STATUTORY INSTRUMENTS

1964 No. 918

AFRICA

The Malawi (African Trust Land) (Modification) Order 1964

Made - - - -	*23rd June* 1964
Laid before Parliament	*29th June* 1964
Coming into Operation	*Immediately before 6th July* 1964

At the Court at Buckingham Palace, the 23rd day of June 1964

Present,

The Queen's Most Excellent Majesty in Council

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

Citation, construction and commencement.

1.—(1) This Order may be cited as the Malawi (African Trust Land) (Modification) Order 1964 and shall be construed as one with the Nyasaland Protectorate (African Trust Land) Orders in Council 1950 to 1963(b).

(2) This Order shall come into operation immediately before 6th July 1964.

Amendment of section 1 of Order of 1950.

2. Section 1(1) of the Nyasaland Protectorate (African Trust Land) Order in Council 1950(c) (hereinafter referred to as "the principal Order") (as amended by section 2 of the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council 1955(d) and section 2 of the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council 1956(e)) is amended—

(*a*) by the deletion from the definition of the expression "certificate of claim" of the words "has been recognised by a Secretary of State" and the substitution of the words "was recognised by one of Her Majesty's principal Secretaries of State in the United Kingdom";

(*b*) by the deletion of the definition of the expression "the Fund";

(*c*) by the deletion from the definition of the expression "the Gazette" of the words "the Nyasaland Protectorate" and the substitution of the word "Malawi";

(*d*) by the deletion of the definition of the expression "the Governor" and the substitution of the following definition—

"'the Governor' means the Governor of the former Nyasaland Protectorate and includes any person who was for the time being lawfully acting in or performing the functions of that office";

(a) 53 & 54 Vict. c. 37. (b) S.I. 1950/1183, 1955/1215, 1956/232, 1961/999, 1962/635, 2182, 1963/884, 1926 (1950 II, p. 156; 1955 II, p. 2216; 1956 II, p. 1994; 1961 II, p. 1928; 1962 I, p. 646; III, p. 2960; 1963 II, p. 1487; III, p. 3781). (c) S.I. 1950/1183 (1950 II, p. 156). (d) S.I. 1955/1215 (1955 II, p. 2216). (e) S.I. 1956/232 (1956 II, p. 1994).

(*e*) by the insertion, immediately after the definition of the expression "minerals", of the following definition—

"'the Minister' means the Minister of the Government of Malawi to whom responsibility for land is for the time being assigned";

(*f*) by the deletion of the definition of the expression "the Protectorate";

(*g*) by the insertion, in the definition of the expression "public land", at the end of paragraph (*a*), of the words "or otherwise acquired by the Government of Malawi";

(*h*) by the deletion of the definition of the expression "treasury".

Substitution of section 5 of Order of 1950.

3. Section 5 of the principal Order is revoked and the following section is substituted—

"Vesting of African trust land.

5.—(1) All African trust land is hereby vested in the Governor-General.

(2) The entire property in and control of minerals in, under or upon any African trust land are, save in so far as any part thereof may have been the subject of alienation duly ratified by the Crown, or in relation to which prospecting or mining rights subsist by virtue of express grant made under any law relating to mines or minerals, hereby vested in the Governor-General, and shall be administered and controlled for the use or common benefit, direct or indirect, of Africans, but nothing contained in this Order or in any regulations made thereunder shall affect any grant ratified by the Crown relating to the ownership of mines or minerals, and any person entitled to the exercise of such rights on African trust land may enter thereon together with other persons employed by him for the purpose of exercising such rights subject to the provisions of the laws and regulations for the time being in force in Malawi."

Amendment of section 6 of Order of 1950.

4. Section 6 of the principal Order is amended—

(*a*) by the deletion from subsection (1) of the word "Governor" wherever it occurs and the substitution of the word "Minister" and by the deletion of the words "to the general or special directions of a Secretary of State";

(*b*) by the insertion in subsection (2), immediately after the words "existing Orders or", of the words "by the Governor or the Minister".

Amendment of section 7 of Order of 1950.

5. Section 7 of the principal Order (as amended by section 4 of the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council 1955) is amended—

(*a*) by the deletion of the word "Governor" wherever it occurs and the substitution of the word "Minister";

(*b*) by the deletion from paragraph (*b*) of the proviso to subsection (1) of the words "without the special sanction of a Secretary of State";

(*c*) by the deletion from subsection (4) of the words "In the event of any difference of opinion the matter shall be referred for decision to the Secretary of State.".

Amendment of section 8 of Order of 1950.

6. Section 8 of the principal Order (as set out in section 5 of the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council 1955) is amended—

(*a*) by the deletion of the word "Governor" wherever it occurs and the substitution of the word "Minister";

(*b*) by the deletion of subsection (2).

Substitution of section 9 of Order of 1950.

7. Section 9 of the principal Order is revoked and the following section is substituted—

"Proceeds of disposal of African trust land.

9. When any grant, disposition, permit or licence of or in respect of African trust land has been made or given by the Governor or the Minister under section 7 of this Order, all moneys payable under the terms of such grant, disposition, permit or licence shall be paid into the general revenue of Malawi.".

Amendment of section 10 of Order of 1950.

8. Section 10 of the principal Order (as set out in section 6 of the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council 1955) is amended—

(*a*) by the insertion after the word "Governor", where it first occurs in subsection (1), of the words "or the Minister";

(*b*) by the deletion of the word "Governor", wherever it occurs elsewhere in subsection (1) or in subsection (2), and the substitution of the word "Minister".

Amendment of section 11 of Order of 1950.

9. Section 11 of the principal Order (as amended by section 7 of the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council 1955 and section 2 of the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council 1961(a)) is amended by the deletion of the word "Governor" and the substitution of the word "Minister".

Amendment of section 11A of Order of 1950.

10. Section 11A of the principal Order (as inserted by section 8 of the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council 1955) is amended by the deletion of the word "Governor" and the substitution of the word "Minister".

Amendment of section 12 of Order of 1950.

11. Section 12 of the principal Order is amended by the deletion of the word "Governor" and the substitution of the words "Governor-General" and by the deletion of the words "with the approval of the Secretary of State".

Amendment of section 13 of Order of 1950.

12. Section 13 of the principal Order is amended—

(*a*) by the deletion of the words "Governor" and "Governor's" and the substitution, respectively, of the words "Minister" and "Minister's";

(*b*) by the deletion of the words "subject to the general or special directions of a Secretary of State".

Revocation of section 14 of Order of 1950.

13. Section 14 of the principal Order is revoked.

Construction of references to the Protectorate in Order of 1950.

14. References in the principal Order to "the Protectorate" shall be construed as references to "Malawi".

W. G. Agnew.

(a) S.I. 1961/999 (1961 II, p. 1928).

EXPLANATORY NOTE

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

This Order modifies the Nyasaland Protectorate (African Trust Land) Orders in Council 1950 to 1963 with effect from 6th July 1964 (the date upon which the Nyasaland Protectorate becomes an independent sovereign state under the name of Malawi) so as to vest African Trust land in the Governor-General, to transfer the power of disposition of that land from the Governor to the responsible Minister, and to make such other amendments as will make the provisions of the Order consistent with the constitutional arrangements which will come into operation on that day.