1965 No. 135

AFRICA

The Gambia Independence Order 1965

Made - - - -	*29th January* 1965
Laid before Parliament	*4th February* 1965
Coming into Operation	*Immediately before 18th February* 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 vested in Her by the British Settlements Acts 1887 and 1945(a), the Foreign Jurisdiction Act 1890(b) and the Gambia Independence Act 1964(c) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, commencement and construction.

1.—(1) This Order may be cited as the Gambia Independence Order 1965.

(2) This Order shall come into operation immediately before 18th February 1965:

Provided that where the Governor-General has power by or under this Order to make any appointment or make any order (other than an order under section 4(3) of this Order relating to any Act of the Parliament of the United Kingdom or any Order of Her Majesty in Council) or to do any other thing for the purposes of this Order, that power may be exercised by the Governor and Commander-in-Chief of the Colony and Protectorate of The Gambia at any time after 4th February 1965 to such extent as may, in his opinion, be necessary or expedient to enable the Constitution of The Gambia established by this Order and set out in Schedule 3 to this Order to function as from 18th February 1965.

(3) Save where the context otherwise requires, expressions used in sections 1 to 15 (inclusive) of this Order have the same meaning as in the said Constitution and the provisions of section 116 of that Constitution shall apply for the purpose of interpreting those sections as they apply for the purpose of interpreting that Constitution.

(4) References in Chapter VII of the said Constitution to any question as to the interpretation of that Constitution shall be construed as including references to any question as to the interpretation of this Order.

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7. (b) 53 & 54 Vict. c. 37.
(c) 1964 c. 93.

Revocation.

2. The Orders in Council specified in Schedule 1 to this Order (hereinafter referred to as " the existing Orders ") are revoked.

Establishment of Constitution.

3. Subject to the provisions of this Order, the Constitution set out in Schedule 3 to this Order (hereinafter referred to as " the Constitution ") shall come into effect in The Gambia at the commencement of this Order.

Existing laws.

4.—(1) The existing laws shall, as from the commencement of this Order, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Gambia Independence Act 1964 and this Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an 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 (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Gambia Independence Act 1964 and this Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The Governor-General may by order made at any time before 18th February 1966 make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Gambia Independence Act 1964 and this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) The provisions of this section shall be without prejudice to any powers conferred by this Order or by any other law 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 " existing law " means any Ordinance, law, rule, regulation, order or other instrument made in pursuance of (or continuing in operation under) the existing Orders, and having effect as part of the law of The Gambia or of any part thereof immediately before the commencement of this Order or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council so having effect.

Existing officers.

5.—(1) Where any office has been established by or under the existing Orders or any existing law and the Constitution establishes or provides for the establishment of a similar or an equivalent office, any person who, immediately before the commencement of this Order, holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed as from the commencement of this Order to have been appointed, elected or otherwise selected to or to act in the latter office in accordance with the provisions of the Constitution:

Provided that any person who under the existing Orders or any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate

his office at the expiration of that period or on the attainment of that age.

(2) Any person who, by virtue of this section, is deemed as from the commencement of this Order to have been appointed, elected or otherwise selected to hold or act in any office shall also be deemed to have taken and subscribed any necessary oath under the Constitution.

(3) (*a*) The person who holds the office of Deputy Governor on 17th February 1965 shall be entitled to the leave, beginning on 18th February 1965, for which, under the terms of service applicable to him on 17th February 1965, he is then eligible and to any additional leave for which he is eligible under the law with respect to pensions benefits in respect of his service as a public officer, and while on such leave shall be regarded as still holding an office in the public service:

Provided that, if the said person is charged, as from 18th February 1965, with the performance of special duties in respect of the government of The Gambia, then—

(i) he shall, during the period for which he is so charged, be regarded as still holding an office in the public service; and

(ii) the leave to which he is entitled under this subsection shall include the leave for which, under the terms of service aforesaid, he is eligible in respect of that period and shall begin at the expiration of that period.

(*b*) In this subsection "pensions benefits" has the meaning assigned to that expression in section 112 of the Constitution.

(4) A person who is a member of the Public Service Commission established by the existing Orders may, notwithstanding that, by reason of his having held or been nominated for election to any office before 18th February 1965, he is disqualified to be appointed as a member of the Public Service Commission established by the Constitution, continue in office under this section as a member of that Commission and be re-appointed thereto upon the expiration of his term of office.

(5) The provisions of this section shall be without prejudice to the provisions of section 6 of this Order.

(6) In this section "existing law" means such a law as is referred to in section 4(5) of this Order.

Parliament.

6.—(1) The House of Representatives constituted by the existing Orders (hereinafter referred to as "the existing House of Representatives") shall be the House of Representatives during the period beginning with the commencement of this Order and ending with the first dissolution of Parliament thereafter.

(2) The electoral districts established immediately before the commencement of this Order in pursuance of section 37(*d*) of the Gambia (Constitution) Order in Council 1962(a) for the purposes of elections of the elected members of the existing House of Representatives referred to in paragraphs (*a*) and (*b*) of section 28(2) of that Order shall be deemed as from the commencement of this Order and until other provision is made in that behalf in accordance with this Order to be the constituencies into which The Gambia is divided in pursuance of

(a) S.I. 1962/826 (1962 I, p. 876).

section 38 of the Constitution; and the persons who, immediately before the commencement of this Order, are the elected members of the existing House of Representatives representing those electoral districts shall be deemed as from the commencement of this Order to have been elected to the House of Representatives in accordance with the provisions of this Order as the elected members representing the respective constituencies corresponding to those electoral districts and shall hold their seats in the House of Representatives in accordance with those provisions.

(3) The registers of voters having effect immediately before the commencement of this Order for the purposes of elections of the elected members of the existing House of Representatives referred to in paragraphs (*a*) and (*b*) of section 28(2) of the Gambia (Constitution) Order in Council 1962 shall, as from the commencement of this Order, have effect as if they had been compiled in pursuance of this Order.

(4) The persons who, immediately before the commencement of this Order, are the elected members of the existing House of Representatives referred to in section 28(2)(*c*) of the Gambia (Constitution) Order in Council 1962 and the persons who, immediately before the commencement of this Order, are the nominated members of the existing House of Representatives shall, as from the commencement of this Order, be deemed respectively to have been elected or, as the case may be, appointed as the Chiefs' representative members and the nominated members of the House of Representatives in accordance with the provisions of this Order and shall hold their seats in the House of Representatives in accordance with those provisions.

(5) The person who, immediately before the commencement of this Order, is the Speaker of the existing House of Representatives shall be deemed as from the commencement of this Order to have been elected as Speaker of the House of Representatives in accordance with the provisions of this Order and shall hold office in accordance with those provisions.

(6) Until Parliament otherwise provides, any person who holds or acts in any office the holding of which would, under the existing Orders, have disqualified him for membership of the existing House of Representatives shall be disqualified to be nominated for election as a voting member or appointed as a nominated member of the House of Representatives as though provision in that behalf had been made in pursuance of section 35(6) of the Constitution.

(7) The Standing Orders of the existing House of Representatives as in force immediately before the commencement of this Order shall, until it is otherwise provided by the House of Representatives under section 58(1) of the Constitution, be the Standing Orders of the House but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(8) Subject to the provisions of sections 60 and 61 of the Constitution, Parliament shall, unless sooner dissolved, stand dissolved on the date on which the existing House of Representatives would have been required by the existing Orders to be dissolved.

(9) The Governor-General may, at any time after the commencement of this Order, appoint a Constituency Boundaries Commission in

accordance with the provisions of the Constitution to review the boundaries of the constituencies into which The Gambia is divided and he shall in any event appoint such a Commission for that purpose in time to enable it to complete such a review and to make any order that may be consequential thereon before the date specified in subsection (8) of this section.

(10) The Commission that is appointed in pursuance of subsection (9) of this section shall be deemed to have been appointed in the circumstances specified in section 38(3)(*c*) of the Constitution.

(11) Any person who, by virtue of this section, is deemed as from the commencement of this Order to have been elected as Speaker or any other member of the House of Representatives shall be deemed to have taken and subscribed any necessary oath under the Constitution.

Transitional provisions relating to Attorney-General and Director of Public Prosecutions.

7.—(1) Notwithstanding the provisions of section 64 of the Constitution, until Parliament or, subject to the provisions of any Act of Parliament, the Governor-General, acting in accordance with the advice of the Prime Minister, otherwise provides, the office of Attorney-General shall be a public office.

(2) Notwithstanding the provisions of section 76(1) of the Constitution, no appointment shall be made to the office of Director of Public Prosecutions so long as the office of Attorney-General remains a public office.

(3) So long as the office of Attorney-General remains a public office subsections (3) and (4) of section 64 of the Constitution shall not have effect and, subject to the provisions of subsection (4) of this section, the following provisions of the Constitution shall have effect as if references therein to the Director of Public Prosecutions were references to the Attorney-General, that is to say, sections 55, 76 (other than subsection (1) thereof), 85(5), 106(3)(*b*), 107, 113(3) and 116(7)(*a*).

(4) In their application, by virtue of this section, in relation to the Attorney-General, subsections (1) and (2) of section 107 of the Constitution shall have effect as if references therein to the Public Service Commission were references to the Prime Minister:

Provided that, before tendering advice to the Governor-General for the purposes of the said subsection (1) or subsection (2), the Prime Minister shall consult the Public Service Commission.

(5) Until Parliament otherwise provides, the Attorney-General shall, so long as his office remains a public office, be an *ex officio* member of the House of Representatives but he shall not be entitled to vote therein.

(6) When the office of Attorney-General ceases to be a public office, the person who immediately prior thereto held that office shall, for the purposes of any law with respect to pensions benefits (which expression shall in this section have the meaning attributed to it in section 112 of the Constitution), be entitled to be treated as if his office had been abolished.

(7) In relation to the appointment of any person, at any time before 18th February 1970, in exercise of the powers conferred by subsection (1) or subsection (2) of section 107 of the Constitution and in relation to any person who has been so appointed, the reference in subsection (3) of the said section 107 to a period of seven years shall be construed as if it were a reference to a period of five years:

Provided that this subsection shall not have effect in relation to the appointment of any person in any case in which, by virtue of subsection (4) of this section, the said powers are exercisable by the Governor-General, acting in accordance with the advice of the Prime Minister, unless the Public Service Commission concurs in its having effect in relation to that appointment.

Emergency Powers Orders in Council 1939 to 1964.

8. The Emergency Powers Orders in Council 1939(a) to 1964(b) shall cease to have effect as part of the law of The Gambia on 18th August 1966 or such earlier date as Parliament may prescribe:

Provided that sections 6(2)(*d*) and 8 of the Emergency Powers Order in Council 1939 shall cease to have effect as part of the law of The Gambia as from the commencement of this Order.

Appeals in respect of certain decisions affecting pensions benefits.

9.—(1) The provisions of this section shall have effect for the purpose of enabling an officer to whom this section applies or his personal representatives to appeal against any of the following decisions, that is to say:—

(*a*) a decision of the Public Service Commission to give such concurrence as is required by section 113(1) or section 113(2) of the Constitution in relation to the refusal, withholding, reduction in amount or suspending of any pensions benefits in respect of such an officer's service as a public officer;

(*b*) a decision of any authority to remove such an officer from office if the consequence of the removal is that any pensions benefits cannot be granted in respect of the officer's service as a public officer; or

(*c*) a decision of any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is, or in the opinion of the authority might be, to reduce the amount of any pensions benefits that may be granted in respect of the officer's service as a public officer.

(2) Where any such decision as is referred to in subsection (1) of this section is taken by any authority, the authority shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made within the time stated in the notice, the authority shall notify the Prime Minister in writing of that application and the Prime Minister shall thereupon appoint an Appeals Board consisting of—

(*a*) one member selected by the Prime Minister;

(*b*) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant; and

(*c*) one member selected by the two other members jointly (or, in default of agreement between those members, by the Judicial Service Commission) who shall be the Chairman of the Board.

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

(b) S.I. 1956/731, 1963/88, 1633, 1964/267, 1199 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084; 1964 I, p. 467; II, p. 2781).

(4) The Appeals Board shall enquire into the facts of the case, and for that purpose—

(*a*) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing;

(*b*) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and

(*c*) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When the Appeals Board has completed its consideration of the case, then—

(*a*) if the decision that is the subject of the reference to the Board is such a decision as is mentioned in paragraph (*a*) of subsection (1) of this section, the Board shall advise the Public Service Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice; and

(*b*) if the decision that is the subject of the reference to the Board is such a decision as is referred to in paragraph (*b*) or paragraph (*c*) of subsection (1) of this section, the Board shall not have power to advise the authority concerned to affirm, reverse or modify the decision but—

(i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the pensions benefits that, under any law, might have been granted in respect of his service as a public officer if he had retired voluntarily at the date of his removal and may direct that any law with respect to pensions benefits shall in any other respect that the Board may specify have effect as if he had so retired; and

(ii) where some other disciplinary action has been taken in relation to the officer the Board may direct that, on the grant of any pensions benefits under any law in respect of the officer's service as a public officer, those benefits shall be increased by such amount or shall be calculated in such manner as the Board may specify in order to offset all or any part of the reduction in the amount of those benefits that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary action,

and any direction given by the Board under this paragraph shall be complied with notwithstanding the provisions of any other law.

(6) In this section—

"pensions benefits" has the meaning assigned to that expression in section 112 of the Constitution; and

"legal representative" means a person entitled to practise as a barrister or as a solicitor in The Gambia.

(7) This section applies to any officer who is the holder of a pensionable office and who is designated under the Overseas Service Aid Scheme.

