STATUTORY INSTRUMENTS

1963 No. 883

RHODESIA AND NYASALAND FEDERATION

The Nyasaland (Constitution) Order in Council 1963

Made - - - -	*2nd May* 1963
Laid before Parliament	*8th May* 1963
Coming into Operation—	
Sections 1 *and* 5(2) *of the Order* -	*9th May* 1963
Sections 25(2), 26, 74(2), 75, 76 *and* 77 *of the Constitution* - - -	*As provided in section* 1 (3)
Remainder - -	*On a day to be appointed under section* 1 (2)

At the Court at Buckingham Palace, the 2nd day of May 1963

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act 1890(a), 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 and commencement.

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

(2) Except as provided in subsection (3) of this section, this Order shall come into operation on such day as may be appointed by the Governor, acting in his discretion, by Proclamation published in the Gazette, which day shall not be earlier than 9th May 1963.

(3) This section and section 5(2) of this Order shall come into operation on 9th May 1963, sections 25(2) and 26 of the Constitution shall come into operation on the day upon which the Legislative Assembly first sits following the first dissolution of the Assembly after the appointed day, and sections 74(2), 75, 76 and 77 of the Constitution shall come into operation on such day, after the appointed day, as may be appointed by the Governor, acting in his discretion, by notice published in the Gazette.

Interpretation.

2.—(1) In this Order—

"the appointed day" means the day appointed by the Governor under section 1(2) of this Order;

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

"the existing Orders" means the Nyasaland (Constitution) Order in Council 1961(a) and the Nyasaland (Constitution) (Amendment) Order in Council 1963(b);

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

(2) References in this Order to "the Governor" shall be construed, in relation to any period before the appointed day, as references to the person holding the office of Governor constituted by the existing Orders or, to the extent of his authority, to any person who is for the time being authorised to perform the functions of that office.

(3) Unless the context otherwise requires, the expressions in sections 1 to 21 (inclusive) of this Order have the same meanings as in the Constitution and the provisions of section 96 of the Constitution shall apply for the purpose of interpreting those sections as they apply for interpreting the Constitution.

Revocations.

3. The provisions of the existing Orders, other than sections 82(2), 82(3), 84 and 86 of the Nyasaland (Constitution) Order in Council 1961, are revoked.

Establishment of Constitution.

4. Subject to the provisions of this Order, the provisions of the Constitution set out in the Schedule to this Order shall have effect in Nyasaland.

Existing laws.

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

(2) (*a*) The Governor may by order made at any time before 1st November 1963 make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(*b*) An order by the Governor under this subsection shall have effect from such date, not being earlier than the appointed day, as may be specified therein.

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

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

(5) For the purposes of this section, the expression "the existing laws" means all Ordinances, laws, rules, regulations, orders and other instruments made in pursuance of, or kept in force by, the existing

(a) S.I. 1961/1189 (1961 II, p. 2218). (b) S.I. 1963/175 (1963 I, p. 164).

Orders and having effect as part of the law of Nyasaland or any part thereof immediately before the appointed day.

Existing offices.

6.—(1) Where any office has been established by or under the existing Orders or any existing law and the Constitution establishes a similar or an equivalent office any person who, immediately before the appointed day, holds or is acting in the former office shall, so far as is consistent with the provisions of this Order, be deemed as from the appointed day to have been appointed to hold or to act in the latter office in accordance with the provisions of this Order and to have taken any necessary oath under this Order:

Provided that unless the Legislature of Nyasaland otherwise provides, any person who under the existing Orders or any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age.

(2) The provisions of this section shall be without prejudice to any powers conferred by or under this Order upon any person or authority to make provision for the abolition of offices and the removal of persons holding or acting in any office.

(3) In this section "existing law" means such a law as is referred to in section 5(5) of this Order.

Fundamental rights and freedoms.

7. Until the expiration of a period of two years commencing with the appointed day, nothing contained in any law made before the appointed day shall be held to be inconsistent with any of the provisions of section 9, 10, 11, 12 or 13 of the Constitution, and until the expiration of that period nothing done under the authority of any such law shall be held to be done in contravention of those sections.

Financial Secretary.

8.—(1) There shall be a Financial Secretary, whose office shall be a public office.

(2) The Financial Secretary shall be a member of the Legislative Assembly in addition to the members of the Assembly for whom provision is made by section 25 of the Constitution.

(3) There shall be an office of Minister of Finance which shall be deemed to be one of the offices established under section 53(2) of the Constitution and shall be held by the Financial Secretary.

(4) Nothing in section 35 of the Constitution shall apply in relation to the seat in the Legislative Assembly of the Financial Secretary and nothing in section 53(3) or 54 of the Constitution shall apply in relation to the office of Minister held by the Financial Secretary.

(5) The Minister of Finance shall have responsibility for the conduct (subject to the provisions of the Constitution or any other law) of the business of the Government of Nyasaland relating to financial matters and for the administration of the departments of Government dealing with those matters and, accordingly, such responsibility shall not be assigned to any other Minister.

(6) In this section "financial matters" means the financial and economic policy of the Government of Nyasaland, the appropriation of public money, taxation and the administration of public funds.

(7) The provisions of this section shall cease to have effect on such day as may be appointed by the Governor, acting after consultation with the Prime Minister and with the approval of a Secretary of State, by notice in the Gazette.

Appointment of Ministers.

9. Until the day appointed under section 8(7) of this Order section 53(3) of the Constitution shall have effect as if in paragraph (*a*) of the proviso to that subsection for the word " three " there were substituted the word " two ".

Special legislative powers of Governor with respect to finance.

