Provision for giving effect to the Order

4.—(1) Where, by virtue of paragraph (2) of Article IX of the Nyasaland Order in Council, 1907, as set out in Article 2 of this Order or by virtue of any directions given by Instructions under Her Majesty's Sign Manual and Signet in pursuance of the said paragraph (2), provision for any matter may be made by law enacted under the Nyasaland Order in Council, 1907, it shall be lawful for such provision to be made by law enacted under that Order and, subject to the succeeding paragraph of this Article, to come into operation notwithstanding that Article 2 of this Order has not yet come into operation or that the said directions have not yet taken effect.

(2) If in pursuance of the preceding paragraph of this Article provision is made for the election of members of the Legislative Council of the Nyasaland Protectorate, such an election shall not be held before the date when Article 2 of this Order comes into operation but shall be held at such time within six months after that date as the Governor of the Protectorate may, by Proclamation published in the Official Gazette of the Protectorate, appoint.

W. G. Agnew.

EXPLANATORY NOTE

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

This Order re-enacts in revised form Articles IX to XII of the Nyasaland Order in Council, 1907, and also inserts in the latter Order an Article relating to the privileges, immunities and powers of the Legislative Council and its members and an Article prescribing the penalty to which a person is liable for sitting or voting in the Legislative Council when not entitled to do so.

1955 No. 1215

The Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council, 1955

Made - - - - *29th July,* 1955
Laid before Parliament *4th August,* 1955
Coming into operation on a date to be proclaimed in the Nyasaland Protectorate Gazette in accordance with section 1 (3)*

At the Court at Goodwood House, the 29th day of July, 1955

Present,

The Queen's Most Excellent Majesty in Council

Whereas by the Nyasaland Protectorate (African Trust Land) Order in Council, 1950(**a**), (hereinafter referred to as the " principal Order ") provision is made for the assurance, protection and preservation of the

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* Date appointed, 19. 8. 55. (a) S.I. 1950/1183 (1950 II, p. 156).

customary rights of Africans of the Protectorate to use and enjoy the land of the Protectorate and the natural fruits thereof:

And Whereas it is expedient to amend the principal Order in the manner hereafter appearing:

Now, therefore, Her Majesty, by virtue and in exercise of the powers vested in Her by the Foreign Jurisdiction Act, 1890(a), and of all other powers enabling Her in this behalf, is pleased, by and with the advice of Her Majesty's Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement

1.—(1) This Order may be cited as the Nyasaland Protectorate (African Trust Land) (Amendment) Order in Council, 1955, and shall be read and construed as one with the Nyasaland Protectorate (African Trust Land) Order in Council, 1950.

(2) The principal Order and this Order may be cited together as the Nyasaland Protectorate (African Trust Land) Orders in Council, 1950 and 1955.

(3) This Order shall come into operation on a date to be appointed by the Governor by Proclamation in the Gazette.

Amendment of section 1 of the principal Order

2. Section 1 of the principal Order shall be amended by the addition at the end of paragraph (*f*) in the definition of "public land" of the following words—

"and respectively delineated in the plans deposited in the office of the Secretary, Lands and Mines, and in his custody and bearing the signature of the Director of Surveys and the Survey Department plan, number and date as set out in the second column of the Second Schedule hereto, or, respectively, delineated in such other plans as may be substituted therefor under section 11A of this Order;".

Amendment of section 4 of the principal Order

3. Section 4 of the principal Order shall be amended—

(*a*) by renumbering it as subsection (1) of the said section;

(*b*) by the addition of the following subsection—

"Certificate of Secretary, Lands and Mines to be *prima facie* proof.

(2) In any proceedings before a court in which the question arises as to whether any land is public land or African trust land, a certificate purporting to be signed by the Secretary, Lands and Mines, shall be *prima facie* proof that the land is public land or African trust land as the case may be.".

