BECHUANALAND PROTECTORATE

1960 No. 2416

The Bechuanaland Protectorate (Constitution) Order in Council, 1960

Made - - - -	21*st December*, 1960
Laid before Parliament	30*th December*, 1960
Coming into Operation	
Sections 24, 37 (2), 48 (2), 59, 62 (4) *and* 63 (2)	31*st December*, 1960
Remainder - - -	*On a day to be appointed by the High Commissioner under section* 2

At the Court at Buckingham Palace, the 21st day of December, 1960

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act, 1890(a), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

PRELIMINARY

Interpretation

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

"the African Council" means the Council constituted under section 56 of this Order;

"the appointed day" means the day appointed under subsection (1) of section 2 of this Order;

"Bechuanaland" means the Bechuanaland Protectorate;

"Chief Justice" means the Chief Justice of the High Court of Bechuanaland;

"Electoral College" means the Electoral College of the African Council constituted under section 58 of this Order;

"the Executive Council" means the Executive Council for Bechuanaland constituted under this Order;

"the Gazette" means the Official Gazette of the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland;

"Her Majesty's dominions" shall be construed as including all countries and territories within the Commonwealth;

"High Commissioner" means the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland appointed under the provisions of the Basutoland, Bechuanaland Protectorate and

(a) 53 & 54 Vict. c. 37.

Swaziland (Office of High Commissioner) Orders in Council, 1959 to 1960 and includes any person appointed to act as High Commissioner and to the extent to which a Deputy to the High Commissioner is authorised to act, that Deputy;

"High Court" means the High Court of Bechuanaland constituted under section 51 of this Order;

"law" includes any instrument having the force of law;

"the Legislative Council" means the Legislative Council for Bechuanaland constituted under this Order;

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

"prescribed" means prescribed by any law for the time being in force;

"President" means the President of the Legislative Council and any Member presiding in place of the President in pursuance of section 39 of this Order;

"public office" means, subject to the provisions of subsections (3) and (4) of this section, any office of emolument in the public service;

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

"public seal" means the public seal of Bechuanaland;

"public service" means the service of the Crown in respect of Bechuanaland.

"Resident Commissioner" means the Resident Commissioner of Bechuanaland;

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

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

"Standing Orders" means the Standing Orders of the Legislative Council;

"the Territory" means the Bechuanaland Protectorate.

(2) Where in this Order reference is made to any public officer by the terms designating or describing his office, such reference shall be construed as a reference to the officer for the time being lawfully discharging the functions of that office.

(3) For the purposes of this Order, a person shall not be considered to hold a public office if he is on leave of absence pending relinquishment of such office or by reason only that he is in receipt of a pension or other like allowance in respect of service in any such office; and if it shall be declared by any law in force in Bechuanaland that an office shall or shall not be a public office for all or any of the purposes of this Order, this Order shall have effect accordingly as if such law were enacted therein.

(4) For the purposes of this Order, a person shall not be considered to be a public officer by reason only of the fact that he is in receipt

of a salary or other emolument or any allowance as a Member of the Executive, Legislative or African Councils, or as an African Authority, Subordinate African Authority, Special Constable or retired or reserve member of Her Majesty's forces, or as a Member of any authority, tribunal or other public body in Bechuanaland.

(5) For the avoidance of doubt it is hereby declared that any person who has vacated his seat in any body, or has vacated any office, established by this Order may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(6) This Order shall be construed as if subsection (2) of section 3 of the British Nationality Act, 1948(**a**), (as interpreted by subsection (1) of section 3 of the Ireland Act, 1949(**b**)), and subsection (2) of section 3 of the Ireland Act, 1949, applied to it, as those subsections apply to laws in force on the dates of the commencement of those Acts respectively.

(7) Where a person is required by this Order to take an Oath, he shall be permitted, if he so desires, to comply with that requirement by making an affirmation.

(8) For the purposes of this Order, where the resignation in writing of a member of any body or the holder of any office constituted by this Order is required to be addressed to any specified person, the resignation shall take effect from the time when it is received by that person.

(9) Any power exercised or any duty performed in pursuance of the provisions of this Order or of any other law relating to the administration of the government of Bechuanaland which is exercised or performed in the area where the headquarter offices of the Government of the Bechuanaland Protectorate are situated, shall not be called into question in any court by reason only that such power was exercised or such duty was performed outside the territorial limits of Bechuanaland.

(10) If for the purpose of resolving any doubt that may arise as to the right of any person to be registered on any particular roll of voters or to sit as a member of any Council, a law in force in Bechuanaland shall prescribe a definition of the terms "European", "Asian" or "African", this Order shall have effect in relation to such matter as if such law were enacted therein.

(11) Save as is in this Order otherwise provided, or required by the context, the Interpretation Act, 1889(**c**), shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Citation, commencement and revocation

2.—(1) This Order may be cited as the Bechuanaland Protectorate (Constitution) Order in Council, 1960, and, save as otherwise provided in this Order, shall come into operation on a date to be appointed by the High Commissioner by notice in the Gazette.

(2) Subject to the provisions of sections 71, 72 and 73 of this Order, the Order in Council dated the 9th day of May, 1891(**d**), relating to Bechuanaland and the Bechuanaland Protectorate and Southern Rhodesia Amending Order in Council, 1909(**e**), are hereby revoked.

(**a**) 11 & 12 Geo. 6. c. 56. (**b**) 12, 13 & 14 Geo. 6. c. 41. (**c**) 52 & 53 Vict. c. 63.
(**d**) S.R. & O. Rev. VIII, p. 349.
(**e**) S.R. & O. 1909/1231 (Rev. VIII, p. 353: 1909, p. 331).

PART II
EXECUTIVE COUNCIL

Establishment and constitution of Executive Council

3.—(1) There shall be an Executive Council in and for the Bechuanaland Protectorate.

(2) The Executive Council shall consist of—

(i) The Resident Commissioner;

(ii) Three Ex officio Members;

(iii) Two Official Members; and

(iv) Four Nominated Members.

(3) The High Commissioner, when present, shall preside in accordance with section 14 of this Order.

Ex officio Members

4. The Ex officio Members of the Executive Council shall be the Government Secretary, the Finance Secretary and the Assistant Attorney-General.

Appointment of Official and Nominated Members

5.—(1) The Official Members shall be persons holding a public office who shall be appointed by the High Commissioner, either by office or by name, as he shall see fit, by instrument under the public seal.

(2) The Nominated Members shall be persons who, being Members of the Legislative Council and not holding any public office, shall be appointed by the High Commissioner by instrument under the public seal. Two such Nominated Members shall be Europeans and two shall be Africans.

(3) The High Commissioner shall without delay report to Her Majesty through a Secretary of State, every appointment made under subsections (1) and (2) of this section.

Tenure of office

6.—(1) Subject to the provisions of this Order, the Official and Nominated Members shall hold their seats in the Executive Council during Her Majesty's pleasure.

(2) The seat of an Official Member of the Executive Council appointed by name shall become vacant—

(*a*) upon his death; or

(*b*) if he shall, by writing under his hand addressed to the High Commissioner through the Resident Commissioner, resign his seat in the Executive Council and if his resignation shall be accepted by the High Commissioner; or

(*c*) if he shall cease to hold any public office.

(3) The seat of a Nominated Member of the Executive Council shall become vacant—

(*a*) if he shall cease to be a Member of the Legislative Council:

Provided that if he shall cease to be a Member of the Legislative Council by reason of a dissolution thereof, he shall not on that account vacate his seat in the Executive Council until the first meeting of the Legislative Council after such dissolution; or

(*b*) if he shall, by writing under his hand addressed to the High Commissioner through the Resident Commissioner, resign his seat in the Executive Council;

(*c*) if without the written permission of the Resident Commissioner he shall be absent from Bechuanaland for a continuous period of fourteen days or more; or

(*d*) if he is appointed to any public office.

