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AFRICA

The Swaziland Order in Council 1963

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At the Court at Buckingham Palace, the 20th day of December 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 Jurisidiction 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:—

PART I

INTRODUCTORY

Citation, publication and commencement.

1.—(1) This Order may be cited as the Swaziland Order in Council 1963.

(a) 53 & 54 Vict. c. 37.

(2) This Order shall be published in the Gazette and, except for Part IV and sections 75 and 76, shall come into operation on such day (in this Order referred to as "the appointed day") as the Commissioner, in his discretion, by notice published in the Gazette shall appoint, which day shall not be earlier than the day when this Order is so published or than 2nd January 1964; and Part IV and sections 75 and 76 shall come into operation on such later day or days as the Commissioner, in his discretion, shall so appoint.

Interpretation.

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

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

"the Gazette" means the Swaziland Government Gazette;

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

"meeting" means any sitting or sittings of the Legislative Council commencing when the Council first meets after being summoned at any time, and terminating when the Council is adjourned *sine die*, or at the conclusion of a session;

"the Ngwenyama" means the person appointed as Ngwenyama under Swazi law and custom;

"public office" means an office of emolument in the public service;

"public officer" means the holder of a public office or a person appointed to act in a public office;

"the public seal" means the public seal of Swaziland;

"the public service" means the service of the Crown in a civil capacity in respect of the government of Swaziland;

"session" means the sittings of the Legislative Council commencing when the Council first meets after being constituted under this Order, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the Legislative Council is sitting continuously without adjournment, and includes any period during which the Council is in committee.

(2) 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 perform the functions of that office.

(3) For the purposes of this Order the resignation of a member of any body or a holder of any office that is required to be addressed to any person shall be deemed to have effect from the time at which it is received by that person.

(4) For the avoidance of doubt it is hereby declared that any person who has vacated his seat in any body, or has vacated any office, established by this Order may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(5) If for the purpose of resolving any doubt that may arise as to the qualifications of any person, in accordance with the provisions of this Order,—

(*a*) to be registered as a voter on the European roll or on the national roll, as the case may be; or

(*b*) to be elected an elected member of the Legislative Council,

a law for the time being in force in Swaziland includes definitions of "European" and "Eurafrican", those definitions shall have effect as if they were included in this Order.

(6) The Interpretation Act 1889(a) 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 of the United Kingdom.

Revocation.

3. The Orders in Council mentioned in Schedule 1 to this Order are revoked, without prejudice to anything lawfully done thereunder.

PART II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

4. 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 Part of this Order 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.

5.—(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;

(a) 52 & 53 Vict. c. 63.

(*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.

6.—(1) No person shall be deprived of his personal liberty save as may be authorized 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 before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(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.

(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 authorizes 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.

Protection from slavery and forced labour.

7.—(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.

8.—(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 authorizes the infliction of any description of punishment that was lawful in Swaziland immediately before the appointed day.

Protection from deprivation of property.

9.—(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 of 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 authorizes—

(*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, whether under civil process or after conviction of a criminal offence under the law of Swaziland;

(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;

(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.

10.—(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*) 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;

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

(*c*) that authorizes an officer or agent of the Government of Swaziland, 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

(*d*) that authorizes, 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,

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.

Provisions to secure protection of law.

11.—(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 authorized 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 authorizes 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 ;

"legal representative" means an advocate or attorney entitled to practise as such in Swaziland.

Protection of freedom of conscience.

12.—(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 other than his own.

(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 that is reasonably required—

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

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

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.

(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.

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

(*b*) 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

(*c*) that imposes restrictions upon public officers,

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.

Protection of freedom of assembly and association.

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

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

(*c*) that imposes restrictions upon public officers,

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.

Protection of freedom of movement.

15.—(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 does not belong to Swaziland;

(*e*) for imposing restrictions on the acquisition or use by any person of any property in Swaziland;

(*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 be obliged to act in accordance with any such recommendations.

Protection from discrimination on the grounds of race, etc.

16.—(1) Subject to the provisions of subsections (4), (5) and (8) 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 (6), (8) and (9) of this section, no persons shall be treated in a discriminatory manner by any person acting by virtue of any written law or 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*) for the appropriation of the revenues or other funds of Swaziland or for the imposition of taxation ;

(*b*) with respect to persons who do not belong to Swaziland ;

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

(*d*) 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 ;

(*e*) 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

(*f*) for authorizing 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) 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.

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

(7) 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.

(8) 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 10, 12, 13, 14 and 15 of this Order, being such a restriction as is authorized by section 10(2), section 12(5), section 13(2), section 14(2), or paragraph (*a*) or (*b*) of section 15(3), as the case may be.

(9) 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 person detained under emergency laws.

17.—(1) Where a person is detained by virtue of a law that authorizes 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 authorized;

(*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.

18.—(1) If any person alleges that any of the provisions of this Part of this Order 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 Part of this Order.

(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 Part of this Order, 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 for Basutoland, the Bechuanaland Protectorate and Swaziland 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 Order 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.

Interpretation of Part II and savings.

19.—(1) In this Part of this Order, 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, but not, save in sections 5 and 7 of this Order, 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;

" 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.

(2) In this Part of this Order " 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 is in operation by virtue of a proclamation made under section 3 of that Order.

(3) For the purposes of this Part of this Order a person shall be deemed to belong to Swaziland if that person is a British subject or a British protected person and—

(*a*) was born in Swaziland or of parents who at the time of his birth were ordinarily resident in Swaziland;

(*b*) has been ordinarily resident in Swaziland continuously for a period of seven years or more and since the completion of that period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of the Commonwealth;

(*c*) has obtained the status of a British subject by reason of the grant in Swaziland of a certificate of naturalization under the British Nationality and Status of Aliens Act 1914(b), or the British Nationality Act 1948(c);

(a) *See* S.I. 1952 I, at p. 621. Amending instruments are S.I. 1956/731, 1963/88, 1633 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084).
(b) 4 & 5 Geo. 5. c. 17.
(c) 11 & 12 Geo. 6. c. 56.

(*d*) is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of court or a deed of separation; or

(*e*) is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any of the foregoing paragraphs applies.

(4) 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 Part of this Order other than sections 5, 7 and 8.

(5) 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 Part of this Order.

PART III

HER MAJESTY'S COMMISSIONER FOR SWAZILAND

Her Majesty's Commissioner for Swaziland.

20. 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.

Commissioner's powers and duties.

21. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law for the time being in force in Swaziland, 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 this Order and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office (including the exercise of any powers with respect to which he is empowered by this Order to act in his discretion) according to such instructions, if any, as Her Majesty may from time to time see fit to give him; but the question whether he has in any matter complied with such instructions shall not be enquired into by any court.

Publication of Commission and making of oaths.

22. Every person appointed to the office of Commissioner shall, before assuming the functions of his office, cause the Commission appointing him to be Commissioner to be read and published in the presence of the Chief Justice or some other judge of the High Court and of such members of the Executive Council as can conveniently attend; and he shall make before them oaths or affirmations of allegiance and for the due execution of his office in the forms set out in Schedule 2 to this Order, which oaths or affirmations the Chief Justice or other judge shall administer.

Acting Commissioner.

23.—(1) During any period when 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 assumed and performed—

(*a*) by such person as Her Majesty may designate in that behalf by instructions given 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 perform those functions, by 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 perform the functions of the office of Commissioner after the Commissioner or some other person having a prior right to perform 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 a subsisting appointment of a deputy under the next following section.

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

Deputy to Commissioner.

24.—(1) Whenever the Commissioner—

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

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

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

he may, in his discretion, 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, other than any function 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, or the Emergency Powers Order in Council 1939(a), as from time to time amended or replaced.

(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 by any court.

(3) An 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, in his discretion, 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.

(a) *See* S.I. 1952 I, at p. 621. Amending instruments are S.I. 1956/731, 1963/88, 1633 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084).