Compulsory retirement to facilitate appointment of local candidates.

10. (1) If the Prime Minister so requests, the authorities having power to make appointments in any branch of the public service shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in, that branch than there are vacancies in that branch that could appropriately be filled by such local candidates; those authorities, if satisfied that such is the case, shall, if so requested by the Prime Minister, select officers in that branch to whom this section applies and whose retirement would, in the opinion of those authorities, cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the Prime Minister of the number of officers so selected; if the Prime Minister specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), those authorities shall nominate that number of officers from among the officers so selected and require them by notice in writing to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) Any notice given under subsection (1) of this section requiring any officer to retire from the public service shall—

(*a*) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify the date on which he shall so retire which shall be not earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, not earlier than when it would otherwise expire; and

(*b*) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives the notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that the officer may agree to the notice specifying an earlier date or, as the case may be, a shorter period.

(3) This section applies to any officer who holds a pensionable office and—

(*a*) is designated under the Overseas Service Aid Scheme; or

(*b*) is an overseas officer who, after the commencement of this Order, is appointed to any public office (otherwise than on promotion or transfer from another public office) and who is notified at the time of his appointment that this section will apply to him.

(4) In this section "overseas officer" means an officer in the public rvice who is, either individually or as a member of a class, declared by the appropriate Commission to be an overseas officer, and "the appropriate Commission" means—

(*a*) in relation to an officer who can be removed from office by the Judicial Service Commission, that Commission; and

(*b*) in any other case, the Public Service Commission.

Transitional provisions relating to functions of existing public service authorities.

11.—(1) Any power that, immediately before the commencement of this Order, is vested in an existing public service authority (that is to say, the Governor, acting on the advice of the Public Service Commission established by the existing Orders, or the Commissioner of Police) and that, under the existing Orders is then delegated to some other person or authority shall, as from the commencement of this Order and so far as is consistent with the provisions of the Constitution, be deemed to have been delegated to such person or authority in accordance with those provisions.

(2) Any matter that, immediately before the commencement of this Order, is pending before an existing public service authority shall, so

far as is consistent with the provisions of the Constitution, be continued before the corresponding public service authority established by the Constitution, and any matter that, immediately before the commencement of this Order, is pending before a person or authority to whom power to deal with that matter has been delegated by an existing public service authority shall, so far as is consistent with the provisions of the Constitution, be continued before the person or authority to whom that power was delegated:

Provided that, where the hearing of a disciplinary proceeding has begun but has not been completed immediately before the commencement of this Order, the continued hearing shall not be held before any person unless the hearing that has already taken place was also held before him; and where, by virtue of this proviso, the hearing cannot be continued it shall be re-commenced.

Legal proceedings.

12.—(1) All proceedings that, immediately before the commencement of this Order, are pending before any court established by or under the existing Orders or by or under any law continuing in operation under the existing Orders may be continued and concluded after the commencement of this Order before the corresponding court established by this Order or by or under an existing law.

(2) Subject to the provisions of section 13(3) of this Order, any decision given before the commencement of this Order by any such court as aforesaid shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the corresponding court established by this Order or by or under an existing law.

(3) In this section "existing law" means such a law as is referred to in section 4(5) of this Order.

Appeals to Her Majesty in Council and to Judicial Committee.

13.—(1) Subject to the provisions of subsection (3) of this section, no appeal shall lie to Her Majesty in Council, whether as of right or by leave either of Her Majesty in Council or of any court established for The Gambia, from any decision given in any civil or criminal matter by any such court.

(2) The Judicial Committee shall have and exercise the jurisdiction in respect of appeals from the Court of Appeal and in respect of proceedings concerning judges of the Court of Appeal and of the Supreme Court that, in the law of The Gambia, is conferred on the Committee by Chapter VII of the Constitution, and the provisions of the Judicial Committee Act 1833(a) and of any rules made thereunder from time to time shall, in so far as they relate to the powers of the Committee and the procedure to be adopted with respect to proceedings before the Committee, apply in relation to proceedings before the Committee under the said Chapter VII and for that purpose shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary by reason of the nature of those proceedings or otherwise to bring them into conformity with the provisions of this Order.

(3) Any appeal or petition for special leave to appeal to Her Majesty in Council from a decision given by the Court of Appeal established by the existing Orders, being an appeal or a petition that is pending immediately before the commencement of this Order and—

(*a*) in the case of an appeal, is one in which the records have been registered in the Office of the Privy Council before the commencement of this Order; or

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

(*b*) in the case of a petition, is one that has been filed in that Office before the commencement of this Order,

shall continue to lie to Her Majesty in Council and may be prosecuted and disposed of in accordance with the law regulating the procedure in such appeals that is in force immediately before the commencement of this Order.

(4) Any Order made by Her Majesty in Council on any appeal that lies to Her Majesty in Council by virtue of subsection (3) of this section or on any appeal that has been made to Her Majesty in Council at any time before the commencement of this Order shall be enforced in accordance with the law regulating the enforcement of such Orders that is in force immediately before the commencement of this Order.

Oath to be taken by Governor-General.

14. Until Parliament otherwise provides, the oath for the due execution of the office of Governor-General shall be in the form set out in Schedule 2 to this Order.

Alteration of the Gambia Independence Act 1964 and this Order.

15.—(1) Parliament may alter any of the provisions of the Gambia Independence Act 1964 or of this Order (in so far as those provisions form part of the law of The Gambia) in the same manner as it may alter any of the provisions of the Constitution:

Provided that sections 3, 6, 7, 9, 10, 11, 12, 13 and this section of this Order may be altered by Parliament only in the same manner as the provisions of the Constitution that are specified in section 48(3) of the Constitution.

(2) Subsection (8) of section 48 of the Constitution shall apply for the purpose of construing references in this section to any provision of the Gambia Independence Act 1964 or this Order and to the alteration of any such provision as it applies for the purpose of construing references in the said section 48 to the Constitution and to the alteration thereof.

W. G. Agnew.

SCHEDULE 1 TO THE ORDER

Section 2.

EXISTING ORDERS REVOKED BY THIS ORDER

Titles of Orders	*References*
The Gambia Court of Appeal Order in Council 1961.	S.I. 1961/743 (1961 I, p. 1542).
The Gambia (Constitution) Order in Council 1962.	S.I. 1962/826 (1962 I, p. 876).
The Gambia (Validation) Order in Council 1963.	S.I. 1963/1051 (1963 II, p. 1811).
The Gambia (Constitution) (Amendment) Order in Council 1963.	S.I. 1963/1629 (1963 III, p. 3034).
The Gambia (Constitution) (Amendment) Order 1964.	S.I. 1964/1190 (1964 II, p. 2766).

SCHEDULE 2 TO THE ORDER

Section 14.

OATH FOR THE DUE EXECUTION OF THE OFFICE OF GOVERNOR-GENERAL

I, ..., do swear [*or* solemnly affirm] that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of Governor-General of The Gambia. So help me God. [*To be omitted in affirmation.*]

Section 3

SCHEDULE 3 TO THE ORDER

THE CONSTITUTION OF THE GAMBIA

ARRANGEMENT OF SECTIONS

CHAPTER I

CITIZENSHIP

Section

1. Persons who become citizens on 18th February 1965.
2. Persons entitled to be registered as citizens by virtue of connection with The Gambia before 18th February 1965.
3. Persons born in The Gambia after 17th February 1965.
4. Persons born outside The Gambia after 17th February 1965.
5. Marriage to citizen of The Gambia.
6. Commonwealth citizenship.
7. Powers of Parliament.
8. Deprivation of citizenship on acquisition or exercise of rights of other citizenship.
9. Procedure for deprivation of citizenship.
10. Interpretation.

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

11. Fundamental rights and freedoms.
12. Protection of right to life.
13. Protection of right to personal liberty.
14. Protection from slavery and forced labour.
15. Protection from inhuman treatment.
16. Protection from deprivation of property.
17. Protection from arbitrary search or entry.
18. Provisions to secure protection of law.
19. Protection of freedom of conscience.
20. Protection of freedom of expression.
21. Protection of freedom of assembly and association.
22. Protection of freedom of movement.
23. Protection from discrimination on the grounds of race, etc.
24. Derogations from fundamental rights and freedoms under emergency powers.
25. Protection of persons detained under emergency laws.
26. Enforcement of protective provisions.
27. Declaration of emergency.
28. Interpretation and savings.

CHAPTER III

THE GOVERNOR-GENERAL

29. Establishment of office of Governor-General.
30. Discharge of Governor-General's functions during vacancy, etc.
31. Oaths to be taken by Governor-General.

CHAPTER IV

PARLIAMENT

PART 1

Composition of Parliament

Section

32. Establishment of Parliament.
33. House of Representatives.
34. Qualifications for membership of House of Representatives.
35. Disqualifications for membership of House of Representatives.
36. Election of elected members.
37. Constituency Boundaries Commission.
38. Constituencies.
39. Chiefs' representative members.
40. Supervisor of Elections.
41. Nominated members.
42. Tenure of seats of members of House of Representatives.
43. Speaker.
44. Deputy Speaker.
45. Clerk to House of Representatives and his staff.
46. Decision of questions as to membership of House of Representatives.

PART 2

Legislation and procedure in House of Representatives

47. Power to make laws.
48. Alteration of this Constitution.
49. Office of Chief.
50. Oath to be taken by members of House of Representatives.
51. Presiding in House of Representatives.
52. Quorum in House of Representatives.
53. Use of English in House of Representatives.
54. Voting in House of Representatives.
55. Unqualified persons sitting or voting.
56. Mode of exercise of legislative power.
57. Restrictions with regard to certain financial measures.
58. Regulation of procedure in House of Representatives, etc.

PART 3

Summoning, prorogation and dissolution

59. Sessions of Parliament, etc.
60. Prorogation and dissolution of Parliament.
61. General elections.

CHAPTER V
THE EXECUTIVE

Section

62. Exercise of executive authority of The Gambia.
63. Ministers of Government of The Gambia.
64. Attorney-General.
65. Establishment of Cabinet of Ministers.
66. Collective responsibility.
67. Allocation of portfolios to Ministers.
68. Performance of functions of Prime Minister during absence or illness.
69. Exercise of Governor-General's functions.
70. Governor-General to be informed concerning matters of government.
71. Parliamentary Secretaries.
72. Oaths to be taken by Ministers, etc.
73. Permanent secretaries.
74. Secretary to the Cabinet.
75. Constitution of offices, etc.
76. Director of Public Prosecutions.
77. Prerogative of mercy.
78. Advisory Committee on Prerogative of Mercy.
79. Functions of Advisory Committee.

CHAPTER VI
FINANCE

80. Consolidated Revenue Fund.
81. Withdrawals from Consolidated Revenue Fund or other public funds.
82. Authorisation of expenditure from Consolidated Revenue Fund by appropriation.
83. Authorisation of expenditure in advance of appropriation.
84. Contingencies Fund.
85. Remuneration of certain officers.
86. Public debt.
87. Director of Audit.

CHAPTER VII
THE JUDICATURE
PART 1
The Supreme Court

88. Establishment of Supreme Court.
89. Appointment of judges of Supreme Court.
90. Tenure of office of judges of Supreme Court.
91. Oaths to be taken by judges of Supreme Court.
92. Reference to Supreme Court in cases involving interpretation of Constitution.

PART 2

The Court of Appeal

Section

93. Establishment of Court of Appeal.
94. Appointment of judges of Court of Appeal.
95. Tenure of office of judges of Court of Appeal.
96. Oaths to be taken by judges of Court of Appeal.
97. Number of judges.

PART 3

Subordinate courts and courts-martial

98. Establishment of other courts.

PART 4

Appeals

99. Appeals on constitutional questions and questions relating to fundamental rights.
100. Other appeals from Supreme Court and Court of Appeal.
101. Appeals from subordinate courts and courts-martial.
102. Supplementary.

PART 5

Judicial Service Commission

103. Judicial Service Commission.
104. Appointment, etc. of judicial officers.

CHAPTER VIII

THE PUBLIC SERVICE

105. Public Service Commission.
106. Appointment, etc. of public officers.
107. Director of Public Prosecutions.
108. Director of Audit.
109. Principal representatives of The Gambia abroad.
110. Permanent secretaries, Secretary to the Cabinet and Establishment Secretary.
111. Police Force.
112. Pensions laws and protection of pensions rights.
113. Power to withhold pensions, etc.

CHAPTER IX

MISCELLANEOUS

114. Resignations.
115. Re-appointments and concurrent appointments.
116. Interpretation.

THE SCHEDULE TO THE CONSTITUTION.—Oath for Due Execution of Office of Judge of Court of Appeal, Judge of Supreme Court, Member of Constituency Boundaries Commission, Member of Public Service Commission, Member of Judicial Service Commission and Supervisor of Elections.

CHAPTER I

CITIZENSHIP

Persons who become citizens on 18th February 1965.

1.—(1) Every person who, having been born in The Gambia, is on 17th February 1965 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of The Gambia on 18th February 1965:

Provided that a person shall not become a citizen of The Gambia by virtue of this subsection if neither of his parents nor any of his grandparents was born in The Gambia.

(2) Every person who, on 17th February 1965, is a citizen of the United Kingdom and Colonies—

(*a*) having become such a citizen under the British Nationality Act 1948(a) by virtue of his having been naturalised in The Gambia as a British subject before that Act came into force; or

(*b*) having become such a citizen by virtue of his having been naturalised or registered in The Gambia under that Act,

shall become a citizen of The Gambia on 18th February 1965.

