NYASALAND PROTECTORATE

The Nyasaland Protectorate (African Trust Land) Order in Council, 1950

1950 No. 1183

Made - - - - 21*st July*, 1950
Laid before Parliament 22*nd July*, 1950
Coming into operation on a date to be proclaimed in the Nyasaland Protectorate Gazette in accordance with Article 2*

At the Court at Buckingham Palace, the 21st day of July, 1950

Present,
The King's Most Excellent Majesty in Council

Whereas the territories of Africa now known as the Nyasaland Protectorate are under the protection of His Majesty the King:

And Whereas by the Nyasaland Protectorate (Native Trust Land) Orders in Council, 1936 to 1949(**a**), provision is made for the assurance, protection and preservation of the customary rights of natives of the Protectorate to use and enjoy the land of the Protectorate and the natural fruits thereof:

And Whereas it is expedient that the said Orders in Council should be consolidated and amended:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890(**b**), or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

Interpretation.

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

"African" means—

(*a*) any member of a tribe or race of Africa which ordinarily resides in the Protectorate, and

(*b*) any person who ordinarily resides in the Protectorate as a member of such tribe or race;

"African trust land" means all land in the Protectorate declared to be such under Sections 4 or 11 of this Order;

"certificate of claim" means Certificate of Claim No. 61, and any certificate of claim the validity of which has been recognised by a Secretary of State;

"the existing Orders" means the Orders in Council mentioned in the First Schedule to this Order;

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* The date thus appointed was 1st September, 1950.

(a) S.R. & O. 1936 (No. 728) I, p. 938; S.R. & O. 1940 (No. 1462) I, p. 401; S.R. & O. 1944 (No. 1214) I, p. 138; S.R. & O. 1947 (No. 2742) I, p. 800; S.I. 1949 (No. 356) I, p. 1862.

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

"the Fund" means the Fund established under the Native Development and Welfare Fund Ordinance(a), or under any Ordinance amending or replacing the same;

"the Gazette" means the official Gazette of the Nyasaland Protectorate;

"the Governor" means the Governor and Commander-in-Chief of the Nyasaland Protectorate and includes the Officer Administering the Government and, to the extent to which a Deputy for the Governor is authorized to act, that Deputy;

"minerals" means all mineral substances and mineral oils wherever found;

"native authority" means a native authority established under any law for the time being in force in the Protectorate;

"non-African" means any person other than an African;

"the Protectorate" means the Nyasaland Protectorate as defined by the British Central Africa Order in Council, 1902(b), or by any Order of His Majesty in Council amending or replacing the same;

"public land" means—

(*a*) all lands and interests in land acquired or occupied by or on behalf of His Majesty;

(*b*) land in townships not in private ownership;

(*c*) land in forest reserves;

(*d*) land which has been declared to be a public road;

(*e*) land declared to be public land under Section 8 or subsection (1) of Section 11 of this Order; and

(*f*) the lands set out in the Second Schedule hereto.

"public road" has the same meaning as it has in any law for the time being in force in the Protectorate enabling roads to be declared public roads;

"treasury" means a native treasury established under any law for the time being in force in the Protectorate.

(2) The Interpretation Act, 1889(c), shall apply for the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

Short title and commencement.

2. This Order may be cited as the Nyasaland Protectorate (African Trust Land) Order in Council, 1950, and shall come into operation on a day to be appointed by the Governor by Proclamation in the Gazette, which day shall not be earlier than the day after the day on which this Order shall be laid before both Houses of Parliament.

Revocation.

3. The existing Orders are hereby revoked, but without prejudice to the validity of any right of occupancy, acquisition, exchange or licence granted, made or given thereunder.

Declaration of African Trust Land.

