STATUTORY INSTRUMENTS

1973 No. 1758

PACIFIC ISLANDS

The New Hebrides Order 1973

Made - - - -	*24th October* 1973
Laid before Parliament	*30th October* 1973
Coming into Operation	*On publication in accordance with the provisions of section* 1(3)

At the Court at Buckingham Palace, the 24th day of October 1973

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 vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

1.—(1) This Order may be cited as the New Hebrides Order 1973.

(2) This Order and the New Hebrides Orders in Council 1922 to 1970(**b**) may be cited together as the New Hebrides Orders 1922 to 1973.

(3) This Order shall be published in the New Hebrides in the British Service Gazette and shall come into operation on the date of such publication or on the 31st October 1973, whichever is the later.

2.—(1) In this Order, unless the context otherwise requires:

" functions " includes rights, duties and powers ;

" the Protocol " means the Protocol made the 6th day of August 1914 between the Government of His late Majesty King George the Fifth and the Government of the French Republic in the terms set forth in the Schedule to the New Hebrides Order in Council 1922(**c**) as interpreted in accordance with the agreement to that effect, contained in the notes exchanged between the two Governments dated the 16th day of December 1922 and the 26th day of December 1922 respectively, and set out in the Schedule to the New Hebrides Order in Council 1923(**d**), and as modified, added to, or amended by any of the agreements set out in the Schedule to the New Hebrides Order in Council 1961(**e**) or in the Schedule to the New Hebrides Order in Council 1963(**f**) or as published in accordance with the provisions of section 10A of the New Hebrides Order in Council 1922 as amended(**g**).

(**a**) 53 & 54 Vict. c. 37.
(**b**) S.R. & O. 1922/717, 1923/356 (Rev. VIII, pp. 719, 757: 1922, p. 324; 1923, p. 337); S.I. 1955/553, 1961/1831, 1963/1324, 1970/950, (1955 II, p. 1700; 1961 III, p. 3456; 1963 II, p. 2297; 1970 II, p. 2940).
(**c**) S.R. & O. 1922/717 (Rev. VIII, p. 719: 1922, p. 324).
(**d**) S. R. & O. 1923/356 (Rev. VIII, p. 757: 1923, p. 337).
(**e**) S.I. 1961/1831 (1961 III, p. 3456).
(**f**) S.I. 1963/1324 (1963 II, p. 2297).
(**g**) *See* section 3 of S.I. 1970/950 (1970 II, p. 2940).

" public office " means an office of emolument in the service of Her Majesty in the New Hebrides but does not include the office of Judge of the High Court of the Western Pacific and " public officer " shall be construed accordingly.

(2) In this Order, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person who is for the time being lawfully acting in or performing the functions of that office.

(3) Subject to the provisions contained in Schedule 1 to this Order, the Interpretation Act 1889(**a**) shall apply, with the necessary adaptations, for the purpose of interpreting this Order, and otherwise in relation thereto, as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

3. Sections 1 to 14 (inclusive) of the New Hebrides Order in Council 1922 shall be replaced by the provisions contained in Schedule 1 to this Order.

4.—(1) Any office constituted and subsisting immediately before the day this Order comes into operation shall, on and after that day, be deemed to be an office constituted by or under the provisions contained in Schedule 1 to this Order.

(2) Any person, who immediately before the day this Order comes into operation, holds or is acting in any such office or any public office otherwise constituted, shall, on and after that day, continue to hold or to act in his office as if he had been appointed to it in accordance with the provisions contained in Schedule 1 to this Order.

5. Subject to the provisions of this Order, all laws which, immediately before the coming into operation of this Order, are binding upon all persons over whom Her Majesty has jurisdiction within the New Hebrides shall so continue in force.

6. Without prejudice to anything done thereunder, the Orders in Council described in the first column of Schedule 2 to this Order are hereby revoked as respects the New Hebrides to the extent specified in the second column of that Schedule.

W. G. Agnew.

(**a**) 1889 c. 63.

Section 3.

SCHEDULE 1

Limits of the Order.

"1. The limits of this Order shall include all the islands of the Pacific Ocean known as the New Hebrides and all the islands known as the Banks Islands and Torres Islands, and the said islands are hereinafter referred to as the New Hebrides.

The Protocol.

2. The Protocol shall have the force of law and shall be binding upon all persons within the New Hebrides over whom Her Majesty shall at any time have jurisdiction, and the provisions of this Order and of all laws made thereunder shall be read and construed subject to the terms of the Protocol in all respects.