Amendment of section 7 of the principal Order

4. Section 7 of the principal Order shall be amended by the substitution of a colon for the full stop at the end of subsection (2) of the said section and by the addition of the following proviso—

"Provided that the Governor may, in his discretion, reserve a rent which is less than a rack-rent in leases or rights of occupancy

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

granted to local government and public utility bodies, native authorities incorporated for the purpose of acquiring or holding land, missions or religious bodies, scientific and philanthropic bodies or any other organizations, associations, bodies or undertakings deemed by the Governor to perform a useful service to the community or to any section of the community.".

Repeal and replacement of section 8 of the principal Order

5. Section 8 of the principal Order shall be repealed and replaced as follows—

"Acquisition of African trust land for public purpose.

8.—(1) Whenever it appears to the Governor that any African trust land is needed for a public purpose which is for the benefit, direct or indirect, of Africans, he may, after consulting the native authority, if any, of the area in which it is situated, declare, by Proclamation published in the Gazette, that such land is public land, and upon such Proclamation such land shall become public land, and shall be used for a public purpose as aforesaid:

Provided that this subsection shall not apply to—

(*a*) any African trust land required for use as a public road but such land may be acquired for such purpose in accordance with the provisions (save as to compensation) of any law for the time being in force in the Protectorate relating to public roads, and upon being declared a public road under such law shall become public land;

(*b*) any African trust land which is the subject of a grant, disposition, permit or licence made or given under the existing Orders or under section 7 of this Order, where such land is not situated within an area proposed for a township or a High Density Residential Area, or which, in the opinion of the Governor, is likely to become a township or a High Density Residential Area, or within an area required for the development of an existing township or a High Density Residential Area.

(2) Compensation shall be paid out of the general reserve of the Protectorate for any land declared to be public land under subsection (1) of this section of an amount to be agreed by the Governor with the native authority, if any, of the area in which the land is situated, or if there is no such native authority, or failing agreement, to be determined by regulations made under section 12 of this Order:

Provided that when land is acquired for the purpose of the development of an existing township or for the purpose or in anticipation of the creation of a township at a future date, no compensation shall be paid in the nature of a lump sum, but that 25 per centum of the rentals derived from future lettings of the land shall be paid into the treasury of the native authority, if any, of the area in which the land is situated,

or into the Fund, or partly into such treasury and partly into the Fund, and the remaining 75 per centum of such rentals shall be paid into the general revenue of the Protectorate:

Provided further that no compensation shall be payable—

(*a*) when the native authority, if any, of the area in which the land is situated signifies that in his opinion no compensation is necessary;

(*b*) for land acquired for use as a public road;

(*c*) for land acquired for a purpose which is, in the opinion of the Governor, for the direct benefit of Africans and which will not permit of the earning of any substantial revenue;

(*d*) for land the value of which is, in the opinion of the Governor, inconsiderable immediately prior to acquisition and which is to be used for the purpose of Government buildings and the appurtenances thereof.

(3) Whenever any African trust land is required for temporary use for a public purpose, such use not being, in the opinion of the Governor, likely to necessitate occupation for a period in excess of seven years, the Governor may, in his discretion, after consulting the native authority of the area in which the land is situated, authorize the temporary use and occupation of the land for such public purpose, and such land shall remain African trust land throughout the period of temporary use and occupation:

Provided that, on the expiry of such period, the Governor may, in his discretion, after consulting the native authority, authorize such temporary use and occupation for a further period of three years.".

Repeal and replacement of section 10 *of the principal Order*

6. Section 10 of the principal Order shall be repealed and replaced as follows—

"Compensation to individual Africans for disturbance.

10.—(1) Any African who, by reason of—

(*a*) any grant, disposition, permit or licence of or in respect of African trust land made or given by the Governor under section 7 of this Order, or

(*b*) any declaration under section 8 of this Order that any such land is public land, or

(*c*) the temporary use and occupation of African trust land under subsection (3) of section 8 of this Order,

suffers any disturbance of, or damage to, any interest which he may have in such land according to African law or custom, shall be paid such compensation for such disturbance as

the Governor shall, after consultation with the native authority, if any, of the area in which such land is situated, determine to be reasonable.

