PACIFIC PROTECTORATES

1952 No. 458

The Tonga Order in Council, 1952

Made - - - -	10*th March*, 1952
Laid before Parliament	11*th March*, 1952
Coming into Operation	1*st April*, 1952

At the Court at Clarence House, the 10th day of March, 1952

Present

The Queen's Most Excellent Majesty in Council

Whereas by treaty, grant, usage, sufferance or other lawful means Her Majesty has jurisdiction in Tonga:

And Whereas by the Pacific Order in Council, 1893(a), provision was made for the exercise of Her Majesty's jurisdiction in Tonga:

And Whereas it is expedient to make other provision for the exercise of Her Majesty's said jurisdiction:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890(b), 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:—

Short title and commencement

1. This Order may be cited as the Tonga Order in Council, 1952, and shall come into operation on the first day of April, 1952.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

"Chief Justice" means the Chief Justice of Fiji and includes any person acting in that office;

"Fiji" means the Colony of Fiji;

"Governor" means the Governor of Fiji and includes any person for the time being administering the Government of Fiji and, to the extent to which a Deputy for the Governor is authorised to act, that Deputy;

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

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

"Supreme Court" means the Supreme Court of Fiji.

(2) Save as in this Order otherwise provided or required by the context, the Interpretation Act, 1889(c), shall apply in relation to this Order as it applies in relation to an Act of Parliament.

(a) Rev. VIII, p. 597; 1893, p. 312. (b) 53 & 54 Vict. c. 37.
(c) 52 & 53 Vict. c. 63.

Revocation of Pacific Order in Council

3. Without prejudice to anything lawfully done thereunder, the Pacific Order in Council is hereby revoked in so far as it applies to Tonga:

Provided that, until the Governor, by Regulation made under the provisions of this Order, provides that the jurisdiction of the High Commissioner's Court in Tonga shall cease, and subject as hereinafter provided—

(*a*) the High Commissioner's Court shall continue to have all the jurisdiction in respect of causes or matters occurring or arising in Tonga which it would have if the Pacific Order in Council still applied to Tonga; and

(*b*) such jurisdiction shall be exercisable upon the principles of, and in conformity with, such law, and according to such procedure and practice, as would be applicable if the Pacific Order in Council still applied as aforesaid; and

(*c*) judgments, decrees, orders and sentences of the Court shall be enforced and executed as if the Pacific Order in Council still applied as aforesaid;

and until the Governor provides as aforesaid, the following provisions shall have effect:—

(i) the Governor may, by Regulation made under the provisions of this Order, make such provision adding to or subtracting from the jurisdiction of the High Commissioner's Court and modifying the law upon the principles of which, and the procedure and practice in accordance with which, such jurisdiction is exercisable, and modifying the manner of enforcement and execution of judgments, decrees, orders and sentences of the Court, and such provision with respect to appeals from the said Court, as he may think fit; and

(ii) subject to any Regulation made under the provisions of this Order, where under or in pursuance of the provisions of the Pacific Order in Council the High Commissioner has power to make any order or give any direction regarding the exercise of the jurisdiction of the High Commissioner's Court or regarding the enforcement or execution of the judgments, decrees, orders and sentences of the Court, such power shall, in relation to causes or matters occuring or arising in Tonga, be exercised by the Governor; and

(iii) in this proviso the expression "the High Commissioner's Court" shall not include the High Commissioner's Court when consisting of the High Commissioner; and the British Agent and Consul in Tonga shall be deemed, for the purposes of this proviso, to be a Deputy Commissioner authorised to act for and in respect of Tonga under the Pacific Order in Council and also to be a Judicial Commissioner under the Pacific Order in Council for the purpose of the trial of matrimonial causes arising in Tonga.

Governor's powers

4.—(1) The Governor 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.

(2) The power of the Governor to appoint a Deputy under Article 7 of the Letters Patent of the Colony of Fiji dated the second day of April, 1937, as from time to time amended, shall apply in relation to the powers and authorities vested in him in respect of Tonga as it applies to the powers and authorities vested in him in respect of Fiji.

(3) The Governor shall not, in the exercise of the powers and authorities vested in him in respect of Tonga, act otherwise than in accordance with this Order, with 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 with such Orders in Council, Regulations and other laws as may from time to time be in force in Tonga.

Power to make Regulations

5.—(1) Subject to the provisions of this Order, it shall be lawful for the Governor to make Regulations (to be called " Queen's Regulations ") exercising, or providing for the exercise of, such powers and jurisdiction as Her Majesty now has, or may from time to time have, in relation to Tonga.

