STATUTORY INSTRUMENTS

1961 No. 1189

RHODESIA AND NYASALAND FEDERATION

The Nyasaland (Constitution) Order in Council, 1961

Made - - - -	*26th June*, 1961
Laid before Parliament	*30th June*, 1961
Coming into Operation	*On a day to be appointed by the Governor under section* 1 (2).

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FIRST SCHEDULE

ORDERS IN COUNCIL REVOKED

SECOND SCHEDULE

FORMS OF OATHS AND AFFIRMATIONS

At the Court at Buckingham Palace, the 26th day of June, 1961

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), the Colonial Courts of Admiralty Act, 1890(b), 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, commencement and revocation.

1.—(1) This Order may be cited as the Nyasaland (Constitution) Order in Council, 1961.

(2) This Order shall be published in the Gazette and, except for Part III and sections 70, 71 and 72, shall come into operation on such day (in this Order referred to as "the commencement date") as the Governor, in his discretion, may by proclamation published in the Gazette appoint, which day shall not be earlier than the day when this Order is so published or than the day after that on which this Order is laid before both Houses of Parliament; and Part III and sections 70, 71 and 72 of this Order shall come into operation on such later day or days as the Governor, in his discretion, may so appoint.

(a) 53 & 54 Vict. c. 37. (b) 53 & 54 Vict. c. 27.

(3) The Orders in Council set out in the First Schedule to this Order are revoked, but this revocation shall not prejudice anything lawfully done thereunder, and in particular shall not affect the continued operation of any law made under or by virtue of those Orders and in force in Nyasaland immediately before the commencement date.

Interpretation.

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

" the Gazette " means the Nyasaland Government Gazette ;

" the Governor " means the Governor of Nyasaland ;

" law " includes any instrument having the force of law made in exercise of a power conferred by a law ;

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

" public officer " means the holder of any public office or a person appointed to act in a public office ;

" public seal " means the public seal of Nyasaland ;

" public service " means the service of the Crown in respect of the government of Nyasaland ;

" session " means the sittings of the Legislative Council commencing when the Council first meets after being constituted under this Order, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or is dissolved without having been prorogued ;

" sitting " means a period during which the Legislative Council is sitting continuously without adjournment, and includes any period during which the Council is in committee.

(2) A reference in this Order to the holder of an office by the term designating his office includes, to the extent of his authority, any person who is for the time being authorized to perform the functions of that office.

(3) For the avoidance of doubt it is hereby declared that any person who has vacated his seat in any body, or has vacated any office, established by this Order may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(4) References in this Order to Her Majesty's dominions shall be construed as if they were references to all countries or territories within the Commonwealth.

(5) The provisions of this Order shall have effect subject to the provisions of the Federation of Rhodesia and Nyasaland (Constitution) Order in Council, 1953(a), and shall be construed accordingly.

(6) The Interpretation Act, 1889(b), shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

PART II

THE GOVERNOR

The Governor.

3.—(1) There shall be a Governor of Nyasaland who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(a) S.I. 1953/1199 (1953 II, p. 1804). (b) 52 & 53 Vict. c. 63.

(2) The Governor shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law, and such other powers and duties as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office (including the exercise of any powers with respect to which he is empowered by this Order to act in his discretion) according to such instructions, if any, as Her Majesty may from time to time see fit to give him; but the question whether he has in any matter complied with such instructions shall not be enquired into by any court.

(3) A person appointed to the office of Governor shall, before assuming the functions of his office, make oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the Second Schedule to this Order.

Acting Governor.

4.—(1) During any period when the office of Governor is vacant or the Governor is absent from Nyasaland or is for any other reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by—

(*a*) such person as Her Majesty may designate in that behalf by Instructions given under Her Sign Manual and Signet or through a Secretary of State; or

(*b*) if there is no person in Nyasaland so designated and able to perform those functions, the person who is the substantive holder of the office of Chief Secretary.

(2) Before assuming the functions of the office of Governor any such person as aforesaid shall make the oaths or affirmations directed by the last foregoing section to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform those functions has notified him that he is about to assume or resume those functions.

(4) The Governor or any other person as aforesaid shall not, for the purposes of this section, be regarded as absent from Nyasaland or as unable to perform the functions of the office of Governor—

(*a*) by reason only that he is in passage from one part of Nyasaland to another;

(*b*) by reason only that, in performing the functions of the office of Governor, he is in any territory adjacent to Nyasaland or in passage between Nyasaland and any such territory; or

(*c*) at any time when there is a subsisting appointment of a deputy under the next following section.

Deputy to Governor.

5.—(1) Whenever the Governor—

(*a*) has occasion to be absent from the seat of government but not from Nyasaland;

(*b*) has occasion to be absent from Nyasaland for a period which he has reason to believe will be of short duration;

(*c*) is suffering from an illness which he has reason to believe will be of short duration; or

(*d*) considers for any other reason that the public interest so requires,

he may, in his discretion, by instrument under the public seal, appoint any person to be his deputy, and in that capacity to perform on his behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall comply with all instructions that the Governor may from time to time address to him; but the question whether a deputy has in any matter complied with such instructions shall not be enquired into by any court.

(3) Any appointment under this section may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, in his discretion, by instrument under the public seal, and, subject thereto, a person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed.

PART III

EXECUTIVE COUNCIL

Executive Council.

6.—(1) There shall be an Executive Council for Nyasaland which, subject to the provisions of this Order, shall consist of three ex officio members and seven appointed members.

(2) The members of the Executive Council shall be styled Ministers.

Ex officio members.

7. The ex officio members of the Executive Council shall be the Chief Secretary, the Attorney-General and the Financial Secretary.

Appointed members.

8.—(1) Subject to the provisions of this section, the appointed members of the Executive Council shall be persons appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(2) Of the appointed members of the Executive Council two shall be persons who are public officers, and five shall be persons who are elected members of the Legislative Council, of whom three shall be members elected on the lower franchise and two shall be members elected on the higher franchise.

(3) If the Governor, in his discretion, so recommends, and a Secretary of State approves, one of the two appointed members of the Executive Council who are public officers or both of them shall be replaced by one elected member or, as the case may be, two elected members, of the Legislative Council.

(4) The Governor, when he appoints elected members of the Legislative Council under this section, shall have regard to the composition of the parties in that Council, and shall consult the person or persons who appear to him to be the leader or leaders of the main party or parties in that Council.

(5) The Governor shall forthwith report to Her Majesty through a Secretary of State the appointment of any person to be a member of the Executive Council.

Governor to consult Executive Council.

9.—(1) Subject to the provisions of this section, the Governor shall consult the Executive Council in the formulation of policy and in the exercise of all powers conferred upon him by this Order or by any other law for the time being in force in Nyasaland, except—

(*a*) any power conferred upon him by this Order which he is empowered to exercise in his discretion or in pursuance of instructions from Her Majesty;

(*b*) any power (other than a power expressed, in whatever terms, to be exercisable by the Governor in Council) conferred upon him by any law in force at the commencement date, so long as that power continues to be exercisable by virtue of that law; or

(*c*) any other power conferred upon him which he is empowered, either expressly or by implication, to exercise without consulting the Council.

(2) The Governor shall not be obliged to consult the Executive Council in any case in which, in his judgment,—

(*a*) it is in the public interest that he should act without consulting the Council;

(*b*) the matters to be decided are too unimportant to require their advice; or

(*c*) the urgency of the matter requires him to act before they can be consulted.

(3) In every case falling within paragraph (*c*) of the last foregoing subsection the Governor shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons for those measures.

Governor may act against advice of Executive Council.

10.—(1) In any case in which the Governor is required by the last foregoing section to consult the Executive Council he may, if he thinks it right to do so, act against the advice given to him by the Council; but if he so acts he shall at the first convenient opportunity report the matter to a Secretary of State with the reasons for his action.

(2) Whenever the Governor acts against the advice of the Executive Council any member of the Council may require that there be recorded in the minutes any advice or opinion he may give upon the question at issue and his reasons.

