STATUTORY INSTRUMENTS

1963 No. 2092

AFRICA

The Nyasaland (Constitution) (No. 2) Order in Council 1963

Made - - - -	*20th December* 1963
Laid before Parliament	*31st December* 1963
Coming into Operation	*1st January* 1964

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 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 Nyasaland (Constitution) (No. 2) Order in Council 1963, and this Order and the Nyasaland (Constitution) Order in Council 1963(b) (hereinafter referred to as " the principal Order ") may be cited together as the Nyasaland (Constitution) Orders in Council 1963.

(2) This Order shall be construed as one with the principal Order.

(3) This Order shall come into operation on 1st January 1964.

Insertion of section 13A in Order of 1963.

2. The principal Order is amended by the insertion, immediately after section 13, of the following section—

"Appeals in respect of certain decisions affecting pensions and like benefits.

13A.—(1) The following provisions of this section shall have effect for the purpose of enabling any entitled officer or his personal representatives to appeal against a decision to which this section applies, that is to say a decision within any of the following classes :—

(*a*) a decision of the appropriate Commission to give such concurrence as is required by section 92 of the Constitution in relation to the refusal, withholding, reduction in amount or suspension of any benefits in respect of such an officer's service as a public officer ;

(*b*) a decision by any authority to dismiss such an officer if the consequence of the dismissal is that any benefits cannot be granted in respect of the officer's service as a public officer ;

(*c*) a decision by any authority to take some other disciplinary action in relation to such an officer if the

(a) 53 & 54 Vict. c. 37. (b) S.I. 1963/883 (1963 II, p. 1435).

consequence of the action is to reduce the amount of any benefits that may be granted in respect of the officer's service as a public officer.

(2) Where any decision such as is referred to in subsection (1) of this section is taken by any authority, the authority shall cause to be delivered to the officer concerned, or his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made to an authority within the time stated in such a notice as is mentioned in subsection (2) of this section for a case to be referred to an Appeals Board, the authority shall notify the Governor in writing of that application and thereupon the Governor, acting in his discretion, shall appoint an Appeals Board for that purpose consisting of—

(*a*) one member selected by the Governor, after consultation with the Prime Minister;

(*b*) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant; and

(*c*) one member selected by the two other members jointly (or, in default of agreement between those members, by the Judicial Service Commission) who shall be the Chairman of the Board.

(4) Such an Appeals Board shall inquire into the facts of the case that is referred to it, and for that purpose the Board—

(*a*) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request;

(*b*) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and

(*c*) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When such an Appeals Board has completed its consideration of the case, then—

(*a*) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (*a*) of subsection (1) of this section, the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice;

(*b*) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (*b*) or (*c*) of subsection (1) of this section, the Board shall not have power to advise the authority responsible for making the decision to affirm, reverse or modify the decision but the Board may advise the person or authority responsible for granting the benefits in question—

(i) where the officer has been dismissed, to grant all or part of the benefits for which the officer concerned would have been eligible under any law if he had retired voluntarily at the date of the dismissal; or

(ii) where some other disciplinary action has been taken in relation to the officer, that on the grant of any benefits under any law in respect of the officer's service such benefits shall be increased by such amount, or shall be calculated in such manner, as the Board may specify in order to offset all or any part of the reduction in the amount of such benefits that, in the opinion of the Board, would or might otherwise be a consequence of the action,

and that person or authority shall act in accordance with that advice and the provisions of that law shall have effect accordingly.

(6) In this section—

"the appropriate Commission" has the meaning assigned to it in section 92 of the Constitution;

"entitled officer" means any officer whom the Governor, acting in his discretion, declares to be an entitled officer, either specifically or by virtue of his belonging to a class of officer so declared.

(7) Nothing in this section shall apply in relation to any officer holding the office of Deputy-Governor, judge of the Supreme Court of Appeal, judge of the High Court, Director of Public Prosecutions or Director of Audit."

Amendment of section 15 of Constitution.

3. Section 15 of the Constitution is amended by the insertion, immediately after subsection (3), of the following subsection:—

"(3A) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Supreme Court of Appeal:

Provided that no appeal shall lie from a determination under this section that an application is frivolous or vexatious."

Amendment of section 16 of Constitution.

4. Section 16 of the Constitution is amended by the deletion of subsection (3)(*b*).

Amendment of section 17 of Constitution.