Appointment of High Commissioner.

3.—(1) Her Majesty may appoint, by commission under Her Sign Manual and Signet, a High Commissioner for the New Hebrides who shall hold office during Her Majesty's pleasure.

(2) Whenever the office of High Commissioner is vacant or the person holding that office is for any reason unable to perform the functions of that office those functions shall be performed by such person as Her Majesty may have designated by instructions given through a Secretary of State.

High Commissioner's functions.

4. The High Commissioner shall have such functions as may be conferred upon him by or under this Order or any other law for the time being in force in the New Hebrides and such other functions in relation to the New Hebrides as Her Majesty may assign to him and, subject to the provisions of this Order and of any other law by which any such functions are conferred, shall perform all the functions of his office (including the functions conferred upon him by this Order) according to such instructions, if any, as he may receive from time to time from Her Majesty through a Secretary of State:

Provided that the question whether or not the High Commissioner has in any matter complied with any such instructions shall not be inquired into in any court.

High Commissioner's powers as respects offices.

5.—(1) Subject to the provisions of this Order and of any other law for the time being in force in the New Hebrides, the High Commissioner shall have power, in Her Majesty's name and on Her Majesty's behalf—

(*a*) to constitute such offices as may lawfully be constituted by Her Majesty and abolish any office so constituted by him;

(*b*) to make appointments (including appointments on promotion and transfer) to any office so constituted by him; and

(*c*) to terminate the appointment of or dismiss any person so appointed, or suspend him from performing the functions of his office, or take such other disciplinary action with respect to him as may be necessary.

(2) A person appointed to an office constituted under this section shall, unless it is otherwise provided by law, hold office during Her Majesty's pleasure.

(3) The High Commissioner may delegate to the Resident Commissioner or to any other public officer in such manner and upon such conditions as he may deem fit any of the powers conferred upon him by this section.

Appointment of Resident Commissioner.

6.—(1) There shall be a Resident Commissioner in the New Hebrides who shall be appointed by the High Commissioner in pursuance of instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

(2) Whenever the office of Resident Commissioner is vacant or the person holding that office is absent from the New Hebrides or is for any other reason unable to perform the functions of his office those functions shall be performed by—

(*a*) such person as the High Commissioner may have designated with the approval of a Secretary of State (hereinafter referred to as " the person designated "); or

(*b*) if no person has been so designated, by the Assistant Resident Commissioner.

(3) For the purposes of the preceding subsection the person holding the office of Resident Commissioner shall not be regarded as absent from the New Hebrides or unable to perform the functions of his office—

(*a*) by reason only of the fact that he is in passage from one part of the New Hebrides to another; or

(*b*) at any time when there is a subsisting appointment of a deputy under the next following section.

(4) The person designated or the Assistant Resident Commissioner, as the case may be, shall not continue to perform the functions of the office of Resident Commissioner after the person holding that office has informed him that he is about to assume or resume the functions of his office.

Resident Commissioner's Deputy.

7.—(1) Whenever the Resident Commissioner—

(*a*) has occasion to be absent from Vila but not from the New Hebrides; or

(*b*) has occasion to be absent from the New Hebrides for a period which he has reason to believe will be of short duration; or

(*c*) is suffering from an illness which he has reason to believe will be of short duration,

he may, by writing under his hand, appoint any public officer to be his deputy during his absence or illness and in that capacity to perform on his behalf such of the functions of his office, as he may specify.

(2) The powers and authority of the Resident Commissioner shall not be abridged, altered or in any way affected by the appointment of a deputy under this section otherwise than as the High Commissioner may at any time think proper to direct by instructions to the Resident Commissioner and the deputy shall conform to and observe all instructions that may from time to time be given to him by the Resident Commissioner:

Provided that the question whether or not the deputy has in any matter complied with any such instructions shall not be enquired into in any court.

(3) A person appointed as deputy under this section shall hold that office for such period as may be specified in the instrument by which he is appointed but his appointment may be revoked at any time by the High Commissioner by instructions given to the Resident Commissioner.

(4) In this section " Resident Commissioner " does not include a deputy appointed under this section.

Resident Commissioner's functions.

8. (1) The Resident Commissioner shall have such functions as may be conferred upon him by or under this Order or any other law for the time being in force in the New Hebrides and such other functions as Her Majesty may assign to him and, subject to the provisions of this Order and of any other law by which any such functions are conferred, shall perform all the functions of his office (including the functions conferred upon him by this Order) according to such instructions as he may receive from time to time from Her Majesty through a Secretary of State, or from the High Commissioner:

Provided that the question whether or not the Resident Commissioner has in any matter complied with any such instructions shall not be enquired into in any court.

