1963 No. 2088

AFRICA

The Northern Rhodesia (Constitution) Order in Council 1963

Made - - - -	*20th December* 1963
Laid before Parliament	*1st January* 1964
Coming into Operation	
The Order and Chapters I (except section 8(8)*), III, IV, V, VII, sections* 97, 98 *and* 99, *and Chapter X of the Constitution* - -	*3rd January* 1964

Remainder — as provided in section 4

At the Court at Buckingham Palace, the 20th day of December 1963

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 : —

Citation and commencement.

1.—(1) This Order may be cited as the Northern Rhodesia (Constitution) Order in Council 1963.

(2) This Order shall, except as otherwise provided, come into operation on 3rd January 1964.

Interpretation.

2.—(1) In this Order—

" the existing Orders " means the Northern Rhodesia (Constitution) Order in Council 1962(b), the Northern Rhodesia (Electoral Provisions) Order 1963(c), the Northern Rhodesia (Electoral Provisions) (No. 2) Order 1963(d) and the Northern Rhodesia (Electoral Provisions) (No. 3) Order 1963(e) ;

" the Constitution " means the Constitution set out in the Schedule to this Order.

(2) Unless the context otherwise requires, expressions used in sections 1 to 16 (inclusive) of this Order have the same meaning as in the Constitution and the provisions of section 116 of the Constitution shall apply for the purposes of interpreting those sections as they apply for interpreting the Constitution.

Revocation.

3. Subject to the provisions of sections 5 and 14(1) of this Order, the existing Orders are revoked with effect from the commencement of this Order.

(a) 53 & 54 Vict. c. 37.
(b) S.I. 1962/1874 (1962 II, p. 2195).
(c) S.I. 1963/1489 (1963 II, p. 2628).
(d) S.I. 1963/1922 (1963 III, p. 3771).
(e) S.I. 1963/2087 (1963 III, p. 4531).

Establishment of Constitution.

4. Subject to the provisions of this Order, the Constitution shall come into effect in Northern Rhodesia at the commencement of this Order:

Provided that—

(*a*) Chapters II, VI and IX of the Constitution shall come into operation on such day after the commencement of this Order, as the Governor, acting in his discretion, may by notice in the Gazette appoint;

(*b*) sections 92, 93, 94, 95 and 96 of the Constitution shall come into operation on 31st July 1964; and

(*c*) section 8(8) of the Constitution shall come into operation on 1st January 1965.

Continuance of Executive Council and exercise of Governor's powers.

5.—(1) Until Chapter VI of the Constitution comes into operation the provisions of section 4 and Part II of the Constitution set out in schedule 2 to the Northern Rhodesia (Constitution) Order in Council 1962, shall, subject to the provisions of subsection (2) of this section, continue to have effect and accordingly—

(*a*) the Executive Council established in accordance with those provisions shall continue to exist and shall be constituted and perform its functions in accordance with those provisions;

(*b*) Parliamentary Secretaries appointed in accordance with those provisions shall continue to perform their functions in accordance with those provisions; and

(*c*) any member of the Executive Council, who immediately before the commencement of this Order, has responsibility for any business of the Government of Northern Rhodesia or any department of the Government under those provisions, shall, subject to those provisions, continue to have such responsibility.

(2) No member of the Executive Council and no Parliamentary Secretary appointed under the said provisions shall vacate his office on the grounds that he has ceased to be a member of the Legislative Council established by the existing Orders, by reason only of the fact that the said Legislative Council has ceased to exist.

(3) Until the coming into operation of Chapter VI of the Constitution, section 9 of the Constitution set out in schedule 2 to the Northern Rhodesia (Constitution) Order in Council 1962 shall have effect in relation to functions conferred upon the Governor by any provision of the Constitution as it has effect in relation to functions conferred upon him by the existing Orders.

Qualifications for elections to Legislative Assembly.

6.—(1) Until such day as the Governor, acting in his discretion, may by notice in the Gazette appoint, section 36(1)(*b*) of the Constitution shall have effect as if for the word "registered" there was substituted the words "qualified for registration".

(2) Until the first Speaker of the Legislative Assembly has been elected under section 34 of the Constitution, the person who, immediately before the commencement of this Order, holds the office of Speaker of the Legislative Council constituted by the existing Orders or, if that person becomes unable for any reason to discharge the functions referred to in this section, such person as the Governor, acting in his discretion, may appoint, shall discharge the functions of the Speaker of the Assembly under section 36(2)(*b*) of the Constitution.

(3) Until other provision is made under section 37(1)(*d*) of the Constitution, a person shall be excepted from the disqualifications relating to public offices or offices in the armed forces of the Crown specified in that subsection if, under the provisions of section 29(1) of the Constitution set out in Schedule 2 to the Northern Rhodesia (Constitution) Order in Council 1962 or under any law made under section 29(2) of that Constitution which is in force immediately before the commencement of this Order, he would not have been treated as holding or acting in a public office for the purposes of Part III of that Constitution.

Qualification of voters.

7. Until the day appointed under section 6(1) of this Order, section 41(1) of the Constitution shall have effect as if for the words " the date upon which he applies for registration ", wherever they occur, there was substituted the words " 30th September 1963 ".

Constituencies.

8. Until other provision is made under section 39 of the Constitution, the boundaries of the main roll constituencies and the reserved constituencies into which Northern Rhodesia is divided by section 38 of the Constitution shall be the boundaries of the equivalent constituencies established under regulations made under the Northern Rhodesian (Electoral Provisions) Order 1963 as delimited immediately before the commencement of this Order.

Existing laws.

9.—(1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the existing Orders, have effect after the commencement of this Order as if they had been made in pursuance of this Order and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(2) The Governor may by order made at any time before 1st July 1964 make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(3) Where any matter that falls to be prescribed or otherwise provided for the purposes of the Constitution by the Legislature of Northern Rhodesia or by any other person or authority is prescribed or provided for by or under any existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for, immediately before the commencement of this Order, by or under the existing Orders, that prescription or provision shall, as from the commencement of this Order, have effect as if it had been made by the Legislature of Northern Rhodesia.

(4) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(5) For the purposes of this section, the expression " the existing laws " means all Ordinances, laws, rules, regulations, orders and other instruments made in pursuance of, or kept in force by, the existing Orders and having effect as part of the law of Northern Rhodesia or any part thereof immediately before the commencement of this Order.

Existing Offices.

10.—(1) Where any office has been established by or under the existing Orders and any provision of the Constitution establishes a similar or an equivalent office (not being the office of a member of the Legislative Council) any person who, immediately before the commencement of that provision, holds or is acting in the former office shall, so far as is consistent with the provisions of this Order, be deemed to have been appointed, as from the commencement of that provision, to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken any necessary oath under the Constitution.

Provided that any person who under the provisions of the existing Orders would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

(2) For the purposes of this section the office of a member of the Executive Council established by the existing Orders shall not, except as provided in section 5 of this Order, be regarded as a similar or equivalent office to the office of Minister established by or under the Constitution.

Rules of procedure of Legislative Assembly.

11. The rules and orders of the Legislative Council constituted by the existing Orders as in force immediately before the commencement of this Order shall, until it is otherwise provided under section 53 of the Constitution, be the rules of procedure of the Legislative Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring those rules into conformity with the Constitution.

Proceedings before High Court.

12. Any proceedings pending immediately before the commencement of this Order before the High Court of Northern Rhodesia established by the existing Orders may be continued after the commencement of this Order before the High Court of Northern Rhodesia established by the Constitution.

Court of Appeal.

13.—(1) Until other provison is made by the Legislature of Northern Rhodesia—

(*a*) the Court of Appeal shall possess the same jurisdiction to hear and determine appeals from the High Court and the same power in relation to those appeals as the jurisdiction and powers possessed immediately before 1st January 1964 by the Federal Supreme Court by virtue of any enactment of the Federal Legislature in respect of appeals from the High Court constituted by the existing Orders;

(*b*) the Chief Justice may make rules with respect to the practice and procedure of the Court of Appeal in relation to the jurisdiction and powers conferred by paragraph (*a*) of this subsection.

(2) Nothing in this section shall confer upon the Court of Appeal jurisdiction in respect of proceedings pending in the Federal Supreme Court immediately before 1st January 1964.

(3) In this section "Federal Supreme Court" and "Federal Legislature" mean respectively the Federal Supreme Court and the Federal Legislature established by the Federation of Rhodesia and Nyasaland (Constitution) Order in Council 1953(a).

The Public Service.

14.—(1) Until Chapter IX of the Constitution comes into operation the provisions of Part VIII of the Constitution set out in schedule 2

(a) S.I. 1953/1199 (1953 II, p. 1804).

to the Northern Rhodesia (Constitution) Order in Council 1962 shall continue to have effect, and accordingly the Public Service Commission and the Police Service Commission established by those provisions shall continue to exist, and shall be constituted and perform their functions in accordance with those provisions and public officers and police officers shall be appointed and hold office in accordance with those provisions.

(2) During the period commencing with the coming into operation of Chapter IX of the Constitution and ending on such day as may be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State the following provisions shall have effect—

(*a*) power to appoint overseas officers to hold or act in any office in the public service to which sections 91, 101 or 106 of the Constitution applies, and to exercise disciplinary control over and remove overseas officers from any such office shall, notwithstanding anything in the Constitution, vest in the Governor, acting after consultation with the appropriate service Commission;

(*b*) the Governor, acting in his discretion, may give to the appropriate service Commission such directions with respect to the exercise of the powers of the Commission to appoint to any office a person who is not an overseas officer as appear to the Governor necessary for enabling the Governor to exercise the powers under paragraph (*a*) of this subsection, and that Commission shall comply with those directions;

(*c*) section 111(1) of the Constitution shall have effect as if there were inserted after the words "appropriate Commission" the words "or in the case of pensions benefits in respect of the service of any person who immediately before he ceased to be a public officer was an overseas officer, the Governor, acting in his discretion";

(*d*) section 111(2) of the Constitution shall have effect as if there were inserted after the words "appropriate Commission" the words "or, if that person was an overseas officer immediately before he ceased to be a public officer, the Governor, acting in his discretion".

(3) In this section—

"appropriate service Commission" means in relation to appointments to an office to which section 91 of the Constitution applies or to the removal or disciplinary control of a person holding or acting in such an office the Judicial Service Commission, in relation to appointments to an office to which section 101 of the Constitution applies or to the removal or disciplinary control of a person holding or acting in such an office, the Public Service Commission, and in relation to appointments to an office to which section 106 of the Constitution applies and to the removal or disciplinary control of a person holding or acting in such an office, the Police and Prison Service Commission;

"overseas officer" means a public officer who is, either individually or as a member of a class, declared by the Governor, acting in his discretion, to be an overseas officer.

Consolidated Fund.

15. Until 1st August 1964 references in the Constitution to the Consolidated Fund shall be construed as references to the general revenues of Northern Rhodesia.

16. Until other provision is made in that behalf by the Legislature of Northern Rhodesia in accordance with the provisions of section 97(1) of the Constitution, and subject to the other provisions of that section, there shall be paid to the holders of the offices to which that section applies the salaries payable to the holders of the corresponding offices immediately before the commencement of this Order. Remuneration of certain offices.

W. G. Agnew.

Section 4

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CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

1. Whereas every person in Northern Rhodesia is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

2.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law in force in Northern Rhodesia of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection of right to personal liberty.

3.—(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say—

(*a*) in execution of the sentence or order of a court, whether established for Northern Rhodesia or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court of record punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Northern Rhodesia;

(*f*) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into Northern Rhodesia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Northern Rhodesia or for the purpose of restricting that person while he is being conveyed through Northern Rhodesia in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Northern Rhodesia or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Northern Rhodesia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Northern Rhodesia,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in

paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Protection from slavery and forced labour.

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression " forced labour " does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(*d*) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment.

5.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Northern Rhodesia immediately before the coming into operation of this Constitution.

Protection from deprivation of property.

6.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary or expedient—

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community; and

(*b*) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Northern Rhodesia.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that the law in question authorises—

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(*b*) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, rate or due;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law in force in Northern Rhodesia;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon

of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by the Legislature of Northern Rhodesia.