(4) In this section "the Commissioner" means the person holding the office of Commissioner or the person performing the functions of that office under the last foregoing section.

PART IV

EXECUTIVE COUNCIL

Executive Council.

25. There shall be an Executive Council for Swaziland which, subject to the provisions of this Order, shall consist of three ex officio members and five appointed members.

Ex officio members.

26. The ex officio members of the Executive Council shall be the Chief Secretary, the Attorney-General and the Secretary for Finance and Development.

Appointed members.

27.—(1) Subject to the provisions of this section, the appointed members of the Executive Council shall be persons appointed by the Commissioner, in his discretion, by instrument under the public seal.

(2) Of the appointed members of the Executive Council one shall be a person who is a public officer and four shall be persons who are elected members or nominated members of the Legislative Council.

(3) The Commissioner, before he appoints the said four persons, shall consult as he may think fit the elected members of the Legislative Council in order to secure that the said four persons shall be as representative as possible of the different classes of voters who elect members to the Legislative Council.

(4) The Commissioner shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

Commissioner to consult Executive Council.

28.—(1) Subject to the provisions of this Order, the Commissioner shall consult the Executive Council in the formulation of policy and in the exercise of all powers conferred upon him by this Order or by any other law for the time being in force in Swaziland, except—

(*a*) any power conferred upon him by this Order which he is empowered to exercise in his discretion or in pursuance of instructions given by Her Majesty; or

(*b*) any power conferred upon him by any other law which he is empowered, either expressly or by implication, to exercise without consulting the Council.

(2) The Commissioner shall not be required to consult the Executive Council in any case in which, in his judgment,—

(*a*) the service of Her Majesty would sustain material prejudice thereby;

(*b*) the matters to be decided are too unimportant to require such consultation; or

(*c*) the urgency of the matter requires him to act before the Council can be consulted.

(3) In every case falling within paragraph (*c*) of the last foregoing subsection the Commissioner shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons for those measures.

Commissioner may act against advice of Executive Council.

29.—(1) In any case in which the Commissioner is required by the last foregoing section to consult the Executive Council he may, if he thinks it right to do so, act against the advice given to him by the Council; but if he so acts he shall at the first convenient opportunity report the matter to a Secretary of State with the reasons for his action.

(2) Whenever the Commissioner acts against the advice of the Executive Council any member of the Council may require that there shall be recorded in the minutes any advice or opinion he may give upon the question at issue and his reasons.

Vacation of seat of appointed member.

30.—(1) Subject to the provisions of this section, an appointed member of the Executive Council shall hold his seat in the Council during Her Majesty's pleasure.

(2) An appointed member of the Executive Council shall vacate his seat—

(*a*) at such time or in such circumstances as may be specified in the instrument by which he is appointed;

(*b*) if he resigns his seat by writing under his hand addressed to the Commissioner and, in the case of a member who is a public officer, the Commissioner, in his discretion, accepts his resignation;

(*c*) if he is absent from Swaziland for a period of more than two weeks without written permission given by the Commissioner;

(*d*) in the case of a member who is a public officer, if he ceases to be a public officer; or

(*e*) in the case of a member who is an elected member or a nominated member of the Legislative Council,—

(i) when, after any dissolution of that Council, he is informed by the Commissioner that the Commissioner is about to reappoint him as a member of the Executive Council or to appoint another person in his place; or

(ii) if he ceases to be a member of that Council otherwise than by reason of a dissolution.

Temporary members of Executive Council.

31.—(1) Whenever an appointed member of the Executive Council is unable, because he is ill, or absent from Swaziland, or for any other reason, to perform his functions as a member of the Council, the Commissioner, in his discretion, may, by instrument under the public seal, appoint to be temporarily a member of the Council—

(*a*) in place of a member who is a public officer, a person who is a public officer;

(*b*) in place of a member who is an elected member or a nominated member of the Legislative Council, a person who is an elected member or, as the case may be, a nominated member of that Council.

(2) The Commissioner shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

(3) A person appointed under this section to be temporarily a member of the Executive Council shall vacate his seat when he is informed by the Commissioner that the member in whose place he was appointed is again able to perform his functions as a member of the Council, or when the seat of that member becomes vacant.

(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Executive Council as they apply in relation to the member in whose place he was appointed.

Determination of questions as to membership.

32. Any question whether a person is a member of the Executive Council shall be determined by the Commissioner, in his discretion.

Oath or affirmation by members of Executive Council.

33. Before assuming the functions of his office a member of the Executive Council shall make before the Commissioner, or some person authorized in that behalf by the Commissioner, an oath or affirmation for the due execution of his office in the form set out in Schedule 2 to this Order.

Summoning of Executive Council.

34. The Executive Council shall not be summoned except by the authority of the Commissioner, in his discretion.

Proceedings in Executive Council.

35.—(1) The Commissioner shall, so far as practicable, attend and preside at all meetings of the Executive Council, and in his absence such member as the Commissioner may either generally or specially appoint shall preside.

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

(3) Subject to the provisions of the last foregoing subsection, the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council; and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

Submission of questions to Executive Council.

36. The Commissioner shall alone be entitled to submit questions to the Executive Council for their advice; but if the Commissioner declines to submit any question to the Council when requested in writing by any member of the Council to do so, that member may require that there shall be recorded in the minutes his written application, together with the Commissioner's answer.

Assignment of departments.

37. The Commissioner, in his discretion, may by directions in writing charge any member of the Executive Council with responsibility for any department or subject, and may vary or revoke any such directions.

Leave of absence.

38. The Commissioner, in his discretion, may grant leave of absence from his duties to any member of the Executive Council.

PART V

LEGISLATIVE COUNCIL

Legislative Council.

39. There shall be a Legislative Council for Swaziland which, subject to the provisions of this Order, shall consist of a Speaker, four official members, twenty-four elected members and such number of nominated members as the Commissioner may appoint under section 44 of this Order.

The Speaker.

40.—(1) The Speaker shall be appointed by the Commissioner by instrument under the public seal from among persons who do not hold any public office and who are not members of the Legislative Council.

(2) The Speaker shall hold office as such during Her Majesty's pleasure, and shall not vacate his office by reason only of a dissolution of the Legislative Council; but he shall vacate his office—

(*a*) at such time as may be specified in the instrument by which he is appointed;

(*b*) if he resigns his office by writing under his hand addressed to the Commissioner, and the Commissioner accepts his resignation; or

(*c*) if he is appointed to a public office.

(3) The Commissioner may grant the Speaker leave of absence from his duties.

(4) There shall be charged on the revenues of Swaziland and paid thereout to the Speaker such salary and allowances as the Commissioner may prescribe by order under his hand.

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

Acting Speaker.

41. 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 Commissioner, in his discretion, may by instrument under the public seal appoint a person (in this Order called "the Acting Speaker") to act as Speaker; and the provisions of the last foregoing section other than subsection (1) and paragraph (*c*) of subsection (2) shall apply in relation to that person as they apply in relation to the Speaker.

Official members.

42. The official members of the Legislative Council shall be—

(*a*) the Chief Secretary, the Attorney-General, and the Secretary for Finance and Development; and

(*b*) the appointed member of the Executive Council who is a public officer.

Elected members.

43.—(1) The elected members of the Legislative Council shall be persons qualified for election as such in accordance with the provisions of this Order, and shall be elected in the manner provided by this Order and by any other law for the time being in force in Swaziland.

(2) Subject to the provisions of this Order, of the elected members of the Legislative Council—

(*a*) eight shall be persons who are Swazis or Eurafricans, and who are certified by the Ngwenyama in Council as having been elected in accordance with Swazi traditional methods of election;

(*b*) eight shall be persons who are Europeans or Eurafricans, of whom four shall be elected by voters registered on the roll referred to in this Order as "the European roll", and four shall be elected by voters registered on the roll referred to in this Order as "the national roll"; and

(*c*) eight shall be persons of any race, who shall be elected by voters registered on the national roll.

