protectorate (Constitution) (Amendment) Order 1964(d).

" the Constitution " means the Constitution set out in the schedule to this Order.

(2) References in this Order to " the Commissioner " shall be construed, in relation to any period before the appointed day, as references to the person holding the office of Commissioner constituted by the existing Orders or, to the extent of his authority, to any person who is for the time being authorised to perform the functions of that office.

(3) Unless the context otherwise requires, expressions used in sections 1 to 16 (inclusive) of this Order have the same meaning as in the Constitution and the provisions of section 102 of the Constitution shall apply for the purposes of interpreting those sections as they apply for interpreting the Constitution.

Revocation.

3. Subject to the provisions of section 5 of this Order, the existing Orders are revoked with effect from the appointed day.

(a) 53 & 54 Vict. c. 37.
(b) S.I. 1960/2416 (1960 I, p. 327).
(c) S.I. 1963/1628 (1963 III, p. 3027).
(d) S.I. 1964/1189 (1964 II, p. 2764).

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

Provided that sections 91 to 97 (inclusive) of the Constitution shall come into operation on such day after the appointed day as the Commissioner, acting in his discretion, shall by notice in the Gazette appoint.

5. Until the day appointed under the proviso to section 4 of this Order, section 52(4) and Part VII of the Bechuanaland Protectorate (Constitution) Order in Council 1960, as amended by the Bechuanaland Protectorate (Constitution) Order 1963, shall continue to have effect after the appointed day, but so that references in the said Part VII to the Legislative Council shall be construed as references to the Legislative Assembly established by this Order. Continuance of certain provisions of the Bechuanaland Protectorate (Constitution) Order in Council 1960.

6.—(1) Subject to the provisions of this section, the existing laws shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order. Existing laws.

(2) The Commissioner may by order made at any time before 1st July 1965 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 this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(3) Where any matter that falls to be prescribed or otherwise provided for the purposes of the Constitution by the Legislature of Bechuanaland or by any other authority or person is prescribed or provided for by or under any existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for, immediately before the commencement of this Order, by or under the existing Orders, that prescription or provision shall, as from the commencement of this Order, have effect as if it had been made by the Legislature of Bechuanaland or by that authority or person, as the case may be.

(4) 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.

(5) For the purposes of this section, the expression "the existing laws" means all Proclamations, Ordinances, laws, rules, regulations, orders and other instruments made by the High Commissioner for South Africa, the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland or any other person or authority in Bechuanaland and having effect as part of the law of Bechuanaland or any part thereof immediately before the commencement of this Order and includes any law applied to Bechuanaland by any such instrument.

7.—(1) Where any office has been established by or under the existing Orders and any provision of the Constitution establishes a similar or an equivalent office (not being the office of a member of the Legislative Assembly or the Speaker) any person who, immediately before the commencement of that provision, holds or is acting in the former office shall, so far as is consistent with the provisions of this Order, be deemed to have been appointed, as from the commencement of that provision, to hold or to act in the latter office in accordance with the provisions of the Existing Offices.

Constitution and to have taken any necessary oath under the Constitution:

Provided that any person who under the provisions of the existing Orders would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

(2) For the purposes of this section the office of a member of the Executive Council established by the existing Orders shall not, except as provided in section 8 of this Order, be regarded as a similar or equivalent office to the office of Minister established by or under the Constitution.

Executive Council.

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 Cabinet established by the Constitution has been constituted, and

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

First Specially Elected Members.

9.—(1) At any time before the appointed day the Commissioner may, by regulations, which shall be published in the Gazette, make provision for the holding, as nearly as may be in accordance with the schedule to the Constitution, of a general election of the Specially Elected Members of the Legislative Assembly as soon as practicable after the holding of an election of the members of the Legislative Assembly under the authority of regulations made by the Commissioner under the Bechuanaland (Electoral Provisions) Orders 1964(a), and for the purposes of such general election of the Specially Elected Members the Speaker of the Legislative Council established by the existing Orders shall be deemed to be the Speaker of the Legislative Assembly.

(2) The persons who are elected at a general election held in pursuance of regulations made under subsection (1) of this section as Specially Elected Members of the Legislative Assembly shall be deemed to have been elected in accordance with the provisions of the Constitution.

(3) Any regulations made by the Commissioner under this section shall have effect after the appointed day as if they were rules made by the Legislative Assembly under paragraph 2 of the schedule to the Constitution, and may be amended or revoked accordingly.

First Elected Members of House of Chiefs.

10.—(1) At any time before the appointed day the Commissioner may, by regulations published in the Gazette make provision for the holding of an election of the Elected Members of the House of Chiefs in the manner provided by section 84 of this Constitution.

(2) The persons who are elected in pursuance of regulations made under subsection (1) of this section as Elected Members of the House of Chiefs shall be deemed to have been elected in accordance with the provisions of the Constitution.

(3) Any regulations made by the Commissioner under this section shall have effect after the appointed day as if they were rules made by the House of Chiefs with the approval of the Commissioner under section 88(*f*) of the Constitution and may be amended or revoked accordingly.

First Constituencies.

11. Until other provision is made under section 52 of the Constitution, Bechuanaland shall be divided, for the purpose of the election of

(a) S.I. 1964/915, 1843 (1964 II, p. 1953; III, p. 4009).

the Elected Members of the Legislative Assembly, into thirty one constituencies in accordance with the provisions of any Proclamation made by the Commissioner under section 4(5) of the Bechuanaland (Electoral Provisions) Order 1964(a) which is in force immediately before the appointed day.

Financial Secretary.

12.—(1) There shall be a Financial Secretary, whose office shall be a public office.

(2) The Financial Secretary shall be a member of the Legislative Assembly in addition to the members of the Assembly for whom provision is made by section 45 of the Constitution.

(3) There shall be an office of Minister of Finance which shall be deemed to be one of the offices established under section 26(2) of the Constitution and shall be held by the Financial Secretary.

(4) Nothing in sections 26(3) or 27 of the Constitution shall apply in relation to the office of Minister held by the Financial Secretary.

(5) The Minister of Finance shall have responsibility for the conduct (subject to the provisions of the Constitution or any other law) of the business of the Government of Bechuanaland relating to financial matters and for the administration of the departments of Government dealing with those matters and, accordingly, such responsibility shall not be assigned to any other Minister.

(6) In this section "financial matters" means the financial and economic policy of the Government of Bechuanaland, the appropriation of public money, taxation and the administration of public funds.

(7) The provisions of this section shall cease to have effect on such day as may be appointed by the Commissioner, acting after consultation with the Prime Minister and with the approval of a Secretary of State, by notice in the Gazette.

Rules of procedure of Legislative Assembly.

13. The Standing Orders of the Legislative Council constituted by the existing Orders as in force immediately before the appointed day shall, until it is otherwise provided under section 63 of the Constitution, be the rules of procedure of the Legislative Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring those rules into conformity with the Constitution.

Proceedings before High Court.

14. Any proceedings pending immediately before the appointed day before the High Court of Bechuanaland established by the existing Orders may be continued after the appointed day before the High Court of Bechuanaland established by the Constitution.

Fundamental rights and freedoms.

15. Until the expiration of a period of twelve months commencing with the appointed day, nothing contained in any law made before the appointed day shall be held to be inconsistent with any of the provisions of sections 9, 10, 11, 12 or 13 of the Constitution and until the expiration of that period nothing done under the authority of any such law shall be held to be done in contravention of those sections.

Electoral regulations.

16. Any regulations made by the Commissioner under the Bechuanaland (Electoral Provisions) Orders 1964 and in force immediately before the commencement of this Order shall have effect, from the commencement of this Order, as if they were laws enacted by the Legislature of Bechuanaland and may be amended or revoked accordingly.

W. G. Agnew.

(a) S.I. 1964/915 (1964 II, p. 1953).

Section 4

THE SCHEDULE TO THE ORDER

THE CONSTITUTION OF BECHUANALAND

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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.
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8. Provisions to secure protection of law.
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11. Protection of freedom of assembly and association.
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CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

1. Whereas every person in Bechuanaland 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 Chapter shall have effect for the purpose of affording protection to those 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 in force in Bechuanaland 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—

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

(*b*) in execution of the order of a court of record 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 in force in Bechuanaland;

(*f*) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(*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 Bechuanaland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Bechuanaland or for the purpose of restricting that person while he is being conveyed through Bechuanaland in the course of his extradition or removal as a convicted prisoner from one country 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 Bechuanaland 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 Bechuanaland 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 in force in Bechuanaland,

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 therefore 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;

(*d*) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and 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; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

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 authorises the infliction of any description of punishment that was lawful in Bechuanaland immediately before the coming into operation 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 or expedient—

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community; 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 the High Court direct or on appeal from any 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.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Bechuanaland.

