1960 No. 1056

The Sierra Leone (Constitution) (Amendment) Order in Council, 1960

Made - - - -	*23rd June*, 1960
Laid before Parliament	*29th June*, 1960
Coming into Operation	*9th July*, 1960

At the Court at Buckingham Palace, the 23rd day of June, 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) 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), 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, and this Order may be cited together as the Sierra Leone (Constitution) Orders in Council, 1958 to 1960.

(3) This Order shall be published in the Gazette 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 have been laid before both Houses of Parliament.

Amendment of the principal Order

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

(*a*) in subsection (1)—

(i) by the insertion immediately after the definition of " the appointed day " of the following definition—

' " the Cabinet " means the Cabinet of Ministers constituted under section 3 of this Order ; ' ;

(ii) by the deletion of the definition of " the Executive Council " ;

(*b*) by the deletion of subsection (2) and the substitution therefor of the following subsection :—

" (2) In this Order, unless it is otherwise expressly provided or required by the context, any reference to an officer by the

(a) 53 & 54 Vict. c. 37. (b) S.I. 1958/1259 (1958 II, p. 2851).
(c) S.I. 1958/1524 (1958 II, p. 2873).

term designating his office shall be construed as a reference to the officer for the time being lawfully discharging the functions of that office.";

(*c*) in subsection (3), by the deletion of the words "References in this Order" and the substitution therefor of the words "In this Order, unless it is otherwise expressly provided or required by the context, references".

3. The heading "Executive Council" of Part II of the principal Order is deleted and the following heading substituted therefor—

"The Executive"

4. Section 3 of the principal Order is amended by the deletion of subsection (1) and the substitution therefor of the following subsection—

"(1) There shall be a Cabinet of Ministers in and for Sierra Leone which shall consist of a Prime Minister and not less than seven other Ministers."

5. Subject to section 3 of this Order, the principal Order is amended by the deletion of the expression "Executive Council" and of the expression "Council" wherever either occurs therein and the substitution therefor of the word "Cabinet" and by the deletion of the word "Premier" wherever it occurs therein and the substitution therefor of the words "Prime Minister".

6. Section 5 of the principal Order is revoked and the following section substituted therefor—

"Exercise of Governor's functions.

5.—(1) The Governor shall, subject to any Instructions under Her Majesty's Sign Manual and Signet, consult with the Cabinet in the exercise of all his functions other than—

(*a*) any function which is expressed (in whatever terms) to be exercisable by him on or in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, any person or authority other than the Cabinet;

(*b*) any function which is expressed (in whatever terms) to be exercisable by him in his discretion; and

(*c*) any power that he is required to exercise in pursuance of instructions from Her Majesty.

(2) The Governor shall act in accordance with the advice of the Cabinet in the exercise of any function in the exercise of which he is obliged by this section to consult with the Cabinet.

(3) Where the Governor is directed by this Order to exercise any function on the recommendation of any person or authority, he shall, subject to any Instructions under Her Majesty's Sign Manual and Signet, exercise that function in accordance with such recommendation:

Provided that—

(*a*) before he acts in accordance therewith, he may, in his discretion, once refer that recommendation back for reconsideration by the person or authority concerned; and

(*b*) if that person or authority, having reconsidered the original recommendation under the preceding paragraph, substitutes therefor a different recommendation, the provisions of this subsection shall apply to that different recommendation as they apply to the original recommendation.

(4) Where the Governor is directed by this Order 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.

(5) Where the Governor is directed by this Order to exercise any function in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court.

(6) Nothing in subsection (1) of this section shall apply to matters for which provision is made by sections 6 and 44 of this Order."

7. Section 12 of the principal Order is revoked and the following section substituted therefor—

"Presiding in the Cabinet.

12. The Prime Minister shall, so far as practicable, attend and preside at all meetings of the Cabinet and in his absence such Minister shall preside as the Prime Minister shall appoint:

Provided that whenever the Governor has summoned a meeting of the Cabinet under the provisions of subsection (1) of section 14 of this Order he shall preside."

8. Section 14 of the principal Order is revoked and the following section substituted therefor—

"Summoning of Cabinet and quorum.

14.—(1) The Cabinet shall be summoned by the Prime Minister or, in the absence of the Prime Minister, by such Minister as the Prime Minister shall appoint:

Provided that the Governor, acting in his discretion, may summon and attend a special meeting of the Cabinet whenever he shall think fit.

