STATUTORY INSTRUMENTS

1961 No. 2273

EAST AFRICA

The Kenya (Constitution) (Amendment No. 2) Order in Council, 1961

Made - - - - 27th November, 1961
Laid before Parliament 1*st December,* 1961
Coming into Operation 2*nd December,* 1961

At the Court of Saint James, the 27th day of November, 1961

Present,

Her Majesty Queen Elizabeth The Queen Mother
Her Royal Highness The Princess Margaret, Countess of Snowdon
Lord President **Lord Carrington**
Earl of Perth **Mr. Secretary Amery**

Whereas Her Majesty, in pursuance of the Regency Acts, 1937 to 1953, was pleased, by Letters Patent dated the eighth day of November, 1961, to delegate to the following Counsellors of State (subject to the exceptions hereinafter mentioned) or any two or more of them, that is to say, His Royal Highness Prince Philip, Duke of Edinburgh, Her Majesty Queen Elizabeth The Queen Mother, Her Royal Highness The Princess Margaret, Countess of Snowden, His Royal Highness The Duke of Gloucester, His Royal Highness The Duke of Kent and Her Royal Highness The Princess Alexandra of Kent, full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas Her Majesty was further pleased to except from the number of the said Counsellors of State His Royal Highness Prince Philip, Duke of Edinburgh, and Her Royal Highness The Princess Alexandra of Kent while absent from the United Kingdom:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and Her Royal Highness The Princess Margaret, Countess of Snowdon, being authorised thereto by the said Letters Patent, and in pursuance of the powers in that behalf by the British Settlements Act, 1887 and 1945(a), the Foreign Jurisdiction Act, 1890(b), or otherwise in Her Majesty vested, do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf order, and it is hereby ordered, as follows:—

Citation, construction and commencement.

1.—(1) This Order may be cited as the Kenya (Constitution) (Amendment No. 2) Order in Council, 1961, and shall be construed as one

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

with the Kenya (Constitution) Orders in Council, 1958 to 1960(a), and the Kenya (Constitution) (Amendment) Order in Council, 1961(b).

(2) The Kenya (Constitution) Orders in Council, 1958 to 1960, the Kenya (Constitution) (Amendment) Order in Council, 1961, and this Order may be cited together as the Kenya (Constitution) Orders in Council, 1958 to 1961.

(3) Section 1 of the Kenya (Constitution) (Amendment) Order in Council, 1961, is amended by the deletion from subsection (1) of all words after the words " Order in Council, 1961 ".

(4) This Order shall come into operation on the second day of December, 1961.

Insertion of new section 3A in Order of 1958.

2. The Kenya (Constitution) Order in Council, 1958, (hereinafter referred to as " the principal Order ") is amended by the insertion immediately after section 3 of the following section :—

"The Deputy Governor.

3A.—(1) There shall be a Deputy Governor in and for Kenya who shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

(2) If the office of Deputy Governor is vacant or the holder of that office is performing the functions of the office of Governor under the next following section or is absent from Kenya or is for any other reason unable to perform the functions of his office, the Governor, in his discretion, may appoint a person to act as Deputy Governor, and any person so appointed shall continue to act until his appointment is revoked by the Governor, in his discretion."

Replacement of sections 4 and 5 of Order of 1958.

3. Sections 4 and 5 of the principal Order are revoked and the following sections are substituted therefor:—

"Acting Governor.

4.—(1) During any period when the office of Governor is vacant or the Governor is absent from Kenya or is for any other reason unable to perform the functions of his office—

(*a*) the Deputy Governor, or

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

shall, during Her Majesty's pleasure, assume and perform the functions of the office of Governor and administer the government of Kenya accordingly.

(2) Before assuming the functions of the office of Governor any such person as aforesaid shall make the oaths or affirmations directed by section 3 of this Order to be made by the Governor.

(3) The Deputy Governor shall not continue to perform the functions of the office of Governor after the Governor has notified him that he is about to assume or resume

(a) S.I. 1958/600, 1959/1302, 1960/703, 2201 (1958 I, p. 961; 1959 I, p. 982; 1960 I, pp. 1218, 1219).