10.—(1) Where the Governor considers it to be necessary or expedient to do so for the purpose of maintaining or securing the financial or economic stability of Nyasaland or for securing that a condition attached to a financial grant made by the United Kingdom Government to the Nyasaland Government is complied with, he may exercise any of the following powers—

(*a*) send, by message, to the Legislative Assembly a draft of a Bill or motion;

(*b*) require, by the same or a later message, that the Bill or motion should be introduced or moved, not later than such date as he may specify;

(*c*) if the Assembly fail to pass any Bill introduced, or to carry any motion proposed, in the Legislative Assembly (whether introduced or proposed in pursuance of the provisions of this subsection or otherwise) within such time and in such form as he considers reasonable or expedient declare that such Bill or motion shall have effect as if it had been passed or carried by the Assembly, 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 Assembly, including any committee thereof.

(2) Where a requirement by the Governor under subsection (1)(*b*) of this section is not complied with the Bill or motion to which the message relates shall be deemed for all purposes to be introduced or moved in the Legislative Assembly on the date specified in the message.

(3) Where the Governor makes a declaration with respect to a Bill or motion under subsection (1)(*c*) of this section the following provisions shall apply—

(*a*) the Bill or motion shall be deemed to have been passed or carried by the Legislative Assembly with effect from the date of the declaration;

(*b*) the Governor shall forthwith report the making of the declaration to a Secretary of State together with his reasons for so acting;

(*c*) any member of the Assembly may, within seven days of the making of the declaration, submit to the Governor a statement in writing of his objection to the declaration and the 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;

(*d*) if the declaration relates to a motion the declaration may be revoked by a Secretary of State or, if the declaration relates to a Bill and the Bill has become a law, that law may be disallowed by Her Majesty through a Secretary of State.

(4) Where a declaration relating to a motion is revoked under subsection (3)(*d*) of this section the Governor shall cause notice of the revocation to be published in the Gazette and from the date of such publication the motion shall cease to have effect and section 38(2) of the Interpretation Act 1889(a) shall apply to the revocation as it applies to the repeal of an Act of Parliament; and where a law is disallowed under subsection (3)(*d*), of this section, the provisions of section 49(2) and (3) of the Constitution shall apply as if the law had been disallowed under subsection (1) of that section.

(5) The powers of the Governor under subsections (1), (3) and (4) of this section shall be exercised in his discretion.

(6) This section shall cease to have effect on such day as may be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

Special executive powers of Governor with respect to finance.

11. Until the day appointed under section 10(6) of this Order—

(*a*) section 47(2) of the Constitution shall have effect as if the following paragraph were included as paragraph (*e*) thereof—

"(*e*) to be prejudicial to the financial or economic stability of Nyasaland or inconsistent with any condition attached to a financial grant made by the United Kingdom Government to the Nyasaland Government;"

(*b*) section 48 of the Constitution shall have effect as if there were inserted, after the word "Governor", the words "acting in his discretion";

(*c*) section 59(4) of the Constitution shall have effect as if there were inserted, after the words "under section 57 of this Constitution", the words "or for the purpose of maintaining or securing the financial or economic stability of Nyasaland or for the purpose of ensuring that any condition attached to a financial grant made by the United Kingdom Government to the Nyasaland Government is complied with".

Legislative measures relating to conditions of service of public officers.

12.—(1) Where the Governor considers it to be necessary or expedient to do so for the purpose of securing or maintaining satisfactory terms and conditions of service (including salary, allowances, leave and passages) for any overseas officer he may exercise any of the powers described in section 10(1) of this Order and the provisions of sections 10(2), 10(3), 10(4) and 10(5) of this Order shall apply in relation to the exercise by the Governor of those powers in such a case.

(2) Except upon the recommendation of the Governor, acting in his discretion, the Legislative Assembly shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding in the Assembly, would effect any alteration in the salary, allowances or conditions of service (including leave and passages) of any overseas officer;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision should be made for effecting such an alteration.

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

(a) 52 & 53 Vict. c. 63.

(4) This section shall cease to have effect on such day as may be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

Special executive powers of Governor with respect to public service.

13.—(1) Until the day appointed under section 12(4) of this Order—

(*a*) power to appoint overseas officers to hold or act in any office in the public service to which section 73, 82 or 88 of the Constitution applies, and to exercise disciplinary control over and remove overseas officers from any such office shall, notwithstanding anything in the Constitution, vest in the Governor, acting after consultation with the appropriate service Commission;

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

(*c*) section 47(2) of the Constitution shall have effect as if the following paragraph were included as paragraph (*f*) thereof—

"(*f*) to affect prejudicially the salary, allowances or conditions of service (including leave and passages) of any overseas officer";

(*d*) section 81(2) of the Constitution shall have effect as if there were substituted for the words "acting in accordance with the advice of the Prime Minister" the words "acting after consultation with the Prime Minister";

(*e*) section 92(1) of the Constitution shall have effect as if there were inserted after the words "appropriate Commission" the words "or, in the case of pensions benefits in respect of the service of any person who immediately before he ceased to be a public officer was an overseas officer, the Governor, acting in his discretion";

(*f*) section 92(2) of the Constitution shall have effect as if there were inserted after the words "appropriate Commission" the words "or, if that person was an overseas officer immediately before he ceased to be a public officer, the Governor, acting in his discretion".

(2) In this section—

"appropriate service Commission" means in relation to appointments to an office to which section 73 of the Constitution applies or to the removal or disciplinary control of a person holding or acting in such an office the Judicial Service Commission, in relation to appointments to an office to which section 82 of the Constitution applies or to the removal or disciplinary control of a person holding or acting in such an office, the Public Service Commission, and in relation to appointments to an office to which section 88 of the Constitution applies and to the removal or disciplinary control of a person holding or acting in such an office, the Police Service Commission;

"overseas officer" has the meaning assigned to it in section 12(3) of this Order.

Speaker and members of Legislative Assembly.

