The Tanganyika (Legislative Council) Amendment Order in Council, 1948

1948 No. 105

Made - - - -	*26th January*, 1948
Laid before Parliament	*27th January*, 1948
Coming into Operation	*1st February*, 1948

At the Court at Buckingham Palace, the 26th day of January, 1948

Present,

The King's Most Excellent Majesty in Council

Whereas His Majesty accepted a mandate on behalf of the League of Nations in respect of the Tanganyika Territory (hereinafter referred to as " the Territory "):

And Whereas His Majesty has now been designated as Administering Authority for the Territory under a Trusteeship Agreement approved by the General Assembly of the United Nations on the 13th day of December, 1946:

And Whereas by the Tanganyika (Legislative Council) Orders in Council, 1926 to 1945, provision is made for the Constitution of a Legislative Council in and for the Territory:

And Whereas it is expedient to make other provision than in the said Orders is contained in regard to the constitution of the said Legislative Council:

Now, therefore, His Majesty, by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

53 & 54 Vict. c. 37.

Short title and commencement.

I.—(1) This Order may be cited as the Tanganyika (Legislative Council) Amendment Order in Council, 1948, and shall be construed as one with the Tanganyika (Legislative Council) Orders in Council, 1926 to 1945, and those Orders and this Order may be cited together as the Tanganyika (Legislative Council) Orders in Council 1926 to 1948.

(2) This Order shall come into operation on the 1st day of February, 1948, and shall be published in the Gazette.

Revocation and re-enactment of certain clauses of Principal Order.

II. Clauses II, III, VI, VII, IX, XI, XII and XIII of the Tanganyika (Legislative Council) Order in Council, 1926 (a), (hereinafter called " the Principal Order "), are hereby revoked without prejudice to anything lawfully done thereunder, and the following Clauses are substituted therefor:—

"Limits of the Order." " II. This Order shall apply to the Tanganyika Territory (now known as Tanganyika) as defined in the Tanganyika Order in Council, 1920."

(a) S.R. & O. 1926 (No. 991) p. 576.

"Interpretation." "III.—(1) In this Order, unless the context otherwise requires:—

"Council" means the Legislative Council established by this Order;

"The Executive Council" means the Executive Council of the Territory as from time to time established;

"The Gazette" means the Official Gazette of the Territory;

"The Governor" means the Governor and Commander-in-Chief of the Territory and includes the Officer for the time being administering the Government and, to the extent to which a Deputy for the Governor is authorised to act, that Deputy;

"The Governor in Council" means the Governor acting with the advice of the Executive Council, but not necessarily in accordance with that advice, nor necessarily in such Council assembled;

"His Majesty" includes His Majesty's Heirs and Successors;

"Meeting" means any sitting or sittings of the 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 without adjournment;

"The Public Seal" means the Public Seal of the Territory;

"Secretary of State" means one of His Majesty's Principal Secretaries of State;

"Session" means the meetings of the Council commencing when the Council first meets after its prorogation at any time, and terminating when the Council is prorogued;

"The Territory" means Tanganyika.

(2) For the purposes of this Order, a person shall not be deemed to hold an office of emolument under the Crown in the Territory by reason only that he is in receipt of a pension or other like allowance in respect of service under the Crown; and if it shall be declared by any law for the time being in force in the Territory that an office shall not be an office of emolument under the Crown in the Territory for all or any of the purposes of this Order, this Order shall have effect accordingly as if such law were enacted therein."

"Official Members" "VI. The Official Members shall consist of

(a) The persons for the time being lawfully discharging the functions of

(i) the Chief Secretary,

(ii) the Member of the Executive Council for Law and Order,

(iii) the Member of the Executive Council for Finance, Trade and Economics,

(iv) the Member of the Executive Council for Agriculture and Natural Resources,

(v) the Member of the Executive Council for Education, Labour and Social Welfare,

(vi) the Member of the Executive Council for Lands and Mines,

(vii) the Secretary for African Affairs, and

(viii) the Co-ordinating Secretary,

who shall be styled Ex-Officio Members; and

(*b*) subject to the provisions of Clause V of this Order, such other persons holding office of emolument under the Crown in the Territory, who shall be styled Nominated Official Members, as the Governor may from time to time, by Instrument under the Public Seal, appoint."

"Unofficial Members."