5. Section 17 of the Constitution is amended by the insertion, immediately after the word "Governor", of the words "and Commander in Chief".

Amendment of section 30 of Constitution.

6. Section 30 of the Constitution is amended by the deletion of subsection (1)(*b*).

Amendment of section 37 of Constitution.

7. Section 37 of the Constitution is amended by the insertion, immediately after subsection (2), of the following subsection—

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

Substitution of section 57 of Constitution.

8. Section 57 of the Constitution is revoked and the following section is substituted—

"Governor's special responsibilities.

57. 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 Nyasaland, 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 Nyasaland Police Force :

Provided that the Governor, acting in his discretion, may assign to the Prime Minister, or to any other Minister designated by the Prime Minister, such responsibility with respect to the conduct (subject as aforesaid) of that business relating to public order and public safety or the use and operational control of the Nyasaland Police Force as he may think fit, upon such conditions as he may think fit."

Insertion of section 68A in Constitution.

9. The Constitution is amended by the insertion, immediately after section 68, of the following section :—

"Court of Appeal.

68A. (1) There shall be a Supreme Court of Appeal for Nyasaland.

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

(*a*) the Chief Justice ;

(*b*) such number of Justices of Appeal (if any) as may be prescribed by the Legislature of Nyasaland :

Provided that the office of a Justice of Appeal shall not be abolished while there is a substantive holder thereof ;

(*c*) the puisne judges of the High Court.

(3) The provisions of sections 68(3), 69, 70 and 71 of this Constitution shall apply in relation to the Supreme Court of Appeal and to a Justice of Appeal as they apply in relation to the High Court and to a puisne judge of the High Court.

(4) Where the Supreme 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."

Amendment of section 78 of Constitution.

10. Section 78 of the Constitution is amended by the revocation of subsection (5) thereof and the substitution of the following :—

"(5) This section applies to the offices of the Governor, the Deputy Governor, judge of the Supreme Court of Appeal, judge of the High Court, member of the Public Service Commission, member of the Police Service Commission, the Director of Public Prosecutions and the Director of Audit."

Insertion in Constitution of section 79A.

11. The Constitution is amended by the insertion, immediately after section 79, of the following section :—

"Director of Audit.

79A. (1) There shall be a Director of Audit for Nyasaland, whose office shall be a public office.

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

(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."

Amendment of section 82 of Constitution.

12. Section 82 of the Constitution is amended—

(*a*) by the insertion in subsection (3)(*b*), immediately after the word " judge ", of the words " of the Supreme Court of Appeal or " ;

(*b*) by the insertion in subsection (3) of the following paragraph :—

" (*g*) the office of Director of Audit."

Insertion in Constitution of section 84A.

13. The Constitution is amended by the insertion, immediately after section 84, of the following section :—

"Appointment and tenure of office of Director of Audit.

84A. (1) Power to appoint persons to hold or to act in the office of Director of Audit shall vest in the Governor, acting after consultation with the Prime Minister and the Public Service Commission.

(2) The provisions of section 84 shall apply in relation to the Director of Audit as they apply in relation to the Director of Public Prosecutions."

Amendment of section 92 of Constitution.

14. Section 92 of the Constitution is amended by the insertion in subsection (3), immediately after the word " judge ", of the words " of the Supreme Court of Appeal or ".

Amendment of section 96 of Constitution.

15. Section 96 of the Constitution is amended—

(*a*) by the deletion of the definition of " the Commonwealth " in subsection (1) and the substitution of the following definition :—

" ' the Commonwealth ' means the United Kingdom, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, the Republic of Nigeria, the Republic of Cyprus, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, Uganda, Zanzibar and Kenya and any dependency of any such country."

(*b*) by the insertion in subsection (2), immediately after the word " judges ", of the words " of the Supreme Court of Appeal or " ;

(*c*) by the deletion from subsection (6) of the words " judge of the High Court or the Director of Public Prosecutions " and the substitution of the words " judge of the Supreme Court of Appeal or of the High Court, the Director of Public Prosecutions or the Director of Audit."

W. G. Agnew.

EXPLANATORY NOTE

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

This Order amends the Nyasaland (Constitution) Order in Council 1963 to make provision for a court of appeal and the office and functions of a Director of Audit and for certain other matters, consequent upon the dissolution of the Federation of Rhodesia and Nyasaland.