14.—(1) Until sections 25(2) and 26 of the Constitution come into operation—

(*a*) the composition of the Legislative Assembly shall include a Speaker, in addition to the members of the Assembly;

(*b*) the Speaker shall be appointed by the Governor, acting in his discretion, by instrument under the Public Seal from among persons who are not Ministers, members of the Legislative Assembly or public officers;

(*c*) 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 Assembly but he 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, with his consent, he is nominated as a candidate for election to the Assembly; or

(iii) if he is appointed to be a Minister or to a public office;

(*d*) there shall be charged on the revenues of Nyasaland and paid thereout to the Speaker such salary and allowances as the Governor, acting in his discretion, may by writing under his hand prescribe;

(*e*) a person who holds the office of Speaker shall not be regarded as a member of the Legislative Assembly for the purposes of section 81(3) of the Constitution.

(2) The persons who, immediately before the appointed day, are elected members of the Legislative Assembly constituted by the existing Orders shall, as from the appointed day, be deemed to have been elected to the Legislative Assembly constituted by the Constitution to represent the same constituencies as the constituencies for which they were respectively elected under the provisions of the existing Orders, and shall hold their seats in the Assembly in accordance with the provisions of the Constitution.

(3) The Legislative Assembly constituted by the Constitution shall, unless sooner dissolved, stand dissolved on the day upon which the Legislative Council constituted by the Nyasaland (Constitution) Order in Council 1961 would have been required to be dissolved under the provisions of section 51(2) of that Order.

Disqualification for membership of Legislative Assembly.

15. Until other provision is made under section 30(4) of the Constitution, a person shall be disqualified for membership of the Legislative Assembly if he holds or is acting in any such office or appointment as would, immediately before the appointed day, have disqualified him for election as a member of the Legislative Assembly constituted by the existing Orders.

Constituencies.

16. Until other provision is made under section 32 of the Constitution, the boundaries of the higher franchise constituencies and the lower franchise constituencies into which Nyasaland is divided by section 31 of the Constitution shall be the boundaries of the equivalent constituencies established by regulations made under the Nyasaland (Electoral Provisions) Orders in Council 1960(a) as in force immediately before the appointed day.

(a) S.I. 1960/2210, 2414 (1960 III, pp. 2908, 2910).

Rules of procedure of Legislative Assembly.

17. The rules and orders of the Legislative Assembly constituted by the existing Orders as in force immediately before the appointed day shall, until it is otherwise provided under section 44 of the Constitution, be the rules of procedure of the Legislative Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring those rules into conformity with the Constitution.

Courts.

18.—(1) Until the day appointed under section 12(4) of this Order the judges of the High Court constituted by the Constitution shall, notwithstanding anything in the Constitution, be appointed by the Governor in pursuance of instructions by Her Majesty given through a Secretary of State.

(2) Until such time as other provision is made by any competent authority—

(*a*) the High Court constituted by the Constitution and all other courts in Nyasaland shall possess the same jurisdiction and powers as were respectively possessed immediately before the appointed day by the High Court constituted by the existing Orders and by those other courts;

(*b*) that jurisdiction and those powers shall be exercised in conformity with the same law and according to the same practice as the law and practice which the High Court and those other courts are respectively required to conform with and observe immediately before the appointed day.

(3) Any proceedings pending immediately before the appointed day before the High Court, constituted by the existing Orders, may be continued before the High Court constituted by the Constitution.

(4) References in sections 82(2) and 82(3) of the Nyasaland (Constitution) Order in Council 1961 to the High Court shall be construed as references to the High Court constituted by the Constitution.

Remuneration of officers.

19. Until such time as other provision is made in that behalf by the Legislature of Nyasaland, there shall be paid to the holders of the offices to which section 78 of the Constitution applies salaries and allowances calculated at the same rate as the salaries and allowances paid immediately before the appointed day to the holders of the equivalent offices established by the existing Orders.

Director of Public Prosecutions.

20.—(1) Until such day as may be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State, a person may be appointed to the office of Director of Public Prosecutions for a fixed period and a person may be so appointed notwithstanding that he has attained the age prescribed for the purposes of section 84(1) of the Constitution.

(2) A person appointed to the office of Director of Public Prosecutions for a fixed period shall vacate his office at the expiration of that period instead of upon the attainment of the age prescribed for the purposes of section 84(1) of the Constitution.

Electoral regulations.

21. Any regulations made by the Governor under the Nyasaland (Electoral Provisions) Orders in Council 1960 and continued in force by section 5 of this Order shall have effect, from the appointed day, as if they were laws enacted by the Legislature of Nyasaland and may be amended or revoked accordingly.

W. G. Agnew.

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CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

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

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

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

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

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

Protection of right to life.

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

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

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

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

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

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

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

Protection of right to personal liberty.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any person who is arrested or detained—

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

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

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

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

Protection from slavery and forced labour.

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

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

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

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

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

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

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

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

Protection from inhuman treatment.

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

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

Protection from deprivation of property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

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

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

(i) enemy property;

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

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

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

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

Protection for privacy of home and other property.

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

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

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

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

(*c*) that authorises an officer or agent of the Government of Nyasaland, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be;

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

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

Provisions to secure protection of law.

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

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

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

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

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

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

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

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

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

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

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

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

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

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

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

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

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

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

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

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

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

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

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

(*b*) subsection (2)(*d*) of this section to the extent that the law in question prohibits legal representation in a court established by or under the Local Courts Ordinance(a);

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

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

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

(a) Ordinance No. 8 of 1962.

(14) In this section—

"criminal offence" means a criminal offence under the law in force in Nyasaland;

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

Protection of freedom of conscience.

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

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

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

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

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

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

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

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

Protection of freedom of expression.

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

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

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

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

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

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

Protection of freedom of assembly and association.

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

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

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

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

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

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

Protection of freedom of movement.

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

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

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

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

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

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

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

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

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to

general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

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

Protection from discrimination on the grounds of race, etc.

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

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

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

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

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

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

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

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

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

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

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

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

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

Provisions for periods of public emergency.

14.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939(a), as amended, shall be held to be inconsistent with or in contravention of section 3, 4(2), 7, 9, 10, 11, 12 or 13 of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorizes the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

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

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

Enforcement of protective provisions.

