1960 No. 1960

The Sierra Leone (Constitution) (Amendment) (No. 2) Order in Council, 1960

Made - - - -	*26th October*, 1960
Laid before Parliament	*1st November*, 1960
Coming into Operation	*22nd November*, 1960

At the Court at Buckingham Palace, the 26th day of October, 1960

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act, 1890(a), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

Citation, construction and commencement

1.—(1) This Order may be cited as the Sierra Leone (Constitution) (Amendment) (No. 2) Order in Council, 1960, and shall be construed as one with the Sierra Leone (Constitution) Order in Council, 1958(b), which Order, as amended by the Sierra Leone (Constitution) (Amendment) Order in Council, 1958(c), and the Sierra Leone (Constitution) (Amendment) Order in Council, 1960(d), is hereinafter referred to as " the principal Order ".

(2) The Sierra Leone (Constitution) Order in Council, 1958, the Sierra Leone (Constitution) (Amendment) Order in Council, 1958, the Sierra Leone (Constitution) (Amendment) Order in Council, 1960, and this Order may be cited together as the Sierra Leone (Constitution) Orders in Council, 1958 to 1960.

(3) Section 1 of the Sierra Leone (Constitution) (Amendment) Order in Council, 1960, is amended by the deletion of subsection (2).

(4) This Order shall be published in the Gazette and shall come into operation on such day as the Governor, in pursuance of instructions given to him by Her Majesty through a Secretary of State, may appoint by Proclamation in the Gazette, which day shall not be earlier than the day after the day on which this Order shall have been laid before both Houses of Parliament.

Amendment of principal Order

2. Section 1 of the principal Order is amended as follows:—

(i) by the insertion immediately after subsection (2) of the following subsection numbered (2A):—

> " (2A) Where, by or under this Order, a power is conferred to make any appointment, the person or authority having power to make the appointment shall have power, exercisable in the like manner—

(a) 53 & 54 Vict. c. 37. (b) S.I. 1958/1259 (1958 II, p. 2851).
(c) S.I. 1958/1524 (1958 II, p. 2873). (d) S.I. 1960/1056 (Pt. II. p. 4006, of this vol.).

(*a*) to suspend the appointment of any person appointed;

(*b*) in the case of a power to make an appointment to a public office, to direct that the person other than the person appointed shall, during any period that the person appointed is unable to perform the functions of his office owing to absence or inability to act from illness or any other cause, perform the functions of that office;

(*c*) in the case of a power to make an appointment to a public office, to appoint another person substantively to such an office, notwithstanding that there is already a substantive holder thereof, when that substantive holder is on leave of absence pending relinquishment of his office; and when two or more persons are holding the same office by reason of an appointment made pursuant to this paragraph, 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;

(*d*) in the case of a power to make an appointment to a public office, to direct that the person shall perform the functions of that office when no person has been appointed thereto, either until a contrary direction shall be given by the person or authority having power to make the appointment or until a person shall have been appointed substantively thereto whichever shall be the earlier." ;

(ii) in subsection (5)—

(*a*) by the insertion in paragraph (*b*) immediately after the words "House of Representatives" of the words "Overseas Representative, Private Secretary to a Minister," ; and

(*b*) by the insertion of the following paragraph—

"(*c*) For the purposes of Part VII of this Order (as inserted by section 9 of the Sierra Leone (Constitution) (Amendment) (No. 2) Order in Council, 1960), the expression "the public service" shall not include service otherwise than in a civil capacity, the expression "public office" shall not include an office the remuneration of the holder of which is calculated on a daily rate and the expressions "public office" and "public officer" shall be construed accordingly."

3. Subsection (1) of section 16 of the principal Order (as specified in section 10 of the Sierra Leone (Constitution) (Amendment) Order in Council, 1960), is amended by the deletion therefrom of paragraphs (*c*) and (*d*).

4. Section 17 of the principal Order is revoked and the following section substituted therefor—

"The Attorney-General.

17.—(1) The Attorney-General shall be a person who is a public officer and shall be the legal adviser to the Government.

(2) Power to make appointments to the office of Attorney-General and to dismiss and to exercise disciplinary control over the Attorney-General is hereby vested in the Governor.

(3) The powers vested in the Governor by subsection (2) of this section shall be exercised by him after consultation with the Prime Minister.

