STATUTORY INSTRUMENTS

1964 No. 1652

AFRICA

The Zambia Independence Order 1964

Made - - - - 15th October 1964

Coming into Operation Immediately before 24th October 1964

* *To be laid before Parliament*

At the Court at Buckingham Palace, the 15th day of October 1964

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf conferred by the Foreign Jurisdiction Act 1890(a) and the Zambia Independence Act 1964(b) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, commencement and construction.

1.—(1) This Order may be cited as the Zambia Independence Order 1964.

(2) This Order shall come into operation immediately before 24th October 1964:

Provided that the Governor of Northern Rhodesia acting in accordance with the advice of the Prime Minister may at any time after 15th October 1964 exercise any of the powers conferred upon the President by section 4(3)(*a*) of this Order or section 82 of the Constitution of Zambia established by this Order to such extent as may, in his opinion, be necessary or expedient to enable that Constitution to function as from 24th October 1964.

(3) Save where the context otherwise requires, expressions used in sections 1 to 22 (inclusive) of this Order have the same meaning as in the Constitution set out in Schedule 2 to this Order and the provisions of section 125 of that Constitution shall apply for the purposes of interpreting those sections as they apply for the purposes of interpreting that Constitution.

Revocations.

2. The Orders specified in Schedule 1 to this Order (hereinafter referred to as " the existing Orders "), excepting sections 19 and 20 of the Northern Rhodesia (Procedure in Appeals to Privy Council) Order in Council 1963(c), are revoked.

Establishment of Constitution.

3. Subject to the provisions of this Order the Constitution set out in Schedule 2 to this Order (hereinafter referred to as " the Constitution ") shall come into effect in Zambia at the commencement of this Order:

Provided that section 20(8) of the Constitution shall come into effect in Zambia on 24th October 1966 or such later date as Parliament may prescribe.

* This Instrument was laid before Parliament on 27th October 1964.

(a) 53 & 54 Vict. c. 37. (b) 1964 c. 65.

(c) S.I. 1963/2089 (1963 III, p. 4598).

Existing laws.

4.—(1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the existing Orders or the establishment of a Republic in Zambia, continue in force after the commencement of this Order as if they had been made in pursuance of this Order.

(2) The existing laws and any Act of Parliament of the United Kingdom or Order of Her Majesty in Council (other than the Zambia Independence Act 1964 or this Order) having effect as part of the law of Zambia or any part thereof immediately before the commencement of this Order shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(3) The President may by order made at any time before 24th April 1965 make such amendments to—

(*a*) the existing laws; or

(*b*) any Act of Parliament of the United Kingdom or Order of Her Majesty in Council (other than the Zambia Independence Act 1964 or this Order) having effect as part of the law of Zambia or any part thereof immediately before the commencement of this Order,

as may appear to him to be necessary or expedient for bringing those laws or that Act of Parliament or Order into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the commencement of this Order, by or under the existing Orders, that prescription or provision shall, as from the commencement of this Order, have effect as if it had been made under the Constitution by Parliament or, as the case may be, by the other authority or person.

(5) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(6) For the purposes of this section, the expression "the existing laws" means all Ordinances, laws or statutory instruments having effect as part of the law of Northern Rhodesia or any part thereof immediately before the commencement of this Order (including any Ordinance, law or statutory instrument made before the commencement of this Order and coming into operation on or after the commencement of this Order) which were made or had effect as if they were made in pursuance of the existing Orders or were continued in force by the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963(a).

Existing offices.

5.—(1) Where any office has been established by or under the existing Orders and the Constitution establishes a similar or an equivalent office, any person who immediately before the commencement of this Order holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed to have been appointed or elected as from the commencement of

(a) S.I. 1963/2085 (1963 III, p. 4477).

this Order to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken the oath of allegiance and any other necessary oath under the Constitution:

Provided that any person who, under the existing Orders or under any existing law, would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age.

(2) Where any office of Minister (other than the office of Prime Minister) or of Parliamentary Secretary is established under the existing Orders immediately before the commencement of this Order an equivalent office shall be deemed to have been established, from the commencement of this Order, under the Constitution, and any person holding that office immediately before the commencement of this Order shall be deemed to have been appointed, immediately after the assumption of office by the first President of the Republic of Zambia, to hold the equivalent office in accordance with the provisions of the Constitution.

(3) The President may, at any time after the commencement of this Order, require any person who continues in office by virtue of the provisions of this section to take an oath of allegiance and any oath for the due execution of his office that is prescribed by or under an Act of Parliament.

(4) The provisions of this section shall be without prejudice to the provisions of section 9 or 10 of this Order.

(5) In this section "existing law" means such a law as is referred to in section 4(6) of this Order.

Citizenship.

6.—(1) Any person who, at the commencement of this Order, is entitled to be registered as a citizen of Zambia under section 4 or 8 of the Constitution shall, until he becomes a citizen of Zambia or until 24th October 1966 (whichever is the earlier) and subject to the provisions of subsection (3) of this section, have the status of a citizen of Zambia.

(2) Any person who has the status of a citizen of Zambia by virtue of the provisions of this section shall be regarded as such a citizen for the purposes of the provisions of the Constitution (other than Chapter II or section 66(1)) and the provisions of any other law for the time being in force in Zambia (other than a law made or having effect as if made in pursuance of section 11 of the Constitution).

(3) Where provision is made by any law for the time being in force for depriving any person of citizenship of Zambia those provisions shall apply to the status conferred by this section and any person may be deprived of that status under those provisions accordingly.

Declaration of emergency.

7. If, immediately before the commencement of this Order, a Proclamation by the Governor of Northern Rhodesia under section 4 of the Preservation of Public Security Ordinance(a) is in force, then, there shall be deemed to be in force, from the commencement of this Order, a declaration under section 29(1)(*b*) of the Constitution that has been approved by the National Assembly at the commencement of this Order, and that declaration shall, unless it is sooner revoked or unless it is extended by the National Assembly in accordance with section 29 of the Constitution, continue in force until 24th April 1965.

(a) Laws of Northern Rhodesia c. 265.

First President.

8.—(1) If at the commencement of this Order the person named in section 32(1) of the Constitution is not the President designate, the first President of the Republic of Zambia shall be the person who is then the President designate and if, at the commencement of this Order, there is no person who is President designate the office of President shall be deemed to have become vacant at the commencement of this Order and the provisions of section 37 of the Constitution shall apply accordingly.

(2) The first President shall, as soon as practicable after the commencement of this Order, take the oaths prescribed for the purposes of section 39 of the Constitution.

(3) In this section references to the President designate are references to the person elected as such in pursuance of the Zambia (Election of First President) Order 1964(a).

Constituencies and Elections.

9.—(1) In this section "the interim period" means the period beginning from the commencement of this Order and ending on the day upon which Parliament is first dissolved after the commencement of this Order or, if that dissolution occurs before 10th March 1969 and the President by order made on the day of that dissolution so prescribes, ending on 10th March 1969.

(2) Notwithstanding anything in section 59, 61, 66 or 68 of the Constitution the following provisions shall have effect during the interim period—

(*a*) the whole of Zambia shall, for the purpose of the election of the elected members of the National Assembly,—

(i) be divided into sixty-five main roll constituencies; and

(ii) be divided into ten reserved constituencies;

(*b*) the boundaries of the main roll constituencies and of the reserved constituencies shall be the boundaries of the corresponding main roll constituencies and reserved constituencies established by the existing Orders, as delimited immediately before the commencement of this Order;

(*c*) each of the constituencies into which Zambia is divided by paragraph (*a*) of this subsection shall return one member to the National Assembly, who shall be elected in such manner as may be prescribed by or under any law—

(i) in the case of a main roll constituency, by the voters registered in that constituency as main roll voters; and

(ii) in the case of a reserved constituency, by the voters registered in that constituency as reserved roll voters;

(*d*) every person who immediately before the commencement of this Order was registered as a reserved roll voter under the existing Orders shall be deemed to possess the qualifications specified in section 66(1) of the Constitution;

(*e*) a person registering as a voter for the purpose of elections to the National Assembly under any law shall—

(i) if he is an African, be registered as a main roll voter;

(ii) if he is a European, be registered as a reserved roll voter;

(iii) if he is neither an African nor a European, declare whether he wishes to be registered as a main roll voter or a reserved

(a) S.I. 1964/1283 (1964 II, p. 2959).

roll voter and he shall be registered accordingly as a main roll voter or a reserved roll voter, as the case may be.

(3) An Electoral Commission may be established at any time during the interim period in accordance with section 67 of the Constitution and any such Commission may prescribe the boundaries of the constituencies in accordance with section 68 of the Constitution and as if subsection (2) of this section were not in force, and any boundaries so prescribed shall come into effect on the day upon which the interim period expires.

(4) Registers of voters for the purposes of elections to the National Assembly may be prepared during the interim period as if subsection (2) of this section were not in force, but those registers shall not have effect until after the expiration of the interim period.

(5) (*a*) Every person who, immediately before the commencement of this Order, is registered as a main roll voter under the existing Orders shall be deemed to possess the qualifications specified in section 66(1) of the Constitution.

(*b*) The provisions of this subsection shall cease to have effect on such day as the President may by order prescribe.

Members of National Assembly.

10.—(1) Any person who, by virtue of the provisions of section 5 of this Order, is, at the commencement of this Order, a member of the National Assembly—

(*a*) shall be deemed, as from the commencement of this Order, to have been elected to represent the constituency established by section 9 of this Order that corresponds to the constituency in which he was elected under the existing Orders ;

(*b*) shall, if he does not become a citizen of Zambia on 24th October 1964, not be required until 24th October 1966 to vacate his seat in the Assembly on the grounds that he is not a citizen of Zambia, but he shall vacate his seat on that date if he is not then such a citizen.

(2) Until Parliament otherwise provides in pursuance of section 62(5) of the Constitution and save as maybe otherwise provided by any existing law (as defined in section 4(6) of this Order), a person shall be disqualified for election as a member of the National Assembly if he holds or is acting in any public office or he is a member of the armed forces of Zambia.

Dissolution of Parliament.

11. Parliament unless sooner dissolved shall stand dissolved on 10th March 1969.

Procedure of National Assembly.

12. The rules and orders of the Legislative Assembly established by the existing Orders, as in force immediately before the commencement of this Order, shall, until it is otherwise provided in pursuance of section 81 of the Constitution, be the rules of procedure of the National Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions, as may be necessary to bring those rules into conformity with the Constitution.

Emergency Powers Orders in Council 1939 to 1964.

13. The Emergency Powers Orders in Council 1939(**a**) to 1964(**b**) shall cease to have effect as part of the law of Zambia.

(**a**) See S.I. 1952 I, at p. 621.
(**b**) S.I. 1956/731, 1963/88, 1633, 1964/267, 1199 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084; 1964 I, p. 467).

Chiefs.