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

(2) The High Court shall have original jurisdiction—

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

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

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

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

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

(4) Where any provision of any law is held by a competent court to be inconsistent with any of the provisions of sections 1 to 14 (inclusive) of this Constitution any person detained in custody under that provision may, as of right, make application to a competent superior court for the purpose of questioning the validity of his further detention, notwithstanding that

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

he may previously have appealed against his conviction or sentence or that any time prescribed for the filing of such an appeal may have expired.

(5) The Legislature of Nyasaland may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

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

Interpretation and savings.

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

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

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

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

"disciplined force" means—

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

(*b*) the Nyasaland Police Force; or

(*c*) a police force established by law enacted by the Legislature of Nyasaland;

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

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

(*a*) Her Majesty is at war; or

(*b*) there is in force a Proclamation made by the Governor under the provisions of section 3 of the Emergency Powers Order in Council 1939, as amended, and published in the Gazette declaring that a state of public emergency exists.

(3) For the purposes of this Chapter a person shall be deemed to belong to Nyasaland if—

(*a*) he is a British subject or a British protected person and—

(i) was born in Nyasaland or of parents who at the time of his birth were ordinarily resident in Nyasaland;

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

(iii) has obtained the status of a British subject by reason of the grant by the Governor of Nyasaland of a certificate of naturalization under the British Nationality and Status of Aliens Act 1914(a) or the British Nationality Act 1948(b);

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

(a) 4 & 5 Geo. 5. c. 17. (b) 11 & 12 Geo. 6. c. 56.

(v) is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any of the foregoing subparagraphs applies ; or

(*b*) is a citizen of the Federation of Rhodesia and Nyasaland by virtue of his connection with Nyasaland.

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

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

CHAPTER II

THE GOVERNOR AND THE DEPUTY GOVERNOR

Establishment of office of Governor.

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

Oaths to be taken by Governor.

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

Powers and duties of Governor.

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

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

Establishment of office of Deputy Governor.

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

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

Succession to government.

21.—(1) Whenever the office of Governor is vacant or the Governor is absent from Nyasaland or is for any other cause prevented from or incapable of discharging the functions of his office—

(*a*) the Deputy Governor ; or

(*b*) if the office of Deputy Governor is vacant or the Deputy Governor is absent from Nyasaland or is for any reason unable to discharge the functions of his office, such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State,

shall, during Her Majesty's pleasure, discharge the functions of the office of Governor and administer the government of Nyasaland accordingly.

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

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

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

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

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

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

(*c*) when the Deputy Governor has entered upon the discharge of the functions of the office of Governor and so long as any direction given by the Deputy Governor under subsection (4) of this section is in force, he shall not be regarded as absent from Nyasaland or as unable to discharge the functions of the office of Governor by reason only that he is in passage to, or in, any place outside Nyasaland or in passage from that place to Nyasaland.

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

Discharge of Governor's functions by Deputy Governor.

22.—(1) The Governor, acting in his discretion, may, by writing under his hand, authorize the Deputy Governor to exercise for and on behalf of the Governor, subject to such exceptions and conditions as the Governor may from time to time specify, any or all of the functions of the office of Governor.

(2) The powers and authority of the Governor shall not be affected by any authority of the Deputy Governor under subsection (1) of this section otherwise than as Her Majesty may from time to time think proper to direct and the Deputy Governor shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of Governor as the Governor may from time to time address to him for his guidance.

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

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

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

(*b*) any functions conferred upon the Governor by any Act of Parliament or by any Order of Her Majesty in Council or other instrument made under any Act of Parliament other than the Order to which this Constitution is scheduled, the Emergency Powers Order in Council 1939 or any Order amending or replacing those Orders.

Personal staff and expenditure of Governor.

23.—(1) The offices on the personal staff of the Governor shall be the office of legal adviser to the Governor and such other offices as the Governor, acting after consultation with the Prime Minister, may, by order published in the Gazette, prescribe.

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

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

CHAPTER III

THE LEGISLATURE

PART I—*Composition*

Establishment of Legislature of Nyasaland.

24. There shall be a Legislature for Nyasaland which shall consist of Her Majesty and a Legislative Assembly.

Composition of Legislative Assembly.

25.—(1) The Legislative Assembly shall consist of twenty-eight members elected to the Assembly in accordance with the provisions of this Part of this Constitution.

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

Speaker.

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

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

(3) The Speaker shall vacate his office—

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

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

(*c*) if he is required, by virtue of section 36 of this Constitution, to cease to perform his functions as a member of the Assembly;

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

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

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

Deputy Speaker.

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

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

(3) The Deputy Speaker shall vacate his office—

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

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

(*c*) if he is required, by virtue of section 36 of this Constitution, to cease to perform his functions as a member of the Assembly;

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

(*e*) if he is removed from office by a resolution of the Assembly supported by the votes of two-thirds of all the members of the Assembly.

Right of attendance of Ministers.

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

Qualifications for membership of Legislative Assembly.

29.—(1) Subject to the provisions of section 30 of this Constitution, a person shall be qualified to be elected a member of the Legislative Assembly if, and shall not be qualified to be so elected unless, he—

(*a*) has attained the age of twenty-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 Assembly.

(2) For the purpose of subsection (1)(*d*) of this section 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 of Nyasaland or of the Legislative Assembly.

(3) A person shall not be qualified to be elected a member of the Legislative Assembly—

(*a*) for a higher franchise constituency, unless he is registered as a voter under the higher franchise;

(*b*) for a lower franchise constituency, unless he is registered as a voter under the lower franchise:

Provided that a person who is registered as a voter (whether under the higher franchise or under the lower franchise) and possesses the qualifications for registration as a voter under both those franchises may be elected a member of the Legislative Assembly for any constituency.

Disqualifications for membership of Legislative Assembly.