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

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(*b*) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

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

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law in force in Bechuanaland;

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

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

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

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

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; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind, a person who has not attained the age of twenty-one years, a prodigal, or a person who is absent from Bechuanaland, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person declared to be insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) 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 moneys provided by the Legislature of Bechuanaland.

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 in order to secure the development or utilisation of any property for a purpose beneficial to the community;

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

(*c*) that authorises an officer or agent of the Government of Bechuanaland, 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 duty or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(*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 not 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 or recognised 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) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) 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 or recognised 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.

(10) 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.

(11) 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 in interlocutory proceedings; 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.

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

(*a*) subsection (2)(*a*) 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*) subsection (2)(*d*) of this section to the extent that the law in question prohibits legal representation before a subordinate court

in proceedings for an offence under African customary law (being proceedings against any person who, under that law, is subject to that law);

(*c*) subsection (2)(*e*) of this section to the extent that the law in question imposes reasonable 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;

(*d*) subsection (5) of this section to the extent that the law in question authorises 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;

(*e*) subsection (8) of this section to the extent that the law in question authorises a court to convict a person of a criminal offence under any African customary law to which, by virtue of that law, such person is subject.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2)(*d*) and (*e*) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section—

"criminal offence" means a criminal offence under the law in force in Bechuanaland;

"legal representative" means a person entitled to practise in Bechuanaland as an advocate or attorney.

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) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) 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.

(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 without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) 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 ; or

(*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, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television ; 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 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 ; or

(*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 Bechuanaland, the right to reside in any part of Bechuanaland, the right to enter Bechuanaland and immunity from expulsion from Bechuanaland.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention 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 that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Bechuanaland, 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 ;

(*b*) for the imposition of restrictions on the freedom of movement of any person who does not belong to Bechuanaland ;

(*c*) for the imposition of restrictions on the entry into or residence within defined areas of Bechuanaland of persons who are not Bushmen to the extent that such restrictions are reasonably required for the protection or well being of Bushmen ;

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

(*e*) for the removal of a person from Bechuanaland to be tried outside Bechuanaland for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Bechuanaland of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Bechuanaland, appointed by the Chief Justice:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction 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.

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, tribe, 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 which 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 do not belong to Bechuanaland;

(*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 or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(*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 which, 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 reasonable 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 authorised 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 sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by section 7(2), 9(5), 10(2), 11(2) or 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) Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section—

(*a*) if that law was in force immediately before the coming into operation of this Constitution and has continued in force at all times since the coming into operation of this Constitution; or

(*b*) to the extent that the law repeals and re-enacts any provision which has been contained in any enactment at all times since immediately before the coming into operation of this Constitution.

Provisions for periods of public emergency.

14.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939(**a**), as amended(**b**), shall be held to be inconsistent with or in contravention of section 3, 4(2), 7, 9, 10, 11, 12 or 13 of this Constitution to the extent that the regulation 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 regulation 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, qualified to be enrolled as an advocate in Bechuanaland, 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.

Enforcement of protective provisions.

15.—(1) Subject to the provisions of subsection (6) of this section, if any person alleges that any of the provisions of sections 1 to 14 (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 which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section;

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 1 to 14 (inclusive) of this Constitution.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 1 to 14 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question

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

(**b**) The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/1199 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084; 1964 II, p. 2781).

to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal for Basutoland, Bechuanaland and Swaziland:

Provided that no appeal shall lie from a determination of the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) The Legislature of Bechuanaland may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

Interpretation and savings.

16.—(1) In this Chapter, 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 having jurisdiction in Bechuanaland, other than a court established by a disciplinary law, and includes Her Majesty in Council and in sections 2 and 4 of this Constitution a court established by a disciplinary law;

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means—

(*a*) the Bechuanaland Protectorate Police Force; or

(*b*) any other police force established by law enacted by the Legislature of Bechuanaland;

"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 Chapter "a period of public emergency" means any period during which—

(*a*) Her Majesty is at war;

(*b*) Part II of the Emergency Powers Order in Council 1939, as amended, is in force in Bechuanaland or any part thereof.

(3) For the purposes of this Chapter a person shall be deemed to belong to Bechuanaland if he is a British subject or a British protected person and—

(*a*) was born in Bechuanaland or of parents who at the time of his birth were ordinarily resident in Bechuanaland; or

(*b*) has been ordinarily resident in Bechuanaland continuously for a period of seven years or more and since the completion of such

period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of the Commonwealth ; or

(*c*) has obtained the status of a British subject by reason of the grant by the Commissioner (or by the High Commissioner or other competent authority in Bechuanaland) of a certificate of naturalization under the British Nationality and Status of Aliens Act 1914(**a**), or the British Nationality Act 1948(**b**) ; or

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

(*e*) 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

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

(4) In relation to any person who is a member of a disciplined force raised under a law enacted by the Legislature of Bechuanaland, 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 Chapter other than sections 2, 4 and 5.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Bechuanaland, 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 Chapter.

CHAPTER II

THE COMMISSIONER AND THE DEPUTY COMMISSIONER

Her Majesty's Commissioner for Bechuanaland.

17. 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.

Oaths to be taken by Commissioner.

18. A person appointed to the office of Commissioner shall, before entering upon that office, take and subscribe the oath of allegiance and such oath for the due execution of his office as may be prescribed by law.

Powers and duties of Commissioner.

19. The Commissioner shall have such functions as may be conferred upon him by or under this Constitution or any other law and such other functions as Her Majesty may assign to him and, subject to the provisions of this Constitution and any law by which any such functions are conferred, shall exercise all the functions of his office (including any functions that are expressed to be exercisable by him in his discretion) according to such instructions as Her Majesty may give him:

Provided that the question whether or not the Commissioner has in any matter complied with such instructions shall not be enquired into in any court.

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

Establishment of office of Deputy Commissioner.

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

(2) If the office of Deputy Commissioner is vacant or the Deputy Commissioner is administering the Government of Bechuanaland or is for any reason unable to exercise the functions of his office, the Commissioner, acting in his discretion, may appoint a person to act as Deputy Commissioner, and that person shall continue to act until his appointment is revoked by the Commissioner acting in his discretion.

Succession to government.

21.—(1) Whenever the office of Commissioner is vacant or the Commissioner is absent from Bechuanaland or is for any other reason unable to exercise the functions of his office—

(*a*) the Deputy Commissioner; or

(*b*) if the office of Deputy Commissioner is vacant or the Deputy Commissioner is absent from Bechuanaland or is for any other reason unable to exercise the functions of the office of Commissioner, such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State,

shall, during Her Majesty's pleasure, exercise the functions of the office of Commissioner and administer the Government of Bechuanaland accordingly.

(2) Before assuming the administration of the Government of Bechuanaland, the Deputy Commissioner or any person designated under subsection (1)(*b*) of this section shall take and subscribe the oath of allegiance and such oath for the due execution of the office of Commissioner as may be prescribed by law.

(3) The Deputy Commissioner shall not continue to administer the government if the Commissioner has notified him that he is about to assume or resume the administration of the government, and the person designated under subsection (1)(*b*) of this section shall not continue to administer the government if the Commissioner or Deputy Commissioner has so notified him.

(4) If the Commissioner or, in the case where the Deputy Commissioner is exercising the functions of the office of Commissioner under subsection (1) of this section, the Deputy Commissioner has occasion to be absent from Bechuanaland for a period which in his opinion will be of short duration, he may, acting in his discretion, direct by notice published in the Gazette that, notwithstanding his absence from Bechuanaland, he will continue to administer the Government of Bechuanaland.

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

(*a*) the Commissioner or the Deputy Commissioner shall not be regarded as absent from Bechuanaland or as unable to exercise the functions of the office of Commissioner by reason of the fact that he is in passage from one part of Bechuanaland to another;

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

(*c*) when the Deputy Commissioner is exercising the functions of the office of Commissioner under subsection (1) of this section, he

shall not be regarded as absent from Bechuanaland so long as any direction given by him under subsection (4) of this section is in force.

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

Exercise of Commissioner's functions by Deputy Commissioner.

22.—(1) The Commissioner, acting in his discretion, may, by writing under his hand, authorise the Deputy Commissioner to exercise on his behalf and subject to such exceptions as, acting in his discretion, he may specify any or all of the functions of the office of Commissioner.