(3) Every person who, having been born outside The Gambia, is on 17th February 1965 a citizen of the United Kingdom and Colonies or a British protected person shall, if his father becomes, or would but for his death have become, a citizen of The Gambia by virtue of subsection (1) or subsection (2) of this section, become a citizen of The Gambia on 18th February 1965.

Persons entitled to be registered as citizens by virtue of connection with The Gambia before 18th February 1965.

2.—(1) Any person who, but for the proviso to subsection (1) of section 1 of this Constitution, would be a citizen of The Gambia by virtue of that subsection shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(2) Any woman who, on 17th February 1965, has been married to a person—

(*a*) who becomes a citizen of The Gambia by virtue of section 1 of this Constitution; or

(*b*) who, having died before 18th February 1965, would, but for his death, have become a citizen of The Gambia by virtue of that section

but whose marriage has been terminated by death or dissolution before 18th February 1965 shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

(3) Any woman who, on 17th February 1965, has been married to a person who becomes, or would but for his death have become, entitled to be registered as a citizen of The Gambia under subsection

(a) 11 & 12 Geo. 6. c. 56.

(1) of this section but whose marriage has been terminated by death or dissolution before 18th February 1965 or is so terminated on or after that date but before 18th February 1967 and before that person exercises his right to be registered as a citizen of The Gambia under subsection (1) of this section, shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

(4) In this section " the specified date " means—

(*a*) in relation to a person to whom subsection (1) of this section refers, 18th February 1967 ; and

(*b*) in relation to a woman to whom subsection (3) of this section refers, 18th February 1967 or the expiration of a period of two years commencing with the termination of her marriage (whichever is the later),

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

Persons born in The Gambia after 17th February 1965.

3. Every person born in The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth:

Provided that a person shall not become a citizen of The Gambia by virtue of this section if at the time of his birth—

(*a*) neither of his parents is a citizen of The Gambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to The Gambia ; or

(*b*) his father is a citizen of a country with which The Gambia is at war and the birth occurs in a place then under occupation by that country.

Persons born outside The Gambia after 17th February 1965.

4. A person born outside The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth if, at that date, his father is a citizen of The Gambia otherwise than by virtue of this section or section 1(3) of this Constitution.

Marriage to citizen of The Gambia.

5. Any woman who is married to a citizen of The Gambia or who has been married to a man who was, during the subsistence of the marriage, a citizen of The Gambia shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

Commonwealth citizenship.

6.—(1) Every person who, under this Constitution or any Act of Parliament, is a citizen of The Gambia or who, under any enactment for the time being in force in any country to which this section applies, is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948, or who continues to be a British subject under section 2 of that Act, shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana,

Malaysia, Nigeria, the Republic of Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Kenya, Malawi, Malta, Zambia and Southern Rhodesia.

Powers of Parliament.

7.—(1) Parliament may make provision for the acquisition of citizenship of The Gambia by persons who are not eligible or who are no longer eligible to become citizens of The Gambia under the provisions of this Chapter.

(2) Parliament may make provision authorising the Minister to deprive of his citizenship of The Gambia any person who is a citizen of The Gambia otherwise than by virtue of section 1, section 3 or section 4 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of The Gambia.

Deprivation of citizenship on acquisition or exercise of rights of other citizenship.

8.—(1) If the Minister is satisfied that any citizen of The Gambia has at any time after 17th February 1965 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country other than The Gambia, the Minister may by order deprive that person of his citizenship.

(2) If the Minister is satisfied that any citizen of The Gambia has at any time after 17th February 1965 voluntarily claimed and exercised in a country other than The Gambia any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Minister may by order deprive that person of his citizenship.

Procedure for deprivation of citizenship.

9.—(1) Before any order is made under section 8 of this Constitution or under a law made in pursuance of section 7(2) of this Constitution depriving a person of his citizenship of The Gambia, the Minister shall give that person notice in writing informing him of the ground on which the order is proposed to be made and of his right to have his case referred to a committee of enquiry.

(2) If any person to whom notice is given applies to have his case referred to a committee of enquiry the Minister shall, and in any other case the Minister may, refer the case to a committee of enquiry which he shall appoint for that purpose and which shall consist of a chairman who shall be selected by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in The Gambia and two other members who shall be selected by the Minister.

(3) Where any case is referred to a committee under this section, the committee shall hold an enquiry in such manner as the Minister may direct and submit its report to the Minister; and the Minister shall have regard to the report in determining whether to make the order but shall not be obliged to act in accordance with any recommendation contained in the report.

Interpretation.

10.—(1) In this Chapter—

"British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948; and

"the Minister" means the Minister who is for the time being responsible for matters relating to citizenship of The Gambia.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 18th February 1965 and the birth occurred after 17th February 1965 the national status that the father would have had if he had died on 18th February 1965 shall be deemed to be his national status at the time of his death.

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

Fundamental rights and freedoms.

11. Whereas every person in The Gambia is entitled to the fundamental rights and freedoms, 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 person does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

12.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia 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 right to personal liberty.

13.—(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 The Gambia or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of the Supreme Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;

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

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

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

(*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 The Gambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from The Gambia or for the purpose of restricting that person while he is being conveyed through The Gambia 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 The Gambia, 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 with a view to the making of any such order or relating to such an order after it has been made, 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 The Gambia in which, in consequence of any such order, his presence would otherwise be unlawful.

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

(3) Any person who is arrested or detained—

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

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

and who is not released, shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(*b*) of this section 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.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

Protection from slavery and forced labour.

14.—(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.

15.—(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 The Gambia on 17th February 1965.

Protection from deprivation of property.

16.—(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 for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the Supreme Court for—

(*a*) 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

(*b*) the purpose of obtaining prompt payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (*a*) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the Supreme Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court or any other tribunal or authority in relation to the jurisdiction conferred on the Supreme Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the Supreme Court or applications to the other tribunal or authority may be brought).

(4) 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 The Gambia.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) 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.

(6) 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, interest or right—

(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 of The Gambia;

(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 any of the following property (including an interest in or right over property), that is to say:—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt 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.

(7) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition 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 monies have been invested other than monies provided by Parliament.

Protection from arbitrary search or entry.

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

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

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources or the development or utilisation of any 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 The Gambia, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to 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.

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

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

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

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

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

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

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

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

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

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

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

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

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

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

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

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

(10) Nothing in subsection (9) of this section 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 by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of 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; or

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(*b*) may by law be empowered or required to do in the interests of defence, public safety or public order.

(11) 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 in proceedings against a member of an African race for an offence committed within the former Protectorate, being proceedings before a court having jurisdiction only in the former Protectorate or before another court on appeal from such a court;

(*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; or

(*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.

(12) In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (*d*) and (*e*) of subsection (2) 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.

(13) In this section "criminal offence" means a criminal offence under the law of The Gambia.

Protection of freedom of conscience.

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

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

(3) 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 places of education which it wholly maintains or in the course of any education which it otherwise provides.

(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.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of freedom of expression.

20.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including 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 ;

(*b*) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating 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.

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

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

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

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

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

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

Protection of freedom of movement.

22.—(1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout The Gambia, the right to reside in any part of The Gambia, the right to enter The Gambia, the right to leave The Gambia and immunity from expulsion from The Gambia.

(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 on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia that are reasonably required in the interests of defence, public safety or public order;

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

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

(*d*) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of The Gambia;

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

(*f*) for the imposition of restrictions upon the movement or residence within The Gambia or on the right to leave The Gambia of any public officer;

(*g*) for the removal of a person from The Gambia to be tried or punished in some other country for a criminal offence under the law of that other country 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 of The Gambia of which he has been convicted; or

(*h*) for the imposition of restrictions on the right of any person to leave The Gambia that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law 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.

(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 three months after the order was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in The Gambia.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

Protection from discrimination on the grounds of race, etc.

23.—(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 are not citizens of The Gambia;

(*c*) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description;

(*d*) for the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law; 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 provision with respect to standards or qualifications (not

being standards or qualifications specifically relating to race, tribe, place of origin, political opinions, colour or creed) to be required of any person who is appointed to or to act in any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by law for public purposes.

(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 subsection (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 17, 19, 20, 21 and 22 of this Constitution, being such a restriction as is authorised by section 17(2), section 19(5), section 20(2), section 21(2) or paragraph (*a*) or paragraph (*b*) of section 22(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.

Derogations from fundamental rights and freedoms under emergency powers.

24. Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 13 or section 23 of this Constitution to the extent that the Act authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in The Gambia during that period.

Protection of persons detained under emergency laws.

25.—(1) When a person is detained by virtue of any such law as is referred to in section 24 of this Constitution the following provisions shall apply, that is to say:—

(*a*) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of his detention, a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in The Gambia;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(*e*) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(2) 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.

(3) Nothing contained in subsection (1)(*d*) or subsection (1)(*e*) of this section shall be construed as entitling a person to legal representation at public expense.

Enforcement of protective provisions.

26.—(1) If any person alleges that any of the provisions of sections 11 to 25 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

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

(*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 directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 11 to 25 (inclusive) of this Constitution:

Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 11 to 25 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of subsection (3) of this section, the Supreme 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 or, if that decision is the subject of an appeal under section 99 of this Constitution to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee.

(5) Parliament may confer upon the Supreme 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) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

Declaration of emergency.

27.—(1) The Governor-General may, by proclamation which shall be published in the Official Gazette, declare that a state of emergency exists for the purposes of this Chapter.

(2) Every declaration of emergency shall lapse—

(*a*) in the case of a declaration made when Parliament is sitting, at the expiration of a period of seven days beginning with the date of publication of the declaration; and

(*b*) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration,

unless it has in the meantime been approved by a resolution of the House of Representatives supported by the votes of two-thirds of all the voting members of the House.

(3) A declaration of emergency may at any time be revoked by the Governor-General by proclamation which shall be published in the Official Gazette.

(4) A declaration of emergency that has been approved by a resolution of the House of Representatives in pursuance of subsection (2) of this section shall, subject to the provisions of subsection (3) of this section, remain in force so long as that resolution remains in force and no longer.

(5) A resolution of the House of Representatives passed for the purposes of this section shall remain in force for twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution supported by the votes of two-thirds of all the voting members of the House, each extension not exceeding twelve months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a majority of all the voting members of the House.

(6) Any provision of this section that a declaration of emergency shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.

(7) The Governor-General may summon the House of Representatives to meet for the purposes of subsection (2) of this section notwithstanding that Parliament then stands dissolved, and the persons who were members of the House of Representatives immediately before the dissolution shall be deemed, for those purposes, still to be members of that House but, subject to the provisions of section 43(4) of this Constitution (which relates to the election of the Speaker of the House of Representatives), the House shall not, when summoned by virtue of this subsection, transact any business other than debating and voting upon a resolution for the purposes of subsection (2) of this section.

Interpretation and savings.

28.—(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 The Gambia other than a court established by a disciplinary law, and includes the Judicial Committee and in sections 12 and 14 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*) a naval, military or air force;

(*b*) the Police Force; or

(*c*) a prison service;

"legal representative" means a person entitled to practise as a barrister or a solicitor in The Gambia; and

"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*) The Gambia is at war; or

(*b*) a declaration of emergency is in force under section 27 of this Constitution.

(3) In relation to any person who is a member of a disciplined force raised under an Act of Parliament, 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 12, 14 and 15 of this Constitution.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in The Gambia, 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 III

THE GOVERNOR-GENERAL

Establishment of office of Governor-General.

29. There shall be a Governor-General who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in The Gambia.

Discharge of Governor-General's functions during vacancy, etc.

30. Whenever the office of Governor-General is vacant or the holder of the office is absent from The Gambia or is for any reason unable to exercise the functions conferred upon him by this Constitution, those functions shall be exercised by such person as Her Majesty may appoint or, if there is no person in The Gambia so appointed and able to exercise those functions, by the Chief Justice.

Oaths to be taken by Governor-General.

31. A person appointed to or assuming the functions of the office of Governor-General shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

CHAPTER IV

PARLIAMENT

PART 1

Composition of Parliament

Establishment of Parliament.

32. There shall be a Parliament which shall consist of Her Majesty and a House of Representatives.

House of Representatives.

33.—(1) The House of Representatives shall consist of a Speaker and the following other members, that is to say :—

(*a*) thirty-two members who shall be known as " elected members " and who shall be elected in accordance with the provisions of section 36 of this Constitution ;

(*b*) four members who shall be known as " Chiefs' representative members " and who shall be elected in accordance with the provisions of section 39 of this Constitution ; and

(*c*) until Parliament otherwise provides, two members who shall be known as " nominated members " and who shall be appointed in accordance with the provisions of section 41 of this Constitution.

(2) Only an elected member or a Chiefs' representative member shall be entitled to vote upon any question before the House of Representatives and the elected members and the Chiefs' representative members are in this Constitution collectively referred to as " voting members ".

(3) A person who is exercising the functions of the office of Attorney-General by virtue of section 64(4) of this Constitution but who is not otherwise a member of the House of Representatives shall be an *ex officio* member of the House but shall not be entitled to vote therein.

Qualifications for membership of House of Representatives.

34. Subject to the provisions of section 35 of this Constitution, a person shall be qualified to be nominated for election as a voting member of the House of Representatives or to be appointed as a nominated member if, and shall not be so qualified unless, at the date of his nomination for election or, as the case may be, at the date of his appointment—

(*a*) he has attained the age of twenty-one years ;

(*b*) he can speak English well enough to take an active part in the proceedings of the House ;

(*c*) in the case of a voting member, he is a citizen of The Gambia ; and

(*d*) in the case of an elected member, he is registered in some constituency as a voter in elections of elected members of the House and is not disqualified from voting in such elections.

