STATUTORY INSTRUMENTS

1967 No. 241

AFRICA

The Swaziland Constitution Order 1967

Made - - - -	*22nd February* 1967
Laid before Parliament	*28th February* 1967
Coming into Operation	*1st March* 1967

At the Court at Buckingham Palace, the 22nd day of February 1967

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 and commencement.

1.—(1) This Order may be cited as the Swaziland Constitution Order 1967.

(2) This Order shall come into force on 1st March 1967.

Interpretation.

2.—(1) In the Order—

"the Constitution" means the Constitution of the Kingdom of Swaziland set out in the Schedule to this Order;

"the appointed day" means such date after the return of the writs at the general election referred to in section 8(1) of this Order as may be appointed by the Commissioner, acting in his discretion, by notice published in the Gazette;

"the existing laws" means any Proclamations, Laws, rules, regulations, orders or other instruments made, or having effect as if they had been made, in pursuance of the existing Orders or this Order and having effect as part of the law of Swaziland immediately before the appointed day;

"the existing Orders" means the Swaziland Order in Council 1963(b), the Swaziland (Amendment) Order 1964(c), the Swaziland (Amendment) Order 1965(d) and the Swaziland (Amendment) Order 1966(e).

(2) The provisions of sections 134 and 141 of the Constitution shall apply for the purposes of interpreting sections 1 to 13 of this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.

Revocations.

3. With effect from the appointed day, the existing Orders and the Swaziland Court of Appeal Order 1966(f) are revoked:

Provided that section 98 of the Swaziland Order in Council 1963 shall continue in force until the date on which section 89 of the Con-

(a) 1890 c. 37. (b) S.I. 1963/2094 (1963 III, p. 4616).
(c) S.I. 1964/1192 (1964 II, p. 2770). (d) S.I. 1965/1305 (1965 II, p. 3708).
(e) S.I. 1966/1178 (1966 III, p. 3053). (f) S.I. 1966/1180 (1966 III, p. 3056)

stitution shall, in pursuance of section 4(2) of this Order, have come into operation.

Establishment of Constitution.

4.—(1) Subject to the provisions of this section, the Constitution shall come into operation in Swaziland on the appointed day and from that day Swaziland shall be known as the Kingdom of Swaziland.

(2) Section 89 of the Constitution shall come into operation on such date, after the appointed day, as may be appointed by the Commissioner by notice published in the Gazette.

Existing laws.

5.—(1) Subject to the provisions of this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) The King may, by order published in the Gazette, at any time within six months after the appointed day provide that any existing law shall be read and construed with such adaptations and modifications as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution or otherwise for giving effect, or enabling effect to be given, to those provisions; and any existing law shall have effect accordingly from such date (not being earlier than the appointed day) as may be specified in the order.

(3) An order made under this section may be amended or revoked by Parliament or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(4) Where any matter that falls to be prescribed or otherwise provided for the purposes of the Constitution by Parliament or by any other person or authority is prescribed or provided for by or under any existing law (including any adaptation or modification of any such law made under this section) or is otherwise prescribed or provided for, immediately before the appointed day, by or under the existing Orders, that prescription or provision shall, as from the appointed day, have effect as if it had been made for those purposes by Parliament or, as the case may be, by the other person or authority.

(5) The provisions of this section shall be without prejudice to any powers conferred by the Constitution or any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

Existing offices.

6.—(1) The person who, immediately before the appointed day, holds the office of Her Majesty's Commissioner under section 20 of the Swaziland Order in Council 1963 shall, as from that day, continue to hold that office as if he had been appointed thereto in accordance with the provisions of the Constitution.

(2) Where any other office has been established by or under the existing Orders or any existing law and the Constitution establishes a similar or an equivalent office any person who, immediately before the appointed day, holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed to have been appointed on the appointed day to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken any necessary oaths under the Constitution:

Provided that any person who under the existing Orders or any existing law would have been required to vacate his office at the

expiration of any period or on the attainment of any age shall vacate his office under the Constitution at the expiration of that period or upon the attainment of that age.

(3) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and the removal from office of persons holding or acting in any office.

First constituencies.

7. Until such time as is otherwise provided under section 51 of the Constitution, the respective boundaries of the constituencies established by that section shall be those prescribed in the Electoral Provisions Regulations 1966 made by the Commissioner under section 2 of the Swaziland (Electoral Provisions) Order 1966(a).

Provisions relating to elections.

8.—(1) Writs for a general election of elected members of the House of Assembly shall be issued within thirty days of the dissolution of the Legislative Council established by the existing Orders and the provisions of the Constitution shall apply in relation to that general election as they would apply in relation to a general election held after the appointed day:

Provided that for those purposes a person shall be entitled to vote if, in pursuance of the Swaziland (Electoral Provisions) Order 1966, he has been registered as a voter, but no person shall be entitled to vote in any constituency unless, in pursuance of the said Order, he has been registered as a voter in that constituency.

(2) The Commissioner, acting in his discretion, may at any time before the appointed day by regulations make such provision for the holding of elections to the House of Assembly in accordance with the provisions of the Constitution and matters relating thereto as he may consider necessary or expedient for the purpose of enabling elections of the elected members of that House to be held.

(3) The Commissioner, acting in his discretion, may at any time before the appointed day by regulations make such provision as he may consider necessary or expedient for the election, in accordance with the provisions of the Constitution, by the members of the House of Assembly of elected Senators.

(4) Any regulation made under this section may amend or revoke any law relating to elections to the Legislative Council established by the existing Orders and may be amended or revoked by Parliament.

Procedure of House of Assembly.

9. The Standing Orders of the Legislative Council established by the existing Orders, as those Standing Orders were in force immediately before the appointed day, shall, except as may be otherwise provided under section 66 of the Constitution, have effect after the appointed day as if they had been made under that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

Legal proceedings.

10.—(1) All proceedings that, immediately before the appointed day, are pending before any court established by or under the existing Orders or the Swaziland Court of Appeal Order 1966 may be continued and concluded after that day before the corresponding court established by or under the Constitution.

(a) S.I. 1966/1179 (1966 III, p. 3054).

(2) Any decision given before the appointed day by any such court as aforesaid shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after that day as if it were a decision of the corresponding court established by or under the Constitution.

Remuneration of certain officers.

11. Until such time as a salary and allowances are prescribed, there shall be paid to the holder of any office to which section 124 of the Constitution applies a salary and allowances calculated at the same rate as the salary and allowances paid immediately before the appointed day to the holder of the office corresponding thereto.

Power reserved to Her Majesty.

12. There is reserved to Her Majesty in Council power to make laws for the peace, order and good government of Swaziland—

(*a*) in respect of any matter which in the opinion of Her Majesty's Government in the United Kingdom is a matter relating to—

(i) defence (whether of Swaziland or of the United Kingdom or of any other territory for whose government Her Majesty's Government in the United Kingdom are wholly or partly responsible);

(ii) external affairs; or

(iii) internal security of Swaziland;

(*b*) for the protection of the terms and conditions of service of members of the public service of Swaziland or in respect of the retirement of members of that public service;

(*c*) for securing to or in respect of persons who—

(i) hold or have held office or employment in the public service of Swaziland; and

(ii) are participants in any pension provision applicable to that office or employment,

such benefits by way of modification of or addition to that pension provision, or otherwise by way of compensation out of the public funds of Swaziland, as appear to Her Majesty to be appropriate having regard to any arrangements made in that behalf between Her Majesty's Government in the United Kingdom and the Government of Swaziland;

(*d*) for the purpose of ensuring proper financial administration or securing compliance with a condition attached to a financial grant made by Her Majesty's Government in the United Kingdom to the Government of Swaziland; and

(*e*) for the purpose of ensuring compliance by the Government of Swaziland with any obligation assumed by that Government to the holders of stock forming the whole or any part of the public debt of Swaziland.

Reservation of constituent power.

13. There is reserved to Her Majesty in Council full power to amend, suspend, revoke or replace this Order.

W. G. Agnew.

SCHEDULE TO THE ORDER

Section 2 (1).

THE CONSTITUTION OF THE KINGDOM OF SWAZILAND

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CONSTITUTION OF THE KINGDOM OF SWAZILAND

CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

1. Whereas every person in Swaziland is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

2.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection of right to personal liberty.

3.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

(*a*) in execution of the sentence or order of a court, whether established for Swaziland or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Swaziland;

(*f*) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into Swaziland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Swaziland or for the purpose of restricting that person while he is being conveyed through Swaziland in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Swaziland or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Swaziland in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in paragraph (*b*) of subsection (3) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person

or from any other person or authority on whose behalf that other person was acting.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Swaziland during that period.

(8) For the purposes of subsection (1)(*a*) of this section, a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of an offence and the detention of a person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

Protection from slavery and forced labour.

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(*d*) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment.

5.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Swaziland immediately before the appointed day.

Protection from deprivation of property.

6.—(1) No property shall be compulsorily taken possession of, and no interest in or right over property shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public

health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit;

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right to direct access to the High Court for—

(*a*) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and

(*b*) the purpose of obtaining prompt payment of that compensation:

Provided that if any law for the time being in force in Swaziland so provides in relation to any matter referred to in paragraph (*a*) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) No person who is entitled to compensation under this section shall be prevented from remitting within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Swaziland.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last foregoing subsection to the extent that the law in question authorises—

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(*b*) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section—

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary to do so because the property is in a dangerous state or injurious to the health of human beings, animals or plants or because of the risk that the property is likely to spread an infectious or dangerous disease ;

(vi) in consequence of any law with respect to the limitation of actions ; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society ; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property ;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein ;

(iii) property of a person adjudged insolvent or a body corporate in liquidation for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property ; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by any legislature in Swaziland.

Protection against arbitrary search or entry.

7.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) (i) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and

country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit ; or

(ii) that is reasonably required for the purpose of promoting the rights or freedoms of other persons ; or

(*b*) that authorises an officer or agent of the Government or of a local government authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be ; or

(*c*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the entry upon any premises by order of a court,

except so far as, in respect of paragraph (*b*) or paragraph (*c*) of this subsection, that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions to secure protection of law.

8.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty ;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged ;

(*c*) shall be given adequate time and facilities for the preparation of his defence ;

(*d*) shall be permitted to defend himself before the court in person or by a legal representative of his own choice ;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution ; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a

copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(*b*) may by law be empowered or required to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) paragraph (*a*) of subsection (2) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) paragraph (*d*) of subsection (2) of this section to the extent that the law in question prohibits legal representation before a Swazi court or before any court or authority hearing appeals from such a court;

(*c*) paragraph (*e*) of subsection (2) of this section to the extent that the law in question imposes conditions that must be satisfied if

witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(*d*) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (*d*) and (*e*) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in paragraph (*d*) of subsection (2) of this section shall be construed as entitling a person to legal representation at public expense.

(14) In this section, "criminal offence" means a criminal offence under the law of Swaziland.

Protection of freedom of conscience.

9.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section freedom of conscience includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(*b*) that is reasonably required for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of members of any other religion or belief.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of freedom of expression.

10.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) (i) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ; or

(ii) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television ; or

(*b*) that imposes restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) (i) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ;

(ii) that is reasonably required for the purpose of protecting the rights or freedoms of other persons ; or

(*b*) that imposes restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of movement.

12.—(1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Swaziland, the right to reside in any part of Swaziland, the right to enter Swaziland and immunity from expulsion from Swaziland.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for imposing restrictions on the movement or residence within Swaziland of any person that are reasonably required in the interests of defence, public safety or public order ;

(*b*) for imposing restrictions on the movement or residence within Swaziland of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality or public health, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society ;

(*c*) for imposing restrictions, by order of a court, on the movement or residence within Swaziland of any person either in consequence of his having been found guilty of a criminal offence under the law of Swaziland or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Swaziland ;

(*d*) for imposing restrictions on the freedom of movement of any person who is not a citizen of Swaziland ;

(*e*) for imposing restrictions on the acquisition or use by any person of any property in Swaziland that are reasonably required in the interests of defence, public safety, public order, public morality or public health ;

(*f*) for imposing restrictions on the movement or residence within Swaziland of any person who holds or is acting in any public office ; or

(*g*) for the removal of a person from Swaziland to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph (*a*) of the last foregoing subsection so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons entitled to practise in Swaziland as advocates or attorneys.

(5) On any review by a tribunal in pursuance of the last foregoing subsection of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Protection from discrimination on the grounds of race, etc.

13.—(1) Subject to the provisions of subsections (4), (5), (6) and (9) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (7), (9) and (10) of this section, no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) with respect to persons who are not citizens of Swaziland or companies which are not registered in Swaziland ;

(*b*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law ;

(*c*) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons ;

(*d*) whereby persons of any such description as is mentioned in the last foregoing subsection may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society ; or

(*e*) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Swaziland during that period.

(5) Subsection (1) of this section shall not apply to the Poll Tax Proclamation, the African Tax Proclamation, the African Tax (Consolidation) Proclamation 1963 or to any order made under the Swazi Administration Proclamation prior to the coming into operation of this section:

Provided that if any such Proclamation or order is amended in such a way as to increase the discrimination made in the Proclamation or order or to impose a new discrimination, the provisions of this subsection shall cease to apply to that Proclamation or order.

(6) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin, political opinions, colour or creed) to be required of any person who is appointed to any public office, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by any law for public purposes.

(7) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) of this section.

(8) Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by section 7(2), section 9(5), section 10(2), section 11(2), or paragraph (*a*) or (*b*) of section 12(3), as the case may be.

(10) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under any law for the time being in force in Swaziland.

Protection of persons detained under emergency laws.

14.—(1) Where a person is detained by virtue of a law that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Swaziland during that period, the following provisions shall apply, that is to say—

(*a*) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practise in Swaziland as advocates or attorneys;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal; and

(*e*) at the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in paragraph (*d*) or (*e*) of subsection (1) of this section shall be construed as entitling a person to legal representation at public expense.

Enforcement of protective provisions.

15.—(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being, or is likely to be, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(*a*) to hear and determine any application made in pursuance of the last foregoing subsection;

(*b*) to determine any question which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Chapter.

(3) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of this Chapter, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his judgment, which shall be final, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of the last foregoing subsection, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or (whether mediately or direct) to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) No appeal shall lie from any determination by the High Court that an application made in pursuance of subsection (1) of this section is merely frivolous or vexatious.

(6) Provision may be made by or under a law enacted under this Constitution for conferring upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or expedient for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the High Court (including rules with respect to the time within which applications to that court may be made).

Interpretation and savings.

16.—(1) In this Chapter, unless the context otherwise requires—

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means a court of law having jurisdiction in Swaziland, including Her Majesty in Council, but not, save in sections 2 and 4 of this Constitution, a court established by a disciplinary law;

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means—

(*a*) a naval, military or air force;

(*b*) the Swaziland Police Force; or

(*c*) the Swaziland Prison Service;

"legal representative" means a person entitled to be in, or to enter, Swaziland and entitled to practise as an advocate or attorney in Swaziland;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

"property" means land, or other property, of any description including Swazi nation land and minerals and mineral oils in Swaziland, and any right or interest held, in relation to minerals or mineral oils in Swaziland, by any person under any grant, lease or other disposition lawfully made.

(2) In this Chapter "a period of public emergency" means any period during which—

(*a*) Her Majesty is at war; or

(*b*) Part II of the Emergency Powers Order in Council 1939(a) as from time to time amended(b) is in operation in Swaziland or part thereof by virtue of a proclamation made under section 3 of that Order.

(3) In relation to any person who is a member of a disciplined force raised under a law made by any legislature in Swaziland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Swaziland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER II

THE MONARCHY

The office of King.

17.—(1) The person who is the Ngwenyama of Swaziland immediately before the making of the Swaziland Constitution Order 1967 is hereby recognised as King of Swaziland.