(2) The powers and authority of the Commissioner shall not be affected by any authority given to the Deputy Commissioner under subsection (1) of this section otherwise than as Her Majesty may direct, and the Deputy Commissioner shall comply with such instruction relating to the exercise by him of any of the functions of the office of Commissioner as the Commissioner, acting in his discretion, may give him:

Provided that the question whether or not the Deputy Commissioner has in any matter complied with such instructions shall not be enquired into in any court.

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

(4) In this section "the Commissioner" means the person holding the office of Commissioner and includes any person exercising the functions of that office under section 21 of this Constitution and "the Deputy Commissioner" means the person holding the office of Deputy Commissioner and includes any person appointed to act as Deputy Commissioner.

(5) In subsection (1) of this section the reference to the 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 the Order in Council to which this Constitution is scheduled, the Emergency Powers Order in Council 1939 and any Order amending or replacing either of those Orders.

Public seal.

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

Power to constitute offices and make appointments, etc.

24.—(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 Constitution 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.

CHAPTER III

THE EXECUTIVE

Executive authority of Bechuanaland.

25.—(1) The executive authority of Bechuanaland shall vest in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of Bechuanaland may be exercised on behalf of Her Majesty by the Commissioner, either directly or through officers subordinate to him.

(3) Nothing in this section shall prevent the Legislature of Bechuanaland from conferring functions on persons or authorities other than the Commissioner.

Ministers of Government of Bechuanaland.

26.—(1) There shall be a Prime Minister who shall be appointed by the Commissioner.

(2) There shall be, in addition to the office of Prime Minister, such other offices of Minister of the Government of Bechuanaland as may be established by the Legislature of Bechuanaland or, subject to the provisions of any law enacted by that Legislature, by the Commissioner, acting in accordance with the advice of the Prime Minister:

Provided that—

(*a*) the number of such Ministers shall not exceed seven or such greater number as the Commissioner, in pursuance of instructions of Her Majesty given through a Secretary of State, may by notice in the Gazette prescribe;

(*b*) one of such offices shall be the office of Deputy Prime Minister.

(3) The Commissioner, acting in his discretion, shall appoint as Prime Minister a member of the Legislative Assembly who appears to him likely to command the support of a majority of the members of the Assembly and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the Assembly:

Provided that—

(*a*) not more than four of the other Ministers may be appointed from among persons who are not members of the Assembly, but are qualified for election as such;

(*b*) if occasion arises for making an appointment to the office of Prime Minister or any other Minister while the Legislative Assembly stands dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed to the office of Prime Minister or any other Minister.

Tenure of office of Ministers.

27.—(1) The Commissioner, acting in his discretion, may remove the Prime Minister from office—

(*a*) if a vote of no confidence in the Government of Bechuanaland is passed by the Legislative Assembly; or

(*b*) if at any time between the holding of a general election and the first sitting of the Assembly thereafter the Commissioner considers that, in consequence of changes in the membership of the Assembly resulting from that election, the Prime Minister will not be able to command the support of a majority of the members of the Assembly:

Provided that the Commissioner shall not remove the Prime Minister from office when a vote of no confidence has been passed by the Assembly unless three days have elapsed since that vote was passed and the Commissioner has decided not to dissolve the Assembly under paragraph (*b*) of the proviso to section 71(2) of this Constitution.

(2) The office of any Minister shall become vacant—

(*a*) in the case of a Minister appointed from among the members of the Legislative Assembly, or in the case of a Minister appointed from among persons who are not members of the Assembly who becomes a member of the Assembly before the expiration of four months from the date of his appointment—

(i) if he ceases to be a member of the Legislative Assembly otherwise than by reason of a dissolution of the Legislative Assembly; or

(ii) if, at the first sitting of the Assembly after a general election, he is not a member of the Assembly.

(*b*) in the case of a Minister appointed from among persons who are not members of the Assembly, if before the expiration of four months from the date of his appointment—

(i) circumstances arise (other than a dissolution of the Assembly) that, if he were such a member, would cause him to vacate his seat in the Assembly; or

(ii) he does not become a member of the Assembly.

(3) The office of a Minister other than the Prime Minister shall become vacant—

(*a*) if the Commissioner, acting in accordance with the advice of the Prime Minister, so directs;

(*b*) if the Prime Minister resigns from office within three days after the passage by the Legislative Assembly of a resolution of no confidence in the Government or is removed from office under subsection (1) of this section; or

(*c*) upon the appointment of any person to the office of Prime Minister.

Cabinet.

28.—(1) There shall be a Cabinet of Ministers, consisting of the Prime Minister and the other Ministers.

(2) The Cabinet shall, subject to the provisions of this Constitution, be collectively responsible to the Legislative Assembly for any advice given to the Commissioner by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The Attorney-General shall so far as practicable attend meetings of the Cabinet for the purpose of giving advice.

Exercise of Prime Minister's functions during absence or illness.

29.—(1) Whenever the Prime Minister is absent from Bechuanaland or is by reason of illness unable to exercise the functions conferred on him by this Constitution—

(*a*) the Deputy Prime Minister shall exercise those functions; or

(*b*) if the office of Deputy Prime Minister is vacant or the Deputy Prime Minister is absent from Bechuanaland or is for any reason unable to discharge the functions of his office the Commissioner may authorise some other Minister to exercise those functions (other than the functions conferred by subsection (2) of this section) and that Minister may exercise those functions until his authority is revoked by the Commissioner.

(2) The powers of the Commissioner under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Commissioner considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers in his discretion.

Allocation of portfolios to Ministers.

30. The Commissioner, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government of Bechuanaland, including the administration of any department of government:

Provided that—

(*a*) except for the purpose of conducting business in the Legislative Assembly a Minister shall not be given responsibility for any matter for which under section 31 of this Constitution the Commissioner is responsible or in respect of which he discharges functions, acting in his discretion, under section 78(1) of this Constitution; and

(*b*) a Minister shall not be given responsibility for the department of the Attorney-General.

Commissioner's special responsibilities.

31. The Commissioner shall be responsible for the following matters—

(*a*) external affairs;

(*b*) defence (including the armed forces); and

(*c*) internal security (including the organisation, use and operational control of the police).

Exercise of Commissioner's functions.

32.—(1) In the exercise of his functions under this Constitution or any other law the Commissioner, subject to the provisions of this section, shall obtain and act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet.

(2) The provisions of subsection (1) of this section shall not apply in relation to the exercise by the Commissioner of—

(*a*) any function conferred upon him by this Constitution that is expressed to be exercisable by him in his discretion or in pursuance of instructions of Her Majesty or in accordance with the advice of or after consultation with any person or authority other than the Cabinet;

(*b*) any function conferred upon him by any other law that is expressed to be exercisable by him in his discretion or that he is otherwise authorised by such law to exercise without obtaining the advice of the Cabinet;

(*c*) any function conferred upon him by this Constitution, or any other law with respect to any matter specified in paragraphs (*a*), (*b*) or (*c*) of section 31 of this Constitution if in his judgment it is in the public interest that he should act without obtaining the advice of the Cabinet or the urgency of the matter requires him to act before the advice of the Cabinet can be obtained or the question for decision is too unimportant to require their advice.

(3) Where the Commissioner is directed by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(4) Where the Commissioner is directed by this Constitution to exercise any power in accordance with the 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.

(5) Where the Commissioner has obtained the advice of the Cabinet or a Minister for the purposes of subsection (1) of this section, he may act otherwise than in accordance with that advice—

(*a*) if he considers it necessary or expedient so to act for the purposes of discharging his responsibilities in relation to any matter specified in paragraphs (*a*), (*b*) or (*c*) of section 31 of this Constitution; or

(*b*) if he considers it necessary or expedient so to act in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Bechuanaland 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) and either—

(i) he has obtained the prior approval of the Secretary of State so to act; or

(ii) in his judgment urgent necessity requires him so to act without such prior approval.

(6) In any case in which the Commissioner acts under sub-paragraph (ii) of paragraph (*b*) of subsection (5) of this section he shall, without delay, report the matter to the Secretary of State with the reasons for his action.

(7) Nothing in subsection (1) of this section shall be construed as applying to matters for which provision is made by section 67 of this Constitution.

Commissioner to be kept informed of matters of government.

33. The Prime Minister shall keep the Commissioner fully informed concerning the general conduct of the Government of Bechuanaland and shall furnish him with such information as he may require in respect to any particular matter relating to the Government of Bechuanaland.

Oaths to be taken by Ministers and Parliamentary Secretaries.

34. A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by law.

Summoning of Cabinet and quorum.

35.—(1) The Cabinet shall not be summoned except by the authority of the Commissioner, acting in his discretion:

Provided that the Commissioner shall summon the Cabinet if the Prime Minister so recommends.

