1961 No. 1190

EAST AFRICA

The Tanganyika (No. 2) Order in Council, 1961

Made - - - -	*26th June*, 1961
Laid before Parliament	*30th June*, 1961
Coming into Operation	*1st July*, 1961

At the Court at Buckingham Palace, the 26th day of June, 1961

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act, 1890(a), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, construction and commencement.

1.—(1) This Order may be cited as the Tanganyika (No. 2) Order in Council, 1961.

(2) Section 1 of the Tanganyika Order in Council, 1961(b), is amended by the deletion of subsection (2) thereof.

(3) The Tanganyika Orders in Council, 1920 to 1960(c), the Tanganyika Order in Council, 1961, and this Order may be cited together as the Tanganyika Orders in Council, 1920 to 1961.

(4) This Order shall be construed as one with the Tanganyika Orders in Council, 1920 to 1960, and the Tanganyika Order in Council, 1961.

(5) References in this Order to the Tanganyika Order in Council, 1920(d), (hereinafter called "the principal Order"), to any other Order of Her Majesty in Council or to any other law for the time being in force in the Territory shall be construed as references to that Order or that law, as the case may be, as from time to time amended (including, in the case of a reference to the principal Order and save where the context otherwise requires, the principal Order as amended by this Order).

(6) This Order shall come into operation on the first day of July, 1961.

Amendment of Article 2 of Order of 1920.

2. Article 2 of the principal Order is amended—

(*a*) by renumbering it as paragraph (1) of Article 2;

(*b*) by the deletion therefrom of the definitions of "public office" and "public officer";

(a) 53 & 54 Vict. c. 37. (b) S.I. 1961/738 (Pt. I, p. 457).
(c) S.R. & O. 1920/1583, 1939/875; S.I. 1948/2066 (Rev. VIII, p. 266: 1920 I, p. 685; 1939 II, p. 1698; 1948 I, p. 1353); S.I. 1949/2192, 1955/1216, 1959/1047, 1960/1373 (1949 I, p. 1890; 1955 I, p. 688; 1959 I, p. 985; 1960 I, p. 1252).
(d) S.R. & O. 1920/1583 (Rev VIII, p. 266: 1920 I, p. 685).

(*c*) by the insertion therein, after the definition of "session", of the following:—

"Commission" means the Public Service Commission, the Judicial Service Commission, or the Police Service Commission, as the case may require;

"the Consolidated Fund" means the fund established by Article 13 of this Order;

"financial year" means the period of twelve months ending on the thirtieth day of June in any year or on such other date as the National Assembly may prescribe;

"the Governor" means the Governor and Commander-in-Chief of the Territory and, to the extent to which a Deputy for the Governor is authorised to perform the functions of the office of Governor, includes that Deputy;

"the Judicial Service Commission" means the Judicial Service Commission established by Article 19D of this Order;

"the Police Service Commission" means the Police Service Commission established by Article 10D of this Order;

"prescribe", in relation to the National Assembly, means prescribe by Ordinance or by resolution;

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

a "public officer" means a person holding or acting in a public office;

the "public service" means, subject to the provisions of paragraphs (2) and (3) of this Article, the service of the Crown in a civil capacity in respect of the government of the Territory;

"the Public Service Commission" means the Public Service Commission established by Article 10 of this Order;

"the Tanganyika Police Force" means the force established by the Police Force Ordinance(a) or by or under any law amending or replacing that Ordinance."; and

(*d*) by the addition of the following paragraphs as paragraphs (2) and (3) thereof:—

"(2) In this Order, unless the context otherwise requires, "the public service" includes service in the office of Judge of the High Court or in the office of a member of the Tanganyika Police Force.

(3) In this Order, "the public service" does not include service in the office of—

(*a*) Governor, Speaker or Deputy Speaker of the National Assembly, Minister, Parliamentary Secretary, Member of the National Assembly or member of any Commission established by this Order; or

(*b*) save in so far as may be prescribed by any law for the time being in force in the Territory, member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any such law, Chief, Native Authority, member of a Native

(a) Cap. 322 of the Revised Laws of Tanganyika.

Authority or member of a Native Court (by whatever name called);

and a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Crown.".

Replacement of Article 3 of Order of 1920.

3. Article 3 of the principal Order is revoked and the following Article substituted therefor:—

"Interpretation.

3.—(1) Unless the context otherwise requires, any reference in this Order to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(2) Where this Order confers power on any person or authority to appoint a person to act in or perform the functions of an office if the holder thereof is unable himself to perform its functions, no such appointment shall be called in question on the ground that the holder of that office was not unable to perform those functions.