Disqualifications for membership of House of Representatives.

35.—(1) No person shall be qualified to be nominated for election as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment—

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

(*b*) he holds the office of Speaker;

(*c*) he is, under any law in force in The Gambia, adjudged or otherwise declared to be of unsound mind;

(*d*) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in The Gambia;

(*e*) he is under sentence of death imposed on him by a court in The Gambia or is under a sentence of imprisonment (by whatever name called) for a term of or 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; or

(*f*) subject to such exceptions and limitations as may be prescribed by Parliament, he has any such interest in any such government contract as may be so prescribed.

(2) Parliament may provide that a person shall not be qualified to be nominated for election as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment, he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the House or the compilation of any register of voters for the purposes of such an election.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the House of Representatives or is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be nominated for election as a voting member of the House or to be appointed as a nominated member.

(4) No person shall be qualified to be nominated for election as an elected member of the House of Representatives who, at the date of his nomination for election, is, or is nominated for election as, a Chiefs' representative member; and no person shall be qualified to be nominated for election as a Chiefs' representative member who, at the date of his nomination for election, is, or is nominated for election as, an elected member.

(5) No person shall be qualified to be nominated for election as a voting member of the House of Representatives who, at the date of his nomination for election, is a nominated member; and no person shall be qualified to be appointed as a nominated member who, at the date of his appointment, is, or is nominated for election as, a voting member or who has, at any time since Parliament was last dissolved, stood as a candidate for election as a voting member but was not elected.

(6) Parliament may provide that, subject to such exceptions and limitations as Parliament may prescribe, a person shall not be qualified to

be nominated for election as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment—

(*a*) he holds or is acting in any office or appointment that may be prescribed by Parliament;

(*b*) he is a member of any naval, military or air force that may be so prescribed; or

(*c*) he is a member of any police force.

(7) For the purposes of subsection (1)(*e*) 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.

(8) In subsection (1)(*f*) of this section "government contract" means any contract made with the Government of The Gambia or with a department of that Government or with an officer of that Government contracting as such.

Election of elected members.

36.—(1) The Gambia shall, in accordance with the provisions of section 38 of this Constitution, be divided into constituencies and each constituency shall elect one elected member to the House of Representatives in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.

(2) The election of elected members of the House of Representatives shall be based upon universal adult suffrage, that is to say:—

(*a*) every citizen of The Gambia who has attained the age of twenty-one years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections of elected members of the House of Representatives, be entitled to be registered as such a voter under any law in that behalf, and no other person may be so registered; and

(*b*) every person who is registered as aforesaid in any constituency shall, unless he is disqualified by Parliament from voting in that constituency in any election of elected members of the House of Representatives, be entitled so to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

(3) In any election of elected members of the House of Representatives the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

Constituency Boundaries Commission.

37.—(1) There shall be a Constituency Boundaries Commission which shall be appointed by the Governor-General in the circumstances specified in section 38(3) of this Constitution and which shall consist of a Chairman and two other members.

(2) The Chairman and the other members of the Commission shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial Service Commission.

(3) A person shall not be qualified to be appointed as a member of the Commission if—

(*a*) he is, or has at any time during the five years immediately preceding his appointment been, a member of the House of Representatives or a member of any House of Representatives established for The Gambia by Order of Her Majesty in Council before the coming into operation of this Constitution (other than a nominated or an *ex officio* member or a temporary member appointed in place of such a member);

(*b*) he is, or has at any time during the said five years been, nominated as a candidate for election as a member of the House of Representatives or of any such House of Representatives established as aforesaid;

(*c*) he is, or has at any time during the said five years been, the holder of an office in any political organisation that sponsors or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the House of Representatives or of any such House of Representatives established as aforesaid or of any local government authority; or

(*d*) he is a public officer.

(4) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

(*a*) when the order of the Commission is published in the Official Gazette in accordance with the provisions of section 38(6) of this Constitution; or

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (3) of this section.

(5) A member of the Commission may be removed from office only for inability to exercise 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.

(6) A member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the Prime Minister represents to the Governor-General that the question of removing a member of the Commission under this section ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice 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 Parliament or a court having jurisdiction in appeals from such a court; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this section.

(8) If the question of removing a member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Judicial Service Commission, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.

(9) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Schedule to this Constitution.

(10) In the exercise of its functions under this Constitution the Commission shall not be subject to the direction or control of any other person or authority.

(11) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of The Gambia for the purpose of the exercise of its functions.

(12) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member 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:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

Constituencies.

38.—(1) For the purpose of the election of elected members of the House of Representatives The Gambia shall, in accordance with the provisions of this section, be divided into thirty-two constituencies having such boundaries as may be prescribed by order made by the Constituency Boundaries Commission.

(2) All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Commission to be reasonably practicable but the Commission may depart from this principle to such extent as it considers expedient in order to take account of the following factors, that is to say:—

(*a*) the density of population, and in particular the need to ensure the adequate representation of sparsely populated rural areas;

(*b*) the means of communication;

(*c*) geographical features; and

(*d*) the boundaries of existing administrative areas.

(3) The Governor-General shall appoint a Constituency Boundaries Commission in the following circumstances, that is to say:—

(*a*) whenever a census of the population of The Gambia has been held in pursuance of any law;

(*b*) whenever Parliament has amended subsection (1) of this section so as to alter the number of the constituencies into which The Gambia is divided; or

(*c*) on the expiry of eight years after the Commission last reviewed the boundaries of the constituencies in accordance with the provisions of this section.

(4) Whenever the Constituency Boundaries Commission has been appointed in the circumstances specified in subsection (3)(*a*) or in the circumstances specified in subsection (3)(*b*) of this section it shall forthwith carry out a review of the boundaries of the constituencies into which The Gambia is divided and may (and in the circumstances specified in subsection (3)(*b*) shall), by order, alter the boundaries in accordance with the provisions of this section to such extent as it thinks desirable in the light of those circumstances and the review.

(5) Whenever the Constituency Boundaries Commission has been appointed in the circumstances specified in subsection (3)(*c*) of this section it shall, within the period of two years commencing with its appointment, carry out a review of the boundaries of the constituencies into which The Gambia is divided and may, by order, alter the boundaries in accordance with the provisions of this section to such extent as it considers desirable in the light of the review.

(6) Every order made by the Constituency Boundaries Commission under this section shall be published in the Official Gazette and shall come into effect upon the next dissolution of Parliament after it was made.

(7) To the extent that any Act of Parliament amends subsection (1) of this section so as to alter the number of constituencies into which The Gambia is divided it shall come into effect when the order of the Commission that, in accordance with the provisions of subsection (4) of this section, is consequential thereon comes into effect.

(8) For the purposes of subsection (2) of this section the number of inhabitants of any part of The Gambia shall be ascertained by reference to the latest census of the population held in pursuance of any law.

Chiefs' representative members.

39.—(1) The Chiefs' representative members shall be elected by the Head Chiefs from among their own number in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) In any election of the Chiefs' representative members the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

Supervisor of Elections.

40.—(1) There shall be a Supervisor of Elections whose duty it shall be to exercise general supervision over the registration of voters in elections of the members of the House of Representatives and over the conduct of such elections.

(2) The functions of the office of Supervisor of Elections shall be exercised either by the person holding or acting in such public office as may for the time being be designated in that behalf by the Public Service Commission or, if the Public Service Commission so decides, by such other person who is not a public officer as may for the time being be so designated, but before exercising its powers under this subsection the Public Service Commission shall consult with the Prime Minister.

(3) A person shall not enter upon the duties of the office of Supervisor of Elections until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Schedule to this Constitution.

(4) For the purposes of the exercise of his functions under subsection (1) of this section, the Supervisor of Elections may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given under this subsection shall comply with those directions.

(5) The Supervisor of Elections may, whenever he considers it necessary or expedient so to do, report to the House of Representatives on the exercise of his functions under the foregoing provisions of this section; he shall submit every such report to the Minister for the time being responsible for matters relating to the election of members of the House of Representatives and that Minister shall, not later than seven days after the House first meets after he has received the report, lay it before the House.

(6) In the exercise of his functions under the foregoing provisions of this section, the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.

(7) The Supervisor of Elections shall exercise such other functions in relation to elections (whether to the House of Representatives or to local government authorities) as may be prescribed by or under an Act of Parliament.

Nominated members.

41. The nominated members shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

Tenure of seats of members of House of Representatives.

42.—(1) A voting member or a nominated member of the House of Representatives shall vacate his seat therein—

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

(*b*) if any other circumstances arise that, if he were not such a member, would cause him to be disqualified under section 35(1) of this Constitution or under a law made in pursuance of section 35(2) or section 35(3) or section 35(6) of this Constitution to be elected as such or, as the case may be, to be appointed as such;

(*c*) in the case of a voting member, if he ceases to be a citizen of The Gambia;

(*d*) in the case of an elected member, if he ceases to be registered as a voter in elections of elected members to the House of Representatives or if he ceases to be qualified to vote in such elections; or

(*e*) in the case of a Chiefs' representative member, if he ceases to be a Head Chief.

(2) Parliament may, in order to permit any member of the House of Representatives who has been adjudged or declared to be of unsound mind, adjudged or declared bankrupt, sentenced to death or imprisonment or convicted or reported guilty of any offence prescribed under section 35(3) of this Constitution to appeal against the decision in accordance with any law, provide that, subject to such conditions as may be prescribed by Parliament, the decision shall not have effect for the purposes of this section until such time as may be so prescribed.

Speaker.

43.—(1) There shall be a Speaker of the House of Representatives who shall be elected by the House from among persons who are members thereof or who are qualified to be elected as such.

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

(3) The Speaker shall vacate his office—

(*a*) in the case of a Speaker who was elected from among the members of the House of Representatives, if any circumstances arise that, if he had not been so elected, would have caused him to vacate his seat as a member under section 42 of this Constitution ;

(*b*) if any circumstances arise that, if he were not Speaker, would cause him to be disqualified to be elected as such ;

(*c*) when the House of Representatives first meets after a dissolution of Parliament ; or

(*d*) if he is removed from office by resolution of the House of Representatives supported by the votes of two-thirds of all the voting members.

(4) No business shall be transacted in the House of Representatives (other than the election of a Speaker) at any time when the office of Speaker is vacant.

Deputy Speaker.

44.—(1) There shall be a Deputy Speaker of the House of Representatives who shall be elected by the House from among persons who are members thereof.

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

(3) The House of Representatives shall elect a Deputy Speaker—

(*a*) subject to the provisions of section 43(4) of this Constitution, when it first meets in every session ; and

(*b*) when it first meets after the office of Deputy Speaker has become vacant,

or as soon thereafter as may be convenient.

(4) The Deputy Speaker shall vacate his office—

(*a*) if he vacates his seat as a member of the House of Representatives ;

(*b*) when the House first meets in each session ;

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

(*d*) if he is removed from office by resolution of the House of Representatives.

Clerk to House of Representatives and his staff.

45.—(1) There shall be a Clerk to the House of Representatives.

(2) The office of the Clerk to the House of Representatives and the offices of the members of his staff shall be public offices.

Decision of questions as to membership of House of Representatives.

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

(*a*) any person has been validly elected as a voting member of the House of Representatives ;

(*b*) any person has been validly appointed as a nominated member of the House ;

(*c*) any person who has been elected as Speaker of the House from among persons who were not members thereof was qualified to be so elected ; or

(*d*) the seat in the House of any member thereof has become vacant.

(2) An application to the Supreme Court for the determination of any question under subsection (1)(*a*) of this section may be made by any person qualified to vote in the election to which the application relates or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the Supreme Court for the determination of any question under subsection (1)(*b*) or subsection (1)(*c*) of this section may be made by any voting member of the House of Representatives or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the Supreme Court for the determination of any question under subsection (1)(*d*) of this section may be made—

(*a*) by any voting member of the House or by the Attorney-General;

(*b*) in the case of the seat of an elected member of the House, by any person registered in some constituency as a voter in elections of elected members of the House; or

(*c*) in the case of the seat of a Chief's representative member, by any Head Chief,

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) Parliament may make provision with respect to—

(*a*) the circumstances and manner in which and the imposition of reasonable conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and

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

(6) The determination by the Supreme Court of any question under this section shall not be subject to appeal.

(7) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

PART 2

Legislation and procedure in House of Representatives

Power to make laws.

47. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of The Gambia.

Alteration of this Constitution.

48.—(1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A bill for an Act of Parliament under this section shall not be passed by the House of Representatives unless it was supported on the final reading in the House by the votes of two-thirds of all the voting members of the House.

(3) A bill for an Act of Parliament to alter any of the following provisions of this Constitution, that is to say:—

(*a*) this section;

(*b*) sections 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 36(1), 37, 38 (except in so far as it prescribes the number of constituencies), 47, 59(1), 60, 61, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 and 113; and

(*c*) section 116 in its application to any of the provisions specified in paragraphs (*a*) and (*b*) of this subsection,

shall not be submitted to the Governor-General for his assent unless the bill, after it has been passed by the House of Representatives and in the form in which it was so passed, has, in accordance with the provisions of any law in that behalf, been submitted to and been approved at a referendum.

(4) Every person who is entitled to vote in elections of elected members of the House of Representatives shall be entitled to vote at a referendum held for the purposes of subsection (3) of this section and no other person may so vote; and the bill shall not be regarded as having been approved at that referendum unless it was so approved by the votes of one-half of all such persons or by two-thirds of all the votes validly cast at the referendum.