(4) In the exercise of the powers conferred upon him by subsection (2) of section 35 of this Order, the Attorney-General shall not be subject to the direction or control of any person.

(5) The assignment to a Minister of responsibility for the department of the Attorney-General shall confer responsibility only for submitting to the Cabinet questions referring to that department and conducting government business relating to that department in the House of Representatives and shall have effect without prejudice to the provisions of subsection (4) of this section."

5. Section 59 of the principal Order (as set out in section 13 of the Sierra Leone (Constitution) (Amendment) Order in Council, 1960), is amended by the deletion from subsection (1) of the words " a Senior Puisne Judge ".

6. Section 60 of the principal Order (as set out in section 13 of the Sierra Leone (Constitution) (Amendment) Order in Council, 1960), is amended by the deletion therefrom of subsection (1) and the substitution therefor of the following subsection—

"(1) (*a*) The Chief Justice shall be appointed by the Governor, by Instrument under the Public Seal, in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(*b*) The Puisne Judges of the Supreme Court shall be appointed by the Governor, by Instrument under the Public Seal, acting on the recommendation of the Judicial Service Commission."

7. Section 61 of the principal Order (as set out in section 13 of the Sierra Leone (Constitution) (Amendment) Order in Council, 1960), is amended by the deletion from paragraph (*b*) of subsection (1) of the words " (including that of the Senior Puisne Judge) ".

8. The principal Order is amended by the insertion therein immediately after section 64 (as set out in section 13 of the Sierra Leone (Constitution) (Amendment) Order in Council, 1960), of the following sections numbered 65, 66, 67, 68 and 69—

"*The Judicial Service Commission.*

Judicial Service Commission.

65.—(1) There shall be in and for Sierra Leone a Judicial Service Commission which shall consist of the following persons, that is to say—

(*a*) The Chief Justice, as Chairman;

(*b*) A Puisne Judge appointed as occasion may require by the Governor after consultation with the Chief Justice;

(*c*) The Chairman of the Public Service Commission; and

(*d*) One other member (hereinafter called " the appointed member ") appointed in accordance with the provisions of subsection (2) of this section.

(2) The Governor, acting in his discretion, may, by Instrument under the Public Seal, appoint to be a member of

the Judicial Service Commission a person who is or has been a Judge of the Supreme Court or a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of Her Majesty's dominions or a court having jurisdiction in appeals from any such court:

Provided that no person shall be appointed under this subsection who holds or is acting in any public office other than the office of member of the Public Service Commission.

(3) The office of the appointed member shall become vacant—

(*a*) at the expiration of three years from the date of his appointment or at such earlier time as may be specified in the Instrument by which he was appointed;

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

(*c*) if he is appointed to the office of Chief Justice, Chairman of the Public Service Commission or any public office except the office of member of the Public Service Commission;

(*d*) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehaviour:

Provided that if the appointed member is a Judge of the Supreme Court, he shall not be so removed unless, in accordance with the provisions of section 62 of this Order, he is removed from his office as a Judge.

(4) If the office of the appointed member is vacant or that member is for any reason unable to perform the functions of his office, the Governor, acting in his discretion, may, by Instrument under the Public Seal, appoint a person qualified for appointment as such a member to act as a member of the Commission, and any person so appointed shall, subject to the provisions of subsection (3) of this section, continue to act until the office of the appointed member is filled or until his appointment is revoked by the Governor, acting in his discretion.

(5) The appointed member shall not, within a period of three years commencing with the date on which he last held or acted in the office of appointed member, be eligible for appointment to any office power to make appointments to which is vested by this Order in the Governor acting on the recommendation of the Judicial Service Cmmission:

Provided that nothing in this subsection shall prevent his being appointed to the office of judge of the Supreme Court.

(6) The appointed member shall be paid such salary and allowances as may be prescribed by or under any law or by a resolution of the House of Representatives:

Provided that—

(*a*) no such resolution may reduce any salary or allowance for the time being prescribed by or under a law; and

(*b*) the salary of the appointed member shall not be reduced during his continuance in office.

(7) The salary for the time being payable to the appointed member under this Order shall be charged on and paid out of the revenues of Sierra Leone.

(8) Nothing in subsection (6) of this section shall entitle the appointed member to any salary in respect of his office as such, if he is also a Judge of the Supreme Court.