(3) Where this Order confers any power to make any Proclamation or order or to give any directions, the power shall be construed as including a power, exercisable in like manner, to amend or revoke any such Proclamation, order or directions.

(4) Where this Order requires a person to make an oath, he shall be permitted, if he so desires, to comply with that requirement by making an affirmation.

(5) For the avoidance of doubt it is hereby declared that a person who has vacated any office established by this Order, may, if qualified, again be appointed to that office.

(6) In this Order, unless the context otherwise requires, references to the functions of the Governor shall be construed as references to his powers and duties in the exercise of the executive authority of the Territory and to any other powers or duties conferred or imposed on him as Governor by or under this Order or any other Order of Her Majesty in Council or any other law for the time being in force in the Territory.

(7) 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.".

Amendment of Article 4 of Order of 1920.

4.—(1) Article 4 of the principal Order is amended by the deletion of paragraphs (3A) to (6) (inclusive) thereof and the substitution therefor of the following:—

"(4) (*a*) Whenever the office of Governor is vacant or the Governor is absent from the Territory or is for any other cause unable to perform the functions of his office, those functions shall, during

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

Her Majesty's pleasure, be performed, and the government of the Territory administered, by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

(*b*) Before assuming the administration of the government of the Territory any such person as aforesaid shall take the oaths directed by paragraph (3) of this Article to be taken by a person appointed to the office of Governor.

(*c*) No such person as aforesaid shall continue to administer the government of the Territory after the person who is the substantive holder of the office of Governor has notified him that he is about to assume or resume the administration.

(*d*) For the purposes of this paragraph the Governor—

(i) shall not be regarded as absent from the Territory during his passage from one part of the Territory to another or as unable to perform the functions of his office by reason of such passage; and

(ii) shall not be regarded as absent from the Territory or as unable to perform the functions of his office at any time when there is a subsisting appointment of a Deputy to the Governor under paragraph (5) of this Article.

(5) (*a*) Whenever the Governor has occasion to be absent from Dar es Salaam but not from the Territory, or to be absent from the Territory for a period which he has reason to believe will be of short duration, or whenever by reason of illness which he has reason to believe will be of short duration he considers it desirable so to do, he may, acting in his discretion, by Instrument under the Public Seal of the Territory, appoint any person in the Territory to be his Deputy during such absence or illness and in that capacity to perform such of the functions of the office of Governor as may be specified in such Instrument.

(*b*) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a Deputy; and a Deputy shall act in accordance with such instructions as the Governor may address to him for his guidance:

Provided that the question whether or not a Deputy has so acted shall not be enquired into in any court.

(*c*) A person appointed as a Deputy shall hold that appointment until the expiration of such period, if any, as may be specified in the Instrument by which he is appointed, or until his appointment is revoked by the Governor, acting in his discretion, or by a Secretary of State.

(6) References in paragraph (5) of this Article to the functions of the office of Governor do not include references to any function vested in the Governor by any Act of Parliament or by any Order of Her Majesty in Council other than this Order, the Tanganyika (Legislative Council) Order in Council, 1926(a), the Emergency Powers Order in Council, 1939(b), or any law amending or replacing any of those Orders.".

(2) The person who holds the office of Deputy Governor immediately before the first day of July, 1961, shall be entitled to the leave,

(a) S.R. & O. 1926/991 (Rev. VIII, p. 278: 1926,p. 576).
(b) *See* S.I. 1952 I, at p. 621

beginning with that day, for which, under the terms of service applicable to him immediately before that day, he is then eligible and to any additional leave for which he is eligible under any Order of Her Majesty in Council or any other law for the time being in force in the Territory, and while on such leave shall be regarded as still in the public service:

Provided that, if the said person is charged, as from the first day of July, 1961, with the performance of special duties in respect of the government of the Territory, then—

(*a*) he shall, during the period for which he is so charged, be regarded as still in the public service; and

(*b*) the leave to which he is entitled under this subsection shall include the leave for which, under the terms of service aforesaid, he is eligible in respect of that period and shall begin at the expiration of that period.

Replacement of Article 9 of Order of 1920.

5. Article 9 of the principal Order is revoked and the following Article substituted therefor:—

"Constitution of offices.

9. Subject to the provisions of this Order or of any other Order of Her Majesty in Council or of any other law for the time being in force in the Territory, the Governor may, in Her Majesty's name and on Her Majesty's behalf, constitute offices for the Territory, make appointments to any such office and remove from office persons so appointed.".

Replacement of Article 10 of Order of 1920.

6. Article 10 of the principal Order is revoked and the following Articles are substituted therefor:—

"Public Service Commission.

