1958 No. 1958

The Nigeria (Constitution) (Amendment No. 4) Order in Council, 1958

Made - - - - 21*st November*, 1958
Laid before Parliament 27*th November*, 1958
Coming into Operation 28*th November*, 1958

At the Court at Buckingham Palace, the 21st day of November, 1958

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 Nigeria (Constitution) (Amendment No. 4) Order in Council, 1958, and shall be construed as one with the Nigeria (Constitution) Orders in Council, 1954 to 1957(b), the Nigeria (Constitution) (Amendment) Order in Council, 1958(c), the Nigeria (Constitution) (Amendment No. 2) Order in Council, 1958(d), and the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1958(e).

(2) The Nigeria (Constitution) Orders in Council, 1954 to 1957, the Nigeria (Constitution) (Amendment) Order in Council, 1958, the Nigeria (Constitution) (Amendment No. 2) Order in Council, 1958, the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1958, and this Order may be cited together as the Nigeria (Constitution) Orders in Council, 1954 to 1958.

(3) Section 1 of the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1958, is amended by the deletion of subsection (2).

(4) This Order shall come into operation on the twenty-eighth day of November, 1958.

Amendment of Order of 1954

2.—(1) Section 2 of the Nigeria (Constitution) Order in Council, 1954 (hereinafter called "the principal Order") (as amended by section 2 of the Nigeria (Constitution) (Amendment No. 2) Order in Council, 1957, subsection (1) of section 3 of the Nigeria (Constitution) (Amendment) Order in Council, 1958, and section 2 of the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1958) is amended by the deletion from subsection (4) of sub-paragraph (iv) of paragraph (*a*) and the substitution of the following sub-paragraph:—

"(iv) references to offices in the public service of the Federation include references to the offices of the judges of the Federal Supreme Court, the High Court of Lagos and the High Court of the Southern Cameroons and references to the offices of members of all other

(a) 53 & 54 Vict. c. 37. (b) S.I. 1954/1146, 1955/432, 1956/836, 1957/1363, 1530 (1954 II, p. 2829; 1955 II, p 3163; 1956 II, p. 2953; 1957 II, pp. 3028, 3030).
(c) S.I. 1958/429 (Pt. II, p. 2757, of this volume).
(d) S.I. 1958/1257 (Pt. II, p. 2811, of this volume).
(e) S.I. 1958/1522 (Pt. II, p. 2822, of this volume).

courts of the Federation, the Southern Cameroons or Lagos, being offices the emoluments attaching to which are payable out of the Consolidated Revenue Fund or the other public funds of the Federation or the Southern Cameroons, as the case may be; and references to offices in the public service of a Region include references to the offices of the judges of the High Court of the Region and references to the offices of the members of all other courts of the Region, being offices the emoluments attaching to which are paid out of the Consolidated Revenue Fund or the other public funds of the Region."

(2) Any appointment of any person to any judicial office of any Region or the Southern Cameroons made by any person or authority during the period between the thirty-first day of March, 1958, and the commencement of this Order in purported exercise of any power conferred upon that person or authority by or under the Native Courts Law, 1956, of the Northern Region(**a**), the Customary Courts Law, 1957, of the Western Region(**b**), the Customary Courts Law, 1956, of the Eastern Region(**c**), or the Customary Courts Law, 1956, of the Southern Cameroons(**d**), as the case may be, shall for all purposes whatsoever be, and be deemed always to have been, duly made notwithstanding that, by virtue of the provisions of sub-paragraph (iv) of paragraph (*a*) of subsection (4) of section 2 of the principal Order (as set out in subsection (1) of section 3 of the Nigeria (Constitution) (Amendment) Order in Council, 1958), the provisions of the principal Order relating to the making of appointments to offices in the public service of the Federation or the public service of a Region, as the case may be, applied during that period in relation to the making of appointments to that judicial office, and all acts and things done by the person so appointed to that judicial office in exercise of the functions of that judicial office shall accordingly be deemed to have been validly and effectively done.

3. Section 138 of the principal Order is amended—

(*a*) by the deletion from subsection (2) of the word "and" in paragraph (*b*); and

(*b*) by the insertion in subsection (2) after paragraph (*b*) of the following paragraph:—

"(*bb*) the Chief Justice of each Region and the Chief Justice of Lagos; and".

4. Section 139 of the principal Order (as amended by section 74 of the Nigeria (Constitution) (Amendment) Order in Council, 1958) is amended by the deletion from subsection (4) of the words "of his attaining" in paragraph (*b*) of the proviso and the substitution of the words "after his attainment of".

5. Section 142 of the principal Order (as amended by section 2 of the Nigeria (Constitution) (Amendment) Order in Council, 1955, section 6 of the Nigeria (Constitution) (Amendment) Order in Council, 1956, and section 75 of the Nigeria (Constitution) (Amendment) Order in Council, 1958) is amended—

(*a*) by the deletion from subsection (2) of the words "of the High Court of the Northern Region" in sub-paragraph (i) of paragraph (*cc*) and the words "of the Northern Region" in sub-paragraph (ii) and (iii) of that paragraph; and

(**a**) Law No. 6 of 1956. (**b**) Law No. 26 of 1957. (**c**) Law No. 21 of 1956. (**d**) Law No. 9 of 1956.