(4) If a Nominated Member of the Executive Council shall be disqualified for the time being for sitting or voting in the Legislative Council under the provisions of subsection (3) of section 30 of this Order or by reason of the fact that he is appointed temporarily to, or to act in, any public office, he shall not sit in the Executive Council by virtue of his appointment as a Nominated Member for so long as he shall be so disqualified for sitting or voting in the Legislative Council.

Suspension and incapacity of Members of Executive Council

7.—(1) The High Commissioner may, by instrument under the public seal, declare any Member of the Executive Council to be incapable, by reason of illness, absence or other cause, of discharging his functions as a Member of the Council, and thereupon such Member shall not sit or vote in the Executive Council until he is declared, in manner aforesaid, again to be capable of discharging his said functions.

(2) The High Commissioner may, by instrument under the public seal, suspend any Member of the Executive Council from the exercise of his functions as a Member of the Council. Every such suspension shall forthwith be reported by the High Commissioner to Her Majesty through a Secretary of State, and shall remain in force until it shall be removed by the High Commissioner by instrument under the public seal or by Her Majesty through a Secretary of State, or the person suspended ceases to be a Member of the Executive Council.

Temporary Members

8.—(1) Whenever there shall be a temporary vacancy in the number of persons sitting as Members in the Executive Council by reason of the fact that—

(*a*) an Ex officio or an Official Member, though continuing to hold his office, is unable temporarily for any reason to discharge the functions of his office; or

(*b*) one person is lawfully holding more than one of the offices specified in section 4 of this Order or of the offices held by Official Members appointed by office; or

(*c*) no person is for the time being the holder of one of those offices or of the office of an Official Member appointed by office; or

(*d*) a Member is by reason of a declaration of the High Commissioner under subsection (1) of section 7 of this Order, temporarily incapable of discharging his functions as a Member; or

(*e*) a Member is suspended from the exercise of his functions as a Member under subsection (2) of section 7 of this Order; or

(*f*) a Nominated Member is temporarily disqualified for sitting in the Council by reason of the provisions of subsection (4) of section 6 of this Order; or

(*g*) a Member is temporarily absent from Bechuanaland,

a person may be appointed a temporary Member of the Executive Council for the period of such vacancy.

(2) The said person—

(*a*) in the case of a vacancy in respect of a person sitting in the Executive Council as an Ex officio or Official Member, shall be a

public officer and shall be appointed by the High Commissioner by instrument under the public seal;

(*b*) in the case of a vacancy in respect of a person sitting in the Executive Council as a Nominated Member, shall be qualified for appointment as a Nominated Member in terms of this Order and shall be appointed by the High Commissioner by instrument under the public seal.

(3) Every person so appointed shall, so long as his appointment shall subsist, be to all intents and purposes—

(*a*) in the case of a vacancy in respect of a person sitting in the Executive Council as an Ex officio Member, an Ex officio Member;

(*b*) in the case of a vacancy in respect of a person sitting in the Executive Council as an Official Member, an Official Member;

(*c*) in the case of a vacancy in respect of a person sitting in the Executive Council as a Nominated Member, a Nominated Member;

and, subject to the provisions of this section, the provisions of sections 6, 7 and 11 of this Order shall apply accordingly.

(4) The High Commissioner shall forthwith report every appointment made by him under this section to Her Majesty through a Secretary of State and every person so appointed shall hold his appointment during Her Majesty's pleasure. Any such appointment may be revoked by the High Commissioner by instrument under the public seal and the High Commissioner shall forthwith report every such revocation to Her Majesty through a Secretary of State.

(5) Any appointment made under this section shall cease to have effect on notification by the High Commissioner to the person appointed of its revocation by the High Commissioner or by its supersession by the definitive appointment of a person to fill the vacancy, or when the vacancy shall otherwise cease to exist.

Determination of questions as to membership

9. All questions which may arise as to the right of any person to be or to remain a Member of the Executive Council shall be referred to the High Commissioner and shall be determined by him.

Oath to be taken by Members of Executive Council

10. No Member of the Executive Council shall be permitted to take part in the proceedings of the Council (other than proceedings for the purposes of this section) until he has made and subscribed before the Council an oath in the form set out in the First Schedule to this Order. Where, on a previous occasion, a person has complied with the requirements of this section as a Member or Temporary Member of the Executive Council, it shall not be necessary for him, on again becoming a Member of the Council, to make and subscribe the said oath.

Precedence of Members

11.—(1) After the High Commissioner and the Resident Commissioner, the Members of the Executive Council shall have seniority and precedence as may be specially assigned by Her Majesty and, in default thereof, as follows:—

First, the Ex officio Members, in the order in which they are mentioned in section 4 of this Order;

Secondly, the Members temporarily appointed under section 8 of this Order to fill a vacancy in the number of persons sitting in the Executive Council as Ex officio Members, in such order as the High Commissioner may assign;

Thirdly, the Official Members; and

Fourthly, the Nominated Members.

(2) As between themselves the Official Members and the Nominated Members shall severally have seniority and precedence according to the length of time for which they have been continuously Members of the Executive Council, Members who have been continuously Members for the same length of time taking precedence according to the alphabetical order of their names.

(3) In ascertaining, for the purposes of subsection (2) of this section, the length of time for which any person shall have been continuously a Member of the Executive Council, no account shall be taken of any interval between the vacation by that person of his seat in the Executive Council in consequence of a dissolution of the Legislative Council and the date of his appointment to fill a vacancy in the Executive Council caused by that dissolution.

Summoning and Quorum

12.—(1) The Executive Council shall not be summoned except by the authority of the High Commissioner or of the Resident Commissioner. Due notice of every meeting of the Council shall be given to all Members thereof.

(2) No business except that of adjournment shall be transacted if objection is taken by any Member present that there are less than four Members present besides the person presiding.

Summoning of persons to Executive Council

13. Whenever the High Commissioner or Resident Commissioner desires to obtain the advice of any person in Bechuanaland concerning the government thereof, he may summon such person in writing to the Executive Council.

Presiding in Executive Council

14.—(1) The High Commissioner may, so far as he considers it to be necessary for the exercise of his powers and the performance of his duties, attend any meeting of the Executive Council when he is, from time to time, present in Bechuanaland; and, whenever he shall so attend, he shall preside.

(2) The Resident Commissioner shall, so far as is practicable, attend all meetings of the Executive Council; and, whenever he shall so attend in the absence of the High Commissioner, he shall preside.

(3) In the absence of both the High Commissioner and the Resident Commissioner, such Member of the Executive Council as the High Commissioner or Resident Commissioner may appoint, or, in default of such appointment or in the absence of any Member so appointed, the senior Member of the Executive Council actually present shall preside.

High Commissioner to consult with the Executive Council

15. Subject to the provisions of section 17 of this Order, the High Commissioner shall, in the exercise of his powers and the performance of his duties, consult with the Executive Council and whenever he does not consult with the Executive Council in person on any matter, he shall authorise and instruct the Resident Commissioner to consult with the Executive Council on such matter on his behalf; and the Resident Commissioner, having done so, shall forthwith communicate the advice of the Council to the High Commissioner.

Resident Commissioner to consult with Executive Council

16. In the exercise of his powers and the performance of his duties the Resident Commissioner shall, subject to the provisions of section 17 of this Order, consult with the Executive Council.

Cases in which High Commissioner or Resident Commissioner need not consult with Executive Council

17. The High Commissioner or the Resident Commissioner, as the case may be, shall not be obliged to consult with the Executive Council in any case—

(*a*) which is of such a nature that, in his judgment, Her Majesty's service would sustain material harm by such consultation; or

(*b*) in which the matters to be decided are, in his judgment, too unimportant to warrant such consultation; or

(*c*) in which the matters to be decided are, in his judgment, too urgent to admit of such consultation by the time within which it may be necessary for him to act. In such case, the High Commissioner or Resident Commissioner, as the case may be, shall, as soon as is practicable, communicate to the Executive Council the measures which he shall have taken together with the reasons therefor.

Decisions as to matters to be discussed in Executive Council

18.—(1) Questions for the advice or decision of the Executive Council may be submitted to the Council only by the High Commissioner or the Resident Commissioner.

