1959 No. 104

The Somaliland (Constitution) Order in Council, 1959

Made - - - -	19*th January*, 1959
Laid before Parliament	23*rd January*, 1959
Coming into Operation	21*st February*, 1959

At the Court at Buckingham Palace, the 19th day of January, 1959

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in this 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 and commencement

1.—(1) This Order may be cited as the Somaliland (Constitution) Order in Council, 1959, and shall be construed as one with the Somaliland (Constitution) Order in Council, 1955(b) (hereinafter called " the principal Order ").

(2) The Somaliland (Constitution) Order in Council, 1955, and this Order may be cited together as the Somaliland (Constitution) Orders in Council, 1955 and 1959.

(3) This Order shall be published in the Gazette and shall come into operation on a date to be appointed by the Governor by Proclamation in the Gazette, which date 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.—(1) Subsection (4) of section 1 of the principal Order is hereby amended by inserting the word " or " immediately after the semi-colon in paragraph (*b*) thereof and by adding the following two paragraphs immediately after paragraph (*b*) as so amended: —

" (*c*) is in receipt of a salary or other emoluments in respect of his tenure of office as a Member of the Legislative Council or a Member of the Executive Council ; or

(*d*) is on leave of absence pending relinquishment of an office of emolument under the Crown."

(2) Subsection (5) of section 1 of the principal Order is hereby amended by the substitution of a semi-colon and the word " and " for the full stop at the end of paragraph (*b*) thereof and by adding the

(a) 53 & 54 Vict. c. 37. (b) S.I. 1955/242 (1955 II, p. 2467).

following two paragraphs immediately after paragraph (*b*) as so amended :—

"(*c*) as if subsection (1) of section 1 of the Pakistan (Consequential Provision) Act, 1956(**a**), applied to it in the same way as that subsection applies to laws in force on the date mentioned in that subsection ; and

(*d*) as if subsection (1) of section 2 of the Federation of Malaya Independence Act, 1957(**b**), applied to it in the same way as that subsection applies to existing laws as defined by subsection (4) of that section."

3. Section 7 of the principal Order is hereby amended by substituting the word "Protectorate" for the word "Colony" where it appears.

4. Section 16 of the principal Order is hereby amended by revoking subsection (2) thereof and substituting therefor the following subsection:—

"(2) The Legislative Council shall consist of—

(*a*) the Governor as President ;

(*b*) three *ex officio* Members ;

(*c*) not more than fourteen Official Members ;

(*d*) thirteen Elected Members ; and

(*e*) not more than three Nominated Members:

Provided that the Council shall be properly constituted although no Nominated Members shall have been appointed."

5. Section 18 of the principal Order is hereby amended—

(*a*) by substituting the word "Nominated" for the word "Unofficial" wherever it appears ;

(*b*) by re-numbering the existing subsection (2) as subsection (3) ;

(*c*) by inserting a new subsection immediately after subsection (1) thereof as follows:—

"(2) The Elected Members shall be persons not holding office of emolument under the Crown and shall be elected in the manner provided by, or in pursuance of, any law or regulation for the time being in force in the Protectorate." ;

(*d*) by substituting for the existing marginal note, a new marginal note namely:—

"Official, Elected and Nominated Members.".

6. Section 19 of the principal Order is hereby revoked and in place thereof the following section shall have effect:—

"Qualifications for Official, Elected or Nominated Membership.

19. Subject to the provisions of section 20 of this Order, any person who,

(*a*) is a British subject or a British protected person ; and

(*b*) is of the age of twenty-eight years or upwards ; and

(*c*) in the case of an Elected or Nominated Member has resided in the Protectorate for a period of at least two years immediately before the date of his nomination

(**a**) 4 & 5 Eliz. 2. c. 31. (**b**) 5 & 6 Eliz. 2. c. 60.

for election, or appointment, as the case may be, or is domiciled in the Protectorate and is resident there at the date aforesaid ; and

(*d*) in the case of an Elected Member is otherwise qualified in accordance with any law or regulation for the time being in force in the Protectorate,

shall be qualified to be appointed an Official or Nominated Member, or to be an Elected Member, as the case may be, and no other person shall be so qualified."

7. Section 20 of the principal Order is hereby revoked and in place thereof the following section shall have effect:—

"Disqualifications for Official, Elected or Nominated Membership.