(2) No business shall be transacted at any meeting of the Cabinet if there are less than four members of the Cabinet present besides the person presiding.

Presiding in Cabinet.

36.—(1) The Commissioner shall, so far as practicable, attend and preside at all meetings of the Cabinet.

(2) In the absence of the Commissioner there shall preside at any meeting of the Cabinet the Prime Minister, or in his absence the Deputy Prime Minister.

Attorney-General.

37.—(1) There shall be an Attorney-General whose office shall be a public office.

(2) The Attorney-General shall be the principal legal adviser to the Government of Bechuanaland, and for the due performance of his duties he shall be entitled to be provided with all papers which are available to members of the Cabinet.

(3) The Attorney-General shall have power in any case in which he considers it desirable so to do—

(*a*) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(*b*) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(*c*) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Attorney-General under subsection (3) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(5) The powers conferred on the Attorney-General by paragraphs (*b*) and (*c*) of subsection (3) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(6) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court (including the Judicial Committee of Her Majesty's Privy Council) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney-General by subsection (3)(*c*) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(7) In the exercise of the functions vested in him by subsection (3) of this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

Parliamentary Secretaries.

38.—(1) Subject to the provisions of subsection (2) of this section, the Commissioner, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the Legislative Assembly to assist Ministers in the performance of their duties:

Provided that the number of such Parliamentary Secretaries shall not exceed three or such greater number as the Prime Minister, with the consent of the Secretary of State, may from time to time determine.

(2) If occasion arises for making an appointment under subsection (1) of this section while the Legislative Assembly stands dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed as a Parliamentary Secretary.

(3) The office of a Parliamentary Secretary shall become vacant—

(*a*) if the Commissioner, acting in accordance with the advice of the Prime Minister, so directs;

(*b*) if the Prime Minister resigns from office within three days after the passage by the Legislative Assembly of a resolution of no confidence in the Government of Bechuanaland or is removed from office under section 27(1) of this Constitution;

(*c*) upon the appointment of any person to the office of Prime Minister;

(*d*) if the holder of the office ceases to be a member of the Legislative Assembly otherwise than by reason of a dissolution of the Assembly; or

(*e*) if, at the first sitting of the Legislative Assembly after a general election, the holder of the office is not a member of the Assembly.

Permanent Secretaries.

39. Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary whose office shall be a public office.

Secretary to the Cabinet.

40.—(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet, for conveying the decisions of the Cabinet to the appropriate person or authority and for transmitting to the Commissioner or the Attorney-General all the papers and information to which, under the provisions of section 33 or 37(2) of this Constitution, as the case may be, he is entitled and shall have such other functions as the Prime Minister may from time to time direct.

Prerogative of Mercy.

41. The Commissioner, acting in his discretion, but subject to the provisions of section 42 of this Constitution may, in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant to any person concerned in or convicted of any offence 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 punishment imposed on that person for any offence;

(*c*) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and

(*d*) remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

Advisory Committee on Prerogative of Mercy.

42.—(1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of—

(*a*) the Deputy Commissioner;

(*b*) the Attorney-General; and

(*c*) two other members appointed by the Commissioner, by instrument in writing under his hand, of whom one shall be a Minister and one shall be a person qualified to practise in Bechuanaland as a medical practitioner.

(2) A member of the Committee appointed under subsection (1)(*c*) of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed:

Provided that his seat shall become vacant—

(*a*) in the case of a person who, at the date of his appointment, was a Minister, if he ceases to be a Minister; and

(*b*) if the Commissioner, by instrument in writing under his hand, so directs.

(3) The Committee shall not be summoned except by the authority of the Commissioner who shall, so far as is practicable, attend and preside at all meetings of the Committee, and, in the absence of the Commissioner, the Deputy Commissioner shall preside.

(4) The Committee may act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(5) Subject to the provisions of this section, the Committee may regulate its own procedure.

(6) In the exercise of his functions under this section the Commissioner shall act in his discretion, but, before appointing a Minister to be a member under subsection (1)(*c*) of this section and before directing that the seat on the Committee of a member who is a Minister shall become vacant, he shall consult with the Prime Minister.

Functions of Advisory Committee on Prerogative of Mercy.

43.—(1) Where any person has been sentenced to death for any offence, the Commissioner shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as he may require, to be considered at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he shall decide in his

own judgment whether to exercise any of his functions under section 41 of this Constitution.

(2) The Commissioner may consult with the Committee before deciding whether to exercise any of his functions under the said section 41 in any case not falling within subsection (1) of this section, but he shall not be obliged to act in accordance with the advice of the Committee.

CHAPTER IV

THE LEGISLATURE

Part 1—Composition

Establishment of Legislature of Bechuanaland.

44. There shall be a Legislature for Bechuanaland which shall consist of Her Majesty and a Legislative Assembly.

Composition of Legislative Assembly.

45.—(1) The Legislative Assembly shall consist of—

(*a*) thirty-one Elected Members;

(*b*) four Specially Elected Members; and

(*c*) the Attorney-General.

(2) If a person who is not a member of the Legislative Assembly is elected to the office of Speaker of the Assembly that person shall, by virtue of holding that office, be a member of the Assembly in addition to the members referred to in subsection (1) of this section.

Speaker.

46.—(1) There shall be a Speaker of the Legislative Assembly who shall be elected by the members of the Assembly from among persons who are members of the Assembly or from persons who are not members of the Assembly.

(2) A Minister, a Parliamentary Secretary or a public officer shall not be qualified to be elected as Speaker.

(3) The Speaker shall vacate his office—

(*a*) if, having been elected from among the members of the Legislative Assembly, he ceases to be a member of the Assembly otherwise than by reason of a dissolution of the Assembly;

(*b*) if any circumstances arise that, if he were not Speaker, would disqualify him for election as such;

(*c*) if he is required, by virtue of section 56 of this Constitution, to cease to perform his functions as a member of the Assembly;

(*d*) when the Assembly first sits after any dissolution thereof; or

(*e*) if he is removed from office by a resolution of the Assembly supported by the votes of not less than two-thirds of all the members thereof.

(4) No business shall be transacted in the Legislative Assembly (other than an election to the office of Speaker) at any time when the office of Speaker is vacant.

Deputy Speaker.

47.—(1) There shall be a Deputy Speaker of the Legislative Assembly who shall be elected from among the persons who are members of the Assembly other than Ministers or Parliamentary Secretaries.

(2) The members of the Legislative Assembly shall elect a person to the office of Deputy Speaker when the Assembly first sits after any dissolution and, if the office becomes vacant otherwise than by reason of the dissolution of the Assembly, at the first sitting of the Assembly after the office becomes vacant.

(3) The Deputy Speaker shall vacate his office—

(*a*) if he ceases to be a member of the Legislative Assembly;

(*b*) if he becomes a Minister or a Parliamentary Secretary;

(*c*) if he is required, by virtue of section 56 of this Constitution, to cease to perform his functions as a member of the Assembly;

(*d*) if he is elected as Speaker;

(*e*) if he is removed from office by a resolution of the Assembly supported by the votes of not less than two-thirds of all the members of the Assembly.

Qualifications for membership of Legislative Assembly.

48. Subject to the provisions of section 49 of this Constitution a person shall be qualified to be elected as an Elected Member or a Specially Elected Member of the Legislative Assembly if, and shall not be qualified to be so elected unless, he—

(*a*) is qualified for registration as a voter and is so registered; and

(*b*) is able to speak, and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the Assembly.

Disqualifications for membership of Legislative Assembly.

49.—(1) No person shall be qualified to be elected as an Elected Member or a Specially Elected Member of the Legislative Assembly who—

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

(*b*) has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;

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

(*d*) is a member of the House of Chiefs;

(*e*) subject to such exceptions as may be prescribed by the Legislature of Bechuanaland, holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months; or

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

(2) No person shall be qualified to be elected a member of the Legislative Assembly who holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the Assembly or the compilation or revision of any electoral register for the purposes of such elections.

(3) The Legislature of Bechuanaland may provide that a person shall not be qualified for election to the Legislative Assembly for such period (not exceeding five years) as may be prescribed if he is convicted of any such offence connected with elections to the Assembly as may be prescribed.

(4) 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, and no account shall be taken of a sentence of imprisonment imposed as an alternative or in default of the payment of a fine.

Constituencies.

50. Bechuanaland shall be divided into as many constituencies as there are Elected Members of the Legislative Assembly and each of those constituencies shall return one member to the Legislative Assembly.