14. Any person who, immediately before the commencement of this Order, was recognised by the Governor to be of Chiefly status in Barotseland or was recognised under any law as Litunga of Barotseland or as a Paramount Chief, Senior Chief, Chief or sub-Chief shall, until that recognition is withdrawn by the President, be deemed, from the commencement of this Order, to have received equivalent recognition by the President.

Appeals in respect of certain decisions affecting pensions and like benefits.

15.—(1) The following provisions of this section shall have effect for the purpose of enabling any officer to whom this section applies or his personal representatives to appeal against a decision to which this section applies, that is to say, a decision within any of the following classes:—

(*a*) a decision of the appropriate Commission to give such concurrence as is required by section 121 of the Constitution in relation to the refusal, withholding, reduction in amount or suspension of any benefits in respect of such an officer's service as a public officer;

(*b*) a decision by any authority to remove such an officer from office if the consequence of the removal is that any benefits cannot be granted in respect of the officer's service as a public officer;

(*c*) a decision by any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is to reduce the amount of any benefits that may be granted in respect of the officer's service as a public officer.

(2) Where any decision such as is referred to in subsection (1) of this section is taken by any authority, the authority shall cause to be delivered to the officer concerned, or his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made to an authority within the time stated in such a notice as is mentioned in subsection (2) of this section for a case to be referred to an Appeals Board, the authority shall notify the President in writing of that application and the President shall appoint an Appeals Board for that purpose consisting of—

(*a*) one member selected by the President;

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

(*c*) one member selected by the two other members jointly (or, in default of agreement between those members, by the Chief Justice) who shall be the Chairman of the Board.

(4) Such an Appeals Board shall inquire into the facts of the case that is referred to it, and for that purpose the Board—

(*a*) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request;

(*b*) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and

(*c*) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider

any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When such an Appeals Board has completed its consideration of the case, then—

(*a*) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (*a*) of subsection (1) of this section, the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice;

(*b*) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (*b*) or (*c*) of subsection (1) of this section, the Board shall not have power to advise the authority responsible for making the decision to affirm, reverse or modify the decision but the Board may advise the authority responsible for granting the benefits in question—

(i) where the officer has been removed from office, to grant all or part of the benefits for which the officer concerned would have been eligible under any law if he had retired voluntarily at the date of the dismissal; or

(ii) where some other disciplinary action has been taken in relation to the officer, that on the grant of any benefits under any law in respect of the officer's service such benefits shall be increased by such amount, or shall be calculated in such manner, as the Board may specify in order to offset all or any part of the reduction in the amount of such benefits that, in the opinion of the Board, would or might otherwise be a consequence of the action,

and that authority shall act in accordance with that advice and the provisions of that law shall have effect accordingly.

(6) In this section—

"the appropriate Commission" has the meaning assigned to it in section 121 of the Constitution;

"pensions benefits" has the meaning assigned to it in section 120 of the Constitution.

(7) This section applies to any officer who is the holder of a pensionable public office and—

(*a*) is designated under the Overseas Service Aid Scheme;

(*b*) is, immediately before the commencement of this Order, a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary;

(*c*) whose conditions of service include an entitlement to free overseas passages from Zambia for the purpose of leave of absence upon the completion of a tour of duty; or

(*d*) is not a citizen of Zambia.

Compulsory retirement to facilitate appointment of local candidates.

16.—(1) If the President is satisfied that there are more local candidates qualified for appointment to, or promotion in, any branch of the public service mentioned in section 115(2) of the Constitution than

there are vacancies in that branch which could appropriately be filled by such local candidates, he may select officers in that branch to whom this subsection applies and whose retirement would cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and, by notice in writing, call upon the officers so selected to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) If the President so requests, the Judicial Service Commission or Public Service Commission shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in any branch of the service for which the Commission is responsible than there are vacancies in that branch that could appropriately be filled by such local candidates; and the Commission, if satisfied that such is the case, shall, if so requested by the the President, select officers in that branch to whom this subsection applies and whose retirement would in the opinion of the Commission cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the President of the number of officers so selected; and if the President specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), the Commission shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(3) Any notice given under subsection (1) or (2) of this section requiring any officer to retire from the public service shall—

(*a*) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify the date upon which he shall so retire which shall be not earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, when it would otherwise expire; and

(*b*) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives the notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that, with the consent of the officer, the notice may specify an earlier date or, as the case may be, a shorter period.

(4) An officer to whom this section applies shall not be compulsorily retired from the public service for the purpose of facilitating the appointment of local candidates except in accordance with the provisions of this section.

(5) This section applies to any officer who holds a pensionable public office and—

(*a*) is designated under the Overseas Service Aid Scheme;

(*b*) is, immediately before the commencement of this Order, a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary;

(*c*) whose conditions of service include an entitlement to free passages from Zambia for the purpose of leave of absence upon the completion of a tour of duty; or

(*d*) is an overseas officer who, after the commencement of this Order, is appointed to any public office (otherwise than on promotion or transfer from another public office) and who is notified at the time of his appointment that this section will apply to him.

(6) In this section "overseas officer" means an officer in the public service who is, either individually or as a member of a class, declared by the appropriate Commission to be an overseas officer, and "the appropriate Commission" means—

(*a*) in relation to an officer who can be removed from his office by the Judicial Service Commission, that Commission; and

(*b*) in any other case, the Public Service Commission.

Legal proceedings.

17.—(1) All proceedings that, immediately before the commencement of this Order, are pending before any court established by or under the existing Orders may be continued and concluded after the commencement of this Order before the corresponding court established by or under the Constitution.

(2) Any decision given before the commencement of this Order by any such court as aforesaid shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the corresponding court established by or under the Constitution.

Prerogatives and privileges of Crown.

18. Where under any law in force in Northern Rhodesia immediately before the commencement of this Order any prerogative or privileges are vested in Her Majesty those prerogatives or privileges shall, from the commencement of this Order, vest in the President.

Property and assets.

19.—(1) Subject to the provisions of this section, any property and assets which immediately before the commencement of this Order are vested in Her Majesty or in the Governor of Northern Rhodesia, for the purposes of the Government of Northern Rhodesia, shall, from the commencement of this Order, vest in the President on behalf of the Government of Zambia.

(2) Any property which, immediately before the commencement of this Order, is liable to escheat or be forfeited to Her Majesty for the purposes of the Government of Northern Rhodesia, shall, from the commencement of this Order, be liable to escheat or be forfeited to the President on behalf of the Government of Zambia.

(3) Where, immediately before the commencement of this Order, any person holds any property or assets in trust for Her Majesty or for the Governor of Northern Rhodesia for the purposes of the Government of Northern Rhodesia, that person shall, from the commencement of this Order, hold such property or assets on the like trust for the President.

(4) Nothing in subsection (1) or (3) of this section shall apply in relation to any property or assets which, immediately before the commencement of this Order, are vested in Her Majesty, the Secretary of State or the Governor of Northern Rhodesia by virtue of the

Northern Rhodesia (Crown Lands and Native Reserves) Orders in Council 1928 to 1963(a) or the Northern Rhodesia (Native Trust Land) Orders in Council 1947 to 1963(b).

Rights, liabilities and obligations.

20.—(1) All rights, liabilities and obligations of—

(*a*) Her Majesty in respect of the Government of Northern Rhodesia; and

(*b*) the Governor of Northern Rhodesia or the holder of any other office under the Crown in respect of the Government of Northern Rhodesia on behalf of that Government,

shall, from the commencement of this Order, be rights, liabilities and obligations of the President on behalf of the Government of Zambia and, subject to the provisions of any law, shall be enforceable by or against the President accordingly.

(2) In this section, rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise (other than any rights referred to in subsections (1), (2), (3) and (4) of section 19 of this Order, any rights, liabilities or obligations of Her Majesty in respect of the Government of Northern Rhodesia arising under any treaty, convention or agreement with another country or with any international organisation, and any rights or obligations which cease to have effect by virtue of section 8 of the Zambia Independence Act 1964).

Remuneration of certain officers.

21. Until other provision is made in that behalf by Parliament in pursuance of section 111 of the Constitution and subject to the other provisions of that section, there shall be paid to the holders of the offices to which that section applies the salaries payable to the holders of the corresponding offices immediately before the commencement of this Order.

Alteration of this order.

22. Parliament may alter any of the provisions of this Order in the same manner as it may alter any of the provisions of the Zambia Independence Act 1964 which form part of the law of Zambia.

W. G. Agnew.

Section 2.

SCHEDULE 1 TO THE ORDER

ORDERS REVOKED BY THIS ORDER

The Northern Rhodesia (Barotseland) Order in Council 1953(c)

The Northern Rhodesia (Barotseland) (Amendment) Order in Council 1963(d)

The Northern Rhodesia (Constitution) Order in Council 1963(e)

The Northern Rhodesia (Procedure in Appeals to Privy Council) Order in Council 1963(f) (except ss. 19/20)

(a) S.R. & O. 1928/246, 1936/1380 (Rev. VIII, p. 173: 1928, p. 601; 1936 I, p. 936); 1929/103, 651, 1931/167, 849, 1933/227, 488, 1937/760, 1943/76, 1947/194 (Rev. VIII, p. 182: 1929, pp. 457, 467; 1931, pp. 453, 458; 1933, pp. 824, 828; 1937, p. 809; 1943 I, p. 295; 1947 I, p. 778); 1929/1002, 1938/181 (Rev. VIII, p. 193: 1929, p. 468; 1938 I, p. 1309); 1947/2214 (Rev. VIII, p. 201: 1947 I, p. 779): S.I. 1950/1966, 1951/1168, 1955/1953, 1956/1892, 1960/2209, 1961/1503, 1962/403, 633, 1335, 1873, 1963/1045, 1923, 2090 (1950 II, p. 95; 1951 II, p. 96; 1955 II, p. 2211; 1956 II, p. 1990; 1960 III, p. 2906; 1961 II, p. 3057; 1962 I, pp. 370, 642; II, pp. 1442, 2193; 1963 II, p. 1786; III, pp. 3775, 4604).

(b) S.R. & O. 1947/2214 (Rev. VIII, p. 201: 1947 I, p. 779); S.I. 1954/1142, 1374, 1959/2204, 1961/335, 995, 1962/404, 634, 1336, 1963/1050, 1328, 1924, 2091 (1954 II, pp. 1937, 1938; 1959 II, p. 2340; 1961 I, p. 529; II, p. 1920; 1962 I, pp. 372, 644; II, p. 1444; 1963 II, p. 1809, 2309; III, pp. 3777, 4606).

(c) S.I. 1953/739 (1953 II, p. 1512). (d) S.I. 1963/174 (1963 I, p. 162).

(e) S.I. 1963/2088 (1963 III, p. 4532). (f) S.I. 1963/2089 (1963 III, p. 4598).