Nominated members.

44.—(1) Subject to the provisions of section 46 of this Order, the nominated members of the Legislative Council shall be British subjects or British protected persons who have attained the age of twenty-one years, and shall be appointed by the Commissioner, in his discretion, by instrument under the public seal; but nominated members of the Council shall only be appointed if, and shall not be appointed unless, in the Commissioner's judgment, such appointment is necessary—

(*a*) to secure representation in the Council of interests or of communities which, in his judgment, should be, but are not, or are not adequately, represented in the Council (for which purpose he may appoint not more than three nominated members); or

(*b*) to ensure the continued administration of the government of Swaziland.

(2) The Commissioner shall not make any appointment under this section without obtaining the prior approval of a Secretary of State.

Qualifications for elected membership.

45. Subject to the provisions of the next following section, a person shall be qualified to be elected an elected member of the Legislative Council if, and shall not be qualified to be so elected unless,—

(*a*) as respects a person to be elected in accordance with Swazi traditional methods of election,—

(i) he is a British subject or a British protected person;

(ii) he has attained the age of twenty-one years;

(iii) he has been ordinarily resident in Swaziland for a period of, or periods amounting in the aggregate to, not less than three years during the five years immediately before the date of his election; and

(iv) in the case of a Eurafrican, he is not registered as a voter on the European roll;

(*b*) as respects a person to be elected by voters registered on the European roll, he has the qualifications mentioned in section 52(1) of this Order, and is registered as a voter on that roll; and

(*c*) as respects a person to be elected by voters registered on the national roll, he has the qualifications mentioned in section 52(2) of this Order, and is registered as a voter on that roll and, if he is a candidate for a seat reserved for a European or a Eurafrican candidate under section 51(2) of this Order, his nomination as a candidate is supported by not less than twenty-five persons who are Europeans or Eurafricans and are registered as voters on that roll.

Disqualifications for elected and nominated membership.

46.—(1) No person shall be qualified to be elected an elected member or appointed a nominated member of the Legislative Council who—

(*a*) is, by virtue of his own act, under any 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 of Swaziland for or on account of the public service, and—

(i) in the case of an elected member, has not, within one month before the day 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

(ii) in the case of a nominated member, has not disclosed to the Commissioner 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, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

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

(*h*) in the case of an elected member, 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.

(2) For the purpose of paragraph (*f*) of the last foregoing subsection 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.

Vacation of seats of elected and nominated members.

47.—(1) A nominated member of the Legislative Council shall hold his seat in the Council during Her Majesty's pleasure.

(2) An elected member or a nominated member of the Legislative Council shall vacate his seat—

(*a*) on a dissolution of the Council;

(*b*) if, being an elected member, he resigns his seat by writing under his hand addressed to the Speaker, or, being a nominated member, he resigns his seat by writing under his hand addressed to the Commissioner;

(*c*) if, being an elected member, he accepts appointment as a nominated member, or, being a nominated member, he accepts nomination as a candidate for election to the Council;

(*d*) if he is absent from two consecutive meetings of the Council without having obtained before the termination of either meeting from the Speaker, or other person presiding, if he is an elected member, or from the Commissioner, if he is a nominated member, permission to be or to remain absent therefrom;

(*e*) if 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 of Swaziland 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 or to him to be just to do so, the Council may by resolution exempt an elected member and the Commissioner, in his discretion, may exempt a nominated member 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 Council or to the Commissioner, as the case may be, the nature of the contract and his interest, or the interest of the firm or company, therein;

(*f*) if, being an elected member, he ceases to be qualified for registration as a voter;

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

(*h*) if any circumstance arises that, if he were not a member of the Council, 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 the last foregoing section; or

(*i*) in the circumstances mentioned in the next following section.

Vacation of seat on sentence, etc.

48.—(1) Subject to the provisions of this section, if an elected member or a nominated member of the Legislative Council 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, he shall forthwith cease to perform his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker 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 Council signified by resolution.

(2) If at any time before the 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 Legislative Council shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Council.

(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.

Temporary members of Legislative Council.

49.—(1) Whenever a nominated member of the Legislative Council is unable, because he is ill, or absent from Swaziland, or for any other reason, to perform his functions as a member of the Council, the Commissioner, in his discretion, may, by instrument under the public seal, appoint to be temporarily a member of the Council a person qualified for appointment as a nominated member.

(2) The Commissioner shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

(3) A person appointed under this section to be temporarily a member of the Legislative Council shall vacate his seat when he is informed by the Commissioner that the member in whose place he was appointed is again able to perform his functions as a member of the Council, or when the seat of that member becomes vacant.

(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Legislative Council as they apply in relation to the member in whose place he was appointed.

Determination of questions as to membership.

50.—(1) Any question whether—

(*a*) a person has been validly elected an elected member of the Legislative Council; or

(*b*) an elected member of the Council has vacated his seat therein or is required under section 48 of this Order to cease to perform his functions as a member,

shall be determined in accordance with any law for the time being in force in Swaziland.

(2) Any question whether—

(*a*) a person has been validly appointed a nominated member of the Legislative Council; or

(*b*) a nominated member of the Council has vacated his seat therein or is required under section 48 of this Order to cease to perform his functions as a member,

shall be determined by the Commissioner, in his discretion.

Constituencies.

51.—(1) For the purpose of electing the elected members of the Legislative Council who are to be elected by voters registered on the European roll and the national roll—

(*a*) as respects the four members to be elected by voters registered on the European roll, Swaziland shall be treated as a single constituency; and

(*b*) as respects the twelve members to be elected by voters registered on the national roll, Swaziland shall be divided into four constituencies, each of which shall return three members.

(2) In each of the said four constituencies one seat shall be reserved for a European or a Eurafrican candidate.

(3) The names and boundaries of the said four constituencies shall be fixed by the Commissioner, in his discretion, by notice published in the Gazette.

Qualifications of voters.

52.—(1) Subject to the provisions of the next following section, a European or a Eurafrican shall be qualified to be registered as a voter on the European roll if, and shall not be qualified to be so registered unless,—

(*a*) he is a British subject or a British protected person or, until 31st December 1965, not being a British subject or a British protected person, he is a South African citizen;

(*b*) he has attained the age of twenty-one years; and

(*c*) he has been ordinarily resident in Swaziland for a period of, or periods amounting in the aggregate to, not less than three years during the five years immediately before the date of his application for registration.

(2) Subject to the provisions of the next following section, a person shall be qualified to be registered as a voter on the national roll if, and shall not be qualified to be so registered unless, that person—

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

(*b*) has attained the age of twenty-one years;

(*c*) has been ordinarily resident in Swaziland for a period of, or periods amounting in the aggregate to, not less than three years during the five years immediately before the date of his application for registration; and

(*d*) has paid or is exempt from paying, or is the wife of a person who has paid or is exempt from paying, tax under the Income Tax Proclamation(a), the Poll Tax Proclamation(b), the African Tax Proclamation(c), or any regulations made thereunder, or under any law amending or replacing those Proclamations or regulations and for the time being in force in Swaziland.

(3) A person who has the requisite qualifications may be registered as a voter both on the European roll and on the national roll; but, as respects the national roll, he may be registered as a voter in one constituency only to which that roll relates.

(4) Where a man is married under a system permitting of polygamy and has more than one wife, only the wife to whom he has been married for the longest period, or, if the system under which he is married recognizes any other wife to be the senior wife, only that other wife, shall be deemed to be his wife for the purpose of subsection (2) of this section.

Disqualifications of voters.

53. 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

(a) Laws of Swaziland, 1959, c. 105.
(b) Laws of Swaziland, 1959, c. 108.
(c) Laws of Swaziland, 1959, c. 109.

called) for a term of or exceeding six months, other than a sentence in lieu of a fine, but including a suspended sentence, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a 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.