(5) The conduct of any referendum for the purposes of subsection (3) of this section shall be under the general supervision of the Supervisor of Elections and the provisions of subsections (4), (5) and (6) of section 40 of this Constitution shall apply in relation to the exercise by the Supervisor of Elections or by any other officer of his functions with respect to a referendum as they apply in relation to the exercise of his functions with respect to elections of members of the House of Representatives.

(6) A bill for an Act of Parliament under this section shall not be submitted to the Governor-General for his assent unless it is accompanied by a certificate under the hand of the Speaker of the House of Representatives (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsection (2) of this section and, where appropriate, the provisions of subsections (3) and (4) of this section have been complied with, and every such certificate shall be conclusive for all purposes and shall not be enquired into in any court.

(7) A bill for an Act of Parliament shall not be held to alter any of the provisions specified in subsection (3) of this section by reason only that it provides for the substitution for a reference to Her Majesty or to the Governor-General in any of those provisions of a reference to some other person or authority:

Provided that a person or authority who is substituted in any such provision for Her Majesty or the Governor-General shall exercise any function that is vested in him by virtue of the substitution in the same manner and subject to the same conditions, if any, as would have applied to the exercise of that function by Her Majesty or the Governor-General, as the case may be, if that substitution had not been made.

(8) In this section—

(*a*) references to this Constitution include references to any law that amends or replaces any of the provisions of this Constitution; and

(*b*) references to the alteration of this Constitution include references to the amendment, modification or re-enactment, with or without amendment or modification, of any provision for the time being contained in this Constitution, the suspension or repeal of any such provision, the making of different provision in lieu of such provision and the addition of new provisions to this Constitution, and references to the alteration of any particular provision of this Constitution shall be construed likewise.

Office of Chief.

49. No provision of law, in so far as it provides for the abolition of the office of Head Chief, Deputy Head Chief, Sub-Chief or Headman, shall have effect unless it is included in an Act of Parliament; and the provisions of section 48 of this Constitution shall apply in relation to a bill for such an Act as they apply in relation to a bill for an Act to alter this Constitution (not being such a bill as is referred to in subsection (3) of the said section 48).

Oath to be taken by members of House of Representatives.

50.—(1) Every member of the House of Representatives shall, before taking his seat in the House, take and subscribe before the House the oath of allegiance but a member may before taking that oath take part in the election of a Speaker of the House.

(2) Any person elected to the office of Speaker of the House of Representatives shall, if he has not already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe that oath before the House before entering upon the duties of his office.

Presiding in House of Representatives.

51. There shall preside at any sitting of the House of Representatives—

(*a*) the Speaker; or

(*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 House (not being a Minister or a Parliamentary Secretary) as the House may elect for that purpose.

Quorum in House of Representatives.

52. If objection is taken by any member of the House of Representatives present that there are present in the House (besides the person presiding) less than one-fourth of all the members of the House and, after such interval as may be prescribed in the rules of procedure of the House, the person presiding ascertains that the number of members present is still less than one-fourth of all the members of the House, he shall thereupon adjourn the House.

Use of English in House of Representatives.

53. The business of the House of Representatives shall be conducted in English.

Voting in House of Representatives.

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

(2) The Speaker shall have neither an original nor a casting vote.

(3) The Deputy Speaker or other member of the House of Representatives presiding in the absence of the Speaker shall have a casting vote but no original vote.

(4) If there is an equality of votes on any question before the House of Representatives and either the Speaker is presiding or the Deputy Speaker or other member presiding does not exercise his casting vote, the motion before the House shall be deemed to be lost.

(5) The rules of procedure of the House of Representatives may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.

Unqualified persons sitting or voting.

55.—(1) Any person who sits or votes in the House of Representatives knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding £20, or such other sum as may be prescribed by Parliament, for each day on which he so sits or votes in the House.

(2) Any prosecution for an offence under this section shall be instituted in the Supreme Court and shall not be so instituted except by the Director of Public Prosecutions.

Mode of exercise of legislative power.

56.—(1) The power of Parliament to make laws shall be exercisable by bills passed by the House of Representatives and assented to by the Governor-General on behalf of Her Majesty.

(2) When a bill is submitted to the Governor-General for assent in accordance with the provisions of this Constitution he shall signify that he assents or that he withholds assent.

(3) When the Governor-General assents to a bill that has been submitted to him in accordance with the provisions of this Constitution the bill shall become law and the Governor-General shall thereupon cause it to be published in the Official Gazette as a law.

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

(5) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of The Gambia".

Restrictions with regard to certain financial measures.

57. Except on the recommendation of the Governor-General signified by a Minister, the House of Representatives 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 Consolidated Revenue Fund or any other public fund of The Gambia or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of The Gambia of any monies not charged thereon or any increase in the amount of such a payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government of The Gambia; or

(*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.

Regulation of procedure in House of Representatives, etc.

58.—(1) Subject to the provisions of this Constitution the House of Representatives may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

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

(3) Parliament may, for the purpose of the orderly and effective discharge of the business of the House of Representatives, make provision for the powers, privileges and immunities of the House and the committees and the members thereof.

PART 3

Summoning, prorogation and dissolution

Sessions of Parliament, etc.

59.—(1) Each session of Parliament shall be held at such place within The Gambia and shall begin at such time (not being later than twelve months from the end of the preceding session if Parliament has been prorogued or fourteen days from the holding of a general election of members of the House of Representatives if Parliament has been dissolved) as the Governor-General shall appoint.

(2) Subject to the provisions of subsection (1) of this section, the sittings of the House of Representatives shall be held at such time and place as the House may, by its rules of procedure or otherwise, determine.

Prorogation and dissolution of Parliament.

60.—(1) The Governor-General may at any time prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of the House of Representatives after any dissolution and shall then stand dissolved.

(3) At any time when The Gambia is at war, Parliament may extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) In the exercise of his powers to dissolve Parliament, the Governor-General shall act in accordance with the advice of the Prime Minister:

Provided that—

(*a*) if the Prime Minister advises a dissolution and the Governor-General considers that the government of The Gambia can be carried on without a dissolution and that a dissolution would not be in the interests of The Gambia, he may refuse to dissolve Parliament;

(*b*) if the House of Representatives passes a resolution that it has no confidence in the Government of The Gambia and the Prime Minister does not within three days either resign or advise a dissolution, the Governor-General may dissolve Parliament; and

(*c*) if the office of Prime Minister is vacant and the Governor-General 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 the majority of the voting members of the House of Representatives, the Governor-General shall dissolve Parliament.

General elections.

61.—(1) Subject to the provisions of subsection (2) of this section, a general election of members of the House of Representatives shall be held at such time within three months after any dissolution of Parliament as the Governor-General may appoint.

(2) If, when Parliament has been dissolved, the Prime Minister advises the Governor-General that, owing to the existence of a public emergency, it would not be practicable to hold a general election within three months after the dissolution, the Governor-General, acting in accordance with the advice of the Prime Minister, may by Proclamation recall the Parliament that has been dissolved and the following provisions shall then have effect, that is to say:—

(*a*) the House of Representatives shall meet at such date, not later than fourteen days after the date of the Proclamation, as may be specified therein;

(*b*) the Prime Minister shall, subject to the provisions of section 43(4) of this Constitution introduce or cause to be introduced in the House of Representatives as soon as it meets a resolution declaring that a public emergency exists and, subject as aforesaid, no other business shall be transacted in the House until that resolution has been passed;

(*c*) if the resolution is passed by the House of Representatives with the support of the votes of two-thirds of all the voting members thereof, a general election shall be held at such time within twelve months after the original dissolution of the Parliament that has been recalled as the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint; and the Parliament that has been recalled shall be deemed to be the Parliament for the time being and may meet and be kept in session accordingly until the date fixed for the nomination of candidates in that general election and, unless previously dissolved, shall then stand dissolved; and

(*d*) if the resolution is defeated, or, though passed, did not obtain the support of the votes of two-thirds of all the voting members of the House, or has not been put to the vote within five days after it has been introduced, the Parliament that has been recalled shall then be again dissolved and a general election shall be held at such time within three months after the date of the Proclamation by which Parliament was so recalled as the Governor-General may appoint.

CHAPTER V

THE EXECUTIVE

Exercise of executive authority of The Gambia.

62.—(1) The executive authority of The Gambia is vested in Her Majesty.

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

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General.

Ministers of Government of The Gambia.

63.—(1) There shall be a Prime Minister of The Gambia, who shall be appointed by the Governor-General.

(2) Whenever the Governor-General has occasion to appoint a Prime Minister he shall appoint a voting member of the House of Representatives who appears to him likely to command the support of the majority of the voting members of the House.

(3) There shall be, in addition to the office of Prime Minister, such other offices of Minister as, subject to the provisions of section 64(2) of this Constitution may be established by Parliament or, subject as aforesaid and to the provisions of any Act of Parliament, by the Governor-General, acting in accordance with the advice of the Prime Minister.

(4) Appointments to the office of Minister, other than the office of Prime Minister, shall be made by the Governor-General, acting in accordance with the advice of the Prime Minister, from among the members of the House of Representatives.

(5) If occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, then, notwithstanding any other provision of this section. a person who was a voting member of the House of Representatives immediately before the dissolution may be appointed as Prime Minister or any other Minister and a person who was a nominated member immediately before the dissolution may be appointed as any Minister other than Prime Minister.

(6) The Governor-General may remove the Prime Minister from office—

(*a*) if a resolution of no confidence in the Government of The Gambia is passed by the House of Representatives and the Prime Minister does not within three days either resign from his office or advise a dissolution of Parliament ; or

(*b*) if, at any time between the holding of a general election of the elected members of the House of Representatives and the date on which the House first meets thereafter, the Governor-General considers that in consequence of changes in the membership of the House resulting from that election the Prime Minister will not be able to command the support of the majority of the voting members of the House.

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

(*a*) if the holder of the office ceases to be a member of the House of Representatives otherwise than by reason of the dissolution of Parliament ;

(*b*) in the case of the Prime Minister, if, when the House of Representatives first meets after the dissolution of Parliament, he is not then a voting member thereof ; or

(*c*) in the case of any other Minister, if, when the House of Representatives first meets after the dissolution of Parliament, he is not then a member thereof.

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

(*a*) if the Governor-General, 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 House of Representatives of a resolution of no confidence in the Government of The Gambia or is removed from office under subsection (6) of this section; or

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

Attorney-General.

64.—(1) There shall be an Attorney-General who shall be principal legal adviser to the Government of The Gambia.

(2) The office of Attorney-General shall be the office of a Minister.

(3) No person shall be qualified to hold the office of Attorney-General unless he is entitled to practise as a barrister or a solicitor in The Gambia.

(4) If the person holding the office of Attorney-General is for any reason unable to exercise the functions conferred upon him by or under any law, those functions may be exercised by such other person, being a person entitled to practise as a barrister or a solicitor in The Gambia (whether or not he is a member of the House of Representatives), as the Governor-General, acting in accordance with the advice of the Prime Minister, may direct.

Establishment of Cabinet of Ministers.

65. There shall be a Cabinet of Ministers which shall consist of the Prime Minister and such other Ministers as may for the time being be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.

Collective responsibility.

66.—(1) The function of the Cabinet shall be to advise the Governor-General in the government of The Gambia and the Cabinet shall be collectively responsible to Parliament for any advice given to the Governor-General 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.

(2) The provisions of this section shall not apply in relation to—

(*a*) the appointment and removal from office of Ministers, members of the Cabinet and Parliamentary Secretaries, the assignment of responsibility to any Minister under section 67 of this Constitution, or the authorization of another member of the Cabinet to perform the functions of the Prime Minister during absence or illness;

(*b*) the dissolution of Parliament; or

(*c*) the matters referred to in section 77 of this Constitution (which relates to the prerogative of mercy).

Allocation of portfolios to Ministers.

67. The Governor-General, 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 The Gambia, including the administration of any department of government.

Performance of functions of Prime Minister during absence or illness.

68.—(1) Whenever the Prime Minister is absent from The Gambia or is by reason of illness unable to perform the functions conferred upon him by this Constitution, the Governor-General may authorize some other member of the Cabinet to perform those functions (other than the functions conferred by this section) and that member may perform those functions until his authority is revoked by the Governor-General.

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

Provided that if the Governor-General considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice.

Exercise of Governor-General's functions.

69.—(1) In the exercise of his functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of any person or authority other than the Cabinet:

Provided that the Governor-General shall act in accordance with his own deliberate judgment in the performance of the following functions:—

(*a*) in the exercise of the powers relating to the dissolution of Parliament conferred upon him by the proviso to section 60(4) of this Constitution;

(*b*) in the exercise of the power to appoint the Prime Minister conferred upon him by subsection (2) or subsection (5) of section 63 of this Constitution;

(*c*) in the exercise of the power to remove the Prime Minister from office conferred on him by section 63(6) of this Constitution;

(*d*) in the exercise of the powers conferred upon him by section 68 of this Constitution (which relates to the performance of the functions of the Prime Minister during absence or illness) in the circumstances described in the proviso to subsection (2) of that section; and

(*e*) in signifying his approval for the purposes of section 106(4) of this Constitution of an appointment to an office on his personal staff.

(2) Where the Governor-General is required by this Constitution to act in accordance with the advice of any person or authority, the question whether he has in any case received, or acted in accordance with, such advice shall not be enquired into in any court.

Governor-General to be informed concerning matters of government.

70. The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of The Gambia and shall furnish the Governor-General with such information as he may request with respect to any particular matter relating to the government of The Gambia.

Parliamentary Secretaries.

71.—(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the House of Representatives to assist Ministers in the performance of their duties:

Provided that, if occasion arises for making an appointment while Parliament is dissolved, a person who was a member of the House

immediately before the dissolution may be appointed as a Parliamentary Secretary.