10.—(1) There is hereby established for the Territory a Public Service Commission which shall consist of a Chairman and not less than three nor more than six other members.

(2) The members of the Commission shall be appointed by the Governor, by Instrument under the Public Seal of the Territory, after consultation with the Prime Minister.

(3) A person shall not be qualified for appointment as a member of the Commission if he is—

(*a*) a public officer; or

(*b*) a Minister or a Parliamentary Secretary or a Member of the National Assembly; or

(*c*) a member of a municipal council established under the Municipalities Ordinance(a) or a member of a council established under the Local Government Ordinance(b); or

(*d*) an officer of any society or association which the Governor, acting in his discretion, is satisfied is of a political nature: or

(*e*) a person, whether in the public service or not, who is a member of any body which, in the opinion of the Governor, acting in his discretion, is a staff association or a trade union or has as its object or one of its objects the control or influencing of salaries, wages,

(a) Cap. 105 of the Revised Laws of Tanganyika.
(b) Cap. 333 of the Revised Laws of Tanganyika.

pensions or conditions of service of any class of employed person.

(4) Every member of the Commission shall vacate his office—

(*a*) at the expiration of four years from the date of his appointment or at such earlier time as may be specified in the Instrument by which he was appointed;

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such;

(*c*) upon receipt by the Governor of his resignation in writing; or

(*d*) if the Governor, after consultation with the Prime Minister, directs that he be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(5) (*a*) If the office of Chairman of the Commission is vacant or the Chairman is for any reason unable to perform the functions of his office, the Governor, after consultation with the Prime Minister, may appoint any other member to act as Chairman, and such member shall, subject to the provisions of the preceding paragraph, continue to act until the office of Chairman is filled or until the Chairman is again able to perform the functions of his office or until the appointment of such member to act as Chairman is revoked by the Governor after consultation with the Prime Minister.

(*b*) If the office of a member of the Commission other than the Chairman is vacant or such a member is for any reason unable to perform the functions of his office, the Governor, after consultation with the Prime Minister, may appoint a person who is qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of the preceding paragraph, continue to act until the office is filled or until his appointment is revoked by the Governor after consultation with the Prime Minister.

(6) A member of the Commission shall not, within a period of three years commencing with the date on which he last held or acted in the office of member of the Commission, be eligible for appointment to any public office.

(7) A member of the Commission shall not be removed from office except in accordance with the provisions of this Article.

Appointment, etc. of officers.

10A.—(1) Subject to the provisions of this Order, power to appoint persons to hold or act in offices in the public service (including power to make appointments on promotion and transfer and to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove from office persons so appointed is hereby vested in the Public Service Commission.

(2) The Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this Article

by directions in writing to any public officer and may by such directions, and subject as aforesaid, empower the officer to whom the delegation is made to authorise another public officer to exercise any power so delegated.

(3) Before making any appointment of a person to hold either the office of Deputy Controller and Auditor-General or the office of Principal Auditor (including an appointment on promotion or transfer and the confirmation of an appointment) the Commission shall consult the Director-General of the Overseas Audit Service.

(4) The Commission shall not remove a public officer from office or inflict any other punishment on him on the grounds of any act done or omitted to be done by him in the exercise of a judicial function conferred on him unless the Judicial Service Commission concurs therein.

(5) No appointment may be made under this Article to any office on the personal staff of the Governor except with the concurrence of the Governor.

Appointment, etc. of permanent secretaries.

10B.—(1) The power to appoint a person to hold or act in the office of permanent secretary (including the power to make appointments on promotion and transfer) is hereby vested in the Governor, acting in accordance with the advice of the Prime Minister.

(2) Subject to the provisions of paragraph (4) of this Article, a permanent secretary may be removed from office only for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except by the Governor, acting after consultation with the Prime Minister.

(3) Before tendering advice for the purposes of paragraph (1) or paragraph (2) of this Article, the Prime Minister shall consult the Public Service Commission.

Clerk of the National Assembly.

10C. Before exercising any of its powers in relation to the Clerk or a Clerk-Assistant of the National Assembly, the Public Service Commission shall consult the Speaker.

Police Service Commission.

10D. There is hereby established for the Territory a Police Service Commission which shall consist of—

(*a*) the Chairman of the Public Service Commission, who shall be Chairman;

(*b*) such Puisne Judge as may for the time being be designated in that behalf by the Governor after consultation with the Chief Justice;

(*c*) such member of the Public Service Commission other than the Chairman thereof as may for the time being be designated in that behalf by the Governor after consultation with the Prime Minister.

Appointment, etc. of police officers.