Right to vote at elections.

54.—(1) Any person who is registered as a voter shall, while he is so registered, and subject to the provisions of the last foregoing section, be entitled to vote at any election of a member to the Legislative Council by voters registered on the European roll or, as the case may be, on the national roll.

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

Persons not to be treated as holding public offices.

55.—(1) A person shall not be treated as holding, or acting in, a public office for the purposes of this Part of this Order if he is on leave of absence pending relinquishment of such an office, or by reason only that he—

(*a*) is receiving a pension or other like allowance from the Crown;

(*b*) is receiving any remuneration or allowance from the revenues of Swaziland as a member of the Executive Council, the Legislative Council or the Swazi National Council;

(*c*) is a retired or reserve member of Her Majesty's forces or a special constable;

(*d*) is a member of any public authority, tribunal or other public body in Swaziland; or

(*e*) is the holder of an office in the service or appointment of the Crown, or is performing any functions on behalf of the Crown, if the only payments he receives in respect of that office or those functions are by way of travelling or subsistence allowances or a refund of out-of-pocket expenses.

(2) A provision in any law for the time being in force in Swaziland that a person shall not be treated as holding, or acting in, a public office for all or any of the purposes of this Part of this Order shall have effect as if it were included in this Order.

Law as to elections.

56.—(1) Subject to the provisions of this Order, a law enacted under this Order may provide for the election of the elected members of the Legislative Council, and in particular, and without prejudice to the generality of the foregoing power, may provide for—

(*a*) the registration of voters;

(*b*) the nomination of candidates for election (including the number of persons required to support nominations);

(*c*) the ascertainment of the qualifications of voters and of candidates for election;

(*d*) the division of Swaziland into constituencies for the purpose of elections;

(*e*) the holding of elections;

(*f*) the determination of any question whether any person has been validly elected an elected member of the Council or whether an elected member of the Council has vacated his seat therein; and

(*g*) the definition and trial of offences connected with elections and the imposition of penalties therefor, including disqualification for membership of the Council, or for registration as a voter, or for voting at elections, of any person concerned in any such offence.

(2) At any time after 2nd January 1964 and before the first sitting of the Legislative Council the Commissioner, in his discretion, may by Proclamation make such provision as appears to him to be necessary or expedient with respect to any matter referred to in the last foregoing subsection.

(3) A Proclamation made under this section—

(*a*) may be given retrospective effect to a day not earlier than the appointed day;

(*b*) shall be published in the Gazette; and

(*c*) may be amended or revoked by a subsequent Proclamation made under this section or, after the Legislative Council has been first constituted, by a law enacted under this Order.

PART VI

LEGISLATION AND PROCEDURE OF LEGISLATURE

Power to make laws.

57.—(1) Subject to the provisions of this Order, the Commissioner, with the advice and consent of the Legislative Council, may make laws (which shall be styled "Laws") for the peace, order and good government of Swaziland.

(2) This section shall not apply to the matters specified in Schedule 3 to this Order, which shall continue to be regulated by Swazi law and custom.

Royal Instructions.

58. Subject to the provisions of this Order, the Commissioner and the Legislative Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions given under Her Majesty's Sign Manual and Signet which may from time to time be addressed to the Commissioner in that behalf.

Standing Orders.

59.—(1) Subject to the provisions of this Order and of any Instructions given under Her Majesty's Sign Manual and Signet, the Legislative Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills, and for the presentation thereof to the Commissioner for assent; but no such Standing Orders shall have effect until they have been approved by the Commissioner, in his discretion.

(2) At any time after 2nd January 1964 and before the first sitting of the Legislative Council, the Commissioner may make and publish Standing Orders for the purposes mentioned in the last foregoing subsection, and those Standing Orders shall be deemed to have been made by the Council under that subsection, and may be amended or revoked by the Council by Standing Orders so made.

Privileges of Legislative Council and its members.

60. A law enacted under this Order may determine and regulate the privileges, immunities and powers of the Legislative Council and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland or of its members.

Oath or affirmation of allegiance.

61. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purpose of this section) until he has made before the Council an oath or affirmation of allegiance in the form set out in Schedule 2 to this Order.

Presiding in Legislative Council.

62. The person who shall preside at the sittings of the Legislative Council shall be—

(*a*) the Speaker ; or

(*b*) the Acting Speaker ; or

(*c*) in their absence, a member of the Council (not being a member of the Executive Council) elected by the Council for the sitting.

Quorum.

63.—(1) A quorum of the Legislative Council shall consist of ten persons besides the person presiding at the sitting.

(2) If at any sitting of the Legislative Council any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the Council, the person presiding at the sitting ascertains that a quorum of the Council is still not present, the Council shall be adjourned.

(3) If at any sitting of the Legislative Council it appears to the person presiding that a quorum of the Council is not present when the votes of the members on any question proposed for decision are counted, the voting on that question shall be invalid, that question shall stand over until the next sitting of the Council, and the attention of the person presiding shall be deemed to have been drawn to the absence of a quorum for the purpose of the last foregoing subsection.

Legislative Council may transact business notwithstanding vacancies.

64. The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council ; and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

Voting.

65.—(1) Subject to the provisions of this Order, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting.

(2) The Speaker and the Acting Speaker shall have neither an original nor a casting vote.

(3) Any other person shall, when presiding in the Legislative Council, retain his original vote as a member but shall have no casting vote.

(4) If upon any question before the Legislative Council the votes are equally divided, the motion shall be declared lost.

High Commissioner and Commissioner may address Legislative Council.

66. The High Commissioner or the Commissioner, in his discretion, may attend and address the Legislative Council at any time, and may for that purpose require the attendance of members.

Introduction of Bills, etc.

67.—(1) Subject to the provisions of this Order and to the Standing Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the Bill, motion or petition shall be debated and disposed of according to the Standing Orders of the Council.

(2) Except on the recommendation of the Commissioner, in his discretion, the Legislative Council shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council or of the Attorney-General,—

(i) makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Swaziland, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Swaziland;

(ii) effects any alteration in the salary, allowances or conditions of service (including leave, passages and promotion) of any public officer or in the law, regulations or practice governing the payment of pensions, gratuities or other like benefits to any public officer or former public officer or his widow, children, dependants or personal representatives; or

(iii) affects Swazi law and custom as respects marriage, divorce, property or inheritance;

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

(*c*) receive any petition which, in the opinion of the person presiding in the Council or of the Attorney-General, requests that provision be made for any of the purposes aforesaid.

Commissioner's reserved power.

68.—(1) If the Commissioner considers that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Swaziland as a territory within the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer), that any Bill introduced, or any motion proposed, in the Legislative Council should have effect, then, if the Council fails to pass the Bill or to carry the motion within such time and in such form as the Commissioner thinks reasonable and expedient, the Commissioner may, at any time he thinks fit, and notwithstanding any provisions of this Order or of any Standing Orders of the Council, declare that the Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was introduced or proposed or with such amendments as the Commissioner thinks fit that have been moved or proposed in the Council, including any committee thereof; and the Bill or motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Order, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) The Commissioner shall forthwith report to a Secretary of State every case in which he makes any declaration under this section and the reasons therefor.

(3) If any member of the Legislative Council objects to any declaration made under this section, he may, within seven days of

the making thereof, submit to the Commissioner a statement in writing of his reasons for so objecting and, if he furnishes a copy of that statement, and requests the Commissioner to do so, the Commissioner shall, as soon as practicable, forward the copy to a Secretary of State.

(4) Any declaration made under this section that relates to a motion may be revoked by a Secretary of State and the Commissioner shall cause notice of the revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and section 38(2) of the Interpretation Act 1889(a) shall apply to the revocation as it applies to the repeal of an Act of Parliament.

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

Assent to Bills.

