STATUTORY INSTRUMENTS

1961 No. 1505

PACIFIC ISLANDS

The Tonga (Amendment) Order in Council, 1961

Made - - - -	*2nd August*, 1961
Laid before Parliament	*9th August*, 1961
Coming into Operation	*1st September*, 1961

At the Court at Buckingham Palace, the 2nd day of August, 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 Tonga (Amendment) Order in Council, 1961, and shall be construed as one with the Tonga Order in Council, 1952(b) (hereinafter referred to as "the principal Order"); and the principal Order and this Order may be cited together as the Tonga Orders in Council, 1952 and 1961.

(2) This Order shall come into operation on the 1st day of September, 1961.

Replacement of s. 2 of principal Order.

2. The following section is substituted for section 2 of the principal Order:—

"Interpretation.

2.—(1) In this Order—

"Chief Commissioner" means the United Kingdom Chief Commissioner for Tonga;

"High Commissioner" means Her Majesty's High Commissioner for the Western Pacific;

"law" includes any instrument having the force of law made in exercise of a power conferred by a law;

"Pacific Order in Council" means the Pacific Order in Council, 1893(c), as from time to time amended by Order in Council;

"Supreme Court" means the Supreme Court of Fiji.

(2) The Interpretation Act, 1889(d), shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.".

(a) 53 & 54 Vict. c. 37.
(b) S.I. 1952/458 (1952 II, p. 2311).
(c) Rev. VIII, p. 597; S.R. & O. 1893, p. 312.
(d) 52 & 53 Vict. c. 63.

Replacement of s. 4 of principal Order.

3. The following section is substituted for section 4 of the principal Order :—

"United Kingdom Chief Commissioner for Tonga.

4.—(1) The office of United Kingdom Chief Commissioner for Tonga is hereby constituted.

(2) (*a*) The Governor of Fiji shall hold the office of Chief Commissioner, and may exercise on Her Majesty's behalf all such powers and jurisdiction as Her Majesty now has, or may from time to time have, in relation to Tonga, and to that end may take or cause to be taken all such measures and do or cause to be done all such things as he may think expedient.

(*b*) The person other than the Governor for the time being administering the Government of Fiji shall also perform the functions of the office of Chief Commissioner; and any power from time to time conferred on the Governor of Fiji to appoint a deputy shall apply in relation to the functions of the office of Chief Commissioner as it applies in relation to the functions of the office of Governor of Fiji.

(3) The Chief Commissioner shall not, in performing the functions of his office, act otherwise than in accordance with this Order, such Instructions as may from time to time be given to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, and such Orders in Council, Regulations and other laws as may from time to time be in force in Tonga.".

"Chief Commissioner" substituted for "Governor".

4. Sections 5, 6, 7, 9, 10, 11, 12 and 13 of the principal Order are amended by substituting for the word "Governor" wherever it appears the words "Chief Commissioner".

Amendment of s. 8. of principal Order.

5. Section 8 of the principal Order is amended by substituting for the words "Chief Justice" the words "Chief Justice of Fiji, or any person acting in that office,".

Replacement of ss. 14, 15 and 16 of principal Order.

6. The following sections are substituted for sections 14, 15 and 16 of the principal Order:—

"Application of certain enactments.

14.—(1) The following enactments shall extend to Tonga as if Tonga were a British Colony or possession but subject to the provisions of this Order and to the exceptions, adaptations and modifications mentioned in this section :—

(*a*) the Admiralty Offences (Colonial) Acts, 1849 and 1860(a);

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

(*c*) the Foreign Tribunals Evidence Act, 1856(c);

(*d*) the Evidence by Commission Acts, 1859 and 1885(d);

(*e*) the British Law Ascertainment Act, 1859(e);

(a) 12 & 13 Vict. c. 96 and 23 & 24 Vict. c. 122.
(b) 14 & 15 Vict. c. 99.
(c) 19 & 20 Vict. c. 113.
(d) 22 Vict. c. 20 and 48 & 49 Vict. c. 74.
(e) 22 & 23 Vict. c. 63.

(*f*) the Foreign Law Ascertainment Act, 1861(a);

(*g*) the Conveyancing (Scotland) Act, 1874, section 51(b);

(*h*) the Fugitive Offenders Act, 1881(c);

(*i*) the Merchant Shipping Act, 1894, Part XIII(d).

(2) References in any of the said enactments to—

(*a*) the Governor of a Colony or British possession;

(*b*) a Superior Court or Supreme Court in a Colony or British possession; and

(*c*) a magistrate or justice of the peace of a Colony or British possession,

shall be construed respectively as references to the Chief Commissioner, to the Supreme Court, and to any judge of the Supreme Court and any judge or magistrate of a court constituted in accordance with the provisions of section 7 of this Order.

(3) In section 51 of the Conveyancing (Scotland) Act, 1874, and any enactment for the time being in force amending or replacing that section, the Supreme Court is substituted for a Court of Probate in a Colony.