(2) If the High Commissioner or Resident Commissioner declines to submit any question to the Council when requested in writing by any Member thereof so to do, it shall be competent to such Member to require that there be recorded upon the minutes his written application together with the answer returned by the High Commissioner or Resident Commissioner thereto.

High Commissioner or Resident Commissioner may act in opposition to Executive Council

19.—(1) The High Commissioner or the Resident Commissioner may act in opposition to the advice given to him by the Members of the Executive Council if he shall in any case consider it right to do so; and when the Resident Commissioner so acts he shall report the matter in writing to the High Commissioner, at the first convenient opportunity, with the reasons for his action. In any case in which the High Commissioner or Resident Commissioner so decides to act in opposition to the advice of the Executive Council, the High Commissioner shall, at the first convenient opportunity, report the matter to Her Majesty through a Secretary of State with the reasons for such action.

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

Minutes

20. Minutes shall be kept of all the proceedings of the Executive Council; and at every meeting of the Executive Council the minutes of the last preceding meeting shall be confirmed with or without amendment, as the case may require, before the Council proceeds to the despatch of any other business.

Executive Council may transact business notwithstanding vacancies

21. The Executive Council shall not be disqualified for the transaction of business by reason of any vacancy among the Members thereof and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Executive Council or otherwise took part in the proceedings.

PART III

LEGISLATIVE COUNCIL

Establishment and constitution of the Legislative Council

22.—(1) There shall be a Legislative Council in and for the Bechuanaland Protectorate.

(2) The Legislative Council shall consist of—

(*a*) the Resident Commissioner who shall be the President;

(*b*) three persons (who shall be styled "Ex officio Members") for the time being holding the public offices enumerated in section 23 of this Order;

(*c*) seven persons, being holders for the time being of public offices in the Territory (who shall be styled "Official Members") as may be appointed by office or name by the High Commissioner by instrument under the public seal;

(*d*) twenty-one persons (who shall be styled "Elected Members") as may be elected in the manner prescribed by section 24 of this Order; and

(*e*) not more than four persons (who shall be styled "Nominated Members") as may be appointed by the High Commissioner by instrument under the public seal in pursuance of section 25 of this Order.

Ex officio Members

23. The Ex officio Members of the Legislative Council shall be the Government Secretary, the Finance Secretary and the Assistant Attorney-General.

Elected Members

24.—(1) Of the Elected Members—

(*a*) ten shall be Africans elected by the Electoral College of the African Council from among the members of the College in accordance with the provisions of section 62 of this Order;

(*b*) ten shall be Europeans and shall be elected from ten constituencies (by whatever name called) by the Europeans qualified as voters in such constituencies; and

(*c*) one shall be an Asian and shall be elected by Asians qualified as voters in the Territory.

(2) Subject to the provisions of this Order, provision shall be made by or in pursuance of a law enacted under this Order for the election of persons to be Elected Members under paragraphs (*b*) and (*c*) of subsection (1) of this section, including (without prejudice to the generality of the foregoing power) the following matters:—

(*a*) the qualifications and disqualifications of candidates for election as such Elected Members, in addition to those prescribed in sections 26 and 27 of this Order;

(*b*) qualifications and disqualifications for voting at such elections;

(*c*) the establishment of constituencies (by whatever name called) for the purpose of returning such Members to the Legislative Council;

(*d*) the conduct of elections wholly or in part by postal voting;

(*e*) the definition and trial of offences relating to elections and the imposition of penalties therefor.

(3) The provisions of any such law as is mentioned in subsection (2) of this section shall, in relation to the qualifications and disqualifications for Members and voters, apply, as nearly as may be, equally to the election of Europeans and Asians as Elected Members.

(4) Before the appointed day, it shall be lawful for the High Commissioner, with the prior approval of the Secretary of State, to make and publish a Proclamation providing for the matters referred to in subsections (2) and (3) of this section and for the holding of elections thereunder prior to the appointed day. Any such Proclamation shall be deemed, on the appointed day, to be a Law enacted under the provisions of this Order, and may thereafter be amended or revoked by Laws made under the powers conferred by subsections (2) and (3) of this section.

(5) This section shall come into operation on the day after the day on which this Order shall have been laid before both Houses of Parliament.

Nominated Members

25. The Nominated Members shall be persons not holding any public office who are qualified for appointment under the provisions of this Order; if he exercises his power of appointment in this behalf, the High Commissioner shall appoint as Nominated Members either one European and one African or two Europeans and two Africans as he shall see fit:

Provided that no appointment of Nominated Members in pursuance of this section shall be made prior to the first meeting of the Council or the first meeting of the Council after a dissolution until the elections for Elected Members have taken place.

General qualifications for Elected and Nominated Members

26. Subject to the other provisions of this Order, a person shall be qualified to be an Elected or Nominated Member of the Legislative Council if, and shall not be qualified to be elected or appointed as such unless, he—

(*a*) is either a British subject or British protected person of the age of twenty-one years or upwards; and

(*b*) in the case of a Member elected under the provisions of paragraphs (*b*) and (*c*) of subsection (1) of section 24, possesses the other qualifications and none of the disqualifications of a voter specified in the law for the time being in force relating to the election of such Members.

Disqualifications for Elected and Nominated Membership

27.—(1) No person shall be qualified to be elected as an Elected Member or appointed as a Nominated Member of the Legislative Council or, having been so elected or appointed, shall sit or vote in the Legislative Council, who—

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

(*b*) holds any public office in a permanent capacity or by virtue of a contract of service expressed to continue for a period exceeding six months; or

(*c*) is an unrehabilitated insolvent or undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under any law in force in any part of Her Majesty's dominions; or

(*d*) is under sentence of death imposed on him by a court in any part of Her Majesty's dominions, or subject to the provisions of subsection (2) of this section, is serving a sentence of imprisonment (by whatever name called) of or exceeding six months imposed on him by such court or substituted by competent authority for some other sentence imposed on him by such a court or is under such a sentence of imprisonment, the execution of which is suspended; or

(*e*) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in Bechuanaland; or

(*f*) is disqualified for membership of the Council under any law for the time being in force in Bechuanaland relating to offences connected with elections.

(2) For the purposes of paragraph (*d*) of subsection (1) of this section—

(*a*) two or more sentences 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

(*b*) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

Tenure of office of Official, Elected and Nominated Members

28. Every Official Member appointed by name and every Elected or Nominated Member of the Legislative Council shall cease to be a Member at the next dissolution of the Council after his election or appointment, or previously thereto if his seat shall become vacant under the provisions of this Order.

Inability of Ex officio, Official or Nominated Member to perform his functions; suspension of such a Member

29.—(1) The High Commissioner may, by instrument under the public seal, declare that an Ex officio Member, an Official Member or a Nominated Member is, by reason of illness, absence or other cause, unable to perform his functions as a member of the Legislative Council, and thereupon that member shall not take part in the proceedings of the Council until he is declared in manner aforesaid to be again able to perform his said functions.

(2) The High Commissioner may, by instrument under the public seal, declare that an Ex officio Member, an Official Member or a Nominated Member is suspended from the exercise of his functions as a member of the Legislative Council, and thereupon that member shall not take part in the proceedings of the Council.

(3) Every suspension under subsection (2) of this section shall forthwith be reported to Her Majesty through a Secretary of State and shall remain in force until it is revoked by Her Majesty by instructions given through a Secretary of State or by the High Commissioner by instrument under the public seal or the person suspended ceases to be a member of the Legislative Council.

Vacation of seats

30.—(1) The seat of an Official Member of the Legislative Council appointed by name shall become vacant—

(*a*) upon his death; or

(*b*) if he shall, by writing under his hand addressed to the High Commissioner through the Resident Commissioner, resign his seat and if his resignation shall be accepted by the High Commissioner; or

(*c*) if he shall cease to hold any public office.

