STATUTORY INSTRUMENTS

1963 No. 1047

EAST AFRICA

The Kenya (Amendment) Order in Council 1963

Made - - - -	30*th May* 1963
Laid before Parliament	30*th May* 1963
Coming into Operation	31*st May* 1963

At the Court at Buckingham Palace, the 30th day of May 1963

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts 1887 and 1945(a), the Foreign Jurisdiction Act 1890(b) 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 Kenya (Amendment) Order in Council 1963, and this Order and the Kenya Order in Council 1963(c) (hereinafter referred to as "the principal Order") may be cited together as the Kenya Orders in Council 1963.

(2) This Order shall be construed as one with the principal Order.

(3) This Order shall come into operation on 31st May 1963.

Amendment of section 4 of principal Order.

2. Section 4 of the principal Order is amended by the deletion of the word "revocations" in subsection (1) thereof and the substitution therefor of the word "qualifications".

Amendment of section 6 of principal Order.

3.—(1) Section 6 of the principal Order is amended—

(*a*) by the insertion immediately after subsection (3) thereof of the following subsections as subsections (3A) and (3B) thereof:—

"(3A) The Governor, acting in his discretion, may, by regulations which shall be published in the Kenya Gazette, make provision for the holding, as nearly as may be in accordance with Schedule 3 of the Constitution, of a general election of the Specially Elected Members of the House of Representatives at any time after the holding of an election of the members of the proposed Lower House under the authority of the regulations referred to in subsection (2) of this section, and for the purposes of any such general election of the Specially Elected Members—

(*a*) the Speaker of the Legislative Council established by the existing Orders shall be deemed to be the Speaker of the House of Representatives; and

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7. (b) 53 & 54 Vict. c. 37.
(c) S.I. 1963/791 (1963 I, p. 953).

(*b*) the persons elected as the members of the proposed Lower House at the election held under the authority of the regulations referred to in subsection (2) of this section shall be deemed to be the Elected Members of the House of Representatives.

(3B) The persons who are elected, at a general election held in pursuance of regulations made under subsection (3A) of this section, as Specially Elected Members of the House of Representatives shall be deemed on and after the appointed day to have been so elected in accordance with the provisions of the Constitution."; and

(*b*) by the revocation of subsection (8) thereof and the substitution therefor of the following:—

"(8) The Governor, acting in his discretion, may, by regulations which shall be published in the Kenya Gazette and, after the appointed day, in the Regional Gazette of the Region concerned, make provision for the holding, as nearly as may be in accordance with the provisions of Schedule 6 of the Constitution, of a general election of the Specially Elected Members of a Regional Assembly before that Regional Assembly first meets after the appointed day notwithstanding that there is then no person holding or capable of exercising the functions of the office of President of the Regional Assembly; and for the purposes of any such election section 87(5) of the Constitution shall have effect as if the last dissolution of the Legislative Council established by the existing Orders were the last dissolution of the Regional Assembly.".

(2) For the avoidance of doubt it is hereby declared that section 6(3A) of the principal Order as set out in subsection (1)(*a*) of this section shall come into operation when this Order comes into operation.

Insertion in principal Order of provision for pensions appeals.

4. The principal Order is amended by the insertion, immediately after section 10 thereof, of the following two sections as sections 10A and 10B:—

"Appeals in respect of certain decisions affecting pensions benefits.

10A.—(1) The following 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 of the Government of Kenya to give such concurrence as is required by section 186(1) or section 186(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, whether of a Commission established by the Constitution or some other person or 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, whether of a Commission established by the Constitution or some other person or 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 Commission or other person or authority taking the decision 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) In the following provisions of this section references to the Commission shall be construed—

(*a*) in relation to such a decision as is referred to in paragraph (*a*) of subsection (1) of this section, as references to the Public Service Commission of the Government of Kenya;

(*b*) in relation to such a decision as is referred to in paragraph (*b*) or paragraph (*c*) of subsection (1) of this section, being a decision taken by a Commission established by the Constitution, as references to that Commission; and

(*c*) in relation to such a decision as is referred to in paragraph (*b*) or paragraph (*c*) of subsection (1) of this section, being a decision taken by some other person or authority, as references to that person or authority.

(3) The Commission shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of any decision such as is referred to in subsection (1) of this section, stating the time, not being less than 14 days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the Commission for the case to be referred to an Appeals Board.

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

(*a*) one member, who shall not be a member of the Commission, selected by the Prime Minister;

(*b*) one member selected by an association representative of public officers or by 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.