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

(*a*) if the Governor-General, 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 House of Representatives of a resolution of no confidence in the Government of The Gambia or is removed from office under section 63(6) of this Constitution;

(*c*) on 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 House of Representatives otherwise than by reason of a dissolution of Parliament; or

(*e*) if, when the House of Representatives first meets after the dissolution of Parliament, the holder of the office is not then a member thereof.

Oaths to be taken by Ministers, etc.

72. A member of the Cabinet, 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 Parliament.

Permanent secretaries.

73. 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, every department of government shall be under the supervision of a public officer whose office is referred to in this Constitution as the office of permanent secretary:

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

Secretary to the Cabinet.

74.—(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 and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.

Constitution of offices, etc.

75. Subject to the provisions of this Constitution and of any other law, the Governor-General may constitute offices for The Gambia, make appointments to any such office and terminate any such appointment.

Director of Public Prosecutions.

76.—(1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) The Director of Public Prosecutions 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.

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by paragraphs (*b*) and (*c*) of subsection (2) 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.

(5) For the purposes of this section, any appeal from a judgment in 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) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(*c*) of this section shall not 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.

(6) In the exercise of the functions vested in him by subsection (2) of this section and by section 55 of this Constitution, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

Prerogative of mercy.

77.—(1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant a pardon, either free or subject to lawful conditions, to any person concerned in or convicted of any offence;

(*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; or

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

(2) The powers of the Governor-General under subsection (1) of this section shall be exercised by him in accordance with the advice of the Prime Minister.

Advisory Committee on Prerogative of Mercy.

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

(*a*) the Prime Minister, who shall be Chairman;

(*b*) the Attorney-General; and

(*c*) not less than two nor more than four other members appointed by the Governor-General, by instrument in writing under his hand,

of whom at least one shall be a Minister and at least one shall be a person entitled to practise in The Gambia 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;

(*b*) in the case of a person who, at the date of his appointment, was entitled to practise in The Gambia as a medical practitioner, if he ceases to be so entitled; or

(*c*) if the Governor-General, by instrument in writing under his hand, so directs.

(3) The Committee may act notwithstanding any vacancy in its membership or the absence of any member 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.

(4) The Committee may regulate its own procedure.

(5) In the exercise of his functions under this section, the Governor-General shall act in accordance with the advice of the Prime Minister.

Functions of Advisory Committee.

79.—(1) Where any person has been sentenced to death (otherwise than by a court-martial) for an offence, the Prime Minister 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 taken into consideration 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 deliberate judgment whether to advise the Governor-General to exercise any of his powers under section 77(1) of this Constitution.

(2) The Prime Minister may consult with the Advisory Committee on the Prerogative of Mercy before making any recommendation to the Governor-General under section 77(2) of this Constitution 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 VI

FINANCE

Consolidated Revenue Fund.

80. All revenues or other monies raised or received by The Gambia (not being revenues or other monies that are payable, by or under an Act of Parliament, into some other fund established for any specific purpose or that may, by or under such an Act, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into and form a Consolidated Revenue Fund.

Withdrawals from Consolidated Revenue Fund or other public funds.

81.—(1) No monies shall be withdrawn from the Consolidated Revenue Fund except—

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

(*b*) where the issue of those monies has been authorised by an Appropriation Act or by an Act made in pursuance of section 83 of this Constitution.

(2) Where any monies are charged by this Constitution or any Act of Parliament upon the Consolidated Revenue Fund or any other public fund, they shall be paid out of that fund by the Government of The Gambia to the person or authority to whom payment is due.

(3) No monies shall be withdrawn from any public fund other than the Consolidated Revenue Fund unless the issue of those monies has been authorised by or under any law.

(4) Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Revenue Fund or any other public fund.

Authorisation of expenditure from Consolidated Revenue Fund by appropriation.

82.—(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the House of Representatives in each financial year estimates of the revenues and expenditure of The Gambia for the next following financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Revenue Fund by this Constitution or by any Act of Parliament) have been approved by the House of Representatives, a bill, to be known as an Appropriation bill, shall be introduced in the House, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.

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

(*a*) that the amount appropriated by the Appropriation Act to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act; or

(*b*) that any monies have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation Act or for a purpose to which no amount has been appropriated by that Act,

a supplementary estimate or, as the case may be, a statement of excess showing the sums required or spent shall be laid before the House of Representatives and, when the supplementary estimate or statement of excess has been approved by the House, a supplementary Appropriation bill shall be introduced in the House, providing for the issue of such sums from the Consolidated Revenue Fund and appropriating them to the purposes specified therein.

Authorization of expenditure in advance of appropriation.

83. Parliament may make provision under which, if the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may authorize the withdrawal of moneys from the Consolidated Revenue 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 Act, whichever is the earlier.

Contingencies Fund.

84.—(1) Parliament may make provision for the establishment of a Contingencies Fund and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen 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 and a supplementary Appropriation bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

85.—(1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as may be prescribed by or under an Act of Parliament.

(2) The salaries and allowances prescribed in pursuance of this section in respect of the holders of the offices to which this section applies shall be a charge on the Consolidated Revenue Fund.

(3) The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

(4) When a person's salary or other terms of service 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 Governor-General, a judge of the Court of Appeal, a judge of the Supreme Court, a member of the Constituency Boundaries Commission, a member of the Public Service Commission, the appointed member of the Judicial Service Commission, the Director of Public Prosecutions and the Director of Audit.

(6) In relation to a person who, not being a public officer, is for the time being designated under section 40(2) of this Constitution to exercise the functions of the office of Supervisor of Elections, this section shall also apply to that office and shall so apply as if that person were the holder of that office.

(7) Nothing in this section shall be construed as prejudicing the provisions of section 112 of this Constitution (which protects pensions rights in respect of service as a public officer).

Public debt.

86.—(1) All debt charges for which The Gambia is liable shall be a charge on the Consolidated Revenue Fund.

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

Director of Audit.

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

(2) It shall be the duty of the Director of Audit—

(*a*) to satisfy himself that all monies that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it ; and

(*b*) at least once in every year to audit and report on the public accounts of The Gambia, the accounts of all officers and authorities of the Government of The Gambia, the accounts of all courts in The Gambia (other than courts no part of the expenses of which are defrayed directly out of monies provided by Parliament), the accounts of every Commission established by this Constitution and the accounts of the Clerk to the House of Representatives.

(3) The Director of Audit and any officer authorised by him shall have access to all books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in subsection (2) of this section.

(4) The Director of Audit shall submit every report made by him in pursuance of subsection (2) of this section to the Minister for the time being responsible for finance who shall, not later than seven days after the House of Representatives first meets after he has received the report, lay it before the House.

(5) The Director of Audit shall exercise such other functions in relation to the accounts of the Government of The Gambia or the accounts of other authorities or bodies established by law for public purposes as may be prescribed by or under an Act of Parliament.

(6) In the exercise of his functions under subsections (2), (3) and (4) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER VII

THE JUDICATURE

PART 1

The Supreme Court

Establishment of Supreme Court.

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

(2) The judges of the Supreme Court shall be the Chief Justice and such number, if any, of other judges (hereinafter referred to as "the puisne judges") as may be prescribed by Parliament:

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

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

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

Appointment of judges of Supreme Court.

89.—(1) The Chief Justice shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) The puisne judges shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial Service Commission.

(3) (*a*) A person shall not be qualified to be appointed as a judge of the Supreme 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 Parliament or a court having jurisdiction in appeals from such a court; or

(ii) he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

(*b*) In this subsection "the specified qualifications" means the professional qualifications specified under the Courts Ordinance 1964(a) (or by or under any law amending or replacing that Ordinance) one of which must be held by any person before he may apply under that Ordinance (or under any such law) to be admitted to practise as a barrister or a solicitor in The Gambia.

(4) If the office of Chief Justice is vacant or the Chief Justice is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the judges of the Court of Appeal or the puisne judges or such other person qualified to be appointed as a judge of the Supreme Court as the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint:

Provided that—

(*a*) a person may be appointed under this subsection notwithstanding that he has attained the age prescribed for the purposes of section 90(1) of this Constitution; and

(*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 or if the Chief Justice advises the Governor-General that the state of business in the Supreme Court so requires, the Governor-General, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a judge of the Supreme 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 prescribed for the purposes of section 90(1) 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 90(4) and 90(7) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked

(a) Ordinance No. 13 of 1964.

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by the Governor-General, acting in accordance with the advice of the Judicial Service Commission :

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 Supreme Court.

90.—(1) Subject to the provisions of this section, a person holding the office of a judge of the Supreme Court shall vacate that office when he attains the prescribed age.

(2) Notwithstanding that he has attained the age prescribed for the purposes of subsection (1) of this section, a person holding the office of a judge of the Supreme 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 Supreme Court may be removed from office only for inability to exercise 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 Supreme Court shall be removed from office by the Governor-General if the question of his removal has been referred by the Governor-General to the Judicial Committee under subsection (5) of this section and the Judicial Committee has advised the Governor-General that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the Prime Minister or, in the case of a puisne judge, the Chief Justice represents to the Governor-General that the question of removing a judge under this section ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected in accordance with the provisions of subsection (6) of this section 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 Parliament 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 Governor-General and recommend to the Governor-General whether the question of the removal of that judge from office should be referred by him to the Judicial Committee ; and

(*c*) if the tribunal so recommends, the Governor-General shall refer the question to the Judicial Committee which shall advise the Governor-General thereon.

(6) When the question of removing the Chief Justice is to be investigated the members of the tribunal shall be selected by the Chairman of the Public Service Commission, and when the question of removing a puisne judge is to be investigated they shall be selected by the Chief Justice.

(7) If the question of removing a judge from office has been referred to a tribunal under subsection (5) of this section, the Governor-General, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice and in accordance with the advice of the Chief Justice in the case of a puisne judge, may suspend the judge from exercising the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Governor-General that the question of the removal of the judge from office should not be referred to the Judicial Committee; or

(*b*) if the Judicial Committee advises the Governor-General that the judge ought not to be removed from office.

(8) The prescribed age for the purposes of subsection (1) of this section is the age of sixty-two years or such other age as may be prescribed by Parliament:

Provided that an Act of Parliament, to the extent to which it alters the prescribed age after the appointment of a person to be a judge of the Supreme Court, shall not have effect in relation to that person unless he consents that it should have effect.

Oaths to be taken by judges of Supreme Court.

91. A judge of the Supreme Court shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Schedule to this Constitution.

Reference to Supreme Court in cases involving interpretation of Constitution.

92.—(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 Supreme Court.

(2) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme 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 or, if that decision is the subject of an appeal under section 99 of this Constitution to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, the Judicial Committee.

PART 2

The Court of Appeal

Establishment of Court of Appeal.

93.—(1) There shall be a Court of Appeal which shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The judges of the Court of Appeal shall be—

(*a*) the President;

(*b*) such number, if any, of other judges as may be prescribed by Parliament:

Provided that the office of a judge of the Court of Appeal shall not be abolished while there is a substantive holder thereof; and

(*c*) the Chief Justice and other judges of the Supreme Court *ex officio*.

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

Appointment of judges of Court of Appeal.

94.—(1) The President of the Court of Appeal shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) The judges referred to in section 93(2)(*b*) of this Constitution shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial Service Commission.

(3)(*a*) A person shall not be qualified to be appointed as a judge of the Court of Appeal 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 specified by Parliament or a court having jurisdiction in appeals from such a court ; or

(ii) he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

(*b*) In this subsection " the specified qualifications " means the professional qualifications specified under the Courts Ordinance 1964 (or by or under any law amending or replacing that Ordinance) one of which must be held by any person before he may apply under that Ordinance (or under any such law) to be admitted to practise as a barrister or a solicitor in The Gambia.

(4) If the office of President of the Court of Appeal is vacant or the President is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the other judges of the Court as may for the time being be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.

(5) If the office of any judge of the Court of Appeal other than the President is vacant or if any such judge is acting as President or is for any reason unable to perform the functions of his office or if the President advises the Governor-General that the state of business in the Court of Appeal so requires, the Governor-General, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a judge of the Court of Appeal to act as a judge:

Provided that a person may act as a judge notwithstanding that he has attained the age prescribed for the purposes of section 95(1) of this Constitution.

(6) Any person appointed under subsection (5) of this section to act as a judge of the Court of Appeal shall, subject to the provisions of sections 95(4) and 95(7) 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 Governor-General, acting in accordance with the advice of the Judicial Service Commission:

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 judge of the Court of Appeal 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 Court of Appeal.

95.—(1) Subject to the provisions of this section, a person holding the office of a judge of the Court of Appeal shall vacate that office when he attains the prescribed age.

(2) Notwithstanding that he has attained the age prescribed for the purposes of subsection (1) of this section, a person holding the office of a judge of the Court of Appeal 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 Court of Appeal may be removed from office only for inability to exercise 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 Court of Appeal shall be removed from office by the Governor-General if the question of his removal has been referred by the Governor-General to the Judicial Committee under subsection (5) of this section and the Judicial Committee has advised the Governor-General that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the Prime Minister or, in the case of a judge other than the President, the President represents to the Governor-General that the question of removing a judge under this section ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected in accordance with the provisions of subsection (6) of this section 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 Parliament 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 Governor-General and recommend to the Governor-General whether the question of the removal of that judge from office should be referred by him to the Judicial Committee; and

(*c*) if the tribunal so recommends, the Governor-General shall refer the question to the Judicial Committee which shall advise the Governor-General thereon.