(2) No business except that of adjournment shall be transacted at any meeting of the Cabinet if there are present less than four members of the Cabinet and any member of the Cabinet present at the meeting has objected to the transaction of business on that account".

9. The principal Order is amended by the insertion therein immediately after section 14 of the following sections numbered 14A, 14B and 14C—

"Governor entitled to information.

14A. The Governor shall, for the due exercise of his functions, receive all papers which are available to the Cabinet and any other information concerning the government of Sierra Leone which is so available.

Voting.

14B.—(1) Where any matter is dependent upon the decision of the Cabinet, any decision shall be regarded as the decision of the Cabinet if a majority of the votes of the members present and voting is cast in favour thereof.

(2) A member of the Cabinet shall have an original vote in the Cabinet, and the Prime Minister may, when presiding in the Cabinet, also give a casting vote if on any question the votes are equally divided.

Committee of the Cabinet.

14C. 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 such manner, as may be prescribed by or in pursuance of any such Instructions."

10. Section 16 of the principal Order is amended—

(*a*) by re-numbering the existing section as subsection (1) of the section; and

(*b*) by the addition of the following subsection numbered (2):—

"(2) The Governor, acting in his discretion, may by directions in writing depute any Minister to exercise or to perform, on the Governor's behalf but subject to his control, any power or duty relating to any subject referred to in subsection (1) of this section, and acting as aforesaid may at any time revoke or vary such directions by further directions given in writing."

11. Section 29 of the principal Order is amended by the deletion of the words "or vote".

12. Section 43 of the principal Order is amended by the deletion therefrom of subsection (2) and the substitution therefor of the following subsection—

"(2) Except on the recommendation or with the consent of the Governor the House of Representatives shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the Speaker or other person presiding, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Sierra Leone or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to Sierra Leone;

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

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

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

"PART VI

THE JUDICATURE

Judges of Supreme Court.

59.—(1) Subject to section 61 of this Order, the judges of the Supreme Court of Sierra Leone shall be a Chief Justice, a Senior Puisne Judge and such Puisne Judges as may from time to time be appointed under the next following section.

(2) The office of a Judge of the Court shall not be abolished while there is a substantive holder thereof.

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

Appointment of judges of Supreme Court.

60.—(1) The Chief Justice, the Senior Puisne Judge and the Puisne Judges of the Supreme Court shall be appointed by the Governor, by Instrument under the Public Seal, in pursuance of instructions given to him by Her Majesty through a Secretary of State.

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

(i) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of Her Majesty's dominions or a court having jurisdiction in appeals from any such court; or

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

(*b*) In computing, for the purposes of paragraph (*a*) of this subsection, the period during which any person has been qualified to practise as an advocate or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

Acting Judges.

61.—(1) (*a*) If the office of Chief Justice is vacant or if the Governor is satisfied that the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such one of the other judges of the Supreme Court as the Governor, acting in his discretion, may appoint for that purpose.

(*b*) If the office of any Puisne Judge of the Supreme Court (including that of the Senior Puisne Judge) is vacant or if any such Judge is appointed to act as Chief Justice or if the Governor is satisfied that any Puisne Judge is for any reason unable to perform the functions of his office or that the state of business in the Supreme Court so requires, the Governor, acting in his discretion after consultation with the Chief Justice, may appoint a person qualified for appointment as a judge of the Supreme Court to act as a Puisne Judge of that Court:

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

(2) Any person appointed under paragraph (*b*) of subsection (1) of this section to act as a Puisne Judge of the Supreme Court shall, unless he earlier resigns his office or is removed therefrom under section 62 of this Order, 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 his discretion, after consultation with the Chief Justice.

(3) Any person appointed to act as a judge under the provisions of this section may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit with the consent of the Chief Justice as a judge for the purpose of giving judgment or otherwise in relation to any proceeding heard by him while he was so acting.

Tenure of office of judges of Supreme Court.

62.—(1) Subject to the provisions of subsections (3) to (8) inclusive of this section, each judge of the Supreme Court shall hold office until he attains the age of 62 years:

Provided that—

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

(*b*) the Governor may permit a judge who attains the age of 62 years to continue in office until he has attained such later age, not exceeding 65 years, as may (before the judge has attained the age of 62 years) have been agreed between them.

(2) Nothing done by a judge of the Supreme Court 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) A judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with subsection (4) of this section.