The Northern Rhodesia (Constitution) (Amendment) Order 1964(a)

The Northern Rhodesia (Constitution) (Amendment No. 2) Order 1964(b)

The Zambia (Election of First President) Order 1964(c)

Section 3.

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(a) S.I. 1964/919 (1964 II, p. 2046). (b) S.I. 1964/1191 (1964 II, p. 2768).
(c) S.I. 1964/1283 (1964 II, p. 2959).

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3.—(1) Every person who, having been born in the former Protectorate of Northern Rhodesia, is on 23rd October 1964, a British protected person shall become a citizen of Zambia on 24th October 1964.

(2) Every person who, having been born outside the former Protectorate of Northern Rhodesia, is on 23rd October 1964 a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Zambia in accordance with the provisions of subsection (1) of this section, become a citizen of Zambia on 24th October 1964.

Persons entitled to be registered as citizens by virtue of connection with Northern Rhodesia.

4.—(1) Subject to the provisions of this section, any woman who, on 23rd October 1964, is or has been married to a person—

(*a*) who becomes a citizen of Zambia by virtue of section 3 of this Constitution; or

(*b*) who, having died before 24th October 1964 would, but for his death, have become a citizen of Zambia by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

(2) Subject to the provisions of this section, any person who, on 23rd October 1964, is a citizen of the United Kingdom and Colonies, having become such a citizen by virtue of his having been naturalised or registered in the former Protectorate of Northern Rhodesia under the British Nationality Act 1948 (a), shall be entitled, upon making application before such date and in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia:

Provided that any person who is under the age of twenty-one years (other than a woman who is or has been married) shall not be competent to make an application for registration under this subsection, but an application may be made on behalf of that person by his parent or guardian.

(3) Subject to the provisions of this section, any woman who—

(*a*) is on 23rd October 1964 married to a man who after that date becomes a citizen of Zambia; or

(a) 11 & 12 Geo. 6. c. 56.

(*b*) is on 23rd October 1964 married to a man who becomes entitled to be registered as a citizen of Zambia under subsection (2) of this section, but whose marriage is terminated after that date by death or dissolution and before that person exercises his right to be so registered,

shall be entitled, upon making application before such date and in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

(4) Subject to the provisions of this section, any woman who on 23rd October 1964 has been married to a person who becomes or would, but for his death, have become entitled to be registered as a citizen of Zambia under subsection (2) of this section, but whose marriage has been terminated by death or dissolution before 24th October 1964, shall be entitled, upon making application before such date and in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

(5) An application for registration as a citizen under this section shall not be made by or on behalf of any person who, under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind.

Persons born in Zambia after 23rd October 1964.

5. Every person born in Zambia after 23rd October 1964 shall become a citizen of Zambia at the date of his birth:

Provided that a person shall not become a citizen of Zambia by virtue of this section if at the time of his birth—

(*a*) neither of his parents is a citizen of Zambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Zambia; or

(*b*) his father is a citizen of a country with which Zambia is at war and the birth occurs in a place then under occupation by that country.

Persons born outside Zambia after 23rd October 1964.

6. A person born outside Zambia after 23rd October 1964 shall become a citizen of Zambia at the date of his birth if at the date of his birth his father is a citizen of Zambia otherwise than by virtue of this section or section 3(2) of this Constitution.

Marriage to Zambia citizen after 23rd October 1964.

7. Any woman who is or has been married to a citizen of Zambia (the marriage having occurred after 23rd October 1964) shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

Persons entitled to be registered as Zambia citizens by virtue of connection with Zambia.

8.—(1) Subject to the provisions of this section, any person who—

(*a*) has attained the age of twenty-one years or is a woman who is or has been married;

(*b*) is a Commonwealth citizen or a citizen of the Republic of Ireland or a citizen of any country in Africa to which this subsection applies; and

(*c*) has been ordinarily resident in Zambia for the prescribed period,

shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

(2) Subject to the provisions of this section, any person who has attained the age of twenty-one years or is a woman who is or has been married shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia if, at the date of his application, one of his parents is a citizen of Zambia.

(3) An application for registration as a citizen under this section shall not be made by or on behalf of any person who, under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind.

(4) The countries in Africa to which subsection (1) of this section applies (other than countries to which section 9 of this Constitution applies) are any countries which are for the time being declared by the Minister, by notice published in the Gazette, to be countries which permit citizens of Zambia to become citizens of those countries by registration.

(5) Any period during which a person was resident in the former Protectorate of Northern Rhodesia may, if that period was continuous until the commencement of this Order, be taken into account in determining whether that person has been resident in Zambia for the prescribed period.

(6) In this section "the prescribed period" in relation to any person, means the period of four years immediately preceding that person's application for registration.

Commonwealth citizens.

9.—(1) Every person who under this Constitution or any Act of Parliament is a citizen of Zambia or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948(a), or who continues to be a British subject under section 2 of that Act, shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and colonies, any country that on 23rd October 1964 is specified in section 1(3) of the British Nationality Act 1948 and any other country that may be prescribed by Parliament.

Reciprocal privileges for citizens of other countries.

10.—(1) A citizen of any country to which section 9 of this Constitution applies and a citizen of any other country which the Minister may for the time being specify by notice published in the Gazette shall enjoy the same rights and privileges (being rights and privileges that, under this Constitution or any other law in force in Zambia, are enjoyed by citizens of Zambia other than any rights and privileges under section 61 or 66(1) of this Constitution) as a citizen of Zambia enjoys under the Constitution of the country concerned or under any other law in force in that country.

(2) In any proceedings to determine whether a citizen of any country other than Zambia should enjoy any right or privilege in Zambia by virtue of subsection (1) of this section, a certificate signed by the

(a) 11 & 12 Geo. 6. c. 56.

Minister shall be prima facie evidence on the question whether a citizen of Zambia enjoys that right or privilege under the Constitution of that other country or under any other law in force in that other country.

Powers of Parliament.

11.—(1) Parliament may make provision for the acquisition of citizenship of Zambia by persons who are not eligible or who are no longer eligible to become citizens of Zambia under the provisions of this Chapter.

(2) Parliament may make provision for depriving any person of his citizenship of Zambia :

Provided that a person who is a citizen by virtue of section 3(1), 5 or 6 of this Constitution shall not be deprived of his citizenship except upon the ground that he is a citizen of another country.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Zambia.

(4) Parliament may provide that any period during which a person—

(*a*) has been detained in execution of a sentence of imprisonment imposed by any court in Zambia or in the former Protectorate of Northern Rhodesia ;

(*b*) has been a patient in a hospital or other institution for the care or treatment of persons of unsound mind ; or

(*c*) has the right to reside in Zambia or in the former Protectorate of Northern Rhodesia by virtue only of a temporary permit issued under the authority of any law relating to immigration,

shall not be taken into account in computing the prescribed period, for the purposes of section 8 of this Constitution, in relation to that person.

Interpretation.

12.—(1) In this Chapter—

" the Minister " means the Minister who is for the time being responsible for matters relating to citizenship of Zambia ;

" British protected person " means a person who is a British protected person for the purposes of the British Nationality Act 1948.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death ; and where that death occurred before 23rd October 1964 and the birth occurred after 24th October 1964 the national status that the father would have had if he had died on 24th October 1964 shall be deemed to be his national status at the time of his death.

CHAPTER III

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

13. Whereas every person in Zambia is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but

subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

14.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection of right to personal liberty.

15.—(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say—

(*a*) in execution of the sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court of record punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

(*f*) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Protection from slavery and forced labour.

16.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(*d*) any labour required during any period when the Republic is at war or a declaration under section 29 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment.

17.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the former Protectorate of Northern Rhodesia immediately before the coming into operation of this Constitution.

Protection from deprivation of property.

18.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary or expedient—

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community; and

(*b*) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Zambia.

(3) Nothing contained in or done under the authority of any law

shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that the law in question authorises—

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(*b*) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, rate or due;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law in force in Zambia;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

Protection for privacy of home and other property.

19.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(*c*) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(*d*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions to secure protection of law.

20.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings ; or

(*b*) may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) subsection (2)(*a*) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts ;

(*b*) subsection (2)(*d*) of this section to the extent that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under African customary law (being proceedings against any person who, under that law, is subject to that law) ;

(*c*) subsection (2)(*e*) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds ;

(*d*) subsection (2) of this section to the extent that the law provides that—

(i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is reasonable so to do, so orders ; and

(ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge ;

(*e*) subsection (2) of this section to the extent that the law provides that the trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court ;

(*f*) subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined

force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2)(*d*) and (*e*) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In its application to a body corporate subsection (2) of this section shall have effect as if the words " in person or " were omitted from paragraphs (*d*) and (*e*).

(15) In this section " criminal offence " means a criminal offence under the law in force in Zambia.

Protection of freedom of conscience.

21.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression.

22.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and

information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ; or

(*b*) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television ; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

23.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons ;

(*c*) that imposes restrictions upon public officers ; or

(*d*) for the registration of trades unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register (including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of movement.

24.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Zambia, the right to reside in any part of Zambia, the right to enter Zambia and immunity from expulsion from Zambia.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society;

(*b*) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;

(*c*) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or

(*d*) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Zambia, appointed by the Chief Justice:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Protection from discrimination on the grounds of race, etc.

25.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression " discriminatory " means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) for the appropriation of the general revenues of the Republic;

(*b*) with respect to persons who are not citizens of Zambia ;

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law ;

(*d*) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons ; or

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 19, 21, 22, 23 and 24 of this Constitution, being such a restriction as is authorised by section 19(2), 21(5), 22(2), 23(2) or 24(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section—

(*a*) if that law were in force immediately before the coming into operation of this Constitution and has continued in force at all times since the coming into operation of this Constitution ; or

(*b*) to the extent that the law repeals and re-enacts any provision which has been contained in any enactment at all times since immediately before the coming into operation of this Constitution.

Derogation from fundamental rights and freedoms.

26.—(1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 15 or 25 of this Constitution to the extent that the Act authorizes the taking, during any period when the Republic is at war or any period when a declaration under section 29 of this Constitution is in force, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period.

(2) Where a person is detained by virtue of such an authorization as is referred to in subsection (1) of this section the following provisions shall apply—

(*a*) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorized;

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person;

(*e*) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations, concerning the necessity or expediency of continuing his detention, to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2)(*d*) or (2)(*e*) of this section shall be construed as entitling a person to legal representation at the public expense.

Reference of certain matters to special tribunal.

27.—(1) Whenever—

(*a*) a request is made in accordance with subsection (2) of this section for a report on a bill or a statutory instrument; or

(*b*) the Chief Justice considers it necessary for the purpose of determining claims for legal aid in respect of proceedings under section 28 of this Constitution,

the Chief Justice shall appoint a tribunal which shall consist of two persons selected by him from amongst persons who hold or have held the office of a judge of the High Court.