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

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

(*b*) 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 the Commonwealth 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 the Commonwealth, or is under a sentence of imprisonment (by whatever name called), imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(*f*) is detained under a detention order, or is subject to a control order or a restriction order.

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

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

(4) The Legislature of Nyasaland may provide that, subject to such exceptions and limitations (if any) as may be prescribed, any person shall be disqualified for election to the Legislative Assembly by virtue of—

(*a*) his holding or acting in any office or appointment that may be prescribed;

(*b*) his belonging to any armed forces of the Crown that may be prescribed; or

(*c*) his belonging to any police force.

Division of Nyasaland into constituencies.

31.—(1) For the purposes of the election of the members of the Legislative Assembly the whole of Nyasaland shall—

(*a*) be divided into eight higher franchise constituencies; and

(*b*) be divided into twenty lower franchise constituencies.

(2) The boundaries of the higher franchise constituencies and of the lower franchise constituencies shall be delimited from time to time by a Constituencies Commission appointed in accordance with section 32 of this Constitution.

(3) In the exercise of its functions under this section a Constituencies Commission shall comply with such general directions as may be specified in the instrument by which it is appointed and, subject thereto, by any law for the time being in force in Nyasaland.

Constituencies Commission.

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

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

(3) When a Constituencies Commission has been appointed, the Commission shall without delay proceed to delimit the boundaries of the constituencies in accordance with section 31 of this Constitution and shall as soon as is practicable, submit to the Governor a report which shall include—

(*a*) a list of the higher and lower franchise constituencies delimited by the Commission and a description of the boundaries of those constituencies;

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

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

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

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

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

Method of election.

33. Each of the constituencies into which Nyasaland is divided under sections 31 and 32 of this Constitution shall return one member to the Legislative Assembly, who shall be elected in such manner as may be prescribed by the Legislature of Nyasaland,—

(*a*) in the case of a higher franchise constituency, by the voters registered in that constituency under the higher franchise; and

(*b*) in the case of a lower franchise constituency, by the voters registered in that constituency under the lower franchise.

The franchise.

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

(*a*) (i) is a British subject or is 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 Personal Tax Ordinance(a), or any rules made thereunder, or is the wife or daughter of such an African;

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

(*c*) has been ordinarily resident at any place in Nyasaland, at any time, for a continuous period of two years; and

(*d*) is not disqualified for registration as a voter under the provisions of subsection (6) of this section.

(a) Ordinance No. 19 of 1962.

(2) A person shall not be qualified for registration as a voter under the higher franchise unless he possesses, in addition to the qualifications required by subsection (1) of this section, one of the qualifications specified in paragraph 1 of the Schedule to this Constitution.

(3) A person shall not be qualified for registration as a voter under the lower franchise unless he possesses, in addition to the qualifications required by subsection (1) of this section, one of the qualifications specified in paragraph 2 of the Schedule to this Constitution.

(4) A person who is qualified for registration as a voter under the higher franchise and as a voter under the lower franchise may be registered under either of those franchises at his choice, but he shall not be registered under both franchises.

(5)(*a*) A person shall be entitled to be registered as a voter—

(i) in the constituency in which, at the time of his application for registration, he is ordinarily resident, or carrying on a business or employed, or the owner of immovable property;

(ii) in the constituency in which he was born; or

(iii) in the constituency in which he or his father or his mother has a right of occupancy of any immovable property.

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

(6) No person shall be qualified to be registered as a voter under the higher franchise or as a voter under the lower franchise if—

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

(*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 the Commonwealth, or is under a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

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

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

(7) Any person who—

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

(*b*) was, before 1st July 1962, registered as a voter by virtue of regulations made under the Nyasaland (Electoral Provisions) Orders in Council 1960;

(*c*) is ordinarily resident in Nyasaland on such date as may be prescribed by any law for the time being in force in Nyasaland; and

(*d*) complies with such other conditions as may be so prescribed,

shall be deemed to possess the qualifications for registration as a voter under the higher franchise and as a voter under the lower franchise.

Tenure of office of members.

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

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

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

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

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

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

(*d*) if any circumstance arise that, if he were not a member of the Assembly, would cause him to be disqualified for election under section 30(1)(*a*), 30(1)(*b*), 30(1)(*c*), 30(1)(*d*), 30(2) or 30(4) of this Constitution; or

(*e*) in the circumstances mentioned in section 36 of this Constitution.

Vacation of seat on sentence, etc

36.—(1) Subject to the provisions of this section, if a member of the Legislative Assembly—

(*a*) is sentenced by a court in any part of the Commonwealth 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,

he shall, forthwith cease to perform his functions as a member of the Assembly, and his seat in the Assembly shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, 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 Assembly 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 Assembly shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Assembly.

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

Determination of questions as to membership of Legislative Assembly.

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

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

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

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

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

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

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

Interpretation.

38. In this Part of this Chapter—

(*a*) references to a sentence of imprisonment shall be construed as including a sentence of imprisonment the execution of which is suspended but not as including a sentence of imprisonment imposed in default of payment of a fine;

(*b*) references to a detention order, a control order or a restriction order are references to a detention order, control order or restriction order made under the Preservation of Public Security Ordinance 1960(a).

PART 2—*General Provisions Relating to Procedure*

Oath to be taken by Speaker and members.

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

Presiding in Legislative Assembly.

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

(*a*) the Speaker;

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

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

Quorum in Legislative Assembly.

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

Voting in Legislative Assembly.

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

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

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

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

Unqualified person sitting or voting.

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

Regulation of procedure in Legislative Assembly.

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

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

(a) Ordinance No. 1 of 1960.

PART 3—*Legislative Powers and Procedure*

Legislative powers.

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

Laws relating to privileges of Legislative Assembly.

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

Mode of exercising legislative power.

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

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

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

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

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

(*c*) to be repugnant to or inconsistent with this Constitution; or

(*d*) to be prejudicial to the public order and public safety of Nyasaland or to the discharge by the Governor of his responsibility under section 57 of this Constitution.