Tenure of office of appointed members.

11.—(1) Subject to the provisions of this section, an appointed member of the Executive Council shall hold office as such during Her Majesty's pleasure.

(2) An appointed member of the Executive Council shall vacate his office—

(*a*) at such time or in such circumstances as may be specified in the instrument by which he is appointed;

(*b*) if he resigns his office by writing under his hand addressed to the Governor, and the Governor, in his discretion, accepts his resignation;

(*c*) if he is absent from Nyasaland for a period of more than two weeks without written permission given by the Governor, in his discretion;

(*d*) in the case of a member who was a public officer at the time of his appointment, if he ceases to be a public officer; or

(*e*) in the case of a member who was an elected member of the Legislative Council at the time of his appointment—

(i) when, after any dissolution of that Council, he is informed by the Governor that the Governor is about to reappoint him as a member of the Executive Council or to appoint another person in his place; or

(ii) if he ceases to be a member of that Council otherwise than by reason of a dissolution.

Temporary members of Executive Council.

12.—(1) Whenever a member of the Executive Council is unable, because he is ill, or absent from Nyasaland, or for any other reason, to perform his functions as a member of the Council, the Governor, in his discretion, may, by instrument under the public seal, appoint to be temporarily a member of the Council—

(*a*) in place of an ex officio member or an appointed member who is a public officer, a person who is a public officer;

(*b*) in place of any other appointed member, a person who is a member of the Legislative Council elected on the lower franchise or on the higher franchise, as the case may be.

(2) The Governor shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

(3) A person appointed under this section to be temporarily a member of the Executive Council—

(*a*) shall hold office as such during Her Majesty's pleasure;

(*b*) shall cease to hold office as such when he is informed by the Governor that the member in whose place he was appointed is again able to perform the functions of his office, or when the office of the member in whose place he was appointed becomes vacant.

(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Executive Council as they apply in relation to the ex officio member or the appointed member, as the case may be, in whose place he was appointed.

Determination of questions as to membership.

13. Any question whether any person is a member of the Executive Council shall be determined by the Governor, in his discretion.

Oath or affirmation by members of Executive Council.

14. Before assuming the functions of his office a member of the Executive Council shall make before the Governor, or some person authorized in that behalf by the Governor, an oath or affirmation for the due execution of his office in the form set out in the Second Schedule to this Order.

Summoning of Executive Council.

15. The Executive Council shall not be summoned except by the authority of the Governor, in his discretion.

Proceedings in Executive Council.

16.—(1) The Governor shall, so far as practicable, attend and preside at all meetings of the Executive Council, and in his absence the senior ex officio member present shall preside; and for the purpose of this subsection the ex officio members of the Council shall rank in such order as Her Majesty may prescribe by instructions given through a Secretary of State.

(2) No business shall be transacted at any meeting of the Executive Council if there are less than five members of the Council present at the meeting and any member present has objected to the transaction of business on that account.

(3) Subject to the last foregoing subsection, the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council; and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

(4) (*a*) The Governor or other person presiding, when in his opinion the business before the Executive Council makes it desirable, may summon any person to a meeting of the Council, notwithstanding that that person is not a member of the Council.

(*b*) Any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Executive Council relating to the matter in respect of which he was summoned, except that he shall not have a right to vote.

Assignment of departments.

17. The Governor, in his discretion, may by directions in writing charge any member of the Executive Council with responsibility for any department or subject, and may revoke or vary any directions given under this section.

Parliamentary Secretaries.

18.—(1) The Governor, in his discretion, may, by instrument under the public seal, appoint from among the elected members of the Legislative Council not more than three Parliamentary Secretaries, who shall not be members of the Executive Council but who shall assist members of that Council in their duties.

(2) If the Governor appoints three Parliamentary Secretaries at least two shall be members of the Legislative Council elected on the lower franchise.

(3) (*a*) Subject to paragraph (*b*) of this subsection, a Parliamentary Secretary shall hold office as such during the Governor's pleasure.

(*b*) A Parliamentary Secretary shall vacate his office—

(i) at such time or in such circumstances as may be specified in the instrument by which he is appointed;

(ii) if he resigns his office by writing under his hand addressed to the Governor, and the Governor, in his discretion, accepts his resignation; or

(iii) if he ceases to be an elected member of the Legislative Council.

Leave of absence.

19. The Governor, in his discretion, may grant leave of absence from his duties to any member of the Executive Council and to any Parliamentary Secretary.

PART IV

LEGISLATIVE COUNCIL

Legislative Council.

20. There shall be a Legislative Council for Nyasaland which, subject to the provisions of this Order, shall consist of a Speaker, three ex officio members, two official members, twenty-eight elected members and such number of nominated members as the Governor may appoint under section 26 of this Order.

The Speaker.

21.—(1) The Speaker shall be appointed by the Governor by instrument under the public seal from among persons who do not hold any public office, and who are not ex officio, official, elected or nominated members of the Legislative Council.

(2) The Speaker shall hold office as such during Her Majesty's pleasure, and shall not vacate his office by reason only of a dissolution of the Legislative Council; but he shall vacate his office—

(*a*) at such time as may be specified in the instrument by which he is appointed;

(*b*) if he resigns his office by writing under his hand addressed to the Governor, and the Governor accepts his resignation; or

(*c*) if he is appointed to a public office.

(3) A person shall not be treated as holding a public office for the purposes of this section by reason only that he is receiving any remuneration or allowances from the revenues of Nyasaland as a member of the Public Service Commission or the Police Service Commission.

(4) The Governor may grant the Speaker leave of absence from his duties.

(5) There shall be charged on the revenues of Nyasaland and paid thereout to the Speaker such salary and allowances as the Governor may prescribe by order under his hand.

(6) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

Acting Speaker.

22. During any period when the office of Speaker is vacant or the Speaker is absent from Nyasaland, or is for any other reason unable to perform the functions of his office, the Governor, in his discretion, may by instrument under the public seal appoint a person to act as Speaker; and the provisions of this Order other than subsection (1) of the last foregoing section shall apply in relation to that person as they apply in relation to the Speaker

Ex officio members.

23. The ex officio members of the Legislative Council shall be the Chief Secretary, the Attorney-General and the Financial Secretary.

Official members.

24. The official members of the Legislative Council shall be the two appointed members of the Executive Council who are public officers.

Elected members.

25. The elected members of the Legislative Council shall be persons qualified for election in accordance with the provisions of this Order, and elected in the manner provided by regulations made under the Nyasaland (Electoral Provisions) Orders in Council, 1960(a), or by any law enacted under this Order.

Nominated members.

26.—(1) Subject to the provisions of section 28 of this Order, the nominated members of the Legislative Council shall be persons appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(2) The Governor shall forthwith report to Her Majesty through a Secretary of State the appointment of any person to be a nominated member of the Legislative Council.

(a) S.I. 1960/2210, 2214 (1960 III, pp. 2908, 2910).

Qualifications for elected members.

27.—(1) Subject to the provisions of the next following section, a person shall be qualified to be elected a member of the Legislative Council if, and shall not be qualified to be so elected unless, he—

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

(*b*) is qualified for registration as a voter and is so registered;

(*c*) has been ordinarily resident in Nyasaland—

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

(ii) for periods amounting in the aggregate to not less than two years during the four years immediately before that date; and

(*d*) can satisfy the Speaker, or a person appointed by the Speaker by writing under his hand, that he can speak, write and understand English well enough to take an active part in the proceedings of the Council.

(2) For the purpose of paragraph (*d*) of the last foregoing subsection a person shall be deemed to have the requisite knowledge of English if—

(*a*) English is his native tongue;

(*b*) he possesses a degree awarded by a university recognized by the Speaker in which the medium of instruction is English; or

(*c*) he has been a member of the Legislative Council established by this Order or of the Legislative Council existing before the commencement date.