69.—(1) A Bill shall not become law until—

(*a*) the Commissioner has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent; or

(*b*) Her Majesty has given Her assent to it through a Secretary of State, and the Commissioner has signified Her assent by notice published in the Gazette.

(2) When a Bill is presented to the Commissioner for his assent, he shall, in his discretion, but subject to the provisions of this Order and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, to it, or that he reserves the Bill for the signification of Her Majesty's pleasure.

Reservation of Bills.

70. Unless he has previously obtained Her Majesty's instructions through a Secretary of State, the Commissioner shall reserve for the signification of Her Majesty's pleasure any Bill within any of the following classes, that is to say:—

(*a*) any Bill which appears to him, in his discretion,—

(i) to be inconsistent with obligations imposed upon Her Majesty by any treaty, convention, agreement or arrangement relating to any country or to any international or similar organization outside Swaziland;

(ii) to be likely to prejudice the Royal Prerogative; or

(iii) to be in any way repugnant to, or inconsistent with, the provisions of this Order other than the provisions of Part II;

(*b*) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its members; and

(*c*) any Bill, not being a Bill declared by him to be an urgent measure, which he is required by the Ngwenyama, in accordance with the provisions of section 76 of this Order, so to reserve.

Disallowance of laws.

71.—(1) Any law assented to by the Commissioner may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by Her Majesty the Commissioner shall cause notice of the disallowance to be published in the Gazette, and the law shall be annulled with effect from the date of publication of the notice.

(a) 52 & 53 Vict. c. 63.

(3) Section 38(2) of the Interpretation Act 1889(a) shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment amended or repealed by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Sessions.

72. The sessions of the Legislative Council shall be held at such place and begin at such time as the Commissioner may from time to time by notice published in the Gazette appoint; but a period of twelve months shall not elapse between the date when the Council last sat in one session and the date appointed for its first sitting in the next session.

Prorogation and dissolution.

73.—(1) The Commissioner, in his discretion, may at any time, by notice published in the Gazette, prorogue or dissolve the Legislative Council.

(2) The Commissioner shall dissolve the Legislative Council at the expiration of four years from the date when the Council first meets after any general election if it is not sooner dissolved.

General elections.

74. There shall be a general election at such time within six months after the appointed day, and thereafter within three months after every dissolution of the Legislative Council, as the Commissioner by notice published in the Gazette shall appoint.

PART VII

POWERS AND PRIVILEGES OF THE NGWENYAMA

Ngwenyama's powers as respects Executive Council.

75.—(1) The Ngwenyama shall be provided with copies of all papers submitted to the Executive Council and of the minutes of meetings of the Council.

(2) The Ngwenyama may by writing under his hand require that, for reasons to be specified by him, the Commissioner—

(*a*) shall cause to be considered at a meeting of the Executive Council any matter other than a matter in respect of which the Commissioner is not obliged to consult the Council under the provisions of section 28 of this Order or which relates to the exercise by the Commissioner of the prerogative of mercy; and

(*b*) shall cause to be reconsidered at a meeting of the Council any advice tendered to the Commissioner by the Council other than advice tendered in regard to the exercise of the prerogative of mercy; and such a meeting shall, unless the Commissioner, in his discretion, on the grounds of urgency otherwise decides, be held not less than seven days after the meeting at which the advice in question was tendered.

Ngwenyama's powers as respects Bills.

76.—(1) The Ngwenyama shall be provided with a copy of every Bill passed by the Legislative Council.

(2) The Ngwenyama, within one month of the transmission to him of a Bill passed by the Legislative Council, may, by writing under his hand, for reasons to be specified by him, require the Commissioner to reserve that Bill for the signification of Her Majesty's pleasure, unless the Commissioner, in his discretion, declares that Bill to be an urgent measure.

(a) 52 & 53 Vict. c. 63.

Ngwenyama's emoluments and Civil List.

77.—(1) The Ngwenyama shall be paid such emoluments and shall have such Civil List as may be prescribed by Her Majesty by instructions given through a Secretary of State.

(2) The emoluments of the Ngwenyama, and his Civil List, shall be a charge on and paid out of the revenues of Swaziland.

Ngwenyama's privileges.

78. The Ngwenyama shall be entitled—

(*a*) to immunity from civil process in his private capacity;

(*b*) to exemption from taxation of all income accruing to him, and of all property owned by him, in his private capacity; and

(*c*) to immunity from compulsory acquisition of all property owned by him in his private capacity.

PART VIII

OFFICES AND THE PUBLIC SERVICE

Commissioner's powers.

79. The powers conferred upon the Commissioner by this Part of this Order shall be exercised by him in his discretion.

Commissioner's powers to constitute and appoint to offices, etc.

80.—(1) Subject to the provisions of this Order and of any other law for the time being in force in Swaziland, the Commissioner shall have power, in the name and on behalf of Her Majesty,—

(*a*) to constitute such offices as may lawfully be constituted by Her Majesty and abolish any office so constituted by him;

(*b*) to make appointments (including appointments on promotion and transfer) to any office so constituted by him; and

(*c*) to terminate the appointment of or dismiss any person so appointed, or suspend him from performing the functions of his office, or take such other disciplinary action with respect to him as may be necessary.

(2) A person appointed to an office constituted under this section shall, unless it is otherwise provided by law, hold office during Her Majesty's pleasure.

Existing offices.

81. Any office constituted for Swaziland—

(*a*) by the High Commissioner under Article IV of the Swaziland Order in Council 1903(**a**) as amended, or section 11 of the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council 1959(**b**), or

(*b*) by the Commissioner under section 8 of the Swaziland (Her Majesty's Commissioner) Order 1963(**c**),

and subsisting immediately before the appointed day, shall for the purposes of the last foregoing section be deemed to be an office constituted by the Commissioner under that section.

(**a**) S.R. & O. 1903/531 (Rev. VIII, p. 360: 1903, p. 781).
(**b**) S.I. 1959/1620 (1959 I, p. 281). (**c**) S.I. 1963/1630 (1963 III, p. 3074).

82.—(1) Subject to the provisions of this Order, power to appoint to public offices, and to promote, transfer, terminate the appointment of, dismiss, and exercise disciplinary control over, public officers, shall vest in the Commissioner. Public officers.

(2) The Commissioner may, by regulations published in the Gazette, delegate to any public officer or class of public officer, subject to such conditions as may be prescribed in the regulations, any power vested in him by the last foregoing subsection.

(3) The powers conferred upon the Commissioner by this section shall be subject to, and shall be exercised by him in accordance with, the provisions of any Instructions given under Her Majesty's Sign Manual and Signet or through a Secretary of State.

(4) Nothing in this section shall affect the provisions of any law in force in Swaziland immediately before the appointed day concerning the powers mentioned in subsection (1) of this section in relation to—

(*a*) members of the Swaziland Police Force below the rank of assistant superintendent; or

(*b*) subordinate officers of the Swaziland Prison Service within the meaning of the Prison Regulations made under the Prisons Proclamation(a).

83.—(1) There shall be for Swaziland a Public Service Commission, which shall consist of a chairman and such other members as may be prescribed by regulations made under section 85 of this Order. Public Service Commission.

(2) The Commissioner shall appoint the members of the Public Service Commission, and may at any time terminate the appointment of a member.

(3) No person shall be appointed, or shall remain, a member of the Public Service Commission if he is, or becomes,—

(*a*) a member of the Legislative Council;

(*b*) a member of the Standing Council of the Swazi National Council;

(*c*) a public officer;

(*d*) a member of any staff association or of any trade union as to which the Commissioner is satisfied that its object, or one of its objects, is to control or influence the salaries, wages, pensions or conditions of service of any class of employed persons; or

(*e*) an officer of any society or association which the Commissioner is satisfied is of a political nature.

(4) There shall be charged on the revenues of Swaziland and paid thereout to the members of the Public Service Commission such salaries and allowances as the Commissioner may from time to time prescribe by order under his hand.

