1960 No. 1373

The Tanganyika Order in Council, 1960

Made - - - -	*3rd August*, 1960
Laid before Parliament	*9th August*, 1960
Coming into Operation	*3rd September*, 1960

At the Court at Buckingham Palace, the 3rd day of August, 1960

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 Order in Council, 1960, and shall be construed as one with the Tanganyika Orders in Council, 1920 to 1959(b).

(2) The Tanganyika Orders in Council, 1920 to 1959, and this Order may be cited together as the Tanganyika Orders in Council, 1920 to 1960.

(3) This Order shall be published in the Official Gazette of the Territory and shall come into operation on a day to be appointed by the Governor by Proclamation in the Gazette, which day shall not be earlier than the day after the day on which this Order shall have been laid before both Houses of Parliament:

Provided that section 9 shall come into operation on the day after the day on which this Order shall have been laid before both Houses of Parliament.

Amendment of Order of 1920.

2. Article 4 of the Tanganyika Order in Council, 1920(c), (hereinafter referred to as "the principal Order") (as amended by Article 2 of the Tanganyika Order in Council, 1949(d), and section 2 of the Tanganyika Order in Council, 1959(e)), is amended—

(*a*) by the insertion after paragraph (3) of the following paragraph:—

"Office of Deputy Governor constituted.

(3A) (*a*) The office of Deputy Governor of the Territory is hereby constituted.

(*b*) Appointment to the office of Deputy Governor shall be made by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State."; and

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(a) 53 & 54 Vict. c. 37.
(b) 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 (1949 I, p. 1890; 1955 I, p. 688; 1959 I, p. 985).
(c) S.R. & O. 1920/1583 (Rev. VIII, p. 266: 1920 I, p. 685).
(d) S.I. 1949/2192 (1949 I, p. 1890). (e) S.I. 1959/1047 (1959 I, p. 985).

(*b*) by the deletion of paragraphs (4), (5) and (6) and the substitution of the following paragraphs :—

"Succession to Government.

(4) (*a*) Whenever the office of Governor is vacant or the person who is the substantive holder of that office is absent from the Territory or is for any other cause prevented from or incapable of discharging the functions of his office—

(i) the person who is the substantive holder of the office of Deputy Governor ; or

(ii) if the office of Deputy Governor is vacant or the person who is the substantive holder of that office is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, such person as Her Majesty may designate by Instructions under Her Sign Manual and Signet or through a Secretary of State,

shall, during Her Majesty's pleasure, discharge the functions of the office of Governor and administer the government of the Territory accordingly.

(*b*) Before assuming the administration of the government of the Territory any such person as aforesaid shall, in the form and manner prescribed in paragraph (3) of this Article, take the Oaths therein directed to be taken by the Governor.

(*c*) Any such person as aforesaid shall not continue to administer the government of the Territory after the person holding the substantive office of Governor or some other person having a prior right to administer the government has notified him that he is about to assume or resume the administration.

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

(i) the person holding the substantive office of Governor shall not be regarded as absent from the Territory or as prevented from or incapable of discharging the functions of his office by reason of the fact that he is in passage from one part of the Territory to another, or when he has given a direction under paragraph (5) of this Article and that direction is in force ; and

(ii) the person holding the substantive office of Deputy Governor shall not be regarded as absent from the Territory or as prevented from or incapable of discharging the functions of his office by reason of the fact that he is in passage from one part of the Territory to another or when, having assumed the administration of the government of the Territory under subparagraph (*a*) of this paragraph he has given a direction under paragraph (5) of this Article and that direction is in force.

Discharge of Governor's functions during temporary absence or illness of Governor.

(5) (*a*) Whenever the Governor—

(i) has occasion to be absent from Dar es Salaam but not from the Territory ; or

(ii) has occasion to be absent from the Territory for a period that he has reason to believe will be of short duration ; or

(iii) by reason of illness that he has reason to believe will be of short duration, considers it desirable to do so,

he may, by Instrument under the Public Seal, direct the person who is the substantive holder of the office of Deputy Governor, or, if the office of Deputy Governor is vacant, or the person who is the substantive holder of that office is administering the government of the Territory or is absent or unable to act, then any person in the Territory, during such absence or illness, to discharge for and on behalf of the Governor during such absence or illness such functions of the office of Governor as may be prescribed in such Instrument.