Protection for privacy of home and other property.

7.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(*c*) that authorises an officer or agent of the Government of Northern Rhodesia, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that

is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be ; or

(*d*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions to secure protection of law.

8.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty ;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged ;

(*c*) shall be given adequate time and facilities for the preparation of his defence ;

(*d*) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice ;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution ; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall

again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or

(*b*) may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) subsection (2)(*a*) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) subsection (2)(*d*) of this section to the extent that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under African customary law (being proceedings against any person who, under that law, is subject to that law);

(*c*) subsection (2)(*e*) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*d*) subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2)(*d*) and (*e*) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section—

"criminal offence" means a criminal offence under the law in force in Northern Rhodesia;

"legal representative" means a person entitled to practise in Northern Rhodesia as an advocate.

Protection of freedom of conscience.

9.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression.

10.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ; or

(*b*) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television ; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ; or

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons ; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of movement.

12.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Northern Rhodesia, the right to reside in any part of Northern Rhodesia, the right to enter Northern Rhodesia and immunity from expulsion from Northern Rhodesia.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Northern Rhodesia, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society;

(*b*) for the imposition of restrictions on the freedom of movement of any person who does not belong to Northern Rhodesia;

(*c*) for the imposition of restrictions upon the movement or residence within Northern Rhodesia of public officers; or

(*d*) for the removal of a person from Northern Rhodesia to be tried outside Northern Rhodesia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Northern Rhodesia of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Northern Rhodesia, appointed by the Chief Justice:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Protection from discrimination on the grounds of race, etc.

13.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such

description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) for the appropriation of public revenues or other public funds;

(*b*) with respect to persons who do not belong to Northern Rhodesia;

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(*d*) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by section 7(2), 9(5), 10(2), 11(2) or 12(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section—

(*a*) if that law was in force immediately before the coming into operation of this Constitution and has continued in force at all times since the coming into operation of this Constitution; or

(*b*) to the extent that the law repeals and re-enacts any provision which has been contained in any enactment at all times since immediately before the coming into operation of this Constitution.

Provisions for periods of public emergency.

14.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939(a), as amended(b), shall be held to be inconsistent with or in contraven-

(a) *See* S.I. 1952 I, at p. 621.

(b) S.I. 1956/731, 1963/88, 1633 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084).

tion of section 3, 4(2), 7, 9, 10, 11, 12 or 13 of this Constitution, and nothing contained in or done under the authority of any regulation made under the Preservation of Public Security Ordinance(a) shall be held to be inconsistent with or in contravention of section 3 or 13 of this Constitution, to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance only of such a regulation as is referred to in subsection (1) of this section so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, qualified to be enrolled as an advocate in Northern Rhodesia, appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Enforcement of protective provisions.

15.—(1) Subject to the provisions of subsection (6) of this section, if any person alleges that any of the provisions of sections 1 to 14 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section;

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 1 to 14 (inclusive) of this Constitution.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 1 to 14 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal:

Provided that no appeal shall lie from a determination of the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) The Legislature of Northern Rhodesia may confer upon the High Court such powers in addition to those conferred by this section

(a) Laws of Northern Rhodesia c. 265.

as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

Interpretation and savings.

16.—(1) In this Chapter, unless the context otherwise requires—

" contravention ", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly ;

" court " means any court of law having jurisdiction in Northern Rhodesia, other than a court established by a disciplinary law, and includes Her Majesty in Council and in sections 2 and 4 of this Constitution a court established by a disciplinary law ;

" disciplinary law " means a law regulating the discipline of any disciplined force ;

" disciplined force " means—

(*a*) a naval, military or air force ;

(*b*) the Northern Rhodesia Police Force ; or

(*c*) any other police force established by law enacted by the Legislature of Northern Rhodesia ;

" member ", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter " a period of public emergency " means any period during which—

(*a*) Her Majesty is at war ;

(*b*) Part II of the Emergency Powers Order in Council 1939(**a**), as amended(**b**), is in force in Northern Rhodesia or any part thereof ; or

(*c*) section 4(2) of the Preservation of Public Security Ordinance(**c**) is in force.

(3) For the purposes of this Chapter a person shall be deemed to belong to Northern Rhodesia if he is a British subject or a British protected person and—

(*a*) was born in Northern Rhodesia or of parents who at the time of his birth were ordinarily resident in Northern Rhodesia ;

(*b*) has been ordinarily resident in Northern Rhodesia continuously for a period of seven years or more and since the completion of such period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of the Commonwealth ;

(*c*) is a citizen of the United Kingdom and Colonies by virtue of registration in Northern Rhodesia, or the grant of naturalisation in Northern Rhodesia, under the British Nationality Act 1948(**d**) ;

(**a**) *See* S.I. 1952 I, at p. 621. (**b**) 1956/731, 1963/88, 1633 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084). (**c**) Laws of Northern Rhodesia c. 265. (**d**) 11 & 12 Geo. 6. c. 56.

(*d*) is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of court or a deed of separation ; or

(*e*) is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any of the foregoing paragraphs applies.

(4) In relation to any person who is a member of a disciplined force raised under a law enacted by the Legislature of Northern Rhodesia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Northern Rhodesia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER II

THE CONSTITUTIONAL COUNCIL

Constitutional Council.

17.—(1) There shall be a Constitutional Council for Northern Rhodesia which shall consist of a Chairman and not more than four other members.

(2) The members of the Constitutional Council shall be appointed by the Governor, acting after consultation with the Prime Minister and the other members of the Legislative Assembly who appear to him, acting in his discretion, to be the leaders in the Assembly of political parties represented in the Assembly.

(3) A person shall not be qualified for appointment as Chairman of the Constitutional Council unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or a court having jurisdiction in appeals from such a court.

(4) A person shall not be qualified for appointment as a member of the Constitutional Council if he is a member of the Legislative Assembly or a public officer.

Tenure of office of members of Constitutional Council.

18.—(1) The office of a member of the Constitutional Council shall become vacant—

(*a*) at the expiration of four years from the date of his appointment ;

(*b*) if any circumstances arise that if he were not a member of the Council would cause him to be disqualified for appointment ;

(*c*) if he is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law in force for the time being in Northern Rhodesia ; or

(*d*) if he is sentenced by a court in any part of the Commonwealth, the Republic of South Africa or the Republic of Ireland to death or to imprisonment (by whatever name called).

(2) A member of the Constitutional Council may be removed from office by the Governor for misbehaviour in his capacity as a member

of the Council but he shall not be so removed except in accordance with the provisions of this section.

(3) If the Governor, acting in his discretion, considers that the question of removing a member of the Constitutional Council ought to be investigated then—

(*a*) the Governor, acting in his discretion, shall appoint a tribunal which shall consist of a Chairman, being a person who holds or has held office as a judge of a court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court, and of two other members;

(*b*) that tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether the member ought to be removed under this section;

(*c*) if the tribunal reports that the member ought to be removed, the Governor shall remove him accordingly.

(4) If the question of removing a member of the Constitutional Council has been referred to a tribunal under this section, the Governor, acting in his discretion, may suspend the member from performing the functions of his office and any such suspension may at any time be revoked by the Governor, acting in his discretion, and shall in any case cease to have effect if the tribunal recommends to the Governor that the person shall not be removed.

Functions of Constitutional Council in respect of proposed legislation.

19.—(1) The Governor may refer to the Constitutional Council the draft of any bill or statutory instrument proposed to be introduced or made and the Council shall consider the bill or statutory instrument and shall make a report to the Governor stating whether or not in the opinion of the Council any, and if so which, provisions of the bill or statutory instrument would, if enacted or made, be inconsistent with Chapter I of this Constitution.

(2) Nothing done by the Governor or the Constitutional Council under this section shall affect the reference of bills or statutory instruments to the Constitutional Council under section 20 or 21 of this Constitution or the functions of the Council under those sections.

Functions of Constitutional Council in respect of bills.

20.—(1) If not less than seven members of the Legislative Assembly so request by notice in writing delivered to the Speaker within three days after the final reading of any bill by the Assembly, the Speaker shall refer the bill to the Constitutional Council.

(2) The Constitutional Council shall consider a bill referred to it under this section and shall, within the prescribed period, make a report addressed to the Governor and the Speaker stating whether or not in the opinion of the Council any, and if so which, provisions of the bill would, if enacted, be inconsistent with Chapter I of this Constitution.

(3) Where the Constitutional Council reports within the prescribed period that the opinion of the Council is that a provision of a bill would, if enacted, be inconsistent with Chapter I of this Constitution, the Legislative Assembly may resolve that the bill shall be presented for assent notwithstanding the opinion of the Council:

Provided that no motion for the purposes of this subsection shall be introduced into or passed by the Assembly before the expiration

of six months after the date upon which the bill was sent to the Council.

(4) No bill shall be presented to the Governor for assent until after the expiration of three days from the final reading of the bill by the Legislative Assembly and, if a bill is referred to the Constitutional Council in accordance with subsection (1) of this section, that bill shall not be presented to the Governor for assent—

(*a*) where the Council makes a report within the prescribed period that the bill is not inconsistent with Chapter I of this Constitution, until the report of the Council is received by the Speaker;

(*b*) where the Council makes a report within the prescribed period that the bill is inconsistent with Chapter I of this Constitution, until a resolution is passed by the Legislative Assembly in accordance with subsection (3) of this section; or

(*c*) where the Council makes no report within the prescribed period, until after the expiration of that period.

(5) Where the Legislative Assembly is prorogued a bill which has been referred to the Constitutional Council in the session terminated by that prorogation and in respect of which—

(*a*) the prescribed period has not expired; or

(*b*) the Council has reported that a provision of the bill is inconsistent with Chapter I of this Constitution,

shall not lapse by reason only of that prorogation, notwithstanding any provision in the rules of procedure of the Assembly to the contrary.

(6) A bill presented to the Governor for assent shall be accompanied by a statement in writing of the Speaker signed by him specifying the provisions of subsection (4) of this section which are applicable to the bill and certifying that those provisions have been complied with.

(7) Nothing in this section shall apply to a bill for the appropriation of public revenues or public funds.

(8) In this section "the prescribed period" in relation to a bill means the period commencing with the delivery of the bill to the Constitutional Council and ending thirty days thereafter or if the Speaker, on the application of the Chairman of the Council, considers that owing to the length or complexity of the bill thirty days is insufficient for consideration of the bill, ending on such later day as the Speaker may determine.

(9) The date upon which a bill is delivered to the Constitutional Council under subsection (1) of this section or any extension of the period of thirty days by the Speaker under subsection (8) of this section shall be notified in the Gazette.

Functions of Constitutional Council in respect of statutory instruments.

21.—(1) Every statutory instrument shall be published in the Gazette.

(2) If, within fourteen days of the publication in the Gazette of any statutory instrument not less than seven members of the Legislative Assembly by notice in writing delivered to the Constitutional Council so request, the Council shall consider the statutory instrument and make a report, within forty days of the publication of the instrument in the Gazette, addressed to the Assembly and to the authority having power to make the statutory instrument stating whether or not in the

opinion of the Council any, and if so which, provision of the instrument is inconsistent with Chapter I of this Constitution.

(3) Where the Constitutional Council has reported within the time prescribed that any provision of a statutory instrument is inconsistent with Chapter I of this Constitution the Council shall cause notification of the report in respect of that provision to be published in the Gazette and that provision shall, unless it is sooner revoked, be annulled with effect from the expiration of fourteen days from the publication of the notification of the report in the Gazette.

Functions of Constitutional Council in respect of proceedings under Section 15.

22.—(1) The Constitutional Council may grant to any person who satisfies them that—

(*a*) he intends to bring or is an applicant or appellant in proceedings under section 15(1) or 15(4), as the case may be, of this Constitution;

(*b*) he has reasonable grounds for bringing the application or appeal; and

(*c*) except in the case of an application or appeal relating to the validity of a provision of law in respect of which the Council has reported that it is inconsistent with Chapter I of this Constitution or in which it appears to the Council that issues are or will be raised which are of general public importance, he cannot afford to pay for the cost of the application or appeal,

a certificate that the application or appeal is a proper case to be determined at the public expense.