(3) The Governor shall, after a bill has been assented to, cause it to be published as a law.

(4) A bill duly passed shall become law on being assented to in accordance with this Constitution but no law shall come into force until it has been published, without prejudice, however, to the power of the Legislature of Nyasaland to postpone the operation of any law or to make laws with retrospective effect.

Restriction with regard to certain financial measures.

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

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

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

(ii) for the imposition of any charge upon the revenues or other public funds of Nyasaland or the alteration of any such charge otherwise than by reduction;

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

(iv) for the composition or remission of any debt due to the Government of Nyasaland;

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

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

Disallowance of laws.

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

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

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

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

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

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

PART 4—*Summoning, Prorogation and Dissolution*

Sessions of Legislative Assembly.

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

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

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

Prorogation and dissolution of Legislative Assembly.

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

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

Provided that—

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

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

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

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

(a) 63 & 64 Vict. c. 62.

CHAPTER IV

THE EXECUTIVE

Executive authority of Nyasaland.

52.—(1) The executive authority of Nyasaland shall vest in Her Majesty.

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

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

Appointment of Ministers.

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

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

Provided that—

(*a*) the number of such Ministers shall not exceed nine or such greater number as the Governor, in pursuance of instructions of Her Majesty given through a Secretary of State, may by notice in the Gazette prescribe;

(*b*) the office of Attorney-General shall be the office of a Minister.

(3) The Governor, acting in his discretion, shall appoint as Prime Minister the member of the Legislative Assembly who appears to him best able to command the support of the majority of the members of the Assembly, and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the Assembly:

Provided that—

(*a*) not more than three of the Ministers may be appointed from among persons who are not members of the Assembly, but are qualified for election as such;

(*b*) if occasion arises for making an appointment to the office of Prime Minister or any other Minister from among the members of the Assembly while the Assembly is dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed as Prime Minister or any other Minister.

Tenure of office of Ministers.

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

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

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

Provided that the Governor shall not remove the Prime Minister from office when a vote of no confidence has been passed by the Assembly unless three days have elapsed since that vote was passed and the Governor has decided not to dissolve the Assembly under paragraph (*b*) of the proviso to section 51(2) of this Constitution.

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

(*a*) in the case of a Minister appointed from among the members of the Legislative Assembly—

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

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

(*b*) in the case of a Minister appointed from among persons who are not members of the Assembly, if circumstances arise (other than a dissolution of the Assembly) that, if he were such a member, would cause him to vacate his seat in the Assembly.

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

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

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

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

Cabinet.

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

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

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

(*a*) the appointment and removal from office of Ministers and Parliamentary Secretaries, the assigning of responsibility to any Minister under section 56 of this Constitution, the designation of any Minister under section 57 of this Constitution or the authorization of another Minister to perform the functions of the Prime Minister during absence or illness ;

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

Assignment of responsibilities to Ministers.

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

(2) The Attorney-General shall be the principal legal adviser to the Government of Nyasaland in respect of matters for which responsibility is assigned to Ministers under this section.

Governor's special responsibilities.

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

(*a*) public order and public safety ;

(*b*) the use and operational control of the Nyasaland Police Force:

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

Performance of functions of Prime Minister during absence or illness.

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

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

Provided that if the Governor considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers in his discretion.

Exercise of Governor's functions.

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

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

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

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

(*c*) any function conferred upon him by any law relating to a matter that is not within the executive authority of Nyasaland.

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

(4) Where the Governor has obtained the advice of the Cabinet or a Minister for the purposes of subsection (1) of this section, he may act otherwise than in accordance with that advice if in his judgment it is necessary or expedient so to act for the purposes of a matter for which the Governor is responsible under section 57 of this Constitution.

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

Governor to be kept informed of matters of government.

60.—(1) The Prime Minister shall—

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

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

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

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

Parliamentary Secretaries.

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

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

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

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

(*b*) if the Prime Minister resigns from office within three days after the passage by the Legislative Assembly of a resolution of no confidence in the Government of Nyasaland or is removed from office under section 54(1) of this Constitution;

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

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

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

Oaths to be taken by Ministers, etc.

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

Permanent Secretaries.

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

Secretary to Cabinet.

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

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

Director of Public Prosecutions.

65.—(1) There shall be a Director of Public Prosecutions, whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do—

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

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

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

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by subsections (2)(*b*) and (*c*) of this section shall be vested in him to the exclusion of any other person or authority:

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

(5) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question

of law reserved for the purpose of any such proceedings, to any other court having jurisdiction in Nyasaland or to the Judicial Committee of Her Majesty's Privy Council shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(*c*) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(6) In the exercise of the powers conferred on him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that where the exercise of any such power in any case may, in the judgment of the Director, involve general considerations of public policy the Director shall, before deciding whether to exercise that power, bring the case to the notice of the Attorney-General and shall have regard to any views expressed by the Attorney-General relating to those considerations.

Constitution of offices.

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

Prerogative of mercy.

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

(*a*) grant to any person concerned in or convicted of any offence a pardon, either free or subject to lawful conditions;

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

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

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

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

CHAPTER V

THE JUDICATURE

PART 1—*The High Court*

High Court.

68.—(1) There shall be a High Court for Nyasaland.

(2) The Judges of the High Court shall be—

(*a*) the Chief Justice;

(*b*) such number of other judges, not being less than two, (hereinafter called puisne judges) as may be prescribed by the Legislature of Nyasaland:

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

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

Appointment of judges of High Court.

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

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

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

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

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

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

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

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

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

Provided that a person who is not a puisne judge may be so appointed notwithstanding that he has attained the age prescribed for the purposes of section 70(1) of this Constitution.

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

Provided that a person may act as a puisne judge notwithstanding that he has attained the age prescribed for the purposes of section 70(1) of this Constitution.