(*b*) The power and the authority of the Governor shall not be abridged, altered or in any way affected by any direction under sub-paragraph (*a*) of this paragraph, otherwise than as Her Majesty may at any time think proper to direct, and the Deputy Governor or other such person shall conform to and observe all such instructions as the Governor may from time to time address to him for his guidance.

(*c*) Any direction given under sub-paragraph (*a*) of this paragraph may at any time be varied or revoked by the Governor or by a Secretary of State.

Definition of expression "functions of the office of Governor".

(6) In paragraph (5) of this Article the reference to the functions of the office of Governor does not include a reference to any power or function conferred upon the Governor by any Act of Parliament or by any Order of Her Majesty in Council other than this Order, the Tanganyika (Public Service Commission) Order in Council, 1960(a), the Tanganyika (Legislative Council) Order in Council, 1926(b), the Emergency Powers Order in Council, 1939(c), or any Order amending or replacing any of those Orders.".

3. Article 6 of the principal Order (as set out in section 3 of the Tanganyika Order in Council, 1959, is amended—

(*a*) by the deletion of the words "and an Executive Council"; and

(*b*) by the deletion from the marginal note of the words "and Executive Council".

4. Article 10 of the principal Order is revoked and the following Article is substituted:—

"Director of Audit.

10.—(1) There shall be a Director of Audit who shall be appointed by the Governor with the prior approval of a Secretary of State and who, while holding office, shall not be capable of holding any other office of emolument under the Crown in the Territory or of being a member of the Council of Ministers or the Legislative Council.

(2) The Director of Audit may be removed from office only by the Governor with the prior approval of a Secretary of State.".

(a) S.I. 1960/1059 (Pt. I, p. 1274, of this vol.). (b) S.R. & O. 1926/991 (Rev. VIII, p. 278: 1926, p. 576). (c) *See* S.I. 1952 I, at p. 621.

5. Article 11 of the principal Order is revoked and the following Article is substituted—

"Powers of pardon, etc.

11. The Governor may, in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant to any person concerned in or convicted of any offence against any law for the time being in force in the Territory a pardon either free or subject to lawful conditions;

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

(*c*) substitute a less severe form of punishment for the punishment imposed for such an offence; or

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

6. Article 19 of the principal Order is revoked and the following Articles are substituted—

"Judges of the High Court.

19.—(1) The Judges of the High Court shall be a Chief Justice, who shall be the President of the Court and such number of Puisne Judges as may, from time to time, be appointed under the provisions of the next succeeding paragraph.

(2) The Chief Justice and Puisne Judges of the High Court shall be appointed by the Governor by Instrument under the Public Seal of the Territory in pursuance of instructions given by Her Majesty through a Secretary of State.

(3) No person shall be appointed to be a Judge of the High Court unless—

(i) he is qualified to practise as an advocate in a court in some part of the Commonwealth having unlimited jurisdiction in civil and criminal matters, or in the High Court, and

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

(4) In computing, for the purposes of paragraph (3) of this Article, the period during which any person has been qualified to practise as an advocate or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

(5) The reference in this Article to a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth shall be construed as if it included a reference to a court having such jurisdiction in the Republic of Ireland.

Tenure of Judges of the High Court.

19A.—(1) Subject to the provisions of this Article, every Judge of the High Court shall hold office until he attains the age of sixty two years:

Provided that—

(i) the Governor may permit a Judge who has attained that age to continue in office for a further period not exceeding twelve months, or in the case of a person appointed to be a Judge of the High Court prior to the commencement of sections 1 to 8 of the Tanganyika Order in Council, 1960, for a further period not exceeding three years;

(ii) nothing done by a Judge shall be invalid by reason only that he has attained the age at which he is required by or under this paragraph to vacate his office.

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

(3) A Judge of the High Court may be removed from office only for inability to discharge 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 next following paragraph.

(4) A Judge of the High Court shall be removed from office by the Governor by order under the Public Seal of the Territory if the question of the removal of that Judge from office has, at the request of the Governor, made in pursuance of the next following paragraph, 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 the Judge ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If the Governor considers that the question of removing a Judge of the High Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(*a*) the Governor shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor 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;

(*b*) that tribunal shall inquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether he should request that the question of the removal of that Judge should be referred by Her Majesty to the Judicial Committee; and

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

(6) The provisions of sections 6 and 8, section 9 (other than the words "not inconsistent with their commission" and "subject only to the terms of their commission"), sections 10 to 15 inclusive, and section 17 of the Commissions

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

of Inquiry Ordinance(a), as in force on the date of the commencement of sections 1 to 8 of the Tanganyika Order in Council, 1960, shall apply in relation to a tribunal appointed under the last foregoing paragraph as they apply in relation to commissioners appointed under that Ordinance, and for that purpose those provisions shall have effect as if they formed part of this Order.