(9) The Governor, acting in his discretion, may appoint a Secretary to the Judicial Service Commission.

Proceedings of Judicial Service Commission.

66. At any meeting of the Judicial Service Commission a quorum shall be constituted if there are present the Chairman of the Public Service Commission and two other members; and if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.

Appointment, etc. of judicial officers.

67.—(1) Subject to the provisions of this Order, power to appoint persons to hold or act in offices to which this section applies (including power to make appointments on promotion and transfer and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor acting on the recommendation of the Judicial Service Commission.

(2) This section applies to the offices of Master and Registrar of the Supreme Court, Deputy Registrar of the Supreme Court, Senior Registar of the Supreme Court, Official Administrator and Registrar-General, Senior Police Magistrate and Police Magistrate.

(3) In this section the expression "transfer" means a transfer involving an increase of salary.

Regulations regarding Judicial Service Commission.

68. The Governor, acting on the recommendation of the Judicial Service Commission, may make regulations for providing for all or any of the following matters, that is to say—

(*a*) the exercise by the Commission of any of its functions;

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

(*c*) the protection and privileges of members of the Commission in respect of the performance of their functions and the privilege of communications to and from the Commission and its members in the case of legal proceedings; and

(*d*) the definition and trial of offences in relation to the functions of the Commission and the imposition of penalties for such offences:

Provided that any such penalty shall consist of a fine not exceeding two hundred pounds or imprisonment for a term not exceeding one year or both such a fine and imprisonment.

Protection of Commission, etc. from legal proceedings.

69. The question whether—

(*a*) the Judicial Service Commission has validly performed any function vested in it by or under this Order;

(*b*) any member of the Commission has validly performed any function in relation to the work of the Commission vested in such member under this Order,

shall not be enquired into in any court."

9. The principal Order is amended by the addition after Part VI, as inserted by section 13 of the Sierra Leone (Constitution) (Amendment) Order in Council, 1960, of the following new Part:—

"PART VII

THE PUBLIC SERVICE

Public Service Commission.

70.—(1) There shall be in and for Sierra Leone a Public Service Commission which shall consist of a Chairman and not less than two or more than four other members as the Governor, acting in his discretion, may from time to time decide.

(2) The members of the Commission shall be appointed by the Governor, after consultation with the Prime Minister, by Instrument under the Public Seal.

(3) A person shall not be qualified to hold the office of a member of the Public Service Commission if he is a Member of the House of Representatives or if he holds or is acting in any public office other than the office of member of the Judicial Service Commission.

(4) A member of the Public Service Commission shall not, within a period of three years commencing with the date on which he last held or acted in that office, be eligible for appointment to any office power to make appointments to which is vested by this Order in the Governor acting on the recommendation of the Public Service Commission.

(5) Any person who, immediately before his appointment to be a member of the Public Service Commission, was a public officer shall, until he ceases to be a member of the Public Service Commission or, while continuing to be such a member, attains the age at which he would, if he were a public officer, be required to retire, be deemed to hold a pensionable office in the service of the Crown in respect of the Government of Sierra Leone for the purposes of any law relating to the grant of pensions, gratuities or other allowances in respect of such service.

(6) The office of a member of the Public Service Commission shall become vacant—

(*a*) at the expiration of five years from the date of his appointment or such earlier time as may be specified in the Instrument by which he was appointed;

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

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

(*d*) if he is removed from office by the Governor, after consultation with the Prime Minister, for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(7) If the office of a member of the Public Service Commission is vacant or a member is for any reason unable to perform the functions of his office, the Governor, 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 of the Commission, and any person so appointed shall, subject to the provisions of subsection (6) of this section, continue to act until the office of the member of the Commission is filled or until his appointment is revoked by the Governor after consultation with the Prime Minister.

(8) The members of the Public Service Commission shall be paid such salaries and allowances as may be prescribed by or under any law or by a resolution of the House of Representatives:

Provided that—

(*a*) no such resolution may reduce any salary or allowance for the time being prescribed by or under a law; and

(*b*) the salary of a member of the Public Service Commission shall not be reduced during his continuance in office.

(9) Until such time as provision in that behalf is made in pursuance of subsection (8) of this section, there shall be paid to the Chairman and other members of the Public Service Commission salaries and allowances calculated at the same rate as the salaries and allowances payable immediately before the commencement of Part VII of this Order to the Chairman and other members of the Public Service Commission established by the Sierra Leone (Public Service Commission) Order in Council, 1953(**a**).

