STATUTORY INSTRUMENTS

1961 No. 738

EAST AFRICA

The Tanganyika Order in Council, 1961

Made - - - -	14*th April*, 1961
Laid before Parliament	20*th April*, 1961
Coming into Operation	1*st May*, 1961

At the Court at Windsor Castle, the 14th day of April, 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 Order in Council, 1961, and shall be construed as one with the Tanganyika Orders in Council, 1920 to 1960(b).

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

(3) References in this Order to the Tanganyika Order in Council, 1920(c), (hereinafter called " the principal Order ") or to the Tanganyika (Legislative Council) Order in Council, 1926(d), shall be construed as references to those respective Orders as from time to time amended.

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

Amendment of Article 2 of Order of 1920.

2. Article 2 of the principal Order is hereby amended by the insertion therein, after the definition of " Person ", of the following:—

" " the Cabinet " means the Cabinet established by Article 12A of this Order ;

" Minister " means a Minister appointed under Article 12E of this Order, and includes the Prime Minister ;

" the National Assembly " means the National Assembly constituted as provided by the Tanganyika (Legislative Council) Order in Council, 1926 ;

" Parliamentary Secretary " means a Parliamentary Secretary appointed under Article 12L of this Order ;

" public office " means any office of emolument in the service of the Crown in a civil capacity in respect of the government of the Territory ;

(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, 1960/1373 (1949 I, p. 1890; 1955 I, p. 688; 1959 I, p. 985 ; 1960 I, p. 1252).
(c) S.R. & O. 1920/1583 (Rev VIII, p. 266: 1920 I, p. 685).
(d) S.R. & O. 1926/991 (Rev. VIII, p. 278: 1926, p. 576).

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

"session" has the meaning assigned to it by Clause III of the Tanganyika (Legislative Council) Order in Council, 1926."

Amendment of Article 3 of Order of 1920.

3. Article 3 of the principal Order is hereby amended by the addition at the end thereof of the following paragraph as paragraph (5):—

"(5) Unless the context otherwise requires, references in this Order 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.".

Amendment of Article 4 of Order of 1920.

4. Article 4 of the principal Order is hereby amended by the addition at the end of paragraph (5) thereof of the following sub-paragraph as sub-paragraph (*d*):—

"(*d*) In the exercise of the powers conferred on him by this paragraph, the Governor shall act in his discretion.".

Revocation of Article 6 of Order of 1920.

5. Article 6 of the principal Order is hereby revoked.

Amendment of Article 10 of Order of 1920.

6. Article 10 of the principal Order is hereby amended by the deletion from paragraph (1) thereof of the words "a member of the Council of Ministers or the Legislative Council" and the substitution therefor of the words "a Minister or a Parliamentary Secretary or a Member of the National Assembly".

Amendment of Article 11 of Order of 1920.

7. Article 11 of the principal Order is hereby amended by renumbering it as paragraph (1) thereof and adding the following as paragraph (2):—

"(2) In the exercise of the powers conferred on him by this Article, the Governor shall act in his discretion."

Addition to Order of 1920 of Articles relating to Executive.

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

"THE EXECUTIVE

Cabinet.

12A. There shall be in and for the Territory a Cabinet consisting of the Prime Minister and such other Ministers as may be appointed in accordance with the provisions of this Order.

Functions of Cabinet.

12B. Subject to the provisions of this Order and of any other Order of Her Majesty in Council, the Cabinet shall be charged with the general direction and control of the government of the Territory and shall be collectively responsible therefor to the Legislative Council.

Exercise of Governor's functions.

12C.—(1) The Governor shall act in accordance with the advice of the Cabinet (or a Minister acting under the general authority of the Cabinet) in the exercise of his functions other than—

(*a*) any function which is expressed (in whatever terms) to be exercisable by him on or in accordance with the recommendation or advice of, or with the concurrence or approval of, or after consultation with, any person or authority other than the Cabinet; and

(*b*) any function which is expressed (in whatever terms) to be exercisable by him in his discretion.

(2) Where the Governor is directed by this Order to exercise any function after consultation with any person or authority other than the Cabinet (or a Minister acting under the general authority of the Cabinet), he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(3) Where the Governor is directed by this Order to exercise any function in accordance with the advice of, or with the approval of, or after consultation with, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court.