Delimitation Commission.

51.—(1) The Commissioner, acting in his discretion, shall not later than three years after the coming into operation of this Constitution and thereafter at intervals of not less than five years, appoint a Delimitation Commission consisting of a Chairman and not more than four other members.

(2) A person shall not be qualified to hold the office of a member of the Commission if he is a member of the Legislative Assembly.

(3) The office of a member of the Delimitation Commission shall become vacant—

(*a*) at the expiration of four years from the date of his appointment; or

(*b*) if he becomes a member of the Legislative Assembly.

(4) If, after the appointment of the Delimitation Commission and before a Proclamation of constituencies has been made under subsection (4) of section 52 of this Constitution, the office of Chairman or any other member of the Commission falls vacant or the holder of the office becomes unable for any reason to discharge his functions as a member of the Commission, the Commissioner, acting in his discretion, may appoint another person, being a person who is not a member of the Legislative Assembly, to be a member of the Commission.

Report of Commission.

52.—(1) Whenever a Delimitation Commission has been appointed the Commission shall as soon as practicable submit to the Commissioner a report which shall include a list of the constituencies delimited by the Commission and a description of the boundaries of those constituencies.

(2) In the discharge of its duties under this Constitution the Delimitation Commission shall ensure that the boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable:

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of natural community of interest, means of communication, geographical features, density of population, and the boundaries of Tribal Territories and administrative districts.

(3) In this section "population quota" means the number obtained by dividing the number of inhabitants of Bechuanaland (as ascertained by reference to the latest census of the population of Bechuanaland) by the number of constituencies into which Bechuanaland is divided under section 50 of this Constitution.

(4) The Commissioner shall as soon as practicable after the submission of the report of the Delimitation Commission, by Proclamation published in the Gazette, declare the boundaries of the constituencies as delimited by the Commission.

(5) A Proclamation made under subsection (4) of this section shall come into force at the next dissolution of the Legislative Assembly after it is made.

Election of Elected Members and Specially Elected Members.

53.—(1) The Elected Members of the Legislative Assembly shall be directly elected in the manner provided by, or in pursuance of, any law for the time being in force in Bechuanaland.

(2) The Specially Elected Members of the Legislative Assembly shall be elected by the Elected Members of the Assembly in accordance with the provisions of the schedule to this Constitution.

Qualifications of voters.

54.—(1) A person who—

(*a*) is a British subject or a British protected person ; and

(*b*) has attained the age of twenty-one years ; and

(*c*) has either resided in Bechuanaland for a continuous period of at least twelve months immediately preceding the date on which he applies for registration as a voter or was born in Bechuanaland and is domiciled in Bechuanaland on the date on which he applies for registration as a voter ;

shall, unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by any law, to be registered as a voter for the purposes of elections of Elected Members of the Legislative Assembly.

(2) A person who has not continuously resided in Bechuanaland for the period mentioned in paragraph (*c*) of subsection (1) of this section but has during the whole of such period retained his residence (or if he has more than one residence, his principal residence) in Bechuanaland and has been absent therefrom for some temporary purpose only shall be deemed for the purposes of the said paragraph (*c*) to have been resident in Bechuanaland during such absence.

(3) (*a*) A person shall be entitled to be registered as a voter—

(i) in the constituency in which he has his residence, or if he has more than one residence in Bechuanaland in the constituency in which he has his principal residence, or

(ii) in the case of a person who does not have a residence in Bechuanaland, in the constituency in which he was born.

(*b*) A person shall be entitled to be registered as a voter in one constituency only.

Tenure of office of members.

55. The seat of an Elected Member or a Specially Elected Member of the Legislative Assembly shall become vacant—

(*a*) upon the dissolution of the Assembly ;

(*b*) if he ceases to be qualified for registration as a voter ;

(*c*) if he ceases to be resident in Bechuanaland or, if he was born in Bechuanaland, if he ceases to be domiciled in Bechuanaland ;

(*d*) if he is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in the rules of procedure of the Assembly ;

(*e*) if any circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) of subsection (1) or subsection (2) of section 49 ;

(*f*) in the circumstances mentioned in section 56 of this Constitution.

Vacation of seat on sentence, etc.

56.—(1) Subject to the provisions of this section, if a member of the Legislative Assembly is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding six months or, having been under suspended sentence for such a term imposed by such a court, is ordered by the court to serve that sentence, he shall forthwith cease to perform his functions as a member of the Assembly and to be entitled to such remuneration (if any) as may be otherwise payable to him as such, and his seat in the Assembly 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, as the case may be, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Assembly signified by resolution.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than six months his seat in the Legislative Assembly shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Assembly and be paid any remuneration to which he ceased to be entitled when he ceased to be a member.

(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, and no account shall be taken of a sentence of imprisonment imposed as an alternative or in default of the payment of a fine.

Determination of questions as to membership of Legislative Assembly.

57.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

(*a*) any person has been validly elected as an Elected Member of the Legislative Assembly or the seat of any such member has become vacant ;

(*b*) any person who is not a member of the Assembly is qualified to be Speaker of the Assembly.

(2) Any question whether any person has been validly elected as a Specially Elected Member of the Legislative Assembly or whether the seat of any such member has become vacant shall be determined by the Speaker.

(3) The Legislature of Bechuanaland may make provision with respect to—

(*a*) the persons who may apply to the High Court for the determination of any question under this section;

(*b*) the circumstances and manner in which and the conditions upon which any such application may be made; and

(*c*) the powers, practice and procedure of the High Court in relation to any such application.

PART 2

General Provisions Relating to Procedure

Oaths to be taken by Speaker and members.

58. The Speaker, before assuming the duties of his office, and every member of the Legislative Assembly before taking his seat therein, shall take and subscribe before the Assembly the oath of allegiance.

Presiding in Legislative Assembly.

59. There shall preside at any sitting of the Legislative Assembly—

(*a*) the Speaker;

(*b*) in the absence of the Speaker, the Deputy Speaker; or

(*c*) in the absence of the Speaker and the Deputy Speaker, such member of the Assembly (not being a Minister or a Parliamentary Secretary) as the Assembly may elect for that sitting.

Quorum in Legislative Assembly.

60. If objection is taken by any member of the Legislative Assembly present that there are present in the Assembly (besides the person presiding) less than nine members of the Assembly and, after such interval as may be prescribed in the rules of procedure of the Assembly, the person presiding ascertains that the number of members present is still less than nine, he shall thereupon adjourn the Assembly.

Voting in Legislative Assembly.

61.—(1) Save as otherwise provided in this Constitution, any question proposed for decision in the Legislative Assembly shall be determined by a majority of the votes of the members present and voting.

(2) The Attorney-General shall have no vote.

(3) The person presiding in the Legislative Assembly shall have neither an original vote nor a casting vote and if upon any question before the Assembly the votes are equally divided the motion shall be lost.

Unqualified persons sitting or voting.

62. Any person who sits or votes in the Legislative Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding fifty rand or such other sum as may be prescribed by the Legislature of Bechuanaland for each day on which he so sits or votes in the Assembly, which shall be recoverable by action in the High Court at the suit of the Attorney-General.

Regulation of procedure in Legislative Assembly.

63.—(1) Subject to the provisions of this Constitution, the Legislative Assembly may regulate its own procedure.

(2) The Legislative Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after any dissolution) and the presence or participation of any person not entitled to be present or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

PART 3

Legislative Powers and Procedure

Legislative powers.

64. Subject to the provisions of this Constitution, the Legislature of Bechuanaland shall have power to make laws for the peace, order and good government of Bechuanaland.

Laws relating to privileges of Legislative Assembly.

65. A law of the Legislature of Bechuanaland may make provision for determining and regulating the privileges, immunities and powers of the Legislative Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members thereof.

Mode of exercising legislative powers.

66.—(1) The power of the Legislature of Bechuanaland to make laws shall be exercised by bills passed by the Legislative Assembly and assented to by Her Majesty or by the Commissioner on behalf of Her Majesty.

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

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

(*a*) to be inconsistent with any obligation imposed on Her Majesty by any treaty, convention or agreement with or arrangement relating to any other country or any international or similar organization; or

(*b*) to be likely to prejudice the Royal prerogative.

(3) When a bill has been passed and assented to in accordance with the provisions of this Constitution it shall become law and the Commissioner shall thereupon cause it to be published in the Gazette as a law.

(4) No law made by the Legislature of Bechuanaland shall come into operation until it has been published in the Gazette but that Legislature may postpone the coming into operation of any such law and may make laws with retrospective effect.

Commissioner's reserved power.