(3) A person shall only be qualified to be elected a member of the Legislative Council—

(*a*) for a lower franchise constituency if he is registered as a voter under the lower franchise;

(*b*) for a higher franchise constituency if he is registered as a voter under the higher franchise:

Provided that a person who is qualified for registration as a voter under both the lower and the higher franchise shall be qualified, under whichever franchise he may be registered, to be elected a member of the Council either for a lower franchise constituency or for a higher franchise constituency.

Disqualifications for elected and nominated members.

28.—(1) No person shall be qualified to be elected or appointed a member of the Legislative Council who—

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

(*b*) is a member of the Federal Assembly of the Federation of Rhodesia and Nyasaland;

(*c*) has been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;

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

(*e*) is under sentence of death imposed on him by a court in any part of Her Majesty's dominions, or is under a sentence of imprisonment (by whatever name called), other than a sentence in lieu of a fine but including a suspended sentence, imposed on

him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(*f*) is detained under a detention order, or is subject to a control order or a restriction order, under any law for the time being in force in Nyasaland; or

(*g*) is disqualified for election or appointment as a member of the Council or for registration as a voter under any law enacted under section 62 of this Order for the time being in force in Nyasaland.

(2) No person shall be qualified to be elected a member of the Legislative Council who—

(*a*) subject to the provisions of this Part of this Order, holds, or is acting in, any public office; or

(*b*) holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(3) For the purposes of this section a chief, former chief or sub-chief, recognized as such by the Governor, shall, notwithstanding that he holds a public office, be qualified to be elected a member of the Legislative Council, but if he is nominated as a candidate in any election of a member to the Council he shall cease, so long as he is a candidate or, if he is elected, so long as he remains a member of the Council, to draw any salary as a chief or to perform any judicial or native authority functions.

Tenure of office of official, elected and nominated members.

29.—(1) Subject to the provisions of this Order, an official member or a nominated member of the Legislative Council shall hold his seat in the Council during Her Majesty's pleasure.

(2) The seat of an official member of the Legislative Council shall become vacant—

(*a*) if he ceases to be a public officer or a member of the Executive Council;

(*b*) upon a dissolution of the Council;

(*c*) if he resigns his seat by writing under his hand addressed to the Governor, and the Governor, in his discretion, accepts his resignation; or

(*d*) in the circumstances mentioned in the next following section.

(3) The seat of an elected member or a nominated member of the Legislative Council shall become vacant—

(*a*) upon a dissolution of the Council;

(*b*) if, being an elected member, he resigns his seat by writing under his hand addressed to the Speaker, or, being a nominated member, he resigns his seat by writing under his hand addressed to the Governor, and the Governor, in his discretion, accepts his resignation;

(*c*) if, being an elected member, he is appointed as a nominated member of the Council or, being a nominated member, he is, with his consent, nominated as a candidate in any election of a member to the Council;

(*d*) if, being an elected member, he ceases to be qualified for registration as a voter;

(*e*) if he ceases to be ordinarily resident in Nyasaland;

(*f*) if any of the circumstances arise that, if he were not a member of the Legislative Council, would cause him to be disqualified for election or, as the case may be, appointment thereto by virtue of paragraph (*a*), (*b*), (*c*), (*d*) or (*g*) of subsection (1) or by virtue of subsection (2) of the last foregoing section; or

(*g*) in the circumstances mentioned in the next following section.

Vacation of seat on sentence, etc.

30.—(1) Subject to the provisions of this section, if an official member, an elected member or a nominated member of the Legislative Council—

(*a*) is sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding twelve months; or

(*b*) is detained under a detention order, or is subject to a control order or a restriction order, under any law for the time being in force in Nyasaland,

he shall forthwith cease to perform his functions as a member of the Council, and his seat in the Council 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, or the detention order, control order, or restriction order, 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 Council signified by resolution.

(2) If at any time before the member vacates his seat—

(*a*) 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 twelve months or a punishment other than imprisonment is substituted; or

(*b*) the detention order, control order, or restriction order, as the case may be, is revoked,

his seat in the Legislative Council shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Council.

(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.

Temporary members of Legislative Council.

31.—(1) Whenever an ex officio member, an official member, or a nominated member of the Legislative Council is unable, because he is ill, or absent from Nyasaland, or for any other reason, to perform his functions as a member of the Council, the Governor, in his discretion, may, by instrument under the public seal, appoint to be temporarily a member of the Council—

(*a*) in place of an ex officio member or an official member, a person who is a public officer;

(*b*) in place of a nominated member, a person qualified for appointment as a nominated member.

(2) The Governor shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

(3) A person appointed under this section to be temporarily a member of the Legislative Council—

(*a*) shall hold his seat in the Council during Her Majesty's pleasure;

(*b*) shall vacate his seat when he is informed by the Governor that the member in whose place he was appointed is again able to perform his functions as a member of the Council, or when the seat of the member in whose place he was appointed becomes vacant.

(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Legislative Council as they apply in relation to the ex officio member, the official member, or the nominated member, as the case may be, in whose place he was appointed.

Determination of questions as to membership of Legislative Council.

32.—(1) Any question whether a person has become an elected member of the Legislative Council, or whether an elected member of the Legislative Council has vacated his seat therein, shall be determined by the High Court.

(2) Any question whether a person has become a nominated member of the Legislative Council, or whether a nominated member of the Legislative Council has vacated his seat therein, shall be determined by the Governor, in his discretion.

Penalty for sitting or voting in Legislative Council when unqualified.

33.—(1) Any person who sits or votes in the Legislative Council 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 for every day upon which he sits or votes.

(2) Any such penalty shall be recoverable by civil action in the High Court at the suit of the Attorney-General.

Persons not to be treated as holding public offices.

34.—(1) A person shall not be treated as holding, or acting in, a public office for the purposes of this Part of this Order—

(*a*) if he is on leave of absence pending relinquishment of a public office;

(*b*) by reason only that he—

(i) is receiving any remuneration or allowances from the revenues of Nyasaland as a member of the Executive Council, or as a member of the Legislative Council;

(ii) is receiving a pension or other like allowance from the Crown;

(iii) is an officer of Her Majesty's forces on retired or half pay;

(iv) is a member of any of the defence forces of the Federation of Rhodesia and Nyasaland whose services are not wholly employed by the Federation, or a member of the Nyasaland Special Constables Force or of the Nyasaland Police Reserve, or of any of the reserves of Her Majesty's forces, or, for the duration of any war in which Her Majesty is engaged, of any of Her Majesty's forces;

(v) is a Native Authority or a member of a Native Authority, as defined in the Native Authority Ordinance(**a**), or a person employed by a Native Authority, or by a District Council, Rural Area Board or High Density Residential Area Authority, established by the Local Government (District Councils) Ordinance(**b**), the Rural Area Boards Ordinance(**c**), and the High Density Residential Areas Ordinance(**d**), respectively; or

(**a**) Laws of Nyasaland, 1957, c. 73. (**b**) Laws of Nyasaland, 1957, c. 100.
(**c**) Laws of Nyasaland, 1957, c. 95. (**d**) Laws of Nyasaland, 1957, c. 99.

(vi) is the holder of an office in the service or appointment of the Crown, or is performing any functions on behalf of the Crown, if the only payments he receives in respect of that office or those functions are by way of travelling or subsistence allowances or a refund of out-of-pocket expenses.

(2) A provision in any law for the time being in force in Nyasaland that an office shall not be a public office for all or any of the purposes of this Part of this Order shall have effect as if it were included in this Order.

PART V

LEGISLATION AND PROCEDURE IN LEGISLATIVE COUNCIL

Power to make laws.

35. Without prejudice to the power of Her Majesty in Council to do so, and subject to the provisions of this Order, the Governor, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of Nyasaland.

Royal Instructions.

36. Subject to the provisions of this Order, the Governor and the Legislative Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under Her Majesty's Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf.

Standing Orders.

37.—(1) Subject to the provisions of this Order and of any Instructions under Her Majesty's Sign Manual and Signet, the Legislative Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills, and for the presentation thereof to the Governor for assent; but no such Standing Orders shall have effect until they have been approved by the Governor, in his discretion.