(2) The King of Swaziland shall be the Head of State.

(3) The King shall do all things that belong to his office in accordance with the provisions of this Constitution and of all other laws for the time being in force.

Succession to the throne of Swaziland.

18. When an announcement is made to the Swazi nation in accordance with Swazi law and custom that the office of King is vacant by reason of the death of the holder thereof or any other cause, such person as, in accordance with Swazi law and custom, is declared to be King shall become King.

(a) See S.I. 1952 I, p. 621.

(b) S.I. 1956/731, 1963/88, 1633, 1964/267, 1199 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084; 1964 I, p. 467; II, p. 2781).

The office of Ndlovukazi.

19.—(1) The person who is the Ndlovukazi (Queen Mother) immediately before the making of the Swaziland Constitution Order 1967 is hereby recognised as the Ndlovukazi.

(2) When the office of Ndlovukazi becomes vacant in accordance with Swazi law and custom, a person shall, in accordance with Swazi law and custom, be designated as the holder of that office.

The Regent.

20.—(1) Until the King has been installed, that is to say, until he has publicly assumed the functions and responsibilities of King in accordance with Swazi law and custom, or during any period when he is by reason of absence from Swaziland or any other cause unable to perform the functions of his office, those functions shall be performed, save as otherwise provided in this section, by the Ndlovukazi acting as Regent.

(2) If the Regent is unable for any reason to perform the functions of such office, a person shall be authorised, in accordance with Swazi law and custom (hereinafter referred to as "an authorised person"), to perform on her behalf her functions under subsection (1) of this section.

King's emoluments and Civil List.

21.—(1) The King shall be paid such emoluments and shall have such Civil List as may be prescribed by Parliament.

(2) The emoluments of the King and his Civil List shall be a charge on and paid out of the Consolidated Fund and shall not be reduced during the King's continuance in office.

Remuneration of Regent and of authorised person.

22.—(1) The Ndlovukazi shall, in respect of any period during which she acts as Regent, be entitled to such remuneration as may be prescribed by Parliament.

(2) An authorised person shall be entitled to such remuneration as may be prescribed by Parliament.

(3) Any remuneration prescribed under subsection (1) or (2) of this section shall be a charge on and paid out of the Consolidated Fund and shall not be reduced during the Ndlovukazi's continuance in office as Regent or, as the case may be, during the period in which an authorised person is acting under section 20(2) of this Constitution.

Immunities of the King, the Ndlovukazi and authorised person.

23.—(1) The King shall be entitled to immunity from taxation in respect of his emoluments and Civil List, all income accruing to him in his private capacity and all property owned by him in his private capacity.

(2) The Ndlovukazi shall be entitled to immunity from taxation in respect of her emoluments or any income accruing to her in her private capacity and all property owned by her in her private capacity.

(3) An authorised person shall be entitled to immunity from taxation in respect of any remuneration to which he is entitled under section 22 of this Constitution, and all income accruing to him in his private capacity during any period in which he is performing on behalf of the Ndlovukazi her functions as Regent, and, in so far as the taxation relates to the period concerned, all property owned by him in his private capacity.

(4) The King and the Ndlovukazi shall be entitled to immunity from compulsory acquisition of all property owned by them in their private capacity.

Protection of the King and of the Ndlovukazi in respect of legal proceedings.

24.—(1) Whilst any person holds the office of King, he shall be entitled to immunity from suit and legal process in any civil cause in respect of all things done or omitted to be done by him in his private capacity, to immunity from criminal proceedings in respect of all things done or omitted to be done by him either in his official capacity or in his private capacity and to immunity from being summoned to appear as a witness in any civil or criminal proceeding.

(2) The Ndlovukazi shall be entitled to immunity from suit and legal process in any civil cause in respect of all things done or omitted to be done by her in her private capacity, to immunity from criminal proceedings in respect of all things done or omitted to be done by her in her official capacity or in her private capacity and to immunity from being summoned to appear as a witness in any civil or criminal proceeding.

(3) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period during which that person has held the office of King or Ndlovukazi shall not be taken into account in calculating the period of time prescribed by that law which determines whether any such proceedings as are mentioned in subsection (1) or (2), as the case may be, of this section may be brought against that person.

(4) For the avoidance of doubt it is hereby declared that any right, interest or function vested in the King or Ngwenyama in relation to Swazi nation land or minerals or mineral oils in Swaziland is so vested in him, in his capacity as King or, as the case may be, as Ngwenyama, and not in his private capacity.

Oaths.

25.—(1) The King shall, at his installation as King, take and subscribe the oath for the due execution of his office which is set out in Schedule 1 to this Constitution.

(2) The Ndlovukazi shall, before commencing to act as Regent, take and subscribe the oath of allegiance and the oath for the due execution of the office of Regent which are set out in Schedule 1 to this Constitution.

(3) The person who is the Ngwenyama of Swaziland immediately before the making of the Swaziland Constitution Order 1967 shall take and subscribe the oath mentioned in subsection (1) of this section as soon as practicable after the appointed day.

(4) The oaths referred to in the foregoing provisions of this section shall be administered to the King or the Ndlovukazi by the Chief Justice (or, in the absence of the Chief Justice, by a judge of the Court of Appeal or some other judge, if any, of the High Court) in the presence of such of the judges of the Court of Appeal, such of the other judges, if any, of the High Court and such Ministers of the Government as are able to attend.

CHAPTER III

HER MAJESTY'S COMMISSIONER FOR SWAZILAND

Her Majesty's Commissioner for Swaziland.

26.—(1) There shall be a Commissioner for Swaziland, who shall be styled Her Majesty's Commissioner for Swaziland, and who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) The Commissioner shall have such functions as are conferred upon him by or under this Constitution or any other law and, subject to the provisions of this Constitution and, in the case of functions conferred upon him by or under any other law, subject to the provisions of that law or any law amending that law, shall exercise all the functions of his office according to such instructions as Her Majesty may give him through a Secretary of State.

Establishment of office of Deputy Commissioner.

27.—(1) There shall be a Deputy Commissioner who shall be appointed by the Commissioner in pursuance of instructions given by Her Majesty through a Secretary of State and who shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Commissioner is vacant or the Deputy Commissioner is acting as Commissioner or is for any reason unable to exercise the functions of his office, the Commissioner may appoint a person to act as Deputy Commissioner and that person shall continue to act until his appointment is revoked by the Commissioner.

Acting Commissioner.

28.—(1) Whenever the office of Commissioner is vacant or the Commissioner is absent from Swaziland or is for any other reason unable to exercise the functions of his office—

(*a*) the Deputy Commissioner ; or

(*b*) if the office of Deputy Commissioner is vacant or the Deputy Commissioner is absent from Swaziland or is for any other reason unable to exercise the functions of the office of Commissioner, such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State,

shall, during Her Majesty's pleasure, exercise the functions of the office of Commissioner.

(2) The Deputy Commissioner shall not continue to exercise the functions of the office of Commissioner if the Commissioner has notified him that he is about to assume or resume the exercise of those functions, and the person designated under subsection (1)(*b*) of this section shall not continue to exercise those functions if the Commissioner or Deputy Commissioner has so notified him.

(3) If the Commissioner or, in the case where the Deputy Commissioner is exercising the functions of the office of Commissioner under subsection (1) of this section, the Deputy Commissioner has occasion to be absent from Swaziland for a period which in his opinion will be of short duration, he may direct by notice which shall be published in the Gazette that, notwithstanding his absence from Swaziland, he will continue to exercise the functions of the office of Commissioner.

(4) For the purposes of subsection (1) of this section—

(*a*) the Commissioner shall not be regarded as absent from Swaziland so long as any direction given by him under subsection (3) of this section is in force; and

(*b*) when the Deputy Commissioner is exercising the functions of the office of Commissioner under subsection (1) of this section, he shall not be regarded as absent from Swaziland so long as any direction given by him under subsection (3) of this section is in force.

(5) In this section "the Commissioner" means the person holding the office of Her Majesty's Commissioner and "the Deputy Commissioner" means the person holding the office of Deputy Commissioner.

Exercise of Commissioner's functions by Deputy Commissioner.

29.—(1) The Commissioner may, by writing under his hand, authorise the Deputy Commissioner to exercise, on his behalf and subject to such exceptions as he may specify, any or all of the functions of the office of Commissioner.

(2) The powers and authority of the Commissioner shall not be affected by any authority given to the Deputy Commissioner under subsection (1) of this section otherwise than as a Secretary of State may direct, and the Deputy Commissioner shall comply with such instructions relating to the exercise by him of any of the functions of the office of Commissioner as the Commissioner may give him.

(3) Any authority given under subsection (1) of this section may at any time be varied or revoked by a Secretary of State or by the Commissioner by writing under his hand.

(4) In this section "the Commissioner" means the person holding the office of Her Majesty's Commissioner and includes any person exercising the functions of that office under section 28 of this Constitution and "the Deputy Commissioner" means the person holding the office of Deputy Commissioner and includes any person appointed to act as Deputy Commissioner.

(5) In subsection (1) of this section the reference to the functions of the office of Commissioner does not include a reference to any functions conferred upon the Commissioner by any Act of the Parliament of the United Kingdom or by any Order of Her Majesty in Council or other instrument made under any such Act other than the Swaziland Constitution Order 1967, the Emergency Powers Order in Council 1939 and any Order amending or replacing either of those Orders.

Commissioner's personal staff.

30.—(1) The Commissioner, acting after consultation with the Prime Minister, may—

(*a*) by order, which shall be published in the Gazette, prescribe the offices that are to constitute his personal staff (which shall be offices in the public service); and

(*b*) by order prescribe the salaries and allowances that are to be paid to the persons holding or acting in those offices and the sums to be paid in respect of the other expenditure attaching to the office of Commissioner.

(2) Any salaries, allowances or other sums prescribed under subsection (1) of this section shall be a charge on and paid out of the Consolidated Fund.

(3) The power to appoint persons to hold or act in offices on the Commissioner's personal staff (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Commissioner, acting after consultation with the Public Service Commission.

Commissioner to be informed of Cabinet affairs, etc.

31.—(1) The Prime Minister shall—

(*a*) cause to be transmitted to the Commissioner copies of all papers submitted for consideration by the Cabinet or any committee thereof at the same time as those papers are transmitted to its members;

(*b*) cause the Commissioner to be informed of the summoning of any meeting of the Cabinet or any committee thereof and of the matters to be discussed at that meeting at the same time as its members are so informed;

(*c*) cause the Commissioner to be furnished, as soon as possible after each meeting of the Cabinet or any committee thereof, with a copy of the minutes of the meeting showing the matters discussed and the conclusions reached at that meeting;

(*d*) cause the Commissioner to be furnished with a copy of every Parliamentary bill at the same time as copies thereof are transmitted to members of the House in which the bill is to be introduced.

(2) The Prime Minister shall keep the Commissioner fully informed concerning the general conduct of those matters for which he and the other Ministers are responsible and shall furnish the Commissioner with such information as he may request in respect of any particular matter relating to the government of Swaziland.

Immunities of Her Majesty's Commissioner.

32.—(1) The Commissioner shall be entitled to immunity from suit and legal process, to inviolability of residence, official premises and official archives and to the like privileges as are accorded to the envoy of a foreign sovereign power accredited to Her Majesty, and to such other privileges as the holder of that office enjoyed immediately before the appointed day.

(2) In this section "the Commissioner" means the person holding the office of Commissioner or the person performing the functions of that office under the provisions of section 28 of this Constitution.

CHAPTER IV

PARLIAMENT

PART 1

Composition of Parliament

Establishment of Parliament.

33. There shall be a Parliament which shall consist of the King, a Senate and a House of Assembly.

Composition of Senate.

34.—(1) Subject to the provisions of this section, the Senate shall consist of twelve members (in this Constitution referred to as "Senators") who shall be elected or appointed in accordance with this section.

(2) If any person who is not a Senator is elected to be Speaker of the Senate he shall, by virtue of holding the office of Speaker, be a member of the Senate in addition to the twelve members aforesaid.

(3) Six Senators shall be elected by the members of the House of Assembly entitled to vote in the manner prescribed by section 35 of this Constitution.

(4) The remaining six Senators shall be appointed by the King, acting in his discretion, in accordance with subsection (5) of this section.

(5) The Senators appointed by the King shall be persons who, in the opinion of the King after consultation with such bodies as he may consider appropriate,

(*a*) are able by reason of their special knowledge or practical experience to represent economic, social or cultural interests not already adequately represented in Parliament; or

(*b*) are, by reason of their particular merit, able to contribute substantially to the good government of Swaziland.

(6) Notwithstanding any other provision of this section, the power of the King to appoint six Senators shall not be so exercised as to deny a majority in the Senate to the party or coalition of parties which is in the majority in the House of Assembly and, accordingly, that power shall be exercised after the election of the Senators referred to in subsection (3) of this section.

Method of election of Senators.

35. The Senators elected by the members of the House of Assembly shall be elected, in such manner as may be prescribed by or under any law, in accordance with the system of proportional representation by means of the single transferable vote.

Composition of House of Assembly.

36.—(1) Subject to the provisions of this section, the House of Assembly shall consist of twenty-four elected members, six nominated members and, until such time as the office of a Minister responsible for justice is established under section 72 of this Constitution, the Attorney-General.

(2) If any person who is not a member of the House is elected to be Speaker thereof he shall, by virtue of holding the office of Speaker, be a member of the House of Assembly in addition to the members specified in subsection (1) of this section.

Elected members of House of Assembly.

37. Swaziland shall, in accordance with the provisions of section 51 of this Constitution, be divided into eight constituencies and each constituency shall elect three members to the House of Assembly in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

Nominated members of House of Assembly.

38. The nominated members of the House of Assembly shall be appointed by the King, acting in his discretion, after consultation with such bodies as he may consider appropriate and after taking account of any economic, social or cultural interests not already adequately represented in the House:

Provided that the power of appointment shall not be so exercised as to deprive the party or coalition of parties which has a majority among the elected members of the House of that majority.

Qualifications for membership of Parliament.

39. Subject to the provisions of section 40 of this Constitution, a person shall be qualified to be elected or appointed as a Senator or to be elected as an elected member or appointed as a nominated member of the House of Assembly if, and shall not be qualified to be so elected or appointed unless, he—

(*a*) is a person qualified for registration as a voter ; and

(*b*) has been so registered in any constituency.

Disqualifications for membership of Parliament.

40.—(1) No person shall be qualified to be elected or appointed as a Senator or to be elected as an elected member or appointed as a nominated member of the House of Assembly who—

(*a*) is, by virtue of his own act, under acknowledgment of allegiance, obedience or adherence to a foreign power or state ;

(*b*) holds, or is acting in, any public office;

(*c*) is a party to, or is a partner in a firm or a director or manager of a company which is a party to, any subsisting contract (the amount or value of the consideration for which exceeds two hundred rand, or which forms part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds two hundred rand) with the Government for or on account of the public service, and—

(i) in the case of an elected Senator, has not disclosed to the elected members of the House of Assembly through the Speaker of that House the nature of the contract and his interest, or the interest of the firm or company, therein ;

(ii) in the case of an appointed Senator, has not disclosed to the King the nature of the contract and his interest, or the interest of the firm or company, therein ;

(iii) in the case of an elected member of the House of Assembly, has not, within one month before the date of the election, published in English in the Gazette and in a newspaper circulating in Swaziland, a notice setting out the nature of the contract and his interest, or the interest of the firm or company, therein ; or

(iv) in the case of a nominated member of the House of Assembly, has not disclosed to the King the nature of the contract and his interest, or the interest of the firm or company, therein ;

(*d*) is an unrehabilitated insolvent or an undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under any law for the time being in force in any part of the Commonwealth ;

(*e*) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland ;

(*f*) is, for an offence which is a criminal offence under the law of Swaziland, under sentence of death imposed on him by a court in any part of the Commonwealth, or is, for such an offence, under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months, other than a sentence in lieu of a fine, but including a suspended sentence, or has been, for such an offence, under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months, other than a sentence

in lieu of a fine or a suspended sentence which has not been enforced, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court:

Provided that if two years or more have elapsed since the termination of the sentence of imprisonment, the person shall not be disqualified from membership of Parliament by reason only of such sentence;

(*g*) is disqualified for membership of the Senate or House of Assembly under any law for the time being in force relating to offences connected with elections;

(*h*) in the case of an elected member of the House of Assembly, holds, or is 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; or

(*i*) in the case of appointment as a nominated member of the House of Assembly, is a person who, at the immediately preceding general election of members of the House or at any subsequent bye-election, had accepted nomination as a candidate for election as an elected member and was not so elected.

