STATUTORY INSTRUMENTS

1963 No. 172

NORTH BORNEO

The North Borneo (Public Service Commission) Order in Council 1963

Made - - - -	*28th January* 1963
Laid before Parliament	*1st February* 1963
Coming into Operation	*On a day to be appointed by the Governor under section* 1 (2).

At the Court at Buckingham Palace, the 28th day of January 1963

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in the exercise of the powers vested in Her by the British Settlements Acts 1887(a) and 1945(b) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, publication and commencement.

1.—(1) This Order may be cited as the North Borneo (Public Service Commission) Order in Council 1963.

(2) This Order shall be published in the Government Gazette of North Borneo and shall come into operation on a day to be appointed by the Governor by Proclamation in the Gazette, which day shall not be earlier than 2nd February 1963.

Interpretation.

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

"the Commission" means the Public Service Commission established by this Order;

"the Governor" means the Governor and Commander-in-Chief of North Borneo and includes any officer for the time being administering the Government, and, to the extent to which a Deputy to the Governor is authorised to act, that Deputy;

"public office" means any office of emolument in the public service;

"public officer" means the holder of any public office and includes any person appointed to act in any such office;

"the public service" means the service of the Crown in a civil capacity in respect of the Government of North Borneo.

(2) For the purposes of this Order a person shall not be considered to be a public officer by reason only of the fact that he—

(*a*) is a member of the Executive Council of North Borneo;

(*b*) is a member of the Legislative Council of North Borneo; or

(*c*) is a member of the Commission.

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

(3) The Governor shall not be obliged to consult with the Executive Council of North Borneo in the exercise of the powers conferred upon him by this Order.

(4) Except as may be otherwise provided in this Order or as may be required by the context, 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 purposes of interpreting and in relation to an Act of Parliament.

Public officers.

3.—(1) Except as otherwise provided in this Order, the appointment, promotion, transfer, termination of appointment, dismissal and disciplinary control of public officers is hereby vested in the Governor.

(2) The Governor may, by regulations published in the Government Gazette of North Borneo, provide for the delegation, subject to such conditions as may be prescribed in such regulations, to any public officer or class of public officer of any of the powers vested in the Governor by subsection (1) of this section.

(3) Except as otherwise required by section 2 (3) of this Order, the provisions of subsections (1) and (2) of this section shall be subject to the provisions of any Instructions which may be issued by Her Majesty under Her Sign Manual and Signet, or through a Secretary of State, and any power conferred by this section or delegated under this section shall be exercised in accordance with the provisions of such Instructions.

(4) Nothing in this section shall affect the provisions of any enactment concerning the powers referred to in subsection (1) of this section in relation to Members of the Police Force other than gazetted officers within the meaning of the Police Force Ordinance(b), or to Subordinate Officers of the Prisons Service within the meaning of the Prisons Ordinance 1956(c) of North Borneo.

Public Service Commission.

4.—(1) There shall be, in and for North Borneo, a Public Service Commission, and, subject to the provisions of subsection (3) of this section, the Commission shall consist of such persons appointed by the Governor in such manner as may be prescribed by regulations made under section 6 of this Order.

(2) The Governor may terminate the appointment of any member of the Commission at any time and, subject as aforesaid, the members of the Commission shall hold office upon such terms and conditions as may be prescribed by regulations made under section 6 of this Order.

(3) No person shall be appointed as a member of the Commission if he is, nor shall any person remain a member if he becomes—

(*a*) a member of the Executive Council or of the Legislative Council of North Borneo;

(*b*) a member of the public service;

(*c*) a member of any local authority established under the Local Government Ordinance 1961(d) of North Borneo; or

(*d*) an officer of any society which the Governor is satisfied is of a political nature.

(a) 52 & 53 Vict. c. 63.
(b) Cap. 101, Laws of North Borneo (1954 Revised Edition) Vol. III.
(c) North Borneo Ordinance No. 7 of 1956.
(d) North Borneo Ordinance No. 11 of 1961.