(2) Where a certificate is granted to any person by the Constitutional Council in pursuance of subsection (1) of this section there shall be paid to that person out of the Consolidated Fund such amount as the court by which the application or appeal is heard may assess as the costs reasonably incurred by that person in connection with the application or appeal.

(3) For the purposes of this section—

(*a*) the costs incurred in an application or appeal shall include the cost of the assistance of a solicitor and, if necessary, an advocate in the steps preliminary or incidental to the application or appeal;

(*b*) in assessing the costs reasonably incurred by a person in an application or appeal regard shall be had to costs awarded against that person or recovered by him in those proceedings.

(4) The sums required for making payments under this section shall be charged on the Consolidated Fund.

Procedure of Constitutional Council.

23.—(1) The Constitutional Council shall not transact any business unless a quorum is present; the quorum shall be three members including the member presiding.

(2) A decision of the Constitutional Council shall be made by the majority of the members present and voting.

(3) The Chairman of the Constitutional Council if present shall preside at any meeting of the Council and, in his absence, such other member of the Council as may be elected by the Council to act as Chairman shall preside.

(4) The Chairman or member presiding shall have an original vote and, in the case of an equality of votes, shall have and exercise a casting vote in addition to his original vote.

(5) The proceedings of the Constitutional Council shall be conducted in private and the Council shall not be entitled to hear objectors or to examine witnesses in regard to any bill or statutory instrument which is being considered by the Council.

(6) If the Constitutional Council report to any authority that its opinion is that the provisions of a bill or statutory instrument are inconsistent with Chapter I of this Constitution the report shall state the grounds upon which the Council has reached that conclusion, but it shall not be competent for the Council to propose amendments to the bill or statutory instrument in question.

(7) Subject to the provisions of subsection (1) of this section, the Constitutional Council shall not be disqualified for the transaction of business by reason of any vacancy among the members thereof; and any proceedings therein shall be valid notwithstanding that some person who is not entitled to do so took part in those proceedings.

(8) Subject to the provisions of this Constitution, the Constitutional Council may regulate its own procedure.

Interpretation.

24. In this Chapter "statutory instrument" means any proclamation, regulation, order, rule or other instrument having the force of law made after the coming into operation of this Constitution under any enactment of the Legislature of Northern Rhodesia.

CHAPTER III

THE GOVERNOR AND THE DEPUTY GOVERNOR

Establishment of office of Governor.

25. There shall be a Governor, who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Northern Rhodesia.

Oaths to be taken by Governor.

26. A person appointed to the office of Governor shall, before entering upon that office, take and subscribe the oath of allegiance and such oath for the due execution of his office as may be prescribed by law.

Powers and duties of Governor.

27. The Governor shall have such functions as may be conferred upon him by or under this Constitution or any other law and such other functions as Her Majesty may be pleased to assign to him and, subject to the provisions of this Constitution and any law by which any such functions are conferred, shall do or execute all things that belong to his office (including the exercise of any functions that are expressed to be exercisable by him in his discretion) according to such instructions, if any, as Her Majesty may see fit to give him:

Provided that the question whether or not the Governor has in any matter complied with such instructions shall not be called in question in any court of law.

Establishment of office of Deputy Governor.

28.—(1) There shall be a Deputy Governor who shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Governor is vacant or the Deputy Governor is administering the government of Northern Rhodesia or is for any reason unable to perform the functions of his office, then the Governor, acting in his discretion, may appoint a person to act as Deputy Governor and any such person shall continue to act until his appointment is revoked by the Governor, acting in his discretion.

Succession to Government.

29.—(1) Whenever the office of Governor is vacant or the Governor is absent from Northern Rhodesia or is for any other cause prevented from or incapable of discharging 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 Northern Rhodesia or is for any reason unable to discharge the functions of his office, 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, discharge the functions of the office of Governor and administer the government of Northern Rhodesia accordingly.

(2) Before assuming the administration of the government of Northern Rhodesia, the Deputy Governor or any such person as aforesaid shall take and subscribe the oath of allegiance and such oath for the due execution of the office of Governor as may be prescribed by law.

(3) The Deputy Governor shall not continue to administer the government after the Governor has notified him that he is about to assume or resume the administration of the government and the person designated under subsection (1)(*b*) of this section shall not continue to administer the government after the Governor or the Deputy Governor has so notified him.

(4) The Governor, or, if the Deputy Governor has entered upon the discharge of the functions of the office of the Governor under subsection (1) of this section, the Deputy Governor may, if he has occasion to be absent from Northern Rhodesia for a period which in his opinion will be of short duration, direct by notice published in the Gazette that, notwithstanding his absence from Northern Rhodesia, he will continue to administer the government of Northern Rhodesia.

(5) For the purposes of subsection (1) of this section—

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

(*b*) so long as any direction given by the Governor under subsection (4) of this section is in force, the Governor shall not be regarded as absent from Northern Rhodesia or as unable to discharge the functions of the office of Governor by reason only that he is in passage to, or in, any place outside Northern Rhodesia or in passage from that place to Northern Rhodesia;

(*c*) when the Deputy Governor has entered upon the discharge of the functions of the office of Governor and so long as any direction given by the Deputy Governor under subsection (4) of this section is in force, he shall not be regarded as absent from Northern

Rhodesia or as unable to discharge the functions of the office of Governor by reason only that he is in passage to, or in, any place outside Northern Rhodesia or in passage from that place to Northern Rhodesia.

(6) In this section "the Governor" means the person holding the office of Governor and "the Deputy Governor" means the person holding the office of Deputy Governor.

Discharge of Governor's functions by Deputy Governor.

30.—(1) The Governor, acting in his discretion, may, by writing under his hand, authorize the Deputy Governor to exercise for and on behalf of the Governor, subject to such exceptions and conditions as the Governor 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 of the Deputy Governor under subsection (1) of 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 discharge by him of any of the functions of the office of Governor as the Governor may from time to time address to him for his guidance.

(3) Any authority given under subsection (1) of this section may at any time be varied or revoked by Her Majesty by instructions through a Secretary of State or by the Governor by writing under his hand.

(4) In subsection (1) of this section the reference to any functions of the office of Governor does not include a reference to—

(*a*) the functions conferred upon the Governor by this section;

(*b*) any functions 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 the Order to which this Constitution is scheduled, the Emergency Powers Order in Council 1939(a) or any Order amending or replacing those Orders.

Personal staff and expenditure of Governor.

31.—(1) The offices on the personal staff of the Governor shall be such offices as the Governor, acting after consultation with the Prime Minister, may, by order published in the Gazette, prescribe.

(2) The Governor, acting after consultation with the Prime Minister, may, by order published in the Gazette, prescribe the sums payable in respect of the expenditure attaching to the office of the Governor (including the sums payable in respect of the salaries and allowances of the members of the Governor's personal staff) and any sum so prescribed shall be a charge on the Consolidated Fund.

(3) Power to appoint persons to hold or act in the offices on the personal staff of the Governor, to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Governor, acting in his discretion.

(a) *See* 1952 I, at p. 621.

CHAPTER IV

THE LEGISLATURE

PART I—*Composition*

Establishment of Legislature of Northern Rhodesia.

32. There shall be a Legislature for Northern Rhodesia which shall consist of Her Majesty and a Legislative Assembly.

Composition of Legislative Assembly.

33.—(1) The Legislative Assembly shall consist of seventy-five members elected to the Assembly in accordance with the provisions of this Part of this Constitution.

(2) If a person who is not a member of the Legislative Assembly is elected to the office of Speaker of the Assembly that person shall, by virtue of holding that office, be a member of the Assembly in addition to the members referred to in subsection (1) of this section.

(3) A Minister who is not a member of the Legislative Assembly may attend and take part in the proceedings of the Assembly or of any committee of the Assembly, but nothing in this subsection shall entitle a person who is not a member of the Assembly to vote in the Assembly or any of its committees.

Speaker.

34.—(1) There shall be a Speaker of the Legislative Assembly who shall be elected by the members of the Assembly from among persons who are members of the Assembly or who are qualified to be elected as such.

(2) A Minister or a Parliamentary Secretary shall not be qualified to be elected as Speaker.

(3) The Speaker shall vacate his office—

(*a*) if, having been elected from among the members of the Legislative Assembly, he ceases to be a member of the Assembly otherwise than by reason of a dissolution of the Assembly;

(*b*) if any circumstances arise that, if he were not Speaker, would disqualify him for election as such;

(*c*) if he is required, by virtue of section 44 of this Constitution, to cease to perform his functions as a member of the Assembly;

(*d*) when the Assembly first sits after any dissolution thereof; or

(*e*) if he is removed from office by a resolution of the Assembly supported by the votes of not less than two-thirds of all the members thereof.

(4) No business shall be transacted in the Legislative Assembly (other than an election to the office of Speaker) at any time when the office of Speaker is vacant.

Deputy Speaker.

35.—(1) There shall be a Deputy Speaker of the Legislative Assembly who shall be elected from among the persons who are members of the Assembly other than Ministers or Parliamentary Secretaries.

(2) The members of the Legislative Assembly shall elect a person to the office of Deputy Speaker when the Assembly first sits after any dissolution and, if the office becomes vacant otherwise than by reason of the dissolution of the Assembly, at the first sitting of the Assembly after the office becomes vacant.

(3) The Deputy Speaker shall vacate his office—

(*a*) if he ceases to be a member of the Legislative Assembly;

(*b*) if he becomes a Minister or a Parliamentary Secretary ;

(*c*) if he is required, by virtue of section 44 of this Constitution, to cease to perform his functions as a member of the Assembly ;

(*d*) if he is elected as Speaker ; or

(*e*) if he is removed from office by a resolution of the Assembly supported by the votes of not less than two-thirds of all the members of the Assembly.

Qualifications for membership of Legislative Assembly.

36.—(1) Subject to the provisions of section 37 of this Constitution, a person shall be qualified to be elected as a member of the Legislative Assembly if, and shall not be qualified to be so elected unless, he—

(*a*) has attained the age of twenty-one years ;

(*b*) is registered as a voter ;

(*c*) satisfies the appropriate authority that he can speak, write and understand English well enough to take an active part in the proceedings of the Assembly ; and

(*d*) has been ordinarily resident in Northern Rhodesia—

(i) for a period of not less than two years immediately before the date of his nomination as a candidate ; or

(ii) for periods amounting in the aggregate to not less than three years during the ten years immediately before that date.

(2) For the purposes of subsection (1) of this section—

(*a*) a person shall be deemed to have the required knowledge of English if—

(i) English is his native tongue ;

(ii) he has completed a full course of primary education of the prescribed standard ; or

(iii) he has been a member of any Legislative Council of Northern Rhodesia established by Order of Her Majesty in Council or of the Legislative Assembly.

(*b*) " the appropriate authority " means the returning officer for the constituency in which the candidate seeks election or, if the returning officer decides that the candidate does not possess the qualification required by that subsection and the candidate appeals against the decision in such manner as may be prescribed by any law, the Speaker.

Disqualifications for membership of Legislative Assembly.

37.—(1) No person shall be qualified to be elected a member of the Legislative Assembly who—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state ;

(*b*) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth, the Republic of South Africa or the Republic of Ireland and has not been discharged, or has made a composition with his creditors and has not paid his debts in full ;

(*c*) is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Northern Rhodesia ;

(*d*) subject to such exceptions as may be prescribed by the Legislature of Northern Rhodesia, holds or is acting in any public office, any office in the armed forces of the Crown or any other office specified by the Legislature of Northern Rhodesia ; or

(*e*) is under sentence of death imposed on him by a court in any part of the Commonwealth, the Republic of South Africa or the Republic of Ireland, or is under a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court.

(2) No person shall be qualified to be elected a member of the Legislative Assembly who holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the Assembly or the compilation or revision of any electoral register for the purposes of such elections.

(3) The Legislature of Northern Rhodesia may provide that a person shall not be qualified for election to the Legislative Assembly for such period (not exceeding five years) as may be prescribed if he is convicted of any such offence connected with elections to the Assembly as may be prescribed.

Constituencies.