(2) For the purpose of subsection (1)(*f*) of this section, two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Tenure of seats of members of Parliament.

41. A Senator or a member of the House of Assembly shall vacate his seat as such if, but only if—

(*a*) Parliament is dissolved;

(*b*) he resigns his seat by writing under his hand addressed to the Speaker of the chamber;

(*c*) he is absent from two consecutive meetings of the Senate or, as the case may be, the House of Assembly, without having obtained before the termination of either meeting from the Speaker, or other person presiding, permission to be or to remain absent therefrom;

(*d*) he becomes a party to any contract (the amount or value of the consideration for which exceeds two hundred rand, or which forms part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds two hundred rand) with the Government 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 becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances it appears to them to be just to do so, the Senate may by resolution exempt a Senator and the House of Assembly may by resolution exempt a member of the House from vacating his seat under the provisions of this paragraph, if the member, before becoming a party to the contract or before or as soon as practicable after becoming otherwise interested in the contract (whether as a partner in a firm or as a director or manager of a company), discloses to the Speaker of the Senate or

the Speaker of the House, as the case may be, the nature of the contract and his interest, or the interest of the firm or company, therein ;

(*e*) he ceases to be qualified for registration as a voter ;

(*f*) he ceases to be ordinarily resident in Swaziland ;

(*g*) any circumstances arise that, if he were not a Senator or a member of the House of Assembly, would cause him to be disqualified for election or appointment thereto by virtue of paragraph (*a*), (*b*), (*d*), (*e*), (*g*) or (*h*) of subsection (1) of section 40 of this Constitution ; or

(*h*) the circumstances mentioned in the next following section arise.

Vacation of seats on sentence, etc.

42.—(1) Subject to the provisions of this section, if a Senator or an elected member or a nominated member of the House of Assembly is, for an offence which is a criminal offence under the law of Swaziland, sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term of or exceeding six months, other than a sentence in lieu of a fine but including a suspended sentence, he shall forthwith cease to perform his functions as a Senator or member of the House, and his seat therein shall become vacant at the expiration of a period of thirty days thereafter :

Provided that the Speaker of the Senate or of the House, as the case may be, may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the Senate or House signified by resolution.

(2) If at any time before the Senator or member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than six months or a punishment other than imprisonment is substituted, his seat in the Senate or House of Assembly shall not become vacant under the provisions of this section, and he may again perform his functions as a Senator or member of the House of Assembly.

(3) For the purpose of this section, two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Speaker and Deputy Speaker of Senate.

43.—(1) When the Senate first meets after the appointed day or after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the Senate ; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the Senate shall elect as soon as practicable another person to that office.

(2) At any time after the election of a Speaker the Senate may, if it thinks fit, elect a person to be the Deputy Speaker of the Senate ; and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the Senate may, if it thinks fit, elect another person to that office.

(3) The Speaker or Deputy Speaker may be elected either from among the Senators who are not Ministers or Assistant Ministers or from among persons who are not Senators :

Provided that a person who is not a Senator shall not be elected as Speaker or Deputy Speaker if he would be disqualified to be a Senator by virtue of paragraph (*d*), (*e*), (*f*) or (*g*) of subsection (1) of section 40 of this Constitution.

(4) If any person who is not a Senator is elected to be Deputy Speaker of the Senate he shall, by virtue of holding the office of Deputy Speaker, be a member of the Senate in addition to the other members thereof.

(5) A person shall vacate the office of Speaker or Deputy Speaker—

(*a*) if, having been elected from among the Senators, he ceases to be a Senator otherwise than by the dissolution of Parliament or if he is appointed to be a Minister or an Assistant Minister or if he is required, by virtue of section 42 of this Constitution, to cease to perform his functions as a member of the Senate;

(*b*) in the case of a Speaker or Deputy Speaker who was elected from among persons who were not Senators, if any circumstances arise which would cause him to be disqualified to be Speaker or Deputy Speaker under the proviso to subsection (3) of this section;

(*c*) when the Senate first sits after any dissolution thereof;

(*d*) if he is removed from office by a resolution of the Senate supported by the votes of not less than two-thirds of all the Senators; or

(*e*) in the case of the Deputy Speaker, if he is elected as Speaker.

(6) A person holding the office of Speaker or Deputy Speaker may resign his office by writing under his hand addressed to the Senate and the office shall become vacant when the writing is received by the Clerk to the Senate.

Speaker and Deputy Speaker of House of Assembly.

44.—(1) When the House of Assembly first meets after the appointed day or after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the House of Assembly; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the House shall elect as soon as practicable another person to that office.

(2) At any time after the election of a Speaker the House of Assembly may, if it thinks fit, elect a person to be the Deputy Speaker of the House of Assembly; and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the House may, if it thinks fit, elect another person to that office.

(3) The Speaker or Deputy Speaker may be elected either from among the members of the House other than the Attorney-General who are not Ministers or Assistant Ministers or from among persons who are not such members:

Provided that a person who is not a member of the House shall not be elected as Speaker or Deputy Speaker if he would be disqualified to be a member of the House by virtue of paragraph (*d*), (*e*), (*f*) or (*g*) of subsection (1) of section 40 of this Constitution.

(4) If any person who is not a member of the House is elected to be Deputy Speaker thereof he shall, by virtue of holding the office of Deputy Speaker, be a member of the House of Assembly in addition to the other members thereof.

(5) A person shall vacate the office of Speaker or Deputy Speaker of the House of Assembly—

(*a*) if, having been elected from among the members of the House, he ceases to be a member otherwise than by the dissolution of Parliament or if he is appointed to be a Minister or Assistant Minister or if he is required, by virtue of section 42 of this Constitution, to cease to perform his functions as a member of the House ;

(*b*) in the case of a Speaker or Deputy Speaker who was elected from among persons who were not members of the House, if any circumstances arise which would cause him to be disqualified to be Speaker or Deputy Speaker under the proviso to subsection (3) of this section ;

(*c*) when the House first sits after any dissolution thereof ;

(*d*) if he is removed from office by a resolution of the House supported by the votes of not less than two-thirds of all the members thereof ; or

(*e*) in the case of the Deputy Speaker, if he is elected as Speaker.

(6) A person holding the office of Speaker or Deputy Speaker may resign his office by writing under his hand addressed to the House and the office shall become vacant when the writing is received by the Clerk to the House.

Acting Speaker.

45.—(1) During any period when the office of Speaker is vacant or the Speaker is absent from Swaziland or is for any other reason unable to perform the functions of his office, the members of the Senate or the House of Assembly may elect from among the members of the Senate or of the House, as the case may be, a person to act as Speaker until a Speaker has been elected and assumed, or the Speaker has resumed, the functions of his office ; and the provisions of section 43 or, as the case may be, section 44 of this Constitution shall apply in relation to that person as they apply in relation to the Speaker.

(2) In subsection (1) of this section, the expression " Speaker " means the Speaker of the Senate or, as the case may be, the Speaker of the House of Assembly.

Clerks to Senate and House of Assembly and their staffs.

46.—(1) There shall be a Clerk to the Senate and a Clerk to the House of Assembly.

(2) The offices of the Clerk to the Senate and the Clerk to the House of Assembly and of the members of their staffs shall be offices in the public service.

(3) Nothing in this section shall be construed as preventing the appointment of one person to the offices of Clerk to the Senate and Clerk to the House of Assembly or the appointment of one person to any office on the staff of the Clerk to the Senate and any office on the staff of the Clerk to the House of Assembly.

Qualifications for voters.

47.—(1) Subject to the provisions of section 48 of this Constitution, a person shall be qualified to be registered as a voter for the purpose of elections of elected members of the House of Assembly if, and shall not be so qualified unless, he—

(*a*) has attained the age of 21 years ; and

(*b*) (i) is a citizen of Swaziland ; or

(ii) is a citizen of the United Kingdom and Colonies and has been ordinarily resident in Swaziland for not less than three years during the five years immediately preceding his application for registration as a voter.

(2) For the purposes of subsection (1) of this section, the expression "citizen of Swaziland" shall, until the expiration of the time prescribed by or under section 128 of this Constitution for making application for registration as a citizen of Swaziland, be deemed to include—

(*a*) the wife of a citizen of Swaziland;

(*b*) the widow or divorced wife of a person who is, or would but for his death have been, a citizen of Swaziland by virtue of the provisions of paragraph (*a*) or (*b*) of section 127 of this Constitution;

(*c*) a person who before the appointed day has "khonta'd", that is to say, has been accepted as a Swazi in accordance with Swazi law and custom; and

(*d*) a person one of whose parents is a citizen of Swaziland.

Disqualifications of voters.

48.—(1) No person shall be qualified to be registered as a voter, or to vote, if—

(*a*) he is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland;

(*b*) he is, for an offence which is a criminal offence under the law of Swaziland, under sentence of death imposed on him by a court in any part of the Commonwealth, or is, for such an offence, under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months, other than a sentence in lieu of a fine or a suspended sentence which is not being enforced, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(*c*) he is disqualified for registration as a voter under any law for the time being in force in Swaziland relating to offences connected with elections.

(2) For the purpose of subsection (1)(*b*) of this section, two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Right to vote at elections.

49.—(1) Any person who is qualified to be registered as a voter shall, while he is so registered, and subject to the provisions of section 48 of this Constitution and of subsection (2) of this section, be entitled to vote at any election of a member to the House of Assembly and, in the case of any general election, be entitled to cast one vote for each of any three candidates for election:

Provided that (except in so far as may otherwise be prescribed) no such person shall be entitled so to vote if on the date prescribed for polling he is for any reason unable to attend in person at the place and time prescribed for polling.

(2) No person shall vote at any election for a constituency who is not registered as a voter in that constituency.

Delimitation Commission.

50.—(1) There shall be a Delimitation Commission which shall be appointed by the Judicial Service Commission in the circumstances specified in section 51(3) of this Constitution and which shall consist of a chairman and two other members.

(2) The chairman and the other members of the Commission shall be appointed by the Judicial Service Commission.

(3) The chairman shall be appointed from among the judges of the High Court.

(4) No person shall be qualified to be appointed as one of the other members of the Commission if —

(*a*) he is, or at any time during the five years immediately preceding his appointment has been, a member of the Legislative Council established for Swaziland by Order of Her Majesty in Council before the appointed day ;

(*b*) he is, or at any time during the said five years has been, nominated as a candidate for election as a member of the Legislative Council established as aforesaid ;

(*c*) he is, or at any time during the said five years has been, a member of the House of Assembly or the Senate established by this Constitution, or at any time during that period has been nominated as a candidate for election to the House of Assembly or the Senate ;

(*d*) he is, or at any time during the said five years has been, the holder of an office in any organisation that sponsors or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the Legislative Council established as aforesaid or of the House of Assembly or the Senate ; or

(*e*) he is a public officer :

Provided that a person shall not be so disqualified by reason only that he had been Speaker of the Legislative Council established as aforesaid or had been Speaker of the House of Assembly or Speaker of the Senate having been elected as such from outside the House of Assembly or, as the case may be, the Senate.

(5) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

(*a*) when an order of the Commission is published in the Gazette in accordance with the provisions of section 51(5) of this Constitution ; or

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (4) of this section.

(6) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that are set out in Schedule 1 to this Constitution or such other oaths as may be prescribed.

(7) In the exercise of its functions under this Constitution the Commission shall not be subject to the direction or control of any other person or authority.

(8) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer

powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

(9) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

Constituencies.

51.—(1) For the purpose of the election of elected members of the House of Assembly Swaziland shall be divided into eight constituencies having such boundaries as may be prescribed by order made by the Delimitation Commission.

(2) All constituencies shall contain as nearly equal numbers of adult inhabitants as appears to the Commission to be reasonably practicable but the Commission may depart from this principle to such extent as it considers expedient in order to take account of the following factors, that is to say—

(*a*) the density of population, and in particular the need to ensure the adequate representation of sparsely populated rural areas;

(*b*) the means of communication;

(*c*) geographical features; and

(*d*) the boundaries of existing administrative areas.

(3) The Judicial Service Commission shall appoint a Delimitation Commission in the following circumstances, that is to say—

(*a*) whenever a census of the population of Swaziland has been held in pursuance of any law and the report of that census has been published;

(*b*) whenever provision has been made altering the number of constituencies or the number of seats of elected members in the House of Assembly; or

(*c*) on the expiration of not less than five nor more than ten years after the Commission last reviewed the boundaries of the constituencies in accordance with the provisions of this section.

(4) Whenever the Delimitation Commission has been appointed in any of the circumstances specified in subsection (3) of this section it shall forthwith carry out a review of the boundaries of the constituencies into which Swaziland is divided and may (and in the circumstances specified in subsection (3)(*b*) shall), by order, alter the boundaries in accordance with the provisions of this section to such extent as it thinks desirable in the light of those circumstances and that review.

(5) Every order made by the Delimitation Commission under this section shall be published in the Gazette and shall come into effect upon the next dissolution of Parliament after it was made.

(6) For the purposes of subsection (2) of this section the number of inhabitants of any part of Swaziland shall be ascertained by reference to the latest census of the population held in pursuance of any law.

Decision of questions as to membership of Parliament.

52.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

(*a*) any person has been validly elected as a Senator by the members of the House of Assembly ;

(*b*) any person has been validly appointed as a Senator by the King ;

(*c*) any person has been validly elected as an elected member of the House ;

(*d*) any person has been validly appointed as a nominated member of the House by the King ;

(*e*) any person who has been elected as Speaker or Deputy Speaker of the Senate or as Speaker or Deputy Speaker of the House from among persons who were not members thereof was qualified to be so elected ; or

(*f*) the seat in the Senate or House of any member thereof has become vacant.

(2) An application to the High Court may be made for the determination of any question—

(*a*) under subsection (1)(*a*) of this section, by any elected member of the House of Assembly or by the Attorney-General ;

(*b*) under subsection (1)(*b*) of this section, by any Senator or by the Attorney-General ;

(*c*) under subsection (1)(*c*) of this section, by any person entitled to vote in the election to which the application relates or by the Attorney-General ;

(*d*) under subsection (1)(*d*) of this section, by any elected or nominated member of the House or by the Attorney-General ;

(*e*) under subsection (1)(*e*) of this section, by any Senator or elected or nominated member of the House, as the case may be, or by the Attorney-General ;

(*f*) under subsection (1)(*f*) of this section, by any Senator or elected or nominated member of the House, as the case may be, or by the Attorney-General, or, in the case of the seat of an elected member of the House, by any person registered in some constituency as a voter in elections of elected members of the House,

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) Parliament may make provision with respect to—

(*a*) the circumstances and manner in which and the conditions upon which any application may be made to the High Court for the determination of any question under this section ; and

(*b*) the powers, practice and procedure of the High Court in relation to any such application,

but, subject to any provision in that behalf made by Parliament under this subsection, the practice and procedure of the High Court in relation to any such application shall be regulated by rules made by the Chief Justice.