67.—(1) If the Commissioner considers 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 Bechuanaland 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 any bill introduced, or any motion proposed, in the Legislative Assembly should have effect, then, if the Assembly fails to pass the bill or to carry the motion within such time and in such form as the Commissioner thinks reasonable and expedient, the Commissioner may, at any time he thinks fit, and notwithstanding any provisions of this Constitution or of any rules of procedure of the Assembly, declare that the bill or motion shall have effect as if it had been passed or carried by the Assembly either in the form in which it was

introduced or proposed or with such amendments as the Commissioner thinks fit that have been moved or proposed in the Assembly, including 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 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 Assembly objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the 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 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 Commissioner shall notify such revocation in the Gazette; and from the date of such notication 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.

Introduction of bills.

68.—(1) Except upon the recommendation of the Commissioner, acting in his discretion, signified by a Minister, the Legislative Assembly shall not—

(*a*) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the revenues or other funds of Bechuanaland or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from any public fund of Bechuanaland of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal;

(iv) for the composition or remission of any debt to the Government of Bechuanaland; or

(v) for the 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, dependents or personal representatives;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes; or

(*c*) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

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

(2) The Legislative Assembly shall not proceed upon any bill or motion (including any amendment to a bill or motion, as the case may be) that, in the opinion of the person presiding, affects—

(*a*) the designation, recognition, removal or powers of Chiefs, Sub-Chiefs or Headmen;

(*b*) the constitution, appointment, removal or powers of African Authorities and Subordinate African Authorities;

(*c*) the organisation, powers or administration of African Courts;

(*d*) customary law, or the ascertainment or recording of customary law; or

(*e*) tribal organisation or tribal property;

unless—

(i) a draft of the bill has first been referred to the House of Chiefs for their consideration at least thirty days before it is introduced in the Assembly, or

(ii) the Commissioner, acting in his discretion, has certified by writing under his hand (in this section called a "certificate of urgency") that the introduction of the bill in the Assembly is a matter of such urgency that it is not in the public interest to refer it first to the House of Chiefs as provided in the foregoing paragraph.

(3) Where, in consequence of the issue of a certificate of urgency by the Commissioner in accordance with the provisions of the last foregoing subsection, the draft of a bill has not been referred to the House of Chiefs at least thirty days before its introduction in the Legislative Assembly then a copy of the bill shall be sent to the House of Chiefs at the time it is introduced in the Assembly.

Disallowance of laws.

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

(2) Whenever any law has been disallowed by Her Majesty the 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.

PART 4

Summoning, Prorogation and Dissolution

Sessions of Legislative Assembly.

70.—(1) Each session of the Legislative Assembly shall be held at such place within Bechuanaland and shall commence at such time as the Commissioner may appoint.

(2) There shall be a session of the Legislative Assembly at least once in every year so that a period of twelve months shall not intervene between the last sitting of the Assembly in one session and the first sitting thereof in the next session.

(3) Whenever the Legislative Assembly is dissolved a general election of the Elected Members of the Assembly shall be held within sixty days of the date of the dissolution and a session of the Assembly shall be appointed to commence within thirty days of the date of that general election.

Prorogation and dissolution of Legislative Assembly.

71.—(1) The Commissioner may at any time prorogue the Legislative Assembly.

(2) The Commissioner, acting in accordance with the advice of the Prime Minister, may at any time dissolve the Legislative Assembly:

Provided that—

(*a*) if the Prime Minister recommends a dissolution and the Commissioner considers that the Government of Bechuanaland can be carried on without a dissolution and that a dissolution would not be in the interests of Bechuanaland, the Commissioner, acting in his discretion, may refuse to dissolve the Assembly;

(*b*) if the Assembly passes a resolution that it has no confidence in the Government of Bechuanaland and the Prime Minister does not within three days either resign from his office or advise a dissolution, the Commissioner, acting in his discretion, may dissolve the Assembly; and

(*c*) if the office of Prime Minister is vacant and the Commissioner considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the Assembly, the Commissioner, acting in his discretion, may dissolve the Assembly.

(3) The Legislative Assembly, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

CHAPTER V

The Judicature

Establishment of High Court.

72.—(1) There shall be for Bechuanaland a High Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The judges of the High Court shall be the Chief Justice and such number of other judges (hereinafter referred to as "the puisne judges") as may be prescribed by the Commissioner by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State:

Provided that the office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(3) The High Court shall be a superior court of record and, save as otherwise provided by the Legislature of Bechuanaland, shall have all the powers of such a court.

(4) The High Court shall sit in such places as the Chief Justice may appoint.

Appointment of judges of High Court.

73.—(1) The Chief Justice and the puisne judges of the High Court shall be appointed by the Commissioner by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(2) A person shall not be qualified to be appointed as a judge of the High Court unless—

(i) he holds, or has held office as, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by the Legislature of Bechuanaland or a court having jurisdiction in appeals from such a court; or

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

(3) In computing, for the purposes of subsection (2) of this section, the period during which any person has been qualified to practise as an advocate or attorney any period during which he has held judicial office after becoming so qualified shall be included.

(4) 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 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 High Court as the Commissioner, acting in his discretion, may appoint for that purpose:

Provided that—

(*a*) a person may be appointed under this subsection notwithstanding that he has attained the age of sixty-two years or such other age as may be prescribed for the purposes of section 74 of this Constitution;

(*b*) a person appointed under this subsection may, notwithstanding the assumption or resumption of the functions of the office of Chief Justice by the holder of that office, continue to act as Chief Justice for so long thereafter and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(5) If the office of any puisne judge is vacant or if any such judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office the Commissioner, after consultation with the Chief Justice, may appoint a person who is qualified to be appointed as a judge of the High Court to act as a puisne judge of that court:

Provided that a person may act as a judge notwithstanding that he has attained the age of sixty-two years or such other age as may be prescribed for the purposes of section 74 of this Constitution.

(6) Any person appointed under subsection (5) of this section to act as a puisne judge shall, subject to the provisions of sections 74(4) and 74(6) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Commissioner, after consultation with the Chief Justice:

Provided that, notwithstanding the expiration of the period of his appointment or the revocation of his appointment, he may thereafter continue to act as a puisne judge for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Tenure of office of judges of High Court.

74.—(1) Subject to the provisions of this section, a person holding the office of a judge of the High Court shall vacate that office when he attains the age of sixty-two years or such other age as may be prescribed by the Legislature of Bechuanaland.

(2) Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person holding the office of a judge of the High Court may continue in office for so long after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) A person holding the office of a judge of the High Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(4) A judge of the High Court shall be removed from office by the Commissioner by order under the public seal if the question of his removal has, at the request of the Commissioner made in pursuance of subsection (5) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under any 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 for misbehaviour.

(5) If the Commissioner considers that the question of removing a judge under this section ought to be investigated, then—

(*a*) the Commissioner shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Commissioner from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by the Legislature of Bechuanaland or a court having jurisdiction in appeals from such a court;

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

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

(6) If the question of removing a judge from office has been referred to a tribunal under subsection (5) of this section, the Commissioner may

suspend the judge from exercising the functions of his office and any such suspension may at any time be revoked by the Commissioner and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the 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.

(7) Subject to the provisions of this section, the provisions of the Commissions of Enquiry Law 1961(a) as in force on the date of the coming into operation of this Constitution, shall apply in relation to a tribunal appointed under this section as if the tribunal were commissioners appointed by a commission issued under the Law, and references in the Law to commissioners and a commission shall be construed accordingly.

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

Oaths to be taken by judges of High Court.

75. A judge of the High Court shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by the law of Bechuanaland.

Reference to High Court in cases involving interpretation of Constitution.

76.—(1) Where any question as to the interpretation of this Constitution arises in any proceedings in any subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

Judges who are also judges in Basutoland and Swaziland.

77.—(1) Where any judge of the High Court also holds or is acting in the office of judge of the High Court of Basutoland or the High Court of Swaziland, he may, when within Bechuanaland exercise jurisdiction under the law of Basutoland or, as the case may be, of Swaziland, in such matters as may be prescribed by or under any law of the Legislature of Basutoland or Swaziland.

(2) Any person mentioned in subsection (1) of this section may, to such extent as may be prescribed by or under any law of the Legislature of Bechuanaland exercise within Basutoland or Swaziland his jurisdiction as a judge of the High Court of Bechuanaland.

CHAPTER VI

The Public Service

Public officers.

78.—(1) Subject to the provisions of this Chapter of the Constitution, power to appoint, promote, transfer, terminate the appointment of, dismiss and exercise disciplinary control over, public officers, shall vest in the Commissioner, acting in his discretion.

