1957 No. 1744

The Jamaica (Constitution) Order in Council, 1957

Made - - - - 8th October, 1957
*Coming into Operation. On a date to be fixed under Section 1**

At the Court at Buckingham Palace, the 8th day of October, 1957

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Jamaica Act, 1866(a), the enactments of the Legislature of the Island of Jamaica therein mentioned, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, construction and commencement

1.—(1) This Order may be cited as the Jamaica (Constitution) Order in Council, 1957, and shall be construed as one with the Jamaica (Constitution) Orders in Council, 1944 to 1956(b).

(2) The Jamaica (Constitution) Orders in Council, 1944 to 1956, and this Order may be cited together as the Jamaica (Constitution) Orders in Council, 1944 to 1957.

(3) This Order shall come into operation on a date to be fixed by the Governor by Proclamation in the Gazette, and shall be published in the Gazette.

Substitution of "Chief Secretary" for "Colonial Secretary"

2. In subsection (1) of Section 1 of the Jamaica (Constitution) Order in Council, 1944(c), (hereinafter referred to as "the principal Order") and in the Second Schedule to that Order for the words "Colonial Secretary" the words "Chief Secretary" are substituted.

Provision for Council of Ministers

3. Sections 8 to 21 of the principal Order and Sections 2 to 7 of the Jamaica (Constitution) Order in Council, 1953(d), are revoked and the following Sections are substituted therefor as Part III of the principal Order:—

"PART III

Council of Ministers

Council of Ministers.

8.—(1) There shall be a Council of Ministers in and for Jamaica which shall, subject to Section 14 of this Order, consist of twelve Ministers, of whom ten shall be persons who are Members of the House of Representatives and two shall be persons who are Unofficial Members of the Legislative Council.

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* 11.11.57.

(a) 29 & 30 Vict. c. 12.

(b) S.R. & O. 1944/1215 (Rev. XI, p. 112: 1944 I, p. 378); S.I. 1949/1436, 2201, 1953/747, 1955/1214, 1956/1209 (1949 I, pp. 2372, 2373; 1953 I, p. 910; 1955, I, p. 1038; 1956 I, p. 1105).

(c) S.R. & O. 1944/1215 (Rev. XI, p. 112: 1944 I, p. 378).

(d) S.I. 1953/747 (1953 I, p. 910).

(2) Of the Ministers one, who shall be styled the Chief Minister, shall be appointed in accordance with subsection (1) of Section 10 of this Order and the others shall be appointed in accordance with subsection (2) of Section 10 of this Order.

Functions of Council of Ministers.

9.—(1) The Council of Ministers shall be the principal instrument of policy and shall have such functions, powers and duties as may from time to time be prescribed by or under this Order, any other Orders of Her Majesty in Council, any Instructions under Her Majesty's Sign Manual and Signet or any Law or other instrument having the force of law in Jamaica.

(2) It shall be the duty of the Council of Ministers to prepare the Annual Estimates of Revenue and Expenditure and all Supplementary Estimates of Expenditure.

Appointment of Ministers.

10.—(1) Whenever there shall be occasion for the appointment of a Chief Minister—

(*a*) the Governor, acting in his discretion, shall submit to the House of Representatives, for its approval, the name of the person, being a Member of that House, whom he proposes for appointment;

(*b*) the House of Representatives shall, before the conclusion of the meeting in which the name of any person proposed for appointment as Chief Minister has been submitted to it in accordance with the provisions of paragraph (*a*) of this subsection, consider and resolve whether the appointment of that person shall be approved;

(*c*) the Governor shall, by Instrument under the Broad Seal, appoint to be Chief Minister the person whose appointment the House of Representatives shall by resolution approve under paragraph (*b*) of this subsection.

(2) Whenever the office of a Minister other than the Chief Minister is vacant the Governor shall, on the recommendtion of the Chief Minister, by Instrument under the Broad Seal, appoint to that office a person who is a Member of the House of Representatives or an Unofficial Member of the Legislative Council, as the case may require.

(3) A person who has vacated his office as a Minister may, if qualified, again be appointed to be a Minister from time to time in accordance with the provisions of this Order.

(4) For the purposes of this Section there shall be occasion for the appointment of a Chief Minister when, following a dissolution of the House of Representatives, a general election of Members to that House has been held, or when the appointment of the Chief Minister has been revoked under subsection (3) of Section 11 of this Order, or when the office of Chief Minister has become vacant under subsection (1) of Section 11 of this Order.

Tenure of office of Chief Minister.