(4) Nothing in this Article shall apply to any function vested in the Governor as a member of the East Africa High Commission established by the East Africa (High Commission) Order in Council, 1947(a), as from time to time amended.

Special responsibilities of Governor.

12D.—(1) The Governor, acting in his discretion, shall be responsible for the following subjects—

(*a*) external affairs, that is to say, the conduct of such external relations as may from time to time be entrusted to the Government of the Territory by Her Majesty's Government in the United Kingdom, and

(*b*) defence, which expression shall, without prejudice to its generality, include the organisation, discipline, control and use of the armed forces of the Crown and the control and use of any establishment, installations and equipment pertaining thereto.

(2) Whenever the Governor has, in consequence of a request made to him in that behalf by the Minister responsible for the police, authorised units of the armed forces of the Crown to give assistance to the police in the maintaining of public safety or public order, the Governor, acting in his discretion, may give such directions to the officer in command of the police or any other police officer as he may consider necessary or expedient for the purposes of any joint operations in which the police and the armed forces of the Crown are taking part, and all persons to whom such directions are given shall obey them forthwith.

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

Appointment of Ministers.

12E.—(1) The Ministers shall be appointed by the Governor by Instrument under the Public Seal of the Territory.

(2) The Governor, acting in his discretion, shall appoint as Prime Minister the Member of the National Assembly who, in his judgment, is best able to command the support of the majority of the Members of the Assembly; and the Governor shall appoint the other Ministers from among the Members of the Assembly in accordance with the advice of the Prime Minister:

Provided that if occasion arises for making an appointment when the Assembly is dissolved, a person who was a Member of the Assembly immediately before the dissolution may be appointed Prime Minister or a Minister, but shall cease to hold office at the beginning of the first session of the next Assembly if he is not then a Member thereof.

(3) Whenever the Prime Minister is ill or absent from the Territory, the Governor may, by Instrument under the Public Seal of the Territory, authorise one of the other Ministers to perform the functions conferred on the Prime Minister by this Order or by any other Order of Her Majesty in Council (other than the function conferred by paragraph (4) of this Article); and the Governor may, by Instrument under the Public Seal of the Territory, revoke any such authorisation.

(4) The power conferred on the Governor by paragraph (3) of this Article shall be exercised by the Governor acting in his discretion if in the opinion of the Governor it is impracticable to obtain the advice of the Prime Minister owing to his illness or absence, and in any other case shall be exercised by the Governor in accordance with the advice of the Prime Minister.

Tenure of office of Ministers.

12F.—(1) The office of Prime Minister shall become vacant if the Governor, acting in his discretion, is satisfied that the Prime Minister has ceased to command the support of the majority of the Members of the National Assembly and, by Instrument under the Public Seal of the Territory, declares the office of Prime Minister vacant.

(2) The office of a Minister other than the Prime Minister shall become vacant—

(*a*) if the office of Prime Minister becomes vacant, or

(*b*) if the Governor, acting in accordance with the advice of the Prime Minister, by Instrument under the Public Seal of the Territory revokes his appointment as a Minister.

(3) The office of any Minister shall become vacant—

(*a*) if he ceases to be a Member of the National Assembly for any reason other than a dissolution thereof;

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

(*c*) if he absents himself from the Territory without permission given, in the case of the Prime Minister, by the Governor acting in his discretion, or, in the case of any other Minister, by the Governor acting in accordance with the advice of the Prime Minister.

(4) A Minister shall not, for the purposes of this Article, be regarded as absent from the Territory at any time when he is in passage from one part of the Territory to another.

Oaths.

12G. No person shall enter upon the duties of his office as a Minister unless he has taken such oaths or affirmations as may be prescribed by any law in force in the Territory.

Presiding in Cabinet.

12H. There shall preside at all meetings of the Cabinet the Prime Minister or such other Minister as the Prime Minister shall appoint in that behalf.

Quorum and Minutes.

12I.—(1) No business except that of adjournment shall be transacted in the Cabinet if objection is taken by any Minister present that there are less than four Ministers present besides the person presiding.

(2) Minutes shall be kept of all proceedings in the Cabinet.

Assignment of responsibility to Ministers.