4. The whole of the lands of the Protectorate with the exception of—

(*a*) public land,

(*b*) all lands and interests in land (other than yearly tenancies) granted, leased or otherwise disposed of by the Governor before the thirtieth day of April, 1936 and all interests in land retained or reserved upon any such disposal,

(a) Nyasaland Ordinance No. 29 of 1949.
(b) S.R. & O. Rev. 1904, V. Foreign Jurisdiction, p. 40.
(c) 52 & 53 Vict. c. 63.

(*c*) all lands and interests in land held on the thirtieth day of April, 1936, under any certificate of claim, and not surrendered to the Governor before the date of this Order,

(*d*) all lands and interests in land granted, leased or otherwise disposed of by the holder of any certificate of claim,

(*e*) all lands and interests in lands granted, leased or otherwise disposed of by the Governor under the Crown Lands Ordinance(a) since the thirtieth day of April, 1936, and all interests in lands retained or reserved upon any such disposals

are hereby declared to be African trust land.

Vesting of African trust land.

5.—(1) All African trust land is hereby vested in the Secretary of State.

(2) The entire property in and control of minerals in, under or upon any African trust land are, save in so far as any part thereof may have been the subject of alienation duly ratified by the Crown, or in relation to which prospecting or mining rights subsist by virtue of express grant made by the Governor, hereby vested in the Secretary of State, and shall be administered and controlled by the Governor for the use or common benefit, direct or indirect, of Africans, but nothing contained in this Order or in any regulations made thereunder shall affect any grant ratified by the Crown relating to the ownership of mines or minerals, and any person entitled to the exercise of such rights on African trust land may enter thereon together with other persons employed by him for the purpose of exercising such rights subject to the provisions of the laws and regulations for the time being in force in the Protectorate.

(3) For the purposes of this section, "Secretary of State" means His Majesty's Principal Secretary of State for the Colonies for the time being.

African trust land to be administered by Governor.

6.—(1) The Governor shall, subject to the provisions of this Order, to the general or special directions of a Secretary of State, and to any law for the time being in force in the Protectorate, administer and control all African trust land for the common benefit, direct or indirect, of Africans, and in so doing shall have regard to African law and custom so far as they are applicable and not repugnant to justice or morality:

Provided that a native authority may, subject to the general or special directions of the Governor, authorize the use and occupation by an African of any African trust land within the native authority's area in accordance with the African law and custom prevailing in that area.

(2) No title claimed by any person other than an African to the use or occupation of African trust land shall be valid unless it has been granted or confirmed by the Governor under the existing Orders or under this Order.

Disposal of African trust land.

7.—(1) In the exercise of his powers and duties under, and subject to, Section 6 of this Order, the Governor may grant leases or rights of occupancy of African trust land, or dispose of other interests therein, or permit or license it to be temporarily used or occupied, on such terms and conditions as he may think fit:

Provided that:

(*a*) before any such grant, disposition, permit or licence is made or given, the Governor shall consult the native authority, if any, of the area in which the land is situated:

(a) Cap. 30. Revised Laws of Nyasaland, 1946.

(*b*) the Governor shall not, without the special sanction of a Secretary of State, make any grant of African trust land for an estate greater than a lease or right of occupancy for ninety-nine years.

(2) The Governor shall, in every grant of a lease or right of occupancy of African trust land reserve a rack-rent in respect thereof.

(3) The Governor shall, in every lease or right of occupancy of African trust land granted to a non-African reserve the right to revise any rent thereby reserved at intervals which shall not exceed thirty-three years.

(4) In further exercise of his powers and duties under this Order, the Governor may, subject to provisions of the laws and regulations for the time being in force in the Protectorate, make grants to search for and work minerals, but in so doing he shall have regard to general African interests, and before making any grant for the working of minerals he shall consult the native authority, if any, of the area concerned. In the event of any difference of opinion the matter shall be referred for decision to the Secretary of State.

Acquisition of African trust land for public purpose.

8.—(1) Whenever it appears to the Governor that any African trust land which is not the subject of a grant, disposition, permit or licence made or given under the existing Orders, or under Section 7 of this Order, 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 when any African trust land is required for use as a public road, this subsection shall not apply, 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.