(4) The determination by the High Court of any question under this section shall not be subject to appeal.

(5) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

PART 2

Legislation and procedure in Parliament

Power to make laws.

53.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Swaziland.

(2) Subsection (1) of this section shall not apply to matters specified in Schedule 2 to this Constitution, which shall continue to be regulated by Swazi law and custom:

Provided that, with the consent of the Swazi National Council signified in writing under the hand of the Secretary of that Council, Parliament may make laws with respect to any such matter that is specified in the writing.

Oaths to be taken by members of Parliament.

54.—(1) Every member of either chamber shall, before taking his seat in that chamber, take and subscribe before the chamber the oath of allegiance that is set out in Schedule 1 to this Constitution or such other oath as may be prescribed, but a member may before taking and subscribing that oath take part in the election of the Speaker of the chamber.

(2) Any person elected as Speaker or Deputy Speaker of either chamber shall, if he has not already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe that oath before the chamber before entering upon the duties of his office.

Presiding in Senate.

55. There shall preside at any sitting of the Senate—

(*a*) the Speaker of the Senate;

(*b*) in the absence of the Speaker, the Deputy Speaker (if any); or

(*c*) in the absence of the Speaker or the Deputy Speaker (if any), such Senator as the Senate may have elected as Acting Speaker under section 45 of this Constitution or such other Senator as the Senate may elect for the purpose of presiding at the sitting.

Presiding in House of Assembly.

56. There shall preside at any sitting of the House of Assembly—

(*a*) the Speaker of the House of Assembly;

(*b*) in the absence of the Speaker, the Deputy Speaker (if any); or

(*c*) in the absence of the Speaker and the Deputy Speaker (if any), such member of the House as the House may have elected as Acting Speaker under section 45 of this Constitution or such member as the House may elect for the purpose of presiding at the sitting.

Quorum in Senate and House of Assembly.

57.—(1) If objection is taken by any Senator who is present that there are present in the Senate (besides the person presiding) fewer than six Senators and, after such interval as may be prescribed in the rules of procedure of the Senate, the person presiding ascertains that there are still fewer than six Senators present, he shall thereupon adjourn the Senate.

(2) If objection is taken by any member of the House of Assembly who is present that there are present in the House (besides the person presiding) fewer than twelve members of the House and, after such

interval as may be prescribed in the rules of procedure of the House, the person presiding ascertains that there are still fewer than twelve members of the House present, he shall thereupon adjourn the House.

Voting in Parliament.

58.—(1) Save as otherwise provided in this Constitution, any question proposed for decision in either chamber shall be determined by a majority of the votes of the members thereof present and voting.

(2) A Speaker elected from among persons who are Senators or a Speaker elected from among persons who are members of the House of Assembly or a member of either chamber presiding in that chamber shall have an original but not a casting vote.

(3) A Speaker or Deputy Speaker of the Senate elected from among persons who are not Senators or a Speaker or Deputy Speaker of the House of Assembly elected from among persons who are not members of the House shall have no vote.

(4) If upon any question before either chamber the votes of the members are equally divided the motion shall be lost.

(5) The rules of procedure of either chamber may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.

Right of Ministers and Assistant Ministers to address, etc., either Senate or House of Assembly.

59. A Minister or an Assistant Minister who is a member of the House of Assembly shall be entitled to attend all meetings of the Senate and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the Senate ; and a Minister or an Assistant Minister who is a Senator shall be entitled to attend all meetings of the House of Assembly and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the House.

Unqualified persons sitting or voting.

60.—(1) Any person who sits or votes in either chamber knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding one hundred rand, or such other sum as may be prescribed, for each day on which he so sits and votes in that chamber.

(2) Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Attorney-General.

Mode of exercise of legislative power.

61.—(1) Subject to the provisions of this Constitution, the power of Parliament to make laws shall be exercised by bills passed by both chambers (that is to say, so passed without amendment or with such amendments only as are agreed by both chambers) and assented to by the King.

(2) When a bill has been presented to the King for assent in pursuance of subsection (1) of this section, he shall signify that he assents or that he withholds assent, and he shall so signify—

(*a*) in the case of an Appropriation bill, forthwith ; and

(*b*) in the case of any other bill, within thirty days subject to the provisions of section 65(7) of this Constitution.

(3) When a bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and

the King shall thereupon cause it to be published in the Gazette as a law.

(4) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(5) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of Swaziland".

Introduction of bills, etc.

62.—(1) A bill may be introduced in either chamber:

Provided that a money bill or a bill introduced in pursuance of section 53(2) of this Constitution shall not be introduced in the Senate.

(2) Except with the consent of the Cabinet signified by a Minister, neither chamber shall—

(*a*) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of Swaziland or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Swaziland of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government; or

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

(3) Subject to the provisions of this Constitution, either chamber may, in respect of a bill sent to it by the other chamber, refer back the bill to that other chamber for further consideration.

Limitation on powers of Senate.

63.—(1) When a bill that is passed by the House of Assembly and that is certified by the Speaker of the House under subsection (2) of this section as an Appropriation bill is sent to the Senate it shall forthwith be introduced in the Senate and shall be passed by the Senate without delay; and if it is not passed by the Senate by the end of the day after the day on which it was sent to the Senate or if it is passed by the Senate with amendments to which the House does not by then agree, the bill, with such amendments, if any, as may have been agreed to by both chambers, shall, unless the House of Assembly otherwise resolves, be presented to the King for assent.

(2) When a bill that in the opinion of the Speaker of the House of Assembly is an Appropriation bill is sent to the Senate from the House it shall bear a certificate of the Speaker of the House that it is an Appropriation bill.

(3) When a bill that is passed by the House of Assembly is certified by the Speaker of the House under subsection (4) of this section as a money bill other than an Appropriation bill and, having been sent to the Senate at least thirty days before the end of the session, is not passed by the Senate within thirty days after it is so sent or is passed by the Senate with amendments to which the House does not agree within thirty days after the bill was sent to the Senate, the bill, with such amendments, if any, as may have been agreed to by both chambers, shall, unless the House of Assembly otherwise resolves, be presented to the King for assent.

(4) When a bill that in the opinion of the Speaker of the House of Assembly is a money bill other than an Appropriation bill is sent to the Senate from the House it shall bear a certificate of the Speaker of the House that it is a money bill other than an Appropriation bill.

(5) When a bill that has been passed by the House of Assembly is not certified by the Speaker of the House either under subsection (2) of this section as an Appropriation bill or under subsection (4) as a money bill other than an Appropriation bill and, having been sent to the Senate at least ninety days before the end of the session, is not passed by the Senate within ninety days after it has been so sent or is passed by the Senate with amendments to which the House of Assembly does not agree within the said ninety days, the bill, with such amendments, if any, as may have been agreed to by both chambers, shall, unless the House of Assembly otherwise resolves, be presented to the King for assent.

(6) When, in respect of a bill (other than an Appropriation bill) that has been passed by the House of Assembly, the King by writing under his hand certifies to the Speaker of the Senate that enactment of the bill is a matter of urgency, subsection (3) and subsection (5) of this section shall have effect as if for the period of thirty days and the period of ninety days specified in those subsections respectively the period of seven days were substituted.

(7) When a bill is presented to the King in pursuance of this section for his assent, it shall bear a certificate by the Speaker of the House of Assembly that this section has been complied with.

(8) Any function that under this section falls to be exercised by the Speaker of the House of Assembly may, if he is absent or is for any other reason unable to exercise the functions of his office, be exercised by the Deputy Speaker or, if there is not a Deputy Speaker, by the Acting Speaker.

(9) A certificate given by the Speaker of the House of Assembly or the Deputy Speaker or the Acting Speaker, as the case may be, under this section shall be conclusive for all purposes and shall not be questioned in any court.

(10) In this section "money bill" means a bill that contains only provisions dealing with—

(*a*) the imposition, repeal, remission, alteration or regulation of taxation;

(*b*) the imposition of charges on the Consolidated Fund or any other public fund of Swaziland or the variation or repeal of any such charges;

(*c*) the grant of money to the King or to any other person or authority or the variation or revocation of such grant;

(*d*) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;

(*e*) the raising or guarantee of any loan or the repayment thereof; or

(*f*) subordinate matters incidental to any of those matters:

Provided that the expressions "taxation", "public money" and "loan" do not include any taxation, money or loan raised by local government authorities or other local bodies.

Her Majesty's Commissioner's reserved legislative powers.

64.—(1) If Her Majesty's Commissioner considers it necessary or expedient so to do for any of the following purposes, that is to say—

(*a*) for the purpose of the discharge of his responsibility for external affairs, defence or internal security (including the use and operational control of the Police Force);

(*b*) for the purpose of ensuring proper financial administration or securing compliance with a condition attached to a financial grant made by the Government of the United Kingdom to the Government of Swaziland; or

(*c*) for the purpose of protecting the terms and conditions of service of public officers,

he may, by notice in writing addressed to the Prime Minister, request the Government of Swaziland to secure the making for that purpose of any law that he may specify in the notice, and he may, by the same or a subsequent notice, specify the form in which and the time by which the law should be made.

(2) If a law that, in pursuance of subsection (1) of this section, the Commissioner has requested should be made is not made in the form or by the time specified by him, he may, by writing under his hand, make such order as he considers necessary or expedient to give effect to his request and that order shall have the force of law and shall be published in the Gazette.

Joint sittings.

65.—(1) When a bill other than a money bill (including an Appropriation bill) or a bill the enactment of which has been certified by the King under section 63(6) of this Constitution to be a matter of urgency has been passed by the House of Assembly, and it has been debated upon in the Senate within ninety days from the date on which it was sent to the Senate but has not within that period been passed by the Senate either without amendment or with amendments which are not acceptable to the House, the King shall proceed forthwith to summon a joint sitting of both chambers and the following provisions of this section other than the provisions of subsection (7) shall have effect.

(2) The King shall, by message to each chamber through the Speaker, summon the chambers to meet in joint sitting on a day appointed in the message, which day shall not be later than twenty-one days after the date of the message, for the purpose of deliberating and voting on the bill; and thereupon neither chamber may separately proceed further with the bill.

(3) The members of Parliament shall meet in joint sitting on the day so appointed and on any succeeding day or days that may be necessary and may deliberate and shall vote together on the bill as last proposed by the House of Assembly and upon such admissible amendments thereto as may be proposed in the joint sitting.

(4) If the bill, with such admissible amendments, if any, as are agreed to by the joint sitting, is affirmed by the joint sitting, the bill as so affirmed shall be deemed to have been passed by both the House of Assembly and the Senate and the provisions of this Constitution, and in particular the provisions relating to assent to bills, shall have effect accordingly.

(5) For the purposes of subsections (3) and (4) of this section—

(*a*) if the bill has not been passed by the Senate with amendments and returned to the House of Assembly, there shall be admissible only such amendments, if any, as are made necessary by the delay in the passage of the bill;

(*b*) if the bill has been passed by the Senate with amendments and returned to the House of Assembly, there shall be admissible only such amendments, if any, as are made necessary by the delay in the passage of the bill and such other amendments as are relevant to the matters with respect to which the chambers have not agreed;

and the decision of the person presiding as to the amendments that are so admissible shall be final.

(6) In relation to a joint sitting—

(*a*) if objection is taken by any member of Parliament who is present that there are present in that sitting (besides the person presiding) fewer than twenty-five members of Parliament and, after such interval as may be prescribed in the rules of procedure in respect of a joint sitting, the person presiding ascertains that there are still fewer than twenty-five members of Parliament present, he shall thereupon adjourn the joint sitting;

(*b*) the joint sitting shall not be disqualified for the transaction of business by reason of any vacancy in the membership of either chamber;

(*c*) when any question is dependent on the decision of the joint sitting, a decision shall be regarded as the decision of the joint sitting if a majority of the votes of the members of Parliament present and voting are cast in favour thereof:

Provided that if, on any question, the votes of such members are equally divided the person presiding shall have, and shall exercise, a casting vote;

(*d*) the proceedings in the joint sitting shall be regulated by rules of procedure and for the purpose of this paragraph each chamber shall, as soon as practicable after the appointed day, appoint its Speaker and two other persons from among the members of the chamber to be members of a committee of both chambers with power to make (including power to amend) such rules of procedure; and

(*e*) the Speaker of the House of Assembly and the Speaker of the Senate shall, in that order, preside alternately at joint sittings, and for the purposes of this paragraph the whole of any sitting referred to in subsection (3) of this section shall together constitute one of such joint sittings.

(7)(*a*) When a bill other than a money bill (including an Appropriation bill) has been passed either by both chambers or at a joint

sitting and is presented to the King for his assent, the King acting in his discretion may refer back to the House of Assembly and the Senate either the whole bill or provisions thereof that he may specify for consideration at a joint sitting (or, as the case may be, a second joint sitting) of both chambers; and the bill or such provisions shall be considered by the chambers in a joint sitting held and concluded within sixty days, and if the bill is affirmed at the joint sitting either without amendment or with amendment of those specified provisions it shall again be presented to the King for assent and the King shall assent to it forthwith.

(*b*) The reference back of a bill under paragraph (*a*) of this subsection shall be by message by the King to each chamber, through the Speaker thereof, summoning the chambers to meet in joint sitting within the time and for the purpose specified in that paragraph, and the provisions of subsection (6) of this section shall apply to that joint sitting as if it were a joint sitting referred to in that subsection.

Regulation of procedure in Parliament, etc.

66.—(1) Subject to the provisions of this Constitution, each chamber may regulate its own procedure.

(2) Each chamber may act notwithstanding any vacancy in its membership (including any vacancy not filled when the chamber first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the chamber shall not invalidate those proceedings.

(3) Parliament may make provision for the powers, privileges and immunities of either chamber and the committees and the members thereof (including any person who is Speaker or Deputy Speaker of either chamber, having been elected from among persons who were not members thereof), but no such powers, privileges or immunities shall exceed those of the Commons' House of the Parliament of the United Kingdom or, as the case may be, of the committees or of the members thereof.

PART 3

Summoning, prorogation and dissolution

Sessions of Parliament, etc.

67.—(1) Each session of Parliament shall be held at such place within Swaziland and begin at such time (not being later than twelve months from the end of the preceding session if Parliament has been prorogued or fourteen days from the holding of a general election of elected members of the House of Assembly if Parliament has been dissolved) as the King may appoint.

(2) Subject to the provisions of subsection (1) of this section, the sittings of each chamber of Parliament shall be held at such time and place as that chamber may, by its rules of procedure or otherwise, determine.

Prorogation and dissolution of Parliament.

68.—(1) The King may at any time prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date when the House of Assembly first meets after any dissolution of Parliament and shall then stand dissolved.

(3) At any time when Her Majesty is at war Parliament may from time to time extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) In the exercise of his power to dissolve Parliament, the King shall act in accordance with the advice of the Prime Minister:

Provided that—

(*a*) if the Prime Minister recommends a dissolution and the King considers that the government of Swaziland can be carried on without a dissolution and that dissolution would not be in the interests of Swaziland, he may refuse to dissolve Parliament;

(*b*) if the House of Assembly passes a resolution of no confidence in the Government of Swaziland and the Prime Minister does not within three days thereafter either resign or advise a dissolution, the King may dissolve Parliament; and

(*c*) if the office of Prime Minister is vacant and the King considers that there is no prospect of his being able within a reasonable time to find a person who is the leader of a party or a coalition of parties that will command the support of a majority of the members of the House of Assembly, he may dissolve Parliament.

Recalling the Senate and House of Assembly in case of emergency.

