RHODESIA AND NYASALAND FEDERATION

1960 No. 204

The Northern Rhodesia Order in Council, 1960

Made - - -	8*th February*, 1960
Laid before Parliament	12*th February*, 1960
Coming into Operation	13*th February*, 1960

At the Court at Buckingham Palace, the 8th day of February, 1960

Present,

The Queen's Most Excellent Majesty in Council

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

Citation, construction and commencement

1.—(1) This Order may be cited as the Northern Rhodesia Order in Council, 1960, and shall be read and construed as one with the Northern Rhodesia Orders in Council, 1924 to 1957.

(2) The Northern Rhodesia Orders in Council, 1924 to 1957, and this Order may be cited together as the Northern Rhodesia Orders in Council, 1924 to 1960.

(3) This Order shall come into operation on the 13th day of February, 1960, and shall be published in the Gazette.

Amendment of Order of 1924

2. Articles 3 and 4 of the Northern Rhodesia Order in Council, 1924(b), are revoked and the following Article is substituted therefor :—

"Interpretation.

3.—(1) In this Order, unless it is otherwise provided or required by the context—

"the Gazette" means the Northern Rhodesia Government Gazette;

"the Governor" means the Governor of Northern Rhodesia and includes the officer for the time being administering the Government and, to the extent to which a Deputy for the Governor is authorised to act, that Deputy;

"High Court" means the High Court of Northern Rhodesia established by this Order;

"Magistrate" means any officer empowered to preside over a subordinate court;

"public office" means an office in the service of the Crown in a civil capacity in respect of the government of Northern Rhodesia, but does not include the office of judge of the High Court;

(a) 53 & 54 Vict. c. 37. (b) S.R. & O. 1924/324 (Rev. VIII, p. 154: 1924, p. 395).

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

(2) In this Order, unless it is otherwise expressly provided or required by the context, any reference to the holder of an office by the term designating his office shall be construed as including a reference to any person, who under and to the extent of any authority in that behalf, is for the time being performing the functions of that office.

(3) Subject to the provisions of this Article and save where the context otherwise requires, the Interpretation Act, 1889(a), shall apply for the purpose of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament."

3. The Northern Rhodesia Order in Council, 1924, is amended by the insertion after Article 16 of the following Article :—

" Concurrent Appointments.

16A.—(1) When any holder of the office of Governor or Chief Justice or of any office constituted under Article 15 of this Order is on leave of absence pending relinquishment of his office, it shall be lawful for another person to be appointed substantively to the same office.

(2) When two or more persons are holding the same office by reason of an appointment made pursuant to paragraph (1) of this Article, then for the purposes of Articles 9 and 10 of this Order and for the purpose of any function conferred upon the holder of that office, the person last appointed to the office shall be deemed to be the holder of the office."

4. Article 18 of the Northern Rhodesia Order in Council, 1924, is revoked.

5. Article 27 of the Northern Rhodesia Order in Council, 1924, is amended as follows :—

(i) by substituting for paragraph (2) thereof the following paragraph :—

" (2) Subject to the provisions hereinafter contained with regard to native law and custom such civil and criminal jurisdiction shall, as far as circumstances admit, be exercised upon the principles of and in conformity with the substance of the law for the time being in force in and for England, and with the powers vested in and according to the course of procedure and practice observed by and before the courts of justice in England, except so far as such law, powers, procedure and practice may be inapplicable or may have been modified by any Order in Council, Regulations, Proclamations, Federal Act or Ordinance or may hereafter be modified by any Order in Council, Federal Act or Ordinance :

Provided that no Act passed by the Parliament of the United Kingdom after the commencement of the Northern Rhodesia Order in Council, 1911(b), shall be deemed to apply to the said Territory, unless it shall have been applied thereto since the commencement of the said Order, or shall hereafter be applied thereto, by any law for the time being in force in the said Territory." ;

(ii) by revoking paragraph (4) thereof.

(a) 52 & 53 Vict. c. 63. (b) S.R. & O. 1911/438 (1911, p. 85).

6. Article 28 of the Northern Rhodesia Order in Council, 1924, is revoked and the following Articles are substituted therefor :—

"The judges of the High Court.

28.—(1) The judges of the High Court shall, subject to Article 28A of this Order, be a Chief Justice, who shall be President of the High Court, and such number of Puisne Judges as the Governor may from time to time prescribe by order published in the Gazette :

Provided that the office of a judge of the High Court shall not be abolished while there is a substantive holder thereof.

(2) The Chief Justice and the Puisne Judges shall be appointed by the Governor by Letters Patent under the public seal of the Territory in pursuance of instructions given by Her Majesty through a Secretary of State.

(3) (*a*) A person shall not be qualified for appointment as a judge of the High Court 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 he is qualified to practise as an advocate in such a court and he has been qualified for not less than five years to practise as an advocate or solicitor in such a court.