(a) Laws of Bechuanaland, No. 33 of 1961.

(2) The Commissioner, acting in his discretion, may, by regulations published in the Gazette, delegate to any public officer or class of public officer, subject to such conditions as may be prescribed in the regulations, any power vested in him by the last foregoing subsection.

(3) The powers conferred upon the Commissioner by subsections (1) and (2) of this section shall be subject to, and shall be exercised by him in accordance with, the provisions of any Instructions given under Her Majesty's Sign Manual and Signet or through a Secretary of State.

(4) The provisions of this section shall not apply to any member of the Bechuanaland Police Force below the rank of Assistant Superintendent to the extent that the Commissioner of Police or some other officer of the Bechuanaland Police Force is empowered by any law for the time being in force to exercise the powers mentioned in sub-section (1) of this section.

Public Service Commission.

79.—(1) There shall be for Bechuanaland a Public Service Commission, and subject to the provisions of subsection (3) of this section, the Commission shall consist of a Chairman and such other members as may be appointed by the Commissioner in such manner as may be prescribed by regulations made under section 81 of this Constitution.

(2) The Commissioner may terminate the appointment of any member of the Commission at any time and, subject as aforesaid, the members of the Commission shall hold office upon such terms and conditions as may be prescribed by regulations made under section 81 of this Constitution.

(3) No person shall be appointed, or shall remain, a member of the Public Service Commission if he is, or becomes—

(*a*) a member of the Legislative Assembly;

(*b*) a member of the House of Chiefs;

(*c*) a public officer;

(*d*) an officer of any society or association which the Commissioner is satisfied is of a political nature.

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

Functions of Public Service Commission.

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

(*b*) This subsection shall not apply to—

(i) a judge of the High Court;

(ii) The Attorney-General;

(iii) The Commissioner or Deputy Commissioner of Police;

(iv) a member of the Commissioner's personal staff; or

(v) the Director of Audit.

(2) The Commissioner, acting in his discretion, may, by regulations published in the Gazette, authorize any public officer or class of public officer to seek on his behalf, subject to such conditions as may be prescribed in the regulations, the advice of the Public Service Commission on any question on which the Commissioner may seek advice under the last foregoing subsection.

(3) It shall be the duty of the Public Service Commission to advise the Commissioner, or any public officer authorized to seek their advice on his behalf, on any question referred to them in accordance with the provisions of this section, but the Commissioner shall not be obliged to act in accordance with their advice.

(4) The Chairman of the Public Service Commission shall at all times have direct access to the Commissioner.

Regulations regarding Public Service Commission.

81.—(1) Subject to the provisions of this Chapter of the Constitution, the Commissioner, acting in his discretion, may make regulations and give instructions for giving effect to the provisions of the two last foregoing sections, and in particular and without prejudice to the generality of the foregoing power, may by such regulations provide for all or any of the following matters relating to the Public Service Commission :—

(*a*) the membership, including the appointment of the Chairman of the Commission ;

(*b*) the appointment, tenure of office and terms of service of members of the Commission and of their staff ;

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

(*d*) consultation by the Commission with other persons or authorities ;

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

(*f*) the protection and privileges of members of the Commission in performing their functions, and the privilege in legal proceedings of communications to and from the Commission or members of the Commission ;

(*g*) the attendance of persons for the purpose of answering questions arising at any enquiry held by the Commission or relating to their functions ; and

(*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 four hundred rand and imprisonment for a term of one year.

CHAPTER VII

The House of Chiefs

House of Chiefs.

82.—(1) There shall be a House of Chiefs for Bechuanaland.

(2) The House of Chiefs shall consist of—

(*a*) eight ex-officio Members, and

(*b*) four Elected Members.

Ex-officio Members of House of Chiefs.

83. The ex-officio Members of the House of Chiefs shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa Tribes, respectively.

Elected Members of House of Chiefs.

84. The Elected Members of the House of Chiefs shall be elected from among their own number by the persons for the time being performing the functions of the office of Sub-Chief in the Chobe, Francistown, Ghanzi and Kgalagadi districts, respectively.

Oath of Allegiance.

85. Every Member of the House of Chiefs shall, before taking his seat therein, take and subscribe before the House of Chiefs the oath of allegiance.

Secretary to the House of Chiefs.

86. The Commissioner, acting in his discretion, shall appoint a person to be the Secretary to the House of Chiefs.

Tenure of office of Elected Members.

87. An Elected Member of the House of Chiefs shall vacate his seat in the House—

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

(*b*) if he ceases to be a Sub-Chief; or

(*c*) if he resigns his seat by writing under his hand addressed to the Chairman of the House.

Rules of Procedure of House of Chiefs.

88. Subject to the provisions of this Constitution, the House of Chiefs may, subject to the approval of the Commissioner, acting in his discretion, make rules regulating its own procedure and in particular, and without prejudice to the generality of the foregoing power, make rules for all or any of the following matters:—

(*a*) the appointment and tenure of office of a Chairman of the House;

(*b*) the times and places at which the House shall meet;

(*c*) the manner in which the views of the House shall be recorded and, if necessary, expressed to a Minister, or to any other person or body;

(*d*) the regulation and orderly conduct of the proceedings of the House;

(*e*) the remuneration of the Chairman and other members of the House;

(*f*) the manner in which the Elected Members of the House shall be elected.

House of Chiefs may transact business notwithstanding vacancies.

89. The House of Chiefs 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 House 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 House or otherwise took part in the proceedings.

Functions of House of Chiefs.

90.—(1) (*a*) The House of Chiefs shall consider the draft of any bill which has been referred to it under the provisions of subsection (2)(*e*)(i) of section 68 of this Constitution or the copy of any bill which has been sent to it under the provisions of subsection (3) of the said section, and the House shall be entitled to submit resolutions thereon to the Minister who is responsible for the bill concerned;

(*b*) Any Minister to whom resolutions have been submitted under the last foregoing paragraph shall lay them before the Legislative Assembly before proceeding with the bill in respect of which the resolutions were submitted;

(*c*) Any Minister who is responsible for a bill such as is referred to in paragraph (*a*) of this subsection, or his representative, may attend the proceedings of the House when the bill is being considered.

(2) Any Minister may consult the House of Chiefs in respect of any matter on which he desires to obtain the opinion of the House, and for that purpose the Minister or his representative may attend the proceedings of the House.

(3) The House of Chiefs shall be entitled to discuss any matter within the executive or legislative authority of Bechuanaland which it considers it is desirable to take cognizance of in the interests of the tribes and tribal organizations they represent and to make representations thereon to the Prime Minister, or through the Prime Minister to the Cabinet, or to send messages thereon to the Legislative Assembly.

(4) A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsections (1)(*c*) and (2) of this section shall be entitled to take part in the proceedings of the House relating to the matter in respect of which he attends as if he were a member of the House:

Provided that he shall not be entitled to vote in the House.

(5) Any reference in paragraphs (*b*) and (*c*) of subsection (1) of this section to a bill includes a reference to a draft bill.

CHAPTER VIII

FINANCE

Consolidated Fund.

91. All revenues or other moneys raised or received for the purposes of the Government of Bechuanaland (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the department of Government that received them for the purposes of defraying the expenses of that department) shall be paid into and form one Consolidated Fund.

Withdrawals from Consolidated Fund or other public funds.

92.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

(*a*) to meet expenditure that is charged upon the Fund by this Constitution or by any law of the Legislature of Bechuanaland;

(*b*) where the issue of those moneys has been authorised by an Appropriation law, by a supplementary estimate approved by resolution of the Legislative Assembly or by a law enacted in pursuance of section 94 of this Constitution.

(2) No moneys shall be withdrawn from any public fund of Bechuanaland other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed by the Legislature of Bechuanaland.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and Administrations or the investment of any such moneys in securities in which, under the law for the time being in force in Bechuanaland, trustees are authorised to invest, or the making of advances to such extent and in such circumstances as may be prescribed by the Legislature of Bechuanaland, shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

Authorisation of expenditure.

93.—(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the Legislative Assembly, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Bechuanaland for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill to be known as an Appropriation bill which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the said bill.

(3) If in any financial year it is found—

(*a*) that the amount appropriated by the Appropriation law for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation law;

(*b*) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation law or for a purpose for which no amount has been appropriated by the Appropriation law,

a supplementary estimate showing the sums required or spent shall be laid before the Legislative Assembly and the heads of expenditure shall be included in a supplementary Appropriation bill, or in a motion or motions approving such expenditure, which shall be introduced into the Assembly.