(6) When the question of removing the President is to be investigated the members of the tribunal shall be selected by the Chief Justice, and when the question of removing any other judge is to be investigated they shall be selected by the President.

(7) If the question of removing a judge from office has been referred to a tribunal under subsection (5) of this section, the Governor-General, acting in accordance with the advice of the Prime Minister in the case of the President and in accordance with the advice of the President in the case of any other judge, may suspend the judge from exercising the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Governor-General that the question of the removal of the judge from office should not be referred to the Judicial Committee ; or

(*b*) if the Judicial Committee advises the Governor-General that the judge ought not to be removed from office.

(8) The prescribed age for the purposes of subsection (1) of this section is the age of sixty-two years or such other age as may be prescribed by Parliament:

Provided that—

(*a*) in relation to a person who also holds such office of judge of a court in a country other than The Gambia as may be prescribed by Parliament for the purposes of this paragraph, the prescribed age shall, subject to the provisions of paragraph (*b*) of this proviso, be the age at which, under the law of that other country, he is required to vacate that office ; and

(*b*) an Act of Parliament or the law of another country, to the extent to which it alters the prescribed age after the appointment of a person to be or to act as a judge of the Court of Appeal, shall not have effect in relation to that person unless he consents that it should have effect.

Oaths to be taken by judges of Court of Appeal.

96. A judge of the Court of Appeal shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Schedule to this Constitution.

Number of judges.

97. The Court of Appeal shall, when determining any matter other than an interlocutory matter, be composed of an uneven number of judges, not being less than three.

PART 3

Subordinate courts and courts-martial

Establishment of other courts.

98.—(1) Parliament may establish courts subordinate to the Supreme Court and courts-martial, and any such court shall, subject to the provisions of this Constitution, have such jurisdiction and powers as may be conferred on it by any law.

(2) The Supreme Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court-martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(3) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by subsection (2) of this section.

PART 4

Appeals

Appeals on constitutional questions and questions relating to fundamental rights.

99.—(1) Subject to the provisions of section 46(6) of this Constitution, an appeal shall lie as of right to the Court of Appeal from decisions of the Supreme Court in the following cases, that is to say :—

(*a*) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution ; and

(*b*) final decisions given in exercise of the jurisdiction conferred on the Supreme Court by section 26 of this Constitution (which relates to the enforcement of fundamental rights and freedoms) ;

and an appeal shall lie as of right direct to the Judicial Committee from any decision of the Court of Appeal in any such case.

(2) In this section—

(*a*) references to final decisions of the Supreme Court shall be construed as including references to decisions given in pursuance of section 26(4) or section 92(2) of this Constitution ; and

(*b*) references to decisions of the Court of Appeal in any cases specified in subsection (1) of this section shall be construed as including references to decisions given by that Court on appeal from decisions of the Supreme Court in any such cases.

Other appeals from Supreme Court and Court of Appeal.

100.—(1) Subject to the provisions of section 46(6) of this Constitution, an appeal shall lie as of right to the Court of Appeal from any decision given by the Supreme Court in any of the cases to which this subsection applies and to the Judicial Committee from any decision given in any such case by the Court of Appeal.

(2) The cases to which subsection (1) of this section applies are—

(*a*) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of £500 or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of £500 or upwards ;

(*b*) final decisions in proceedings for dissolution or nullity of marriage ; and

(*c*) such other cases as may be prescribed by Parliament.

(3) Subject to the provisions of section 46(6) of this Constitution, an appeal shall lie, with the leave of the Court that gave the decision, from the Supreme Court to the Court of Appeal and from the Court of Appeal to the Judicial Committee in the following cases, that is to say:—

(*a*) decisions in any civil proceedings where, in the opinion of the court that gave the decision, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Appeal or to the Judicial Committee, as the case may be ; and

(*b*) such other cases as may be prescribed by Parliament.

(4) An appeal shall lie to the Judicial Committee with the special leave of the Committee from any decision given by the Court of Appeal in any civil or criminal matter.

Appeals from subordinate courts and courts-martial.

101.—(1) Subject to the provisions of subsection (2) of this section, an appeal shall lie as of right to the Supreme Court from final decisions given by any subordinate court or a court-martial in any civil or

criminal proceedings on questions as to the interpretation of this Constitution (not being questions that have been referred to the Supreme Court in pursuance of section 92(1) of this Constitution) or as to the contravention of any of the provisions of sections 11 to 25 (inclusive) of this Constitution (not being questions that have been referred to the Supreme Court in pursuance of section 26(3) of this Constitution).

(2) An appeal from a decision given by a subordinate court or a court-martial in any of the cases referred to in subsection (1) of this section—

(*a*) shall not lie direct to the Court of Appeal; and

(*b*) shall not lie direct to the Supreme Court if, under any law—

(i) an appeal lies as of right from that decision to another subordinate court or court-martial; or

(ii) an appeal lies from that decision to another subordinate court or court-martial with the leave of the court that gave the decision or of some other court and that leave has not been withheld.

(3) An appeal shall lie as of right to the Supreme Court from final decisions given by any subordinate court in any case in which, if the decision of the subordinate court were a decision of the Supreme Court, an appeal would lie as of right to the Court of Appeal under section 100 of this Constitution:

Provided that—

(*a*) an appeal shall not lie to the Supreme Court from a decision given by a subordinate court in any such case if, under any law—

(i) an appeal lies as of right from that decision to the Court of Appeal; or

(ii) an appeal lies from that decision to the Court of Appeal with the leave of the court that gave the decision or of some other court and that leave has not been withheld; and

(*b*) an appeal shall not lie direct to the Court of Appeal or direct to the Supreme Court from a decision given by a subordinate court in any such case if, under any law—

(i) an appeal lies as of right from that decision to another subordinate court; or

(ii) an appeal lies from that decision to another subordinate court with the leave of the court that gave the decision or of some other court and that leave has not been withheld.

(4) An appeal shall lie from a subordinate court or a court-martial to—

(*a*) the Supreme Court; or

(*b*) the Court of Appeal

in such cases (other than the cases referred to in subsection (1) or subsection (3) of this section) as may be prescribed by any law.

Supplementary.

102.—(1) Subject to the provisions of this Chapter, provision may be made by or under an Act of Parliament regulating the procedure to be adopted by the Court of Appeal with respect to any appeal to the Judicial Committee under this Chapter or by the parties to any such appeal.

(2) Any decision given by the Judicial Committee in any appeal under this Chapter shall be enforced in like manner as if it were a decision of the Court of Appeal.

(3) The Judicial Committee shall, in relation to any appeal to it under this Chapter in any case, have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal.

PART 5

Judicial Service Commission

Judicial Service Commission.

103.—(1) There shall be a Judicial Service Commission which shall consist of—

(*a*) the Chief Justice, as Chairman ;

(*b*) the Chairman of the Public Service Commission ; and

(*c*) a member who shall be styled the appointed member and who shall be appointed by the Governor-General, acting in accordance with the advice of the Chief Justice.

(2) A person shall not be qualified to be the appointed member of the Commission if—

(*a*) he is, or has at any time during the five years immediately preceding his appointment been, a member of the House of Representatives or a member of any House of Representatives established for The Gambia by Order of Her Majesty in Council before the coming into operation of this Constitution (other than a nominated or an *ex officio* member or a temporary member appointed in place of such a member) ;

(*b*) he is, or has at any time during the said five years been, nominated as a candidate for election as a member of the House of Representatives or of any such House of Representatives established as aforesaid ;

(*c*) he is, or has at any time during the said five years been, the holder of an office in any political organisation that sponsors or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the House of Representatives or of any such House of Representatives established as aforesaid or of any local government authority ; or

(*d*) he is a public officer.

(3) The appointed member of the Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office other than an office to which section 109 of this Constitution applies.

(4) Subject to the provisions of this section, the office of the appointed member of the Commission shall become vacant—

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

(*b*) if any circumstances arise that, if he were not the appointed member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(5) The appointed member of the Commission may be removed from office only for inability to exercise 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.

(6) The appointed member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the Chief Justice represents to the Governor-General that the question of removing the appointed member of the Commission under this section ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice 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 Parliament or a court having jurisdiction in appeals from such a court ; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the appointed member ought to be removed under this section.

(8) If the question of removing the appointed member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Chief Justice, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.

(9) If the office of the appointed member of the Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Chief Justice, may appoint a person who is qualified to be the appointed member to act as that member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting is filled or, as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the Governor-General, acting in accordance with the advice of the Chief Justice.

(10) The appointed member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Schedule to this Constitution.

(11) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.

(12) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of The Gambia for the purpose of the exercise of its functions.

(13) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member 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:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

Appointment, etc. of judicial officers.

104.—(1) The power to appoint persons to hold or act in any offices to which this section applies (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Judicial Service Commission.

(2) The Judicial Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more of its members or to any judge of the Supreme Court or to any person holding or acting in an office to which this section applies.

(3) The offices to which this section applies are—

(*a*) the office of Registrar or Assistant Registrar of the Supreme Court;

(*b*) the office of magistrate;

(*c*) subject to the provisions of subsection (4) of this section, the office of member of any subordinate court (other than the court of any magistrate who is authorised, by or under any law, to hold such a court by virtue of his holding or acting in any other public office and other than a court whose jurisdiction is limited to members of an African race and which has jurisdiction only in the former Protectorate); or

(*d*) subject as aforesaid, such other offices of member of any court or connected with any court as may be prescribed by Parliament.

(4) Where provision is made by or under any law for the appointment of assessors to assist or take part in the decision of the court in any case, the power to appoint persons to be such assessors, the power to exercise disciplinary control over persons so appointed and the power to remove such persons from office shall vest in the judge presiding over the court in that case.

CHAPTER VIII

The Public Service

Public Service Commission.

105.—(1) There shall be a Public Service Commission which shall consist of a Chairman and not less than two nor more than four other members, who shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed as a member of the Commission if—

(*a*) he is, or has at any time during the five years immediately preceding his appointment been, a member of the House of Representatives or a member of any House of Representatives established for The Gambia by Order of Her Majesty in Council before the coming into operation of this Constitution (other than a nominated or an *ex officio* member or a temporary member appointed in place of such a member);

(*b*) he is, or has at any time during the said five years been, nominated as a candidate for election as a member of the House of Representatives or of any such House of Representatives established as aforesaid;

(*c*) he is, or has at any time during the said five years been, the holder of an office in any political organisation that sponsors or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the House of Representatives or of any such House of Representatives established as aforesaid or of any local government authority; or

(*d*) he is a public officer.

(3) A member of the Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office other than an office to which section 109 of this Constitution applies.

(4) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

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

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(5) A member of the Commission may be removed from office only for inability to exercise 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.

(6) A member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the Prime Minister represents to the Governor-General that the question of removing a member of the Commission under this section ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the

Chief Justice 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 Parliament or a court having jurisdiction in appeals from such a court; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this section.

(8) If the question of removing a member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.

(9) If the office of Chairman of the Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.

(10) If at any time there are less than two members of the Commission besides the Chairman or if any such member is acting as Chairman or is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General, acting in accordance with the advice of the Prime Minister.

(11) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that is set out in the Schedule to this Constitution.

(12) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(13) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of The Gambia for the purpose of the exercise of its functions.

(14) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member 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:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

Appointment, etc. of public officers.

106.—(1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

(2) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer.

(3) The provisions of this section shall not apply in relation to the following offices, that is to say:—

(*a*) the office of a judge of the Court of Appeal or of the Supreme Court;

(*b*) the office of Director of Public Prosecutions;

(*c*) the office of Director of Audit;

(*d*) any office to which section 104 of this Constitution (which relates to offices within the jurisdiction of the Judicial Service Commission) applies;

(*e*) any office to which section 109 of this Constitution (which relates to the offices of the principal representatives of The Gambia abroad) applies;

(*f*) the office of permanent secretary or Secretary to the Cabinet or Establishment Secretary; or

(*g*) any office in the Police Force.

(4) No person shall be appointed under this section to or to act in any office on the Governor-General's personal staff except with the concurrence of the Governor-General.

(5) Before any of the powers conferred by this section in relation to the Clerk of the House of Representatives or a member of his staff are exercised by the Public Service Commission or any other person or authority, the Commission or that person or authority shall consult with the Speaker of the House.

(6) Before the Public Service Commission or any other person or authority exercises its powers under this section to appoint to or to act in any public office any person who holds or is acting in any office the power to make appointments to which is vested by this Constitution in the Judicial Service Commission, the Public Service Commission or that person or authority shall consult with the Judicial Service Commission.

(7) A public officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of a judicial function conferred on him unless the Judicial Service Commission concurs therein.

107.—(1) The Director of Public Prosecutions shall be appointed by the Governor-General, acting in accordance with the advice of the Public Service Commission. Director of Public Prosecutions.

(2) If the office of Director of Public Prosecutions is vacant or if the Director of Public Prosecutions is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Director of Public Prosecutions, and any person so appointed shall, subject to the provisions of subsections (4), (6) and (8) of this section, continue to act until a person has been appointed to the office of Director of Public Prosecutions and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

(3) (*a*) A person shall not be qualified to be appointed to hold or act in the office of Director of Public Prosecutions unless he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

(*b*) In this subsection "the specified qualifications" means the professional qualifications specified under the Courts Ordinance 1964(a) (or by or under any law amending or replacing that Ordinance) one of which must be held by any person before he may apply under that Ordinance (or under any such law) to be admitted to practise as a barrister or a solicitor in The Gambia.

(4) Subject to the provisions of subsection (6) of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.

(5) A person holding the office of Director of Public Prosecutions may be removed from office only for inability to exercise 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.