69. If, between a dissolution of Parliament and the next ensuing general election of elected members of the House of Assembly, an emergency arises of such a nature that in the opinion of the King, after consultation with the Prime Minister, it is necessary for the two chambers of Parliament to be summoned before that general election can be held, the King may, after consultation with the Prime Minister, by proclamation published in the Gazette, summon the preceding chambers of Parliament as constituted immediately before the said dissolution, and those chambers shall thereupon be deemed (except for the purposes of section 70 of this Constitution) not to have been dissolved but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election of elected members of the House of Assembly is held.

General elections.

70. A general election of elected members of the House of Assembly shall be held at such time within three months after every dissolution of Parliament as the King shall appoint by proclamation published in the Gazette.

CHAPTER V

THE EXECUTIVE

Executive authority of Swaziland.

71.—(1) Subject to the provisions of this Constitution, the executive authority of Swaziland shall vest in the King.

(2) Save as otherwise provided in this Constitution, that authority may be exercised by the King either directly or through officers or authorities of the Government of Swaziland.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the King.

Ministers.

72.—(1) There shall be a Prime Minister who shall be appointed by the King.

(2) There shall be, in addition to the office of Prime Minister, the office of Deputy Prime Minister and such other offices of Minister of the Government as may be prescribed or, subject to the provisions of any law, established by the King, acting in accordance with the advice of the Prime Minister:

Provided that the number of offices of Minister other than the Prime Minister and Deputy Prime Minister shall not exceed six.

(3) The King shall appoint as Prime Minister the elected member of the House of Assembly who appears to him best able to command the support of a majority of the members of the House and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the elected or appointed members of either chamber.

(4) For the purposes of this section, during any period when Parliament is dissolved a person who was an elected or appointed member of either chamber immediately before the dissolution shall be regarded as continuing as an elected or appointed member, as the case may be, of that chamber.

Tenure of office of Ministers.

73.—(1) The King, acting in his discretion, may remove the Prime Minister from office—

(*a*) if a resolution of no confidence in the Government of Swaziland is passed by the House of Assembly ; or

(*b*) if, at any time between the holding of a general election of elected members of the House of Assembly and the date on which the House first meets thereafter, the King considers that, in consequence of changes in the membership of the House resulting from that election, the Prime Minister will not be able to command the support of a majority of the members of the House :

Provided that the King shall not remove the Prime Minister from office when a vote of no confidence has been passed by the House of Assembly unless three days have elapsed since the vote was passed and the King has decided not to dissolve Parliament under paragraph (*b*) of the proviso to section 68(4) of this Constitution.

(2) The office of Prime Minister or any other Minister shall become vacant—

(*a*) if he ceases to be a member of Parliament otherwise than by reason of a dissolution of Parliament;

(*b*) if, when Parliament first meets after a dissolution of Parliament, he is not then a member thereof ; or

(*c*) if he resigns from office.

(3) The office of a Minister other than the Prime Minister shall become vacant—

(*a*) if the King, acting in accordance with the advice of the Prime Minister, so directs ;

(*b*) if the Prime Minister resigns from office within three days after the passage by the House of Assembly of a resolution of no confidence in the Government or is removed from office under subsection (1) of this section ; or

(*c*) on the appointment of any person to the office of Prime Minister.

(4) If for any period the Prime Minister or any other Minister is unable by reason of the provisions of section 42 of this Constitution to perform his functions as a member of Parliament, he shall not during such period perform any of his functions as Prime Minister or a Minister as the case may be.

Cabinet.

74.—(1) There shall be a Cabinet of Ministers, consisting of the Prime Minister and the other Ministers.

(2) The function of the Cabinet shall be to advise the King in the government of Swaziland, and the Cabinet shall be collectively responsible to Parliament for any advice given to the King by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of subsection (2) of this section shall not apply in relation to—

(*a*) the appointment and removal from office of Ministers and Assistant Ministers, the assignment of responsibility to any Minister under section 75 of this Constitution or the authorisation of any Minister under section 77 of this Constitution to exercise the functions of the Prime Minister during absence or illness; or

(*b*) the dissolution of Parliament.

Assignment of responsibilities to Ministers.

75. The King, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Constitution and any other law) of any business of the government of Swaziland, including the administration of any department of government:

Provided that, except for the purpose of conducting business in either chamber and subject to the provisions of section 76 of this Constitution, a Minister shall not be given responsibility for any matter for which under that section Her Majesty's Commissioner is responsible.

Her Majesty's Commissioner's special responsibilities.

76.—(1) Her Majesty's Commissioner shall be responsible for the conduct (subject to the provisions of this Constitution and of any other law) of any business of the government of Swaziland with respect to the following matters—

(*a*) external affairs;

(*b*) defence; and

(*c*) internal security (including the use and operational control of the Police Force):

Provided that the Commissioner may, by directions in writing assign to a Minister designated by the Prime Minister such responsibility with respect to the conduct (subject as aforesaid) of any of that business as he may think fit, upon such conditions as he may think fit and without prejudice to his power to revoke at any time such assignment to that Minister.

Exercise of Prime Minister's functions during absence or illness.

77.—(1) Whenever the Prime Minister is absent from Swaziland or is by reason of illness or the provisions of section 73(4) of this Constitution unable to exercise the functions conferred on him by this Constitution, those functions (other than the functions conferred by this section) shall be exercised by—

(*a*) the Deputy Prime Minister ; or

(*b*) if the office of Deputy Prime Minister is vacant or the Deputy Prime Minister is absent from Swaziland or is by reason of illness or the provisions of section 73(4) of this Constitution unable to exercise the functions of the office of Prime Minister, by such other Minister as the King may authorise in that behalf.

(2) A Minister who is authorised by the King in pursuance of subsection (1)(*b*) of this section to exercise the functions conferred on the Prime Minister by this Constitution may exercise those functions until his authority is revoked by the King.

(3) The powers of the King under this section shall be exercised by him in accordance with the advice of the Prime Minister or Deputy Prime Minister as the case may be:

Provided that if the Prime Minister and the Deputy Prime Minister are unable to exercise the functions of the office of Prime Minister by reason, as the case may be, of absence, illness or the provisions of section 73(4) of this Constitution, the King may exercise those powers acting in his discretion.

Exercise of King's functions.

78.—(1) In the exercise of his functions under this Constitution or any other law, the King shall, subject to the following provisions of this section, act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet.

(2) The provisions of subsection (1) of this section shall not apply in relation to the exercise by the King of—

(*a*) any function conferred upon him by this Constitution that is expressed to be exercisable by him in his discretion or in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet ; or

(*b*) any function conferred upon him by any other law that is expressed to be exercisable by him in his discretion or that he is otherwise authorised by such law to exercise without obtaining the advice of the Cabinet.

(3) Where in any matter the King has received the advice of the Cabinet or a Minister for the purposes of subsection (1) of this section, he may, within a period of not more than fourteen days, by writing under his hand require that, for reasons to be specified by him, the Prime Minister shall cause such advice to be reconsidered or, as the case may be, considered at a meeting of the Cabinet, and thereupon the following provisions shall apply—

(*a*) during the said period of fourteen days no act in furtherance of that advice shall be done by any other person pending consideration thereof by the King unless the Prime Minister, by writing under his hand, has certified that on grounds of urgency such act should be done ;

(*b*) a meeting of the Cabinet shall be held within not less than seven days after the receipt by the Prime Minister of the requirement made by the King ; and

(*c*) if the Cabinet, having reconsidered or, as the case may be, considered the original advice tendered to the King, re-submits the same advice to him, the King shall forthwith act in accordance with that advice.

(4) Where the King is directed by this Constitution 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 King is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether he has in any matter so acted shall not be called in question in any court of law.

King to be consulted and informed concerning matters of government.

79. The King shall have the right to require the Prime Minister and other Ministers to consult with him on any matter relating to the government of Swaziland and the Prime Minister shall keep him fully informed concerning the general conduct of the government of Swaziland and shall furnish him with such information as he may request in respect of any particular matter relating to the government of Swaziland.

Assistant Ministers.

80.—(1) The King, acting in accordance with the advice of the Prime Minister, may appoint Assistant Ministers, the number of whom shall not exceed the number of Ministers, to assist Ministers in the performance of their duties, from among the elected or appointed members of either chamber.

(2) For the purpose of this section, during any period when Parliament is dissolved a person who was an elected or appointed member of either chamber immediately before that dissolution shall be regarded as continuing as an elected or an appointed member, as the case may be, of that chamber.

(3) The provisions of subsections (2) and (3) of section 73 of this Constitution shall apply in relation to an Assistant Minister as they apply in relation to a Minister.

Oaths.

81. A Minister or an Assistant Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that are set out in Schedule 1 to this Constitution or such other oaths as may be prescribed.

Her Majesty's Commissioner's reserved executive powers.

82.—(1) If Her Majesty's Commissioner considers it necessary or expedient so to do for any of the following purposes—

(*a*) for the purpose of the discharge of his responsibility for external affairs, defence or internal security (including the use and operational control of the Police Force); or

(*b*) for the purpose of ensuring proper financial administration or securing compliance with a condition attached to a financial grant made by the Government of the United Kingdom to the Government of Swaziland; or

(*c*) for the purpose of protecting the terms and conditions of service of public officers,

he may, by notice in writing addressed to the Prime Minister, request the Government of Swaziland to take for that purpose or to cause to

be taken for that purpose any action that he may specify in the notice, and he may, by the same or a subsequent notice, specify the manner in which and the time by which the action should be taken.

(2) If the action that, in pursuance of subsection (1) of this section, the Commissioner has requested should be taken is not taken in the manner or by the time specified by him, he may himself exercise, to such extent and in such manner as he considers necessary or expedient to give effect to his request, any function that is vested by any law in the King or in any officer or authority of the Government of Swaziland or in any other person or authority (other than a court of law).

(3) References in this section to the taking of any action include references to discontinuing or refraining from any action.

Secretary to the Cabinet.

83.—(1) There shall be a Secretary to the Cabinet whose office shall be an office in the public service.

(2) The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the meetings of the Cabinet and for conveying decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Prime Minister may from time to time direct.

Direction, etc., of government departments.

84. Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a permanent secretary whose office shall be an office in the public service:

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

Attorney-General.

85.—(1) There shall be an Attorney-General whose office shall be a public office.

(2) The Attorney-General shall be the principal legal adviser to the Government of Swaziland and, for the due performance of his duties, entitled to be provided with all papers which are available to the members of the Cabinet or any committee thereof; and he shall have such other functions as may be conferred on him by this Constitution or any other law.

(3) It shall be the duty of the Attorney-General, whenever requested so to do, to advise Her Majesty's Commissioner on any matter of law relating to any functions vested in the Commissioner by this Constitution or any other law.

(4) The Attorney-General 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 court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

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

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

(5) The powers of the Attorney-General under subsection (4) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(6) The powers conferred on the Attorney-General by paragraphs (*b*) and (*c*) of subsection (4) of this section shall be vested in him to the exclusion of any other person or authority:

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.

(7) For the purposes of this section, any appeal from any judgment 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 (including Her Majesty in Council) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney-General by subsection (4)(*c*) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(8) In the exercise of the functions vested in him by subsection (4) of this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

Prerogative of Mercy.

86.—(1) The King may—

(*a*) grant to any person convicted of any offence under the law of Swaziland a pardon, either free or subject to lawful conditions;

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;

(*c*) substitute a less severe form of punishment for any punishment imposed on any person for such an offence; and

(*d*) remit the whole or part of any punishment imposed on any person for such an offence or of any penalty or forfeiture otherwise due to the Government on account of such an offence.

(2) There shall be a Committee on the Prerogative of Mercy which shall consist of—

(*a*) three Ministers appointed by the King, acting in his discretion, one of whom shall be appointed by the King, acting as aforesaid, to be the chairman; and

(*b*) the Attorney-General.

(3) An appointed member of the Committee shall vacate his seat on the Committee—

(*a*) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment;

(*b*) if his appointment is revoked by the King, acting in his discretion; or

(*c*) if he ceases to be a Minister.

(4) In the exercise of the powers conferred upon him by subsection (1) of this section, the King shall act in accordance with the advice of the Committee.

(5) The Committee shall not be summoned except by the authority of the chairman.

(6) The chairman or, in his absence, such member of the Committee as the chairman may designate in that behalf shall preside at meetings of the Committee.

(7) Subject to the provisions of this section, the Committee shall regulate its own procedure.

(8) The Committee may act notwithstanding any vacancy in its membership or the absence of any member, and the validity of the transaction of business by the Committee shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(9) Whenever any person has been sentenced to death by any court in Swaziland other than a court-martial, the chairman shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration at a meeting of the Committee so that the Committee may advise the King whether or not to exercise his powers under subsection (1) of this section in that case.

CHAPTER VI

CONSULTATIVE COUNCIL

Consultative Council.

87.—(1) There shall be for Swaziland a Consultative Council, which shall consist of—

(*a*) Her Majesty's Commissioner for Swaziland as chairman ;

(*b*) the Prime Minister ;

(*c*) the Deputy Commissioner for Swaziland ; and

(*d*) the Deputy Prime Minister.

(2) The Secretary to the Cabinet shall be the secretary of the Council.

Functions of Consultative Council.

88. The Consultative Council shall consult together and exchange information on—

(*a*) questions of policy relating to any of the special responsibilities of Her Majesty's Commissioner referred to in section 76 of this Constitution ;

(*b*) any matter referred to it by Her Majesty's Commissioner, affecting the discharge by him of any of those special responsibilities or of his responsibility for a matter referred to in paragraph (*b*) or (*c*) of subsection (1) of section 82 of this Constitution.

CHAPTER VII

LAND AND MINERALS

Government land.

89.—(1) All land to which this section applies shall vest in the Government on the operative day.

(2) This section applies to all land which, immediately before the operative day, is vested, by or under the Swaziland Order in Council 1963, in Her Majesty's Commissioner as Crown land on behalf of Her Majesty, and to any other land which, on or after the operative day, becomes vested in the Government by or under any law for the time being in force, or otherwise.

(3) The land referred to in subsection (2) of this section shall vest in the Government subject to any subsisting rights and interests which, before the operative day, by or under any Order in Council or any other law in force in Swaziland, or otherwise, have been granted to or recognised as vested in any other person.

(4) Subject to the provisions of any law for the time being in force in Swaziland, the Government may exercise all rights of ownership accorded by law including the power to make grants, leases or other dispositions of Government land, subject to such rights and interests and to such conditions as the Government may think fit.

(5) In this section "the operative day" means such date as may be appointed by the Commissioner under section 4(2) of the Swaziland Constitution Order 1967.

Swazi nation land.

90.—(1) This section applies to—

(*a*) all land which, immediately before the appointed day, is vested in the Ngwenyama as Swazi nation land in trust for the Swazi nation, by or under the Swaziland Order in Council 1963, or otherwise; and

(*b*) any other land which, on or after the appointed day, is so vested by or under any law for the time being in force, or otherwise.

(2) The Ngwenyama in Libandla may exercise all rights of ownership accorded by law including the power to make grants, leases or other dispositions of land to which this section applies, subject to such rights and interests and to such conditions as he may think fit:

Provided that no right to mortgage such land shall be exercisable save and except by a mortgage registered against land acquired by purchase or grant.

(3) The rights and the power conferred upon the Ngwenyama in Libandla by this section shall be subject to the provisions of any law enacted under this Constitution, but no such law shall operate to vest those rights or that power in any other person or authority.

(4) For the avoidance of doubt it is hereby declared that Swazi nation land is subject to compulsory acquisition for public purposes under the law for the time being in force relating to the compulsory acquisition of land for such purposes.

(5) In this section "Libandla" means the Ngwenyama's advisers and representatives of the Swazi nation, or part thereof, called together to discuss any matter of communal concern in accordance with Swazi

law and custom, and " Ngwenyama in Libandla " means the Ngwenyama acting in accordance with the advice of his Libandla.