(2) All Regulations shall be published in such manner and in such place or places in Tonga as the Governor may from time to time direct.

(3) Every such Regulation shall come into operation on the date on which it is published in accordance with the provisions of subsection (2) of this section unless it shall be provided, either in the Regulation or in some other enactment, that it shall come into operation on some other date, in which case it shall come into operation on that date.

(4) The date on which every Regulation is published in accordance with the provisions of subsection (2) of this section shall be notified in the Fiji Royal Gazette, and such notification shall be conclusive evidence as to the date and fact of such publication.

Disallowance of Regulations

6.—(1) Any Regulation made by the Governor in exercise of the power conferred by this Order may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any Regulation has been disallowed by Her Majesty, the Governor shall cause notice of such disallowance to be published in such manner and in such place in Tonga as the Governor may from time to time direct.

(3) Every Regulation so disallowed shall cease to have effect as soon as notice of disallowance has been published as aforesaid; and thereupon any enactment repealed or amended by, or in pursuance of, the Regulation so disallowed shall have effect as if such Regulation had not been made, and, subject thereto, the provisions of subsection (2) of section 38 of the Interpretation Act, 1889(a), shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

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

Courts

7. For the hearing and determination of causes and matters occurring or arising in Tonga over which Her Majesty may from time to time exercise jurisdiction the following provisions shall have effect:—

(*a*) subject to any Regulations made under this Order, the Supreme Court shall have and may exercise, either in Tonga or in Fiji, jurisdiction with respect to such causes and matters, and an appeal shall lie from any judgment, decree, order or sentence of the Supreme Court made, given or passed with respect to such causes or matters in the same manner as an appeal may from time to time lie from the Supreme Court with respect to causes or matters occurring or arising in Fiji;

(*b*) without prejudice to the generality of the power conferred by subsection (1) of section 5 of this Order, the Governor, by Regulations made under this Order, may constitute courts in Tonga having such jurisdiction with respect to such causes and matters as the Governor may think fit, and may provide for the exercise of the jurisdiction of the Supreme Court and of courts constituted as aforesaid and for appeals from such courts to the Supreme Court.

Chief Justice may, by warrant, direct removal of accused persons to Fiji

8. Where it appears to the Chief Justice that arrangements cannot conveniently be made for the trial in Tonga of any person charged with an offence under or by virtue of this Order, he may, by warrant under his hand, direct the removal of such person to Fiji for trial by the Supreme Court.

Sentences may be carried out in Fiji

9.—(1) Where an offender is convicted in Tonga by a Court under or by virtue of the provisions of this Order and is sentenced by that Court to death, or imprisonment or any other punishment involving deprivation of freedom of movement, such sentence shall, if the Governor by any general or special direction so orders, be carried into effect in Fiji.

(2) Where a sentence is to be carried into effect in Fiji, the Court shall, on sentencing the offender or as soon as practicable thereafter, issue a warrant under the hand of the judge or magistrate of the Court directing the removal of such offender to Fiji.

Appointment of officers

10. The Governor may, for the purposes of this Order, constitute such judgeships and other offices as may be lawfully constituted by Her Majesty, and may make appointments to any office constituted as aforesaid and any person so appointed shall, unless it is otherwise provided by law, hold office during Her Majesty's pleasure.

Discipline

11. The Governor may, subject to the provisions of any law for the time being in force in Tonga and to such Instructions as may from time to time be given to him by Her Majesty through a Secretary of State, for cause shown to his satisfaction, dismiss or suspend from

the exercise of his office any person appointed by the Governor in exercise of the power conferred by section 10 of this Order, or, subject as aforesaid, may take such disciplinary action as may seem to him desirable.

Pardon

12. When any offence has been committed for which an offender may be tried under or by virtue of this Order, the Governor may, as he shall see occasion, in Her Majesty's name and on Her Majesty's behalf, grant a pardon to any accomplice in such offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further may grant to any offender convicted of any such offence a pardon, either free or subject to lawful conditions, or any respite, either indefinite or for such period as the Governor may think fit, of the execution of any sentence passed on such offender, and may remit the whole or any part of such sentence or of any penalties or forfeitures otherwise due to Her Majesty.

Official Stamp

13. There shall be an Official Stamp for Tonga. The Governor shall keep and use the Official Stamp for stamping all such documents as may by law require to be stamped therewith.