(2) The seat of an Elected or Nominated Member of the Legislative Council shall become vacant—

(*a*) upon his death; or

(*b*) if being a Nominated Member, he is elected as an Elected Member of the Legislative Council; or

(*c*) if he shall be absent from two consecutive meetings of the Council, without having obtained from the President, before the termination of either of such meetings, permission to be or to remain absent therefrom; or

(*d*) if he shall cease to be a British subject, or shall cease to be a British protected person without becoming a British subject or shall take any oath, or make any declaration or acknowledgment of allegiance, obedience or adherence to any foreign Power or State; or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign Power or State; or

(*e*) if he shall be adjudged or otherwise declared an insolvent or a bankrupt under any law in force in any part of Her Majesty's dominions; or

(*f*) if he shall be adjudged to be of unsound mind or shall be detained as a criminal lunatic under any law for the time being in force in Bechuanaland; or

(*g*) if he shall become disqualified for membership of the Council under any law for the time being in force in Bechuanaland relating to offences connected with elections; or

(*h*) if he shall by writing under his hand addressed to the President resign his seat in the Council; or

(*i*) if he shall be appointed to any public office either permanently or by virtue of a contract of service expressed to continue for a period exceeding six months; or

(*j*) if being an Elected Member elected by the Electoral College, he shall cease for any reason to be a Member of the African Council.

(3) Subject to the provisions of subsection (4) of this section, if any Elected or Nominated Member is sentenced by a court in any part of Her Majesty's dominions to death or imprisonment (by whatever name called) for a term of or exceeding six months, he shall forthwith cease to exercise any of his functions as a Member of the Legislative Council and his seat in the Council shall become vacant at the expiration of thirty days thereafter:

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

(4) If at any time before the Member vacates his seat in pursuance of subsection (3) of this section, 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 or a punishment other than imprisonment is substituted, his seat shall not become vacant under subsection (3) and he may resume the exercise of his functions as a Member.

(5) For the purposes of subsections (3) and (4) of this section—

(*a*) 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

(*b*) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(6) If any Elected or Nominated Member shall be appointed temporarily to, or to act in, any public office, he shall not sit or vote in the Legislative Council so long as he continues to hold, or to act in, that office.

Appointment of temporary members

31.—(1) Where for the time being—

(*a*) one person is discharging the functions of more than one of the offices, the holders of which are specified in section 23 of this Order; or

(*b*) no person is discharging the functions of any one of those offices or of the office of an Official Member appointed by office; or

(*c*) an Official Member is discharging the functions of one of the said offices specified in section 23 of this Order; or

(*d*) the seat of an Official Member appointed by name or of a Nominated Member is vacant otherwise than by means of a dissolution of the Council; or

(*e*) an Ex officio, Official or Nominated Member is unable to sit or vote in the Council by reason of a declaration made under subsections (1) or (2) of section 29 of this Order; or

(*f*) an Ex Officio, Official or Nominated Member is temporarily absent from the Territory,

the High Commissioner may make up any deficiency in the number of members available to sit in the Council and its committees by appointing a duly qualified person as a temporary Ex officio, Official or Nominated, as the case may be, Member of the Council by notification in the Gazette.

(2) The appointment of any person as a temporary member under this section shall cease to have effect when the High Commissioner informs that person that the deficiency in the numbers of members of Council which was the occasion of his appointment has ceased to exist.

(3) So long as their temporary appointments shall subsist, persons appointed as temporary members under this section shall, for the purposes of this Order but subject to the provisions of this section, be deemed to be Ex officio, Official or Nominated Members for the purposes of the relevant provisions of this Order.

Summoning of persons to assist Legislative Council

32. The President may summon any public officer or invite any other person to attend any meeting of the Legislative Council notwithstanding that such officer or person is not a Member of the Council when, in the opinion of the President, the business before the Council renders the presence of such officer or person desirable. Any officer or person so attending shall be entitled to take part in the proceedings of the Council relating to the matters in respect of which he was summoned or invited as if he were a Member of the Council save that he shall not be entitled to vote.

Decision of questions as to membership

33.—(1) All questions which may arise as to the right of any person to be or remain a Member of the Legislative Council other than an Elected Member shall be referred to and shall be determined by the High Commissioner.

(2) All questions which may arise as to the right of any person to be or remain an Elected Member shall be determined in the prescribed manner.

Penalty for sitting or voting in Council when unqualified

34.—(1) Any person who sits or votes in the Legislative Council knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding fifty pounds for every day upon which he so sits or votes.

(2) Any such penalty shall be recoverable in the High Court at the suit of the Attorney-General for the High Commission Territories.

PART IV

LEGISLATION AND PROCEDURE IN LEGISLATIVE COUNCIL

Power to make laws

35. Subject to the provisions of this Order, it shall be lawful for the High Commissioner, with the advice and consent of the Legislative Council to make laws (which shall be styled "Laws") for the peace, order and good government of Bechuanaland.

Royal Instructions

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

Standing Orders

37.—(1) Subject to the provisions of this Order and any Instructions under Her Majesty's Sign Manual and Signet, the Legislative Council may make, amend or revoke Standing Orders for the regulation and orderly conduct of their proceedings, the despatch of business and the presentation of Bills for Royal Assent; but no such Orders shall have effect unless and until they have been approved by the High Commissioner.

(2) Before the first meeting of the Legislative Council, it shall be lawful for the High Commissioner to make and publish Standing Orders for the purposes mentioned in subsection (1) of this section and such Standing Orders shall be deemed to have been made by the Council under this section and may thereafter be amended or revoked by the Council by Standing Orders made under the preceding subsection.

(3) Subsection (2) of this section shall come into operation on the day after the day on which this Order shall have been laid before both Houses of Parliament.

Oath of Allegiance

38.—(1) Subject to the provisions of subsection (2) of this section, no Member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Council an oath of allegiance in the form set out in the Second Schedule to this Order.

(2) If, between the time when a person becomes a Member of Council and the time when the Council next sits thereafter, a meeting takes place of any committee of the Council of which such person is a member, such person may, in order to enable him to attend and take part in proceedings of the committee, take and subscribe the oath of allegiance before a judge of the High Court and the taking and subscribing of the oath in such manner shall suffice for all purposes of this section. In any such case the judge shall forthwith report to the Council through the President that the person in question has taken and subscribed the oath of allegiance.

Presiding in Legislative Council

39. The Resident Commissioner, or such Member of the Legislative Council as the Resident Commissioner may from time to time appoint, or in default of such an appointment or in the absence of the Member so appointed, a Member of the Legislative Council elected by the Council for the meeting, shall preside at the meetings of the Legislative Council.

High Commissioner may address

40. The High Commissioner may attend and address the Legislative Council at any time.

Voting in Council

41.—(1) Save as may be otherwise provided by any law in force for the time being or by Standing Orders, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting.

(2) The President shall not have an original vote, but if upon any question the votes shall be equally divided, the President shall have a casting vote.

(3) A Member presiding in place of the President in pursuance of section 39 of this Order shall retain his original vote, and if upon any question the votes shall be equally divided, he shall also have a casting vote.

(4) If on any question the votes are equally divided and the President or the Member presiding in pursuance of section 39 of this Order does not exercise his casting vote the motion shall be lost.

Quorum of Council

42.—(1) If at any sitting of the Legislative Council any Member who is present draws the attention of the President to the absence of a quorum and, after such interval as may be prescribed in Standing Orders, the President ascertains that a quorum of the Council is still not present, he shall thereupon adjourn the Council.

(2) If at any sitting of the Legislative Council it appears to the President that a quorum of the Council is not present when the votes of the members on any question proposed for decision are counted, the voting on that question shall be invalid; thereupon that question shall stand over until the next sitting of the Council and the attention of the President shall be deemed to have been drawn to the absence of a quorum for the purposes of the last foregoing subsection.

(3) A quorum of the Legislative Council shall consist of fifteen Members besides the President.

Council may transact business notwithstanding vacancies

43. The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancies in the membership thereof, including any vacancies not filled when the Council is first constituted or is re-constituted at any time; and, subject to the provisions of section 42 of this Order, any proceedings therein shall be valid notwithstanding that some person sat or voted in the Council or otherwise took part in the proceedings thereof who was not entitled to do so.