84.—(1) (*a*) The Commissioner, either generally or specially, and in whatever manner he thinks fit, may refer to the Public Service Commission for their advice any question which relates to the appointment, promotion, transfer, termination of appointment, dismissal or disciplinary control of public officers, and any other question which, in his opinion, affects the public service or any public officer. Functions of Public Service Commission.

(a) Laws of Swaziland, 1959, c. 96.

(*b*) This subsection shall not apply to—

(i) a judge of the High Court;

(ii) a member of the Commissioner's personal staff;

(iii) the Director of Audit; or

(iv) any public officer or class of public officer excluded from the purview of the Public Service Commission by regulations made under the next following section.

(2) The Commissioner may, by regulations published in the Gazette, authorize any public officer or class of public officer to seek on his behalf, subject to such conditions as may be prescribed in the regulations, the advice of the Public Service Commission on any question on which the Commissioner may seek advice under the last foregoing subsection.

(3) It shall be the duty of the Public Service Commission to advise the Commissioner, or any public officer authorized to seek their advice on his behalf, on any question referred to them in accordance with the provisions of this section, but the Commissioner shall not be obliged to act in accordance with their advice.

(4) The chairman of the Public Service Commission shall at all times have direct access to the Commissioner.

Regulations regarding Public Service Commission.

85.—(1) Subject to the provisions of this Order, the Commissioner may make regulations and give instructions for giving effect to the provisions of the two last foregoing sections, and in particular and without prejudice to the generality of the foregoing power, may by such regulations provide for all or any of the following matters relating to the Public Service Commission :—

(*a*) the membership of the Commission;

(*b*) the appointment, tenure of office and terms of service of members of the Commission and of their staff;

(*c*) the organization of the work of the Commission;

(*d*) consultation by the Commission with other persons or authorities;

(*e*) the delegation to any member of the Commission of all or any of the functions of the Commission;

(*f*) the protection and privileges of members of the Commission in performing their functions, and the privilege in legal proceedings of communications to and from the Commission or members of the Commission;

(*g*) the attendance of persons for the purpose of answering questions arising at any enquiry held by the Commission or relating to their functions;

(*h*) the exclusion from the purview of the Commission in respect of any public officer or class of public officer of any or all of the matters mentioned in subsection (1) of the last foregoing section; and

(*i*) the definition and trial of offences connected with the functions of the Commission and the imposition of penalties for such offences:

Provided that no such penalty shall exceed a fine of four hundred rand and imprisonment for a term of one year.

(2) Any regulations made or instructions given by the High Commissioner or the Commissioner under section 3(2), 5(2) or 6 of the Swaziland (Public Service Commission) Order in Council 1962(a) and in force immediately before the appointed day shall have effect on and after that day as if they were made under this section, and shall, subject to amendment or revocation by regulations so made, be construed with such adaptations and modifications as may be necessary to bring them into conformity with the provisions of this Order.

Interpretation of regulations and instructions under this Part.

86. The General Interpretation Proclamation(b), as from time to time amended, shall apply for the purpose of interpreting any regulations made or instructions given under this Part of this Order as it applies for the purpose of interpreting regulations made under a Swaziland Proclamation.

PART IX

THE JUDICATURE

The High Court

High Court.

87.—(1) There shall be a High Court for Swaziland and, subject to the provisions of this Part of this Order, the judges of the High Court shall be a Chief Justice, who shall be President of the Court, and such number of Puisne Judges as may from time to time be appointed under the next following section.

(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.

88.—(1) The Chief Justice and Puisne Judges of the High Court shall be appointed by the Commissioner, by instrument under the public seal, in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(2) (*a*) A person shall not be qualified for appointment as a judge of the 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 a court having jurisdiction in appeals from any such court; or

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

(*b*) For the purposes of this subsection, a person shall be regarded as entitled to practise as an advocate or a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

(i) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or

(ii) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

(a) S.I. 1962/1548 (1962 II, p. 1672).
(b) Laws of Swaziland, 1959, c. 2.

(3) Before assuming the functions of his office, every judge of the High Court, and every person appointed to act as a judge of that Court, shall make before the Commissioner, or some person authorized by the Commissioner in that behalf, oaths or affirmations of allegiance and for the due execution of his office in the forms set out in Schedule 2 to this Order.

Retirement and resignation of judges.

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

Provided that a judge, or a person qualified for appointment as a judge, who has attained the age of sixty-two years may, subject to or in pursuance of instructions given to the Commissioner by Her Majesty through a Secretary of State, remain in or be appointed to office, as the case may be, for such fixed period or periods as may be agreed from time to time between the Commissioner and that judge or person.

(2) A judge of the High Court may at any time resign his office by writing under his hand addressed to the Commissioner.

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

(4) 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 to remain in or be appointed to office for a fixed period.

Removal of judges.

90.—(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 the next following subsection.

(2) A judge of the High Court shall be removed from office by the Commissioner by order under the public seal if the question of removing him from office has, at the request of the Commissioner, made in pursuance of the next following subsection, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833(a), or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that he should be removed from office for inability as aforesaid or misbehaviour.

(3) If the Commissioner considers that the question of removing a judge of the High Court from office for inability as aforesaid or misbehaviour should be investigated, then—

(*a*) the Commissioner shall by order under the public seal (which he may amend or revoke by another such order) 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 office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

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

(*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 the last foregoing subsection 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 Powers Proclamation(a) as in force on the appointed day shall apply to the tribunal as if the tribunal were a commission of enquiry to which those provisions have been applied under section 1, 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 should not be removed from office.

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

Acting Chief Justice.

91. 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 Puisne Judges or such other person qualified for appointment as a judge of the High Court as the Commissioner, in his discretion, may by instrument under the public seal 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.

92.—(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 Commissioner, after consultation with the Chief Justice, is satisfied that the state of business in the High Court requires that the number of judges of the Court should be temporarily increased, the Commissioner, in his discretion, and after consultation with the Chief Justice, may by instrument under the public seal 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.

(a) Laws of Swaziland, 1959, c. 11.

(2) A person appointed under this section to act as a Puisne Judge shall hold office until—

(*a*) the Commissioner, in his discretion, and after consultation with the Chief Justice, revokes his appointment; or

(*b*) he resigns his office by writing under his hand addressed to the Commissioner.

Salaries, allowances and conditions of service of judges.

93.—(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 the Commissioner, in his discretion, with the prior approval of a Secretary of State; and there shall be charged on the revenues of Swaziland any salaries and allowances so prescribed, or such proportion of those salaries and allowances as is chargeable to the revenues of Swaziland.

(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 laws shall apply to him, that law shall be deemed to be more favourable than the other law or laws.

(*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.

Jurisdiction of the High Court and subordinate courts

Jurisdiction of High Court.

94. 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.

Principles upon which jurisdiction of courts to be exercised.

95. The jurisdiction of the High Court and of courts subordinate to the High Court shall, subject to the provisions of this Order and until any law enacted under this Order otherwise provides, be exercised in accordance with the laws in force in Swaziland immediately before the appointed day.

Jurisdiction of judges who also hold judicial office in Basutoland and Bechuanaland Protectorate.

96.—(1) Where any person for the time being holding the office of Chief Justice or Puisne Judge of the High Court of Swaziland also holds the office of Chief Justice or Puisne Judge of the High Court of Basutoland or of the Bechuanaland Protectorate, that person may, when within Swaziland, exercise jurisdiction according to the law for the time being in force in Basutoland or the Bechuanaland Protectorate, as the case may be, in any matter specified in Schedule 4 to this Order and which may arise within or in relation to Basutoland or the Bechuanaland Protectorate as fully and effectively as if he were exercising such jurisdiction within Basutoland or the Bechuanaland Protectorate, as the case may be.