10E.—(1) Subject to the provisions of paragraph (3) of this Article, power to appoint persons to hold or act in offices in the Tanganyika Police Force (including power to make appointments on promotion and transfer and to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove from office persons so appointed is hereby vested in the Police Service Commission.

(2) The Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this Article by directions in writing to the Commissioner of Police or to any other member of the Tanganyika Police Force and may by such directions, and subject as aforesaid, empower the person to whom the delegation is made to authorise another member of the Tanganyika Police Force to exercise any power so delegated.

(3) Power to appoint any person to hold or act in the office of Commissioner of Police or Deputy Commissioner of Police (including power to make appointments on promotion and to confirm appointments) and to remove from office persons so appointed is hereby vested in the Governor, acting after consultation with the Prime Minister and the Police Service Commission.

Protection of pension rights.

10F.—(1) The law applicable to any benefits to which this Article applies shall, in relation to any person who has been granted or is eligible for the grant of such benefits, be that in force on the relevant date or any later law that is not less favourable to that person.

(2) In this Article "the relevant date" means—

(*a*) in relation to benefits granted before the first day of July, 1961, the date on which those benefits were granted;

(*b*) in relation to any benefits granted or which may be granted on or after the first day of July, 1961, to or in respect of any person who was a public officer before that date, the thirtieth day of June, 1961; and

(*c*) in relation to any benefits granted or which may be granted to or in respect of any person who becomes a public officer on or after the first day of July, 1961, the date on which he becomes a public officer.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this Article, be deemed to be more favourable to him than the other law or laws.

(4) Any benefit to which this Article applies (not being a benefit that is charged upon some other public fund of the Territory) is hereby charged on the Consolidated Fund.

(5) This Article applies to any benefits payable under any law in force in the Territory providing for the grant

of pensions, compensation, gratuities or other like allowances to persons in respect of their service in the public service or to the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References to the law applicable to any benefits to which this Article applies include (without prejudice to their generality) references to any law relating to the time at which and the manner in which any person may retire in order to become eligible for those benefits.

Powers of Commissions in relation to pensions, etc.

10G.—(1) Where any benefits to which this Article applies can be withheld, reduced in amount or suspended by any person or authority under any law, those benefits shall not be so withheld, reduced in amount or suspended—

(*a*) in the case of benefits that have been granted in respect of the service in the public service of any person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial Service Commission, or for which any person may be eligible in respect of such service, without the approval of that Commission;

(*b*) in the case of benefits that have been granted in respect of the service in the public service of any person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Police Service Commission, or for which any person may be eligible in respect of such service, without the approval of that Commission; or

(*c*) in any other case, without the approval of the Public Service Commission.

(2) No benefits to which this Article applies that have been granted to or in respect of any person who is or has held the office of Judge of the High Court, Director of Public Prosecutions, Controller and Auditor-General or permanent secretary or for which any such person or his widow, children, dependants or personal representatives may be eligible shall be withheld, reduced in amount or suspended on the ground that that person has been guilty of misbehaviour unless he has been removed from that office by reason of such misbehaviour.

(3) This Article applies to any benefits payable under any law in force in the Territory providing for the grant of pensions, compensation, gratuities or other like allowances to persons in respect of their service in the public service or to the widows, children, dependants or personal representatives of such persons in respect of such service.".

Amendment of Article 12B of Order of 1920.

7. Article 12B of the principal Order is amended by the deletion therefrom of the words "Legislative Council" and the substitution therefor of the words "National Assembly".

Replacement of Article 12K of Order of 1920.

8. Article 12K of the principal Order is revoked and the following Article substituted therefor:—

"Attorney-General.

12K.—(1) There shall be an Attorney-General for the Territory who shall be the principal legal adviser to the Government of the Territory and who shall be appointed from among the persons qualified for appointment as a Judge of the High Court.

(2) Power to appoint a person to hold or act in the office of Attorney-General and to remove from that office a person so appointed is hereby vested in the Governor, acting in accordance with the advice of the Prime Minister.".

Insertion in Order of 1920 of further provisions relating to the Executive and provisions relating to finance.

9. The principal Order is hereby amended by the insertion, immediately after Article 12M thereof, of the following Articles:—

'Permanent secretaries.

12N. Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a permanent secretary:

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

Director of Public Prosecutions.

12O.—(1) There shall be a Director of Public Prosecutions for the Territory who shall be appointed from among the persons who are qualified for appointment as a Judge of the High Court.

(2) Subject to the provisions of Article 12Q of this Order, the Director of Public Prosecutions may be removed from office only for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except by the Governor, acting after consultation with the Prime Minister.

Powers of Director of Public Prosecutions.