11.—(1) The Chief Minister shall vacate his office—

(*a*) if he ceases to be a Member of the House of Representatives otherwise than by reason of a dissolution of that House ; or

(*b*) if he resigns his office by writing under his hand addressed to the Governor.

(2) The Chief Minister shall also vacate his office when, following a dissolution of the House of Representatives and the holding of a general election of Members to that House, that House by resolution passed under paragraph (*b*) of subsection (1) of Section 10 of this Order, approves the appointment of any person to be Chief Minister.

(3) (*a*) The House of Representatives may, by resolution in favour of which there are cast the votes of a majority of all the Members of that House, recommend the revocation of the appointment of the Chief Minister.

(*b*) Upon the passing of such a resolution the Governor shall, by Instrument under the Broad Seal, revoke the appointment of the Chief Minister and the Chief Minister shall vacate his office by virtue of such revocation as soon thereafter as the House of Representatives, by resolution passed under paragraph (*b*) of subsection (1) of Section 10 of this Order, approves the appointment of any person to be Chief Minister :

Provided that the Governor, acting in his discretion, may by Proclamation dissolve the Chambers instead of revoking the appointment of the Chief Minister.

Tenure of office of Ministers other than the Chief Minister.

12.—(1) A Minister other than the Chief Minister shall vacate his office—

(*a*) if he ceases to be a Member of the House of Representatives or an Unofficial Member of the Legislative Council, as the case may be, otherwise than by reason of a dissolution of that Chamber ; or

(*b*) if he resigns his office by writing under his hand addressed to the Governor ; or

(*c*) when the House of Representatives, by resolution passed under paragraph (*b*) of subsection (1) of Section 10 of this Order, approves the appointment of any person to be Chief Minister.

(2) The Chief Minister may recommend to the Governor the revocation of the appointment of any other Minister and upon receiving such a recommendation the Governor shall, by Instrument under the Broad Seal, revoke the appointment of the Minister to whom it relates and that Minister shall thereupon vacate his office.

Performance of functions of Chief Minister in certain events.

13.—(1) Whenever the office of Chief Minister is vacant or the Chief Minister is, by reason of his illness or his absence from Jamaica, unable to perform the functions of his office, the Governor may appoint one of the other Ministers, not being a Member of the Legislative Council, to perform the functions conferred on the Chief Minister by this Order (other than the functions conferred by subsection

(3) of this Section) and any Minister so appointed may, during the subsistence of his appointment, perform those functions.

(2) The Governor may revoke any appointment made under this Section.

(3) The powers conferred upon the Governor by this Section shall be exercised by the Governor acting in his discretion—

(*a*) if the office of Chief Minister is vacant; or

(*b*) if, in the opinion of the Governor, it is impracticable to obtain the advice of the Chief Minister owing to his illness or absence.

and in any other case shall be exercised by the Governor in accordance with the advice of the Chief Minister.

Temporary Members of Council of Ministers.

14.—(1) Whenever a Minister other than the Chief Minister is, by reason of his illness or his absence from Jamaica, unable to perform the functions of his office, the Governor may, by Instrument under the Broad Seal, appoint a person to be temporarily a Member of the Council of Ministers:

Provided that the person so appointed shall be a Member of the same Chamber as the Minister on account of whose inability to perform his functions he is appointed.

(2) Sections 12, 18 and 19 of this Order shall apply in relation to a person appointed under this Section to be temporarily a Member of the Council of Ministers as they apply in relation to a Minister.

(3) Subject to Section 12 of this Order as applied by subsection (2) of this Section, a person appointed under this Section to be temporarily a Member of the Council of Ministers shall hold office until he is notified by the Governor that the Minister on account of whose inability to perform his functions he was appointed is again able to perform his functions or the office of that Minister becomes vacant.

(4) The powers conferred on the Governor by this Section shall be exercised by him in accordance with the advice of the Chief Minister.

Official oath.

15. Before entering upon the functions of his office, every Minister and every person appointed to be temporarily a Member of the Council of Ministers shall make and subscribe before the Governor, or some other person authorized in that behalf by the Governor, an oath for the due execution of that office in the following form:—

"I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of ..... So help me God":

Provided that every person authorized by law to make an affirmation instead of taking an oath in legal proceedings may, instead of making the said oath, make an affirmation in like terms.

Summoning of Council of Ministers.

16. Meetings of the Council of Ministers shall be summoned by the Chief Minister:

Provided that the Governor, acting in his discretion, may summon a special meeting of the Council of Ministers whenever he thinks fit and may attend and preside at such a meeting.

Proceedings in Council of Ministers.