(2) Any African, other than an African to whom a valid grant, lease, right of occupancy, permit or licence has been granted, who remains on any land after receiving compensation for disturbance in accordance with the provisions of subsection (1) of this section or after receiving a notice in writing that, in the opinion of the Governor, he has no interest in such land according to African law and custom, shall within thirty days from the date of payment of such compensation or the receipt of such notice in writing, as the case may be, vacate such land and, if he fails to do so, shall be deemed to be in unlawful use and occupation of such land.".

Amendment of section 11 *of the principal Order.*

7. Section 11 of the principal Order shall be amended by the substitution of the following subsection for subsection (1)—

"(1) Whenever any of the lands or interests in land specified in paragraphs (*b*), (*c*), (*d*) or (*e*) of section 4 of this Order shall revert or be surrendered to or otherwise acquired by the Government of the Protectorate, they shall become, unless they have been acquired under a law by virtue of which they become public land, public land or African trust land as the Governor may declare by Proclamation published in the Gazette:

Provided that nothing in this subsection contained shall be deemed to prohibit or restrict the renewal of any grant, lease or other disposition in respect of any of the lands or interests in land specified in paragraphs (*b*) and (*e*) of section 4 of this Order, or the issue of any new grant, lease or other disposition in respect of any such lands or interests in land; and any such grant, lease or other disposition may, in the discretion of the Governor, be so renewed or issued either under the provisions of the law for the time being in force relating to the disposal by the Governor by way of grant, lease or other disposition of public land, or alternatively, under the provisions of section 7 of this Order; and in such event the lands or interests in land the subject of such grant, lease or other disposition shall, as from the date of the instrument giving effect thereto, become public land or African trust land as the case may be without any declaration as is required by this subsection.".

Addition of new section 11A *to the principal Order*

8. There shall be inserted next after section 11 of the principal Order the following new section—

"Power to amend Second Schedule

11A. The Governor may, by notice in the Gazette, at any time after the survey or re-survey of the lands set out in the Second Schedule to this Order, amend such Second Schedule to accord with the Survey Department plan prepared as a result of such survey or re-survey and with the area as ascertained on such survey or re-survey.".

Repeal and replacement of Second Schedule to the principal Order.

9. The Second Schedule to the principal Order shall be repealed and replaced as follows—

" SECOND SCHEDULE

Situation of Land	Survey Department Number and Date of Plan	Area in Acres
SOUTHERN PROVINCE:—		
Chikwawa	2698—20th July, 1953	808·3
Chiradzulu	2714—21st September, 1954	141·84
Liwonde	2767—9th October, 1953	180
Mlanje	2768—8th January, 1954	355
Neno	2725—31st August, 1953	678·83
Port Herald...	2740—9th October, 1953	304
CENTRAL PROVINCE:—		
Dedza	2875—16th September, 1954	1690·08
Dowa	2753—19th February, 1954	320·652
Fort Manning	1204—9th October, 1953	513
Kasungu	2801—30th September, 1954	332·273
Kota kota	1223—9th October, 1953	413
Ncheu	2766—9th October, 1953	273
NORTHERN PROVINCE:—		
Chinteche	2765—9th October, 1953	700
Mzimba	2727—6th September, 1953	784·95"

W. G. Agnew.

EXPLANATORY NOTE

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

This Order amends the Nyasaland Protectorate (African Trust Land) Order in Council, 1950, to provide that in any court proceedings a certificate by the Lands Officer shall be *prima facie* proof that the land is African trust land or public land. It also amends the provisions in the earlier Order for the acquisition of African trust land for public purposes where the Governor is satisfied that such purpose is for the benefit, direct or indirect, of Africans; and for the payment of compensation to individual Africans for disturbance. The Second Schedule to the earlier Order naming public lands is repealed and replaced.