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

(*a*) if the tribunal recommends to the Governor that he should not request that the question of the removal of the Judge from office should be referred by Her Majesty to the Judicial Committee ; or

(*b*) if the Judicial Committee advises Her Majesty that the Judge ought not to be removed from office.

Acting Chief Justice.

19B. 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 Governor may, in his discretion, 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.

19C.—(1) If the office of any Puisne Judge is vacant or if any Puisne Judge is appointed to act as the Chief Justice or if any Puisne Judge is for any reason unable to perform the functions of his office, the Governor, acting in his discretion after consultation with the Chief Justice, may appoint a person qualified for appointment as a Judge of the High Court to act as a Puisne Judge of that Court :

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

(2) Any person appointed under this Article to act as a Puisne Judge of the High Court shall hold office until his appointment is revoked by the Governor, acting in his discretion after consultation with the Chief Justice :

Provided that any such person may at any time resign his office by writing under his hand addressed to the Governor.

(3) Any person appointed to act as a Puisne Judge under the provisions of this Article may, notwithstanding that the period of his appointment has been revoked, sit as a Judge for the purpose of giving judgment or otherwise in relation

(a) Chapter 32 of the Laws of Tanganyika.

to any proceeding commenced before him while his appointment was subsisting.

Remuneration of Judges.

19D.—(1) There shall be paid to the Judges of the High Court such salaries as may be prescribed by the Legislative Council:

Provided that the salary of a Judge and his terms of office other than allowances shall not be altered to his disadvantage after his appointment.

(2) Where a Judge is entitled to exercise an option in relation to his salary or terms of office, the option as exercised by him shall be deemed, for the purposes of the proviso to paragraph (1) of this Article, to be to his advantage.

(3) The salary and allowances payable to a Judge shall be a charge on and paid out of the funds of the Territory.".

7. Article 37 of the principal Order is amended by the addition after the word "Territory" of the following "and, to the extent to which the Deputy Governor or any other person is authorised to discharge the functions of the office of Governor by virtue of a direction given under paragraph (5) of Article 4 of this Order, the Deputy Governor or such other person, as the case may be".

Saving

8.—(1) Every person appointed to be the Chief Justice or a Judge of the High Court or to act as the Chief Justice or as a Judge of the High Court under the provisions of Article 19 of the principal Order prior to the commencement of sections 1 to 8 of this Order shall be deemed to have been appointed the Chief Justice or a Puisne Judge of the High Court or to act as the Chief Justice or as a Puisne Judge of the High Court, as the case may be, under the provisions of the principal Order as enacted in this Order.

(2) The person appointed to be the Director of Audit before the commencement of sections 1 to 8 of this Order shall be deemed to have been appointed under Article 10 of the principal Order as enacted by this Order.

Transitional

9.—(1) The Governor may, by order published in the Gazette, at any time within twelve months after the commencement of this section provide that any existing law shall be read and construed with such adaptations or modifications as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the principal Order, as amended by this Order, or with the provisions of this section, or with the provisions of the Tanganyika Royal Instructions, 1960, or otherwise for giving effect or enabling effect to be given to those provisions; and any such law shall have effect accordingly from such date as may be specified in the order, not being a date earlier than the commencement of this section.

(2) Any order made under subsection (1) of this section may be amended or revoked by a further order made in like manner.

(3) In this section "existing law" means any law in force or having effect immediately before the commencement of this section that was enacted under the Tanganyika (Legislative Council) Order in Council, 1926(a), as amended from time to time, and includes any instrument made in pursuance of any such law.

W. G. Agnew.

(a) S.R. & O. 1926/991 (Rev. VIII, p. 278: 1926, p. 576).

EXPLANATORY NOTE

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

This Order amends the provisions of the Tanganyika Order in Council, 1920, as amended, and constitutes the office of Deputy Governor of the Territory. It also makes fresh provision for the appointment and tenure of office of Judges of the High Court of the Territory, and of the Director of Audit.