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(2) Compensation shall be paid out of the general revenue 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:

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Provided that when land is acquired for the purpose of the development of an existing township, no compensation shall be paid for capital value, 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 administrative headquarters or kindred purposes.

Proceeds of disposal of African trust land.

9. When any grant, disposition, permit or licence of or in respect of African trust land has been made or given by the Governor under Section 7 of this Order, or when the amount of compensation payable for any land declared to be public land under subsection (2) of Section 8 of this Order has been agreed or determined, all monies payable under the terms of such grant, disposition, permit or licence, or in accordance with such agreement or determination, shall be paid, as the Governor in Council shall from time to time direct, 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:

Provided that where the grant is to search for or work minerals, such part of the monies payable under its terms as may be determined by the Governor with the approval of the Secretary of State shall be paid into the general revenue of the Protectorate.

Compensation to individual Africans for disturbance.

10. 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,

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

Land reverting to Government, or no longer needed for public purpose.

11.—(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 public land or African trust land as the Governor may declare by Proclamation published in the Gazette.

(2) Whenever it appears to the Governor that any public land can, without detriment to the efficient administration and good government of the Protectorate, cease to be public land and should be set aside for occupation by Africans, he shall so declare by Proclamation published in the Gazette, and thereupon such land shall become African trust land.

Governor empowered to make regulations.

12. The Governor may, from time to time, with the approval of the Secretary of State, make regulations for the purposes of this Order, and in particular may by such regulations prohibit the unlawful or unauthorised use or occupation of African trust land, and may prescribe as penalties for the breach of any such regulation a fine not exceeding one hundred pounds or imprisonment for a term not exceeding six months, or both such fine and imprisonment, and, in the case of a continuing breach, a further fine not exceeding five pounds for each day during which the breach continues.

Governor's power of delegation.

13. The Governor may, subject to the general or special directions of a Secretary of State, depute any person by name, or the holder for the time being of any office of emolument under the Crown in the Protectorate, to exercise and perform such of the Governor's powers and duties under this Order as he may specify.

E. C. E. Leadbitter.

FIRST SCHEDULE

Section 1(1)

EXISTING ORDERS IN COUNCIL

1. The Nyasaland Protectorate (Native Trust Land) Order in Council, 1936.

2. The Nyasaland Protectorate (Native Trust Land) (Amendment) Order in Council, 1940.

3. The Nyasaland Protectorate (Native Trust Land) (Amendment) Order in Council, 1944.

4. The Nyasaland Protectorate (Native Trust Land) (Amendment) Order in Council, 1947.

5. The Nyasaland Protectorate (Native Trust Land) (Amendment) Order in Council, 1949.

SECOND SCHEDULE

Section 1(1)

Station	Registered No. of Plan	Approximate Area
		acres
SOUTHERN PROVINCE:—		
Chikwawa	1,142	1,075
Chiradzulu	1,139	150
Cholo	1,140	144
Liwonde	1,138	180
Mlanje	1,141	665
Neno	1,143	675
Port Herald	1,148	304
CENTRAL PROVINCE:—		
Dedza	1,157	4,600
Dowa	1,155	330
Fort Manning	1,154	540
Kasungu	1,152	350
Kota-Kota	1,153	640
Lilongwe	1,156	1,565
Ncheu	1,158	175
NORTHERN PROVINCE:—		
Chinteche	1,151	700
Karonga	1,149	1,000
Mzimba	1,150	1,920

EXPLANATORY NOTE

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

This Order replaces the Nyasaland Protectorate (Native Trust Land) Order in Council, 1936, as subsequently amended. It consolidates the existing law and simplifies the description of various categories of land in the Protectorate. The expression "Native trust land" is replaced by "African trust land" as being more conformable to modern verbal practice. The Order also contains provisions for the assessment of compensation in respect of African trust land acquired for a public purpose.