(10) The salaries for the time being payable to members of the Public Service Commission under this Order shall be charged on and paid out of the revenues of Sierra Leone.

(**a**) S.I. 1953/588 (1953 II, p. 1938).

Proceedings of Public Service Commission.

71. At any meeting of the Public Service Commission a quorum shall be constituted if the Chairman and two other members are present; and if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.

Appointment, etc. of public officers.

72.—(1) Subject to the provisions of this Order, power to appoint persons to hold or act in offices in the public service (including power to make appointments on promotion and transfer and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor acting on the recommendation of the Public Service Commission.

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

(*a*) the office of Deputy Governor;

(*b*) the office of any judge of the Supreme Court of Sierra Leone;

(*c*) the office of Attorney-General or Director of Audit or Director of Public Prosecutions;

(*d*) any office to which section 67 of this Order (which relates to offices within the jurisdiction of the Judicial Service Commission) applies.

(3) In relation to offices in the Police Force established by or under the Police Ordinance(a), the provisions of this section shall apply with respect to

(*a*) appointments (including appointments on promotion and transfer and confirmation of appointments) of persons to hold or act in the office of Chief Inspector or above;

(*b*) the dismissal and disciplinary control of persons holding or acting in the office of Chief Inspector or above; and

(*c*) so long as and to the extent that the power to exercise disciplinary control is vested in the Commissioner of Police under the powers conferred upon him by the Police Ordinance, the confirmation of punishments or determination of appeals by persons holding or acting in any office in the Police Force from disciplinary decisions of the Commissioner, where the punishment awarded by the Commissioner is that of dismissal or reduction in rank,

but save as aforesaid the provisions of this section shall not apply in relation to offices in the Police Force.

(4) The appointment of a person to hold or act in any of the following offices in the Audit Department, that is to say, the office of Deputy Director of Audit, the office of Senior Auditor and the office of Auditor (including appointment on promotion and transfer and confirmation of

(a) Laws of Sierra Leone (1946 Revision), Cap. 174.

appointment to any of such offices) shall be made by the Governor on the advice of the Public Service Commission after consultation with the Director-General of the Overseas Audit Service.

(5) Before the Public Service Commission recommends the appointment to any public office of any person holding or acting in any office power to make appointments to which is vested by this Order in the Governor acting on the recommendation of the Judicial Service Commission, it shall consult with that Commission.

(6) The Public Service Commission shall not make any recommendation to the Governor under this section to dismiss, or inflict any other punishment on a public officer on the grounds of any act done or omitted to be done by that officer in the exercise of a judicial function conferred upon him unless the Judicial Service Commission concurs in the making of the recommendation.

(7) In this section the expression "transfer" means a transfer involving an increase of salary.

Delegation of functions of Public Service Commission.

73.—(1) The Governor, acting on the recommendation of the Public Service Commission, may by Instrument under the Public Seal direct that, subject to such conditions as may be specified in that Instrument, power to make appointments to hold or act in such offices, being offices to which this section applies, as may be so specified and power to dismiss and power to exercise disciplinary control over persons holding or acting in those offices, or any of those powers, shall (without prejudice to the exercise of such power by the Governor acting on the recommendation of the Public Service Commission) be exercisable by such one or more members of the Public Service Commission or by such other authority or public officer as may be so specified.

(2) In relation to any power made exercisable under this section by some person or authority other than the Governor acting on the recommendation of the Public Service Commission, the offices to which this section applies are all offices in respect of which that power is, apart from this section, vested in the Governor acting on such recommendation:

Provided that this section shall not apply to the power to appoint to any public office which carries an initial salary exceeding four hundred and fifty-six pounds per annum or to the power to dismiss from any public office which carries a salary exceeding four hundred and two pounds per annum.

(3) In any case where an appointment is to be made by virtue of an Instrument made under this section and the person to be appointed holds or is acting in any office power to make appointments to which is vested by this Order in the Governor acting on the recommendation of the Judicial Service Commission, the person or authority specified in the said Instrument shall consult with that Commission before making the appointment.

Regulations regarding Public Service Commission.