Minerals and mineral oils.

91.—(1) All minerals and mineral oils in, under or upon any land in Swaziland shall vest in the Ngwenyama in trust for the Swazi nation, subject to any subsisting rights and interests which, before the appointed day, by or under any Order in Council or any other law in force in Swaziland, or otherwise, have been granted to or recognised as vested in any other person.

(2) The King may make grants, leases or other dispositions conferring rights or interests in respect of minerals or mineral oils in Swaziland, but the King shall not exercise any such power except in accordance with the advice of the Cabinet.

(3) Any advice tendered for the purposes of subsection (2) of this section shall be such as is, in the judgment of the Cabinet, in the best interests of the economic development of Swaziland as a whole, and shall be tendered after the Cabinet has consulted a committee, which shall be appointed by the Ngwenyama after consultation with the Swazi National Council, and that committee has given to the Cabinet its advice on behalf of the Swazi nation.

(4) Any power conferred upon the King by subsection (2) of this section shall be subject to the provisions of any law enacted under this Constitution, but no such law shall operate to vest that power in any other person or authority.

CHAPTER VIII

THE JUDICATURE

PART 1

The High Court

High Court.

92.—(1) There shall be a High Court for Swaziland and, subject to the provisions of this Chapter, the judges of the High Court shall be the Chief Justice and such number of puisne judges as may from time to time be prescribed.

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

Appointment of judges.

93.—(1) The Chief Justice shall be appointed by Her Majesty's Commissioner, in pursuance of instructions given by Her Majesty through a Secretary of State.

(2) The puisne judges shall be appointed, until a date to be designated by Her Majesty's Commissioner, by the Commissioner acting in accordance with the advice of the Chief Justice, and after that date, by the King acting in accordance with the advice of the Judicial Service Commission.

(3) (*a*) A person shall not be qualified for appointment as a judge of the High 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 the Commonwealth or in the Republic of Ireland or in any other country

outside the Commonwealth that may be prescribed by Parliament, or a court having jurisdiction in appeals from any such court ; or

(ii) he is and has been, for a period in the aggregate of at least ten years, a barrister or advocate entitled to practise in any such court and has so practised for not less than ten years.

(*b*) For the purposes of this subsection, a barrister or advocate shall be regarded as entitled to practise, and as having practised as such, during any period in which he held office as a judge, magistrate, Director of Public Prosecutions or Crown Counsel in any part of the Commonwealth or in a country outside the Commonwealth referred to in this subsection.

(4) A judge of the High Court, and every person appointed to act as a judge of that Court, shall not enter upon the duties of his office until he has taken and subscribed the judicial oath in the form set out in Schedule 1 to this Constitution or such other judicial oath as may be prescribed.

Retirement and resignation of judges.

94.—(1) Subject to the provisions of this Chapter, a judge of the High Court shall hold office until he attains the age of sixty-two years :

Provided that—

(*a*) in the case of the Chief Justice, Her Majesty's Commissioner, acting in pursuance of instructions given by Her Majesty through a Secretary of State, may permit a Chief Justice who attains the age of sixty-two years to continue in office for such fixed period or periods as may be agreed from time to time between the Commissioner and the Chief Justice ; and

(*b*) in the case of any other judge, until a date to be designated by the Commissioner, the Commissioner acting in accordance with the advice of the Chief Justice and, after that date, the King acting in accordance with the advice of the Judicial Service Commission, may permit that other judge who attains the age of sixty-two years to continue in office for such fixed period or periods as may be agreed from time to time between the Commissioner or, as the case may be, the King and that other judge.

(2) Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person may sit as a judge for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him before he attained that age.

(3) A judge of the High Court may at any time resign his office.

(4) The office of any judge of the High Court shall not be abolished while he continues in office.

(5) Nothing done by a judge of the High Court shall be invalid by reason only that—

(*a*) he has attained the age at which he is required under subsection (1) of this section to vacate his office ; or

(*b*) having attained that age, he has not agreed with the Commissioner or the King, as the case may be, to continue in office for a fixed period.

Removal of judges.

95.—(1) A judge of the High 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 removed except in accordance with the provisions of this section.

(2) A judge of the High Court shall be removed from office by Her Majesty's Commissioner if the question of his removal has, at the request of the Commissioner made in pursuance of subsection (3) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under any 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.

(3) If the Commissioner, acting in his discretion in the case of the Chief Justice and in accordance with the advice of the Chief Justice in the case of a puisne judge, considers that the question of removing a judge of the High Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(*a*) the Commissioner shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Commissioner from among persons who hold or have held high judicial office;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Commissioner and recommend to the Commissioner whether he should request that the question of removing the judge from office should be referred by Her Majesty to the Judicial Committee; and

(*c*) if the tribunal so recommends, the Commissioner shall request that the question should be referred accordingly.

(4) (*a*) All questions for decision by a tribunal appointed under subsection (3) of this section shall be decided by a majority of its members; and the chairman shall have an original vote and, if the votes are equally divided, a casting vote.

(*b*) The provisions of the Commissions of Enquiry Proclamation 1963 as in force on the appointed day shall apply to the tribunal as if the tribunal were a commission of enquiry, and references in the Proclamation to a commission shall be construed accordingly.

(*c*) Subject to the provisions of this subsection, the procedure to be followed by the tribunal shall be in the discretion of the tribunal.

(5) If the question of removing a judge of the High Court from office has been referred to a tribunal under subsection (3) of this section the Commissioner may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Commissioner and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Commissioner that he should not request that the question of removing 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.

(6) Except where otherwise provided, the powers conferred upon the Commissioner by this section shall be exercised by him acting in his discretion.

Acting Chief Justice.

96. If the office of Chief Justice is vacant or if 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 judges of the Court of Appeal or the puisne judges or such other person qualified for appointment as a judge of the High Court as Her Majesty's Commissioner, acting in his discretion, may appoint for that purpose:

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

Acting puisne judge.

97.—(1) If the office of a puisne judge is vacant or if a puisne judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office or if the Chief Justice advises Her Majesty's Commissioner (or, after the designated date referred to hereinafter in this subsection, the King) that the state of business in the High Court requires that the number of judges of the Court should be temporarily increased, then, until a date to be designated by Her Majesty's Commissioner, the Commissioner acting in accordance with the advice of the Chief Justice and, after that date, the King acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the High Court to act as a puisne judge:

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

(2) A person appointed to act under this section as a puisne judge shall continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Commissioner acting in accordance with the advice of the Chief Justice or, as the case may be, the King acting in accordance with the advice of the Judicial Service Commission:

Provided that a person whose appointment to act as a puisne judge has expired or been revoked may, with the permission, until a date to be designated by the Commissioner, of the Commissioner and, after that date, of the King, acting in accordance with the advice of the Chief Justice, continue to act as such for such a period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Salaries, allowances and conditions of service of judges.

98.—(1) The judges of the High Court and any person appointed to act as a judge of that Court shall be paid such salaries and allowances as may be prescribed by or under any law for the time being in force in Swaziland or, if not so prescribed, such salaries and allowances as may be prescribed by Her Majesty's Commissioner, acting in his discretion, with the prior approval of a Secretary of State.

(2) (*a*) The salary and allowances of a judge of the High Court or of any person appointed to act as a judge of that Court shall not be reduced nor shall his pension rights and other conditions of service be made less favourable to him, while he continues in office; and, for the purpose of this subsection, if he elects that one of two or more provisions relating to salary, allowances or other conditions of service shall apply to him, that provision shall be deemed to be more favourable than any other provision.

(*b*) This subsection shall not apply to allowances which, under the law for the time being in force in Swaziland relating to pensions, are not taken into account in computing pensions.

(3) The salaries and any allowances payable to judges under this section shall be a charge on and paid out of the Consolidated Fund.

Jurisdiction of High Court.

99. The High Court shall be a superior court of record and shall have within Swaziland unlimited original jurisdiction in civil and criminal matters and such appellate and revisional jurisdiction (including jurisdiction to determine reserved questions of law and cases stated) as may be prescribed by or under any law for the time being in force in Swaziland.

PART 2

The Court of Appeal

Establishment of Court of Appeal.

100.—(1) There shall be a Court of Appeal for Swaziland, styled the Swaziland Court of Appeal (hereinafter referred to in this Part as "the Court"), which shall be a superior court of record.

(2) The judges of the Court shall be—

(*a*) the President;

(*b*) such number of Justices of Appeal, being not less than two or more than four, as may be prescribed; and

(*c*) the Chief Justice and the puisne judges, if any, of the High Court.

Appointment of judges of Court of Appeal.

101.—(1) The President shall be appointed by Her Majesty's Commissioner, in pursuance of instructions given by Her Majesty through a Secretary of State.

(2) The Justices of Appeal shall be appointed by the Commissioner, acting in accordance with the advice of the President.

(3) The President and Justices of Appeal shall, subject to the provisions of this Constitution, hold office on such terms and conditions as the Commissioner shall, in accordance with instructions given by Her Majesty through a Secretary of State, prescribe.

(4) A person shall not be qualified for appointment as the President or a Justice of Appeal unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in a territory which has been designated in that behalf by the Commissioner or a court having jurisdiction in appeals from any such court.

(5) If at any time the office of President is vacant or the President is for any reason unable to perform the functions of his office they shall be performed by such one of the other judges of the Court or such other person qualified for appointment as a judge of the Court as the Commissioner acting in his discretion may appoint.

(6) If the office of any Justice of Appeal is vacant or if a Justice of Appeal is appointed to act as President or is for any reason unable to perform the functions of his office or if the President advises the Commissioner that the state of business in the Court so requires, the Commissioner acting in his discretion may appoint a person who is qualified for appointment as a judge of the Court to act as a Justice of Appeal.

(7) A person appointed under this section to act as President or a Justice of Appeal shall (unless he earlier resigns his acting office or is removed therefrom in pursuance of the provisions of section 102 of this Constitution) continue to act in that office until a person has been appointed to and assumed the functions of that office or until the person holding that office has resumed those functions or until the period for which he was appointed to act has expired, as the case may be.

(8) A person appointed as or to act as President or a Justice of Appeal, notwithstanding the termination of his appointment, otherwise than in pursuance of the provisions of section 102(2) of this Constitution, may continue to act as a judge of the Court for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(9) The Court shall be duly constituted notwithstanding any vacancy among the judges of the Court.

(10) The Court shall have and use a seal bearing the style of the Court and a device approved by the President.

(11) A person appointed to be a judge of the Court of Appeal, and a person appointed to act as a judge of that Court, shall not enter upon the duties of his office until he has taken and subscribed the judicial oath in the form set out in Schedule 1 to this Constitution or such other judicial oath as may be prescribed.

Tenure of office of judges.

102.—(1) The President or a Justice of Appeal shall hold office until the expiration of the period for which he was appointed:

Provided that he may at any time resign his office.

(2) Those provisions of section 95 of this Constitution, which prescribe the circumstances in which a judge of the High Court for Swaziland other than a puisne judge may be removed from office, shall apply in relation to the President and a Justice of Appeal and his removal from office as if he were such a judge of the High Court.

Salary, allowances and conditions of service of judges.

103.—(1) The President and Justices of Appeal and any person appointed to act as a judge of the Court of Appeal shall be paid such salaries and allowances as may be prescribed by or under any law for the time being in force in Swaziland or, if not so prescribed, such salaries and allowances as may be prescribed by Her Majesty's Commissioner, acting in his discretion, with the prior approval of a Secretary of State.

(2) The salary and allowances of the President or a Justice of Appeal shall not be reduced nor his other conditions of service be made less favourable to him, while he continues in office; and, for the purpose of this subsection, if he elects that one or two or more provisions relating to salary, allowances or other conditions of service shall apply to him that provision shall be deemed to be more favourable than any other provision.

(3) This section shall not apply to allowances which, under the law for the time being in force relating to pensions, are not taken into account in computing pensions.

(4) The salaries and any allowances payable to judges under this section shall be a charge on and paid out of the Consolidated Fund.

Appointment of assessors.

104. The Court may, in any case in which it appears to the Court to be expedient, call in the aid of one or more assessors with such special qualifications as the Court may think fit, and hear such case wholly or in part with the assistance of such assessors.

Jurisdiction of the Court.

105.—(1) The Court shall have jurisdiction to hear and determine such appeals from the courts of Swaziland, and to exercise such powers and authorities, as may be by or under any laws for the time being in force subject to the provisions of this Constitution and of any such laws ; and, subject as aforesaid, for all purposes of and incidental to the hearing and determination of any appeals in its jurisdiction the Court shall have the power, authority and jurisdiction vested in the court from which the appeal is brought.

(2) Any decision of the Court shall be enforced in like manner as if it were a judgment of the court from which the appeal was brought.

Practice and procedure on appeals.

106.—(1) Subject to the provisions of this Constitution, the President may make rules for regulating the practice and procedure of the Court with respect to appeals and, in connection with such appeals, for regulating the practice and procedure in any court from which such appeals are brought.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may be made for the following purposes:

(*a*) for regulating the sittings of the Court, whether in divisions or otherwise, and the selection of judges for any purpose ;

(*b*) for regulating the right of practising before the Court and the representation of persons concerned in any proceedings in the Court ;

(*c*) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal ;

(*d*) for providing for summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purposes of delay ;

(*e*) for prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings ;

(*f*) for prescribing and regulating the powers and duties of registrars and officers of the Court ;

(*g*) for prescribing the time within which any requirement of the rules is to be complied with ;

(*h*) for providing for a reference from a decision of a single judge to the Court.

(3) Rules made under this section may fix the number of judges of the Court who may sit for any purpose:

Provided that—

(*a*) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be less than three ; and

(*b*) any determination by the Court of any matter (whether final or otherwise) shall, where more than one judge sits, be according

to the opinion of a majority of the judges who sit for the purpose of determining that matter.

(4) No rules of Court which may involve an increase in the expenses of the Court shall be made except with the concurrence of the Minister for the time being responsible for finance but the validity of a rule of Court shall not be called in question in any proceedings on the grounds that the concurrence of the Minister was not or does not appear to have been obtained.

PART 3

Appeals to Her Majesty in Council

Appeals to Her Majesty in Council.

107.—(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases—

(*a*) final decisions in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;

(*b*) where the matter in dispute on the appeal to Her Majesty in Council is of the value of £500 sterling or upwards or where the appeal involves, directly or indirectly, a claim to or question respecting property or a right of the value of £500 sterling or upwards, final decisions in any civil proceedings;

(*c*) final decisions in proceedings for dissolution or nullity of marriage;

(*d*) final decisions in proceedings under section 15 of this Constitution; and

(*e*) in such other cases as may be prescribed by Parliament.

(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court in the following cases—

(*a*) where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, final decisions in any civil proceedings; and

(*b*) in such other cases as may be prescribed by Parliament.

(3) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal from decisions of the Court of Appeal to Her Majesty in Council in any civil or criminal matter.

(4) The foregoing provisions of this section shall be subject to the provisions of section 52(4) of this Constitution.

PART 4

Judicial Service Commission

Judicial Service Commission.

108.—(1) There shall be a Judicial Service Commission for Swaziland which shall consist of—

(*a*) the Chief Justice, who shall be chairman;

(*b*) the chairman of the Public Service Commission; and

(*c*) a member who shall be styled the appointed member and who shall be appointed, until a date to be designated by Her Majesty's Commissioner, by the Commissioner acting in accordance with the

advice of the Chief Justice and, after that date, by the King, acting in accordance with the advice of the Chief Justice, from among persons who hold or have held high judicial office.