(2) A request for a report on a bill or a statutory instrument may be made by not less than seven members of the National Assembly by notice in writing delivered—

(*a*) in the case of a bill, to the Speaker within three days after the final reading of the bill in the Assembly ;

(*b*) in the case of a statutory instrument, to the authority having power to make the instrument within fourteen days of the publication of the instrument in the Gazette.

(3) Where a tribunal is appointed under this section for the purposes of reporting on a bill or a statutory instrument, the tribunal shall, within the prescribed period, submit a report to the President and to the Speaker of the National Assembly stating—

(*a*) in the case of a bill, whether or not in the opinion of the tribunal any, and if so which, provisions of the bill would, if enacted, be inconsistent with this Chapter of this Constitution ;

(*b*) in the case of a statutory instrument, whether or not in the opinion of the tribunal any, and if so which, provisions of the instrument are inconsistent with this Chapter of this Constitution,

and, if the tribunal reports that any provision would be or is inconsistent with this Chapter of this Constitution, the grounds upon which the tribunal has reached that conclusion:

Provided that if the tribunal considers that the request for a report on a bill or statutory instrument is merely frivolous or vexatious, it may so report to the President without entering further upon the question whether the bill or statutory instrument would be or is inconsistent with this Chapter of this Constitution.

(4) Where a tribunal is appointed under this section for the purpose of determining claims for legal aid, the tribunal may grant to any person who satisfies them that—

(*a*) he intends to bring or is an applicant in proceedings under section 28(1) or 28(4) of this Constitution ;

(*b*) he has reasonable grounds for bringing the application ; and

(*c*) he cannot afford to pay for the cost of the application,

a certificate that the application is a proper case to be determined at the public expense:

Provided that paragraph (*c*) of this subsection shall not apply in any case where the application relates to the validity of a provision of law in respect of which a tribunal has reported that it would be or is inconsistent with this Chapter of this Constitution or where it appears to the tribunal that issues are or will be raised in the application which are of general public importance.

(5) Where a certificate is granted to any person by a tribunal in pursuance of subsection (4) of this section there shall be paid to that person out of the general revenues of the Republic such amount as the court by which the application is heard may assess as the costs reasonably incurred by that person in connection with the application ; and the sums required for making such payment shall be a charge on the general revenues of the Republic.

(6) For the purposes of subsection (5) of this section—

(*a*) the costs incurred in an application shall include the cost of obtaining the advice of a legal representative and, if necessary, the

cost of representation by a legal representative in any court in steps preliminary or incidental to the application;

(*b*) in assessing the costs reasonably incurred by a person in an application regard shall be had to costs awarded against that person or recovered by him in those proceedings.

(7) In this section "prescribed period" means—

(*a*) in relation to a bill the period commencing from the appointment of the tribunal to report upon the bill and ending thirty days thereafter or if the Speaker, on the application of the tribunal, considers that owing to the length or complexity of the bill thirty days is insufficient for consideration of the bill, ending on such later day as the Speaker may determine;

(*b*) in relation to a statutory instrument the period of forty days commencing from the publication of the instrument in the Gazette.

(8) Nothing in subsection (1), (2) or (3) of this section shall apply to a bill for the appropriation of the general revenues of the Republic or a bill containing only proposals for expressly altering this Constitution or the Order to which this Constitution is scheduled.

(9) References in this section to a statutory instrument are references to a statutory instrument made after the coming into operation of this Constitution under the authority of any Act of Parliament or any law enacted by any legislature established for the former Protectorate of Northern Rhodesia, or under the authority of any Act of the Parliament of the United Kingdom or any Order of Her Majesty in Council having effect as part of the law of Zambia.

Enforcement of protective provisions.

28.—(1) Subject to the provisions of subsection (6) of this section, if any person alleges that any of the provisions of sections 13 to 26 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section;

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 13 to 26 (inclusive) of this Constitution.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 13 to 26 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal:

Provided that no appeal shall lie from a determination of the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) No application shall be brought under subsection (1) of this section on the grounds that the provisions of sections 13 to 26 (inclusive) of this Constitution are likely to be contravened by reason of proposals contained in any bill which, at the date of the application, has not become a law.

(6) Parliament may confer upon the Court of Appeal or the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

Declarations relating to emergencies or threatened emergencies.

29.—(1) The President may, at any time, by Proclamation published in the Gazette, declare that—

(*a*) a state of public emergency exists ; or

(*b*) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.

(2) A declaration under subsection (1) of this section, if not sooner revoked, shall cease to have effect—

(*a*) in the case of a declaration made when Parliament is sitting or has been summoned to meet within five days, at the expiration of a period of five days beginning with the date of publication of the declaration ;

(*b*) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration,

unless, before the expiration of that period, it is approved by a resolution passed by the National Assembly.

(3) Subject to the provisions of subsection (4) of this section, a declaration approved by resolution of the National Assembly under subsection (2) of this section shall continue in force until the expiration of a period of six months beginning with the date of its being so approved or until such earlier date as may be specified in the resolution:

Provided that the National Assembly may, by resolution, extend its approval of the declaration for periods of not more than six months at a time.

(4) The National Assembly may by resolution at any time revoke a declaration approved by the Assembly under this section.

Interpretation and savings.

30.—(1) In this Chapter, unless the context otherwise requires—

" contravention ", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly ;

" court " means any court of law having jurisdiction in Zambia, other than a court established by a disciplinary law, and includes the Judicial Committee and in sections 14 and 16 of this Constitution a court established by a disciplinary law ;

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means—

(*a*) a naval, military or air force;

(*b*) the Zambia Police Force; or

(*c*) any other police force established by or under an Act of Parliament;

"legal representative" means a person entitled to practise in Zambia as an advocate;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In relation to any person who is a member of a disciplined force raised under the law of Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 14, 16 and 17.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER IV

THE EXECUTIVE

PART I

The President and the Vice President

The office of President.

31. There shall be a President of the Republic of Zambia who shall be the Head of State.

First President.

32.—(1) The first President shall be Kenneth David Kaunda.

(2) The first President shall be deemed to have assumed office at the coming into operation of this Constitution.

Election of President after dissolution of Parliament.

33.—(1) Whenever Parliament is dissolved an election shall be held to the office of President in such manner as is prescribed by this section and, subject thereto, by or under an Act of Parliament.

(2) A person shall be qualified for election as President if, and shall not be so qualified unless, he—

(*a*) is a citizen of Zambia;

(*b*) has attained the age of thirty years; and

(*c*) is qualified as a voter for the purposes of elections to the National Assembly.

(3) Nominations in the election of a President shall be delivered to the returning officer on such day and at such time as may be prescribed by or under an Act of Parliament; the nomination of a candidate in an election of a President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters for the purposes of elections to the National Assembly.

(4) Where, at the expiration of the time for the delivery of nominations, only one qualified candidate is validly nominated in an election of a President the returning officer shall declare him to be elected and where, at the expiration of that time, more than one qualified candidate is validly nominated the following provisions shall apply—

(*a*) every person nominated as a Parliamentary candidate shall, at the time of his nomination, declare in such manner as may be prescribed by or under an Act of Parliament which of the candidates in the election of President he supports and if he does not so declare his nomination as a Parliamentary candidate shall be void;

(*b*) a candidate in an election of President may enter upon the nomination paper of any Parliamentary candidate, if so requested by the candidate, his endorsement of that person's candidature but the nomination of a Parliamentary candidate shall be valid notwithstanding that the nomination paper is not so endorsed;

(*c*) where the Parliamentary election is contested in any constituency a poll shall be taken in that constituency at which the votes shall be given by ballot and the ballot papers shall be in such form as to disclose both the names of the Parliamentary candidates and the name of the candidate for President which each of the Parliamentary candidates supports;

(*d*) the returning officer shall declare to be elected as President the candidate who receives the greatest number of valid votes cast in the Parliamentary election;

(*e*) for the purpose of determining the number of votes cast for a candidate for election as President, every valid vote cast in favour of a Parliamentary candidate shall be reckoned as a vote for the candidate for President which that Parliamentary candidate supports and in any constituency in which no poll is required to be taken the Parliamentary candidate declared elected shall be deemed to have received the valid votes of all persons registered as voters in that constituency for the purposes of elections to the National Assembly;

(*f*) where there is an equality of votes entitling more than one candidate to be declared elected under paragraph (*d*) of this subsection, one of those candidates shall be selected as President in such manner as Parliament may prescribe;

(*g*) the returning officer may declare the result of the election of President, notwithstanding that any question relating to the Parliamentary election in any constituency has not been finally determined, if he is satisfied that any candidate for President has received the votes of more than half of the number of all the persons registered in Zambia as voters for the purposes of elections to the National Assembly.

(5) Where, at the expiration of the time for the delivery of nominations in an election of a President, no qualified candidate is validly nominated a fresh election of a President shall be commenced and held in the manner provided by the foregoing provisions of this section.

(6) Where, at the expiration of the time for the delivery of nominations in the election of a President, more than one qualified candidate is validly nominated and any of those candidates dies before the commencement of the poll in the Parliamentary election, the poll in the Parliamentary election shall be countermanded, fresh nominations of

Parliamentary candidates shall take place in every constituency and a fresh election of a President shall be held in accordance with the foregoing provisions of this section.

(7) Where—

(*a*) any candidate in an election of a President dies during the period commencing with the taking of the poll in the Parliamentary election and ending when the results of the election have been ascertained and that candidate would, but for his death, have been entitled to have been declared elected as President under subsection (4) of this section by reason of the number of votes he received; or

(*b*) any person who has been declared elected as President under this section dies before he assumes the office of President,

the new National Assembly shall meet on such day (not being more than fourteen days after the result of the election is ascertained or, as the case may be, the death of the person declared elected) as the Speaker shall appoint and shall elect a person to the office of President in such manner as is prescribed by section 37(3) of this Constitution and subject thereto by Parliament.

(8) A person elected to the office of President under this section shall assume that office on the day upon which he is declared elected.

(9) In this section—

"Parliamentary candidate" means a candidate in the Parliamentary election;

"the Parliamentary election" means the general election to elect a new National Assembly following any dissolution of Parliament;

"the returning officer" means the returning officer specified in section 40 of this Constitution.

Tenure of office of President.

34. A person assuming the office of President in accordance with the provisions of this Constitution shall, unless he ceases to hold office by virtue of the provisions of section 35 or 36 of this Constitution or resigns, continue in office until the person elected at the next election of President following a dissolution of Parliament assumes office.

Removal of President on grounds of incapacity.

35.—(1) If the Cabinet resolves, upon a motion supported by the votes of a majority of all the members of the Cabinet, that the question of the mental or physical capacity of the President to discharge the functions of his office ought to be investigated and so informs the Chief Justice, the Chief Justice shall appoint a board consisting of not less than three persons selected by him from among persons who are qualified as medical practitioners under the law of Zambia or under the law of any other country in the Commonwealth, and the board shall inquire into the matter and shall make a report to the Chief Justice stating the opinion of the board whether or not the President is, by reason of any infirmity of body or mind, incapable of discharging the functions of his office.