12J.—(1) Subject to the provisions of this Order and of any other Order of Her Majesty in Council, the Governor, acting in accordance with the advice of the Prime Minister, may by directions in writing—

(*a*) assign to any Minister responsibility for any business of the government of the Territory, including the administration of any department of government; and

(*b*) revoke or vary any directions given under this Article.

(2) Nothing in this Article shall empower the Governor to confer on any Minister authority to exercise any power or to discharge any duty that is conferred by this Order or by any other Order of Her Majesty in Council or by any other law on the Governor or on any person or authority other than that Minister.

Attorney-General.

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

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

Provided that the power to remove from the office of Attorney-General a person who holds or is acting in that office immediately before the first day of May, 1961, shall continue to be vested only in the Governor, acting in his discretion.

(3) The Attorney-General 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 and for 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.

(4) The powers of the Attorney-General under paragraph (3) of this Article may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(5) The powers conferred upon the Attorney-General under sub-paragraphs (*b*) and (*c*) of paragraph (3) 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.

(6) 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 purposes of any such proceedings, to any other court in and for 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.

(7) In the exercise of the powers conferred on him by this Article, the Attorney-General shall not be subject to the direction or control of any other person.

Parliamentary Secretaries.

12L.—(1) The Governor, acting in accordance with the advice of the Prime Minister, may, by Instrument under the Public Seal of the Territory, appoint Parliamentary Secretaries from among the Members of the National Assembly to assist Ministers in the discharge of their functions:

Provided that if occasion arises for making an appointment when the Assembly is dissolved, a person who was a Member of the Assembly immediately before the dissolution may be appointed a Parliamentary Secretary, but shall cease to hold office at the beginning of the first session of the next Assembly if he is not then a Member thereof.

(2) The provisions of paragraphs (2), (3) and (4) of Article 12F and Article 12G of this Order shall apply in relation to Parliamentary Secretaries as they apply in relation to Ministers.

Governor to to be kept informed of Cabinet affairs.

12M.—(1) The Prime Minister shall—

(*a*) cause to be transmitted to the Governor copies of all papers submitted for consideration by the Cabinet at the same time as those papers are transmitted to Ministers;

(*b*) cause the Governor to be informed of the summoniny of any meeting of the Cabinet and of the matters to be discussed at that meeting at the same time as Ministers are so informed; and

(c) cause the Governor to be furnished, immediately after each meeting of the Cabinet, with a copy of the minutes of the meeting showing the matters discussed and the conclusions reached by the Cabinet at that meeting.

(2) The Prime Minister shall keep the Governor fully informed concerning the general conduct of those matters for which he and the other Ministers are responsible and shall furnish the Governor with such information as he may request in respect of any particular matter.".

Amendment of Article 17 of Order of 1920.

9. Article 17 of the principal Order is hereby amended by the deletion from paragraph (3) thereof of the words "the Governor may appoint" and the substitution therefor of the words "the Chief Justice shall determine".

Amendment of Article 19A of Order of 1920.

10. Article 19A of the principal Order is hereby amended by the insertion of the words "acting in his discretion" in the following places, that is to say—

(*a*) immediately after the word "Governor" in paragraph (1) thereof;

(*b*) between the word "Governor" and the words "from among persons" in paragraph (5) thereof; and

(*c*) immediately after the word "Governor" on the first two occasions where that word occurs in paragraph (7) thereof.

Amendment of Article 19C of Order of 1920.

11. Article 19C of the principal Order is hereby amended by the deletion of the words "acting in his discretion" wherever they occur therein.

Revocation of Article 23 of Order of 1920.

12. Article 23 of the principal Order is hereby revoked.

Amendment of Article 26 of Order of 1920.

13. Article 26 of the principal Order is hereby amended by the deletion from paragraph (1) thereof of the words "the High Court may, with the approval of the Governor," and the substitution therefor of the words "the Chief Justice may".

W. G. Agnew.

EXPLANATORY NOTE

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

The purpose of this Order is to make further amendments to the Tanganyika Order in Council, 1920, so as to set up a Cabinet (consisting of a Prime Minister and other Ministers) for the Territory and to require the Governor to act, in general, in accordance with the advice of the Cabinet. Certain subjects, such as defence, external affairs and the public service, are still reserved for the Governor.