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

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

Tenure of office of judges of High Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Laws of Nyasaland, 1957, c. 46.

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

(8) The provisions of this section shall be without prejudice to the provisions of section 69(6) of this Constitution.

Oaths to be taken by judges of High Court.

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

PART 2—*Judicial Service Commission*

Judicial Service Commission.

72. There shall be a Judicial Service Commission for Nyasaland which shall consist of—

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

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

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

Appointment, etc., of judicial officers.

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

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

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

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

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

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

(4) In this section references to the office of Magistrate do not include references to any administrative office the holders of which are, under the provisions of the Courts Ordinance, 1958(a) as in force immediately before the coming into operation of this Constitution, entitled by virtue of that office to hold a subordinate court, and references to a court of law do not include references to a court-martial.

CHAPTER VI

FINANCE

Withdrawal from public funds.

74.—(1) No money shall be withdrawn from the public funds of Nyasaland except upon the authority of a warrant under the hand of the Governor.

(2) No such warrant shall be issued for the purpose of meeting any expenditure other than statutory expenditure unless—

(*a*) the expenditure has been authorised for the financial year during which the withdrawal is to take place—

(i) by an Appropriation law ; or

(a) Ordinance No. 1 of 1958.

(ii) by a supplementary Appropriation law or by a resolution approving a supplementary estimate passed in accordance with the provisions of section 75(3) of this Constitution ; or

(*b*) the expenditure has been authorised in accordance with the provisions of section 76 or 77 of this Constitution.

Authorization of expenditure.

75.—(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the Legislative Assembly in each financial year estimates of the revenues and expenditure of Nyasaland for the next following financial year.

(2) The heads of expenditure contained in the estimates for a financial year (other than statutory expenditure) shall be included in a bill or bills to be known as Appropriation bills which shall be introduced into the Assembly to provide for the issue from the public funds of Nyasaland of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

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

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

(*b*) that any monies have been expended for any purpose in excess of the amount appropriated for that purpose by an Appropriation law or for a purpose for which no amount has been appropriated by any Appropriation law,

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

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

Authorization of expenditure in advance of appropriation.

76. The Legislature of Nyasaland may make provision under which, if the Appropriation laws in respect of any financial year have not come into operation by the beginning of that financial year, the Governor may authorise the withdrawal of monies from the public funds of Nyasaland for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation laws, whichever is the earlier.

Contingencies Fund.

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

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

Remuneration of certain officers.

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

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

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

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

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

Public Debt.

79.—(1) The public debt of Nyasaland shall be a charge upon the revenues and other public funds of Nyasaland.

(2) For the purposes of this section, the public debt includes the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

Interpretation.

80.—(1) In this Chapter —

"financial year" means the period of twelve months ending on the thirtieth day of June in any year or such other day as the Governor may, by order published in the Gazette, prescribe;

"statutory expenditure" means expenditure charged on the revenues or public funds of Nyasaland by any provision of this Constitution or of any other law.

(2) Where, in any financial year, a day is prescribed by order made under subsection (1) of this section, the period from the commencement of that financial year to the day so prescribed shall be regarded as a financial year for the purposes of this Chapter, notwithstanding that it exceeds or is less than twelve months.

CHAPTER VII

THE PUBLIC SERVICE

Public Service Commission.

81.—(1) There shall be a Public Service Commission for Nyasaland, which shall consist of a chairman and not less than three nor more than five other members.

(2) The members of the Public Service Commission shall be appointed by the Governor, acting in accordance with the advice of the Prime Minister.

(3) A person shall not be qualified for appointment as a member of the Public Service Commission if he is a Minister, a member of the Legislative Assembly, or a public officer.

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

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

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

(5) A member of the Public Service Commission may be removed from office by the Governor, acting after consultation with the Prime Minister, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

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

(7) If at any time there are less than three members of the Public Service Commission besides the Chairman or if any such member is appointed to act as Chairman or is for any reason unable to perform the functions of his office, the Governor, acting after consultation with the Prime Minister, may appoint a person who is qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting is filled or, as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the Governor, acting after consultation with the Prime Minister.

Appointment, etc., of public officers.

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

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

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

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

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

(*c*) the office of the Director of Public Prosecutions ;

(*d*) any office to which section 73 of this Constitution (which relates to appointments to judicial offices) applies ;

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

(*f*) any offices in the Nyasaland Police Force.

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

Appointment of Director of Public Prosecutions.

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

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

Tenure of office of Director of Public Prosecutions.

84.—(1) Subject to the provisions of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.

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

(3) The Director of Public Prosecutions shall be removed from office by the Governor if the question of his removal from office has been referred to a tribunal appointed under subsection (4) of this section and the tribunal has recommended to the Governor that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the Governor, acting in his discretion, considers that the question of removing the Director of Public Prosecutions ought to be investigated, then—

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

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

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

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

(7) The prescribed age for the purposes of subsection (1) of this section shall be the age of fifty-five years or such other age as may be prescribed by the Legislature of Nyasaland:

Provided that a law of the Legislature of Nyasaland, to the extent that it alters the age at which the Director of Public Prosecutions shall vacate his office, shall not have effect in relation to a Director of Public Prosecutions after his appointment unless he consents that it should have effect.

Appointment of Permanent Secretaries, etc.

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

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

Police Service Commission.

86. There shall be a Police Service Commission for Nyasaland which shall consist of—

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

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

(*c*) a member of the Public Service Commission, other than the Chairman, designated by the Governor, acting after consultation with the Prime Minister.

(a) Laws of Nyasaland, 1957, c. 46.

Appointment of Commissioner and Deputy Commissioner of Police.

87. Power to appoint persons to hold or act in the office of Commissioner of Police or Deputy Commissioner of Police shall vest in the Governor, acting after consultation with the Prime Minister and the Police Service Commission.

Appointment, etc., of senior police officers.