(2) If the board reports that the President is incapable of discharging the functions of the office of President, the Chief Justice shall certify in writing accordingly and thereupon the President shall cease to hold office.

(3) Where the Cabinet resolves that the question of the mental or physical capacity of the President to discharge the functions of his office should be investigated the President shall, until another person assumes the office of President or the board appointed in pursuance of subsection (1) of this section reports that the President is not incapable of discharging the functions of his office (whichever is the earlier), cease to perform the functions of his office and those functions shall be performed by—

(*a*) the Vice President ; or

(*b*) during any period when there is no Vice President or the Vice President is absent from Zambia or is unable, by reason of mental or physical infirmity, to discharge the functions of his office, by such Minister as the Cabinet shall appoint:

Provided that any person performing the functions of the office of President under this subsection shall not exercise the powers of the President to revoke the appointment of the Vice President or to dissolve Parliament.

(4) A motion for the purposes of subsection (1) of this section may be proposed at any meeting of the Cabinet by any member thereof.

(5) For the purposes of this section, a certificate of the Chief Justice that the Vice President is, by reason of physical or mental infirmity, unable to discharge the functions of his office shall, in respect of any period for which it is in force, be conclusive and shall not be questioned in any court.

Removal of President for violation of Constitution or gross misconduct.

36.—(1) If notice in writing is given to the Speaker of the National Assembly, signed by not less than one third of all the members of the Assembly, of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct and specifying the particulars of the allegations and proposing that a tribunal be established under this section to investigate those allegations, the Speaker shall—

(*a*) if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by the Assembly within seven days of the notice ; or

(*b*) if Parliament is not then sitting (and notwithstanding that it may be prorogued), summon the Assembly to meet within twenty-one days of the notice and cause the motion to be considered at that meeting.

(2) Where a motion under this section is proposed for consideration by the National Assembly, the Assembly shall not debate the motion but the person presiding in the Assembly shall forthwith cause a vote to be taken on the motion and, if the motion is supported by the votes of not less than two-thirds of all the members of the Assembly, shall declare the motion to be passed.

(3) If a motion is declared to be passed under subsection (2) of this section—

(*a*) the Chief Justice shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held high judicial office ;

(*b*) the tribunal shall investigate the matter and shall report to the National Assembly whether they find the particulars of the allegations specified in the motion to have been substantiated ;

(*c*) the President shall have the right to appear and be represented before the tribunal during its investigation of the allegations against him.

(4) If the tribunal report to the National Assembly that the tribunal finds that the particulars of any allegation against the President specified in the motion have not been substantiated no further proceedings shall be taken under this section in respect of that allegation.

(5) If the tribunal report to the National Assembly that the tribunal finds that the particulars of any allegation specified in the motion have been substantiated the Assembly may, on a motion supported by the votes of not less than three-quarters of all the members of the Assembly, resolve that the President has been guilty of such violation of the Constitution or, as the case may be, such gross misconduct as is incompatible with his continuance in office as President and, if the Assembly so resolves, the President shall cease to hold office upon the third day following the passage of the resolution unless he sooner dissolves Parliament.

(6) No proceedings shall be taken or continued under this section at any time when Parliament is dissolved.

Vacancy in office of President.

37.—(1) If the office of President becomes vacant by reason of the death or resignation of the President or by reason of the President ceasing to hold office by virtue of section 35 or 36 of this Constitution, the Vice President shall assume the office of President.

(2) If the office of President becomes vacant as aforesaid in circumstances in which there is no Vice President—

(*a*) until a President assumes office in accordance with this section or section 33 of this Constitution the functions of the office of President shall be performed by such Minister as the Cabinet shall appoint;

(*b*) unless Parliament is dissolved and notwithstanding that it may be prorogued, the National Assembly shall meet on the seventh day after the office of President becomes vacant, or on such earlier day as may be appointed by the Speaker, and shall elect a person qualified in accordance with section 33(2) of this Constitution to the office in such manner as is prescribed by this section and, subject thereto, by Parliament;

(*c*) a person elected as President under this section shall assume the office of President on the day upon which he is declared to be elected.

(3) In an election of a President under this section—

(*a*) the names of the candidate or candidates for election shall be submitted for the approval of the National Assembly;

(*b*) the votes of the members of the Assembly shall be given by ballot in such manner as not to disclose how any particular member voted and where no candidate has received the number of votes entitling him to be declared elected at any ballot a further ballot or ballots shall be taken until a candidate is declared elected;

(*c*) the candidate who receives the votes of a majority of all the members of the Assembly in a ballot shall be declared elected:

Provided that, if after two ballots have been taken no candidate is declared elected, the candidate who, at any subsequent ballot, receives the votes of the majority of the members of the Assembly present and voting in the election shall be declared elected.

Discharge of functions of President during absence illness etc.

38.—(1) Whenever the President is absent from Zambia or considers it desirable so to do by reason of illness or any other cause he may by directions in writing, authorise the Vice President to discharge such of the functions of the office of President as he may specify and the Vice President may discharge those functions until his authority is revoked by the President.

(2) If the President is incapable by reason of physical or mental infirmity of discharging the functions of his office and the infirmity is of such a nature that the President is unable to authorise another person under this section to perform those functions—

(*a*) the Vice President; or

(*b*) during any period when there is no Vice President or the Vice President is absent from Zambia or the Vice President is, by reason of physical or mental infirmity, unable to perform the functions of his office, such Minister as the Cabinet shall appoint,

shall perform the functions of the office of President:

Provided that any person performing the functions of the office of President under this subsection shall not exercise the powers of the President to revoke the appointment of the Vice President or to dissolve Parliament.

(3) Any person performing the functions of the office of President by virtue of subsection (2) of this section shall cease to perform those functions if he is notified by the President that the President is about to resume those functions.

(4) For the purposes of this section, a certificate of the Chief Justice that—

(*a*) the President is incapable by reason of physical or mental infirmity of discharging the functions of his office and the infirmity is of such a nature that the President is unable to authorise another person under this section to perform the functions of his office; or

(*b*) the Vice President is by reason of physical or mental infirmity unable to discharge the functions of his office,

shall, in respect of any period for which it is in force, be conclusive and shall not be questioned in any court:

Provided that any such certificate as is referred to in paragraph (*a*) of this subsection shall cease to have effect if the President notifies any person under subsection (3) of this section that he is about to resume the functions of the office of President.

Oath of President.

39. A person assuming the office of President shall, before entering upon the office, take and subscribe such oaths as may be prescribed by Parliament.

Returning officer at elections of President.

40.—(1) The Chief Justice shall be the returning officer for the purposes of elections to the office of President.

(2) Any question which may arise as to whether—

(*a*) any provision of this Constitution or any law relating to the election of a President under section 33 or 37(2) of this Constitution has been complied with ; or

(*b*) any person has been validly elected as President under those sections,

shall be referred to and determined by the returning officer whose decision shall not be questioned in any court.

Vice-President.

41.—(1) There shall be a Vice-President of the Republic of Zambia who shall be appointed by the President from among the members of the National Assembly :

Provided that if occasion arises for making an appointment to the office of Vice-President while Parliament is dissolved any person who was a member of the Assembly before the dissolution may be appointed as Vice-President.

(2) The Vice-President shall continue in office until a person elected at the next election of President under section 33 or 37 of this Constitution assumes office :

Provided that the office of Vice-President shall become vacant—

(*a*) if the appointment of the holder of the office is revoked by the President ;

(*b*) if the holder of the office ceases to be a member of the National Assembly for any other reason than a dissolution of Parliament ; or

(*c*) if the holder of the office assumes the office of President in accordance with the provisions of section 37(1) of this Constitution.

(3) The Vice-President shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

(4) If the Vice President is absent from Zambia or is incapable by reason of illness or any other cause of discharging the functions of his office, the President may appoint a person, from among the members of the National Assembly, to perform the functions of the office of Vice President and any person so appointed may discharge those functions accordingly :

Provided that a person appointed under this subsection shall cease to perform the functions of the office of Vice President—

(*a*) if his appointment is revoked by the President ;

(*b*) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament ; or

(*c*) upon the assumption by any person of the office of President.

(5) Where the Vice-President is performing the functions of the office of President in accordance with section 35 or 38 of this Constitution he may appoint a person, from among the members of the National Assembly, to perform the functions of the office of Vice-President and any person so appointed may discharge those functions accordingly :

Provided that a person appointed under this subsection shall cease to perform the functions of the office of Vice-President—

(*a*) if his appointment is revoked by the Vice-President;

(*b*) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament; or

(*c*) if the Vice-President ceases to perform the functions of the office of President.

Salary and allowances of President.

42.—(1) The President shall receive such salary and allowances as may be prescribed by resolution of the National Assembly which shall be a charge on the general revenues of the Republic.

(2) The salary and allowances of the President shall not be altered to his disadvantage during his period of office.

(3) A person who has held the office of President shall receive such pension or, upon the expiration of his term of office, such gratuity as may be prescribed by resolution of the National Assembly, which shall be a charge on the general revenues of the Republic.

Protection of President in respect of legal proceedings.

43.—(1) Whilst any person holds or performs the function of the office of President no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity.

(2) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the term of any person in the office of President shall not be taken into account in calculating any period of time prescribed by that law which determines whether any such proceedings as are mentioned in subsection (1) of this section may be brought against that person.

PART 2

The Cabinet

Ministers and junior Ministers.

44.—(1) There shall be such offices of Minister of the Government (not exceeding fourteen in number) and such offices of junior Minister as may be established by Parliament or, subject to the provisions of any Act of Parliament, by the President.

(2) Appointments to the office of Minister or junior Minister shall be made by the President from among the members of the National Assembly:

Provided that if occasion arises for making an appointment to the office of a Minister or a junior Minister while Parliament is dissolved a person who was a member of the Assembly before the dissolution may be appointed as a Minister or a junior Minister.

(3) The office of a Minister or a junior Minister shall become vacant—

(*a*) if the holder of the office ceases to be a member of the National Assembly otherwise than by reason of a dissolution of Parliament;

(*b*) if the holder of the office is removed from office by the President; or

(*c*) upon the assumption by any person of the office of President.

Cabinet.

45.—(1) There shall be a Cabinet which shall consist of the Vice-President and the Ministers.

(2) There shall preside at meetings of the Cabinet—

(*a*) the President;

(*b*) in the absence of the President, the Vice-President; or

(*c*) in the absence of the President and the Vice-President, such Minister as the President may designate.

(3) The Cabinet may act notwithstanding any vacancy in its membership.

Oaths to be taken by Ministers and junior Ministers.

46. A Minister or a junior Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

Secretary to Cabinet.