38.—(1) For the purposes of the election of the members of the Legislative Assembly the whole of Northern Rhodesia shall—

(*a*) be divided into sixty-five main roll constituencies ; and

(*b*) be divided into ten reserved constituencies.

(2) The boundaries of the main roll constituencies and of the reserved constituencies shall be delimited from time to time by a Delimitation Commission appointed in accordance with section 39 of this Constitution.

(3) The boundaries of each main roll constituency shall be such that the number of voters registered as main roll voters included in that constituency is as nearly equal to the electoral quota in respect of the main roll as is reasonably practicable and the boundaries of each reserved constituency shall be such that the number of voters registered as reserved roll voters included in that constituency is as nearly equal to the electoral quota in respect of that roll as is reasonably practicable:

Provided that the number of voters included in a constituency may be greater or less than the electoral quota in order to take account of means of communication, geographical features, the distribution of population and administrative boundaries.

(4) For the purposes of subsection (3) of this section the electoral quota in respect of a roll of voters shall be ascertained by dividing the total number of voters registered throughout Northern Rhodesia on that roll by sixty-five in the case of the main roll or by ten in the case of the reserved roll.

Delimitation Commission.

39.—(1) The Governor, acting in his discretion, shall not later than three years after the coming into operation of this Constitution and thereafter at intervals of not less than five years appoint, by instrument under the Public Seal, a Delimitation Commission consisting of a Chairman and two members.

(2) A person shall not be qualified for appointment as Chairman of a Delimitation Commission unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or a court having jurisdiction in appeals from such a court.

(3) A person shall not be qualified for appointment as a member of a Delimitation Commission if he is a member of the Legislative Assembly.

(4) If, after the appointment of a Delimitation Commission and before a Proclamation of constituencies has been made under subsection (6) of this section, the office of Chairman or any member of the Commission falls vacant or the holder of the office becomes unable for any reason to discharge his functions as a member of the Commission, the Governor, acting in his discretion, may appoint another person qualified for appointment to be a member of the Commission.

(5) When a Delimitation Commission has been appointed, the Commission shall without delay proceed to delimit the boundaries of the constituencies in accordance with section 38 of this Constitution and shall, as soon as is practicable, submit to the Governor a report which shall include—

(*a*) a list of the main roll and reserved constituencies delimited by the Commission and a description of the boundaries of those constituencies ;

(*b*) a map or maps showing the constituencies so described ; and

(*c*) the recommendation of the Commission as to the name by which each constituency shall be known.

(6) The Governor, acting in his discretion, shall as soon as practicable after the submission of the report of a Delimitation Commission, by Proclamation published in the Gazette, declare the boundaries of the constituencies as delimited by the Commission and assign to each constituency a name in accordance with the recommendation of the Commission.

(7) If there shall be any discrepancy between the written description of the boundaries of a constituency contained in the report of a Delimitation Commission and the delimination of the boundaries of that constituency on a map included in the report the written description shall prevail.

(8) Any Proclamation under this section shall come into force at the next dissolution of the Legislative Assembly after it is made.

Method of election.

40. Each of the constituencies into which Northern Rhodesia is divided under sections 38 and 39 of this Constitution shall return one member to the Legislative Assembly, who shall be elected in such manner as may be prescribed by the Legislature of Northern Rhodesia,—

(*a*) in the case of a main roll constituency, by the voters registered in that constituency as main roll voters ; and

(*b*) in the case of a reserved constituency, by the voters registered in that constituency as reserved roll voters.

Qualification of voters.

41.—(1) Subject to the provisions of this section, a person shall be qualified to be registered as a voter at elections to the Legislative

Assembly if, and shall not be qualified to be so registered unless, he—

(*a*) is—

(i) a British protected person by virtue of his connection with Northern Rhodesia ;

(ii) a British subject or a British protected person who, during the period of seven years immediately before the date on which he applies for registration, has been ordinarily resident in Northern Rhodesia for periods amounting in the aggregate to not less than four years ;

(iii) registered in the District census register of a District as a resident of a Chief's area in the District ; or

(iv) a person who, during the period of ten years immediately before the date on which he applies for registration, has been ordinarily resident in Northern Rhodesia for any continuous period of seven years ; and

(*b*) has attained the age of twenty-one years ; and

(*c*) has been ordinarily resident in Northern Rhodesia for a period of two years immediately before the date on which he applies for registration ; and

(*d*) is not disqualified for registration as a voter under the provisions of subsection (4) of this section.

(2) The wife, or wives, of any person who for the time being possesses the qualification specified in subsection (1)(*a*)(i) or subsection (1)(*a*)(iii) of this section shall be deemed to possess the like qualification.

(3) A person who, immediately before the date upon which this Constitution comes into operation, was registered as a voter under the higher franchise for the purpose of elections under the Northern Rhodesia (Constitution) Order in Council 1962(**a**) shall be deemed to possess the qualifications required by subsections (1)(*a*), (1)(*b*) and (1)(*c*) of this section.

(4) No person shall be qualified to be registered as a voter who—

(*a*) is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Northern Rhodesia ; or

(*b*) is disqualified for registration as a voter under any law for the time being in force in Northern Rhodesia relating to offences connected with elections.

(5) A person who is absent from Northern Rhodesia for any period (whether before or after the coming into operation of this Constitution) for the purpose of attending a university, college, school or other educational institution (being a university, college, school or educational institution which is for the time being approved by the Governor under this subsection) shall be deemed, for the purposes of subsection (1) of this section, to have been ordinarily resident in Northern Rhodesia for that period.

Registration of voters.

42.—(1) Subject to the provisions of this section, a person who is qualified under section 41 of this Constitution shall—

(*a*) if he is an African be registered as a main roll voter ;

(*b*) if he is a European be registered as a reserved roll voter ;

(a) S.I. 1962/1874 (1962 II, p. 2195).

(*c*) if he is neither an African nor a European declare whether he wishes to be registered as a main roll voter or a reserved roll voter and he shall be registered accordingly as a main roll voter or a reserved roll voter, as the case may be.

(2) No person shall be registered as a voter unless he applies for registration in such manner and complies with such requirements as to residence within a constituency or such part of a constituency as may be prescribed by the Legislature of Northern Rhodesia.

(3) No person shall be registered as a voter in more than one constituency.

Tenure of office of members.

43.—(1) Every member of the Legislative Assembly shall vacate his seat in the Assembly upon a dissolution of the Assembly.

(2) A member of the Legislative Assembly shall vacate his seat in the Assembly—

(*a*) if he ceases to be qualified for registration as a voter ;

(*b*) if he ceases to be ordinarily resident in Northern Rhodesia ;

(*c*) if he is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in the rules of procedure of the Assembly ;

(*d*) if any circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election under section 37(1)(*a*), 37(1)(*b*), 37(1)(*c*), 37(1)(*d*), 37(2) or 37(3) of this Constitution ; or

(*e*) in the circumstances mentioned in section 44 of this Constitution.

Vacation of seat on sentence, etc.

44.—(1) Subject to the provisions of this section, if a member of the Legislative Assembly is sentenced by a court in any part of the Commonwealth, the Republic of South Africa or the Republic of Ireland to death or to imprisonment (by whatever name called) for a term exceeding six months or, having been under suspended sentence for such a term imposed by such a court, is ordered by the court to serve that sentence, he shall forthwith cease to perform his functions as a member of the Assembly and to be entitled to such remuneration (if any) as may be otherwise payable to him as such, and his seat in the Assembly shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker may at the request of the member from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, as the case may be, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Assembly signified by resolution.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than six months his seat in the Legislative Assembly shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Assembly and be paid any remuneration to which he ceased to be entitled when he ceased to be a member.

(3) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Determination of questions as to membership of Legislative Assembly.

45.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

(*a*) any person has been validly elected as a member of the Legislative Assembly or the seat of any such member has become vacant;

(*b*) any person has been validly elected as Speaker of the Assembly from among persons who are not members of the Assembly or, having been so elected, has vacated the office of Speaker.

(2) The Legislature of Northern Rhodesia may make provision with respect to—

(*a*) the persons who may apply to the High Court for the determination of any question under this section;

(*b*) the circumstances and manner in which and the conditions upon which any such application may be made; and

(*c*) the powers, practice and procedure of the High Court in relation to any such application.

(3) The determination by the High Court of any question under this section shall not be subject to appeal.

Clerk and staff of Legislative Assembly.

46.—(1) There shall be a clerk of the Legislative Assembly and such other offices in the department of the clerk of the Assembly as the Legislature of Northern Rhodesia may prescribe.

(2) Power to appoint persons to hold or act in the office of clerk of the Legislative Assembly shall vest in the Speaker:

Provided that no person shall be appointed to hold the office of clerk of the Assembly unless a proposal for the appointment of that person has been submitted to the Assembly and the Assembly has resolved that he should be appointed.

(3) Subject to the provisions of subsection (4) of this section, the clerk of the Legislative Assembly shall vacate his office when he attains the age of fifty-five years or such other age as may be prescribed by the Legislature of Northern Rhodesia.

(4) The clerk of the Legislative Assembly may be removed from office by resolution of the Assembly for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour but shall not be otherwise removed.

(5) Power to appoint persons to hold or act in any office in the department of the clerk of the Legislative Assembly (other than the office of clerk) and to exercise disciplinary control over persons holding or acting in such office and to remove such persons from office shall vest in the Speaker.

(6) Before exercising the powers conferred by subsection (5) of this section to appoint any person to hold or act in any office or to remove any person from office the Speaker shall consult the Public Service Commission, and if the Speaker acts otherwise than in accordance with the recommendation of the Commission he shall, as soon as practicable thereafter, inform the Legislative Assembly that he has so acted.

Interpretation.

47. In this Part of this Chapter references to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

PART 2—*General Provisions Relating to Procedure*

Oaths to be taken by Speaker and members.

48. The Speaker, before assuming the duties of his office, and every member of the Legislative Assembly before taking his seat therein, shall take and subscribe before the Assembly the oath of allegiance.

Presiding in Legislative Assembly.

49. There shall preside at any sitting of the Legislative Assembly—

(*a*) the Speaker;

(*b*) in the absence of the Speaker, the Deputy Speaker; or

(*c*) in the absence of the Speaker and the Deputy Speaker, such member of the Assembly (not being a Minister or a Parliamentary Secretary) as the Assembly may elect for that sitting.

Quorum in Legislative Assembly.

50. If objection is taken by any member of the Legislative Assembly present that there are present in the Assembly (besides the person presiding) less than fifteen members of the Assembly and, after such interval as may be prescribed in the rules of procedure of the Assembly, the person presiding ascertains that the number of members present is still less than fifteen, he shall thereupon adjourn the Assembly.

Voting in Legislative Assembly.

51.—(1) Save as otherwise provided in this Constitution, any question proposed for decision in the Legislative Assembly shall be determined by a majority of the votes of the members present and voting.

(2) The Speaker shall not have an original vote but if upon any question before the Legislative Assembly the votes are equally divided, he shall have and exercise a casting vote.

(3) Any member of the Legislative Assembly, other than the Speaker, shall, when presiding in the Assembly, retain his original vote as a member and shall also have and exercise a casting vote where the votes are equally divided.

(4) The rules of procedure of the Legislative Assembly may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.

Unqualified persons sitting or voting.

52. Any person who sits or votes in the Legislative Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding twenty-five pounds or such other sum as may be prescribed by the Legislature of Northern Rhodesia for each day on which he so sits or votes in the Assembly, which shall be recoverable by action in the High Court at the suit of the Attorney-General.

Regulation of procedure in Legislative Assembly.

53.—(1) Subject to the provisions of this Constitution, the Legislative Assembly may regulate its own procedure.

(2) The Legislative Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after any dissolution) and the presence or participation of any person not entitled to be present or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

PART 3—*Legislative Powers and Procedure*

Legislative powers.

54. Subject to the provisions of this Constitution, the Legislature of Northern Rhodesia shall have power to make laws for the peace, order and good government of Northern Rhodesia.

Laws relating to privileges of Legislative Assembly.

55. A law of the Legislature of Northern Rhodesia may make provision for determining and regulating the privileges, immunities and powers of the Legislative Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members thereof.

Mode of exercising legislative powers.