Application of certain enactments

14. The enactments described in the First Schedule to the Foreign Jurisdiction Act, 1890(**a**), shall apply 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 following, that is to say—

(i) The Governor is hereby substituted for the Governor of a Colony or British possession, the Supreme Court is hereby substituted for a Superior Court or Supreme Court in a Colony, and 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 is hereby substituted for a Magistrate or Justice of the Peace of a Colony or British possession.

(ii) For the portions of the Merchant Shipping Acts, 1854(**b**) and 1867(**c**) referred to in the said Schedule there shall be substituted Part XIII of the Merchant Shipping Act, 1894(**d**).

(iii) In section fifty-one of the Conveyancing (Scotland) Act, 1874(**e**), and any enactment for the time being in force amending the same, the Supreme Court is substituted for a Court of Probate in a Colony.

(iv) With respect to the Fugitive Offenders Act, 1881(**f**)—

(*a*) so much of sections 4 and 5 of the said 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

(a) 53 & 54 Vict. c. 37.
(b) 17 & 18 Vict. c. 104.
(c) 30 & 31 Vict. c. 124.
(d) 57 & 58 Vict. c. 60.
(e) 37 & 38 Vict. c. 94.
(f) 44 & 45 Vict. c. 69.

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;

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

(*c*) the Governor 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;

(*d*) for the purposes of Part II of the said Act Tonga and Fiji shall be deemed to be one group of British possessions:

Provided that nothing in this section contained shall be construed to extend to Tonga the enactments mentioned in the Schedule to the Foreign Jurisdiction Act, 1913(**a**), or any of them.

Application of the Colonial Prisoners Removal Act, 1884

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

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

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

16. The Pacific (Fugitive Criminals Surrender) Order in Council, 1914(**c**), as amended by the Pacific (Fugitive Criminals Surrender) (Amendment) Order in Council, 1933(**d**), shall continue to apply to Tonga, and, in relation to such application, shall be amended as follows:—

(*a*) In Article 2—

(i) the definitions of the terms "the Principal Order", "High Commissioner" and "Pacific Protectorate" are deleted;

(ii) the definitions of the terms "magistrate" and "Gazette" are replaced by the following definitions—

"the term 'magistrate' means a judge or magistrate of a Court constituted in accordance with the provisions of section 7 of the Tonga Order in Council, 1952, and includes any other judicial officer empowered by the Governor of Fiji to exercise either generally or in any particular case the powers conferred upon a magistrate by this Order";

(a) 3 & 4 Geo. 5. c. 16. (b) 47 & 48 Vict. c. 31.
(c) S.R. & O. 1914/152; Rev. VIII, p. 699; 1914 I, p. 640.
(d) S.R. & O. 1933/43; Rev. VIII, p. 699; 1933, p. 840.

" the term ' Gazette ' means the Fiji Royal Gazette " ;

(iii) the words " High Commissioner " where they appear in the definition of a " diplomatic representative of a foreign state " are replaced by the words " Governor of Fiji " ;

(*b*) References to " a Pacific Protectorate ", " any Pacific Protectorate " or " the limits of the Principal Order " wherever they appear in the Order and Schedules thereto, shall be read as references to Tonga ;

(*c*) In paragraph (1) of Article 10 all the words following the words " Supreme Court of Fiji " are deleted ;

(*d*) References to the High Commissioner or High Commissioner for the Western Pacific wherever they appear in the Order and Schedules thereto, other than in Article 2 thereof, shall be read as references to the Governor of Fiji ;

(*e*) In Article 20 the words " by Proclamation under his hand and the seal of the Western Pacific High Commission " are deleted and replaced by the words " by notice in the Gazette ".

Reservation of powers

17.—(1) Nothing in this Order shall affect the powers of Her Majesty in Council to make laws exercising, or providing for the exercise of, such powers and jurisdiction as Her Majesty now has, or may from time to time have, in relation to Tonga.

(2) Her Majesty hereby reserves to Herself, Her Heirs and Successors, power, with the advice of Her or Their Privy Council, to revoke, add to or amend this Order.

F. J. Fernau.

EXPLANATORY NOTE

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

The above Order in Council revokes the application of the Pacific Order in Council, 1893, as amended, to Tonga, subject to certain transitional provisions preserving the jurisdiction of the High Commissioner's Court under that Order in Council. The above Order in Council also empowers the Governor of Fiji to exercise all the powers and jurisdiction which Her Majesty has, or may have, in relation to Tonga, and to make Regulations for that purpose. Jurisdiction is conferred on the Supreme Court of Fiji and in addition the Governor may, by Regulation, establish courts in Tonga. Certain Acts of Parliament are applied to Tonga as if it were a British Colony or possession.