(*b*) In computing, for the purposes of this paragraph, the period during which any person has been qualified to practise as an advocate or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

(*c*) The reference in this paragraph to a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth shall be construed as if it included a reference to a court having such jurisdiction in the Republic of Ireland.

Acting Judges.

28A.—(1) 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 Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such one of the Puisne Judges or such other person qualified for appointment as a judge of the High Court as the Governor may appoint for that purpose.

(2) If the office of a 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, 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, after consultation with the Chief Justice, may by Letters Patent under the public seal of the Territory appoint a person to act as a Puisne Judge.

(3) Without prejudice to the provisions of the following paragraph, a person appointed under this Article to act as Chief Justice or as a Puisne Judge shall, unless he earlier

resigns his acting office or is removed therefrom under Article 28B of this Order, continue so to act until the end of the period for which he was appointed or, if he was not appointed for a specified period, until his appointment is revoked by the Governor, after consultation with the Chief Justice.

(4) Any person appointed to act as a judge under the provisions of this Article may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceeding heard by him while he was so acting.

(5) Any appointment of a person to perform the functions of the Chief Justice or to act as a Puisne Judge under this Article shall be made by Letters Patent under the public seal of the Territory except in the case of an appointment of a Puisne Judge to perform the fuctions of the Chief Justice.

Tenure of office of judges.

28B.—(1) Subject to the following provisions of this Article, a judge of the High court shall hold office until he attains the age of sixty-two years:

Provided the Governor may permit a judge who has attained the age of sixty-two years to remain in office for such fixed period not exceeding three years as may have been agreed between the judge and the Governor.

(2) A judge of the High Court may at any time resign his office by writing under his hand addressed to the Governor.

(3) A judge of the High Court 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 removed except in accordance with the next following paragraph.

(4) A judge of the High Court shall be removed from office by the Governor by Instrument under the public seal of the Territory if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of the next following paragraph, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act, 1833(a), or any other 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 misbehaviour.

(5) If the Governor considers that the question of removing a judge of the High Court from office for inability as aforesaid or misbehaviour 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 from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters

(a) 3 & 4 Will. 4. c. 41.

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 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.

(6) The provisions of sections 6 and 8, section 9 (other than the words "not inconsistent with their commission" and "subject only to the terms of their commission"), sections 10 to 13 and section 15 of the Commissions of Inquiry Ordinance(a), as in force on the 13th day of February, 1960, shall apply in relation to a tribunal appointed under the last foregoing paragraph as they apply in relation to Commissions appointed under that Ordinance and for that purpose those provisions shall have effect as if they formed part of this order.

(7) If the question of removing a judge of the High Court from his office has been referred to a tribunal under paragraph (5) of this Article, the Governor may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor 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 to be removed from office.

(8) The provisions of paragraph (1) of this Article shall not apply to a person appointed to act as Chief Justice or as a Puisne Judge.

Salaries of Judges.

28C.—(1) There shall be paid to the judges of the High Court such salaries as may be prescribed by any law enacted by the legislature of the Territory and such allowances as may be prescribed by or under any such law:

Provided that the salary of a judge of the High Court, his terms of service and his pension rights, other than allowances, shall not be altered to his disadvantage during his continuance of office.

(2) The salaries and allowances payable to the judges of the High Court shall be charged on and paid out of the revenues of the Territory."

7. Article 29 of the Northern Rhodesia Order in Council, 1924, is revoked.

8.—(1) Article 30 of the Northern Rhodesia Order in Council, 1924, is revoked.

(a) Laws of Northern Rhodesia Cap. 34.

(2) Any rule made under Article 30 of the Northern Rhodesia Order in Council, 1924, and in force immediately before the date of the commencement of this Order shall continue in force as if this Order had not been made:

Provided that any such rules may be amended or revoked by or in pursuance of any law made under section 14 of the Northern Rhodesia (Legislative Council) Order in Council, 1959(a).

9. Articles 30A and 31 of the Northern Rhodesia Order in Council, 1924, are revoked.

10. For Article 34 of the Northern Rhodesia Order in Council, 1924, there shall be substituted the following Article:—

"Appointment of Magistrates and other officers.

34. Article 15 of this Order shall apply to Magistrates and other officers of the High Court with respect to their appointment and tenure of office as it applies to public officers."

Existing Judges

11. Any person holding the office of judge of the High Court or acting in such office at the date of the commencement of this Order shall hold his office as from that date as if he had been duly appointed thereto under the provisions of the Northern Rhodesia Orders in Council, 1924 to 1957, as amended by this Order.

W. G. Agnew.

EXPLANATORY NOTE

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

This Order makes fresh provision for the appointment and tenure of office of judges of the High Court of Northern Rhodesia under the Northern Rhodesia Orders in Council, 1924 to 1957, amends and revokes certain Articles concerning the High Court and makes provision for concurrent appointments.

(a) S.I. 1959/105 (1959 II, p. 2321).