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

(*a*) shall hear the applicant if he so requests in writing 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 Commission and shall also

consider any further document relating to the case that may be produced by or on behalf of the applicant or the Commission.

(6) 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 referred to in paragraph (*a*) of subsection (1) of this section, the Board shall advise the 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 Commission 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 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 there shall be adopted with respect to the calculation of any pensions benefits that, under any law, may be granted in respect of his service as a public officer such measures as the Board may specify in order to off-set all or any part of the reduction in the amount of such 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.

(7) In this section the expression "pensions benefits" has the meaning assigned to it in section 186 of the Constitution.

(8) This section applies to any officer who is the substantive holder of a pensionable public office and—

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

(*b*) is a member of Her Majesty's Overseas Civil Service; or

(*c*) whose conditions of service include an entitlement to free passages from East Africa for the purpose of leave of absence, other than sabbatical leave, upon the completion of a tour of duty.

Compulsory retirement to facilitate appointment of local candidates.

10B.—(1) If the Prime Minister so requests, the authorities having power to make appointments in any branch of the public service of the Government of Kenya shall consider and report to the Prime Minister whether there are more candidates belonging to Kenya (hereinafter referred to as " local candidates ") who are 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; if those authorities report to the Prime Minister that such is the case, the authority having power to remove from office persons holding office in that branch (in this subsection and in subsection (2) of this section referred to as " the nominating authority ") shall, if so requested by the Prime Minister, select officers to whom this section applies who are serving in that branch and whose retirement would, in the opinion of the nominating authority, 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 vacate their appointments (not exceeding the number of officers so selected), the nominating authority shall nominate that number of officers from among the officers so selected and the provisions of subsections (2), (3) and (4) of this section shall apply in the case of any officer so nominated.

(2) The nominating authority shall report the name of the officer to the Chairman of the Public Service Commission of the Government of Kenya who in turn shall circulate that name to the authority having power to make appointments in any other branch of the public service of the Government of Kenya in which the officer is eligible for appointment and to the authority having power to make appointments in any branch of any other public service in Kenya in which he is so eligible; and each such authority shall then consider whether there is any vacancy to which it is willing to appoint the officer.

(3) If any authority indicates to the Chairman of the Public Service Commission of the Government of Kenya that it is willing to appoint the officer to fill a vacancy the officer shall be so informed and that appointment (which, in the case of a vacancy in the public service of a Region, shall be an appointment on secondment from the public service of the Government of Kenya) shall be made, but without prejudice to the right of the officer to retire voluntarily from the public service in the manner provided by any law:

Provided that where more than one authority is willing to appoint the officer to fill a vacancy, the Public Service Commission of the Government of Kenya or, in the case of a member of the Police Force, the Police Service Commission shall decide which vacancy he shall be appointed to fill.

(4) If no authority is willing to appoint the officer to fill a vacancy, the Chairman of the Public Service Commis-

sion of the Government of Kenya shall by notice in writing so inform him and require him to retire from the public service of the Government of Kenya, and he shall retire accordingly.

(5) The provisions of subsections (1), (2), (3) and (4) of this section shall not apply in relation to—

(*a*) a person who is for the time being the holder of the office of Justice of Appeal, judge of the Supreme Court, Attorney-General, Controller and Auditor-General or Inspector-General of Police ; or

(*b*) a person who is for the time being serving in the public service of a Region on secondment from the public service of the Government of Kenya.

(6) If the President of the Regional Assembly of any Region so requests, the authorities having power to make appointments in any branch of the public service of that Region shall consider and report to the President of the Regional Assembly whether there are more local candidates who are 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 ; if those authorities report to the President of the Regional Assembly that such is the case, the authority having power to remove from office persons holding office in that branch (in this subsection and in subsection (7) of this section referred to as " the nominating authority ") shall, if so requested by the President of the Regional Assembly, select officers to whom this section applies who are serving in that branch on secondment from the public service of the Government of Kenya and whose retirement would, in the opinion of the nominating authority, cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the President of the Regional Assembly of the number of officers so selected ; if the President of the Regional Assembly specifies a number of officers to be called upon to vacate their appointments (not exceeding the number of officers so selected), the nominating authority shall nominate that number of officers from among the officers so selected and the provisions of subsections (7), (8) and (9) of this section shall apply in the case of any officer so nominated.

(7) The nominating authority shall report the name of the officer to the Chairman of the Public Service Commission of the Government of Kenya who in turn shall circulate that name to the authority having power to make appointments in any other branch of the public service of the Region in which the officer is eligible for appointment and to the authority having power to make appointments in any branch of any other public service in Kenya in which he is so eligible ; and each such authority shall then consider whether there is any vacancy to which it is willing to appoint the officer.

