STATUTORY INSTRUMENTS

1963 No. 1630

AFRICA

The Swaziland (Her Majesty's Commissioner) Order 1963

Made - - - -	*27th September* 1963
Laid before Parliament	*3rd October* 1963
Coming into Operation	*4th October* 1963

At the Court at Balmoral, the 27th day of September 1963

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. This Order may be cited as the Swaziland (Her Majesty's Commissioner) Order 1963 and shall come into operation on 4th October 1963.

Interpretation.

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

"the Commissioner" means Her Majesty's Commissioner for Swaziland;

"the High Commissioner" means the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland.

(2) Where by this Order a power is conferred upon Her Majesty or any other 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.

(3) In this Order, unless the context otherwise requires, a reference to the holder of an office by the term designating his office includes, to the extent of his authority, any person who is for the time being authorized to discharge the functions of that office.

(4) References in this Order to any other Order of Her Majesty in Council include references to any Order amending or replacing that Order.

(5) The Interpretation Act 1889(b) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

(a) 53 & 54 Vict. c. 37. (b) 52 & 53 Vict. c. 63.

Commissioner.

3.—(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) Before entering on the duties of his office, the Commissioner shall make oaths or affirmations of allegiance and for the due execution of the office of Commissioner in the forms set out in the schedule to this Order.

(3) The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under any Order of Her Majesty in Council or any other law and such other powers and duties as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of any Order of Her Majesty in Council or other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such Instructions as may be addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State; but the question whether he has in any matter complied with such Instructions shall not be inquired into in any court.

Discharge of Commissioner's functions in case of vacancy, absence etc.

4.—(1) Whenever the office of Commissioner is vacant or the Commissioner is absent from Swaziland or is for any other reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be discharged by—

(*a*) such person as may for the time being be designated in that behalf by instructions given by Her Majesty through a Secretary of State; or

(*b*) if there is no person in Swaziland so designated or the person so designated is absent from Swaziland or is unable to discharge the functions of the office of Commissioner, the Chief Secretary.

(2) Before any person assumes the functions of the office of Commissioner under this section he shall make the oaths or affirmations directed by the last foregoing section to be made by the Commissioner.

(3) No person shall continue to discharge the functions of the office of Commissioner after the Commissioner or some other person having a prior right to discharge those functions has notified him that he is about to assume or resume those functions.

(4) The Commissioner or any other person as aforesaid shall not, for the purposes of this section, be regarded as absent from Swaziland or as unable to perform the functions of the office of Commissioner at any time when there is in Swaziland a person appointed as a deputy under the next following section.

(5) In this section "the Commissioner" means the person holding the office of Commissioner.

Deputy to Commissioner.

5.—(1) Whenever the Commissioner—

(*a*) has occasion to be absent from the seat of government but not from Swaziland; or

(*b*) has occasion to be absent from Swaziland for a period that he has reason to believe will be of short duration; or

(*c*) is suffering from any illness that he has reason to believe will be of short duration,

he may by instrument under the public seal appoint any person to be his deputy and in that capacity to perform on his behalf such of the

functions of the office of Commissioner as may be specified in that instrument.

(2) The powers and authority of the Commissioner shall not be abridged, altered or in any way affected by the appointment of a deputy under this section and a deputy shall comply with all instructions that the Commissioner may from time to time address to him; but the question whether a deputy has in any matter complied with such instructions shall not be enquired into in any court.

(3) Any appointment under this section may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Commissioner by instrument under the public seal and, subject thereto, a person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed.

(4) In this section "the Commissioner" means the person holding the office of Commissioner and includes any person discharging the functions of that office under the preceding section.

(5) In subsection (1) of this section the reference to any functions of the office of Commissioner does not include a reference to any functions conferred upon the Commissioner by any Act of Parliament or by any Order of Her Majesty in Council or other instrument made under any Act of Parliament other than this Order, the Swaziland Order in Council 1903(a), the Emergency Powers Order in Council 1939(b) or the Swaziland (Public Service Commission) Order in Council 1962(c).

Commissioner's powers of pardon.

6. The Commissioner may in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant to any person concerned in the commission of any offence for which he may be tried by any court established for Swaziland or to any person convicted of any offence in such a court 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 sentence passed on that person by such a court;

(*c*) substitute a less severe form of punishment for that imposed by any sentence of such a court; or

(*d*) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence in respect of which a person has been convicted by such a court.

Public seal.

7. The Commissioner shall keep and use the public seal of Swaziland.

Power to constitute offices and make appointments, etc.

8.—(1) The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for Swaziland as may be lawfully constituted by Her Majesty and may abolish any office so constituted by him.

(2) Subject to the provisions of this Order and of any other law for the time being in force in Swaziland, the Commissioner may—

(a) S.R. & O. 1903/531 (Rev. VIII, p. 360: 1903, p. 781).
(b) *See* S.I. 1952 I, at p. 621. (c) S.I. 1962/1548 (1962 II, p. 1672).

(*a*) make appointments, to be held during Her Majesty's pleasure, to any office constituted by him for Swaziland in the name and on behalf of Her Majesty; and

(*b*) dismiss, or suspend from the exercise of the functions of his office, any person holding or acting in any such office or take such other disciplinary action as he may think fit with respect to such a person.

Modification of certain Orders.

9.—(1) References in the Swaziland Order in Council 1903 and the Swaziland (Public Service Commission) Order in Council 1962 (except in sections 1 (2) and 2 (1) of the latter) to the High Commissioner shall be construed as if they were references to the Commissioner and references in those Orders to the High Commissioner's official Gazette shall be construed as if they were references to the Swaziland Government Gazette.

(2) To the extent that it revoked the Swaziland Order in Council 1906(a) and the Swaziland Order in Council 1934(b), the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council 1959(c) shall be deemed never to have had effect.

Transitional provisions.

10. Any office that was constituted for Swaziland by the High Commissioner under section 11 of the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council 1959 and was subsisting immediately before the commencement of this Order shall with effect from the commencement of this Order be deemed to have been constituted by the Commissioner under section 8 of this Order and any regulations made by the High Commissioner under the Swaziland (Public Service Commission) Order in Council 1962 and in force immediately before the commencement of this Order shall be deemed to have been made by the Commissioner under that Order.

W. G. Agnew.

SCHEDULE

Oath or Affirmation of Allegiance

I, do swear (*or* solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs and Successors according to law. (So help me God.)

Oath or Affirmation for the due execution of the office of Commissioner

I, do swear (*or* solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors in the office of Her Majesty's Commissioner for Swaziland. (So help me God.)

EXPLANATORY NOTE

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

This Order constitutes the office of Her Majesty's Commissioner for Swaziland and confers certain powers upon the Commissioner.

(a) Rev. VIII, p. 363: S.R. & O. 1906, p. 891. (b) S.R. & O. 1934/1479 (Rev. VIII, p. 364: 1934 I, p. 658). (c) S.I. 1959/1620 (1959 I, p. 281).