56.—(1) The power of the Legislature of Northern Rhodesia to make laws shall be exercised by bills passed by the Legislative Assembly and assented to by Her Majesty or by the Governor on behalf of Her Majesty.

(2) When a bill is presented to the Governor for assent, he shall signify that he assents or that he withholds assent or that he reserves the bill for the signification of Her Majesty's pleasure:

Provided that, unless he has been authorized by a Secretary of State to assent thereto, the Governor shall reserve for the signification of Her Majesty's pleasure any bill that appears to the Governor, acting in his discretion,—

(*a*) to be inconsistent with any obligation imposed on Her Majesty by any treaty, convention or agreement with or arrangement relating to any other country or any international or similar organization ; or

(*b*) to be likely to prejudice the Royal prerogative.

(3) The Governor, acting in his discretion, may refuse his assent to any bill which appears to him to affect his responsibility for defence, external affairs, public order and public safety or the use and operational control of the Northern Rhodesia Police Force or may reserve any such bill for the signification of Her Majesty's pleasure.

(4) When a bill has been passed and assented to in accordance with the provisions of this Constitution it shall become law and the Governor shall thereupon cause it to be published in the Gazette as a law.

(5) No law made by the Legislature of Northern Rhodesia shall come into operation until it has been published in the Gazette but that Legislature may postpone the coming into operation of any such law and may make laws with retrospective effect.

Restriction with regard to certain financial measures.

57. Except upon the recommendation of the Governor, signified by a Minister, the Legislative Assembly shall not—

(*a*) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction ;

(ii) for the imposition of any charge upon the Consolidated Fund or other public funds of Northern Rhodesia or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the Consolidated Fund or other public funds of Northern Rhodesia of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal ; or

(iv) for the composition or remission of any debt to the Government of Northern Rhodesia ;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes ; or

(*c*) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

Restriction on powers of Legislature.

58. Nothing in this Part of this Constitution shall empower the Legislature of Northern Rhodesia to enact any provision of law that is inconsistent with any obligation imposed upon Her Majesty's Government by any written agreement affecting Northern Rhodesia or any rights exercisable in Northern Rhodesia, being an agreement in which Her Majesty's Government have declared that they regard themselves as responsible for the carrying out of that agreement by the Government for the time being of Northern Rhodesia.

Commencement of certain laws in Barotseland Protectorate.

59.—(1) No law or instrument to which this section applies shall come into operation in the Barotseland Protectorate unless the Litunga and Council signifies that he consents to its having effect in the Protectorate.

(2) For the purposes of this section the consent of the Litunga and Council shall be signified by writing under his hand and whenever such consent has been given in relation to any law or instrument, notification of the consent shall be published in the Gazette.

(3) This section applies to any law made by the Legislature of Northern Rhodesia after 1st September 1962, and any instrument having the force of law made in pursuance of any such law, that is inconsistent with any of the provisions of the relevant agreements, including in particular (without prejudice to the generality of the foregoing) the provisions of the relevant agreements relating to the following matters within the Barotseland Protectorate :—

(*a*) land ;

(*b*) the Barotse Native Government ;

(*c*) the Barotse Native Courts ;

(*d*) the registration of persons ;

(*e*) collective punishment ;

(*f*) forests ;

(*g*) the control of bush fires ;

(*h*) the control of game ;

(*i*) fishing ; and

(*j*) the supply of native beer.

(4) In this section " the relevant agreements " means—

(*a*) the concessions mentioned in section 112 of this Constitution ,

(*b*) the agreements made in 1924, with the approval of a Secretary of State, between the Governor of Northern Rhodesia of the one part and Yeta Paramount Chief of Barotseland of the other part ;

(*c*) the agreement dated 29th April 1954 between Her Majesty of the one part and Mwanawina III Paramount Chief of the Barotseland Protectorate of the other part ;

and where any agreement or concession referred to in paragraph (*a*), (*b*) or (*c*) of this subsection has been amended or replaced by any other agreement to which Her Majesty or the Governor, acting with the approval of a Secretary of State, is a party, the reference shall be construed as a reference to the concession or agreement as amended or replaced.

Disallowance of laws.

60.—(1) Any law enacted by the Legislature of Northern Rhodesia that has been assented to by the Governor and that appears to Her Majesty to alter, to the injury of the stockholders, any provision relating to stock to which this section applies or to involve a departure from the original contract in respect of any such stock may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever such a law has been disallowed by Her Majesty the Governor shall cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of publication of that notice.

(3) On the annulment of any law under this section any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made ; but save as provided in the foregoing provisions of this subsection the provisions of section 38(2) of the Interpretation Act 1889(a) shall apply to that annulment as they apply to the repeal of an Act of Parliament.

(4) The stock to which this section applies is stock forming the whole or part of the public debt of Northern Rhodesia—

(*a*) in which a trustee might at any time have invested by virtue of section 2 of the Colonial Stock Act 1900(b) ; or

(*b*) by the conditions of issue of which it is provided that this section shall apply to it.

PART 4—*Summoning, Prorogation and Dissolution*

Sessions of Legislative Assembly.

61.—(1) Each session of the Legislative Assembly shall be held at such place within Northern Rhodesia and shall commence at such time as the Governor may appoint.

(2) There shall be a session of the Legislative Assembly at least once in every year so that a period of twelve months shall not intervene between the last sitting of the Assembly in one session and the first sitting thereof in the next session.

(3) Whenever the Legislative Assembly is dissolved a general election of members of the Assembly shall be held within sixty days of the date of the dissolution and a session of the Assembly shall be appointed to commence within thirty days of the date of that general election.

Prorogation and dissolution of Legislative Assembly.

62.—(1) The Governor may at any time prorogue the Legislative Assembly.

(2) The Governor, acting in accordance with the advice of the Prime Minister, may at any time dissolve the Legislative Assembly ;

Provided that—

(*a*) if the Prime Minister recommends a dissolution and the Governor considers that the Government of Northern Rhodesia can be carried on without a dissolution and that a dissolution would not be in the interests of Northern Rhodesia, the Governor, acting in his discretion, may refuse to dissolve the Assembly ;

(*b*) if the Assembly passes a resolution that it has no confidence in the Government of Northern Rhodesia and the Prime Minister does not within three days either resign from his office or advise a dissolution, the Governor, acting in his discretion, may dissolve the Assembly ; and

(a) 52 & 53 Vict. c. 63. (b) 63 & 64 Vict. c. 62.

(*c*) if the office of Prime Minister is vacant and the Governor considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the Assembly, the Governor, acting in his discretion, may dissolve the Assembly.

(3) The Legislative Assembly, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

CHAPTER V

THE HOUSE OF CHIEFS

Composition of House of Chiefs.

63.—(1) There shall be a House of Chiefs for Northern Rhodesia.

(2) The members of the House of Chiefs shall be—

(*a*) not more than four Chiefs representing the Barotseland Protectorate, who shall be appointed by the Litunga and Council; and

(*b*) twenty-two Chiefs representing Provinces:

Provided that no Chief shall be qualified to be a member of the House if he is a member of the Legislative Assembly.

(3) A person appointed President of the House of Chiefs in accordance with regulations made under section 66 of this Constitution who is not a member of the House shall be deemed to be a member.

(4) Subject to the provisions of subsection (5) of this section, a member of the House of Chiefs shall hold office as such during the Governor's pleasure.

(5) A member of the House of Chiefs shall vacate his seat in the House—

(*a*) at the expiration of three years from the date of his selection or appointment;

(*b*) if he ceases to be a Chief;

(*c*) if any other circumstances arise that would cause him to be disqualified for selection or appointment thereto; or

(*d*) if he resigns his seat by writing under his hand addressed to the President of the House.

(6) In this section "Province" does not include any province comprising all or part of the Barotseland Protectorate.

Functions of House of Chiefs.

64.—(1) The House of Chiefs may consider and discuss—

(*a*) any bill introduced into or proposed to be introduced into the Legislative Assembly that is referred to the House by the Governor; or

(*b*) any other matter referred to the House for its consideration by the Governor or approved by the Governor for consideration by the House,

and may submit resolutions on any such bill or other matter to the Governor, which the Governor shall cause to be laid before the Legislative Assembly.

(2) The powers conferred upon the Governor by this section shall be exercised after consultation with the Prime Minister.

Meetings of House of Chiefs.

65. The House of Chiefs shall meet at such times and such places as the Governor, acting after consultation with the Prime Minister, may appoint.

Regulations relating to House of Chiefs.

66.—(1) Subject to the provisions of this Constitution, the Governor, acting after consultation with the Prime Minister, may by regulation provide for all or any of the following matters—

(*a*) the selection of Chiefs to be members of the House of Chiefs representing Provinces;

(*b*) the appointment or election of a President and Vice-President of the House and the appointment and tenure of office of a Clerk and other officers of the House;

(*c*) the remuneration of the President, Vice-President and other members of the House;

(*d*) the regulation and orderly conduct of the proceedings of the House;

(*e*) the definition and trial of offences relating to the selection of members of the House and the imposition of penalties therefor;

(*f*) the determination of any question whether a person has been selected or appointed as a member of the House or whether the seat of any member has become vacant;

(*g*) the application to the House and the members of the House of any of the provisions of any law for the time being in force in Northern Rhodesia relating to the privileges and immunities of the Legislative Assembly and the members thereof; and

(*h*) the taking by members of the House of an oath or affirmation of allegiance.

(2) Regulations made under this section in respect of the selection of members of the House of Chiefs to represent Provinces shall make provision under which—

(*a*) each Province shall be represented by such number of Chiefs (not being less than one) as may be prescribed in such regulations;

(*b*) the Chiefs representing Provinces shall be selected by the Chiefs recognised under the Native Authority Ordinance(a) in respect of any area in that Province at an election in which the votes are cast in such manner as not to disclose how any particular voter voted.

Attendance of Governor and other persons at House of Chiefs.

67.—(1) The Governor, acting in his discretion, may attend and address the House of Chiefs.

(2) A Minister or his representative may attend the proceedings of the House of Chiefs for the purposes of any responsibility assigned to him in accordance with section 72 of this Constitution.

(3) The President of the House of Chiefs, when in his opinion any matter before the House of Chiefs makes it desirable, may invite any member of the Legislative Assembly to attend the proceedings of the House of Chiefs relating to that matter.

(a) Laws of Northern Rhodesia c. 157.

(4) A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsection (2) or (3) of this section shall be entitled to take part in the proceedings of the House relating to the matter for which the Minister has responsibility or in respect of which he was invited to attend, as the case may be, as if he were a member of the House:

Provided that he shall not be entitled to vote in the House or any of its committees.

CHAPTER VI

THE EXECUTIVE

Executive authority of Northern Rhodesia.

68.—(1) The executive authority of Northern Rhodesia shall vest in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of Northern Rhodesia may be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him.

(3) Nothing in this section shall prevent the Legislature of Northern Rhodesia from conferring functions on persons or authorities other than the Governor.

Appointment of Ministers.

69.—(1) There shall be a Prime Minister who shall be appointed by the Governor.

(2) There shall be, in addition to the office of Prime Minister, such other offices of Minister of the Government of Northern Rhodesia as may be established by the Legislature of Northern Rhodesia or, subject to the provisions of any law enacted by that Legislature, by the Governor, acting in accordance with the advice of the Prime Minister:

Provided that the number of such Ministers shall not exceed thirteen.

(3) The Governor, acting in his discretion, shall appoint as Prime Minister the member of the Legislative Assembly who appears to him best able to command the support of the majority of the members of the Assembly, and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the Assembly or, subject to the provisions of subsection (4) of this section, from among persons who are not members of the Legislative Assembly but are qualified to be elected as such.

(4) A person who is not a member of the Legislative Assembly shall not be appointed to the office of a Minister—

(*a*) if that person has held the office of Minister whilst not being a member of the Assembly during any period since the last dissolution of the Assembly; or

(*b*) at any time when three other offices of Minister are held by persons who are not members of the Assembly.

(5) For the purposes of this section, during any period when the Legislative Assembly is dissolved a person who was a member of the Assembly immediately before that dissolution shall be regarded as continuing as a member of the Assembly.

Tenure of office of Ministers.