(4) Where any supplementary expenditure has been approved in a financial year by a resolution of the Legislative Assembly in accordance with the provisions of subsection (3) of this section, a supplementary Appropriation bill shall be introduced in the Legislative Assembly, not later than the end of the financial year next following, providing for the appropriation of the sums so approved.

Authorisation of expenditure in advance of appropriation.

94. The Legislature of Bechuanaland may make provision under which, if the Appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Commissioner may authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation law, whichever is the earlier.

Contingencies Fund.

95.—(1) The Legislature of Bechuanaland may make provision for the establishment of a Contingencies Fund and for authorizing the Commissioner if satisfied that there has arisen an urgent and unfore-

seen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

96.—(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by the Legislature of Bechuanaland.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances, shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of the Commissioner, the Deputy Commissioner, judge of the High Court, member of the Public Service Commission, and Director of Audit.

Public debt.

97.—(1) There shall be charged on the Consolidated Fund all debt charges for which Bechuanaland is liable.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Bechuanaland or the Consolidated Fund and on the service and redemption of debt thereby created.

Director of Audit.

98.—(1) There shall be a Director of Audit, whose office shall be a public office.

(2) The public accounts of Bechuanaland and of all officers, courts and authorities of the Government of Bechuanaland shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorized by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so provided by the Legislature of Bechuanaland in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(3) The Director of Audit shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before the Legislative Assembly.

(4) In the exercise of his functions under this Constitution the Director of Audit shall not be subject to the direction or control of any other person or authority except the Director General of the Overseas Audit Service.

CHAPTER IX

MISCELLANEOUS

Disposal of land.

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

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

Resignations.

100.—(1) Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected:

Provided that in the case of a person who holds office as Speaker or Deputy Speaker of the Legislative Assembly his resignation from that office shall be addressed to the Assembly, and in the case of a member of the Assembly his resignation shall be addressed to the Speaker.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorized by that person or authority to receive it.

Reappointments and concurrent appointments.

101.—(1) 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.

(2) 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.

Interpretation.

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

"Bechuanaland" means the Bechuanaland Protectorate;

"Chief" and "Sub-Chief" have the meanings assigned to those expressions in the African Administration Proclamation(a);

"the Commissioner" means Her Majesty's Commissioner for Bechuanaland;

(a) Laws of Bechuanaland 1959, Vol. II, p. 873 c. 67.

" financial year " means the period of twelve months ending on 31st March in any year or on such other day as the Legislature of Bechuanaland may prescribe ;

" the Gazette " means the Bechuanaland Government Gazette ;

" the House of Chiefs " means the House constituted by section 82 of this Constitution ;

" oath " includes affirmation ;

" the oath of allegiance " means such oath of allegiance as may be prescribed by law ;

" public office " means, subject to the provisions of subsection (2) of this section, an office of emolument in the public service ;

" public officer " means a person holding or acting in any public office ;

" public seal " means the public seal of Bechuanaland ;

" the public service " means the service of the Crown in a civil capacity in respect of the Government of Bechuanaland ;

" session " means the sittings of the Legislative Assembly beginning when it first sits after the coming into operation of this Constitution or after its prorogation or dissolution at any time and ending when it is prorogued or is dissolved without having been prorogued ;

" sitting " means a period during which the Legislative Assembly is sitting without adjournment and includes any period during which it is in committee.

(2) For the purposes of this Constitution a person shall not be considered to be a public officer by reason only that he is in receipt of any remuneration or allowance as Speaker or Deputy Speaker of the Legislative Assembly, the Prime Minister or other Minister, Parliamentary Secretary, a member of the Assembly, or a member of the House of Chiefs.

(3) For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Crown.

(4) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(5) In this Constitution any reference to the date on which this Constitution comes into operation or commences shall be construed as a reference to the " appointed day " as defined by section 2(1) of the Order in Council to which this Constitution is annexed.

(6) Where any power is conferred by this Constitution to make any Proclamation, order, regulation or rule, or to give any direction or instructions, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such Proclamation, order, regulation, rule, direction or instructions.

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

SCHEDULE

Section 53

ELECTION OF SPECIALLY ELECTED MEMBERS OF LEGISLATIVE ASSEMBLY

1.—(1) In this schedule—

"bye-election" means an election to fill a vacancy among the Specially Elected Members occurring otherwise than upon a dissolution of the Legislative Assembly;

"general election" means an election to fill the vacancies among the Specially Elected Members occurring upon a dissolution of the Legislative Assembly;

"the Speaker" means the Speaker of the Legislative Assembly; and

"prescribed" means prescribed by rules made under paragraph 2 of this schedule.

(2) At any time when the office of Speaker is vacant or the holder of that office is unable by reason of absence or illness to exercise the functions vested in him by this schedule those functions may be exercised by the Deputy Speaker of the Legislative Assembly or, if there is no Deputy Speaker or the Deputy Speaker is unable by reason of absence or illness to exercise those functions, by such member of the Assembly (not being a Minister or a Parliamentary Secretary) as the Assembly may elect for that purpose.

2. Subject to the provisions of this schedule, the Legislative Assembly may make rules for the election of its Specially Elected Members.

3. Elections of Specially Elected Members shall be conducted by the Speaker and, subject to the provisions of this schedule and of any rules made under paragraph 2 thereof, shall be conducted in such manner as he may direct.

4.—(1) The Prime Minister shall nominate four candidates for election in the case of a general election and he shall nominate one candidate for election in the case of a bye-election.

(2) The names of the four candidates or, as the case may be, the name of the one candidate nominated for election by the Prime Minister under the foregoing sub-paragraph shall be presented to the Legislative Assembly in such manner as may be prescribed, and any Elected Member of the Assembly shall thereupon be entitled to nominate four candidates for election in the case of a general election and one candidate for election in the case of a bye-election.

(3) A list of the candidates nominated for election by the Prime Minister and the other Elected Members of the Legislative Assembly under the foregoing provisions of this paragraph shall be prepared, and each Elected Member of the Assembly shall be entitled to vote—

(*a*) in the case of a general election, for four candidates, and

(*b*) in the case of a bye-election, for one candidate,

on the list so constituted.

(4) The vote of every Elected Member of the Legislative Assembly shall be given by ballot in such a manner as not to disclose how he shall have voted.

(5) An Elected Member of the Legislative Assembly shall not cast more than one vote for any one candidate.

5.—(1) The Speaker shall cause elections of Specially Elected Members to be held—

(*a*) in the case of a general election, as soon as practicable after the holding of a general election of the Elected Members of the Legislative Assembly and before the Assembly first meets after that general election; and

(*b*) in the case of a bye-election, as soon as practicable after a vacancy has occurred among the Specially Elected Members.

(2) A meeting of the Elected Members of the Legislative Assembly that is held for the purpose of a general election shall be summoned by the Speaker.

(3) No other business than the holding of a general election may be transacted at any meeting of the Legislative Assembly summoned under sub-paragraph (2) of this paragraph and such a meeting shall not be regarded as a meeting of the Assembly for the purposes of any other provision of this Constitution.

6. When the votes have been cast, whether at a general election or at a bye-election, a list shall be prepared showing the persons for whom votes have been cast in order according to the number of votes received by each of them, the person or persons who received the highest number of votes being placed first and those who received any lower number of votes being placed in descending order.

7. In the case of a general election, and subject to the provisions of paragraph 9 of this schedule, those persons shall be deemed to have been elected as Specially Elected Members who stand in the first and each succeeding place on the list until the number of persons to be elected as Specially Elected Members has been completed.

8. In the case of a bye-election, and subject to the provisions of paragraph 10 of this schedule, the person who stands in the first place on the list shall be deemed to have been elected.

9. Where, by reason of an equality of votes between them, the number of candidates in any place on the list who would otherwise be deemed to have been elected under paragraph 7 of this schedule exceeds the number of persons remaining to be elected as Specially Elected Members after the persons in the preceding places have been elected, none of the candidates in that place or in any succeeding place shall be deemed to have been elected and a further election shall be held to fill the vacancies still remaining among the Specially Elected Members; and the provisions of this schedule shall apply in relation to that further election as if it were a general election where the total number of Specially Elected Members was equal to the number of vacancies still remaining to be filled.

10. Where, in a bye-election, two or more candidates equally receive the highest number of votes, no candidate shall be deemed to have been elected and a further bye-election shall be held, in accordance with the provisions of this schedule, at which only those candidates who received the highest number of votes in the original bye-election may again stand as candidates.

EXPLANATORY NOTE

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

This Order provides a new Constitution for Bechuanaland in pursuance of the proposals set out in Cmnd. 2378.