(2) A person shall not be qualified to be the appointed member if—

(*a*) he is, or at any time during the two years immediately preceding his appointment has been, a member of the Legislative Council established for Swaziland by Order of Her Majesty in Council before the appointed day;

(*b*) he is, or at any time during the said two years has been, nominated as a candidate for election as a member of the Legislative Council established as aforesaid;

(*c*) he is, or at any time during the said two years has been, a member of the House of Assembly or the Senate established by this Constitution, or at any time during that period has been nominated as a candidate for election to the House of Assembly or the Senate;

(*d*) he is, or at any time during the said two years has been, the holder of an office in any organisation that sponsors or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the Legislative Council established as aforesaid or of the House of Assembly or the Senate; or

(*e*) he is a public officer other than a judge of the High Court or Court of Appeal:

Provided that a person shall not be so disqualified by reason only that he had been Speaker of the Legislative Council established as aforesaid or had been Speaker of the House of Assembly or Speaker of the Senate having been elected as such from outside the House of Assembly or the Senate.

(3) Subject to the provisions of this section, the office of the appointed member shall become vacant—

(*a*) at the expiration of five years or such lesser period, not being less than two years, from the date of his appointment as may be specified in his appointment; or

(*b*) if any circumstances arise that, if he were not the appointed member, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) The appointed member may be removed from office only for inability to exercise 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 the provisions of this section.

(5) The appointed member shall be removed from office by Her Majesty's Commissioner if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the Commissioner that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Chief Justice represents to the Commissioner that the question of removing the appointed member under this section ought to be investigated, then—

(*a*) the Commissioner shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office ; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Commissioner and recommend to him whether the appointed member ought to be removed under this section.

(7) If the question of removing the appointed member has been referred to a tribunal under this section, the Commissioner, acting in accordance with the advice of the Chief Justice, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Commissioner, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Commissioner that that member should not be removed.

(8) If the office of the appointed member is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, the Commissioner, acting in accordance with the advice of the Chief Justice, may appoint a person who is qualified to be the appointed member to act as that member, and any person so appointed shall, subject to the provisions of subsection (3) of this section, continue to act until the office in which he is acting is filled or, as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the Commissioner, acting in accordance with the advice of the Chief Justice.

(9) The appointed member shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office in the form set out in Schedule 1 to this Constitution or such other oaths as may be prescribed.

(10) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.

(11) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(12) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

(13) After a date to be designated by the Commisioner, subsections (5) to (8) inclusive of this section shall have effect as if references therein to the Commissioner were references to the King.

Appointment, etc., of judicial officers.

109.—(1) The power to appoint persons to hold or act in any offices to which this section applies (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall, until a date to be designated by Her Majesty's Commissioner, be exercised by the Commissioner after obtaining, but not necessarily acting in accordance with, the advice of the Judicial Service Commission and shall, after that date, vest in that Commission.

(2) Until a date to be designated by Her Majesty's Commissioner, the Commissioner and, after that date, the Judicial Service Commission, may, by directions in writing and subject to such conditions as he or it thinks fit, delegate any of his or its powers under subsection (1) of this section to any one or more of the members of that Commission or to any person holding or acting in any office to which this section applies.

(3) The offices to which this section applies are—

(*a*) the office of Registrar or Assistant Registrar of the High Court;

(*b*) the office of Registrar or Assistant Registrar of the Court of Appeal;

(*c*) the office of magistrate; and

(*d*) such other offices connected with any court as may be prescribed by Parliament.

CHAPTER IX

THE PUBLIC SERVICE

Public Service Commission.

110.—(1) There shall be a Public Service Commission for Swaziland which shall consist of a chairman and not less than two nor more than four other members, who shall be appointed, until a date to be designated by Her Majesty's Commissioner, by the Commissioner in his discretion and, after that date, by the King, acting in accordance with the advice of the Judicial Service Commission.

(2) A person shall not be qualified to be appointed as a member of the Commission if—

(*a*) he is, or at any time during the two years immediately preceding his appointment has been, a member of the Legislative Council established for Swaziland by Order of Her Majesty in Council before the appointed day;

(*b*) he is, or at any time during the said two years has been, nominated as a candidate for election as a member of the Legislative Council established as aforesaid;

(*c*) he is, or at any time during the said two years has been, a member of the House of Assembly or the Senate established by this Constitution, or at any time during that period has been nominated as a candidate for election to the House of Assembly or the Senate;

(*d*) he is, or at any time during the said two years has been, the holder of an office in any organisation that sponsors or otherwise supports, or that has at any time sponsored or otherwise supported, a candidate for election as a member of the Legislative Council

established as aforesaid or of the House of Assembly or the Senate ; or

(*e*) he is a public officer :

Provided that a person shall not be so disqualified by reason only that he had been Speaker of the Legislative Council established as aforesaid or had been Speaker of the House of Assembly or Speaker of the Senate having been elected as such from outside the House of Assembly or the Senate.

(3) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

(*a*) at the expiration of five years or such lesser period, not being less than two years, from the date of his appointment as may be specified in his appointment ; or

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) A member of the Commission may be removed from office only for inability to exercise 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 the provisions of this section.

(5) A member of the Commission shall be removed from office by the Commissioner if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the Commissioner that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister in the case of the chairman or the chairman in the case of any other member represents to the Commissioner that the question of removing a member of the Commission under this section ought to be investigated, then—

(*a*) the Commissioner shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office ; and

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Commissioner and recommend to him whether the member ought to be removed under this section.

(7) If the question of removing a member of the Commission has been referred to a tribunal under this section, the Commissioner, acting in his discretion, in the case of the chairman of the Commission or member for the time being acting as chairman, or acting in accordance with the advice of the chairman of the Commission, in the case of any other member, may suspend the chairman, acting chairman or other member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Commissioner, acting in his discretion or in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Commissioner that the chairman, acting chairman or other member should not be removed.

(8) If the office of the chairman of the Commission is vacant or if the chairman is for any reason unable to exercise the functions of his office, those functions shall be performed by such one of the other

members of the Commission as, until a date to be designated by Her Majesty's Commissioner, the Commissioner and, after that date, the King, acting in accordance with the advice of the Judicial Service Commission, may appoint.

(9) If at any time there are less than two members of the Commission besides the chairman or if any such member is acting as chairman or is for any reason unable to perform the functions of his office, then, until a date designated by Her Majesty's Commissioner, the Commissioner and, after that date, the King, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall continue to act until his appointment is revoked by the Commissioner or, as the case may be, is revoked by the King, acting in accordance with the advice of the Judicial Service Commission.

(10) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office in the form set out in Schedule 1 to this Constitution or such other oaths as may be prescribed.

(11) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.

(12) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions:

Provided that, until a date to be designated by Her Majesty's Commissioner, any regulations made or instructions given under the Swaziland (Public Service Commission) Order in Council 1962(a) or the Swaziland Order in Council 1963 and in force immediately before the appointed day shall continue in force as from that day and may be amended or revoked by regulations made or, as the case may be, instructions given by the Commissioner.

(13) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

(14) After a date to be designated by Her Majesty's Commissioner—

(*a*) subsections (5) and (6) of this section shall have effect as if references therein to the Commissioner were references to the King; and

(*b*) subsection (7) of this section shall have effect as if for the words "the Commissioner acting in his discretion" there were substituted the words "the King acting in accordance with the advice of the Prime Minister", for the words "the Commissioner acting in his discretion or" there were substituted the words "the King acting",

(a) S.I. 1962/1548 (1962 II, p. 1672).

and for the words " recommends to the Commissioner " there were substituted the words " recommends to the King ".

Appointment, etc., of public officers.

111.—(1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall, until a date to be designated by Her Majesty's Commissioner, be exercised by the Commissioner after obtaining, but not necessarily acting in accordance with, the advice of the Public Service Commission and shall, after that date, vest in that Commission.

(2) Until a date to be designated by the Commissioner, the Commissioner and, after that date, the Public Service Commission, may, by directions in writing and subject to such conditions as he or it thinks fit, delegate any of his or its powers under subsection (1) of this section to any member of the Commission or to any public officer.

(3) The provisions of this section shall not apply in relation to any of the following offices—

(*a*) the office of a judge of the High Court or Court of Appeal;

(*b*) the office of Attorney-General;

(*c*) except for the purpose of making appointments thereto or to act therein, the office of Director of Audit;

(*d*) any office appointment to which is within the functions of the Judicial Service Commission;

(*e*) offices in the Police Force and offices in the Prison Service, to the extent provided by sections 115 and 116 of this Constitution.

Secretary to the Cabinet and permanent secretaries.

112.—(1) Before making the appointment of any person to the office of Secretary to the Cabinet, the Commissioner shall inform the Prime Minister of the name of the person he proposes to appoint and the appointment shall not be made unless the Prime Minister concurs therein.

(2) The power to appoint a person to hold or act in the office of permanent secretary shall vest in the Commissioner, acting after consultation with the Prime Minister:

Provided that the power to appoint a person to hold or act in any such office upon transfer from another such office carrying the same emoluments shall vest in the Prime Minister.

(3) After a date to be designated by the Commissioner, subsections (1) and (2) of this section shall have effect as if references therein to the Commissioner were references to the Public Service Commission.

Appointment, qualifications, etc. of Attorney-General.

113.—(1) The power to appoint a person to hold or act in the office of Attorney-General and to remove a person from that office shall vest in Her Majesty's Commissioner.

(2) A person shall not be qualified for appointment to hold or act in the office of Attorney-General unless he is qualified to be appointed as a judge of the High Court or has practised as an attorney in Swaziland for not less than ten years.

Removal of Director of Audit.

114. Until a date to be designated by Her Majesty's Commissioner, the power to remove from office a person holding the office of Director of Audit shall be exercised by the Commissioner acting in his dis-

cretion and, after that date, the provisions of subsections (4) to (7), as qualified by subsection (14), of section 110 of this Constitution shall apply to a person holding the office of Director of Audit as they apply to the chairman of the Public Service Commission:

Provided that subsection (6) of that section shall have effect as if for the words "If the Prime Minister" there were substituted the words "If the Public Service Commission" and subsection (7) shall have effect as if for the words "the Prime Minister," there were substituted the words "the Public Service Commission".

The Police Force.

115.—(1) In relation to any officer in the Police Force below the rank of Inspector, any power vested in the Public Service Commission by section 111 of this Constitution shall not apply to the extent to which that power is, by or under the provisions of any law in force on the appointed day and for the time being in force or any Act of Parliament, to be exercised by the Commissioner of Police or any other officer in the Police Force:

Provided that in the case of disciplinary proceedings an appeal shall lie to the Public Service Commission against the award by the Commissioner of Police or such other officer of the punishment of dismissal or of reduction in rank.

(2) The provisions of section 111(2) of this Constitution shall not apply in relation to offices in the Police Force.

(3) In this section "the Commissioner of Police" means the officer, by whatever name called, commanding the Police Force.

The Prison Service.

116. The provisions of subsections (1) and (2) of section 115 of this Constitution shall apply to persons holding offices in the Prison Service below the rank of Chief Officer as they apply to persons holding offices in the Police Force below the rank of Inspector; and, for the purposes of this section, those subsections shall have effect as if there were substituted for the words "Police Force" the words "Prison Service", for the word "Inspector" the words "Chief Officer" and for the words "Commissioner of Police" the words "Director of Prisons".

Pensions laws and protection of pensions rights.

117.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before the appointed day shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

(*a*) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before the appointed day, be the law that was in force immediately before that day; and

(*b*) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after the appointed day, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts

shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been duly paid out of that fund to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) In this section " pensions benefits " means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

(7) For the purposes of this section—

(*a*) to the extent to which the emoluments attaching thereto were payable by Swaziland, the office of judge of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal ;

(*b*) to the extent aforesaid, the office of Registrar of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal, or other officer of that Court, for Swaziland ;

(*c*) to the extent aforesaid, any office under the High Commissioner for South Africa or the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland ;

(*d*) to the extent aforesaid, any office in the joint audit service of Basutoland, the Bechuanaland Protectorate and Swaziland ;

(*e*) to the extent aforesaid, the office of Agent for the High Commission Territories, Witwatersrand Agencies, or any office under the Agent or any office for the time being succeeding to the functions of any such office ; and

(*f*) to the extent aforesaid, any office in the service of such body, authority, department, service or other organisation as the King may designate by notice under his hand which shall be published in the Gazette,

shall be regarded as offices in the public service.

Power of Commissions in relation to pensions, etc.

118.—(1) Where under any law any person or authority has a discretion—

(*a*) to decide whether or not any pensions benefits shall be granted ; or

(*b*) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be

granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of judge of the Court of Appeal, judge of the High Court or Director of Audit has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section "the appropriate Commission" means—

(*a*) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial Service Commission or that have been granted in respect of such service, the Judicial Service Commission; and

(*b*) in any other case, the Public Service Commission.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) For the purposes of this section—

(*a*) to the extent to which the emoluments attaching thereto were payable by Swaziland, the office of judge of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal;

(*b*) to the extent aforesaid, the office of Registrar of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal, or other officer of that Court, for Swaziland;

(*c*) to the extent aforesaid, any office under the High Commissioner for South Africa or the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland;

(*d*) to the extent aforesaid, any office in the joint audit service of Basutoland, the Bechuanaland Protectorate and Swaziland;

(*e*) to the extent aforesaid, the office of Agent for the High Commission Territories, Witwatersrand Agencies, or any office under the Agent or any office for the time being succeeding to the functions of any such office; and

(*f*) to the extent aforesaid, any office in the service of such body, authority, department, service or other organisation as the King may designate by notice under his hand which shall be published in the Gazette,

shall be regarded as offices in the public service.

CHAPTER X

FINANCE

Consolidated Fund.

119. All revenues or other moneys raised or received for the purposes of the Government of Swaziland (not being revenues or other moneys that are payable by or under this Constitution or any other law into some other fund established for a specific purpose or that may by or under any law be retained by the department of Government that received them for the purposes of defraying the expenses of that department) shall be paid into and form one Consolidated Fund.

Withdrawals from Consolidated Fund or other public funds.

120.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

(*a*) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Swaziland ;

(*b*) where the issue of those moneys has been authorised by an Appropriation Act, by a supplementary estimate approved by resolution of the House of Assembly or in such manner and subject to such conditions as may be prescribed in pursuance of section 122 of this Constitution.

(2) No moneys shall be withdrawn from any public fund of Swaziland other than the Consolidated Fund or any Contingency Fund established under section 123 of this Constitution unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and Administrations or the investment of any such moneys in securities in which, under the law for the time being in force in Swaziland, trustees are authorised to invest, or the making of advances to such extent and in such circumstances as may be prescribed shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

Authorisation of expenditure.

121.—(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before both chambers, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Swaziland for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill to be known as an Appropriation bill which shall be introduced in the House of Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(3) If in any financial year it is found—

(*a*) that the amount appropriated by the Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Act ; or

(*b*) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in

that head by the Appropriation Act or for a purpose for which no amount has been appropriated by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the House of Assembly and shall be included in a motion or motions seeking approval for the supplementary expenditure in such manner as the House shall prescribe.

(4) A final Supplementary Appropriation bill shall be introduced in the House of Assembly, not later than the end of the financial year next following, providing for the appropriation under each head of expenditure of any funds which it has proved necessary to spend in addition to those appropriated in the Appropriation Act.

Authorisation of expenditure in advance of appropriation.

122. If the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister for the time being responsible for finance may, to such extent and subject to such conditions as may be prescribed, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier:

Provided that the expenditure so authorised for any service shall not exceed one quarter of the amount authorised for that service in the preceding year.

Contingencies Fund.

123.—(1) Parliament may make provision for the establishment of a Contingencies Fund and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the House of Assembly, and a bill or motion shall be introduced therein, as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

124.—(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on and paid out of the Consolidated Fund.

(3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances which, under the law for the time being in force relating to pensions, are not taken into account in computing pensions, shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of Her Majesty's Commissioner, Deputy Commissioner, appointed member of the Judicial Service Commission, member of the Public Service Commission and Director of Audit.