74. The Governor, acting on the recommendation of the Public Service Commission, may make regulations for providing for all or any of the following matters, that is to say :—

(*a*) the exercise by the Commission of any of its functions ;

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

(*c*) the appointment, tenure of office and terms of service of staff to assist the Commission in the performance of its functions ;

(*d*) the protection and privileges of members of the Commission in respect of the performance of their functions and the privilege of communications to and from the Commission and its members in the case of legal proceedings ; and

(*e*) the definition and trial of offences in relation to the functions of the Commission and the imposition of penalties for such offences:

Provided that any such penalty shall consist of a fine not exceeding two hundred pounds or imprisonment for a term not exceeding one year or both such a fine and imprisonment.

Protection of Commission, etc. from legal proceedings.

75. The question whether—

(*a*) the Public Service Commission has validly performed any function vested in it by or under this Order ;

(*b*) any member of the Commission or any other authority or public officer has validly performed any function vested in such member or other authority or public officer under section 73 of this Order ;

(*c*) any member of the Commission or any other authority or public officer has validly performed any other function in relation to the work of the Commission (or in relation to any such function as is referred to in the preceding paragraph) vested in such member or other authority or public officer under this Order,

shall not be enquired into in any court.

Revocation of Sierra Leone (Public Service Commission) Order in Council, 1953.

76. The Sierra Leone (Public Service Commission) Order in Council, 1953, is revoked.

Questions pending before former Public Service Commission.

77. Where any question had been referred by the Governor to the Public Service Commission established by the Sierra Leone (Public Service Commission) Order in Council, 1953 (in this section referred to as " the former Commission ") and the proceedings of the former Commission in respect of that question had not terminated on the date immediately preceding the commencement of this

Part of this Order, the Public Service Commission established by section 70 of this Order (in this section referred to as "the new Commission") shall on that date become seised of that question as though it had been referred to the new Commission under the provisions of this Order, and all things (except any hearing in a disciplinary proceeding against any public officer) previously done by the former Commission or by any person in relation to that question shall have effect as if done by the new Commission or by that person in relation to a question so referred to the new Commission.

Preservation of pensions, etc.

78.—(1) All pensions, gratuities or other like allowances which have been, or which may be, granted to any persons who have been and have ceased to be public officers at any time before the day on which this Part of this Order came into operation, or to the widows, children, dependants or personal representatives of such persons, shall be governed by the law under which they were granted or, if granted after that day, by the law in force on that day or, in either case, by any law made thereafter which is not less favourable.

(2) All pensions, gratuities or other like allowances which may be granted to any persons who are public officers on the aforesaid day, or to the widows, children, dependants or personal representatives of such persons, shall be governed by the law in force on that day or by any law made thereafter which is not less favourable.

(3) All pensions, gratuities or other like allowances which may be granted to any persons who may be appointed to be public officers after the aforesaid day, or to the widows, children, dependants or personal representatives of such persons shall be governed by the law in force on the day on which such persons are so appointed or by any law made thereafter which is not less favourable.

(4) Where any person is entitled to exercise an option for his case to be governed by one or two or more laws, the law specified by him in exercising such option shall, for the purposes of this section, be deemed to be more favourable than the other law or laws.

Powers of a person or Commission in relation to grant of pensions, etc.

79.—(1) Where any benefits to which this section applies can be withheld, reduced in amount or suspended by any person or authority under any law in force in Sierra Leone, those benefits shall not be so withheld, reduced in amount or suspended—

(*a*) in the case of benefits that have been granted in respect of service in the public service of Sierra Leone of any person who at the time when he ceased to be a member of that public service was subject to the jurisdiction of the Judicial Service Commission or for which any person may be eligible in respect of such service, without the approval of that Commission;

(*b*) in the case of benefits that have been granted in respect of service in the public service of Sierra Leone of any person who at the time when he ceased to be a member of that public service was subject to the jurisdiction of the Public Service Commission or for which any person may be eligible in respect of such service, without the approval of that Commission.

(2) No benefits to which this section applies that have been granted to any person who holds or has held the office of a judge of the Supreme Court of Sierra Leone or the office of Attorney General or Director of Audit or Director of Public Prosecutions or for which any such person may be eligible shall be withheld, reduced or suspended on the ground that that person has been guilty of misbehaviour while holding that office unless that person has been removed from that office by reason of such misbehaviour.