" VII.—(1) The Unofficial Members shall be such persons not holding office of emolument under the Crown in the Territory as the Governor may from time to time by Instrument under the Public Seal appoint.

(2) Subject to the provisions of this Order, a person appointed as an Unofficial Member shall vacate his seat at the expiration of five years from the date of his appointment but, if not disqualified, shall be eligible for reappointment.

(3) If any person is appointed a temporary Unofficial Member of the Council in accordance with the provisions of Clause VII E of this Order and such temporary appointment is immediately followed by his definitive appointment as an Unofficial Member, the said period of five years shall, unless the Instrument appointing him definitively otherwise provides, be reckoned from the date of his temporary appointment."

"Reporting of appointments."

" VII A. The Governor shall without delay report to His Majesty, through a Secretary of State, every appointment made by him of any person as a Nominated Official or Unofficial Member; and every person so appointed shall hold his seat on the Council during His Majesty's pleasure, and, subject thereto, in accordance with the provisions of this Order."

"Disqualifications for Nominated Official and Unofficial Members."

" VII B. No person shall be capable of being a Nominated Official or Unofficial Member of the Council or, having been appointed or elected thereto, shall sit or vote in the Council, who at the time of appointment or election—

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

(2) is an undischarged bankrupt, having been declared a bankrupt under any law in force in any part of His Majesty's dominions or in any territory under His Majesty's protection or in any territory in which His Majesty has from time to time jurisdiction; or

(3) has, in any part of His Majesty's dominions or in any territory under His Majesty's protection or in any territory in which His Majesty has from time to time jurisdiction, been sentenced to death or to imprisonment (by whatever name called) for a term exceeding six months, and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor or received a free pardon; or

(4) being an Unofficial Member, holds an office of emolument under the Crown in the Territory; or

(5) is a party to any subsisting contract with the Government of the Territory for and on account of the public service and has not disclosed to the Governor the nature of such contract and his interest therein; or

(6) is, under any law in force in the Territory, found or declared to be of unsound mind or adjudged to be a lunatic; or

(7) has within five years before the day of election received any relief from public funds except such special relief as may be declared by any law for the time being in force in the Territory not to be relief for the purposes of this paragraph."

"Vacation of seats."

" VII C.—(1) The seat of a Nominated Official or Unofficial Member of the Council shall become vacant—

(*a*) upon his death; or

(*b*) if he shall, without the leave of the Governor previously obtained, be absent from the sessions of the Council or from the Territory for more than twelve consecutive months or be absent from two consecutive meetings of the Council; or

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

(*d*) if he shall be declared a bankrupt under any law in force in any part of His Majesty's dominions or in any territory under His Majesty's protection or in any territory in which His Majesty has from time to time jurisdiction; or

(*e*) if in any part of His Majesty's dominions or in any territory under His Majesty's protection or in any territory in which His Majesty has from time to time jurisdiction he shall be sentenced to death or to imprisonment (by whatever name called) for a term exceeding six months; or

(*f*) if, without the prior consent of the Governor, he shall become a party to any contract with the Government of the Territory for and on account of the public service; or

(*g*) if, under any law in force in the Territory, he shall be found or declared to be of unsound mind or adjudged to be a lunatic; or

(*h*) if he shall, by writing under his hand addressed to the Governor, resign his seat in the Council; or

(*i*) if, being an Unofficial Member, he shall be appointed permanently to any office of emolument under the Crown; or

(*j*) if he shall otherwise cease to possess qualification for appointment or election, as the case may be, under the provisions of this Order.

(2) If any Unofficial Member shall be appointed temporarily to any office of emolument under the Crown in the Territory or shall be appointed to act in any such office, he shall not sit or vote in the Council for so long as he continues to hold or to act in that office.

(3) The Governor may, by Instrument under the Public Seal, declare any Nominated Official or Unofficial Member to be incapable of discharging his functions as a Member of the Council, and thereupon such Member shall not sit or vote in the Council until he is declared, in manner aforesaid, again to be capable of discharging his said functions.

(4) The Governor may, by Instrument under the Public Seal, suspend any Member from the exercise of his functions as a Member of the Council. Every such suspension shall forthwith be reported by the Governor to His Majesty through a Secretary of State and shall remain in force unless and until it shall be removed by the Governor by Instrument under the Public Seal or by His Majesty through a Secretary of State or the person suspended ceases to be a Member of the Council.