(2) The first Standing Orders of the Legislative Council shall be the Standing Orders in force immediately before the commencement date of the Legislative Council established by the Nyasaland Order in Council, 1907(a), as amended by the Nyasaland (No. 2) Order in Council, 1955(b); and they may be amended or revoked by the Council under this section:

Provided that the Governor may at any time after the making of this Order and before the first sitting of the Council amend the said Standing Orders to conform with the provisions of this Order.

Oath or affirmation of allegiance.

38. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purpose of this section) until he has made before the Council an oath or affirmation of allegiance in the form set out in the Second Schedule to this Order.

Presiding in Legislative Council.

39. There shall preside at any sitting of the Legislative Council the Speaker or, in his absence, the Acting Speaker or, in their absence, a member of the Council (not being a member of the Executive Council) elected by the Council for the sitting.

(a) S.R. & O. 1907/541 (Rev. VIII, p. 230: 1907, p. 169).
(b) S.I. 1955/1212 (1955 II, p. 2213).

Quorum.

40.—(1) A quorum of the Legislative Council shall consist of eleven persons besides the person presiding at the sitting.

(2) If at any sitting of the Legislative Council any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the Council, the person presiding at the sitting ascertains that a quorum of the Council is still not present the Council shall be adjourned.

(3) If at any sitting of the Legislative Council it appears to the person presiding that a quorum of the Council is not present when the votes of the members on any question proposed for decision are counted, the voting on that question shall be invalid, that question shall stand over until the next sitting of the Council, and the attention of the person presiding shall be deemed to have been drawn to the absence of a quorum for the purpose of the last foregoing subsection.

Legislative Council may transact business notwithstanding vacancies.

41. The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council; and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

Voting.

42.—(1) Save as otherwise provided in this Order, all questions proposed for decision in the Legislative Council 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 Council the votes are equally divided, he shall have and exercise a casting vote.

(3) Any other person shall, when presiding in the Legislative Council, retain his original vote as a member and shall also have and exercise a casting vote.

Summoning of persons to Legislative Council.

43.—(1) The Speaker or other person presiding, when in his opinion the business before the Legislative Council makes it desirable, may summon any person to a meeting of the Council, notwithstanding that that person is not a member of the Council.

(2) Any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Legislative Council relating to the matter in respect of which he was summoned, except that he shall not have a right to vote.

Governor may address Legislative Council.

44. The Governor, in his discretion, may attend and address the Legislative Council at any time.

Introduction of Bills, etc.

45.—(1) Subject to the provisions of this Order and to the Standing Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the Bill, motion or petition shall be debated and disposed of according to the Standing Orders of the Council.

(2) Except on the recommendation of the Governor, in his discretion, the Legislative Council shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council,—

(i) makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Nyasaland, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Nyasaland; or

(ii) would effect any alteration in the salary, allowances or conditions of service (including leave, passages and promotion) of any public officer or in the law, regulations or practice governing the payment of pensions, gratuities or other like benefits to any public officer or former public officer or his widow, children, dependants or personal representatives;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision should be made for any of the purposes aforesaid; or

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

Governor's reserved power.

46.—(1) If the Governor considers that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Nyasaland as a territory within the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer), that any Bill introduced, or any motion proposed, in the Legislative Council should have effect, then, if the Council fail to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time he thinks fit, and notwithstanding any provisions of this Order or of any Standing Orders of the Council, declare that the Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit that have been moved or proposed in the Council, including any committee thereof; and the Bill or motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Order, and in particular the provisions relating to assent to Bills and disallowance of laws shall have effect accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he makes any declaration under this section and the reasons therefor.

(3) If any member of the Legislative Council objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting and, if he furnishes a copy of that statement, and requests the Governor to do so, the Governor shall, as soon as practicable, forward the copy to a Secretary of State.

(4) Any declaration made under this section other than a declaration relating to a Bill may be revoked by a Secretary of State and the Governor shall cause notice of the revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to the revocation as it applies to the repeal of an Act of Parliament.

(5) The powers conferred on the Governor by this section shall be exercised by him in his discretion.

Assent to Bills.

47.—(1) A Bill shall not become a law until—

(*a*) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent; or

(*b*) Her Majesty has given Her assent to it through a Secretary of State, and the Governor has signified Her assent by proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for his assent, he shall, in his discretion, but subject to the provisions of this Order and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its members, unless he has been authorized by a Secretary of State to assent to it.

Disallowance of laws.

48.—(1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State.

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

(3) Subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that 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.

Privileges of Legislative Council and its members.

49. A law enacted under this Order may determine and regulate the privileges, immunities and powers of the Legislative Council, and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland or of the members thereof.

Sessions.

50. The sessions of the Legislative Council shall be held at such place and begin at such time as the Governor may from time to time by proclamation published in the Gazette appoint; but a period of twelve months shall not elapse between the date when the Council last sat in one session and the date appointed for its first sitting in the next session.

Prorogation and dissolution.

51.—(1) The Governor, in his discretion, may at any time, by proclamation published in the Gazette, prorogue or dissolve the Legislative Council.

(2) The Governor shall dissolve the Legislative Council at the expiration of five years from the date when the Council first meets after any general election if it is not sooner dissolved.

General elections.

52. There shall be a general election at such time within three months after the commencement date, and thereafter within three months after every dissolution of the Legislative Council, as the Governor by proclamation published in the Gazette shall appoint.

PART VI

VOTERS AND CONSTITUENCIES

Voters.

53.—(1) For the purpose of electing members of the Legislative Council there shall be two classes of voters, that is to say, voters qualified and registered under a lower franchise and voters qualified and registered under a higher franchise.

(2) A person shall be entitled to be registered as a voter in one constituency only.

(3) A person who has the requisite qualifications may be registered under either the lower or the higher franchise, at his choice.

Qualifications and disqualifications for voters.

54.—(1) Subject to the provisions of this Part of this Order, a person shall be qualified to be registered as a voter under either the lower or the higher franchise if, and shall not be qualified to be so registered unless,—

(*a*) that person—

(i) is a British subject or a British protected person by virtue of his connection with Nyasaland ; or

(ii) is an African who, though not a British subject or a British protected person by virtue of his connection with Nyasaland, has paid, or is exempt from paying, tax as a Nyasaland African under the provisions of the African Tax Ordinance(a), or any rules made thereunder, or is the wife or daughter of such an African ;

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

(*c*) he is at the time of his application for registration ordinarily resident, or carrying on a business, or employed, or the owner of immovable property, in the constituency in which he applies for registration, and he has also been ordinarily resident at any place in Nyasaland, at any time, for a continuous period of two years ;

(*d*) he has one of the additional qualifications for the lower franchise specified in the next following section or, as the case may be, he is literate in English and has one of the additional qualifications for the higher franchise specified in section 56 of this Order ; and

(*e*) he is not disqualified as mentioned in the next following subsection.

(2) No person shall be qualified to be registered as a voter, or to vote, if—

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

(a) Laws of Nyasaland, 1957, c. 159.

(*b*) he is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Nyasaland;

(*c*) he is under sentence of death imposed on him by a court in any part of Her Majesty's dominions, or is under a sentence of imprisonment (by whatever name called), other than a sentence in lieu of a fine but including a suspended sentence, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(*d*) he is detained under a detention order; or

(*e*) he is disqualified for registration as a voter under any law enacted under section 62 of this Order for the time being in force in Nyasaland relating to offences connected with elections.

Additional qualifications: lower franchise.