(b) S.I. 1961/2036 (*See* p. 3707 of this Pt.).

those functions and the person designated under paragraph (*b*) of subsection (1) of this section shall not continue to perform those functions after the Governor or the Deputy Governor has so notified him.

(4) For the purposes of this section—

(*a*) the Governor or the Deputy Governor shall not be regarded as absent from Kenya or as unable to perform the functions of the office of Governor by reason only that he is in passage from one part of Kenya to another;

(*b*) the Governor shall not be regarded as absent from Kenya or as unable to perform the functions of his office at any time when there is a subsisting authority given to the Deputy Governor under the next following section;

(*c*) when the Deputy Governor has assumed the functions of the office of Governor under subsection (1) of this section, he shall not be regarded as absent from Kenya or as unable to perform those functions at any time when there is a subsisting authority given to a person acting as Deputy Governor under the next following section; and

(*d*) "the Governor" means the person holding the office of Governor and "the Deputy Governor" means the person holding the office of Deputy Governor.

Performance of Governor's functions by Deputy Governor.

5.—(1) The Governor, in his discretion, may, by writing under his hand, authorise the Deputy Governor to perform on his behalf, subject to such exceptions and conditions as the Governor, in his discretion, may from time to time specify, any or all of the functions of the office of Governor.

(2) The powers and authority of the Governor shall not be affected by any authority given to the Deputy Governor under this section otherwise than as Her Majesty may from time to time think proper to direct, and the Deputy Governor shall conform to and observe such instructions relating to the performance by him of any of the functions of the office of Governor as the Governor may from time to time address to him;

Provided that the question whether or not the Deputy Governor has conformed to and observed any such instructions shall not be enquired into by any court.

(3) Any authority given to the Deputy Governor under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Governor, in his discretion, by writing under his hand.

(4) For the purposes of this section "the Governor" means any person holding the office of Governor or performing the functions of that office under the last foregoing section and "the Deputy Governor" means any person holding the office of Deputy Governor or acting as Deputy Governor.

(5) In subsection (1) of this section the reference to the functions of the office of Governor does not include a reference to any function conferred upon the Governor by any Act of Parliament or by any Order of Her Majesty in Council or other instrument made under any Act of Parliament other than this Order."

Amendment of section 11 of Order of 1958.

4. Subsection (1) of section 11 of the principal Order (as set out in section 2 of the Kenya (Constitution) (Amendment) Order in Council, 1961) is amended by the insertion immediately after the words "consist of" of the words "the Deputy Governor and".

Amendment of section 18 of Order of 1958.

5. Section 18 of the principal Order is amended by the deletion of subsection (2) and the substitution therefor of the following subsection:—

"(2) In the absence of the Governor there shall preside at any meeting of the Council of Ministers the Deputy Governor or, in the absence of the Deputy Governor, the senior Minister present."

Amendment of section 28 of Order of 1958.

6. Section 28 of the principal Order (as set out in section 6 of the Kenya (Constitution) (Amendment No. 2) Order in Council, 1960) is amended by the deletion of paragraph (*b*) of subsection (2).

Amendment of section 67 of Order of 1958.

7. Subsection (1) of section 67 of the principal Order is amended by the insertion after the word "Governor" of the words "Deputy Governor".

Adaptation of existing laws.

8.—(1) The Governor may, by order published in the Gazette, at any time within six months after the date of commencement of this Order, provide that in any existing law any reference to the Governor or to any Minister or public officer shall have effect as if it were a reference to the Deputy Governor; and any such law shall have effect accordingly from such date as may be specified in the order, not being a date earlier than the date of commencement of this Order.

(2) In this section "existing law" means a law in force immediately before the date of commencement of this Order that was enacted by the legislature of Kenya and includes any instrument in force as aforesaid and made in exercise of a power conferred by any law so enacted.

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

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 (Constitution) Order in Council, 1958, in order to constitute the office of Deputy Governor for Kenya. It also amends that Order so as to delete the provision disqualifying a person who has served a sentence of imprisonment exceeding two years from being elected as a member of the Legislative Council.