17.—(1) Subject to Section 16 of this Order there shall preside at any meeting of the Council of Ministers—

(*a*) the Chief Minister; or

(*b*) in the absence of the Chief Minister, such other Minister as the Chief Minister may appoint; or

(*c*) if no Minister so appointed is present, such other Minister as the Members of the Council present may elect.

(2) No business shall be transacted at any meeting of the Council of Ministers if there are less than four Members of the Council present at the meeting and any Member present has objected to the transaction of business on that account.

(3) Subject to subsection (2) of this Section, the Council of Ministers shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy not filled when the Council is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled to do so took part in those proceedings.

Assignment of departments and subjects.

18. Subject to Section 19 of this Order, the Governor, on the recommendation of the Chief Minister, may by directions in writing—

(*a*) charge any Minister who is a Member of the House of Representatives with responsibility for any department or subject; and

(*b*) revoke or vary any directions given under this Section:

Provided that the Governor shall not be obliged to assign to any Minister responsibility for any business relating to—

(i) defence;

(ii) external affairs;

(iii) the Cayman Islands;

(iv) the Turks and Caicos Islands;

(v) the audit of the accounts of the Government;

(vi) the making of appointments (including appointments on promotion or transfer) to offices in the public service of Jamaica; or

(vii) the dismissal or disciplinary control of officers in that public service.

Responsibility for criminal matters.

19. Responsibility for the initiation, conduct and discontinuance of criminal proceedings shall not be assigned to a Minister but shall vest in the Attorney-General; and the assignment to a Minister of responsibility for the department of the Attorney-General shall confer on that Minister responsibility only for submitting to the Council of Ministers questions relating to that department and for the conduct in the legislature of Government business relating to that department."

Composition of Legislative Council

4.—(1) With effect from the commencement of this Order the composition of the Legislative Council shall be varied by reducing the number of *ex officio* Members from three to one and by increasing the minimum number of Unofficial Members from twelve to fourteen, and accordingly—

(*a*) paragraph (*a*) of Section 22 of the principal Order is revoked and the following paragraph is substituted therefor—

"(*a*) one *ex officio* Member, that is to say, the Attorney-General;" and

(*b*) in paragraph (*b*) of the said Section 22 for the word "twelve" the word "fourteen" is substituted.

Saving of existing appointments of Ministers

5. Any appointment of a person to be a Minister (including any appointment of a person to be Chief Minister) made under Section 3 of the Jamaica (Constitution) Order in Council, 1953, and subsisting immediately before the commencement of this Order shall, from the commencement of this Order, have effect as if it had been made under the principal Order as amended by this Order, and accordingly any person holding such an appointment shall by virtue thereof be a Member of the Council of Ministers established by the principal Order as amended by this Order and shall hold office on the terms and conditions of the principal Order as so amended.

"Executive Council" to be construed as "Council of Ministers"

6. References in the principal Order to the Executive Council shall be construed as references to the Council of Ministers established by the principal Order as amended by this Order.

Provisions to give effect to Order

7.—(1) The Governor may by Order, at any time within twelve months after the commencement of this Order, make such provision as appears to him necessary or expedient for the purpose of bringing existing instruments into accord with the provisions of this Order or otherwise for giving effect, or enabling effect to be given, to those provisions; and in particular and without prejudice to the generality of the foregoing power the Governor may by such Orders—

(*a*) modify, add to or adapt any provisions in existing instruments which refer, in whatever terms, to the Executive Council, or to the

Members of the Executive Council or to the Governor in Council: and

(*b*) provide for the transfer of functions, powers and duties conferred or imposed by existing instruments upon any person or authority to such other person or authority as may be specified by such Orders.

(2) An Order made under this Section—

(*a*) may be given retrospective operation to a date not earlier than the commencement of this Order;

(*b*) shall be published in the Gazette and shall thereupon have the force of law and shall take effect on the date specified therein or in any other such Order; and

(*c*) may be revoked or amended by a further Order made under this Section or by any law enacted under the provisions of the principal Order.

(3) In this Section "existing instruments" means Laws, rules, regulations, by-laws, proclamations, orders, licences, permits and other enactments and instruments having the force of law, or issued in pursuance of statutory powers, and in force in Jamaica at the date of the Order by which they are affected.

W. G. Agnew.

EXPLANATORY NOTE

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

This Order amends the Jamaica (Constitution) Order in Council, 1944, by substituting a Council of Ministers for the Executive Council constituted by Part III of that Order as amended; varies the composition of the Legislative Council; and empowers the Governor to make consequential modifications in existing legislation.