55. Subject to the provisions of this Part of this Order, the additional qualifications of which one shall be required for registration as a voter under the lower franchise shall be that the person applying—

(*a*) is literate in English and has for any of the three years immediately preceding his application for registration had an income of not less than £120;

(*b*) is literate in English and at the time of his application for registration owns immovable property of a value not less than £250;

(*c*) is literate in English, Nyanja, Yao, Tumbuka, Ngonde, Tonga, Gujerati or Urdu, and satisfies the registration officer—

(i) that his name is on a tax register and that he has paid his taxes, or been exempted from payment of tax, for the last ten years; or

(ii) that, his name not being on a tax register, he has for the last ten years belonged to a class of persons which has been exempted from payment of tax;

(*d*) is a chief, former chief or sub-chief, and recognized as such by the Governor;

(*e*) is a Native Authority or a member of a Native Authority, and recognized as such under the Native Authority Ordinance(**a**);

(*f*) is a member or former member (either appointed or elected) of a District Council established under the Local Government (District Councils) Ordinance(**b**);

(*g*) is a group or village headman, and recognized as such by the Governor;

(*h*) is a master farmer registered on any register of master farmers maintained by a provincial agricultural officer under the Master Farmers Scheme, as approved from time to time by the Governor in Council;

(*i*) is a pensioner who is receiving a pension for life paid in respect of past service to an employer or in respect of injury received during such service;

(*j*) has served in Her Majesty's armed forces on active service, as defined in the Army Act, 1955(**c**), or for a minimum period of six years, is no longer serving, and was not discharged for misconduct;

(*k*) is a university graduate who is literate in English; or

(**a**) Laws of Nyasaland, 1957, c. 73. (**b**) Laws of Nyasaland, 1957, c. 100.
(**c**) 3 & 4 Eliz. 2. c. 18.

(*l*) is a woman who has been married for a continuous period of ten years, or for ten years in the aggregate, and who is literate in any one of the languages mentioned in paragraph (*c*) of this section.

Additional qualifications: higher franchise.

56. Subject to the provisions of this Part of this Order, the additional qualifications of which one shall be required for registration as a voter under the higher franchise shall be that the person applying—

(*a*) has for either of the two years immediately preceding his application for registration had an income of not less than £720;

(*b*) at the time of his application for registration owns immovable property of a value not less than £1,500;

(*c*) has received primary education up to the standard of the Nyasaland Education Department primary leaving examination, and—

(i) has for either of the two years immediately preceding his application for registration had an income of not less than £480; or

(ii) at the time of his application for registration owns immovable property of a value not less than £1,000;

(*d*) has received secondary education up to the standard achieved after four years of the course of secondary education provided at a Nyasaland Government School, and—

(i) has for either of the two years immediately preceding his application for registration had an income of not less than £300; or

(ii) at the time of his application for registration owns immovable property of a value not less than £500; or

(*e*) is a university graduate.

Literacy, income, ownership and value of property.

57.—(1) This section shall apply for the purpose of interpreting the foregoing provisions of this Part of this Order.

(2) A person shall be treated as literate in the appropriate language if he is able in the presence of the registration officer to complete in that language and without assistance the form of application for registration as a voter or, if he is unable to do so by reason only of blindness or other physical incapacity, he has sufficient knowledge of that language to give the necessary instructions for the completion of that form on his behalf by the registration officer.

(3) A person shall be treated as having an income of a specified amount if, during any of the three years or, as the case may be, either of the two years immediately preceding his application for registration, he has been in bona fide receipt in his own right in Nyasaland of an income of that amount; and in the computation of income—

(*a*) salary or wages and the value of any board and lodging provided for an employee by virtue of his employment, and in respect of which he is not liable for any payment or deduction from his salary or wages, and any money which by virtue of his employment is paid to him in respect of his board and lodging, shall be included;

(*b*) in the case of income received from a profession, trade, business, undertaking or calling, regard shall be had only to net income,

that is to say, the amount that is left after deducting all outgoings and expenses wholly and exclusively incurred in the production of the income; and

(*c*) except as is provided in paragraph (*a*) of this subsection, regard shall be had only to cash income.

(4) A person shall be treated as the owner of immovable property of a specified value at the time of his application for registration if at that time he is the owner of immovable property in Nyasaland of that value; and for this purpose "owner" means, subject to the next following subsection, a person who holds the property (otherwise than as a trustee) or has a beneficial interest in the property—

(*a*) in fee simple; or

(*b*) as a lessee or tenant in possession under a lease, or an agreement for a lease, for a term of not less than one year, or under an annual tenancy, such lease, agreement or tenancy being registered in the Land Registry under the Land Registration Ordinance(a).

(5) Where immovable property—

(*a*) is held in trust for a person, that person shall be deemed to be the owner of the property to the extent of his beneficial interest;

(*b*) is beneficially owned by two or more persons as joint tenants they shall be deemed to be the owners of the property in equal undivided shares;

(*c*) is beneficially owned by two or more persons in undivided shares, each of them shall be deemed to be the owner of the property to the extent of his share; and

(*d*) is held by a mortgagor in possession, he shall be deemed to be the owner of the property.

(6) The value of any immovable property whether held in fee simple, or under a lease, an agreement for a lease, or an annual tenancy, shall, after deduction in respect of any encumbrance which has been created by the person applying for registration as a voter be taken to be—

(*a*) in the case of property within a municipality or township, the amount of its rateable value as assessed by the municipality or township;

(*b*) in the case of property outside a municipality or township, the amount which it would realise if at the time of the owner's application for registration as a voter it were sold in the open market by a willing seller to a willing buyer.

Married women.

58.—(1) For the purposes of this Part of this Order a wife who has not the requisite income or property qualification in her own right shall be deemed to have the same income, or to own immovable property of the same value, as her husband.

(2) Where a man is married under a system permitting of polygamy and has more than one wife, only the wife to whom he has been married for the longest period, or, if the system under which he is married recognizes any other wife to be the senior wife, only that other wife, shall be deemed to be his wife for the purpose of this section

(a) Laws of Nyasaland, 1957, c. 110.

Preservation of rights.

59. Notwithstanding the foregoing provisions of this Part of this Order, a person who has not all the qualifications required by those provisions for registration as a voter under either the lower or the higher franchise, but who—

(*a*) before the 1st day of January, 1961, was registered as a voter under the Legislative Council Ordinance(a); and

(*b*) before the commencement date was registered as a voter by virtue of regulations made under the Nyasaland (Electoral Provisions) Order in Council, 1960,

may be registered as a voter, under either the lower or the higher franchise, as the case may be, if he is ordinarily resident in Nyasaland on such date as may be prescribed by any law enacted under section 62 of this Order for the time being in force in Nyasaland and subject to such other conditions (if any) as may be so prescribed.

Constituencies.

60. Nyasaland shall be divided—

(*a*) for the purpose of electing the twenty members of the Legislative Council under the lower franchise, into constituencies which shall be known as the lower franchise constituencies, and in respect of which members shall be elected to the Council by the voters registered under the lower franchise;

(*b*) for the purpose of electing the eight members of the Legislative Council under the higher franchise, into constituencies which shall be known as the higher franchise constituencies, and in respect of which members shall be elected to the Council by the voters registered under the higher franchise.

Constituencies Commission.

61.—(1) For the purpose of reviewing from time to time the distribution of seats in the Legislative Council the Governor shall, not more than five years after the commencement date, and thereafter at intervals of not more than five years, appoint by instrument under the public seal a Constituencies Commission which shall consist of a chairman and two members, all of whom shall be selected by the Chief Justice.

(2) The Constituencies Commission shall review the boundaries of constituencies and shall, in performing their functions, have regard to such rules as may be specified in the instrument by which they are appointed, or as may be prescribed by any law enacted under section 62 of this Order for the time being in force in Nyasaland, and shall submit to the Governor a report either—

(*a*) showing the constituencies into which they recommend that Nyasaland should be divided in order to give effect to those rules; or

(*b*) stating that, in the opinion of the Commission, no alteration is required to be made in order to give effect to those rules.

(3) The Governor, by proclamation published in the Gazette, shall proclaim the names and the boundaries of each constituency as recommended by the Constituencies Commission from time to time.

Law as to elections.