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

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

(*a*) so far as concerns only the appointment of persons thereto, or to act therein, the office of Commissioner of Police or Deputy Commissioner of Police ; or

(*b*) any office in the Nyasaland Police Force below the rank of Inspector.

Appointment, etc., of junior police officers.

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

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

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

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

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

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

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

Laws with respect to police discipline.

90. Nothing in section 88 or 89 of this Constitution shall preclude the Legislature of Nyasaland from making provision constituting acts or omissions by members of the Nyasaland Police Force as offences against police force discipline and prescribing the punishment that may be imposed for any such offence, and the powers of the Police Service Commission and of any officer of the Nyasaland Police Force under those sections with respect to disciplinary control and removal from office of members of the Police Force shall be exercised in accordance with any such provision.

Pensions laws and protection of pension rights.

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

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

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

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

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

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

(4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Widows' and Orphans' Pensions Ordinance(a) or under any law amending or replacing that Ordinance, they are a charge on a fund established by that Ordinance or by any such law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the revenues of Nyasaland.

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

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

Power of Commissions in relation to pensions, etc.

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

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

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

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

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

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

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

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

(a) Laws of Nyasaland, 1957, c. 61.

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

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

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

CHAPTER VIII

MISCELLANEOUS

Performance of functions of Commissions.

93.—(1) The Governor, acting after consultation with any Commission established by this Constitution, may by regulation make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution.

(2) Any decision of any Commission established by this Constitution shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member.

(3) Subject to the provisions of this section, any Commission established by this Constitution may regulate its own procedure.

(4) Nothing in subsection (1) or (2) of this section shall apply in relation to a Constituencies Commission established under section 32 of this Constitution.

Resignations.

94.—(1) Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected:

Provided that in the case of a person who holds office as Speaker or Deputy Speaker of the Legislative Assembly his resignation from that office shall be addressed to the Assembly, and in the case of a member of the Assembly his resignation shall be addressed to the Speaker.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorized by that person or authority to receive it.

Re-appointments and concurrent appointments.

95.—(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office ; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Interpretation.

96.—(1) In this Constitution, unless the context otherwise requires—

" the Commonwealth " means the United Kingdom, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, the Federation of Malaya, the Federation of Nigeria, the Republic of Cyprus, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, and Uganda and any dependency of any such country ;

" oath " includes affirmation ;

"the oath of allegiance" means such oath of allegiance as may be prescribed by law;

"Minister" means a Minister of the Government of Nyasaland;

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

"public officer" means a person holding or acting in any public office;

"the public service" means, subject to the provisions of subsections (2) and (3) of this section, the service of the Crown in a civil capacity in respect of the government of Nyasaland;

"session" means the sittings of the Legislative Assembly beginning when it first sits after the coming into operation of this Constitution or after its prorogation or dissolution at any time and ending when it is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the Legislative Assembly is sitting without adjournment and includes any period during which it is in committee.

(2) In this Constitution, unless the context otherwise requires, references to offices in the public service shall be construed as including references to the offices of judges of the High Court, to the offices of members of all other courts of law established by the Legislature of Nyasaland (other than courts-martial or a court established by or under the Local Courts Ordinance(a) or any Ordinance amending or replacing that Ordinance), being offices the emoluments attaching to which are paid directly out of monies provided by the Legislature of Nyasaland, to the offices of members of the Nyasaland Police Force, and to the offices on the Governor's personal staff.

(3) In this Constitution references to an office in the public service shall not be construed as including references to the office of the Speaker or Deputy Speaker of the Legislative Assembly, the Prime Minister or other Minister, Parliamentary Secretary, a member of the Assembly or a member of any Commission established by this Constitution.

(4) For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Crown.

(5) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(6) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that—

(*a*) nothing in this subsection shall be construed as conferring on any person or authority power to require a judge of the High Court or the Director of Public Prosecutions to retire from the Public service; and

(*b*) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(7) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

(a) Ordinance No. 8 of 1962.

(8) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

(9) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(10) In this Constitution any reference to the date on which this Constitution comes into operation shall be construed as a reference to the day appointed under section 1(2) of the Order in Council to which this Constitution is annexed.

(11) Where any power is conferred by this Constitution to make any Proclamation, Order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such Proclamation, Order, regulation, rule or direction.

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

Section 34.

THE SCHEDULE TO THE CONSTITUTION

ADDITIONAL QUALIFICATIONS FOR VOTERS

Additional qualifications: higher franchise.

1. Subject to paragraphs 3 and 4 of this Schedule, the additional qualifications required for registration as a voter under the higher franchise shall be that the person apply either—

(*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 of 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 of 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 of not less than £500; or

(*e*) is a university graduate who is literate in English.

Additional qualifications: lower franchise.

2. Subject to paragraphs 3 and 4 of this Schedule, the additional qualifications required for registration as a voter under the lower franchise shall be that the person applying either—

(*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 of 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, sub-chief or former chief, and recognized as such under any law for the time being in force in Nyasaland;

(*e*) is a Native Authority or a member of a Native Authority, and is 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 is 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

(*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 sub-paragraph (*c*) of this paragraph.

Literacy, income ownership and value of property.

3.—(1) This paragraph shall apply for the purpose of interpreting the foregoing provisions of this Schedule.

(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, for 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

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

(*c*) except as is provided in clause (*a*) of this sub-paragraph, 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 sub-paragraph, 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 upon that property, 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.

4.—(1) For the purposes of this Schedule a wife who does not possess in her own right the qualifications relating to income or property specified in subparagraph 1(*a*), 1(*b*), 1(*c*), 1(*d*), 2(*a*), or 2(*b*) of this Schedule 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 purposes of this paragraph.

EXPLANATORY NOTE

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

This Order makes fresh constitutional provision for Nyasaland conferring internal self-government. It contains provision with respect to fundamental rights, the office of Governor, the Legislature, the Cabinet, the Judiciary, the Public Service and finance.

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