(*b*) by the deletion from subsection (2) of the words " of his attaining " in sub-paragraph (ii) of the proviso to paragraph (*d*) and the substitution of the words " after his attainment of ".

6. Section 180E of the principal Order (as set out in subsection (1) of section 99 of the Nigeria (Constitution) (Amendment) Order in Council, 1958, and as amended by section 5 of the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1958) is amended by the deletion of subsection (2) and the substitution of the following subsection :—

" (2) This section applies to the offices of members of all courts of the Western Region other than the High Court, being offices the emoluments attaching to which are payable out of the Consolidated Revenue Fund or the other public funds of the Region, the office of Chief Registrar or Registrar of the High Court of the Region, the office of Registrar of any Magistrates' Court of the Region and the offices of Justices of the Peace of the Region and to such other offices connected with any of the courts of the Region as may be prescribed by any law enacted by the Legislature of the Region."

7.—(1) Section 190B of the principal Order (as set out in subsection (1) of section 25 of the Nigeria (Constitution) (Amendment No. 2) Order in Council, 1958) is amended by the insertion after subsection (5) of the following subsection :—

" (6) The provisions of subsections (1), (2), (3) and (4) of this section (which, by virtue of paragraph 7 of the First Schedule or paragraph 16 of the Second Schedule to the Nigeria (Retirement Benefits) Order in Council, 1958(a), apply, subject to the provisions of that Order, in relation to the grant of certain benefits under that Order and to certain benefits so granted) shall apply, subject as aforesaid, in relation to the grant of all other benefits under the Second Schedule to that Order and to all other benefits so granted as they apply in relation to the grant of benefits, and benefits granted, under a pensions law in force in the Western Region or the Eastern Region and for that purpose subsection (3) shall have effect as if the words " in accordance with any provisions in that behalf in that pensions law " were deleted:

Provided that those provisions shall not apply—

(*a*) in relation to the grant of any benefits under paragraph 6 of the Second Schedule to that Order in respect of which it is provided by any law enacted by the Federal Legislature that they shall be granted by the Governor-General and paid by the Federation or in respect of which it is provided by any law enacted by the Legislature of the Northern Region that they shall be granted by the Governor of that Region and paid by that Region ; or

(*b*) in relation to any benefits granted under that paragraph by the Governor-General or the Governor of the Northern Region and payable by the Federation or that Region, as the case may be."

(2) The provisions of subsections (2), (3) and (4) of section 190B of the principal Order shall apply in relation to any benefits granted under any regulations made under Part 2 of Chapter VII of the principal Order and payable by the Western Region or the Eastern Region as they apply in relation to benefits granted under a pensions law in force in that Region:

(a) S.I. 1958/1523 (Pt. II, p. 2832, of this volume).

Provided that the provisions of section 5 of the Nigeria (Retirement Benefits) Order in Council, 1958, shall apply in relation to any additional allowance granted under those regulations as they apply in relation to an additional allowance granted under that Order.

8. Section 229 of the principal Order (as set out in subsection (1) of section 106 of the Nigeria (Constitution) (Amendment) Order in Council, 1958) is amended by the deletion from subsection (1) of the words " six months " in paragraph (*b*) of the proviso and the substitution of the words " seven years ".

9. The First Schedule to the principal Order (as amended by section 2 of the Nigeria (Constitution) (Amendment) Order in Council, 1955, section 16 of the Nigeria (Constitution) (Amendment) Order in Council, 1956, section 50 of the Nigeria (Constitution) (Amendment No. 2) Order in Council, 1957, and section 107 of the Nigeria (Constitution) (Amendment) Order in Council, 1958) is amended by the deletion from Part I of the words " the revenues " in Item 29 and the substitution of the words " the Consolidated Revenue Fund or the other public funds ".

10. The Third Schedule to the principal Order is amended by the insertion in paragraph 1 after the words " the following Chapters of " in sub-paragraph (*a*) of the words " the Code of Criminal Law established by ".

Amendment of s. 25 *of Order No.* 2 *of* 1958

11. Section 25 of the Nigeria (Constitution) (Amendment No. 2) Order in Council, 1958, is amended by the deletion of subsection (2).

Adaptation of existing laws

12.—(1) The Governor-General may, by Order published in the Official Gazette of the Federation, at any time within twelve months after the commencement of this Order provide that any existing law shall be read and construed with such adaptations and modifications as may appear to the Governor-General to be necessary or expedient for bringing the provisions of that law into conformity with the provisions of the Nigeria (Constitution) Orders in Council, 1954 to 1958, or otherwise for giving effect or enabling effect to be given to those provisions; 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 commencement of this Order.

(2) In this section " existing law " means a law in force or having effect immediately before the commencement of this Order that was enacted by any legislature in Nigeria and includes any instrument made in pursuance of any such law.

W. G. Agnew.

EXPLANATORY NOTE

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

This Order amends the provisions of the Nigeria (Constitution) Order in Council, 1954, relating to the judges of the Federal Supreme Court and the High Courts of the Northern Region and Lagos and to certain other judicial offices, the grant of pensions, offences involving disqualification for election and the Judicial Service Commissions and the Directors of Public Prosecutions of the Western and Eastern Regions. It also validates certain appointments of judicial officers.