62.—(1) Subject to the provisions of this Order, a law enacted under this Order may provide for the election of members of the Legislative Council, and in particular, and without prejudice to the generality of the foregoing power, may revoke any regulations made under the

(a) Laws of Nyasaland, 1957, c. 52.

Nyasaland (Electoral Provisions) Orders in Council, 1960, or the next following subsection, and may provide for—

(*a*) the registration of voters;

(*b*) the ascertainment of the qualifications of candidates for election and voters;

(*c*) the division of Nyasaland into constituencies for the purpose of elections;

(*d*) the holding of elections;

(*e*) the determination of any question whether any person has become an elected member of the Legislative Council or whether the seat of any elected member in the Legislative Council has become vacant; and

(*f*) the definition and trial of offences connected with elections and the imposition of penalties therefor, including disqualification for membership of the Legislative Council, or for registration as a voter, or for voting at elections, of any person concerned in any such offence.

(2) Subject to the provisions of this Order, so long as any regulations made under the Nyasaland (Electoral Provisions) Orders in Council, 1960, are in force the Governor may amend them notwithstanding the revocation of those Orders.

PART VII

OFFICES AND THE PUBLIC SERVICE

Governor's powers to constitute and appoint to offices.

63.—(1) Subject to the provisions of any law for the time being in force in Nyasaland, the Governor, in his discretion, and in the name and on behalf of Her Majesty,—

(*a*) may constitute such offices as may lawfully be constituted by Her Majesty and may abolish any office so constituted; and

(*b*) may make appointments (including appointments on promotion and transfer) to any office so constituted.

(2) A person appointed to an office constituted under this section shall, unless it is otherwise provided by law, hold office during Her Majesty's pleasure.

Governor's powers to dismiss and discipline public officers.

64. Subject to the provisions of any law for the time being in force in Nyasaland, the Governor, in his discretion, may, for cause shown to his satisfaction, dismiss any public officer, or suspend him from performing the functions of his office, or take such other disciplinary action as may seem to him desirable.

Delegation of Governor's powers.

65.—(1) (*a*) Subject to the provisions of this subsection, the Governor, in his discretion, may delegate, in such manner and on such conditions as he may think fit, to any public officer any power conferred upon him by the two last foregoing sections to make appointments to public offices or to dismiss or exercise disciplinary control over public officers.

(*b*) The Governor shall not—

(i) delegate any such power unless he has obtained the consent of a Secretary of State to do so;

(ii) delegate any such power with respect to officers whose annual emoluments exceed such sum as may be prescribed by a Secretary of State.

(c) For the purposes of this subsection the emoluments of an officer shall (whether or not he is employed on terms that include eligibility for pension) include only such emoluments as, under the law for the time being in force in Nyasaland relating to pensions, are taken into account in computing pensions.

(3) If any law in force in Nyasaland immediately before the commencement date confers on any public officer any power to appoint, promote, transfer, dismiss, or exercise disciplinary control over, other officers in the public service, that power shall be deemed to have been delegated to that officer by the Governor under this section, and shall be exercisable by that officer until it is revoked by the Governor or until the provision conferring it has been repealed or revoked.

Public Service Commission.

66.—(1) There shall be for Nyasaland a Public Service Commission, which shall consist of a chairman and such number of other members as may be prescribed by regulations made under section 69 of this Order.

(2) The Governor, in his discretion, shall appoint the members of the Public Service Commission, and may revoke the appointment of any member.

(3) No person shall be appointed, or shall remain, a member of the Public Service Commission if he is, or becomes, a member of the Legislative Council other than the Speaker, or if he holds, or is acting in, any public office.

Public Service Commission to advise Governor.

67.—(1) The Governor, in his discretion, may either generally or specially and in whatever manner he thinks fit, refer to the Public Service Commission for their advice any question which relates to the appointment, promotion, transfer, dismissal or disciplinary control of public officers, and any other question which, in his opinion, affects the public service:

Provided that the Governor shall not refer to the Commission any question which, in his opinion, affects solely the police force or any member of it.

(2) It shall be the duty of the Public Service Commission to advise the Governor on any question which he refers to them under this section, but the Governor shall not be obliged to act in accordance with their advice.

Public Service Commission to advise other officers.

68.—(1) The Governor, in his discretion, and in whatever manner he thinks fit, may require or permit any public officer to whom he delegates, or is deemed to have delegated, any power under section 65 of this Order, to refer to the Public Service Commission for their advice, on such conditions as he may prescribe, any question relating to the exercise of that power.

(2) It shall be the duty of the Public Service Commission to advise any public officer on any question which he refers to them in accordance with the provisions of this section; and, in any case in which he is required by the Governor to refer any question to the Commission for their advice, he shall act in accordance with the advice given to him by the Commission unless the Governor authorizes him to act otherwise.

Regulations regarding Public Service Commission.

69. Subject to the provisions of this Order, the Governor, in his discretion, may make regulations for giving effect to the provisions of sections 63 to 68 inclusive of this Order, and in particular and without prejudice to the generality of the foregoing power may by such regulations provide for all or any of the following matters relating to the Public Service Commission :—

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

(*b*) the organization of the work of the Commission ;

(*c*) grounds of disqualification for membership of the Commission ;

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

(*e*) the appointment, tenure of office and terms of service of staff to assist the Commission in performing their functions ;

(*f*) the delegation to any member of the Commission of all or any of the functions of the Commission ;

(*g*) the protection and privileges of members of the Commission in performing their functions, and the privilege in legal proceedings of communications to and from the Commission or members of the Commission ; and

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

Provided that no such penalty shall exceed a fine of two hundred pounds and imprisonment for a term of one year.

Police Service Commission.

70.—(1) There shall be for Nyasaland a Police Service Commission, which shall consist of a chairman and such number of other members as may be prescribed by regulations made under section 69 of this Order as applied by section 72 of this Order.

(2) The Governor, in his discretion, shall appoint the members of the Police Service Commission, and may revoke the appointment of any member.

(3) No person shall be appointed, or shall remain, a member of the Police Service Commission if he is, or becomes, a member of the Legislative Council other than the Speaker, or if he holds, or is acting in, any public office.

Police Service Commission to advise Governor.

71.—(1) The Governor, in his discretion, may either generally or specially and in whatever manner he thinks fit, refer to the Police Service Commission for their advice—

(*a*) any question which relates to the appointment, promotion, dismissal or disciplinary control of members of the police force of and above the rank of assistant inspector ;

(*b*) any question which relates to the dismissal or disciplinary control of members of the police force below the rank of assistant inspector and in respect of which, under any law for the time being in force in Nyasaland,—

(i) an appeal has been made to the Governor from a decision of the Commissioner of Police ; or

(ii) a decision of the Commissioner of Police has been referred to the Governor for his sanction or confirmation ; and

(*c*) any other question which, in his opinion, affects the police force.

(2) It shall be the duty of the Police Service Commission to advise the Governor on any question which he refers to them under this section, but the Governor shall not be obliged to act in accordance with their advice.

Application of sections 68 and 69 to Police Service Commission.

72. Sections 68 and 69 of this Order shall apply in relation to the Police Service Commission as if references in those sections to the Public Service Commission were references to the Police Service Commission and as if in section 69 for the words "sections 63 to 68 inclusive" there were substituted the words "sections 70 and 71".

Salaries, allowances and conditions of service of members of Public Service Commission and Police Service Commission.

73.—(1) There shall be charged on the revenues of Nyasaland and paid thereout to members of the Public Service Commission and the Police Service Commission such salaries and allowances as the Governor, in his discretion, may prescribe by order under his hand.

(2) The salary and allowances of a member of the Public Service Commission or the Police Service Commission shall not be reduced, nor shall his conditions of service be made less favourable to him, after his appointment.

(3) Nothing in this section shall prevent the reduction, if the cost of living falls, of a cost of living allowance payable to a member of the Public Service Commission or the Police Service Commission.

PART VIII
THE JUDICATURE
The High Court

High Court.