(6) The Director of Public Prosecutions shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.

(7) If the Prime Minister or the Chairman of the Public Service Commission represents to the Governor-General that the question of removing the Director of Public Prosecutions under this section ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice 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 Parliament or a court having jurisdiction in appeals from such a court; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Director of Public Prosecutions ought to be removed under this section.

(a) Ordinance No. 13 of 1964.

(8) If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Director of Public Prosecutions from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director of Public Prosecutions should not be removed.

(9) The prescribed age for the purposes of subsection (4) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that an Act of Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Public Prosecutions, shall not have effect in relation to that person unless he consents that it should have effect.

Director of Audit.

108.—(1) The Director of Audit shall be appointed by the Governor-General, acting in accordance with the advice of the Public Service Commission.

(2) If the office of Director of Audit is vacant or if the Director of Audit is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Director of Audit, and any person so appointed shall, subject to the provisions of subsections (4), (6) and (8) of this section, continue to act until a person has been appointed to the office of Director of Audit and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

(3) Before tendering advice for the purposes of subsection (1) or subsection (2) of this section, the Public Service Commission shall consult the Prime Minister.

(4) Subject to the provisions of subsection (6) of this section, the Director of Audit shall vacate his office when he attains the prescribed age.

(5) A person holding the office of Director of Audit may be removed from office only for inability to exercise 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.

(6) The Director of Audit shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.

(7) If the Prime Minister or the Chairman of the Public Service Commission represents to the Governor-General that the question of removing the Director of Audit under this section ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by

the Chief Justice 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 Parliament or a court having jurisdiction in appeals from such a court; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Director of Audit ought to be removed under this section.

(8) If the question of removing the Director of Audit has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Director of Audit from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director of Audit should not be removed.

(9) The prescribed age for the purposes of subsection (4) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that an Act of Parliament, to the extent to which it alters the prescribed age after a person has been appointed to be or to act as Director of Audit, shall not have effect in relation to that person unless he consents that it should have effect.

Principal representatives of The Gambia abroad.

109.—(1) The power to appoint persons to hold or act in offices to which this section applies and to remove from office persons holding or acting in such offices shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) Before tendering advice for the purposes of this section in relation to any person who holds any office in the public service, other than an office to which this section applies, the Prime Minister shall consult the Public Service Commission.

(3) The offices to which this section applies are the offices of Ambassador, High Commissioner or other principal representative of The Gambia in any other country or accredited to any international organisation.

Permanent secretaries, Secretary to the Cabinet and Establishment Secretary.

110.—(1) The power to appoint a person to hold or act in the office of permanent secretary or Secretary to the Cabinet or Establishment Secretary and to remove from office a person holding or acting in any such office shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) Before tendering advice for the purposes of this section, the Prime Minister shall consult the Public Service Commission.

(3) In this section and in section 106(3)(*f*) of this Constitution "the Establishment Secretary" means the public officer who is for the time being in charge of staff and establishment matters in respect of the public service and who is directly responsible therefor to the Minister for the time being responsible for the public service.

Police Force.

111.—(1) The power to appoint a person to hold or act in the office of Commissioner of Police and the power to remove the Commissioner of Police from office shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that, before tendering advice for the purposes of this subsection, the Prime Minister shall consult the Public Service Commission.

(2) The power to appoint persons to hold or act in offices in the Police Force below the rank of Commissioner of Police but above the rank of Chief Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

(3) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (2) of this section to any one or more of its members or, with the consent of the Prime Minister, to the Commissioner of Police or to any other member of the Police Force.

(4) The power to appoint persons to hold or act in offices in the Police Force of or below the rank of Chief Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Commissioner of Police.

(5) The Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under subsection (4) of this section to any other member of the Police Force.

(6) Parliament may provide that where the power to exercise disciplinary control over any member of the Police Force (including the power to remove him from office) has been exercised under subsection (4) or subsection (5) of this section by any member of the Police Force (hereinafter referred to as "the disciplinary authority"), the member of the Police Force in respect of whom it was so exercised may appeal from the decision of the disciplinary authority to the Public Service Commission:

Provided that Parliament or (in the case of the exercise of a power under subsection (5) of this section) the Commissioner of Police may require appeals to be made to a member of the Police Force of higher rank than the disciplinary authority before they are made to the Public Service Commission.

(7) In this section "Commissioner of Police" means the officer, by whatever name called, commanding the Police Force.

(8) If provision is made by or under any law—

(*a*) altering the ranks into which The Gambia Police Force established by the Police Ordinance(a) is divided; or

(*b*) establishing a police force other than The Gambia Police Force or altering the ranks into which any such other police force is divided,

the Public Service Commission may, by order published in the Official Gazette, specify some rank (other than the rank of Chief

(a) Laws of The Gambia, 1955 Revised Edition, Cap. 70.

Inspector) in The Gambia Police Force or, as the case may be, in that other police force as being equivalent to the rank of Chief Inspector as it exists in The Gambia Police Force under the law in force immediately before the coming into operation of this Constitution and the references in subsections (2) and (4) of this section to the rank of Chief Inspector shall then be construed as if they were, in relation to The Gambia Police Force or, as the case may be, in relation to that other police force, references to the rank for the time being so specified.

Pensions laws and protection of pensions rights.

112.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before 18th February 1965 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

(*a*) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 18th February 1965, be the law that was in force on 17th February 1965; and

(*b*) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 17th February 1965, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Widows' and Orphans' Pensions Ordinance(a) or under any law amending or replacing that Ordinance or under any other law providing for the funding of pensions benefits, they are a charge on a fund established by that Ordinance or by any such law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the Consolidated Revenue Fund.

(5) All sums that, under the Widows' and Orphans' Pensions Ordinance or under any law amending or replacing that Ordinance or under any other law providing for the funding of pensions benefits, are to be paid by the Government of The Gambia into any fund established by that Ordinance or by any such law or are otherwise to be paid by the Government of The Gambia for the purposes of that Ordinance or any such law shall be a charge on the Consolidated Revenue Fund.

(6) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(a) Laws of The Gambia, 1955 Revised Edition, Cap. 66.

(7) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Power to withhold pensions, etc.

113.—(1) Where under any law any person or authority has a discretion—

(*a*) to decide whether or not any pensions benefits shall be granted; or

(*b*) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in his being granted benefits of a smaller amount.

(3) The Public Service Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of judge of the Court of Appeal, judge of the Supreme Court, Director of Public Prosecutions or Director of Audit has been guilty of misbehaviour in that office unless he has been removed from that office by reason of such misbehaviour.

(4) Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held any office to which, at the time of such action, section 104 of this Constitution applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial Service Commission.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

CHAPTER IX

MISCELLANEOUS

Resignations.

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

Provided that—

(*a*) the resignation of a person from the office of Speaker or Deputy Speaker of the House of Representatives shall be addressed to the House; and

(*b*) the resignation of any person from the office of member of the House of Representatives shall be addressed to the Speaker of the House.

(2) The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it.

Re-appointments and concurrent appointments.

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

(2) Where this Constitution vests in any person or authority the power 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.

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

"the Commonwealth" means The Gambia, any country to which section 6 of this Constitution applies and any dependency of any such country;

"financial year" means the period of twelve months ending on 30th June in any year or on such other day as Parliament may prescribe:

Provided that whenever Parliament alters the day on which the financial year ends, it shall provide either—

(*a*) that the period beginning at the end of the last complete financial year under the law in force before the alteration takes effect and ending with the beginning of the first complete financial year under the law in force after the alteration takes effect shall be added to either of those years (as Parliament prescribes) and that the aggregate period, though greater than twelve months, shall be reckoned as one financial year; or

(*b*) that the period beginning and ending as aforesaid, though less than twelve months, shall itself be reckoned as a complete financial year;

"the former Protectorate" means the territory that, on 17th February 1965, was comprised in the Protectorate of The Gambia;

"The Gambia" means the territory that, on 17th February 1965, was comprised in the Colony of The Gambia and the former Protectorate;

"Head Chief", "Deputy Head Chief", "Sub-Chief" and "Headman" have the same meaning as in the Protectorate Ordinance(a);

(a) Laws of The Gambia, 1955 Revised Edition, Cap. 47.

"the Judicial Committee" means the Judicial Committee of the Privy Council established by the Judicial Committee Act 1833(a) as from time to time amended by any Act of the Parliament of the United Kingdom;

"law" includes—

(*a*) any instrument having the force of law made in exercise of a power conferred by a law; and

(*b*) native law and custom and any other unwritten rule of law,

and "lawful" and "lawfully" shall be construed accordingly;

"oath" includes affirmation;

"the Police Force" means the Gambia Police Force established by the Police Ordinance(b) and includes any other police force established by or under an Act of Parliament to succeed to or to supplement the functions of the Gambia Police Force but does not, save in the definition of a "disciplined force" in section 28(1) of this Constitution, include any police force forming part of any naval, military or air force or any police force for the protection of harbours, waterways, railways or air fields or any police force established by any local government authority;

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

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

"the public service" means, subject to the provisions of this section, the service of the Crown in respect of the government of The Gambia;

"session" means the period beginning when the House of Repretatives first meets after 17th February 1965 or after Parliament has at any time been prorogued or dissolved and ending when Parliament is prorogued or when Parliament is dissolved without having been prorogued;

"sitting" means the period during which the House of Representatives is sitting continuously without adjournment and includes any period during which it is in committee;

"subordinate court" means any court of law established for The Gambia other than—

(*a*) the Judicial Committee;

(*b*) the Court of Appeal;

(*c*) the Supreme Court; or

(*d*) a court-martial; and

"voting member" has the meaning assigned to that expression by section 33(2) of this Constitution.

(2) In this Constitution, unless the context otherwise requires, references to offices in the public service shall be construed as including references to the offices of judges of the Court of Appeal and judges of the Supreme Court and the offices of members of all subordinate courts (being offices the emoluments attaching to which, or any part of the emoluments attaching to which, are paid directly out of monies provided by Parliament) but not as including references to

(a) 3 & 4 Will. 4. c. 41. (b) Laws of The Gambia, 1955 Revised Edition, Cap. 70.

any office that, by virtue of subsection (3)(*c*) of section 104 of this Constitution, is excluded from the offices to which that section applies or to the office of assessor in any court.

(3) In this Constitution references to an office in the public service shall not be construed as including—

(*a*) references to the office of the Speaker or Deputy Speaker of the House of Representatives, the Prime Minister or any other Minister, a member of the Cabinet, a Parliamentary Secretary or a member of the House of Representatives;

(*b*) references to the office of a member of any Commission established by this Constitution or a member of the Advisory Committee on the Prerogative of Mercy;

(*c*) save in so far as may be provided by Parliament, references to the office of a member of any other council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law;

(*d*) references to the office of Head Chief, Deputy Head Chief, Sub-Chief or Headman;

(*e*) references to the office of any District Authority or member of any District Authority declared to be, or established as, such an Authority under the District Authority Ordinance(a) or (to the extent to which any such law makes provision for the administration of Districts within the former Protectorate) by or under any law for the time being amending or replacing that Ordinance; or

(*f*) except for the purposes of sections 37(3)(*d*), 103(2)(*d*), 103(3), 105(2)(*d*) and 105(3) of this Constitution (which relate to disqualification for election or appointment to certain offices), references to an office in a naval, military or air force.

(4) For the purposes of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other like allowance.

(5) 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, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office.

(6) Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some specified person or authority, no person may, without his consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.

(7) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that—

(*a*) nothing in this subsection shall be construed as conferring on any person or authority the power to require a judge of the Court of Appeal or a judge of the Supreme Court or the Director of Public Prosecutions or the Director of Audit to retire from the public service; and

(a) Laws of The Gambia, 1955 Revised Edition, Cap. 48.

(*b*) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(8) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.

(9) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(11) Where, under any provisions of this Constitution, any person or authority is authorised or required to exercise any function after consultation with some other person or authority, the person or authority first referred to shall not be required to act in accordance with the advice of the other person or authority and the question whether such consultation was made shall not be enquired into in any court.

(12) Without prejudice to the provisions of section 32(3) of the Interpretation Act 1889(a) (as applied by subsection (15) of this section), where any power is conferred by this Constitution to make any order, regulation or rule or pass any resolution or give any direction or make any declaration or designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, resolution, direction, declaration or designation.

(13) Any reference in this Constitution to a law made before 18th February 1965 shall, unless the context otherwise requires, be construed as a reference to that law as it had effect on 17th February 1965.

(14) Any reference in this Constitution to a law that amends or replaces any other law or any provision of any other law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, suspends, repeals, adds new provisions to or makes different provision in lieu of that other law or that provision.

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

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

THE SCHEDULE TO THE CONSTITUTION

Sections 37(9), 40(3), 91, 96, 103(10) and 105(11).

OATH FOR DUE EXECUTION OF OFFICE OF JUDGE OF COURT OF APPEAL, JUDGE OF SUPREME COURT, MEMBER OF CONSTITUENCY BOUNDARIES COMMISSION, MEMBER OF PUBLIC SERVICE COMMISSION, MEMBER OF JUDICIAL SERVICE COMMISSION AND SUPERVISOR OF ELECTIONS.

I, ..., do swear [*or* solemnly affirm] that I will exercise the functions of the office of ..... without fear or favour, affection or illwill, according to the Constitution and other laws of The Gambia.

So help me God [*To be omitted in affirmation.*]

EXPLANATORY NOTE

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

By virtue of the provisions of the Gambia Independence Act 1964, The Gambia will attain fully responsible status within the Commonwealth on 18th February 1965. This Order makes provision for a new Constitution for The Gambia as from that date.