(8) If any authority indicates to the Chairman of the Public Service Commission of the Government of Kenya that it is willing to appoint the officer to fill a vacancy, the officer shall be so informed and that appointment (which, except in the case of a vacancy in the public service of the Government of Kenya, shall be an appointment on secondment from that public service) shall be made, but without prejudice to the right of the officer to retire voluntarily from the public service in the manner provided by any law:

Provided that where more than one authority is willing to appoint the officer to fill a vacancy, the Public Service Commission of the Government of Kenya or, in the case of a member of the Police Force, the Police Service Commission shall decide which vacancy he shall be appointed to fill.

(9) If no authority is willing to appoint the officer to fill a vacancy, the Chairman of the Public Service Commission of the Government of Kenya shall by notice in writing so inform him and require him to retire from the public service of the Government of Kenya, and he shall retire accordingly.

(10) Any notice given under subsection (4) or subsection (9) of this section requiring an officer to retire from the public service of the Government of Kenya 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, 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.

(11) In determining the date or the period to be specified in pursuance of subsection (10) of this section in a notice given to any officer, the Chairman of the Public Service Commission of the Government of Kenya shall act in accordance with the advice of the authority that nominated that officer under subsection (1) or, as the case may be, subsection (6) of this section.

(12) The provisions of subsection (7) of section 178 of the Constitution shall apply—

(*a*) to the power conferred by this section to select officers whose retirement would cause vacancies that could be filled by local candidates ;

(*b*) to the power to nominate officers to be called upon to vacate their appointments ; and

(*c*) to the power vested in the Public Service Commission of the Government of Kenya by the provisos to subsections (3) and (8) of this section,

as they apply to the power referred to in the said section 178.

(13) For the purposes of this section, officers in a Contingent or specialised branch of the Police Force of or above the rank of Assistant Superintendent shall be regarded as being in a different branch of the public service from officers in that Contingent or specialised branch below that rank but the Police Service Commission shall be regarded as the authority having power to remove any member of the Police Force from office.

(14) Subject to the provisions of subsection (5) of this section, this section applies to any officer who is the substantive holder of a pensionable public office and—

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

(*b*) is a member of Her Majesty's Overseas Civil Service; or

(*c*) whose conditions of service include an entitlement to free passages from East Africa for the purpose of leave of absence, other than sabbatical leave, upon the completion of a tour of duty.".

Amendment of section 94 of Constitution.

5. Section 94 of the Constitution is amended by the deletion of the words " under this Part of this Chapter " from subsection (1) and from subsection (5) thereof.

Amendment of section 122 of Constitution.

6. Section 122 of the Constitution is amended by the deletion of the word " or " immediately after the words " Regional Fund " in subsection (1)(*a*) thereof.

Amendment of section 178 of Constitution.

7. Section 178 of the Constitution is amended by the revocation of subsection (3) thereof and the substitution therefor of the following:—

" (3) Before making any appointment to fill a vacancy in any office in the public service of the Government of Kenya or of any Region, a Public Service Commission shall, without prejudice to its power to advertise the vacancy in any other way that it considers expedient, advertise the vacancy in such manner as it thinks will bring it to the attention of persons serving in any of the public services in Kenya who are likely to be qualified for appointment to the office; and any person serving in any of the public services in Kenya may notify that Public Service Commission that he wishes to be considered for that appointment.".

Replacement of section 206 of Constitution.

8. Section 206 of the Constitution is revoked and the following section substituted therefor:—

" Application of this Part and establishment of divisions.

206. A county council may, by resolution, apply this Part of this Chapter to the area within its jurisdiction and shall then, subject to the provisions of any law made under section 211(1)(*a*) of this Constitution, divide that area into such two or more divisions as appear to the county council to be necessary or expedient for the purposes of this Part.".

9. Section 207 of the Constitution is amended by the deletion of the proviso to subsection (6) thereof. Amendment of section 207 of Constitution.

10. Section 208 of the Constitution is amended by the revocation of subsection (1) thereof and the substitution therefor of the following:— Amendment of section 208 of Constitution.