(2) Where any person mentioned in the last foregoing subsection is in the course of his judicial duties within Basutoland or the Bechuanaland Protectorate, he may there exercise jurisdiction according to the

law for the time being in force in Swaziland in any matter specified in Schedule 4 to this Order and which may arise within or in relation to Swaziland as fully and effectively as if he were exercising such jurisdiction within Swaziland.

(3) The Commissioner, in his discretion, with the prior approval of a Secretary of State, may, by notice published in the Gazette, amend, revoke or replace Schedule 4 to this Order.

Application of certain enactments to Swaziland.

97. The following enactments (being certain of the enactments described in the First Schedule to the Foreign Jurisdiction Act 1890) shall extend to Swaziland as if Swaziland were a Colony or British possession :—

(*a*) the Evidence Act 1851(**a**), sections 7 and 11 ;

(*b*) the Foreign Tribunals Evidence Act 1856(**b**) ;

(*c*) the Evidence by Commission Act 1859(**c**) ;

(*d*) the British Law Ascertainment Act 1859(**d**) ;

(*e*) the Foreign Law Ascertainment Act 1861(**e**) ; and

(*f*) the Evidence by Commission Act 1885(**f**) ;

and references in any of those enactments to a Superior Court or a Supreme Court in a Colony or British possession shall be construed as references to the High Court.

PART X

LAND AND MINERALS

Crown land.

98.—(1) All land to which this section applies shall vest in the Commissioner as Crown land on behalf of Her Majesty.

(2) This section applies to—

(*a*) all land which, immediately before the appointed day, is vested in the High Commissioner as Crown land on behalf of Her Majesty by the Swaziland Crown Lands and Minerals Order in Council 1908(**g**), as amended by the Swaziland Crown Lands and Minerals Amendment Order in Council 1910(**h**) and the Swaziland Order in Council 1934(**i**), or by or under any other law in force in Swaziland, or otherwise ; and

(*b*) any other land which, on and after the appointed day, becomes Crown land under sections 103(3) and 104(3) of this Order or by or under any other law for the time being in force in Swaziland, or otherwise.

(3) The land referred to in paragraph (*a*) of the last foregoing subsection shall vest in the Commissioner 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 recognized as vested in, any other person.

(4) Subject to the provisions of any Order in Council and of any other law for the time being in force in Swaziland, and to any instructions given by Her Majesty through a Secretary of State, the Commissioner, in Her Majesty's name and on Her Majesty's behalf,

(**a**) 14 & 15 Vict. c. 99.
(**b**) 19 & 20 Vict. c. 113.
(**c**) 22 Vict. c. 20.
(**d**) 22 & 23 Vict. c. 63.
(**e**) 24 & 25 Vict. c. 11.
(**f**) 48 & 49 Vict. c. 74.
(**g**) S.R. & O. 1908/1315 (Rev. VIII, p. 365: 1908, p. 378).
(**h**) S.R. & O. 1910/1108 (Rev. VIII, p. 365: 1910, p. 118).
(**i**) S.R. & O. 1934/1479 (Rev. VIII, p. 364: 1934 I, p. 658).

may, in his discretion, make grants, leases or other dispositions of Crown land subject to such rights and interests and to such conditions as he may think fit.

Swazi areas.

99.—(1) All land to which this section applies shall vest in the Ngwenyama as Swazi nation land 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 recognized as vested in, any other person.

(2) This section applies to all land (not being land to which the next following section applies) which, before the appointed day, has been set apart as Swazi or native areas, for the sole and exclusive use and occupation of Swazis, by or under any law in force in Swaziland, or otherwise.

Land settlement areas.

100. The Commissioner, in pursuance of instructions given by Her Majesty through a Secretary of State, shall, by order published in the Gazette, vest in the Ngwenyama as Swazi nation land in trust for the Swazi nation, subject to such rights and interests and to such conditions as he may think fit and as may be specified in the order, all land comprised in land settlement areas which, before the appointed day, has been set apart for African land settlement under section 3 of the Swazi Land Settlement Proclamation(**a**), and is vested by that section in the Government of Swaziland.

Rights in respect of Swazi nation land.

101.—(1) The Ngwenyama in Council may grant to any person such rights in respect of Swazi nation land, and subject to such conditions, as he may think fit.

(2) The power conferred upon the Ngwenyama in Council by this section shall be subject to the provisions of any law enacted under this Order, but no such law shall operate to vest that power in any other person or authority.

Minerals and mineral oils.

102.—(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 recognized as vested in, any other person.

(2) Subject to the provisions of any Order in Council and of any other law for the time being in force in Swaziland, the Commissioner, in the name and on behalf of the Ngwenyama, may make or, if he thinks fit, may refuse to make, grants, leases or other dispositions conferring rights or interests in respect of minerals or mineral oils in Swaziland.

(3) The Commissioner shall not exercise any power conferred upon him by this section except after consultation with the Ngwenyama and (when Part IV of this Order has come into operation) the Executive Council.

Exchanges of Swazi nation land and Crown land.

103.—(1) Whenever the Ngwenyama in Council requests or agrees that any Swazi nation land should be exchanged for Crown land, the Commissioner, in his discretion, may, by notice published in the Gazette, authorize the exchange.

(2) A notice published under this section shall contain an exact description of the respective lands to be exchanged and shall specify the date on which the exchange shall take effect.

(**a**) Laws of Swaziland, 1959, c. 66.

(3) On and after the date specified in the notice—

(*a*) the Swazi nation land described in the notice shall be freed from any right or title to its use and occupation possessed by Swazis by virtue of its having been Swazi nation land, and shall become Crown land ; and

(*b*) the Crown land described in the notice shall vest in the Ngwenyama as Swazi nation land in trust for the Swazi nation, subject to such rights and interests and to such conditions as the Commissioner, in his discretion, may think fit, and as may be specified in the notice.

Acquisition of Swazi nation land for public purposes.

104.—(1) Subject to the provisions of this Order, whenever, in his judgment, any Swazi nation land is required for any public purpose, the Commissioner may, in his discretion, after consulting the Ngwenyama in Council, declare, by order published in the Gazette, that the land is Crown land.

(2) An order published under this section shall specify the date on which it shall take effect and—

(*a*) shall contain an exact description of the Swazi nation land declared to be Crown land, and shall state the purpose for which the land is required ; and

(*b*) if, in the judgment of the Commissioner, in his discretion, it appears just that any Crown land should be set apart as compensation for that Swazi nation land, shall contain an exact description of that Crown land and shall provide that it shall be so set apart.

(3) On and after the date on which the order takes effect—

(*a*) the Swazi nation land declared to be Crown land shall be freed from any right or title to its use and occupation possessed by Swazis by virtue of its having been Swazi nation land, and shall become Crown land ; and

(*b*) any Crown land to be set apart as compensation shall vest in the Ngwenyama as Swazi nation land in trust for the Swazi nation, subject to such rights and interests and to such conditions as the Commissioner, in his discretion, may think fit, and as may be specified in the order.

(4) Whenever any Swazi nation land which has been declared to be Crown land under this section ceases to be required for public purposes, the Commissioner, in his discretion, may declare, by order published in the Gazette, that the land has ceased from the date of the order to be Crown land and to be vested in him, and that it shall vest accordingly in the Ngwenyama as Swazi nation land in trust for the Swazi nation, subject to such rights and interests and to such conditions as the Commissioner, in his discretion, may think fit, and as may be specified in the order.

(5) If any Crown land is set apart under this section as compensation for any Swazi nation land declared to be Crown land under this section, the value of the Crown land so set apart shall be set off against the amount of any compensation that may be payable under section 9 of this Order in respect of the compulsory acquisition as Crown land of that Swazi nation land.

Commissioner may delegate certain powers.