47.—(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) 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 him by the President, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the President may from time to time direct.

PART 3

Executive Functions

Functions of President.

48.—(1) The executive power of the Republic shall vest in the President and, subject to the provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him.

(2) In the exercise of any function conferred upon him by this Constitution or any other law the President shall, unless it is otherwise provided, act in his own deliberate judgment and shall not be obliged to follow the advice tendered by any other person or authority.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

Command of armed forces.

49.—(1) The supreme command of the armed forces of the Republic shall vest in the President and he shall hold the office of Commander in Chief.

(2) The powers conferred on the President by subsection (1) of this section shall include—

(*a*) the power to determine the operational use of the armed forces;

(*b*) the power to appoint members of the armed forces, to make appointments on promotion to any office in the armed forces and to dismiss any member of the armed forces.

(3) The President may, by directions in writing and subject to such conditions as he may think fit, delegate to any member of the armed forces any of the powers mentioned in subsection (2) of this section.

(4) Parliament may regulate the exercise of the powers conferred by or under this section.

Functions of Vice-President.

50. The Vice-President shall be the principal assistant of the President in the discharge of his executive functions and the leader of government business in the National Assembly, and shall be responsible, under the directions of the President, for such business of the government of Zambia (including the administration of any department of Government) as the President may assign to him.

Functions of Cabinet, Ministers and junior Ministers.

51.—(1) The Cabinet shall be responsible for advising the President with respect to the policy of the Government and with respect to such other matters as may be referred to it by the President.

(2) A Minister shall be responsible, under the direction of the President, for such business of the government of Zambia (including the administration of any department of Government) as the President may assign to him.

(3) A junior Minister shall—

(*a*) assist the President or the Vice President in the discharge of such of the functions of the office of President or Vice President as the President may specify ; or

(*b*) assist such Minister in the discharge of the functions assigned to him under subsection (2) of this section as the President may specify.

Attorney-General.

52.—(1) There shall be an Attorney-General of the Republic who shall be appointed by the President and shall be the principal legal adviser to the Government.

(2) A person shall not be qualified to be appointed to the office of Attorney-General unless he is qualified to be appointed to the office of a judge of the High Court.

(3) The office of the Attorney-General shall become vacant—

(*a*) if the holder of the office is removed from office by the President ; or

(*b*) upon the assumption by any person of the office of President.

(4) In the exercise of the power to give directions to the Director of Public Prosecutions conferred by section 53(6) of this Constitution the Attorney-General shall not be subject to the direction or control of any other person or authority.

Director of Public Prosecutions.

53.—(1) There shall be a Director of Public Prosecutions of the Republic, whose office shall be a public office.

(2) 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 court (other than a court-martial) in respect of any offence alleged to have been committed by that person ;

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

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

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or by such public officers or class of public officers as may be specified by him acting in accordance with his general or special instructions:

Provided that nothing in this subsection shall preclude the representation of the Director of Public Prosecutions before any court by a legal practitioner.

(4) The powers conferred on the Director of Public Prosecutions by subsections (2)(*b*) and (*c*) of this section 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 subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) For the purposes of this section, 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 Zambia or to the Judicial Committee shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(*c*) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

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

Provided that where the exercise of any such power in any case may, in the judgment of the Director, involve general considerations of public policy the Director shall bring the case to the notice of the Attorney-General and shall, in the exercise of his powers in relation to that case, act in accordance with any directions of the Attorney-General.

Prerogative of mercy.

54. The President may—

(*a*) grant to any person convicted of any offence 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 any offence;

(*c*) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and

(*d*) remit the whole or part of any punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Government on account of any offence.

Advisory committee.

55.—(1) There shall be an advisory committee on the Prerogative of Mercy which shall consist of such persons as may be appointed by the President.

(2) The President may appoint different persons to the advisory committee for the purposes of advising him in relation to persons convicted by courts-martial and for the purposes of advising him in relation to persons convicted by other courts.

(3) A member of the advisory committee shall hold office during the pleasure of the President.

(4) Where any person has been sentenced to death for any offence the President shall cause the question of the exercise, in relation to that person, of the powers conferred by section 54 of this Constitution, to be considered at a meeting of the advisory committee.

(5) Subject to the provisions of subsection (4) of this section, the President may refer to the advisory committee any question as to the exercise of the powers conferred upon him by section 54 of this Constitution.

(6) The President, if present, shall preside at any meeting of the advisory committee.

(7) The President may determine the procedure of the advisory committee.

Constitution of offices.

56. Subject to the provisions of this Constitution and of any Act of Parliament, the powers of constituting and abolishing offices for the Republic shall vest in the President.

CHAPTER V

PARLIAMENT

PART 1

Composition

Legislative power.

57. The legislative power of the Republic shall vest in the Parliament of Zambia which shall consist of the President and a National Assembly.

Composition of National Assembly.

58.—(1) The National Assembly shall consist of—

(*a*) seventy-five elected members ;

(*b*) such nominated members as may be appointed under section 60 of this Constitution.

(2) If a person who is not a member of the National Assembly is elected to the office of Speaker of the Assembly that person shall, by virtue of holding that office, be a member of the Assembly in addition to the members referred to in subsection (1) of this section.

Elected members.

59. Subject to the provisions of this Constitution, the elected members of the National Assembly shall be elected in such manner as may be prescribed by or under an Act of Parliament.

Nominated members.

60. The President may appoint as nominated members of the National Assembly such persons, not exceeding five in number, as he considers desirable in the public interest in order to enhance the representative character of the Assembly or to obtain the service as a member of the Assembly of any person who, by reason of his special qualifications, would be of special value as such a member.

Qualifications for election to National Assembly.

61. Subject to the provisions of section 62 of this Constitution, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be qualified to be so elected unless,—

(*a*) he is a citizen of Zambia ; and

(*b*) he has attained the age of twenty-one years.

Disqualifications for election to National Assembly.

62.—(1) No person shall be qualified to be elected as a member of the National Assembly who—

(*a*) is under a declaration of allegiance to some country other than Zambia;

(*b*) is, under any law in force in Zambia, adjudged or otherwise declared to be of unsound mind;

(*c*) is under sentence of death imposed on him by any court in Zambia or the former Protectorate of Northern Rhodesia or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(*d*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Zambia.

(2) No person who holds the office of President shall be qualified for election as a member of the National Assembly.

(3) Parliament may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the National Assembly or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected as a member of the Assembly.

(4) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with elections of the members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of the Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(5) Parliament may provide that, subject to such exceptions and limitations (if any) as may be prescribed, a person shall be disqualified for membership of the National Assembly by virtue of—

(*a*) his holding or acting in any office or appointment that may be prescribed;

(*b*) his belonging to any of the armed forces of Zambia that may be prescribed; or

(*c*) his belonging to any police force.

(6) In this section the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

Speaker.

63.—(1) There shall be a Speaker of the National Assembly who shall be elected by the members of the Assembly from among persons who are members of the Assembly or who are qualified to be elected as such.

(2) The President, the Vice-President, a Minister, a junior Minister or any person holding or acting in any office that is prescribed by or under an Act of Parliament shall not be qualified to be elected as Speaker.

(3) The Speaker shall vacate his office—

(*a*) if, having been elected from among the members of the National Assembly, he ceases to be a member of the Assembly otherwise than by reason of a dissolution of the Assembly;

(*b*) if any circumstances arise that, if he were not Speaker, would disqualify him for election as such;

(*c*) when the Assembly first sits after any dissolution of Parliament; or

(*d*) if the Assembly resolves, upon a motion supported by the votes of not less than two-thirds of all the members thereof, that he should be removed from office.

(4) No business shall be transacted in the National Assembly (other than an election to the office of Speaker) at any time when the office of Speaker is vacant.

Deputy Speaker.

64.—(1) There shall be a Deputy Speaker of the National Assembly who shall be elected from among the persons who are members of the Assembly other than the Vice-President, Ministers, junior Ministers or persons holding or acting in any office that is prescribed by or under an Act of Parliament.

(2) The members of the National Assembly shall elect a person to the office of Deputy Speaker when the Assembly first sits after any dissolution of Parliament and, if the office becomes vacant otherwise than by reason of the dissolution of Parliament, at the first sitting of the Assembly after the office becomes vacant.

(3) The Deputy Speaker shall vacate his office—

(*a*) if he ceases to be a member of the National Assembly;

(*b*) if he assumes the office of President or becomes the Vice-President, a Minister, a junior Minister or a person holding or acting in any office prescribed under subsection (1) of this section;

(*c*) if he is elected as Speaker; or

(*d*) if the Assembly resolves that he should be removed from office.

Tenure of office of members of National Assembly.

65.—(1) Every elected member of the National Assembly shall vacate his seat in the Assembly upon a dissolution of Parliament.

(2) An elected member of the National Assembly shall vacate his seat in the Assembly—

(*a*) if he ceases to be a citizen of Zambia;

(*b*) if he assumes the office of President;

(*c*) if he is sentenced by a court in Zambia to death or to imprisonment (by whatever name called) for a term exceeding six months; or

(*d*) subject to the provisions of subsection (3) of this section, if any circumstances arise that, if he were not an elected member of the Assembly, would cause him to be disqualified for election as such under section 62(1)(*a*), (*b*) or (*d*) of this Constitution or under any law made in pursuance of section 62(3), 62(4) or 62(5) of this Constitution.

(3) Parliament may, in order to permit any elected member of the National Assembly who has been sentenced to death or imprisonment, adjudged or declared to be of unsound mind, adjudged or declared bankrupt or convicted or reported guilty of any offence prescribed under section 62(4) of this Constitution to appeal against the decision in accordance with any law, provide that, subject to such conditions as may be prescribed by Parliament, the decision shall not have effect for the purposes of this section until such time as may be so prescribed.

(4) A nominated member of the National Assembly shall vacate his seat in the Assembly if his appointment is revoked by the President.

(5) For the purposes of this section—

(*a*) references to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine;

(*b*) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months and if any one of such sentences exceeds that term they shall be regarded as one sentence.

The franchise.

66.—(1) Every citizen of Zambia who has attained the age of twenty-one years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered.

(2) Every person who is registered in any constituency as a voter for the purposes of elections to the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament in that behalf; and no other person may so vote.

Electoral Commission.

67.—(1) The President shall establish an Electoral Commission for the purposes of reviewing the boundaries of the constituencies into which Zambia is divided by section 68 of this Constitution—

(*a*) at such times (being not less than eight or more than ten years since the boundaries of those constituencies were last reviewed) as the President may from time to time appoint;

(*b*) whenever Parliament has made provision altering the number of seats in the National Assembly (other than the seats of the nominated members);

(*c*) whenever a census of the population has been held in pursuance of any law.

(2) The President shall establish an Electoral Commission for the purposes of supervising the registration of voters and the conduct of elections whenever Parliament is dissolved or he otherwise considers it to be necessary.