(3) This section applies to any benefits payable under any law in force in Sierra Leone providing for the grant of pensions, gratuities or compensation to persons who are or have been members of the public service of Sierra Leone in respect of their service in that service or to the widows, children, dependants or personal representatives of such persons in respect of such service.

Pensions, etc. to be charged on general revenue.

80. All pensions, compensation, gratuities and other like allowances granted in respect of service in a public office shall be charged on and paid out of the revenues of Sierra Leone."

10. The principal Order is amended by the addition after Part VII of the following new Part:—

"PART VIII

MISCELLANEOUS

Director of Audit.

81.—(1) There shall be in and for Sierra Leone a Director of Audit who shall be appointed by the Governor, by Instrument under the Public Seal, after consultation with the Prime Minister.

(2) Before consultation with the Prime Minister for the purposes of this section the Governor shall consult the Public Service Commission and the Director-General of the Overseas Audit Service.

(3) If the office of Director of Audit is vacant or the Director of Audit is for any reason unable to perform the functions of his office, the Governor, after consultation with the Public Service Commission, the Director-General of the Overseas Audit Service and the Prime Minister, may appoint a person to act as Director of Audit, and any person so appointed shall, subject to the provisions of subsection (3) of section 82 of this Order, continue to act until the office of Director of Audit is filled or until his appointment is revoked by the Governor, after consultation as aforesaid:

Provided that he may at any time, by writing under his hand addressed to the Governor, resign his acting office.

(4) The Director of Audit shall receive such salary and allowances as may from time to time be prescribed by or under any law or by resolution of the House of Representatives:

Provided that—

(*a*) no such resolution may reduce any salary or allowance for the time being prescribed by or under a law; and

(*b*) the salary of the Director of Audit shall not be reduced during his continuance in office.

(5) The salary for the time being payable to the Director of Audit under this Order shall be charged on and paid out of the revenues of Sierra Leone.

Tenure of office of Director of Audit.

82.—(1) Subject to the provisions of subsections (2) and (3) of this section, the Director of Audit shall hold office until he attains the age of fifty-five years.

(2) The Director of Audit may at any time, by writing under his hand addressed to the Governor, resign his office.

(3) The Director of Audit may be removed from office only for inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and shall not be so removed except by the Governor after consultation with the Prime Minister.

Functions of Director of Audit.

83.—(1) The accounts of the Supreme Court, the accounts of the offices of the Clerk to the House of Representatives and the accounts of all departments and offices of the Government of Sierra Leone (including the offices of the Cabinet, the Judicial Service Commission and the Public Service Commission but excluding the department of the Director of Audit) shall, at least once in every year, be audited and reported on by the Director of Audit who, with his subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to such accounts.

(2) The Director of Audit shall submit his reports made under subsection (1) of this section to the Speaker (or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker) who shall cause them to be laid before the House of Representatives.

(3) In the exercise of his functions under the provisions of subsections (1) and (2) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

(4) The accounts of the department of the Director of Audit shall be audited and reported on by the Minister responsible for finance, and the provisions of subsections (1) and (2) of this section shall apply in relation to the exercise by that Minister of those functions as they apply in relation to audits and reports made by the Director of Audit.

Director of Public Prosecutions.

84.—(1) There shall be a Director of Public Prosecutions in and for Sierra Leone.

(2) The Director of Public Prosecutions shall be appointed by the Governor, after consultation with the Public Service Commission, from among persons who are qualified for appointment as a judge of the Supreme Court.

(3) If the office of Director of Public Prosecutions is vacant or the Director is for any reason unable to perform the functions of his office, the Governor, after consultation with the Public Service Commission, may appoint a person qualified for appointment as Director of Public Prosecutions to act as Director, and any person so appointed shall, subject to the provisions of subsections (3) to (7) of section 85 of this Order, continue to act until the office of Director of Public Prosecutions is filled or until his appointment is revoked by the Governor, acting in his discretion:

Provided that he may at any time, by writing under his hand addressed to the Governor, resign his acting office.

(4) The Director of Public Prosecutions shall receive such salary and allowances as may from time to time be prescribed by or under any law or by resolution of the House of Representatives:

Provided that—

(*a*) no such resolution may reduce any salary or allowance for the time being prescribed by a law; and

(*b*) the salary of the Director of Public Prosecutions shall not be reduced during his continuance in office.

(5) The salary for the time being payable to the Director of Public Prosecutions shall be charged on and paid out of the revenues of Sierra Leone.