Public debt.

125.—(1) All debt charges for which Swaziland is liable shall be a charge on and paid out of the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the revenues of Swaziland or the Consolidated Fund and on the service and redemption of debt thereby created.

Director of Audit.

126.—(1) There shall be a Director of Audit, whose office shall be a public office.

(2) The public accounts of Swaziland and of all officers, courts and authorities of the Government shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts :

Provided that, if it is so provided by any law in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(3) The Director of Audit shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before both chambers.

(4) In the exercise of his functions under this Constitution the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER XI

CITIZENSHIP

Citizenship by operation of law.

127. On and after the prescribed date, the following persons shall be citizens of Swaziland by operation of law—

(*a*) any person born in Swaziland before, on or after the prescribed date ;

(*b*) any person born outside Swaziland before the prescribed date who, immediately before that date, is a citizen of the United Kingdom and Colonies or a British protected person and whose father was born in Swaziland ; and

(*c*) any person born outside Swaziland on or after the prescribed date if at the date of his birth his father is a citizen of Swaziland by virtue of the provisions of paragraph (*a*) of this section or section 128 or 129 of this Constitution.

Citizenship by registration.

128.—(1) Subject to the provisions of this section, any of the following persons shall be entitled, upon making application in such manner as may be prescribed, to be registered as a citizen of Swaziland—

(*a*) any woman who, on the prescribed date, is married to a person who is a citizen of Swaziland by virtue of the provisions of paragraph (*a*) or (*b*) of section 127 of this Constitution ;

(*b*) any widow or divorced wife, if her husband is, or would but for his death have been, a citizen of Swaziland by virtue of the provisions of paragraph (*a*) or (*b*) of section 127 of this Constitution ;

(*c*) any woman who, on or after the prescribed date, marries a citizen of Swaziland ;

(*d*) any person who, on the prescribed date, is a citizen of the United Kingdom and Colonies, having become such a citizen by virtue of having been naturalised or registered in Swaziland under the British Nationality Act 1948(a), and who makes application within such time as may be prescribed;

(*e*) any person who is a citizen of the United Kingdom and Colonies and has resided in Swaziland throughout the period of five years immediately preceding the prescribed date, and who makes application within such time as may be prescribed;

(*f*) any person one of whose parents is, at the time of his application, or was, at the date of the death of such parent, a citizen of Swaziland;

(*g*) any person who, before the prescribed date, has "khonta'd", that is to say, has been accepted as a Swazi in accordance with Swazi law and custom, and who makes application within such time as may be prescribed; and

(*h*) any woman who, being married to a person who has been registered as a citizen in accordance with the provisions of paragraph (*d*), (*e*), (*f*) or (*g*) of this subsection, makes application within such time as may be prescribed.

(2) A person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under subsection (1) of this section, but an application may be made on his behalf by his parent or guardian.

(3) A person registered as a citizen of Swaziland under the provisions of this section shall be a citizen by registration from the date on which he is so registered.

Citizenship by naturalisation.

129. Subject to the provisions of section 130 of this Constitution, the Government may, upon application made by any person of or over the age of twenty-one years, grant a certificate of naturalisation to that person if satisfied—

(*a*) that he has been ordinarily and lawfully resident in Swaziland—

(i) throughout the period of twelve months immediately preceding the date of the application; and

(ii) during the seven years immediately preceding the said period of twelve months, for periods amounting in the aggregate to not less than four years; and

(*b*) that he is of good character; and

(*c*) that he has an adequate knowledge of at least one of the following languages—

(i) English;

(ii) Siswati; and

(*d*) that he intends, if the certificate is granted, to continue to reside in Swaziland.

General provisions as to naturalisation.

130.—(1) A certificate of naturalisation shall not be granted to any person under section 129 of this Constitution until he has taken the oath of allegiance set out in Schedule 1 to this Constitution or such other oath as may be prescribed.

(2) A person to whom a certificate of naturalisation is granted shall be a citizen by naturalisation from the date on which the certificate is so granted.

(a) 1948 c. 56.

Powers of Parliament.

131.—(1) Subject to the provisions of this Chapter, Parliament may make provision relating to the acquisition of citizenship of Swaziland by registration or naturalisation.

(2) Parliament may make provision for depriving of his citizenship of Swaziland any person who is such a citizen by registration or naturalisation.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Swaziland.

Interpretation.

132.—(1) In this Chapter—

"British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948 by virtue of his connection with Swaziland;

"prescribed date" means the date on which Swaziland becomes a Protected State.

(2) For the purposes of this Chapter, a person born aboard a registered aircraft, or aboard an unregistered aircraft of the Government of any country, shall be deemed to have been born in the place in which the aircraft was registered or, as the case may be, in that country.

CHAPTER XII

MISCELLANEOUS

Swazi National Council.

133. Save as otherwise provided in this Constitution, the Swazi National Council, which consists of the Ngwenyama, the Ndlovukazi, and of all adult male Swazi, shall continue to exercise its function of advising the Ngwenyama on all matters regulated by Swazi law and custom and connected with Swazi traditions and culture; and shall exercise such function either in Libandla or in Liqoqo, as the case may be, in accordance with Swazi law and custom.

References to public office, etc.

134.—(1) In this Constitution, unless the context otherwise requires, the expression "public office"—

(*a*) shall be construed as including the offices of judges of the High Court or Court of Appeal, the offices of members of all other courts of law in Swaziland (other than courts-martial), and offices of members of the Police Force and of members of the Prison Service; and

(*b*) shall not be construed as including the offices of Speaker or Deputy Speaker (if any) of either chamber, Minister, Assistant Minister, Senator, member of the House of Assembly or member of any Commission established by this Constitution.

(2) For the purposes of this Constitution, a person shall not be construed as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of public service.

Acting appointments.

135.—(1) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions

of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

Removal from office.

136.—(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that—

(*a*) nothing in this subsection shall be construed as conferring on any person or authority power to require a judge of the Court of Appeal or of the High Court or the Director of Audit to retire from the public service; and

(*b*) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(2) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

Resignations.

137. Any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed; and the resignation shall take effect and the office shall accordingly become vacant—

(*a*) at such time or on such date (if any) as may be specified in the writing; or

(*b*) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

Re-appointments and concurrent appointments.

138.—(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, 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.

Saving for jurisdiction of courts.

139. No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

Power to amend and revoke instruments, etc.

140. Where any power is conferred by this Constitution to make any order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such order, regulation, rule or direction.

Interpretation.

141.—(1) In this Constitution, unless the context otherwise requires—

" Act of Parliament " means any law made by Parliament ;

" the appointed day " means the day appointed for the purpose of section 4(1) of the Swaziland Constitution Order 1967 ;

" chamber " means either the Senate or the House of Assembly as the context may require ;

" the Commissioner " means Her Majesty's Commissioner for Swaziland;

" the Commonwealth " means the countries that are independent members of the Commonwealth and territories for whose international relations any of those countries is wholly or in part responsible ;

" financial year " means the period of twelve months ending on the thirty-first day of March in any year or such other day as may be prescribed ;

" the Gazette " means the Swaziland Government Gazette ;

" the Government " means the Government of Swaziland ;

" high judicial office " means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or in any other country outside the Commonwealth that may be prescribed or the office of a judge of a court having jurisdiction in appeals from such a court ;

" Libandla " means a Council consisting of advisers of the Ngwenyama and of representatives of the Swazi nation or part of that nation, meeting to discuss any matter of communal concern in accordance with Swazi law and custom ;

" Liqoqo " means a Council the membership of which is in part elected by the Swazi National Council from among their number, in part selected by the Ngwenyama and in part traditionally appointed, and of which both the Ngwenyama and the Ndlovukazi are themselves members ;

" the Ngwenyama " means the person appointed as Ngwenyama under Swazi law and custom and includes any person for the time being exercising the functions of the Ngwenyama under Swazi law and custom ;

" oath " includes affirmation ;

"Parliament" means the Parliament of Swaziland established by this Constitution;

"the Police Force" means the Swaziland Police Force and includes any other police force established in accordance with such provision as may be prescribed;

"prescribed" means prescribed by or under any Act of Parliament;

"public office" means, subject to the provisions of section 134 of this Constitution, an office of emolument in the public service;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"public service" means service in a civil capacity in respect of the government of Swaziland;

"session" means, in relation to Parliament, the sittings of Parliament commencing when the House of Assembly first meets after any general election or when Parliament first meets after its prorogation at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means, in relation to a chamber, a period during which that chamber is sitting continuously without adjournment, and includes any period during which the chamber is in committee.

(2) Save as otherwise provided in this Constitution, the Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

Certain proposals for alteration of this Constitution.

142.—(1) The Government of Swaziland shall not submit to Her Majesty's Government any proposal for the alteration of any provision of this Constitution unless the procedures specified in Part I of Schedule 3 to this Constitution have been complied with.

(2) Nothing in this section shall be construed as affecting the powers of Her Majesty in Council to make provision for the alteration of this Constitution irrespective of whether the procedures specified in Part I of Schedule 3 to this Constitution have been complied with or of whether any proposal for any alteration has been received from the Government of Swaziland.

SCHEDULE 1 TO THE CONSTITUTION

Sections 25, 50(6), 54, 81, 93(4), 101(11), 108(9), 110(10) and 130(1).

OATHS

(Oath or affirmation for the due execution of the office of King of Swaziland)

I ..... do swear [or solemnly affirm] that I, in the office of King of Swaziland will, under the Constitution of the Kingdom of Swaziland, preserve, protect and defend the said Constitution; that I will, as King, govern the people of Swaziland according to the said Constitution and the other laws of Swaziland; and that I will, as King and so far as lies within my power, cause law and justice to be administered in mercy to the people of Swaziland.

So help me God. [To be omitted in affirmation.]

(Oath or affirmation for the due execution of the office of Regent)

I ..... do swear [or solemnly affirm] that I, in the office of Regent of Swaziland, will, under the Constitution of the Kingdom of Swaziland, well and truly serve the King of Swaziland, his heirs and successors; that I will, as Regent, preserve, protect and defend the said Constitution; that I will, as Regent, govern the people of Swaziland according to the said Constitution and the other laws of Swaziland; and that I will, as Regent and so far as lies within my power, cause law and justice to be administered in mercy to the people of Swaziland.

So help me God. [To be omitted in affirmation.]

(Oath or affirmation of allegiance)

I ..... do swear [or solemnly affirm] that I will be faithful and bear true allegiance to King ....., his heirs and successors, according to law.

So help me God. [To be omitted in affirmation.]

(Oath or affirmation for due execution of office)

I ..... do swear [or solemnly affirm] that I will well and truly serve King ....., his heirs and successors, in the office of [here insert the description of the office].

So help me God. [To be omitted in affirmation.]

(Judicial oath or affirmation)

I ..... do swear [or solemnly affirm] that I will well and truly serve King ....., his heirs and successors, in the office of [here insert the description of the judicial office] and I will do right to all manner of people according to the law without fear or favour, affection or ill-will.

So help me God. [To be omitted in affirmation.]

Section 53(2).

SCHEDULE 2 TO THE CONSTITUTION

MATTERS WHICH SHALL CONTINUE TO BE REGULATED BY SWAZI LAW AND CUSTOM

(*a*) The office of Ngwenyama.

(*b*) The office of Ndlovukazi (the Queen Mother).

(*c*) The appointment, revocation of appointment and suspension of Chiefs.

(*d*) The composition of the Swazi National Council, the appointment and revocation of appointment of members of the Council, and the procedure of the Council.

(*e*) The Ncwala Ceremony.

(*f*) The Libutfo (regimental) system.

Section 142.

SCHEDULE 3 TO THE CONSTITUTION

PROCEDURES RELATING TO PROPOSALS FOR ALTERATION OF THE CONSTITUTION

PART I

1. Any proposal by the Government of Swaziland for the alteration of this Constitution shall be submitted to a joint sitting of both chambers of Parliament (hereinafter called " a joint sitting ").

2. If in the case of a proposal to alter any of the provisions specified in Part II of this Schedule—

(*a*) the proposal is debated at a joint sitting after an interval of at least three months from its submission to a joint sitting ;

(*b*) a resolution supported by the votes of at least three-quarters of all the members of both chambers present and voting thereon and approving the proposal is passed at a joint sitting held at least three months after the conclusion of the debate thereon ; and

(*c*) the proposal is submitted to a referendum on which all persons who, at the time the referendum is held, would be entitled to vote at an election of elected members of the House of Assembly, but no other persons, are entitled to vote and two-thirds of all the votes validly cast on that referendum are cast in support of the proposal,

the proposal shall be transmitted by the Government of Swaziland to Her Majesty's Government for their consideration if the King signifies his consent thereto.

3. If in the case of any of the provisions specified in Part III of this Schedule—

(*a*) the proposal is debated at a joint sitting after an interval of at least three months from its submission to a joint sitting ; and

(*b*) a resolution supported by the votes of at least three-quarters of all the members of both chambers present and voting thereon and approving the proposal is passed at a joint sitting held at least three months after the conclusion of the debate thereon,

the proposal shall be transmitted by the Government of Swaziland to Her Majesty's Government for their consideration if the King signifies his consent thereto.

4. If in the case of any provisions of the Constitution not specified in Part II or Part III of this Schedule—

(*a*) the proposal is debated at a joint sitting after an interval of at least one month from its submission to a joint sitting ; and

(*b*) a resolution supported by the votes of at least half of all the members of both chambers present and voting thereon and approving the proposal is passed at a joint sitting held at least one month after the conclusion of the debate thereon,

the proposal shall be transmitted by the Government of Swaziland to Her Majesty's Government for their consideration if the King signifies his consent thereto.

5. Parliament may make provision for the holding of a referendum for the purposes of paragraph 2 of this Part.

6. Any joint sitting for the purposes of this Schedule shall be summoned by the King by message to each chamber through the Speaker.

7. A joint sitting may, by resolution supported by at least half of the members of both chambers sitting and voting thereon, make rules and orders for the regulation and orderly conduct of joint sittings for the purposes of this Schedule.

PART II

(*a*) Chapter I ;

(*b*) sections 17, 18, 20 and 25(1) ;

(*c*) sections 61(2) and (3), 63(6), 67(1), 68(1) and (4), 69 and 70 ;

(*d*) sections 71(1) and (2), 72(1) and (3), 73(1) and (3), 74(2), 75, 77 to 80 inclusive and section 86(1), (2), (3) and (4) ;

(*e*) sections 90 and 91 ;

(*f*) sections 92, 93, 95, 96, 97, 100, 101, 102, 107, 108 and 109 ;

(*g*) sections 110, 111, 112 and 114 to 116 inclusive ;

(*h*) sections 133 and 142 ; and

(*i*) section 141 in its application to any of the provisions mentioned in this Part.

PART III

(*a*) Sections 33 to 45 inclusive ;

(*b*) sections 51, 52, 53, 61(1), 62, 63(1), (3) and (10), 65, 66, 67(2) and 68(3) ;

(*c*) sections 117 and 118 ;

(*d*) section 126 ; and

(*e*) section 141 in its application to any of the provisions mentioned in this Part.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order makes fresh constitutional provision for Swaziland, conferring internal self-government. It recognises the present Ngwenyama as King of Swaziland, provides that the King of Swaziland shall be the Head of State, and includes provision relating to succession to the kingship and the discharge of the functions of that office during any vacancy in the office or during the absence or incapacity of the holder thereof. The Order makes fresh provision for the office of Her Majesty's Commissioner to whom certain responsibilities, including external affairs and defence, are reserved. It also contains provision with respect to the fundamental rights of the individual, the Parliament of Swaziland, the Executive, land, finance, the judicature, the public service and the citizenship of Swaziland.