Introduction of Bills

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

(2) Except on the recommendation or with the consent of the High Commissioner, the Council shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the President, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Bechuanaland or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Bechuanaland;

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

(*c*) receive any petition which, in the opinion of the President, requests that provision be made for any of the purposes aforesaid.

(3) Except on the recommendation or with the consent of the High Commissioner, the Council shall not proceed upon any Bill or motion (including any amendment to a Bill or motion, as the case may be) which, in the opinion of the President would effect any alteration in the salary, allowances or conditions of service (including leave, passages and promotion) of any public officer or any alteration in the law, regulations or practice governing the payment of pensions, gratuities or other like benefits to any public officer or former public officer or his widow, children, dependants or personal representatives.

High Commissioner's reserved power

45.—(1) If the High Commissioner shall consider that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Bechuanaland as a territory within the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the appointment, salary or other conditions of service of any public officer) that any Bill introduced, or any motion proposed in the Legislative Council should have effect, then, if the Council fail to pass such Bill or motion within such time and in such form as the High Commissioner may think reasonable and expedient, the High Commissioner, at any time that he thinks fit, may, notwithstanding any provisions of this Order or of any Standing Orders, declare that such Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was so introduced or proposed or with such amendments as the High Commissioner shall think fit that have been moved or proposed in the Council including any committee thereof; and thereupon the said Bill or motion shall be deemed to have been so passed or carried at the time when such declaration shall have been made, and the provisions of this Order, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) The High Commissioner shall forthwith report to a Secretary of State every case in which he shall make any such declaration and the reasons therefor.

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

(4) Any such declaration relating to a motion may be revoked by a Secretary of State, and the High Commissioner shall cause notice of such revocation to be published in the Gazette; and from the date of such publication any motion which shall have been deemed to have been carried by virtue of the declaration revoked shall cease to have effect; and the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such revocation as they apply to the repeal of an Act of Parliament.

Royal Assent to Bills

46.—(1) No Bill shall become a law until either the High Commissioner shall have assented thereto in Her Majesty's name and on Her Majesty's behalf and shall have signed the same in token of such assent or Her Majesty shall have given Her assent thereto through a Secretary of State.

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

Provided that—

(*a*) if the High Commissioner shall decide to refuse assent to any Bill, he shall cause a full statement of his reasons therefor to be laid before the Legislative Council;

(*b*) the High Commissioner shall reserve for the signification of Her Majesty's pleasure—

(i) any Bill by which any provision of this Order is affected or which is in any way repugnant to, or inconsistent with, the provisions of this Order; or

(ii) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its Members; or

(iii) any Bill which varies the qualifications or disqualifications for voters in elections for membership of the African Council or of the Legislative Council,

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

(3) A Law assented to by the High Commissioner shall come into operation on the date of its publication in the Gazette or, if it shall be enacted, either in such Law or in some other law (including any law in force on the appointed day), that it shall come into operation on some other date, on that date.

(4) A Bill reserved for the signification of Her Majesty's pleasure shall become a Law as soon as Her Majesty shall have given Her Assent thereto through a Secretary of State and the High Commissioner shall have signified such assent by notice published in the Gazette. Every such Law shall come into operation on the date of such notice or, if it shall be enacted, either in such Law or in some other law (including any law in force on the appointed day), that it shall come into operation on some other date, on that date.

Disallowance of laws

47.—(1) Any law to which the High Commissioner shall have given his assent may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by Her Majesty, the High Commissioner shall cause notice of such disallowance to be published in the Gazette.

(3) Every law so disallowed shall cease to have effect as soon as notice of such disallowance shall be published as aforesaid, and thereupon any enactment repealed or amended by or in pursuance of the law disallowed shall have effect as if such law had not been made. Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

Privileges of Legislative Council and Members

48.—(1) It shall be lawful, by any law enacted under this Order, to determine and regulate the privileges, immunities and powers of the Legislative Council, and its Members, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom of Great Britain and Northern Ireland or of the Members thereof.

(2) Prior to the appointed day, it shall be lawful for the High Commissioner, with the prior approval of a Secretary of State, to make a Proclamation exercising the powers conferred by subsection (1) of this section and such Proclamation shall come into force on the appointed day and shall be deemed to be a Law enacted under the provisions of this Order and may thereafter be amended or revoked by Laws made under the preceding subsection.

(3) Subsection (2) of this section shall come into operation on the day after the day on which this Order shall have been laid before both Houses of Parliament.

Sessions of the Legislative Council

49.—(1) The sessions of the Legislative Council shall be held at such times and places as the High Commissioner shall from time to time by Proclamation or notice appoint.

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

(3) The opening of the first session of the Legislative Council shall not be fixed for a date earlier than one month nor later than three months after the appointed day.

Prorogation and dissolution

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

(2) On dissolution all Members of the Legislative Council shall vacate their seats, and the Council shall be reconstituted by election, appointment and otherwise in accordance with the provisions of this Order and shall reassemble at such time, within four months of every dissolution, as the High Commissioner shall by Proclamation appoint, but such time shall not be less than fourteen days after the time fixed by the Resident Commissioner for the reassembly of the African Council after a dissolution in accordance with the provisions of subsection (2) of Section 61 of this Order.

(3) Unless the Council be sooner dissolved, the Council shall be dissolved in the manner provided in this section at the expiration of four years from the first sitting of the Council and thereafter from the first sitting of the Council after each dissolution.

PART V

THE JUDICATURE

High Court

51.—(1) There shall be a High Court in and for the Bechuanaland Protectorate and the Judges of the High Court shall be a Chief Justice, who shall be the President of the Court, and such number of Puisne Judges as may from time to time be appointed under section 52 of this Order:

Provided that the office of any judge shall not be abolished during his continuance in office.

(2) The High Court shall be a superior court of record and shall have within Bechuanaland unlimited original jurisdiction in civil and criminal matters and such appellate and revisional jurisdiction (including jurisdiction to determine reserved questions of law and cases stated) as may be prescribed by or under any law for the time being in force in Bechuanaland.

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

(4) Nothing done by a judge of the High Court shall be invalid by reason only that he has attained the age at which he is required by this Order to vacate his office or that, having attained that age, he has not agreed with the High Commissioner to remain in or be appointed to office for a fixed period.

Appointment of judges

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

(2) A person shall not be qualified to be appointed a judge of the High Court unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of Her Majesty's dominions or a court having jurisdiction in appeals from any such court or 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 solicitor 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 solicitor any period during which he has held judicial office after becoming so qualified shall be included.

(4) The judges of the High Court shall be paid such remuneration and allowances as may be prescribed by or under any law for the time being in force in Bechuanaland or, if not so prescribed, such remuneration and allowances as may be sanctioned by the High Commissioner, with the prior approval of a Secretary of State, and such remuneration and allowances, or such proportion of such remuneration and allowances as are chargeable to the revenues of Bechuanaland, shall be charged on and paid out of the revenues and public funds of Bechuanaland :

Provided that the terms of office of a judge of the High Court shall not be altered to his disadvantage during his continuance in office.

Tenure of office of judges

53.—(1) Subject to the following provisions of this section, each judge of the High Court shall hold office until he attains the age of sixty-two years :

Provided that a judge or a person qualified for appointment as a judge, who has attained the age of sixty-two years may, subject to or in pursuance of instructions given to the High Commissioner by Her Majesty through a Secretary of State, remain in or be appointed to office, as the case may be, for such fixed period or periods as may be agreed from time to time between the High Commissioner and such judge or person.

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

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

(4) A judge of the High Court shall be removed from office by the High Commissioner by order under the public seal if the question of the removal of that judge from office has, at the request of the High Commissioner, made in pursuance of the next following subsection, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act, 1833(a),

(a) 3 & 4 Will. 4. c. 41.

or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

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

(*a*) the High Commissioner shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the High Commissioner from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of Her Majesty's dominions or a court having jurisdiction in appeals from any such court;

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

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

(6) All issues before a tribunal appointed under the provisions of subsection (5) of this section shall be decided by a majority of votes of the members thereof; the Chairman shall have an original vote and, if the votes are equally divided, a casting vote. The procedure to be followed by the tribunal shall be in the discretion of the tribunal and the provisions of the Commissions Proclamation(a), as in force on the appointed day shall apply in relation to the tribunal as if it were a Commission to which the provisions of the said Proclamation apply and for that purpose those provisions shall have effect as if they formed part of this Order.