105.—(1) The powers conferred upon the Commissioner by sections 98(4) and 102(2) of this Order to make grants, leases or other dispositions of Crown land, or conferring rights or interests in respect of minerals

or mineral oils in Swaziland, may be exercised on behalf of the Commissioner by any person so authorized, whether by name or by reference to an office, by the Commissioner, in his discretion, by notice published in the Gazette.

(2) Any authority conferred under this section shall be subject to such conditions and restrictions (if any) as may be specified in the notice by which it is conferred, and may be varied or revoked by the Commissioner, in his discretion, by notice published in the Gazette.

PART XI

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

Public seal

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

Commissioner's powers of pardon, etc.

107. Subject to the provisions of any Instructions given under Her Majesty's Sign Manual and Signet, the Commissioner, in his discretion, 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 any court established for 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 sentence passed on that person by any court established for Swaziland;

(*c*) substitute a less severe form of punishment for that imposed by any sentence of any such 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 any court established for Swaziland.

Concurrent appointments.

108. Whenever the holder of any office constituted for Swaziland by or under this Order or under any Order mentioned in Schedule 1 to this Order, or any public office otherwise constituted, is on leave of absence pending relinquishment of his office—

(*a*) another person may be appointed substantively to that office; and

(*b*) that person shall, for the purpose of any function of that office, be deemed to be the sole holder of that office.

Commissioner's powers: transitional.

109. Notwithstanding the revocation by this Order of the Swaziland Order in Council 1903 and Orders amending it, the Commissioner, in his discretion, may, on and after the appointed day but before the first sitting of the Legislative Council, exercise to such extent as may, in his judgment, be necessary or expedient for the peace, order and good government of Swaziland, the powers conferred upon him by that Order, as amended and in force immediately before the appointed day.

Existing officers.

110.—(1) Subject to the provisions of this Order, any person who, immediately before the appointed day, holds or is acting in the office of Commissioner or any other office constituted for Swaziland under any Order mentioned in Schedule 1 to this Order, or any public office otherwise constituted, shall, on and after that day, continue

to hold or to act in his office as if he had been appointed to it in accordance with the provisions of this Order.

(2) Any person who immediately before the appointed day holds the office of Commissioner shall, on and after that day, be deemed to have complied with the provisions of section 22 of this Order; and any other person to whom the last foregoing subsection applies who, before the appointed day, has made any oath or affirmation required to be made by him before assuming the functions of his office shall not, by reason only of that subsection, be required to make a like oath or affirmation under the provisions of this Order, or of any other law in force in Swaziland.

High Court proceedings.

111. All proceedings commenced or pending immediately before the appointed day before the High Court shall be carried on before the High Court established by this Order.

Existing laws.

112.—(1) The continued operation of the laws (including Swazi law and custom) in force in Swaziland immediately before the appointed day shall not be affected by reason only of the revocation of the Orders mentioned in Schedule 1 to this Order, and those laws shall, subject to amendment, repeal or revocation by any authority having power to amend, repeal or revoke them, continue in force as from that day; but, for the avoidance of doubt, it is hereby declared that the provisions of those laws shall have effect on and after that day only to such extent as they are consistent with the provisions of this Order.

(2) (*a*) The Commissioner, in his discretion, may, by order published in the Gazette, at any time within twelve months after the appointed day, provide that an 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 this Order or otherwise for giving effect or enabling effect to be given to those provisions; and in particular and without prejudice to the generality of the foregoing power the Commissioner may by an order made under this section provide for the transfer of powers and duties conferred or imposed by an existing law upon any person or authority to such other person or authority as may be specified in the order.

(*b*) In this subsection "an existing law" means a law enacted by any legislature in Swaziland, or an instrument made in exercise of a power conferred by a law so enacted, that is in force in Swaziland immediately before the appointed day.

(3) An order made under this section—

(*a*) may be given retrospective effect to a day not earlier than the appointed day; and

(*b*) may be amended, revoked or replaced by a further order so made or, in relation to any law or instrument affected thereby, by any authority having power to amend, repeal or revoke that law or instrument.

Power reserved to Her Majesty.

113. Nothing in this Order shall affect the power of Her Majesty in Council to make laws from time to time for the peace, order and good government of Swaziland.

W. G. Agnew.

Sections 3, 108, 110(1) and 112(1)

SCHEDULE 1

ORDERS IN COUNCIL REVOKED

Titles of Orders	*References*
The Swaziland Order in Council 1903.	S.R. & O. 1903/531 (Rev. VIII, p. 360: 1903, p. 781).
The Swaziland Order in Council 1906.	Rev. VIII, p. 363: S.R. & O. 1906, p. 891.
The Swaziland Order in Council 1909.	S.R. & O. 1909/1236 (Rev. VIII, p. 360: 1909, p. 334).
The Swaziland Order in Council 1934.	S.R. & O. 1934/1479 (Rev. VIII, p. 364: 1934 I, p. 658).
The Swaziland Crown Lands and Minerals Order in Council 1908.	S.R. & O. 1908/1315 (Rev. VIII, p. 365: 1908, p. 378).
The Swaziland Crown Lands and Minerals Amendment Order in Council 1910.	S.R. & O. 1910/1108 (Rev. VIII, p. 365: 1910, p. 118).
The Swaziland Crown Lands and Native Areas Exchange and Expropriation Order in Council 1915.	S.R. & O. 1915/12 (Rev. VIII, p. 367: 1915 I, p. 267).
The South African Protectorates (Extension of Imperial Acts) Order in Council 1910 (*in its application to Swaziland*).	S.R. & O. 1910/881 (Rev. VIII, p. 369: 1910, p. 114).
The Swaziland (Public Service Commission) Order in Council 1962.	S.I. 1962/1548 (1962 II, p. 1672).
The Swaziland (Her Majesty's Commissioner) Order 1963.	S.I. 1963/1630 (1963 III, p. 3074).

Sections 22, 23(2),33, 61 and 88(3)

SCHEDULE 2

FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Allegiance*

I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. *Affirmation of Allegiance*

I ..... do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. *Oath for due execution of office*

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (*here insert the description of the office*). So help me God.

4. *Affirmation for due execution of office*

I ..... do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (*here insert the description of the office*).

SCHEDULE 3 Section 57(2)

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 Newala Ceremony.

(*f*) The Libutfo (regimental) system.

SCHEDULE 4 Section 96

MATTERS IN RESPECT OF WHICH CERTAIN JUDGES OF THE HIGH COURT SHALL HAVE SPECIAL JURISDICTION

(A) In criminal matters—

(*a*) the powers of review ;

(*b*) applications for bail under Part VIII of the Criminal Procedure and Evidence Proclamations of Basutoland, the Bechuanaland Protectorate or Swaziland, as the case may be.

(B) In civil matters—

(*a*) applications to sue by edictal citation or to found jurisdiction by attachment ;

(*b*) applications for the appointment of a curator of any property ;

(*c*) applications for arrest and interdict of persons and things ;

(*d*) applications for provisional sentences ;

(*e*) applications for leave of a judge for the removal to or the institution in the High Court of civil causes or actions otherwise within the jurisdiction of a subordinate court to which Africans only are parties and in which the amount claimed or the value of the subject matter exceeds five hundred pounds ;

(*f*) applications for the surrender or sequestration of insolvent estates ;

(*g*) where any party is in default or where consent to judgment is filed by the defending party ;

(*h*) applications for admission and enrolment by advocates and attorneys.

EXPLANATORY NOTE

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

This Order provides for a new Constitution for Swaziland based on the White Paper (Cmnd. 2052) presented to Parliament by the Secretary of State for the Colonies in May 1963. It makes provision with respect to Her Majesty's Commissioner for Swaziland, an Executive Council and a Legislative Council, and the powers and privileges of the Ngwenyama. It also provides for the public service and an advisory Public Service Commission. It reconstitutes the High Court and provides for the jurisdiction of the High Court and subordinate courts. It further provides for the vesting and disposition of land and minerals. Finally it contains certain miscellaneous and transitional provisions.