(5) Whenever the seat of a Member becomes vacant under sub-section (1) of this Section, the vacancy shall forthwith be reported to the Governor in writing by the Clerk of the Council."

"Decision of questions as to Membership."

" VII D. All questions which may arise as to the right of any person to be or remain a Nominated Official or Unofficial Member shall be referred to and decided by the Governor in Council."

"Temporary appointments."

" VII E.—(1) Whenever there shall be a vacancy in the number of Members of the Council, by reason of the fact that:

(*a*) an Ex-Officio or Nominated Official Member is, as Governor's Deputy, President of the Council; or

(*b*) one person is lawfully discharging the functions of more than one of the offices referred to in Clause VI of this Order; or

(*c*) no person is lawfully discharging the functions of any such office; or

(*d*) a Nominated Official Member is lawfully discharging the functions of any such office; or

(*e*) any such office has ceased to exist; or

(*f*) a Member is suspended from the exercise of his functions as a Member; or

(*g*) a Nominated Official or Unofficial Member is unable to sit or vote in the Council, in consequence of a declaration by the Governor, as provided in this Order, that he is incapable of discharging his functions as a Member; or

(*h*) a Member is absent from the Territory; or

(*i*) an Unofficial Member is temporarily appointed to an office of emolument under the Crown in the Territory,

the Governor may by Instrument under the Public Seal appoint a person as a temporary Member for the period of such vacancy.

(2) If the vacancy is in the number of Ex-Officio or Nominated Official Members, the person appointed shall be a person holding office of emolument under the Crown; and if the vacancy is in the number of Unofficial Members the person appointed shall be a person qualified for appointment as an Unofficial Member.

(3) The period of any such vacancy shall terminate when the circumstances giving rise to the vacancy shall cease to exist.

(4) Every person so temporarily appointed shall, as long as his appointment shall subsist, be to all intents and purposes—

(*a*) in the case of a vacancy in the number of persons sitting as Ex-Officio or Nominated Official Members, a Nominated Official Member; and

(*b*) in the case of a vacancy in the number of persons sitting as Unofficial Members, an Unofficial Member,

and the provisions of sub-section (1) of Clause VII C and of Clause VII D of this Order shall apply accordingly:

Provided that, in the case of a vacancy in the number of persons sitting as Ex-Officio Members of the Council, the person so appointed shall be deemed for the purposes of paragraph (*a*) of Clause VI of this Order to be an Ex-Officio Member."

"Precedence of Members."

" VII F.—(1) After the Governor, Members of the Council shall take precedence as His Majesty may specially assign, and, in default thereof, as follows:—

First, the Ex-Officio Members, in the order in which they are mentioned in Clause VI of this Order;

Secondly, the Nominated Official Members, in such order as the Governor may direct;

Thirdly, the Unofficial Members, according to the length of time during which they have continuously been Members of the Council, Members appointed at the same time taking precedence among themselves according to the alphabetical order of their names.

(2) In ascertaining the period during which a person has continuously been an Unofficial Member of the Council, no account shall be taken of any interval between the vacation by that person of his seat in the Council in consequence of the expiration of his tenure of office and the date of his appointment to fill a vacancy in the Council caused by that expiration of tenure."

Revocation of Tanganyika (Legislative Council) Amendment Order in Council, 1935.

III. The Tanganyika (Legislative Council) Amendment Order in Council, 1935(a), is hereby revoked without prejudice to anything lawfully done thereunder.

Powers reserved to His Majesty.

IV. His Majesty hereby reserves to Himself, His Heirs and Successors power, with the advice of His or Their Privy Council, to revoke, add to or amend this Order, as to Him or Them shall seem fit.

E. C. E. Leadbitter.

EXPLANATORY NOTE

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

The principal object of this Order is to give effect to a recent reorganisation of the central Government of Tanganyika under which certain Members of the Executive Council of that Territory are made responsible for certain Departments of Government. The Order provides that those Members of the Executive Council shall be *ex-officio* Members of the Legislative Council of Tanganyika.

Opportunity has also been taken to make various minor consequential amendments of the Tanganyika (Legislative Council) Orders in Council, 1926 to 1945.

(a) S.R. & O. 1935 (No. 694) p. 483.