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

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

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

Acting Chief Justice and temporary Puisne Judges

54.—(1) 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 High Commissioner may appoint for that purpose:

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

(a) Bechuanaland Laws (Rev. Ed. 1959) cap. 11.

(2) If the office of any Puisne Judge is vacant or if any Puisne Judge is for any reason unable to perform the functions of his office or whenever for any reason it is expedient to do so, the High Commissioner, after consultation with the Chief Justice, may appoint a person qualified for appointment as a judge of the High Court to be temporarily a Puisne Judge of that Court:

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

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

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

Jurisdiction of Judges who also hold judicial office in Basutoland and Swaziland

55.—(1) Where any person for the time being holding the office of the Chief Justice or Puisne Judge of the High Court of Bechuanaland also holds the office of Chief Justice or Puisne Judge of the High Court of Basutoland or of Swaziland, such person may, when within Bechuanaland, exercise jurisdiction according to the law for the time being in force in Basutoland or Swaziland, as the case may be, in any matter enumerated in the Third Schedule to this Order and which may arise within or in relation to Basutoland or Swaziland as fully and effectively as if he were within Basutoland or Swaziland, as the case may be, exercising such jurisdiction.

(2) Where any person mentioned in subsection (1) of this section is in the course of his judicial duties within Basutoland or Swaziland, he may there exercise jurisdiction according to the law for the time being in force in Bechuanaland in any matter enumerated in the Third Schedule to this Order and which may arise within or in relation to Bechuanaland as fully and as effectively as if he were within Bechuanaland exercising such jurisdiction.

(3) The High Commissioner, with the prior approval of the Secretary of State, may, by notice in the Gazette, amend, revoke or replace the Third Schedule to this Order.

PART VI

THE AFRICAN COUNCIL

Establishment and constitution of the African Council

56.—(1) There shall be an African Council in and for the Bechuanaland Protectorate.

(2) The African Council shall consist of—

(*a*) the Resident Commissioner who shall be the President of the Council;

(*b*) the Government Secretary;

(*c*) not more than six Official Members appointed by name or office by the Resident Commissioner;

(*d*) the African Authorities of the Bakhatla, Bakwena, Bamalete, Bamangwato, Bangwaketsi, Barolong, Batawana and Batlokwa Tribes;

(*e*) thirty-two Africans appointed or elected in the prescribed manner from the thirteen electoral districts of Bechuanaland specified in the first and second columns of the Fourth Schedule to this Order, the number from each such electoral district being the number stated in the third column of the said Schedule; and

(*f*) not more than two persons, not being holders of any public office, appointed by the Resident Commissioner.

Functions of the African Council

57.—(1) When constituted as an Electoral College in the manner hereinafter appearing, the African Council shall, from time to time, in the prescribed manner elect ten African Members of the college to be Elected Members of the Legislative Council as provided by paragraph (*a*) of subsection (1) of section 24 and section 62 of this Order.

(2) As occasion arises, the Resident Commissioner may consult with the African Council on any of the following matters in so far as they relate to general policy or administrative practice, that is to say:—

(i) the designation, recognition, removal and powers of Chiefs, Sub-Chiefs and Headmen;

(ii) the constitution, appointment, removal and powers of African Authorities and Subordinate African Authorities;

(iii) the organisation, powers and administration of African courts;

(iv) the ascertainment, recording and development of African customary law;

(v) tribal organisation; and

(vi) any other matter which, in the opinion of the Resident Commissioner, especially concerns the interests or well-being of the African inhabitants of Bechuanaland.

The composition of the Electoral College of the African Council

58.—(1) For the purpose of discharging its responsibilities under subsection (1) of section 57 of this Order, the African Council shall resolve itself into an Electoral College which shall comprise every African who is a member of the Council in pursuance of paragraphs (*d*), (*e*) and (*f*) of subsection (2) of section 56 of this Order.

(2) The Resident Commissioner or, in his absence, the Government Secretary, shall preside over all meetings of the Electoral College but shall not be entitled to vote therein.

Election and appointment of members of African Council

59.—(1) Subject to the provisions of this Order, provision may be made by or in pursuance of a Law enacted under this Order for any matter relating to the appointment and election of members of the African Council under the provisions of paragraphs (*c*), (*e*) and (*f*) of subsection (2) of section 56 of this Order, including (without prejudice to the generality of the foregoing power) the following matters:—

(*a*) the delimitation of the areas of the several electoral districts specified in the first and second columns of the Fourth Schedule to this Order;

(*b*) the qualifications and disqualifications for appointment or election of such members;

(*c*) the methods of appointment or election to be adopted in different electoral districts and fixing the time within which appointments shall be made or elections shall take place;

(*d*) the qualifications and disqualifications of voters;

(*e*) the suspension or disqualification of members who have been appointed or elected;

(*f*) the filling of casual vacancies;

(*g*) the determination of any questions relating to the qualification or disqualification of candidates or members.

(2) Prior to the appointed day, the High Commissioner may make and publish a proclamation or proclamations providing for all or any of the matters referred to in subsection (1) of this section and may authorise the holding of elections and the taking of any other steps thereunder as will facilitate the holding of the first meeting of the African Council after the appointed day in pursuance of subsection (3) of section 60 of this Order. Any such proclamation shall be deemed on the appointed day to be a Law enacted under the provisions of this Order and may thereafter be amended or repealed by Laws made under the powers conferred by subsection (1) of this section.

(3) This section shall come into operation on the day after the day on which this Order shall have been laid before both Houses of Parliament.

Meetings and quorum of African Council

60.—(1) The African Council shall meet from time to time at such time and place as the Resident Commissioner may by notice in the Gazette direct.

(2) There shall be a meeting of the African Council once at least in every year so that a period of twelve months shall not intervene between the conclusion of one meeting and the commencement of the next meeting.

(3) The first meeting of the African Council shall be held before the expiration of thirty days after the appointed day.

(4) A quorum of the African Council shall consist of twenty-eight members besides the President or other person presiding.

Dissolution of African Council

61.—(1) Whenever the Legislative Council shall be dissolved by the High Commissioner under the provisions of section 50 of this Order, the African Council shall also be forthwith dissolved by the Resident Commissioner by notice in the Gazette.

(2) On a dissolution, all members of the African Council shall vacate their seats and the Council shall be reconstituted by election, appointment or otherwise in accordance with the provisions of this Order and shall reassemble at such time, within fourteen weeks of every dissolution, as the Resident Commissioner may, with the prior approval of the High Commissioner, by notice in the Gazette, appoint.

Functions of African Council as an Electoral College

62.—(1) At the first meeting of the African Council and thereafter at the first meeting of the Council after a dissolution, it shall be the duty of the Council immediately to resolve itself into the Electoral College for the purpose of electing in the manner prescribed in subsection (3) of this section ten of its members to be Elected Members of the Legislative Council in accordance with the provisions of paragraph (*a*) of subsection (1) of section 24 of this Order. Of the ten members to be so elected to the Legislative Council, five shall be members of the Electoral College from the Northern Division of the Protectorate, and five shall be from the Southern Division thereof as set out in the first column of the Fourth Schedule to this Order. For the purposes of this subsection, a member shall be deemed to be from the Northern or Southern Division of the Protectorate, as the case may be, if—

(*a*) he is an African Authority of a Tribe within such Division; or

(*b*) he is elected or appointed as a representative of an electoral district within such Division.

(2) Whenever a vacancy shall occur from any cause (other than a dissolution of the African Council) among the ten members of Legislative Council elected by the African Council, the Resident Commissioner shall without undue delay summon the African Council and thereupon the Council shall resolve itself into the Electoral College and proceed to fill the vacancy in the manner prescribed in subsection (3) of this section.