70.—(1) The Governor, acting in his discretion, may remove the Prime Minister from office—

(*a*) if a vote of no confidence in the Government of Northern Rhodesia is passed by the Legislative Assembly; or

(*b*) if at any time between the holding of a general election and the first sitting of the Assembly thereafter the Governor considers that in consequence of changes in the membership of the Assembly resulting from that election, the Prime Minister will not be able to command the support of a majority of the members of the Assembly:

Provided that the Governor shall not remove the Prime Minister from office when a vote of no confidence has been passed by the Assembly unless three days have elapsed since that vote was passed and the Governor has decided not to dissolve the Assembly under paragraph (*b*) of the proviso to section 62(2) of this Constitution.

(2) The office of the Prime Minister or any other Minister shall become vacant—

(*a*) in the case of a Minister appointed from among the members of the Legislative Assembly or who, while holding office as a Minister, becomes a member of the Assembly—

(i) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of the Assembly; or

(ii) if at the first sitting of the Assembly after any dissolution of the Assembly, he is not a member of the Assembly;

(*b*) in the case of any other Minister—

(i) if circumstances arise (other than a dissolution of the Assembly) that, if he were such a member, would cause him to vacate his seat in the Assembly; or

(ii) at the expiration of six months from the date of his appointment.

(3) The office of a Minister (other than the Prime Minister) shall become vacant—

(*a*) if the Governor, acting in accordance with the advice of the Prime Minister, so directs;

(*b*) if the Prime Minister resigns from office within three days after the passage by the Legislative Assembly of a resolution of no confidence in the Government of Northern Rhodesia or is removed from office under subsection (1) of this section; or

(*c*) upon the appointment of any person to the office of Prime Minister.

(4) If at any time the Prime Minister or a Minister is required under the provisions of section 44 of this Constitution to cease to perform his functions as a member of the Legislative Assembly, he shall cease during such time to perform any of his functions as Prime Minister or a Minister, as the case may be.

Cabinet

71.—(1) There shall be a Cabinet of Ministers for Northern Rhodesia, consisting of the Prime Minister and the other Ministers.

(2) The Cabinet shall be collectively responsible to the Legislative Assembly for any advice given to the Governor by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of subsection (2) of this section shall not apply in relation to—

(*a*) the appointment and removal from office of Ministers and Parliamentary Secretaries, the assigning of responsibility to any Minister under section 72 of this Constitution, or the authorization of another Minister to perform the functions of the Prime Minister during absence or illness;

(*b*) the dissolution of the Legislative Assembly.

Assignment of responsibilities to Ministers.

72. The Governor, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government of Northern Rhodesia, including responsibility for the administration of any department of Government.

Governor's special responsibilities.

73. The Governor, acting in his discretion, shall be responsible for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government of Northern Rhodesia, including the administration of any department of Government, with respect to the following matters—

(*a*) defence including naval, military and air forces;

(*b*) external affairs;

(*c*) public order and public safety;

(*d*) the use and operational control of the Northern Rhodesia Police Force:

Provided that the Governor, acting in his discretion, may by directions in writing assign to the Prime Minister, or such other Minister as, after consultation with the Prime Minister, he may determine, such responsibility with respect to the conduct (subject as aforesaid) of any of that business as he may think fit, upon such conditions as he may think fit.

Performance of functions of Prime Minister during absence or illness.

74.—(1) Whenever the Prime Minister is absent from Northern Rhodesia or is by reason of illness or of the provisions of section 70(4) of this Constitution unable to perform the functions conferred on him by this Constitution, the Governor may authorize some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the Governor.

(2) The powers of the Governor under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Governor considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness, or if the Prime Minister is unable to tender advice by reason of the provisions of section 70(4) of this Constitution, he may exercise those powers in his discretion.

Exercise of Governor's functions.

75.—(1) In the exercise of his functions under this Constitution or any other law the Governor shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet.

(2) The provisions of subsection (1) of this section shall not apply in relation to the exercise by the Governor of—

(*a*) any function conferred upon him by this Constitution that is expressed to be exercisable by him in his discretion or in pursuance of instructions of Her Majesty or in accordance with the advice of or after consultation with any person or authority other than the Cabinet;

(*b*) any function conferred upon him by any other law that is expressed to be exercisable by him in his discretion or that he is otherwise authorised by such law to exercise without obtaining the advice of the Cabinet.

(3) Where the Governor is directed by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(4) Where the Governor has obtained the advice of the Cabinet or a Minister for the purposes of subsection (1) of this section, he may act otherwise than in accordance with that advice if in his judgment it is necessary or expedient so to act for the purposes of a matter for which the Governor is responsible under section 73 of this Constitution.

(5) Where any function is vested by any law other than this Constitution in any person or authority other than the Governor (not being a court of law), the Governor may exercise that function in such circumstances and to such extent as he may consider necessary or expedient for the purposes of any matter for which he is responsible under section 73 of this Constitution.

(6) Where the Governor is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority the question whether he has in any matter so acted shall not be called in question in any court of law.

Governor to be kept informed of matters of government.

76.—(1) The Prime Minister shall—

(*a*) cause to be transmitted to the Governor copies of all papers submitted for consideration by the Cabinet at the same time as those papers are transmitted to Ministers;

(*b*) cause the Governor to be informed of the summoning of any meeting of the Cabinet and of the matters to be discussed at that meeting at the same time as Ministers are so informed; and

(*c*) cause the Governor to be furnished, immediately after each meeting of the Cabinet, with a copy of the minutes of the meeting showing the matters discussed and the conclusions reached by the Cabinet at that meeting.

(2) The Prime Minister shall keep the Governor fully informed concerning the general conduct of those matters for which he and the other Ministers are responsible and shall furnish the Governor with such information as he may request in respect of any particular matter.

Parliamentary Secretaries.

77.—(1) The Governor, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the Legislative Assembly to assist Ministers in the performance of their duties:

Provided that, if occasion arises for making appointments while the Assembly is dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed as a Parliamentary Secretary.

(2) The office of a Parliamentary Secretary shall become vacant—

(*a*) if the Governor, acting in accordance with the advice of the Prime Minister, so directs;

(*b*) if the Prime Minister resigns from office within three days after the passage by the Legislative Assembly of a resolution of no confidence in the Government of Northern Rhodesia or is removed from office under section 70(1) of this Constitution;

(*c*) upon the appointment of a person to the office of Prime Minister;

(*d*) if the holder of the office ceases to be a member of the Assembly otherwise than by reason of a dissolution of the Assembly; or

(*e*) if, at the first sitting of the Assembly after any dissolution of the Assembly, the holder of the office is not a member of the Assembly.

Oaths to be taken by Ministers, etc.

78. A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law.

Permanent Secretaries.

79. Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary, whose office shall be a public office.

Secretary to Cabinet.

80.—(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet shall have charge of the Cabinet office and shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Prime Minister may direct.

Attorney-General.

81.—(1) There shall be an Attorney-General whose office shall be a public office.

(2) The Attorney-General shall be the principal legal adviser to the Government of Northern Rhodesia.

(3) The Attorney-General shall have power in any case in which he considers it desirable so to do—

(*a*) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(*b*) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(*c*) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Attorney-General under subsection (3) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(5) The powers conferred on the Attorney-General by subsections 3(*b*) and (*c*) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(6) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court having jurisdiction in Northern Rhodesia or to the Judicial Committee of Her Majesty's Privy Council shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney-General by subsection (3)(*c*) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(7) In the exercise of the powers conferred on him by subsection (3) of this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

Constitution of offices.

82. Subject to the provisions of this Constitution, and of any other law, the Governor may constitute offices for Northern Rhodesia, make appointments to any such office and terminate any such appointment.

Prerogative of mercy.

83.—(1) The Governor, acting in his discretion, may, in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant to any person concerned in or convicted 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, of the execution of any punishment imposed on that person for any offence;

(*c*) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and

(*d*) remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

(2) There may be established by or in pursuance of any Instructions under Her Majesty's Sign Manual and Signet and subject to the provisions of any such Instructions, a Committee of the Cabinet to exercise such functions in relation to the powers conferred upon the Governor by this section as may be prescribed by such Instructions.

CHAPTER VII

THE JUDICATURE

PART 1—*The Court of Appeal and High Court*

Court of Appeal.

84.—(1) There shall be a Court of Appeal for Northern Rhodesia.

(2) The judges of the Court of Appeal shall be—

(*a*) the Chief Justice;

(*b*) one Justice of Appeal or such greater number of Justices of Appeal as may be prescribed by the Legislature of Northern Rhodesia;

(*c*) the puisne judges for the time being of the High Court.

(3) The office of a Justice of Appeal shall not be abolished while there is a substantive holder thereof.

(4) The Court of Appeal shall be a superior court of record and, subject to the provisions of any law of the Legislature of Northern Rhodesia, shall have all the powers of such a court.

(5) When the Court of Appeal is determining any matter other than an interlocutory matter, it shall be composed of an uneven number of judges, not being less than three.

High Court.

85.—(1) There shall be a High Court for Northern Rhodesia which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) (*a*) The Chief Justice shall be, ex officio, a judge of the High Court.

(*b*) The other judges of the High Court shall be such number of puisne judges as may be prescribed by the Legislature of Northern Rhodesia.

(3) The office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(4) The High Court shall be a superior court of record and, subject to the provisions of any law of the Legislature of Northern Rhodesia, shall have all the powers of such a court.

(5) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court-martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by subsection (5) of this section.

(7) The provisions of subsections (1) and (5) of this section shall be without prejudice to section 112(3) of this Constitution.

Appointment of judges of Court of Appeal and High Court.

86.—(1) The Chief Justice shall be appointed by the Governor, acting after consultation with the Prime Minister.

(2) The Justices of Appeal and the puisne judges shall be appointed by the Governor, acting in accordance with the advice of the Judicial Service Commission.

(3) (*a*) A person shall not be qualified for appointment as a Justice of Appeal or as a judge of the High Court unless—

(i) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court;

(ii) he is entitled to practise as an advocate in such a court and has been entitled for not less than seven years to practise as an advocate or a solicitor in such a court; or

(iii) he is entitled to practise as a solicitor in such a court and has held in Northern Rhodesia for periods amounting in the

aggregate to not less than seven years any one or more of the following offices, that is to say, Senior Resident Magistrate, Resident Magistrate, Director of Public Prosecutions, Senior Crown Counsel or Crown Counsel.

(*b*) For the purposes of this subsection, a person shall be regarded as entitled to practise as an advocate or a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

(i) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or

(ii) he does not hold a practising certificate or has not satisfied any other like condition to his being permitted to practise.

(4) If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office, or until the person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the Justices of Appeal or puisne judges as the Governor, acting in his discretion, may appoint.

(5) If the office of a Justice of Appeal is vacant or if any Justice of Appeal is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office, the Governor, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a Justice of Appeal to act as a Justice of Appeal.

Provided that a person may act as a Justice of Appeal notwithstanding that he has attained the age prescribed for the purposes of section 87(1) of this Constitution.

(6) If the office of any puisne judge is vacant or if any such judge is appointed to act as Chief Justice, or is for any reason unable to perform the functions of his office, or if the Governor, acting after consultation with the Chief Justice, is satisfied that the state of business in the High Court requires that the number of judges of the court should be temporarily increased, the Governor, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the High Court to act as a puisne judge of that court:

Provided that a person may act as a puisne judge notwithstanding that he has attained the age prescribed for the purposes of section 87(1) of this Constitution.

(7) Any person appointed under subsection (5) or (6) of this section to act as a Justice of Appeal or puisne judge shall continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor, acting in accordance with the advice of the Judicial Service Commission:

Provided that the Governor, acting in accordance with the advice of the Judicial Service Commission, may permit a person whose appointment to act as a Justice of Appeal or puisne judge has expired or been revoked to continue to act as such a judge for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Tenure of office of judges of Court of Appeal and High Court.