20. No person shall be qualified for appointment as an Official or Nominated Member or for election as an Elected Member who—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance to a foreign Power or State ; or

(*b*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions ; or

(*c*) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Protectorate for or on account of the public service and has not disclosed to the Governor the nature of such contract and his interest, or the interest of such firm or company, therein ; or

(*d*) is under a sentence of death, or is serving, or has, within the five years immediately preceding the date of appointment, or nomination for election, completed the serving, of a sentence of imprisonment (by whatever name called) in any part of Her Majesty's dominions after conviction for an offence involving dishonesty, and has not received a free pardon ; or

(*e*) has been sentenced by a court in any part of Her Majesty's dominions to imprisonment (by whatever name called) for a term exceeding twelve months after conviction for an offence not involving dishonesty and has not either suffered the punishment to which he was sentenced or such other punishment as may have been substituted therefor by a competent authority, or received a free pardon ;

Provided that if, in the circumstances, it shall appear to the Governor to be just to do so, he may, by Order exempt any person from disqualification under the provisions of paragraph (*d*) hereof, and of this paragraph ; or

(*f*) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the Protectorate ; or

(*g*) in the case of an Elected Member, holds or is acting in any public office ; or

(*h*) in the case of an Elected Member, is otherwise disqualified by reason of any law or regulation for the time being in force in the Protectorate."

8. Section 21 of the principal Order is hereby revoked and in place thereof the following section shall have effect :—

"Tenure of office of Official, Elected and Nominated Members.

21.—(1) Every Official or Nominated Member of the Legislative Council shall hold his seat in the Council during Her Majesty's pleasure.

(2) Every Elected or Nominated Member shall cease to be a Member at the next dissolution of the Legislative Council after his appointment or election, or previously thereto if his seat shall become vacant under the provisions of this Order.

(3) The seat of an Official, Elected or Nominated Member of the Legislative Council shall become vacant:—

(*a*) upon his death ; or

(*b*) if he shall be absent from two consecutive meetings of the Council, without having obtained from the Governor, before the termination of either of such meetings, permission to be or to remain absent therefrom ; or

(*c*) if, having been a British subject, he shall cease so to be ; or if, in any case, he shall take any oath or make any declaration or acknowledgment of allegiance obedience or adherence to any foreign Power or State ; or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign Power or State ; or

(*d*) if, being a Nominated or Elected Member, he shall become a party to any contract with the Government of the Protectorate for or on account of the public service, or if any firm in which he is a partner or any company of which he is a director or manager shall become a party to any such contract, or if he shall become a partner in a firm or a director or manager of a company which is a party to any such contract :

Provided that if it shall appear to him or them just to do so, the Governor may exempt any such Nominated Member and the Legislative Council may exempt any Elected Member from vacating his seat under the provisions of this paragraph, if such Member shall, before becoming a party to any such contract, as aforesaid, or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm or director or manager of a company) disclose to the Governor or to the Legislative Council (as the case may be) the nature of such contract and his interest or the interest of any such firm or company therein ; or

(*e*) if, in the case of an Official Member, he shall cease to hold office of emolument under the Crown in the Protectorate ; or

(*f*) if, in the case of an Elected Member, he shall be appointed to, or to act in, any office of emolument under the Crown ; or

(*g*) if, in the case of a Nominated Member, he shall be appointed permanently to any office of emolument under the Crown ; or

(*h*) if, being a Nominated Member, he shall become an Elected Member ; or

(*i*) if, he shall be sentenced by a Court in any part of Her Majesty's dominions to death or imprisonment (by whatever named called) after conviction for an offence involving dishonesty, or to imprisonment for a term exceeding twelve months after conviction for any other offence ; or

(*j*) if he shall be adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions ; or

(*k*) if he shall be adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the Protectorate ; or

(*l*) if he shall, by writing under his hand addressed to the Governor, resign his seat in the Council and, in the case of an Official Member, if his resignation shall be accepted by the Governor acting in his discretion ; or

(*m*) if, in the case of an Elected Member, he shall cease to have any of the qualifications or shall become subject to any of the disqualifications provided by or in pursuance of any law or regulation for the time being in force in the Protectorate.

(4) If a Nominated Member of the Legislative Council shall be appointed temporarily to any office of emolument under the Crown in the Protectorate or shall be appointed to act in any such office, he shall not sit or vote in the Council so long as he continues to hold or act in that office.

(5) Any person vacating a seat as an Official, Elected or Nominated Member may, if qualified, be again appointed or elected from time to time.

(6) Whenever the seat of an Official or Nominated Member becomes vacant, the vacancy shall be filled by appointment by the Governor in accordance with the provisions of this Order.

(7) Whenever the seat of an Elected Member becomes vacant, the vacancy shall be filled by election in accordance with any law or regulation for the time being in force in the Protectorate."

9. Section 22 of the principal Order is hereby amended by substituting the word "Nominated" for the word "Unofficial" where it appears therein and in the marginal note thereto.

10. Section 23 of the principal Order is hereby amended—

(*a*) by inserting the words "as *ex officio*, Official or Nominated Members" immediately after the words "in the Legislative Council" where they appear in subsection (1) ;

(*b*) by substituting the words " or Nominated " for the words " or Unofficial " and the words " a Nominated " for the words " an Unofficial " where they appear ; and

(*c*) by substituting the words " Nominated Members " for the words " Unofficial Members " where they appear in paragraph (*c*) of subsection (2) thereof.