12P.—(1) The Director of Public Prosecutions shall have power, in any case in which he considers it desirable so to do—

(*a*) to institute and undertake criminal proceedings against any person before any civil court in the Territory in respect of any offence alleged to have been committed by that person;

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

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

(2) The powers of the Director of Public Prosecutions under the preceding paragraph may be exercised by him in

person or by officers subordinate to him acting in accordance with his general or special instructions.

(3) The powers conferred on the Director of Public Prosecutions under sub-paragraphs (*b*) and (*c*) of paragraph (1) of this Article shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this paragraph shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(4) For the purposes of this Article, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court in the Territory or to the Court of Appeal for Eastern Africa or to the Judicial Committee of Her Majesty's Privy Council shall be deemed to be part of those proceedings.

(5) In the exercise of the powers conferred on him by this Article, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

Attorney-General to be first Director of Public Prosecutions.

12Q. The person holding the office of Attorney-General immediately before the first day of July, 1961, shall, until he ceases to hold that office, also hold the office of Director of Public Prosecutions, and upon his ceasing to hold the former office he shall (without prejudice to his eligibility for re-appointment) also cease to hold the latter office.

Secretary to the Cabinet.

12R.—(1) There shall be a Secretary to the Cabinet who shall be appointed by the Governor after consultation with the Prime Minister.

(2) The provisions of paragraphs (2) and (3) of Article 10B and of paragraph (2) of Article 10G of this Order shall apply in relation to the Secretary to the Cabinet as they apply in relation to a permanent secretary.

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

FINANCE

Consolidated Fund.

13. All revenues or other monies raised or received by the Territory (not being revenues or other monies payable under any law for the time being in force in the Territory

into some other public fund established for a specific purpose) shall be paid into and form one Consolidated Fund.

Withdrawals from Consolidated Fund or other public funds.

13A.—(1) No monies shall be withdrawn from the Consolidated Fund except—

(*a*) to meet expenditure that is charged upon the Fund by this Order or by any other law for the time being in force in the Territory; or

(*b*) where the issue of those monies has been authorised by an Appropriation Ordinance or by an Ordinance enacted in pursuance of Article 13C of this Order.

(2) No monies shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those monies has been authorised by or under any law for the time being in force in the Territory.

(3) No monies shall be withdrawn from the Consolidated Fund unless such withdrawal has been approved by the Controller and Auditor-General and except in the manner prescribed by or under any law for the time being in force in the Territory.

Authorisation of expenditure from Consolidated Fund by appropriation.

13B.—(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the National Assembly in each financial year estimates of the revenues and expenditure of the Territory for the next following financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Order or by any other law for the time being in force in the Territory) have been approved by the National Assembly, a Bill, to be known as an Appropriation Bill, shall be introduced into the National Assembly, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, for the purposes specified therein.

(3) If in respect of any financial year it is found—

(*a*) that the amount appropriated by the Appropriation Ordinance for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Ordinance; or

(*b*) that any monies have been expended for any purpose in excess of the amount appropriated for that purpose by the Appropriation Ordinance or for a purpose for which no amount has been appropriated by that Ordinance,

a supplementary estimate or, as the case may be, a statement of excess showing the sums required or spent shall be laid before the National Assembly and, when the supplementary estimate or the statement of excess has been

approved, a supplementary Appropriation Bill shall be introduced into the National Assembly, providing for the issue of such sums from the Consolidated Fund and appropriating them for the purposes specified therein.

Authorisation of expenditure in advance of appropriation.

13C. Provision may be made by Ordinance under which, if the Appropriation Ordinance in respect of any financial year has not come into operation by the beginning of that financial year, the Minister for the time being responsible for finance may authorise the withdrawal of monies from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Ordinance, whichever is the earlier.

Contingencies Fund.

13D.—(1) Provision may be made by Ordinance for the establishment of a Contingencies Fund and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented for approval by the National Assembly and a supplementary Appropriation Bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

13E.—(1) There shall be paid to the holders of the offices to which this Article applies such salary and such allowances as may be prescribed, in the case of the Governor, by the Secretary of State and, in any other case, by the National Assembly.

(2) The salaries and any allowances payable to the holders of the offices to which this Article applies are hereby charged on the Consolidated Fund.

(3) The salary payable to the holder of any office to which this Article applies and his terms of office, other than allowances, shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of the preceding paragraph, be deemed to be more advantageous to him than any for which he might have opted.

(5) This Article applies to the offices of Governor, Judge of the High Court, member of the Public Service Commission, Director of Public Prosecutions (except so long as, under Article 12Q of this Order, that office is held by the holder of the office of Attorney-General) and Controller and Auditor-General.