(3) The Electoral College shall meet in private and the votes of the members shall be given by ballot in such a manner as not to disclose how any particular member shall have voted. The Electoral College shall not proceed to elect members to the Legislative Council unless not less than twenty-eight members of the College excluding the Resident Commissioner or the Government Secretary, as the case may be, are present. Subject to the other provisions of this Order, provision may be made by or under a Law enacted under this Order prescribing the manner in which the Electoral College shall conduct its proceedings and carry out its duties.

(4) Prior to the appointed day, the High Commissioner shall, with the prior approval of a Secretary of State, make and publish a Proclamation providing for the matters referred to in subsection (3) of this section and any such Proclamation shall be deemed on the appointed day to be a Law enacted under the provisions of this Order and may thereafter be amended or revoked by Laws made under the powers conferred by subsection (3) of this section.

(5) Subsection (4) of this section shall come into operation on the day after the day on which this Order shall have been laid before both Houses of Parliament.

Rules of Procedure of the African Council

63.—(1) Subject to the provisions of this Order, the African Council may, subject to the approval of the Resident Commissioner, make, amend or revoke Rules of Procedure for the orderly conduct and prompt despatch of the business of the Council or any Committee thereof save when the Council resolves itself into the Electoral College. Without prejudice to the generality of the foregoing power, the Rules of Procedure may provide for the following:—

(*a*) the appointment and tenure of office of a Chairman or other person to preside in the absence of the President;

(*b*) the constitution and powers of any standing or other committees;

(*c*) the appointment and tenure of office of a Secretary to the Council;

(*d*) the manner in which the views of the Council or any Committee shall be recorded and, if necessary, expressed to the Resident Commissioner or High Commissioner;

(*e*) the decision of questions by ballot or otherwise;

(*f*) the admission or exclusion of members of the public to the proceedings of the Council or any Committee thereof.

(2) Before the first meeting of the African Council, it shall be lawful for the Resident Commissioner, with the prior approval of the High Commissioner, to make and publish Rules of Procedure for the purposes mentioned in subsection (1) of this section, and such Rules of Procedure shall be deemed to have been made by the African Council under this section and may thereafter be amended or revoked by the Council by Rules of Procedure made under the preceding subsection.

(3) Subsection (2) of this section shall come into operation on the day after the day on which this Order shall have been laid before both Houses of Parliament.

Council and Electoral College may transact business notwithstanding vacancies

64. Neither the African Council nor the Electoral College shall be disqualified for the transaction of business by reason of any vacancies in the membership of the Council or the College, as the case may be, including any vacancies not filled when the Council or the College is first constituted or reconstituted at any time and, subject to the prescribed provisions relating to the presence of a quorum, any proceedings shall be valid notwithstanding that some person sat or voted in the Council or the College or otherwise took part in the proceedings who was not entitled to do so.

Summoning of persons to the African Council

65.—(1) The President or person presiding over the African Council or any committee thereof may summon any public officer or invite any other person to the Council or committee notwithstanding that he is not a member thereof when in the opinion of the President or other person presiding the business before the Council or the committee renders the presence of such officer or person desirable. Any officer or person so attending shall be entitled to take part in the proceedings of the Council or committee in relation to the matters in respect of which he is summoned or invited as if he were a member but shall not be entitled to vote.

(2) The provisions of subsection (1) of this section shall not apply when the Council has resolved itself into the Electoral College.

PART VII

FINANCE

Interpretation of Part VII

66. In this Part of this Order—

"financial year" means the twelve months ending on the 31st day of March in any year or on such other date as may be prescribed by any law enacted under the provisions of this Order;

"statutory expenditure" means—

(*a*) expenditure charged on the revenues and public funds of Bechuanaland by virtue of the provisions of subsection (4) of section 52 of this Order;

(*b*) the interest on the public debt of Bechuanaland, annuity repayments, sinking fund payments, and the costs, charges and expenses incidental to the management of the public debt;

(*c*) pensions and gratuities granted in respect of public service by or under any law for the time being in force;

(*d*) any such other expenditure as may by law be charged upon the revenues or public funds of Bechuanaland and in such law is declared expressly to be statutory expenditure.

Preparation of annual estimates

67. Annually before the close of each financial year, the High Commissioner shall cause to be prepared and laid before the Legislative Council, estimates of revenue and expenditure for the public services during the succeeding financial year. In such estimates, the sums required to meet statutory expenditure as defined in section 66 of this Order shall be shown separately from other expenditure proposed to be paid out of the revenues and public funds of Bechuanaland.

Authorisation and meeting of expenditure

68.—(1) The High Commissioner shall, in respect of each financial year, at the earliest convenient opportunity, cause to be introduced into the Legislative Council an appropriation Bill containing, under appropriate heads, for the several services required, the estimated aggregate sums which are proposed to be expended (otherwise than by way of statutory expenditure) during that financial year.

(2) Whenever—

(*a*) any expenditure is incurred or is likely to be incurred in any financial year upon any service which is in excess of the sum provided for that service by the appropriation law relating to that year; or

(*b*) any expenditure (other than statutory expenditure) is incurred or is likely to be incurred in any financial year upon any service not provided by the appropriation law relating to that year,

statements of excess or, as the case may be, supplementary estimates shall be laid before and voted on by the Legislative Council. In respect of all supplementary expenditure so voted, there shall be introduced into the Legislative Council, at any time before the end of the financial year, a supplementary appropriation bill containing under appropriate heads, the estimated aggregate sums so voted and, as soon as possible after the end of each financial year, there shall be introduced into the Legislative Council a final appropriation bill containing such sums which have not previously been included in any appropriation bill.

(3) That part of any estimate of expenditure laid before the Legislative Council which is statutory expenditure shall not be voted on by the Council, and such expenditure shall, without further authority, be paid out of the public funds of Bechuanaland.

(4) No moneys shall be withdrawn from the public funds of Bechuanaland except upon the authority of a warrant under the hand of the High Commissioner.

(5) Subject to the provisions of subsections (6) and (7) of this section, no such warrant shall be issued unless it is in respect of statutory expenditure or of sums granted by an appropriation law for the financial year during which the withdrawal is to take place.

(6) Where at any time the Legislative Council is dissolved or is in recess, the High Commissioner may authorise, by warrant, the payment out of the public funds of Bechuanaland of such sums as he may deem necessary to meet any unforeseen expenditure for which no provision or no sufficient provision has been made by an appropriation law or by the vote of the Legislative Council. A statement of any sums so authorised shall as soon as practicable be laid before and voted on by the Council and the aggregate sums so voted shall be included, in due course under the appropriate heads, in an appropriation bill.

(7) If, by the first day of a financial year, an appropriation bill for that year has not become law, the High Commissioner may authorise, by warrant, the meeting of such expenditure from the public funds of Bechuanaland as he may consider essential for the continuance of the public services shown in the estimates until the appropriation bill becomes law:

Provided that the expenditure so authorised for any service shall not exceed one quarter of the amount authorised for that service in the preceding year.

PART VIII

MISCELLANEOUS

Concurrent powers

70.—(1) When a holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office it shall be lawful for another person to be appointed substantively to the same office.

(2) When two or more persons are holding the same office by reason of an appointment made pursuant to subsection (1) of this section, then for the purpose of any function conferred upon the holder of that office by this Order the person last appointed to the office shall be deemed to be the holder of the office.

Saving for acts done, existing laws, etc.

71.—(1) The revocation of the instruments referred to in subsection (2) of section 2 of this Order (in this Part of this Order referred to as the "existing instruments") shall not affect anything lawfully done thereunder.

(2) Without prejudice to the generality of subsection (1) of this section—

(*a*) the continued operation of any law, rules of court or other instrument having the force of law and in force in Bechuanaland immediately before the appointed day shall not be affected by reason only of such revocation, but any such law, rules of court or other instrument shall, until amended by the authority having power to amend the same or until adapted or modified under section 74 of this Order, be construed subject to such modifications as may be necessary to bring the same into conformity with the provisions of this Order;

(*b*) the persons who, immediately before the appointed day, held the office of judge of the High Court or any public office constituted by or under the existing instruments, shall continue to hold their respective offices as if they had been appointed by or under this Order;

(*c*) all proceedings commenced or pending immediately before the appointed day before the High Court shall be carried on before the High Court established by this Order.