87.—(1) Subject to the provisions of this section, a person holding the office of a judge of the Court of Appeal or the office of a judge of the High Court shall vacate that office on attaining the prescribed age:

Provided that the Governor, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who has attained that age to continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A judge of the Court of Appeal or of the High Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(3) A judge of the Court of Appeal or of the High Court shall be removed from office by the Governor if the question of his removal has, at the request of the Governor, made in pursuance of subsection (4) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under any enactment enabling Her Majesty in that behalf and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the Governor, acting in his discretion, considers that the question of removing a judge under this section ought to be investigated, then—

(*a*) the Governor shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor, acting in his discretion, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether he should request that the question of the removal of that judge from office should be referred by Her Majesty to the Judicial Committee; and

(*c*) if the tribunal so recommends, the Governor shall request that the question should be referred accordingly.

(5) If the question of removing a judge from office has been referred to a tribunal under subsection (4) of this section, the Governor, acting in his discretion, may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor, acting in his discretion, and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Governor that he should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or

(*b*) if the Judicial Committee advises Her Majesty that the judge ought not be removed from office.

(6) Subject to the provisions of this section, the provisions of the Commissions of Inquiry Ordinance(a), as in force on the date of the

(a) Laws of Northern Rhodesia, c. 34.

coming into operation of this Constitution, shall apply in relation to a tribunal appointed under this section as if the tribunal were commissioners appointed by a commission issued under the Ordinance, and references in the Ordinance to commissioners and a commission shall be construed accordingly.

(7) The prescribed age for the purposes of subsection (1) of this section shall be the age of sixty-two years or such other age as may be prescribed by the Legislature of Northern Rhodesia:

Provided that a law of the Legislature of Northern Rhodesia to the extent that it alters the age at which a judge of the Court of Appeal or of the High Court shall vacate his office, shall not have effect in relation to a judge after his appointment unless he consents that it should have effect.

(8) The provisions of this section shall be without prejudice to the provisions of section 86(5) or 86(6) of this Constitution.

Oaths to be taken by judges.

88. A judge of the Court of Appeal or of the High Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law.

PART 2—*Appeals to Her Majesty in Council*

Appeals from Court of Appeal to Her Majesty in Council.

89.—(1) Subject to the provisions of section 45(3) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases:—

(*a*) where the matter in dispute on the appeal to Her Majesty in Council is of the value of £1,000 or upwards or where the appeal involves directly or indirectly a claim to or a question respecting property or a right of the value of £1,000 or upwards, final decisions in any civil proceedings;

(*b*) final decisions in proceedings for dissolution or nullity of marriage;

(*c*) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution; and

(*d*) such other cases as may be prescribed by the Legislature of Northern Rhodesia.

(2) Subject to the provisions of section 45(3) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases:—

(*a*) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; and

(*b*) in such other cases as may be prescribed by the Legislature of Northern Rhodesia.

(3) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal to Her Majesty in Council from the decision of any court in any civil or criminal matter.

PART 3—*Judicial Service Commission*

Judicial Service Commission.

90.—(1) There shall be a Judicial Service Commission for Northern Rhodesia which shall consist of—

(*a*) the Chief Justice, who shall be Chairman;

(*b*) the Chairman of the Public Service Commission or such other member of that Commission as may for the time being be designated in that behalf by the Chairman of that Commission; and

(*c*) such Justice of Appeal or puisne judge as may for the time being be designated in that behalf by the Governor, acting after consultation with the Chief Justice.

(2) In the exercise of its functions under this Constitution the Judicial Service Commission shall not be subject to the direction and control of any other person or authority.

Appointment, etc., of judicial officers.

91.—(1) Power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Judicial Service Commission.

(2) The Judicial Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission, any judge of the Court of Appeal or of the High Court, or to any person holding or acting in any office to which this section applies.

(3) The offices to which this section applies are—

(*a*) the office of Registrar or Deputy Registrar of the Court of Appeal or of the High Court;

(*b*) the office of Senior Resident Magistrate, Resident Magistrate or Magistrate;

(*c*) the office of president or member of any subordinate court (not being a court whose jurisdiction is limited to a specified race); or

(*d*) such other offices of president or member of any court or connected with any court of law as may be prescribed by the Legislature of Northern Rhodesia.

(4) In this section references to the office of Magistrate do not include references to any administrative office the holders of which are, under the provisions of the Subordinate Courts Ordinance(**a**) as in force immediately before the coming into operation of this Constitution, entitled by virtue of that office to hold a subordinate court, and references to a court of law do not include references to a court-martial.

CHAPTER VIII

FINANCE

Consolidated Fund.

92. All revenues or other moneys raised or received for the purposes of the Government of Northern Rhodesia (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the department of Government that received them for the purposes of defraying the expenses of that department) shall be paid into and form one Consolidated Fund.

Withdrawals from Consolidated Fund or other public funds.

93.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

(*a*) to meet expenditure that is charged upon the Fund by this Constitution or by any law of the Legislature of Northern Rhodesia;

(**a**) Laws of Northern Rhodesia, c. 4.

(*b*) where the issue of those moneys has been authorised by an Appropriation law, by a supplementary estimate approved by resolution of the Legislative Assembly or by a law enacted in pursuance of section 95 of this Constitution.

(2) No moneys shall be withdrawn from any public fund of Northern Rhodesia other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed by the Legislature of Northern Rhodesia.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Overseas Governments and Administrations or the investment of any such moneys in securities in which, under the law for the time being in force in Northern Rhodesia, trustees are authorised to invest, shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

Authorisation of expenditure.

94.—(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the Legislative Assembly, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Northern Rhodesia for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill to be known as an Appropriation bill which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

(3) If in any financial year it is found—

(*a*) that the amount appropriated by the Appropriation law for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation law;

(*b*) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation law or for a purpose for which no amount has been appropriated by the Appropriation law,

a supplementary estimate showing the sums required or spent shall be laid before the Legislative Assembly and the heads of expenditure shall be included in a supplementary Appropriation bill, or in a motion or motions approving such expenditure, which shall be introduced into the Assembly.

(4) Where any supplementary expenditure has been approved in a financial year by a resolution of the Legislative Assembly in accordance with the provisions of subsection (3) of this section, a supplementary Appropriation bill shall be introduced in the Legislative Assembly, not later than the end of the financial year next following, providing for the appropriation of the sums so approved.

Authorisation of expenditure in advance of appropriation.

95. The Legislature of Northern Rhodesia may make provision under which, if the Appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Governor may authorise the withdrawal of moneys from

the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation law, whichever is the earlier.

Contingencies Fund.

96.—(1) The Legislature of Northern Rhodesia may make provision for the establishment of a Contingencies Fund and for authorizing the Governor if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

97.—(1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as may be prescribed by the Legislature of Northern Rhodesia.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances, shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of the Governor, the Deputy Governor, judge of the Court of Appeal, judge of the High Court, member of the Public Service Commission, member of the Police and Prison Service Commission, Attorney-General and Director of Audit.

Public debt.

98.—(1) There shall be charged on the Consolidated Fund all debt charges for which Northern Rhodesia is liable.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Northern Rhodesia or the Consolidated Fund and on the service and redemption of debt thereby created.

Director of Audit.

99.—(1) There shall be a Director of Audit, whose office shall be a public office.

(2) The public accounts of Northern Rhodesia and of all officers, courts and authorities of the Government of Northern Rhodesia shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorized by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so provided by the Legislature of Northern Rhodesia in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(3) The Director of Audit shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before the Legislative Assembly.

(4) In the exercise of his functions under this Constitution the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER IX
THE PUBLIC SERVICE

Public Service Commission.

100.—(1) There shall be a Public Service Commission for Northern Rhodesia which shall consist of a Chairman and not less than three nor more than five other members.

(2) The members of the Public Service Commission shall be appointed by the Governor, acting after consultation with the Prime Minister and the other members of the Legislative Assembly who appear to him, acting in his discretion, to be the leaders in the Assembly of political parties represented in the Assembly.

(3) A person shall not be qualified for appointment as Chairman of the Public Service Commission unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or a court having jurisdiction in appeals from such a court.

(4) A person shall not be qualified for appointment as a member of the Public Service Commission if—

(*a*) he is, or has at any time been, a member of the Legislative Assembly or an elected member of the Legislature Council established by the Northern Rhodesia (Constitution) Order in Council 1962(a);

(*b*) he is, or has at any time been, nominated as a candidate for election as a member of the Legislative Assembly or such Legislative Council;

(*c*) he is, or has at any time been, the holder of an office in any political organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of the Legislative Assembly or of such Legislative Council; or

(*d*) he is a Minister or a public officer.

(5) If the office of Chairman of the Public Service Commission is vacant or if the person holding that office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the other members of the Commission as may be designated in that behalf by the Governor, acting in his discretion.

(6) If at any time there are less than three members of the Public Service Commission besides the Chairman or if any such member is appointed to act as Chairman or is for any reason unable to perform the functions of his office, the Governor, acting in his discretion, may appoint a person who is qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (7) of this section, continue to act until the office in which he is acting is filled or, as

(a) S.I. 1962/1874 (1962 II, p. 2195).

the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the Governor, acting in his discretion.

(7) Subject to the provisions of subsection (9) of this section, the office of a member of the Public Service Commission shall become vacant—

(*a*) at the expiration of five years from the date of his appointment; or

(*b*) if any circumstances arise that, if he were not such a member, would cause him to be disqualified to be appointed as such.

(8) A member of the Public Service Commission may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(9) A member of the Public Service Commission shall be removed from office by the Governor if the question of his removal from office has been referred to a tribunal appointed under subsection (10) of this section and the tribunal has recommended to the Governor that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(10) If the Governor, acting in his discretion, considers that the question of removing a member of the Public Service Commission ought to be investigated then—

(*a*) the Governor, acting in his discretion, shall appoint a tribunal which shall consist of a chairman and not less than two other members being persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court;

(*b*) that tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether the member ought to be removed under this section.

(11) If the question of removing a member of the Public Service Commission has been referred to a tribunal under this section, the Governor, acting in his discretion, may suspend that member from performing the functions of his office and any such suspension may at any time be revoked by the Governor, acting in his discretion, and shall in any case cease to have effect if the tribunal recommends to the Governor that the person should not be removed.

(12) In the exercise of its functions under this Constitution the Public Service Commission shall not be subject to the direction or control of any other person or authority.

Appointment, etc., of public officers.

101.—(1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments) to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.

(2) The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or to any public officer.

(3) The provisions of this section shall not apply in relation to any of the following offices—

(*a*) any office on the personal staff of the Governor;

(*b*) the office of any judge of the Court of Appeal or of the High Court;

(*c*) the office of the Attorney-General;

(*d*) except for the purpose of making appointments thereto or to act therein, the office of Director of Audit;

(*e*) any office to which section 91 of this Constitution (which relates to appointments to judicial offices) applies;

(*f*) so far only as concerns the appointment of persons thereto or to act therein, the offices of Permanent Secretaries and the office of the Secretary to the Cabinet;

(*g*) any offices in the Northern Rhodesia Police Force; or

(*h*) any offices in the Northern Rhodesia Prisons Service.

(4) Before the Public Service Commission appoints to or to act in any public office any person holding or acting in any office the power to make appointments to which is vested by this Constitution in the Judicial Service Commission, it shall consult that Commission.

Appointment of Attorney-General.

102.—(1) Power to appoint persons to hold or to act in the office of Attorney-General shall vest in the Governor, acting after consultation with the Prime Minister and the Public Service Commission.

(2) A person shall not be qualified for appointment to hold or to act in the office of Attorney-General unless he is qualified to be appointed as a judge of the High Court.

Tenure of office of Attorney-General and Director of Audit.

103.—(1) The provisions of this section shall apply in relation to persons holding the office of Attorney-General or Director of Audit.

(2) Subject to the provisions of this section, a person to whom this section applies shall vacate his office when he attains the prescribed age.

(3) A person to whom this section applies may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(4) A person to whom this section applies shall be removed from office by the Governor if the question of his removal from office has been referred to a tribunal appointed under subsection (5) of this section and the tribunal has recommended to the Governor that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the Governor, acting in his discretion, considers that the question of removing a person to whom this section applies ought to be investigated, then—

(*a*) the Governor, acting in his discretion, shall appoint a tribunal which shall consist of a Chairman and not less than two other members, being persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

(*b*) that tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether the person ought to be removed under this section.