(6) Until such time as provision in that behalf is made in pursuance of paragraph (1) of this Article—

(*a*) the salaries and allowances of the Governor and of Judges of the High Court shall be those to which the

holders of those offices were respectively entitled immediately before the first day of July, 1961,

(*b*) the salary and allowances of the Controller and Auditor-General shall be those to which the Director of Audit was entitled immediately before the first day of July, 1961;

(*c*) the salaries and allowances of the holders of the other offices to which this Article applies shall be such as the Governor, acting in his discretion, may prescribe.

Public debt.

13F.—(1) The public debt of the Territory shall be secured on the Consolidated Fund.

(2) For the purposes of this Article, the public debt of the Territory includes the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

Controller and Auditor-General.

13G.—(1) There shall be a Controller and Auditor-General for the Territory who shall be appointed by the Governor, after consultation with the Prime Minister, the Public Service Commission and the Director-General of the Overseas Audit Service.

(2) If the office of Controller and Auditor-General is vacant, or the Controller and Auditor-General is for any reason unable to perform the functions of his office, the Governor, after consultation with the Prime Minister and the Public Service Commission, may appoint a person to act as Controller and Auditor-General, and any person so appointed shall continue to act until the office of Controller and Auditor-General is filled or until the appointment of that person is revoked by the Governor after consultation with the Prime Minister and with the Public Service Commission.

(3) A person who holds or has held the office of Controller and Auditor-General shall not be eligible for appointment to or to act in any other public office.

(4) A person holding the office of Controller and Auditor-General may be removed from office only for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except by the Governor, acting after consultation with the Prime Minister, with the Public Service Commission and with the Director-General of the Overseas Audit Service.

Control of expenditure and audit of accounts.

13H.—(1) The Controller and Auditor-General shall—

(*a*) before approving any withdrawal from the Consolidated Fund satisfy himself that such withdrawal is authorised by, or as provided by, Article 13A of this Order;

(*b*) satisfy himself that all monies which have been appropriated by an Ordinance and disbursed have been applied to the purposes for which they were so appropriated and that the expenditure conforms to the authority which governs it; and

(*c*) at least once in every year audit and report on the accounts of all departments and offices of the Government of the Territory (including any Commission) and the accounts of the High Court and of all subordinate courts and the accounts of the Office of the Clerk of the National Assembly.

(2) The Controller and Auditor-General and any officer authorised by him shall have access to all books, records, returns, reports and other documents relating to any of the accounts referred to in the preceding paragraph.

(3) The Controller and Auditor-General shall submit every report made by him in pursuance of paragraph (1) of this Article to the Minister for the time being responsible for finance who shall, not later than seven days after the first sitting of the National Assembly next after the receipt of such report, cause it to be laid before the National Assembly; and if the Minister makes default in laying the report before the National Assembly, the Controller and Auditor-General shall submit the report to the Speaker of the National Assembly (or, if the office of Speaker is vacant or if the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker) who shall cause it to be laid before the National Assembly.

(4) The Controller and Auditor-General shall perform such other duties and exercise such other powers in relation to the accounts of the Government of the Territory or the accounts of other public authorities or other bodies as may be prescribed by or under any law for the time being in force in the Territory.

(5) In the exercise of his functions under paragraphs (1), (2) and (3) of this Article, the Controller and Auditor-General shall not be subject to the direction or control of any other person or authority.".

Amendment of Article 19 of Order of 1920.

10. Article 19 of the principal Order is amended by the deletion of paragraphs (1) and (2) thereof and the substitution therefor of the following paragraphs:—

"(1) The Judges of the High Court shall be—

(*a*) the Chief Justice; and

(*b*) such number of Puisne Judges (not being less than six) as may be appointed under the provisions of the following paragraph.

(2) (*a*) The Chief Justice shall be appointed, by Instrument under the Public Seal of the Territory, by the Governor after consultation with the Prime Minister.

(*b*) The Puisne Judges shall be appointed, by Instrument under the Public Seal of the Territory, by the Governor, acting in accordance with the advice of the Judicial Service Commission.".

Amendment of Article 19A of Order of 1920.

11. Article 19A of the principal Order is amended—

(*a*) by the deletion from paragraph (1) thereof of the words "acting in his discretion" and the substitution therefor of the words "acting after consultation with the Prime Minister in the case

of the Chief Justice and acting after consultation with the Chief Justice in the case of a Puisne Judge";

(*b*) by the insertion immediately after the word "Governor" where it first occurs in paragraph (5) thereof of the words "acting in his discretion in the case of the Chief Justice and acting after consultation with the Chief Justice in the case of a Puisne Judge"; and

(*c*) by the deletion from paragraph (7) of the words "acting in his discretion" wherever they occur and the substitution therefor of the words "acting in his discretion in the case of the Chief Justice and acting after consultation with the Chief Justice in the case of a Puisne Judge".