(4) With respect to the Fugitive Offenders Act, 1881—

(*a*) in relation to fugitives who are Tongan subjects as defined by the nationality law of Tonga the Premier of Tonga and a judge of the Supreme Court of Tonga shall respectively perform the functions conferred by the Act as modified by this section on the Chief Commissioner and a judge of the Supreme Court or a judge or magistrate of a court constituted in accordance with the provisions of section 7 of this Order;

(*b*) so much of sections 4 and 5 of the Act as relates to sending a report of the issue of a warrant, together with the information, or a copy thereof, or to the sending of a certificate of committal and report of a case, or to the information to be given by a magistrate to a fugitive, shall be excepted, and in lieu of such information the person acting as the magistrate shall inform the fugitive that in the territory to which he may be conveyed he has the right to apply for a writ of habeas corpus or other like process;

(*c*) so much of section 6 of the Act as requires the expiration of fifteen days before issue of warrant shall be excepted;

(*d*) the Chief Commissioner or the Premier of Tonga, as the case may be, shall not be bound to return a fugitive offender to a British possession unless satisfied that the proceedings to obtain his return are taken with the consent of the Governor of that possession; and

(*e*) for the purposes of Part II of the Act Fiji, Tonga, the Gilbert and Ellice Islands Colony, the British Solomon Islands Protectorate, the Islands of Pitcairn, Henderson,

(a) 24 & 25 Vict. c. 11.
(b) 37 & 38 Vict. c. 94.
(c) 44 & 45 Vict. c. 69.
(d) 57 & 58 Vict. c. 60.

Ducie and Oeno, the Central and Southern Line Islands and, to the extent of Her Majesty's jurisdiction, the New Hebrides, shall be deemed to be one group of Her Majesty's possessions.

Application of the Colonial Prisoners Removal Act, 1884.

15. The Colonial Prisoners Removal Act, 1884(a), shall apply to Tonga as if Tonga were a British possession and part of Her Majesty's dominions, subject as follows:—

The Chief Commissioner shall, in relation to such application, be substituted for the Governor of a British possession and for the Government of a British possession.

Application of Pacific (Fugitive Criminals Surrender) Order in Council, 1914.

16.—(1) The Pacific (Fugitive Criminals Surrender) Order in Council, 1914(b), as amended by the Pacific (Fugitive Criminals Surrender) (Amendment) Order in Council, 1933(c), shall continue to apply to Tonga, but subject to the modifications mentioned in this section.

(2) In section 2 the definitions of the terms "Principal Order", "High Commissioner", "magistrate" and "Gazette" are deleted.

(3) References to "a Pacific Protectorate" or (save in section 12) to "any Pacific Protectorate" or to "the protectorate" or to "that protectorate" or to "the limits of the Principal Order" shall, wherever they appear in the Order or Schedules thereto, be read as references to Tonga.

(4) References to "the High Commissioner" or to "the High Commissioner for the Western Pacific" wherever they appear in the Order and Schedules thereto shall be read as references to the Chief Commissioner.

(5) In relation to fugitive criminals who are Tongan subjects as defined by the nationality law of Tonga a judge of the Supreme Court of Tonga shall perform the functions conferred on a magistrate by the Order as modified by this section; and in relation to other fugitive criminals a judge of the Supreme Court or a judge or magistrate of a court constituted in accordance with the provisions of section 7 of this Order shall perform those functions.

(6) In section 3 for the words "by notice published in the Gazette" the words "by notice published in the Fiji Royal Gazette and in the Tonga Government Gazette" are substituted.

(7) The following subsection is substituted for subsection (1) of section 10:—

"(1) The magistrate, if he commits a fugitive criminal who is not a Tongan subject to prison, shall inform him that he will not be surrendered until after the expiration of twenty-eight days and that he has a right to apply for a writ of habeas corpus to the Supreme Court of Fiji.".

(a) 47 & 48 Vict. c. 31.
(b) S.R. & O. 1914/152 (Rev. VIII, p. 699: 1914 I, p. 640).
(c) S.R. & O. 1933/43 (1933, p. 840).

(8) In subsection (2) of section 10 for the words "such period" the words "twenty-eight days" are substituted.

(9) In section 11 for the words "the prescribed period" the words "twenty-eight days" are substituted.

(10) In section 20 for the words "by Proclamation under his hand and the seal of the Western Pacific High Commission" the words "by notice published in the Fiji Royal Gazette and in the Tonga Government Gazette" are substituted.".

Revocation.

7. The Order in Council made on the 30th day of November, 1882(a), for the purpose of applying the Extradition Acts, 1870 and 1873(b), to Tonga is revoked.

W. G. Agnew.

EXPLANATORY NOTE

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

The need for this Order arises from the Treaty of Friendship with Tonga dated 26th August, 1958, ratified on 25th May, 1959 (published as Cmnd. 606). The Order amends the Tonga Order in Council, 1952, by constituting the Governor of Fiji in his relation to Tonga the United Kingdom Chief Commissioner for Tonga. It also makes consequential and minor amendments.

(a) Rev. IX, p. 410.
(b) 33 & 34 Vict. c. 52 and 36 & 37 Vict. c. 60.