74.—(1) There shall be a High Court for Nyasaland and, subject to the provisions of this Part of this Order, the judges of the High Court shall be a Chief Justice, who shall be President of the Court, and such number of Puisne Judges as may from time to time be appointed under the next following section.

(2) The High Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of any judge of that Court.

Appointment of judges.

75.—(1) The Chief Justice and Puisne Judges of the High Court shall be appointed by the Governor, by instrument under the public seal, in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(2) (*a*) A person shall not be qualified to be appointed 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 Her Majesty's dominions or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court; or

(ii) he is qualified to practise as an advocate in any such court, and has been qualified for not less than five years to practise as an advocate or solicitor in any such court.

(*b*) For the purposes of this subsection a person shall be treated as qualified to practise as an advocate or solicitor in any such court during any period in which, after becoming so qualified, he holds or acts in any office the holder of which is precluded from so practising, being an office under the government of, or connected with a court in, some part of Her Majesty's dominions or the Republic of Ireland.

Retirement and resignation of judges.

76.—(1) Subject to the provisions of this Part of this Order, a judge of the High Court shall hold office until he attains the age of sixty-two years:

Provided that the Governor, in his discretion, may permit a judge to continue in office beyond the age of sixty-two years for a period which does not exceed, or for consecutive periods which do not in the aggregate exceed, three years.

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

(3) No office of judge of the High Court shall be abolished while there is a substantive holder of the office.

Removal of judges.

77.—(1) A judge 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 any other cause) or for misbehaviour, and shall not be removed except in accordance with the next following subsection.

(2) A judge of the High Court shall be removed from office by the Governor by order under the public seal if the question of removing him from office has, at the request of the Governor, made in pursuance of the next following subsection, 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.

(3) 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 by order under the public seal (which he may vary or revoke by another such order) 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 in some part of Her Majesty's dominions 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 removing the 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.

(4) Subject to the provisions of the last foregoing subsection, the provisions of the Commissions of Inquiry Ordinance(b), as in force on the commencement date, shall apply in relation to a tribunal appointed by an order made under that subsection 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.

(5) If the question of removing a judge of the High Court from office has been referred to a tribunal under subsection (3) of this section the Governor may suspend the judge from performing the functions

(a) 3 & 4 Will. 4. c. 41. (b) Laws of Nyasaland, 1957, c. 46.

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 removing 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.

(6) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

Acting Chief Justice.

78. 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, in his discretion, may by instrument under the public seal appoint for that purpose:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-two years.

Acting Puisne Judge.

79.—(1) If the office of a Puisne Judge is vacant, or if a Puisne 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, in his discretion, and after consultation with the Chief Justice, may by instrument under the public seal appoint a person qualified for appointment as a judge of the High Court to act as a Puisne Judge:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-two years.

(2) A person appointed under this section to act as a Puisne Judge shall hold office until—

(*a*) the Governor, in his discretion, and after consultation with the Chief Justice, revokes his appointment; or

(*b*) he resigns his office by writing under his hand addressed to the Governor.

Oaths to be taken by judges.

80. Before assuming the functions of his office, every judge of the High Court shall make before the Governor, or some person authorized by the Governor in that behalf, oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the Second Schedule to this Order.

Salaries, allowances and conditions of service of judges.

81.—(1) There shall be charged on the revenues of Nyasaland and paid thereout to judges of the High Court and to any person appointed to act as a judge of that Court, such salaries and allowances as the Governor, in his discretion, may prescribe by order under his hand.

(2) The salary and allowances of a judge of the High Court, or of any person appointed to act as a judge of that Court, shall not be reduced, nor shall his pension rights and other conditions of service be made less favourable to him, after his appointment.

(3) Nothing in this section shall prevent the reduction, if the cost of living falls, of a cost of living allowance payable to a judge of the High Court, or to any person appointed to act as a judge of that Court.

Jurisdiction of the High Court and subordinate courts

Jurisdiction of High Court.

82.—(1) The High Court shall be a court of record and shall have within Nyasaland unlimited original jurisdiction in civil and criminal matters and such appellate and revisional jurisdiction (including jurisdction to determine reserved questions of law and cases stated) as may be prescribed by any law for the time being in force in Nyasaland.

(2) The High Court shall be a Court of Admiralty and shall exercise Admiralty jurisdiction in Nyasaland in all matters arising upon any lake or navigable inland waters or otherwise relating to ships and shipping.

(3) The following provisions of the Colonial Courts of Admiralty Act, 1890, that is to say, subsections (2) to (4) of section 2, sections 5 and 6 and subsection (3) of section 16, shall apply to the High Court in relation to Nyasaland as if in those provisions the High Court were mentioned in lieu of a Colonial Court of Admiralty, and Nyasaland were mentioned in lieu of a British possession.

Application of English law etc. by High Court and subordinate courts.

83.—(1) Subject to the provisions of this Order and of any law for the time being in force in Nyasaland, the civil and criminal jurisdiction of the High Court and of courts subordinate to the High Court shall, so far as circumstances admit, be exercised in conformity with—

(*a*) the statutes of general application in force in England on the 11th day of August, 1902, and

(*b*) the substance of the English common law and doctrines of equity,

and with the powers vested in and according to the course of procedure and practice observed by and before courts of justice and justices of the peace in England.

(2) In cases in which all the parties are Africans of Nyasaland, that is to say, members of a tribe or race of Africa which ordinarily resides in Nyasaland, or persons who ordinarily reside in Nyasaland as members of such a tribe or race, the civil and criminal jurisdiction of the High Court and of courts subordinate to the High Court shall, until a law enacted under this Order otherwise provides, be exercised in accordance with the provisions of Article 20 of the British Central Africa Order in Council, 1902(a), notwithstanding the revocation of that Order.

Application of certain enactments to Nyasaland.

84.—(1) The following enactments shall extend to Nyasaland as if Nyasaland were a British Colony or possession, but subject to the provisions of this Order and to the exceptions, adaptations and modifications mentioned in this section:—

(*a*) the Admiralty Offences (Colonial) Acts, 1849 and 1860(b);

(*b*) the Evidence Act, 1851, sections 7 and 11(c);

(*c*) the Foreign Tribunals Evidence Act, 1856(d);

(*d*) the Evidence by Commission Acts, 1859 and 1885(e);

(a) S.R. & O. 1902/663 (Rev. VIII, p. 222: 1902, p. 120).
(b) 12 & 13 Vict. c. 96 and 23 & 34 Vict. c. 122.
(c) 14 & 15 Vict. c. 99.
(d) 19 & 20 Vict. c. 113.
(e) 22 Vict. c. 20 and 48 & 49 Vict. c. 74.

(*e*) the British Law Ascertainment Act, 1859(a);

(*f*) the Foreign Law Ascertainment Act, 1861(b);

(*g*) the Conveyancing (Scotland) Act, 1874, section 51(c);

(*h*) the Fugitive Offenders Act, 1881(d);

(*i*) the Merchant Shipping Act, 1894, Part XIII(e).

(2) References in any of the said enactments to—

(*a*) the Governor of a Colony or British possession;

(*b*) a Superior Court or Supreme Court in a Colony or British possession; and

(*c*) a magistrate or justice of the peace of a Colony or British possession,

shall be construed respectively as references to the Governor, the High Court, and a magistrate holding a subordinate court of the first class.

(3) In section 51 of the Conveyancing (Scotland) Act, 1874, and any enactment for the time being in force amending or replacing that section, the High Court is substituted for a Court of Probate in a Colony.

(4) Where under the Merchant Shipping Act, 1894, or any Act amending or replacing that Act, anything is authorized to be done by, to or before a British Consular Officer, that thing may be done in Nyasaland by, to or before such public officer as the Governor may appoint.