Amendment of Article 19B of Order of 1920.

12. Article 19B of the principal Order is amended by the deletion of the words "acting in his discretion" and the substitution therefor of the words "after consultation with the Prime Minister".

Replacement of Article 19D of Order of 1920.

13. Article 19D of the principal Order is revoked and the following Articles are substituted therefor:—

"Judicial Service Commission.

19D. There is hereby established for the Territory a Judicial Service Commission which shall consist of—

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

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

(*c*) such Puisne Judge as may for the time being be designated in that behalf by the Governor after consultation with the Chief Justice.

Appointment, etc. of judicial officers.

19E.—(1) Power to appoint persons to hold or act in the offices to which this Article applies (including power to make appointments on promotion and transfer and to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove from office persons so appointed is hereby vested in the Judicial Service Commission.

(2) The Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this Article by directions in writing to any Judge of the High Court or to any person holding or acting in any office to which this Article applies and may by such directions, and subject as aforesaid, empower the person to whom the delegation is made to authorise any other officer to whom a delegation might be made under this paragraph to exercise any power so delegated.

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

(*a*) the offices of Registrar of the High Court, Deputy Registrar of the High Court, Resident Magistrate and any Magistrate performing magisterial functions otherwise than by reason of his being an Administrative Officer; and

(*b*) such other offices connected with any court constituted for the Territory (other than the Court of Appeal for Eastern Africa) as, subject to the provisions of this Order, may be prescribed by any law for the time being in force in the Territory.".

Insertion in Order of 1920 of further provisions relating to Commissions and the public service.

14. The principal Order is amended by the insertion, immediately after Article 36 thereof, of the following Articles:—

"Powers and procedure of Commissions.

36A.—(1) Any Commission may, subject to the provisions of paragraph (2) of this Article, by regulation or otherwise regulate its own procedure and confer powers and impose duties on any public officer or on any authority of the Government of the Territory for the purpose of the discharge of its functions.

(2) At any meeting of a Commission a quorum shall be constituted if there are present the Chairman of that Commission and, in the case of the Public Service Commission, two other members, and, in the case of the Police Service Commission and the Judicial Service Commission, one other member; and, if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.

Protection of Commissions, etc. from legal proceedings.

36B. The question whether—

(*a*) any Commission has validly performed any function vested in it by this Order;

(*b*) any member of a Commission or any other person or authority has validly performed any function of the Commission delegated to such member or other person or authority under this Order; or

(*c*) any member of a Commission or any other person or authority has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in the preceding sub-paragraph

shall not be enquired into in any court.

Appeals Board.

36C.—(1) If a Commission makes any decision approving the withholding, reducing in amount or suspending of any benefit to which this Article applies, payable to or in respect of an entitled officer, or any decision the effect of which is that such a benefit is not so payable, the Commission shall serve on the officer concerned a written notice of the decision, stating the time, not being less than fourteen days from the date on which the notice is served, within which he may apply for the case to be referred to an Appeals Board.

(2) If, within the time specified in the notice, the officer concerned applies to the Commission for the case to be referred to an Appeals Board, the Commission shall notify the Prime Minister in writing of that application, and the Prime Minister shall then appoint an Appeals Board of three members, consisting of—

(*a*) one member selected by the Prime Minister;

(*b*) one member selected by an association representative of public officers or a professional body, nominated in either case by the officer concerned; and

(*c*) one member selected by agreement between the two other members, who shall be the Chairman of the Board.

(3) The Appeals Board shall enquire into all the facts of the case and for that purpose shall hear the officer concerned, if he applies in that behalf in writing, and shall hear any other person who, in the opinion of the Board, is able to give the Board information on the case, and the Board shall have access to, and shall consider, all documents that were available to the Commission and shall also consider any further document relating to the case that may be produced by or on behalf of the officer concerned or the Commission.

(4) After the Appeals Board has completed its consideration of the case, the Board shall advise the Commission whether the decision of the Commission that is the subject of the reference to the Board should be confirmed, reversed or modified and the Commission shall act in accordance with such advice.

(5) This Article applies to any benefits payable under any law for the time being in force in the Territory providing for the grant of pensions, compensation, gratuities or other like allowances to persons in respect of their service in the public service or to the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) In this Article "entitled officer" means any officer whom the Governor, acting in his discretion, declares to be an entitled officer either specifically or by virtue of his belonging to a class of officers so declared."