Tenure of office of Director of Public Prosecutions.

85.—(1) Subject to the provisions of subsections (3) to (7) of this section, the Director of Public Prosecutions shall hold office until he attains the age of fifty-five years:

Provided that—

(*a*) he may at any time, by writing under his hand addressed to the Governor, resign his office; and

(*b*) the Governor, after consultation with the Public Service Commission, may permit a Director who has attained the age of fifty-five years to continue in office until he has attained such later age, not exceeding fifty-eight years, as may (before the Director has attained the age of fifty-five years) have been agreed between them.

(2) Nothing done by the Director of Public Prosecutions shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.

(3) 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 mind or body or any other cause) or for misbehaviour and shall not be

so removed except in accordance with the provisions of subsection (4) of this section.

(4) The Director of Public Prosecutions shall be removed from office by the Governor by Instrument under the Public Seal if the question of his removal from office has been referred to a tribunal appointed under subsection (5) 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.

(5) If the Prime Minister, or the Chief Justice after consultation with the Prime Minister, represents to the Governor that the question of removing the Director of Public Prosecutions from office for inability as aforesaid or for misbehaviour 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 Her Majesty's dominions or a court having jurisdiction in appeals from any such 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 Director ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) Subject to the provisions of subsection (5) of this section, the provisions of the Commissions of Inquiry Ordinance of Sierra Leone(a), as in force on the date of the commencement of this Part of this Order shall apply in relation to a tribunal appointed by an order made under that subsection as if the members thereof 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) If the question of removing the Director of Public Prosecutions from office has been referred to a tribunal under subsection (5) of this section, the Governor, acting in his discretion, may suspend the Director 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 Director shall not be removed from office.

Powers of Director of Public Prosecutions.

86.—(1) 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 civil court in Sierra Leone in respect of any offence alleged to have been committed by that person;

(a) Laws of Sierra Leone (1946 Revision), Cap. 38.

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

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

(2) The powers of the Director of Public Prosecutions under subsection (1) of this section may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or special instructions.

(3) The powers conferred upon the Director of Public Prosecutions under paragraphs (*b*) and (*c*) of subsection (1) of this section shall be vested in him to the exclusion of any other person:

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.

(4) For the purposes of this section, any appeal from any determination 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 in Sierra Leone or to the Sierra Leone and the Gambia Court of Appeal or to the Judicial Committee of Her Majesty's Privy Council shall be deemed to be part of those proceedings.

(5) In the exercise of the powers conferred upon him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person.

Attorney-General to be Director of Public Prosecutions.

87.—(1) Until the office of Attorney-General ceases to be a public office by or under the provisions of any law made after section 17 of this Order (as set out in section 4 of the Sierra Leone (Constitution) (Amendment) (No. 2) Order in Council, 1960) has come into operation, the Attorney-General shall also be the holder of the office of Director of Public Prosecutions and shall perform the functions of that office.

(2) Subsections (2) to (5) of section 84, and section 85, of this Order shall not apply where the Attorney-General holds the office of Director of Public Prosecutions by virtue of the provisions of subsection (1) of this section."

Transitional provisions relating to the Director of Audit

11.—(1) The person who, immediately before the day on which section 81 of the principal Order as inserted by this Order took effect, held the office of Director of Audit shall, as from that day, continue to hold the office of Director of Audit as if he had been appointed thereto in accordance with the provisions of the said section.

(2) Until other provision is made under and in accordance with the provisions of the said section 81, the salary and allowances of the

Director of Audit shall be the salary and allowances to which the holder of the office of Director of Audit was entitled immediately before the day on which the said section took effect.

Public officers to continue in service

12. Subject to the provisions of this Order, every person who, immediately before the day of the commencement of this Order, holds a public office shall, as from that day, continue to hold the like office as if he had been appointed thereto in accordance with the provisions of the principal Order as amended by this Order.

W. G. Agnew.

EXPLANATORY NOTE

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

This Order amends the Sierra Leone (Constitution) Order in Council, 1958, by establishing a Judicial Service Commission and by substituting a new Public Service Commission for the existing Public Service Commission. It also provides for the establishment of the office of Director of Audit and the office of Director of Public Prosecutions and amends the provisions relating to the office of Attorney-General. Further, the Order contains provisions relating to the grant of pensions.