(5) With respect to the Fugitive Offenders Act, 1881,—

(*a*) so much of sections 4 and 5 of the Act as relates to sending a report of the issue of a warrant, together with the information or a copy thereof, or to the sending of a certificate of committal and report of a case, or to the information to be given by a magistrate to a fugitive, shall be excepted, and in lieu of such information the person acting as the magistrate shall inform the fugitive that in the territory to which he may be conveyed he has the right to apply for a writ of habeas corpus or other like process;

(*b*) so much of section 6 of the Act as requires the expiration of fifteen days before the issue of warrant shall be excepted;

(*c*) the Governor shall not be bound to return a fugitive offender to a British possession unless satisfied that the proceedings to obtain his return are taken with the consent of the Governor of that possession; and

(*d*) for the purposes of Part II of the Act, Kenya, Tanganyika, the Uganda Protectorate, Zanzibar and all British possessions and protectorates in Africa south of the Equator shall be deemed to be one group of British possessions.

PART IX

MISCELLANEOUS

Division of Nyasaland into provinces or districts.

85. The Governor may, by proclamation, divide Nyasaland into provinces or districts in such manner and with such sub-divisions as may be convenient for the purposes of administration, describing the boundaries thereof and assigning names thereto.

(a) 22 & 23 Vict. c. 63. (b) 24 & 25 Vict. c. 11. (c) 37 & 38 Vict. c. 94.
(d) 44 & 45 Vict. c. 69. (e) 57 & 58 Vict. c. 60.

Governor's powers with respect to land.

86.—(1) All public land (as defined in the Nyasaland Protectorate (African Trust Land) Order in Council, 1950(a), as from time to time amended or replaced) shall vest in the Governor in trust for Her Majesty subject to any rights and interests which, before the commencement date, have by or under any Order in Council or any other law for the time being in force in Nyasaland, or otherwise, been granted to, or recognized as vested in, any other person.

(2) All rights in respect of minerals and mineral oils on or under any land which is not—

(*a*) public land, or

(*b*) African trust land (as defined in the said Order, as from time to time amended or replaced),

shall vest in the Governor in trust for Her Majesty unless, before the commencement date, they have by or under any Order in Council or any other law for the time being in force in Nyasaland, or otherwise, been granted to, or recognized as vested in, any other person.

(3) Subject to the provisions of any Order in Council or any other law for the time being in force in Nyasaland, the Governor, in Her Majesty's name and on Her Majesty's behalf, may, in his discretion, make and execute grants, leases or other dispositions of public land.

(4) (*a*) The powers conferred upon the Governor by this section may be exercised on behalf of the Governor by any person so authorized, whether by name or by reference to an office, by the Governor by notice published in the Gazette.

(*b*) Any such authority shall be subject to such conditions and restrictions (if any) as may be specified in the notice by which it is conferred, and may be varied or revoked by the Governor by notice published in the Gazette.

Public seal.

87. The Governor shall keep and use the public seal for sealing all things whatsoever that shall pass the said seal.

Governor's powers of pardon, etc.

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

(*a*) grant to any person concerned in the commission of any offence for which he may be tried in Nyasaland or to any person convicted of an offence in any court in Nyasaland 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 sentence passed on that person in any court in Nyasaland;

(*c*) substitute a less severe form of punishment for that imposed by any sentence of any such court; or

(*d*) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence in respect of which a person has been convicted by any court in Nyasaland.

(2) The powers conferred upon the Governor by this section shall, subject to any Instructions addressed to him under Her Majesty's Sign Manual and Signet, be exercised by him in his discretion.

(a) S.I. 1950/1183 (1950 II, p. 156).

89. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office— Concurrent appointments.

(*a*) another person may be appointed substantively to that office;

(*b*) that person shall, for the purpose of any function attaching to that office, be deemed to be the sole holder of that office.

PART X

TRANSITIONAL PROVISIONS

90.—(1) In the formulation of policy and in the exercise of his powers between the commencement date and the coming into operation of Part III of this Order the Governor shall consult the existing Executive Council as if it were the Executive Council established by Part III of this Order, and as if sections 9 and 10 of this Order were in operation. Executive Council.

(2) The existing Executive Council shall cease to exist on the coming into operation of Part III of this Order.

91.—(1) Any appointment subsisting immediately before the commencement date of a person to hold the office of Governor, a judge of the High Court, or the Speaker of the Legislative Council, or to hold any other office constituted under or by virtue of the Orders set out in the First Schedule to this Order shall have effect as if it had been made under or by virtue of this Order. Existing appointments.

(2) A person to whom the last foregoing subsection applies who, before the commencement date, has made the oaths or affirmations required to be made by him before assuming the functions of his office shall not be required to make an oath or affirmation under this Order.

92.—(1) All proceedings commenced or pending immediately before the commencement date before the High Court shall be carried on before the High Court established by this Order. High Court proceedings and rules of court.

(2) The Chief Justice, until a law enacted under this Order otherwise provides, may amend, revoke or replace any rules of court made under Article 22 of the British Central Africa Order in Council, 1902.

93.—(1) The Governor may, by order published in the Gazette, at any time within twelve months after the commencement date, provide that any existing law shall be read and construed with such adaptations and modifications as may appear to the Governor 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; and any existing law shall have effect accordingly from such date as may be specified in the order, not being a date earlier than the commencement date. Adaptation of existing laws.

(2) In this section "existing law" means a law in force immediately before the commencement date that was enacted by the legislature of

Nyasaland and includes any instrument in force as aforesaid and made in exercise of a power conferred by a law of the legislature of Nyasaland.

(3) An order made under this section may be revoked or amended by a further order so made or, in relation to any law or instrument affected thereby, by the authority having power to repeal, revoke or amend that law or instrument.

W. G. Agnew.

Section 1 (3).

FIRST SCHEDULE

Orders in Council Revoked

The British Central Africa Order in Council, 1902	(a)
The Nyasaland Order in Council, 1907 (No. 2)	
The Nyasaland Order in Council, 1912	
The Nyasaland Order in Council, 1947	
The Nyasaland Order in Council, 1949	
The Nyasaland Order in Council, 1907	(b)
The Nyasaland Order in Council, 1926	
The Nyasaland Order in Council, 1955	
The Nyasaland (No. 2) Order in Council, 1955	
The Nyasaland Order in Council, 1956	
The Nyasaland (No. 2) Order in Council, 1956	
The Nyasaland Order in Council, 1939(c)	
The Nyasaland (Electoral Provisions) Order in Council, 1960	(d)
The Nyasaland (Electoral Provisions) (Amendment) Order in Council, 1960	

Sections 3 (3), 4 (2), 14, 38 and 80.

SECOND SCHEDULE

Forms of Oaths and Affirmations

1. *Oath of Allegiance*

I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. *Affirmation of Allegiance*

I ..... do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. *Oath for due execution of office*

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (*here insert the description of the office*). So help me God.

4. *Affirmation for due execution of office*

I ..... do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (*here insert the description of the office*).

(a) S.R. & O. 1902/663, 1907/1041, 1912/86, 1947/2741 (Rev. VIII, p. 222: 1902, p. 120; 1907, p. 175; 1912, p. 161; 1947 I, p. 798); S.I. 1949/1051 (1949 I, p. 1861).
(b) S.R. & O. 1907/541, 1926/1158 (Rev. VIII, p. 230: 1907, p. 169; 1926, p. 573); S.I. 1955/552, 1212, 1956/231, 834 (1955 II, pp. 2212, 2213; 1956 II, pp. 1992, 1993).
(c) S.R. & O. 1939/291 (Rev. VIII, p. 234: 1939 II, p. 1650).
(d) S.I. 1960/2210, 2414 (1960 III, pp. 2908, 2910).

EXPLANATORY NOTE

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

This Order revokes the Orders set out in the First Schedule and makes new provision for Nyasaland with respect to the Governor, the Executive Council and the Legislative Council. It provides for the constituencies for which elected members of the Legislative Council are to be returned and for the qualifications of those members and of the voters who will elect them. It also provides for the public service, and for the setting up of advisory Public Service and Police Service Commissions. It reconstitutes the High Court and provides for the jurisdiction of the High Court and subordinate courts. Finally, it contains certain miscellaneous and transitional provisions.