(2) The appointment of a Resident Commissioner shall not abridge, alter or affect the right of the High Commissioner to perform the functions conferred upon him by or under this Order or any other law.

Concurrent Appointments.

9.—(1) When the holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office, it shall be lawful for another person to be appointed substantively to the same office.

(2) When two or more persons are holding the same office by reason of an appointment made pursuant to subsection (1) then for the purpose of any function conferred upon the holder of that office the person last appointed to the office shall be deemed to be the holder of the office.

Queen's Regulations.

10.—(1) It shall be lawful for the High Commissioner or the Resident Commissioner to make, alter, and revoke any regulations (to be called "Queen's Regulations") for the peace, order and good government of all persons who are British subjects or who, under the Protocol, or otherwise, are subject to the jurisdiction of Her Majesty, and such regulations shall, on publication in the New Hebrides, be binding on all persons, being British subjects or otherwise, subject to the jurisdiction of Her Majesty.

(2) Any regulation made by the High Commissioner or by the Resident Commissioner may be disallowed by a Secretary of State, and upon such disallowance being published as aforesaid in the New Hebrides, the said regulation shall become void and cease to have effect from the date of the publication, without prejudice to anything lawfully done thereunder.

Public seal.

11. There shall be a public seal of the High Commissioner which he shall keep and use for sealing all things whatsoever that shall pass the seal.

Prerogative of Mercy.

12.—(1) The Resident Commissioner may, in Her Majesty's name and on Her Majesty's behalf—

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

(*b*) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed by a court on that person for any offence;

(*c*) substitute a less severe form of punishment for that imposed by a court on any such person for any offence; or

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

(2) In this section—

"a court" means a court established by Her Majesty for the New Hebrides and includes Her Majesty in Council;

"offence" means an offence triable by a court.

Transfer of certain functions to Resident Commissioner.

13.—(1) Subject to the provisions of this section, all the functions of the High Commissioner for the Western Pacific under any law in force in the New Hebrides shall, in relation to the New Hebrides, be exercised and performed by the Resident Commissioner.

(2) The provisions of this section shall not affect the functions of the High Commissioner for the Western Pacific under:

(*a*) the Western Pacific (Courts) Order in Council 1961(**a**), as amended(**b**);

(*b*) the Fugitive Offenders (New Hebrides) Order 1968(**c**).

(3) For the purposes of sub-section (1) "law" does not include any Act of the Parliament of the United Kingdom or any Order in Council or other instrument made under such an Act.

(**a**) S.I. 1961/1506 (1961 II, p. 3066).
(**b**) S.I. 1966/1183, 1967/586, 1970/1435, 1971/715 (1966 III, p. 3071; 1967 I, p. 1791; 1970 III, p. 4689; 1971 II, p. 1933).
(**c**) 1968/1091 (1968 II, p. 2974).

14. If the Resident Commissioner is informed by a Secretary of State that Her Majesty's Government and the Government of the French Republic have agreed by Exchange of Notes or otherwise to modify, add to or amend the Protocol, he shall cause the modification, addition or amendment to be published in the New Hebrides in the manner customarily adopted for the publication of regulations made under section 10 of this Order, and upon such publication the Protocol shall have the force of law and be binding within the New Hebrides subject to such modification, addition or amendment. Changes to the Protocol.

15. Judicial notice shall be taken of this Order and of the commencement thereof and of the appointment of the High Commissioner, the Resident Commissioner and of any other officers lawfully appointed and of the constitution and limits of any jurisdiction, court or district and of judicial and official seals and signatures and of any laws, regulations or rules lawfully made under this Order or otherwise and no proof shall be required of any such matters." Judicial notice of this Order, etc.

SCHEDULE 2 Section 6

ORDERS REVOKED

Title	Extent of Revocation
The Pacific Order in Council 1893(a) ...	Articles 80 and 115 to 136 (inclusive).
The New Hebrides Order in Council 1955(b).	The whole Order.
The New Hebrides Order in Council 1970(c).	Section 3.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the New Hebrides Order in Council 1922, as amended in 1955 and 1970, by replacing provisions relating to the office and functions of the High Commissioner and of the Resident Commissioner.

(a) Rev. VIII, p. 597; 1893, p. 312.
(b) S.I. 1955/553 (1955 II, p. 1700).
(c) S.I. 1970/950 (1970 II, p. 2940).

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