(6) If the question of removing a person to whom this section applies has been referred to a tribunal under this section, the Governor, acting in his discretion, may suspend a person to whom this section applies from performing the functions of his office and any such suspension may at any time be revoked by the Governor, acting in his discretion, and shall in any case cease to have effect if the tribunal recommends to the Governor that the person should not be removed.

(7) Subject to the provisions of this section, the provisions of the Commissions of Inquiry Ordinance(a), as in force immediately before the coming into operation of this Constitution, shall apply in relation to a tribunal appointed under this section as if the tribunal were commissioners appointed by commission under the Ordinance, and references in the Ordinance to commissioners and a commission shall be construed accordingly.

(8) The prescribed age for the purposes of subsection (2) of this section shall be the age of fifty-five years or such other age as may be prescribed by the Legislature of Northern Rhodesia:

Provided that a law of the Legislature of Northern Rhodesia, to the extent that it alters the age at which the Attorney-General or the Director of Audit shall vacate his office, shall not have effect in relation to a person holding that office after his appointment unless he consents that it should have effect.

Appointment of Permanent Secretaries, etc.

104.—(1) Power to appoint persons to hold or act in the offices to which this section applies shall vest in the Governor, acting after consultation with the Prime Minister and the Public Service Commission.

(2) The offices to which this section applies are the office of Permanent Secretary or the Secretary to the Cabinet.

Police and Prison Service Commission.

105. There shall be a Police and Prison Service Commission for Northern Rhodesia which shall consist of—

(*a*) the Chairman of the Public Service Commission, who shall be Chairman of the Commission;

(*b*) a judge of the High Court designated by the Governor, acting after consultation with the Chief Justice; and

(*c*) a member of the Public Service Commission, other than the Chairman, designated by the Governor, acting in his discretion.

Appointment, etc., of senior police and prison officers.

106.—(1) Power to appoint persons to hold or act in any office in the Northern Rhodesia Police Force or the Northern Rhodesia Prisons Service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Police and Prison Service Commission.

(2) The provisions of this section shall not apply in relation to any of the following offices—

(*a*) any office in the Northern Rhodesia Police Force below the rank of Assistant Inspector Grade I; or

(*b*) any office in the Northern Rhodesia Prisons Service below the rank of Prison Officer.

(a) Laws of Northern Rhodesia, c. 34.

Appointment, etc., of junior police officers.

107.—(1) Power to appoint persons to hold or act in any office in the Northern Rhodesia Police Force (including power to confirm appointments) below the rank of Assistant Inspector Grade I, and to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Commissioner of Police.

(2) The Commissioner of Police may, subject to such conditions as he thinks fit, delegate any of his powers under this section, by directions in writing, to any other officer of the Northern Rhodesia Police Force.

(3) An appeal shall lie to the Police and Prison Service Commission from any decision of the Commissioner of Police, or of any officer to whom the powers of the Commissioner are delegated under subsection (2) of this section, to exercise disciplinary control over or to remove from office any such person as is specified in subsection (1) of this section:

Provided that the Legislature of Northern Rhodesia may provide that, in the case of such decisions (being decisions of an officer of the Northern Rhodesia Police Force other than the Commissioner) as it may specify, an appeal shall first be brought to the Commissioner of Police.

(4) Any right of appeal to the Police and Prison Service Commission or to the Commissioner of Police under this section—

(*a*) shall be exercisable at the instance of the member of the Northern Rhodesia Police Force to whom the decision relates;

(*b*) shall be exercised in accordance with such provision relating to procedure as may be made by any law for the time being in force in Northern Rhodesia.

Appointment etc. of junior prison officers.

108. The provisions of section 107 of this Constitution shall apply in relation to offices in the Northern Rhodesia Prisons Service and to persons holding or acting in such offices as they apply in relation to offices in the Northern Rhodesia Police Force and persons holding or acting in offices in that Force, but as if—

(*a*) references to any office below the rank of Assistant Inspector Grade I were references to any office below the rank of Prison Officer;

(*b*) references to the Commissioner of Police were references to the Commissioner of Prisons; and

(*c*) references in subsections (2) and (3) to any officer of the Northern Rhodesia Police Force were references to any officer of the Northern Rhodesia Prisons Service.

Laws in respect of discipline.

109. Nothing in section 106, 107 or 108 of this Constitution shall preclude the Legislature of Northern Rhodesia from making provision constituting acts or omissions by members of the Northern Rhodesia Police Force or Northern Rhodesia Prisons Service as offences against police force discipline or prisons service discipline, as the case may be, and prescribing the punishment that may be imposed for any such offence, and the powers of the Police and Prison Service Commission and of any officer of the Northern Rhodesia Police Force or Northern Rhodesia Prisons Service under those sections with respect to disciplinary control and removal from office of members of the Police Force or Prisons Service shall be exercised in accordance with any such provision.

Pensions laws and protection of pensions rights.

110.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before the coming into operation of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

(*a*) in so far as those benefits are wholly in respect of a period of service as a public officer or as any officer in the department of the clerk of the Legislative Assembly that commenced before the date on which this Constitution comes into operation, be the law that was in force immediately before that date; and

(*b*) in so far as those benefits are wholly or partly in respect of a period of service as a public officer or as any officer in the department of the clerk of the Legislative Assembly that commenced after the date on which this Constitution comes into operation, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Northern Rhodesia Civil Service (Contributory Pensions) Ordinance(**a**), or the Widows' and Orphans' Pensions Ordinance(**b**) or under any law amending or replacing those Ordinances, they are a charge on a fund established by those Ordinances or by any other law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the Consolidated Fund.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or as officers in the department of the Clerk of the Legislative Assembly or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Power of Commissions in relation to pensions, etc.

111.—(1) Where under any law any person or authority has a discretion—

(*a*) to decide whether or not any pensions benefits shall be granted; or

(*b*) to withhold, reduce in amount or suspend any such benefits that have been granted,

(**a**) Laws of Northern Rhodesia, c. 48. (**b**) Laws of Northern Rhodesia, c. 65.

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of a judge of the Court of Appeal or of the High Court or the Attorney-General or Director of Audit has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section " the appropriate Commission " means—

(*a*) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial Service Commission or that have been granted in respect of such service, the Judicial Service Commission ;

(*b*) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was a member of the Northern Rhodesia Police Force or the Northern Rhodesia Prisons Service, the Police and Prison Service Commission : and

(*c*) in any other case, the Public Service Commission.

(5) In this section " pensions benefits " means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service.

CHAPTER X

MISCELLANEOUS

Protection of rights of Litunga and people of Barotseland Protectorate.

112.—(1) It shall not be lawful for any purpose whatever, except with the consent of the Litunga of the Barotseland Protectorate and with the approval of a Secretary of State, to alienate from the Litunga and the people of the Protectorate any part of the Protectorate.

(2) All rights of whatever kind reserved to or for the benefit of natives by the concessions from Lewanika Paramount Chief of Barotseland to the British South Africa Company dated 17th October 1900 and 11th August 1909 respectively, as approved by a Secretary of State and as varied from time to time by any agreement to which Her Majesty or the Governor with the approval of a Secretary of State is a party, shall continue to have full force and effect.

(3) No court other than a court recognised under the Barotse Native Courts Ordinance(a) shall have any original or appellate jurisdiction in respect of land rights in the Barotseland Protectorate that are governed by Barotse law and custom :

(a) Laws of Northern Rhodesia, c. 160.

Provided that nothing in this subsection shall be construed as limiting the jurisdiction and powers of the High Court in relation to prerogative writs or prerogative orders.

Performance of functions of Commissions.

113.—(1) The Governor, acting after consultation with any Commission established by this Constitution, may by regulation make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution.

(2) Any decision of any Commission established by this Constitution shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member.

(3) Subject to the provisions of this section, any Commission established by this Constitution may regulate its own procedure.

Resignations

114.—(1) Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected:

Provided that in the case of a person who holds office as Speaker or Deputy Speaker of the Legislative Assembly his resignation from that office shall be addressed to the Assembly, and in the case of a member of the Assembly his resignation shall be addressed to the Speaker.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorized by that person or authority to receive it.

Reappointments and concurrent appointments.

115.—(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Interpretation.

116.—(1) In this Constitution, unless the context otherwise requires—

"Chief" means—

(*a*) the Litunga of the Barotseland Protectorate;

(*b*) an African who is recognised by the Litunga and Council to be a member of a ruling tribal family in the Protectorate and who, on the advice of the Resident Commissioner, is recognised by the Governor to be of chiefly status in the Protectorate; or

(*c*) an African who is recognised by the Governor under the provisions of the Native Authority Ordinance(a) as a Paramount Chief, Senior Chief, Chief or Sub-Chief or an African who is appointed a Deputy Chief under that Ordinance;

(a) Laws of Northern Rhodesia c. 157.

" the Commonwealth " means the United Kingdom, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, the Federation of Nigeria, the Republic of Cyprus, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, Uganda, Zanzibar and Kenya and any dependency of any such country;

" financial year " means the period of twelve months ending on the 30th June in any year or on such other day as the Legislature of Northern Rhodesia may prescribe;

" the Litunga and Council " means the Litunga of the Barotseland Protectorate after consultation with his Council as constituted by Barotse custom but not necessarily in such Council assembled;

" Northern Rhodesia " means the territory that, immediately before the coming into operation of this Constitution, was known as Northern Rhodesia;

" oath " includes affirmation;

" the oath of allegiance " means such oath of allegiance as may be prescribed by law;

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

" public officer " means a person holding or acting in any public office;

" the public service " means, subject to the provisions of subsections (2) and (3) of this section, the service of the Crown in a civil capacity in respect of the government of Northern Rhodesia;

" session " means the sittings of the Legislative Assembly beginning when it first sits after the coming into operation of this Constitution or after its prorogation or dissolution at any time and ending when it is prorogued or is dissolved without having been prorogued;

" sitting " means a period during which the Legislative Assembly is sitting without adjournment and includes any period during which it is in committee;

" subordinate court " means any court of law in Northern Rhodesia other than—

(*a*) the Court of Appeal;

(*b*) the High Court; or

(*c*) a court martial.

(2) In this Constitution, unless the context otherwise requires, references to offices in the public service shall be construed as including references to the offices of judges of the Court of Appeal or of the High Court, to the offices of members of all other courts of law established by the Legislature of Northern Rhodesia (other than courts-martial or a court established by or under the Native Courts Ordinance(**a**) or the Barotse Native Courts Ordinance(**b**) or any Ordinance amending or replacing those Ordinances), being offices the emoluments attaching to which are paid directly out of monies provided by the Legislature of Northern Rhodesia, to the offices of members of the Northern Rhodesia Police Force, and to the offices on the Governor's personal staff.

(**a**) Laws of Northern Rhodesia, c. 158. (**b**) Laws of Northern Rhodesia, c. 160.

(3) In this Constitution references to an office in the public service shall not be construed as including references to the office of the Speaker or Deputy Speaker of the Legislative Assembly, the Prime Minister or other Minister, Parliamentary Secretary, a member of the Assembly, President of the House of Chiefs, a member of the House of Chiefs or a member of any Commission established by this Constitution, or any office in the department of the Clerk of the Assembly.

(4) For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Crown.

(5) In this Constitution, 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 for the time being lawfully acting in or performing the functions of that office.

(6) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that—

(*a*) nothing in this subsection shall be construed as conferring on any person or authority power to require a judge of the Court of Appeal or the High Court, the Attorney-General or the Director of Audit to retire from the public service; and

(*b*) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(7) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

(8) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

(9) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(10) In this Constitution any reference to the date on which this Constitution comes into operation or commences shall be construed as a reference to the day appointed by section 1(2) of the Order in Council to which this Constitution is annexed.

(11) Where any power is conferred by this Constitution to make any Proclamation, order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such Proclamation, order, regulation, rule or direction.

(12) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

EXPLANATORY NOTE

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

This Order makes fresh constitutional provision for Northern Rhodesia conferring internal self-government. It contains provision with respect to fundamental rights, a Constitutional Council, the office of Governor, the Legislature, a House of Chiefs, the Cabinet, the Judiciary, the Public Service and finance.