15. Article 37 of the principal Order is revoked.

Revocation of Article 37 of Order of 1920.

16. The Tanganyika (Public Service Commission) Order in Council, 1960(**a**), and the Tanganyika (Public Service Commission) (Amendment) Order in Council, 1961(**b**), are revoked.

Revocation of Tanganyika (Public Service Commission) Orders in Council, 1960 and 1961.

17.—(1) Subject to the provisions of this Order, every person who holds a public office immediately before the first day of July, 1961, shall, as from that day, hold the like office as if he had been appointed thereto under the principal Order as amended by this Order.

Existing public officers.

(2) The person who holds the office of Director of Audit immediately before the first day of July, 1961, shall, as from that day, hold the office of Controller and Auditor-General as if he had been appointed thereto under the principal Order as amended by this Order.

(**a**) S.I. 1960/1059 (1960 I, p. 1274). (**b**) S.I. 1961/739 (Pt. I, p. 1465).

Transitional provisions.

18.—(1) All laws enacted by any legislature in the Territory or under the East Africa (High Commission) Order in Council, 1947(a), (including all instruments made under any law so enacted) which are in force in the Territory immediately before the first day of July, 1961, or which have been made before that day but have not previously been brought into operation shall, subject to amendment or repeal by the competent authority, be construed, in relation to any period beginning on or after that day, with such adaptations and modifications as are necessary to bring them into conformity with this Order, and in particular, and without prejudice to the generality of the foregoing, any reference in any such law to the Public Service Commission shall be construed, in relation to any such period as aforesaid, as a reference to the Public Service Commission, the Police Service Commission and the Judicial Service Commission respectively, or to such of those Commissions as the case may require.

(2) The Governor may, by regulation published in the Gazette and made at any time within three months commencing with the first day of July, 1961, make such provision as he considers necessary or expedient to enable a Commission more effectively to assume the functions conferred on it by the principal Order or otherwise to give effect to the provisions of the principal Order relating to the public service, including (without prejudice to the generality of the foregoing) provision for—

(*a*) the prescribing, for the purposes of sub-paragraph (*b*) of paragraph (3) of Article 2 of the principal Order, of any office referred to therein as an office in the public service;

(*b*) the prescribing, for the purposes of sub-paragraph (*b*) of paragraph (3) of Article 19E of the principal Order, of any office referred to therein as an office to which that Article applies;

(*c*) the definition and trial of offences in relation to the functions of a Commission or in relation to the discipline of police or prison officers, and the imposition of penalties for such offences;

(*d*) the delegation of any function of a Commission to any person to whom it may be validly delegated under the principal Order; and

(*e*) the disposal of any question relating to the public service or to a public officer which, immediately before the first day of July, 1961, is pending before, or part-heard by, the authority competent in that behalf.

(3) Before making any regulations under the preceding subsection the Governor shall consult with the Prime Minister and—

(*a*) in the case of regulations made under paragraph (*a*) of that subsection, the Public Service Commission;

(*b*) in the case of regulations made under paragraph (*b*) of that subsection, the Judicial Service Commission; and

(*c*) in any other case, the Commission concerned.

(4) Regulations made by the Governor under subsection (2) of this section shall have effect until other provision in that behalf is made, in the case of regulations made under paragraph (*a*), paragraph (*b*) or paragraph (*c*) of that subsection, by a law in force in the Territory, or in the case of regulations made under paragraph (*d*) or paragraph (*e*) of that subsection, by the Commission concerned, exercising the powers vested in it by the principal Order.

(a) S.R. & O. 1947/2863 (Rev. XI, p. 695: 1947 I, p. 758).

(5) The Governor may, by order published in the Gazette and made at any time within six months commencing with the first day of July, 1961, make such amendments, adaptations and modifications in any such law as is referred to in subsection (1) of this section as he may consider necessary or expedient by reason of anything contained in this Order or in any regulations made under subsection (2) of this section.

(6) Any regulations made by the Governor under subsection (2) of this section and any order made by him under subsection (5) thereof may be expressed to have effect from any day, not earlier than the first day of July, 1961, which may be specified therein.

W. G. Agnew.

EXPLANATORY NOTE

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

This Order revokes the Tanganyika (Public Service Commission) Orders in Council, 1960 and 1961, and amends the Tanganyika Order in Council, 1920, so as to establish a new Public Service Commission and a Police Service Commission and a Judicial Service Commission. Responsibility for the public service is vested in these Commissions but special provision is made for certain offices. This Order also inserts in the Order of 1920 certain provisions relating to finance.