11. Section 25 of the principal Order is hereby revoked and in place thereof the following section shall have effect:—

" Determination of questions as to membership.

25.—(1) Any question whether a person has been validly appointed as an *ex officio*, Official or Nominated Member of the Legislative Council or whether an *ex officio*, Official or Nominated Member of the Legislative Council has vacated his seat therein shall be determined by the Governor, acting in his discretion.

(2) Any question whether a person has been validly elected as a member of the Legislative Council or whether an Elected Member of the Legislative Council has vacated his seat therein shall be determined by the High Court of the Protectorate."

12. Section 27 of the principal Order is hereby amended—

(*a*) by substituting the words " Elected and Nominated " for the word " Unofficial " ;

(*b*) by revoking subsection (2) thereof and substituting therefor the following subsection :—

" (2) For the purposes of this section, in ascertaining the period during which an Elected or Nominated Member has continuously been a Member of the Legislative Council no account shall be taken of any interval between the vacation by that person of his seat in the Legislative Council in consequence of a dissolution of the Council or other expiration of his term of office and the date of his re-appointment or re-election to fill a vacancy in the Legislative Council caused by that dissolution or other expiration."

13.—(1) The principal Order is hereby amended by adding immediately after section 27 thereof the following new section :—

" Laws as to elections, etc.

27A.—(1) Provision may be made by or in pursuance of any law enacted under this Order for the Governor to declare certain areas of the Protectorate to be electoral districts for the purpose of returning Members to the Legislative Council, and for the election of Members of the Legislative Council to represent such districts, including (without prejudice to the generality of the foregoing power) the following matters, that is to say :—

(*a*) the qualifications and disqualifications of electors ;

(*b*) the registration of electors ;

(*c*) the qualifications and disqualifications for election of candidates for election additional to those prescribed by sections 19 and 20 of this Order ;

(*d*) the ascertainment of the qualifications of candidates for election and of electors ;

(*e*) the division of electoral districts for any purpose connected with elections;

(*f*) the nomination of candidates for election;

(*g*) the holding of elections;

(*h*) the determination of any question which may arise as to whether any person has become an Elected Member of the Legislative Council or as to whether the seat of any Elected Member in the Legislative Council has become vacant;

(*i*) the definition and trial of offences relating to elections and the imposition of penalties therefor, including disqualification for membership of the Legislative Council, or for registration as an elector, or for voting at elections, of any person concerned in any such offence; and

(*j*) the disqualification for election as Members of the Legislative Council of persons holding, or acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(2) A law enacted in pursuance of subsection (1) of this section may provide that if at the time of an election no person has within the period provided for nominations by that law been nominated as a candidate for election in an electoral district the Governor may appoint a person to represent that electoral district in the Legislative Council."

(2) The Somaliland (Electoral Provisions) Order in Council, 1958(a), is revoked without prejudice to anything lawfully done thereunder.

(3) Any law or regulation made under section 3 of the Somaliland (Electoral Provisions) Order in Council, 1958, and in force immediately before the commencement of this Order shall have effect after the commencement of this Order as if it had been made under section 27A of this Order.

14. Section 34 of the principal Order is hereby amended by substituting the word " twelve " for the word " six ".

15. Section 40 of the principal Order is hereby revoked and in place thereof the following section shall have effect:—

" Prorogation and dissolution.

40.—(1) The Governor may, at any time, by Proclamation published in the Gazette, prorogue or dissolve the Legislative Council.

(2) The Governor shall dissolve the Council at the expiration of three years from the date of the return of the first writ at the last preceding general election, if it shall not have been sooner dissolved.".

(a) S.I. 1958/1957 (1958 I, p. 1000).

16. The principal Order is hereby amended by adding immediately after section 40 thereof the following new section:—

"General Elections.

40A. There shall be a general election at such time within three months after the coming into operation of the Somaliland (Constitution) Order in Council, 1959, and thereafter within three months after every dissolution of the Legislative Council, as the Governor shall by Proclamation published in the Gazette appoint.".

17. The principal Order is hereby amended by adding immediately after section 41 thereof the following new section:—

"Penalty for sitting or voting in Legislative Council when unqualified.

41A.—(1) Any person who sits or votes in the Legislative Council knowing, or having reasonable grounds for knowing, that he is not entitled to do so shall be liable to a penalty not exceeding four hundred shillings for every day upon which he so sits or votes.

(2) Any such penalty shall be recoverable by civil action in the High Court of the Protectorate at the suit of the Attorney-General of the Protectorate.".

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 Somaliland (Constitution) Order in Council, 1955, by enlarging the membership of the Legislative Council, enabling members to be elected thereto, and providing for incidental matters connected therewith.