(3) An Electoral Commission shall consist of a Chairman and two other members who shall be appointed by the President.

(4) A person shall not be qualified for appointment as Chairman of an Electoral Commission unless he holds or has held high judicial office.

(5) A person shall not be qualified for appointment as a member of an Electoral Commission if he is a member of the National Assembly.

(6) If, after the appointment of an Electoral Commission and before the Commission stands dissolved, the office of Chairman or any member of the Commission falls vacant or the holder of the office becomes unable for any reason to discharge his functions as a member of the Commission, the President may appoint another person qualified for appointment to be the Chairman or, as the case may be, a member of the Commission.

(7) An Electoral Commission established under subsection (1) of this section shall stand dissolved upon the date on which the report of the Commission relating to the review of the boundaries of the constituencies is delivered to the President, and an Electoral Commission established under subsection (2) of this section shall stand dissolved on such date (not being earlier, in the case of a Commission established upon a dissolution of Parliament, than the date upon which Parliament first sits after that dissolution) as the President may determine.

(8) In the exercise of its functions under this Constitution an Electoral Commission shall not be subject to the direction or control of any other person or authority.

Constituencies and elections.

68.—(1) Zambia shall be divided into constituencies for the purposes of elections to the National Assembly so that—

(*a*) the number of such constituencies shall be equal to the number of seats in the Assembly (excluding the seats of nominated members); and

(*b*) the boundaries of such constituencies shall be such as the Electoral Commission may prescribe.

(2) Each constituency shall return one member to the National Assembly.

(3) The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable:

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features and the difference between urban and rural areas in respect of density of population.

(4) Where an Electoral Commission is established under section 67 of this Constitution for the purposes of reviewing the boundaries of the constituencies it shall review the boundaries accordingly and may, in accordance with the provisions of this section, alter the constituencies to such extent as it considers desirable:

Provided that a Commission established by reason of the holding of a census of the population may, if the Commission considers that the changes in the distribution of population reported in the census do not justify an alteration in the boundaries, so report to the President without entering upon a review of the boundaries of the constituencies.

(5) Any provision by Parliament altering the number of seats in the National Assembly (other than the seats of nominated members) shall come into effect when the alteration of the constituencies that, in accordance with the provisions of subsection (4) of this section, is consequential thereon, comes into effect; and any alteration of the constituencies shall come into effect upon the next dissolution of Parliament.

(6) In this section "the population quota" means the number obtained by dividing the number of inhabitants of Zambia by the number of constituencies into which Zambia is to be divided under this section.

(7) For the purposes of this section the number of inhabitants of Zambia shall be ascertained by reference to the latest census of the population held in pursuance of any law.

(8) During any period when an Electoral Commission is established under section 67(2) of this Constitution the registration of voters and the conduct of elections in every constituency shall be subject to the direction and supervision of the Commission.

Determination of questions as to membership of National Assembly.

69.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

(*a*) any person has been validly elected or appointed as a member of the National Assembly or the seat of any such member has become vacant;

(*b*) any person has been validly elected as Speaker of the Assembly from among persons who are not members of the Assembly or, having been so elected, has vacated the office of Speaker.

(2) Parliament may make provision with respect to—

(*a*) the persons who may apply to the High Court for the determination of any question under this section;

(*b*) the circumstances and manner in which and the conditions upon which any such application may be made; and

(*c*) the powers, practice and procedure of the High Court in relation to any such application.

(3) The determination by the High Court of any question under this section shall not be subject to appeal:

Provided that an appeal shall lie to the Court of Appeal, with the leave of that Court, from any such determination by the High Court in so far as it involves any decision as to the interpretation of this Constitution.

Clerk and staff of National Assembly.

70.—(1) There shall be a Clerk of the National Assembly and such other offices in the department of the Clerk of the Assembly as may be prescribed by resolution of the National Assembly.

(2) Power to appoint persons to hold or act in the office of Clerk of the National Assembly shall vest in the Speaker of the Assembly:

Provided that no person shall be appointed to hold the office of Clerk of the Assembly unless a proposal for the appointment of that person has been submitted to the Assembly and the Assembly has resolved that he should be appointed.

(3) Subject to the provisions of subsection (4) of this section, the Clerk of the National Assembly shall vacate his office when he attains the age of fifty-five years.

(4) The Clerk of the National Assembly may be removed from office by resolution of the Assembly for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour but shall not be otherwise removed.

(5) Power to appoint persons to hold or act in any office in the department of the Clerk of the National Assembly (other than the office of Clerk) and to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Speaker of the Assembly.

(6) (*a*) Before exercising the powers conferred by subsection (5) of this section to appoint any person to hold or to act in any office to which this subsection applies or to remove any person holding such an office from office, the Speaker of the National Assembly shall consult the Public Service Commission, and if the Speaker acts otherwise than in accordance with the recommendation of the Commission he shall, as soon as practicable thereafter, inform the Assembly that he has so acted.

(*b*) This subsection applies to any office in the department of the Clerk of the National Assembly, other than any office in respect of which the annual emoluments do not exceed such sum as may be prescribed by resolution of the Assembly.

PART 2

Legislation and Procedure in National Assembly

Exercise of legislative power of Parliament.

71.—(1) Subject to the provisions of this Constitution, the legislative power of Parliament shall be exercised by bills passed by the National Assembly and assented to by the President.

(2) No bill (other than such a bill as is mentioned in section 27(8) of this Constitution) shall be presented to the President until after the expiration of three days from the third reading of the bill by the National Assembly, and where a bill is referred to a tribunal in accordance with section 27 of this Constitution that bill shall not be presented to the President for assent until the tribunal has reported on the bill or the time for making a report has expired, whichever is the earlier.

(3) Where a bill is presented to the President for assent he shall either assent or withhold his assent.

(4) Where the President witholds his assent to a bill the bill shall be returned to the National Assembly:

Provided that if the President witholds his assent to a bill in respect of which a tribunal has reported under section 27 of this Constitution that it would, if enacted, be inconsistent with Chapter III of this Constitution, the bill shall be returned to the Assembly only if the President so directs.

(5) Where the President withholds his assent to a bill the bill shall not again be presented for assent:

Provided that if, in the case of a bill returned to the Assembly, the Assembly resolves within six months of the bill being so returned upon a motion supported by the votes of not less than two-thirds of all the members of the Assembly that the bill should again be presented for assent, the bill shall be so presented.

(6) Where a bill is again presented to the President for assent in accordance with the provisions of subsection (5) of this section the President shall assent to the bill within twenty-one days of its presentation, unless he sooner dissolves Parliament.

(7) When a bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the Gazette as a law.

(8) No law made by Parliament shall come into operation until it has been published in the Gazette, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(9) All laws made by Parliament shall be styled "Acts" and the words of enactment shall be "enacted by the Parliament of Zambia".

Alteration of Constitution.

72.—(1) Subject to the provisions of this section, Parliament may alter this Constitution or (in so far as it forms part of the law of Zambia) the Zambia Independence Act 1964.

(2) A bill for an Act of Parliament under this section shall not be passed unless—

(*a*) not less than thirty days before the first reading of the bill in the National Assembly the text of the bill is published in the Gazette; and

(*b*) the bill is supported on second and third readings by the votes of not less than two-thirds of all the members of the Assembly.

(3) In so far as it alters—

(*a*) this section;

(*b*) Chapter III or Chapter VII of this Constitution; or

(*c*) section 71(2) or 73 of this Constitution,

an Act of Parliament under this section shall not come into operation unless the provisions contained in the Act effecting that alteration have, in accordance with any law in that behalf, been submitted to a referendum in which all persons who are registered as voters for the purposes of elections to the National Assembly shall be entitled to vote and unless those provisions have been supported by the votes of a majority of all the persons entitled to vote in the referendum.

(4) In this section—

(*a*) references to this Constitution or the Zambia Independence Act 1964 include references to any law that amends or replaces any of the provisions of this Constitution or that Act; and

(*b*) references to the alteration of this Constitution, the Zambia Independence Act 1964, or of any Chapter or section of this Constitution include references to the amendment, modification or re-enactment, with or without amendment or modification, of any provision for the time being contained in this Constitution, that Act, Chapter or section, the suspension or repeal of any such provision and the making of different provision in lieu of such provision, and the addition of new provisions to this Constitution, that Act, Chapter or section.

Statutory instruments.

73.—(1) Nothing in section 57 of this Constitution shall prevent Parliament from conferring on any person or authority power to make statutory instruments.

(2) Every statutory instrument shall be published in the Gazette not later than fourteen days after it is made or, in the case of a statutory instrument which will not have the force of law unless it is approved by some person or authority other than the person or authority by which it was made, not later than fourteen days after it is so approved, and if it is not so published it shall be void from the date on which it was made.

(3) Where a tribunal appointed under section 27 of this Constitution reports to the President that any provision of a statutory instrument is inconsistent with any provision of Chapter III of this Constitution, the President may, by Order, annul that statutory instrument and it shall thereupon be void from the date on which it was made.

Restriction with regard to certain financial measures.

74. Except upon the recommendation of the President signified by the Vice-President or a Minister, the National Assembly shall not—

(*a*) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:—

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the general revenues of the Republic or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the general revenues of the Republic of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government; or

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provisions for any of those purposes.

President may address National Assembly.

75.—(1) The President may, at any time, attend and address the National Assembly.

(2) The President may send messages to the National Assembly and any such message shall be read, at the first convenient sitting of the Assembly after it is received, by the Vice-President or by a Minister designated by the President.

Oaths to be taken by Speaker and members.

76. The Speaker of the National Assembly, before assuming the duties of his office, and every member of the Assembly before taking his seat therein, shall take and subscribe before the Assembly the oath of allegiance.

Presiding in National Assembly.

77. There shall preside at any sitting of the National Assembly—

(*a*) the Speaker of the Assembly; or

(*b*) in the absence of the Speaker, the Deputy Speaker; or

(c) in the absence of the Speaker and of the Deputy Speaker, such member of the Assembly (not being the Vice-President, a Minister, a junior Minister or the holder of any other office prescribed by Parliament for the purposes of this section) as the Assembly may elect for that purpose.

Quorum in National Assembly.

78. If objection is taken by any member of the National Assembly present, that there are present in the Assembly (besides the person presiding) less than one-fourth of all the members of the Assembly and, after such interval as may be prescribed in the rules of procedure of the Assembly, the person presiding ascertains that the number of persons present is still less than one-fourth of all the members of the Assembly, he shall thereupon adjourn the Assembly.

Voting in National Assembly.

79.—(1) Save as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the members present and voting.

(2) The Speaker shall not have an original vote but if upon any question before the National Assembly the votes are equally divided he shall have and exercise a casting vote.

(3) Any member of the National Assembly, other than the Speaker, shall, when presiding in the Assembly, retain his original vote as a member and shall also have and exercise a casting vote where the votes are equally divided.