Principles upon which jurisdiction of courts to be exercised

72. Notwithstanding the revocation of the existing instruments, the jurisdiction of the High Court and courts subordinate to the High Court shall, subject to the provisions of this Order and until any law made under this Order otherwise provides, be exercised in accordance with the laws in force in Bechuanaland immediately prior to the appointed day.

Oaths

73. Any person who has made the oaths or affirmations required to be made by him before entering upon the functions of any office constituted by or under the existing instruments and held by him immediately before the appointed day and who, by virtue of any of the foregoing provisions of this Part of this Order, holds any office constituted by or under this Order shall not be required by any provision of this Order or any other law in force in Bechuanaland to make any oath or affirmation before he first enters upon the functions of that office on or after the appointed day.

Adaptation of existing laws

74.—(1) The High Commissioner may, by order published in the Gazette, at any time within twelve months after the appointed day, provide that any existing law shall be read and construed with such adaptations and modifications as may appear to the High Commissioner to be necessary or expedient for bringing the provisions of that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions; and any existing law shall have effect accordingly from such date as may be specified in the Order, not being a date earlier than the appointed day.

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

Limits of Bechuanaland

75.—(1) The High Commissioner may, by proclamation, with the prior approval of a Secretary of State, define the boundaries of the Bechuanaland Protectorate.

(2) Until other provision is made under the provisions of this section, nothing herein contained shall affect the validity of the Proclamation of the High Commissioner entitled the Bechuanaland Protectorate Boundaries Proclamation made on the twenty-seventh day of September, 1892(a).

Crown land

76.—(1) Subject to the provisions of any law for the time being in force in the Bechuanaland Protectorate and of any Instructions from time to time given to the High Commissioner under the Royal Sign Manual and Signet or through a Secretary of State, the High Commissioner, or any person duly authorised by him in writing in that behalf, may, in Her Majesty's name and on Her behalf, make and execute under the public seal grants and dispositions of land or other immovable property or interests therein, within the Protectorate, which may be lawfully granted or disposed of by Her Majesty.

(2) The Bechuanaland Protectorate (Lands) Order in Council, 1904(b), the Bechuanaland Protectorate (Lands) Order in Council, 1910(c), the Bechuanaland Protectorate (Tati District) Order in Council, 1911(d) and the Bechuanaland Protectorate (Railway Lands) Order in Council, 1922(e), are hereby revoked, subject to anything lawfully done thereunder.

(3) For the removal of doubts, it is hereby declared that, until it is otherwise provided by a Law made under the powers conferred by this Order, the expression "Crown land" in relation to the Bechuanaland Protectorate means all land within the limits of the said Protectorate except—

(i) such land as is declared or recognised as tribal territory by any law for the time being in force;

(ii) the area known as the Barolong Farms and defined in Schedule B to the Bechuanaland Protectorate Boundaries Proclamation;

(iii) any land which is the subject of a grant of ownership duly made by or on behalf of Her Majesty.

(a) Bechuanaland Laws (Rev. Ed. 1959) Cap. 37.
(b) S.R. & O. 1904/969 (Rev. VIII, p. 356: 1904, p. 184).
(c) S.R. & O. 1910/68 (Rev. VIII, p. 357: 1910, p. 117).
(d) S.R. & O. 1911/437 (Rev. VIII, p. 358: 1911, p. 107).
(e) S.R. & O. 1922/571 (Rev. VIII, p. 359: 1922, p. 285).

Application of certain enactments to Bechuanaland

77.—(1) The enactments specified in the Fifth Schedule to this Order, being certain of the enactments described in the First Schedule to the Foreign Jurisdiction Act, 1890, shall apply to the Bechuanaland Protectorate as if the Protectorate were a British colony or possession.

(2) The South African Protectorates (Extension of Imperial Acts) Order in Council, 1910(a), is hereby revoked in its application to the Bechuanaland Protectorate.

Powers reserved to Her Majesty

78.—(1) Her Majesty hereby reserves to Herself, power, with the advice of Her Privy Council, to revoke or amend this Order.

(2) Nothing in this Order shall affect the power of Her Majesty in Council to make laws from time to time for the peace, order and good government of Bechuanaland.

W. G. Agnew.

FIRST SCHEDULE

Section 10

OATH OF A MEMBER OF EXECUTIVE COUNCIL

"I, ..., do swear (or do solemnly affirm) that except with the authority of the High Commissioner or the Resident Commissioner, I will not directly or indirectly reveal the business or proceedings of the Executive Council or the nature or the contents of any document communicated to me as a Member of the Council or any matter coming to my knowledge in my capacity as a Member of the Council and that in all things I will be a true and faithful Councillor."

SECOND SCHEDULE

Section 38

OATH OF A MEMBER OF THE LEGISLATIVE COUNCIL

"I, ..., do swear (or do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law."

THIRD SCHEDULE

Section 55

Matters in respect of which certain Judges of the High Court shall have special jurisdiction.

(A) In criminal matters—

(*a*) the powers of review;

(*b*) applications for bail under Part VIII of the Criminal Procedure and Evidence Proclamations of Basutoland, the Bechuanaland Protectorate or Swaziland, as the case may be.

(B) In civil matters—

(*a*) applications to sue by edictal citation or to found jurisdiction by attachment;

(*b*) applications for the appointment of a curator of any property;

(*c*) applications for arrest and interdict of persons and things;

(*d*) applications for provisional sentences;

(*e*) applications for leave of a Judge for the removal to or the institution in the High Court of civil causes or actions otherwise within the jurisdiction of a subordinate court to which Africans only are parties and in which the amount claimed or the value of the subject matter exceeds five hundred pounds;

(*f*) applications for the surrender or sequestration of insolvent estates;

(*g*) where any party is in default or where consent to judgment is filed by the defending party;

(*h*) applications for admission and enrolment by advocates and attorneys.

(a) S.R. & O. 1910/881 (Rev. VIII, p. 369: 1910, p. 114).

FOURTH SCHEDULE

Section 56 (2) (*e*)

Name of Electoral District	Description	No. of Members to be returned to Council
Northern Division		
1. Bamangwato ...	The Bamangwato Tribal Territory.	7
2. Batawana ...	The Batawana Tribal Territory.	3
3. Chobe	The Chobe District.	1
4. Francistown ...	The Francistown District.	2
5. Ghanzi	The Ghanzi District.	1
Southern Division		
6. Bakhatla	The Bakhatla Tribal Territory.	2
7. Bakwena	The Bakwena Tribal Territory.	3
8. Bamalete	The Bamalete Tribal Territory.	2
9. Bangwaketsi ...	The Bangwaketsi Tribal Territory.	4
10. Barolong	The area known as the " Barolong Farms ".	2
11. Batlokwa ...	The Batlokwa Tribal Territory.	2
12. Gaberones, Lobatsi and Tuli Blocks	The areas known as the Gaberones, Lobatsi and Tuli Blocks.	1
13. Kgalagadi ...	The Kgalagadi District.	2

FIFTH SCHEDULE

Section 77

Evidence Act, 1851(**a**), sections seven and eleven.
Foreign Tribunals Evidence Act, 1856(**b**).
Evidence by Commission Act, 1859(**c**).
British Law Ascertainment Act, 1859(**d**).
Foreign Law Ascertainment Act, 1861(**e**).
Evidence by Commission Act, 1885(**f**).

EXPLANATORY NOTE

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

This Order establishes an Executive Council and a Legislative Council for Bechuanaland and makes provision for a new Constitution for the Territory.

(**a**) 14 & 15 Vict. c. 99. (**b**) 19 & 20 Vict. c. 113. (**c**) 22 Vict. c. 20.
(**d**) 22 & 23 Vict. c. 63. (**e**) 24 & 25 Vict. c. 11. (**f**) 48 & 49 Vict. c. 74.