(4) A judge of the Supreme Court shall be removed from office by the Governor by order under the Public Seal if the question of removal of that judge has, at the request of the Governor, made in pursuance of subsection (5) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act, 1833(a), or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If the Governor considers that the question of removing a judge of the Supreme Court from office for

(a) 3 & 4 Will. 4. c. 41.

inability as aforesaid or misbehaviour ought to be investigated, then

(*a*) the Governor shall by order under the Public Seal (which he may vary or revoke by a subsequent order) appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor, from among person who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of Her Majesty's dominions or a court having jurisdiction in appeals from any such court;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether he should request that the question of 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.

(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 the Sierra Leone (Constitution) (Amendment) Order in Council, 1960, 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 a judge of the Supreme Court from office has been referred to a tribunal under subsection (5) of this section, the Governor may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Governor that he should not request that the question of 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 to be removed from office.

(8) This section shall apply to any person appointed to act as a Puisne Judge of the Supreme Court as it applies to a substantive holder of such office but without prejudice to any provision in this Order for the revocation of his appointment by the Governor.

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

Remuneration of judges of the Supreme Court.

63. There shall be charged on the revenues of Sierra Leone and paid thereout to the Chief Justice, the Senior Puisne Judge, any Puisne Judge and to any person appointed to act as a Puisne Judge such salaries and

(a) Laws of Sierra Leone, Rev. 1946 c. 38.

allowances as may be prescribed by or under any law made under this Order:

Provided that the salary or allowances of any judge shall not be reduced during his continuance in office.

The Sierra Leone (Public Service Commission) Order in Council, 1953, not to apply.

64. The provisions of the Sierra Leone (Public Service Commission) Order in Council, 1953(a), shall not apply in relation to the office of any judge of the Supreme Court."

Disposal of powers vested in the Governor in Council

14. On the date of the commencement of this Order all functions which at that date shall be vested by any law in force in Sierra Leone in the Governor in the Executive Council, howsoever the association of the said Council with the Governor may be described in any such law, shall, so far as the same shall continue in existence and be capable of being exercised after the said date and save as otherwise provided by any law made under this Order, be vested in the Governor, and the provisions of subsections (1), (2), (3) and (5) of section 5 of the principal Order as set out in this Order shall apply accordingly to the exercise of such functions.

Transitional provisions relating to section 6 of principal Order

15.—(1) The person who, immediately before the date of the commencement of this Order, was the Premier of Sierra Leone shall be deemed to have been appointed on that date as Prime Minister in accordance with the provisions of section 6 of the principal Order as amended by this Order.

(2) The persons who, immediately before the date of the commencement of this Order, were Ministers under the provisions of the principal Order shall be deemed to have been appointed on that date as Ministers in accordance with the provisions of section 6 of the principal Order as amended by this Order.

Transitional provisions relating to Judges of Supreme Court

16.—(1) The Chief Justice and other Judges of the Supreme Court of Sierra Leone holding office immediately before the date of the commencement of this Order shall, as from that date, continue to hold the like offices as if they had been appointed thereto under the provisions of Part VI of the principal Order as inserted by this Order.

(2) Until other provision is made under and in accordance with the provisions of section 63 of the principal Order as inserted by this Order, the salaries and allowances of the Judges of the Supreme Court shall be the salaries and allowances to which the holders of those offices were entitled immediately before the date of the commencement of this Order.

Adaptation of existing laws

17.—(1) The Governor may, by order published in the Gazette, at any time within nine months after the date of the commencement of

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

this Order provide that any existing law shall be read and construed with such adaptations and modifications as may appear to the Governor to be necessary or expedient for bringing the provisions of that law into conformity with the provisions of the Sierra Leone (Constitution) Orders in Council, 1958 to 1960, or otherwise for giving effect or enabling effect to be given to those provisions; and any such law shall have effect accordingly from such date as may be specified in the order, not being a date earlier than the date of the commencement of this Order.

(2) In this section "existing law" means a law in force or having effect immediately before the date of the commencement of this Order that was enacted by any legislature in Sierra Leone and includes any instrument made in pursuance of any such law.

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, in order to establish for Sierra Leone a Cabinet consisting of a Prime Minister and Ministers in place of the Executive Council. Provision is made for the Governor to summon a special meeting of the Cabinet whenever he thinks fit. It also empowers the Governor to direct a Minister to perform, on the Governor's behalf but subject to his control, any power or duty relating to a subject within the special responsibilities of the Governor.

The 1958 Order is further amended by the insertion therein of provisions with respect to judges of the Supreme Court.

The opportunity has also been taken to make certain minor amendments to the 1958 Order.