(4) The salaries and allowances of the members of the Commission shall be such as may from time to time be fixed by the Governor and shall be charged on and paid out of the general revenues of North Borneo.

Functions of the Commission.

5.—(1) The Governor may refer to the Commission for its advice any question relating to the appointment (including promotion and transfer) or termination of appointment or to the dismissal or other disciplinary control of public officers or of any public officer or relating to any other matter which, in his opinion, affects the public service or any public officer:

Provided that the provisions of this subsection shall not apply in relation to any of the following:—

(i) any public officer who is a member of the Executive Council of North Borneo;

(ii) such members of the judicial and legal services as are excluded by virtue of regulations made under section 6 of this Order;

(iii) the Director of Audit;

(iv) any member of the Governor's personal staff;

(v) any public officer or any specified class of public officer excluded by virtue of regulations made under section 6 of this Order.

(2) The Governor may, by regulations published in the Government Gazette of North Borneo, authorize any public officer or class of public officer to seek and to receive on his behalf, subject to such exceptions, qualifications and conditions as may be prescribed in any such regulations, the advice of the Commission on any matters on which the Governor may seek advice under the provisions of subsection (1) of this section.

(3) It shall be the duty of the Commission to advise the Governor, or any public officer authorized as aforesaid to receive on the Governor's behalf any advice of the Commission, on any question which he shall refer or cause to be referred to it by virtue of the provisions of subsections (1) and (2) of this section, but the Governor shall not be required to act in accordance with the advice given to him by the Commission.

(4) The Chairman of the Commission shall at all times have direct access to the Governor.

Regulations

6. Subject to the provisions of this Order, the Governor may make regulations and give instructions for giving effect to sections 4 and 5 of this Order, and in particular and without prejudice to the generality of the foregoing powers may by such regulations and instructions make provision for all or any of the following matters, that is to say—

(*a*) the membership, including the appointment of the Chairman, of the Commission;

(*b*) the appointment, tenure of office and terms of service of members of the Commission;

(*c*) the protection and privileges of members of the Commission in respect of the performance of their duties and the privilege of communications to and from the Commission or its members in case of legal proceedings;

(*d*) the organisation of the work of the Commission and the manner in which the Commission shall perform its functions;

(*e*) the manner and circumstances in which any recommendation, in respect of any question that has been referred to the Commission, made by any officer having authority over a department of government of North Borneo, shall be submitted to the Commission by such officer and by the Commission to the Governor ;

(*f*) consultation by the Commission with persons other than members of the Commission ;

(*g*) the appointment, tenure of office and terms of service of staff to assist the Commission in the performance of its functions ;

(*h*) the delegation to any member of the Commission of all or any of the powers or duties of the Commission ;

(*i*) the definition and trial of offences connected with the functions of the Commission and the imposition of penalties for such offences :

Provided that no such penalty shall exceed imprisonment for a term of one year and a fine of two thousand dollars ;

(*j*) requiring persons to attend before the Commission to answer questions relating to any inquiry held by the Commission or to any business or duties of the Commission ;

(*k*) the exclusion from the purview of the Commission of all or any of the matters mentioned in section 5 (1) of this Order in respect of any public officer or of any specified class of public officer.

Interpretation of regulations.

7. The Interpretation Ordinance of North Borneo(a) as amended from time to time, shall apply to any regulations or instructions made or given by the Governor under the provisions of this Order as it applies to regulations and instructions made or given under the provisions of any Ordinance of North Borneo.

W. G. Agnew.

EXPLANATORY NOTE

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

This Order vests in the Governor of North Borneo powers of appointment, promotion, transfer, termination of appointment, dismissal and disciplinary control of public officers and provides for the establishment of a Public Service Commission to advise the Governor on the exercise of these powers.

(a) Cap. 63, Laws of North Borneo (1954 Revised Edition) Vol. II.