"(1) No person shall be a party to any of the following transactions, that is to say:—

(*a*) the sale, lease, charge, mortgage, exchange, partition or any other disposal of or dealing with any estate, interest or right in or over agricultural land situated within an area to which this Part of this Chapter for the time being applies in pursuance of section 206 of this Constitution; or

(*b*) the division of any such agricultural land into a number of parcels held under separate titles; or

(*c*) the sale, transfer, charge or any other disposal of or dealing with any share, debenture or stock in any private company registered under the Companies Ordinance(a) (or under any law amending or replacing that Ordinance) if there is for the time being vested in that company an estate, interest or right in or over any such agricultural land,

unless the consent to such transaction of the Divisional Board in whose area of jurisdiction the land in question is situated (or which has jurisdiction by virtue of a law made under section 211(1)(*b*) of this Constitution) has been given in accordance with the provisions of this Part of this Chapter; and every land transaction in respect of which such consent has not been given shall be absolutely void for all purposes.".

11. Section 211 of the Constitution is amended— Amendment of section 211 of Constitution.

(*a*) by the revocation of subsection (1)(*a*) thereof and the substitution therefor of the following:—

"(*a*) the manner in which a county council that has, in pursuance of section 206 of this Constitution, applied this Part of this Chapter to the area within its jurisdiction shall divide that area into divisions;"; and

(*b*) by the insertion, immediately after the words "class of" in subsection (2)(*b*)(i) thereof, of the word "land".

12. Section 233 of the Constitution is amended by the revocation of subsection (3)(*b*) thereof and the substitution therefor of the following:— Amendment of section 233 of Constitution.

"(*b*) references to the office of a member of any Commission established by this Constitution, a member of the Advisory Committee on the Prerogative of Mercy, a member of any Central Housing Board or Local Government Loans Authority established under section 140 of this Constitution, a member of the Advisory Commission to be appointed under section 146 of this Constitution, a member of an advisory board established in pursuance of the proviso to section 184(3) of this Constitution, a member of the Central Land Board, a member of a Divisional Land Control Board, a member of the Appeals Tribunal appointed under section 210 of this Constitution, a member of a local government authority, a

(a) Revised Laws of Kenya 1962, c. 486.

member of a Commission appointed under section 222 of this Constitution to replace a local government authority, a member of a Commission of Inquiry appointed under section 223 of this Constitution, a member of any Commodity Board established under paragraph 2 of Schedule 5 of this Constitution, a member of the Agricultural Finance Corporation, a member of the Central Agricultural Board, a member of the Central Settlement Committee, a member of the National Forest Authority, a member of the Central Road Authority or a member of any such body as is referred to in paragraph 4(2) of Schedule 5 of this Constitution; or ".

Amendment of Schedule 4 of Constitution.

13. Schedule 4 of the Constitution is amended by the insertion, immediately after Item 4 of Part III thereof, of the following:—

" 4A. Liquor licensing.".

Amendment of Schedule 5 of Constitution.

14. Schedule 5 of the Constitution is amended by the revocation of paragraph 3 thereof and the substitution therefor of the following:—

" 3. *Agricultural Finance Corporation.*

(1) There shall be an Agricultural Finance Corporation which shall be established in such manner as may for the time being be prescribed by or under a law made by the Central Legislature so, however, that it shall contain at least one member representing each Region who shall be appointed by the President of the Regional Assembly of that Region, the number of members who are to be so appointed to represent the Regions being the same in the case of all the Regions.

(2) The Corporation shall have such functions in relation to the provision of agricultural credit as may be conferred on it by any law.".

Temporary provisions for North-Eastern Region.

15.—(1) Until other provision is made by Order of Her Majesty in Council, the Governor may, by regulations which shall be published in the Kenya Gazette and, after the appointed day, in the Regional Gazette of the North-Eastern Region, make such provision as appears to him to be necessary or expedient for the purpose of ensuring effective government in or in relation to that Region and, without prejudice to the generality of that power, he may by such regulations make such temporary adaptations, modifications or qualifications of or exceptions to the provisions of the principal Order (as amended by the provisions of this Order other than this section) or of any other law as appear to him to be necessary or expedient for that purpose.

(2) Any regulation made by the Governor under this section—

(*a*) may be made at any time, whether before or after the appointed day; and

(*b*) whenever made, may be expressed to have effect from any date (whether earlier or later than the date on which it was made) that may be specified therein, not being a date earlier than the appointed day.

(3) In the exercise of his powers under this section, the Governor shall act in his discretion.

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 Kenya Order in Council 1963 by adding provisions which set up machinery for appeals by overseas officers in respect of certain decisions affecting their pensions benefits and which establish a procedure for the compulsory retirement of certain overseas officers to facilitate the appointment of local candidates. It also makes further transitional provision to facilitate the introduction of the new Constitution for Kenya established by the earlier Order and makes some minor amendments to certain provisions of that Order, including certain provisions of the Constitution itself. It also authorises the making of temporary provision in relation to the North-Eastern Region.