(4) The rules of procedure of the National Assembly may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.

Unqualified persons sitting or voting.

80. Any person who sits or votes in the National Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding twenty five pounds or such other sum as may be prescribed by Parliament for each day on which he so sits or votes in the Assembly, which shall be recoverable by action in the High Court at the suit of the Attorney-General.

Procedure in National Assembly.

81.—(1) Subject to the provisions of this Constitution, the National Assembly may determine its own procedure.

(2) The National Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after any dissolution of Parliament) and the presence or participation of any person not entitled to be present or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

PART 3

Summoning, prorogation and dissolution of Parliament

Summoning of Parliament.

82.—(1) Subject to the provisions of this section, each session of Parliament shall be held at such place within Zambia and shall commence at such time as the President may appoint.

(2) There shall be a session of Parliament at least once in every year so that a period of twelve months shall not intervene between the last sitting of the National Assembly in one session and the first sitting thereof in the next session.

(3) Whenever Parliament is dissolved a general election of members of the National Assembly shall be held and the first session of the new Parliament shall commence within three months from the date of that dissolution.

Prorogation and dissolution of Parliament.

83.—(1) The President may at any time prorogue Parliament.

(2) Subject to the provisions of this Constitution, the President may at any time dissolve Parliament.

(3) Subject to the provisions of subsection (4) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

(4) At any time when the Republic is at war, Parliament may from time to time extend the period of five years specified in subsection (3) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(5) If, after a dissolution of Parliament and before the holding of the general election of members of the National Assembly, the President considers that, owing to the existence of a state of war or of a state of emergency in Zambia or any part thereof, it is necessary to recall Parliament, the President may summon the Parliament that has been dissolved to meet and that Parliament shall be deemed to be the Parliament for the time being, but the general election of members of the National Assembly shall proceed and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the day appointed for the nomination of candidates in that general election.

Sittings of National Assembly.

84.—(1) The President may at any time summon a meeting of the National Assembly.

(2) Subject to the provisions of subsection (1) of this section and of section 36(1) and 37(2)(*b*) of this Constitution, the sittings of the National Assembly in any session of Parliament after the commencement of that session shall be held at such times and on such days as the Assembly shall appoint.

CHAPTER VI

The House of Chiefs

Composition of House of Chiefs.

85.—(1) There shall be a House of Chiefs for the Republic.

(2) The members of the House of Chiefs shall be—

(*a*) not more than four Chiefs representing Barotseland, who shall be appointed by the Litunga and Council;

(*b*) four Chiefs representing each of the following provinces, that is to say, the Northern Province, the Southern Province and the Eastern Province;

(*c*) three Chiefs representing each of the following provinces, that is to say, the North-Western Province, the Luapula Province and the Central Province; and

(*d*) one Chief representing the Western Province.

(3) No Chief shall be qualified to be a member of the House if he is a member of the National Assembly.

(4) A person elected or appointed President of the House of Chiefs in accordance with section 88 of this Constitution who is not a member of the House shall be deemed to be a member.

(5) A member of the House of Chiefs shall vacate his seat in the House—

(*a*) at the expiration of three years from the date of his election or appointment;

(*b*) if he ceases to be a Chief; or

(*c*) if any other circumstances arise that would cause him to be disqualified for election or appointment thereto.

Functions of House of Chiefs.

86. The House of Chiefs may consider and discuss—

(*a*) any bill introduced into or proposed to be introduced into the National Assembly that is referred to the House by the President; or

(*b*) any other matter referred to the House for its consideration by the President or approved by the President for consideration by the House,

and may submit resolutions on any such bill or other matter to the President, which the President shall cause to be laid before the National Assembly.

Election of members to represent provinces.

87. The Chiefs representing provinces in the House of Chiefs (other than Barotseland) shall be elected in the manner prescribed by the Schedule to this Constitution.

President of House of Chiefs.

88.—(1) There shall be a President of the House of Chiefs who shall be elected by the members of that House:

Provided that, if the members of the House of Chiefs so resolve in respect of any vacancy in the office of President of the House, upon a motion supported by the votes of not less than two-thirds of all the members of the House, the President may appoint a person to fill that vacancy.

(2) The President of the House of Chiefs may be elected or appointed from amongst the members of the House of Chiefs or from outside the House, but the President, the Vice-President, a Minister or a junior Minister shall not be qualified to be elected or appointed as President of the House of Chiefs.

(3) The President of the House of Chiefs shall vacate his office—

(*a*) if having been elected or appointed from among the members of the House, he ceases to be a member of the House;

(*b*) if any circumstances arise that would disqualify him for election or appointment as such; or

(*c*) at the commencement of the first meeting of the House after the expiration of twelve months from the date of his election or appointment.

Deputy-President of House of Chiefs.

89.—(1) There shall be a Deputy-President of the House of Chiefs who shall be appointed by the President from amongst the members of the House.

(2) The Deputy-President of the House of Chiefs shall vacate his office—

(*a*) if he ceases to be a member of the House; or

(*b*) if his appointment is revoked by the President.

(3) Before exercising the powers conferred upon him by subsection (1) of this section the President shall consult the President of the House of Chiefs.

Oaths of members of House of Chiefs.

90. The President of the House of Chiefs, before assuming the duties of his office, and every member of the House before taking his seat therein, shall take and subscribe before the House the oath of allegiance.

Presiding in House of Chiefs.

91.—(1) There shall preside at any meeting of the House of Chiefs—

(*a*) the President of the House;

(*b*) in the absence of the President of the House, the Deputy-President; or

(*c*) in the absence of the President of the House and the Deputy-President, such member of the House as the House may elect for that sitting.

(2) References in this section to circumstances in which the President of the House of Chiefs or Deputy-President is absent include references to circumstances in which the office of President of the House or Deputy-President is vacant.

Quorum in House of Chiefs.

92. If objection is taken by any member of the House of Chiefs present that there are present in the House (besides the person presiding) less than seven members of the House and, after such interval as may be prescribed in the rules of procedure of the House, the person presiding ascertains that the number of members present is still less than seven, he shall thereupon adjourn the House.

Meetings of House of Chiefs.

93. The House of Chiefs shall meet at such times and at such places as the President may appoint.

Attendance of President and other persons at House of Chiefs.

94.—(1) The President or the Vice-President may, at any time, attend and address the House of Chiefs.

(2) A Minister or a person appointed in that behalf by a Minister may attend the proceedings of the House of Chiefs when any matter for which the Minister is responsible is under consideration by the House.

(3) The President of the House of Chiefs, when in his opinion any matter before the House of Chiefs makes it desirable, may invite any member of the National Assembly to attend the proceedings of the House relating to that matter.

(4) A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsection (2) or (3) of this section shall be entitled to take part in the proceedings of the House relating to the matter for which the Minister has responsibility or in respect of which he was invited to attend, as the case may be, as if he were a member of the House:

Provided that he shall not be entitled to vote in the House or any of its committees.

Procedure in House of Chiefs.

95.—(1) Subject to the provisions of this Constitution, the House of Chiefs may determine its own procedure.

(2) The House of Chiefs may act notwithstanding any vacancy in its membership and the presence or participation of any person not entitled to be present or to participate in the proceedings of the House shall not invalidate those proceedings.

President may make regulations.

96. Subject to the provisions of this Constitution, the President may by regulation provide for all or any of the following matters—

(*a*) the appointment and tenure of office of a clerk and other officers of the House of Chiefs;

(*b*) the remuneration of the President, the Deputy President and other members of the House;

(*c*) the regulation and orderly conduct of the proceedings of the House;

(*d*) the definition and trial of offences relating to the election of members of the House and the imposition of penalties therefor;

(*e*) the application to the House and the members of the House of any of the provisions of any law for the time being in force relating to the privileges and immunities of the National Assembly and the members thereof.

CHAPTER VII

THE JUDICATURE

PART 1

The Court of Appeal and High Court

Court of Appeal.

97.—(1) There shall be a Court of Appeal for the Republic.

(2) The judges of the Court of Appeal shall be—

(*a*) the Chief Justice;

(*b*) one Justice of Appeal or such greater number of Justices of Appeal as may be prescribed by Parliament;

(*c*) the puisne judges for the time being of the High Court.

(3) The office of a Justice of Appeal shall not be abolished while there is a substantive holder thereof.

(4) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(5) When the Court of Appeal is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of judges, not being less than three.

High Court.

98.—(1) There shall be a High Court for the Republic which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) (*a*) The Chief Justice shall be, ex officio, a judge of the High Court.

(*b*) The other judges of the High Court shall be such number of puisne judges as may be prescribed by Parliament.

(3) The office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(4) The High Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(5) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court-martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by subsection (5) of this section.

Appointment of judges of Court of Appeal and High Court.

99.—(1) The Chief Justice shall be appointed by the President.

(2) The Justices of Appeal and the puisne judges shall be appointed by the President, acting in accordance with the advice of the Judicial Service Commission.

(3) (*a*) A person shall not be qualified for appointment as a judge of the Court of Appeal or as a judge of the High Court unless—

(i) he holds or has held high judicial office;

(ii) he is entitled to practise as an advocate in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or a court having jurisdiction in appeals from any such court and has been so entitled for not less than seven years to practise as an advocate or a solicitor in such a court; or

(iii) he is entitled to practise as a solicitor in such a court and has held for periods amounting in the aggregate to not less than seven years any one or more of the following offices, that is to say, Senior Resident Magistrate, Resident Magistrate, Director of Public Prosecutions, Senior State Advocate or State Advocate.

(*b*) For the purposes of this subsection, a person shall be regarded as entitled to practise as an advocate or a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

(i) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or

(ii) he does not hold a practising certificate or has not satisfied any other like condition to his being permitted to practice.

(*c*) References in paragraph (*a*)(iii) of this subsection to the offices specified in that paragraph include references to the corresponding offices under the Government of the former Protectorate of Northern Rhodesia.

(4) 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 person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the Justices of Appeal or puisne judges as the President may appoint.

(5) If the office of a Justice of Appeal is vacant or if any Justice of Appeal is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a Justice of Appeal to act as a Justice of Appeal:

Provided that a person may act as a Justice of Appeal notwithstanding that he has attained the age prescribed by section 100 of this Constitution.

(6) If the office of any puisne judge is vacant, or if any such judge is appointed to act as Chief Justice, or is for any reason unable to perform the functions of his office, or if the President, acting after consultation with the Chief Justice, is satisfied that the state of business in the High Court requires that the number of judges of the court should be temporarily increased, the President, acting in accordance with the advice of the Judicial Service Commission, 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 act as a puisne judge notwithstanding that he has attained the age prescribed by section 100 of this Constitution.

(7) Any person appointed under subsection (5) or (6) of this section to act as a Justice of Appeal or puisne judge shall continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President, acting in accordance with the advice of the Judicial Service Commission:

Provided that the President, acting in accordance with the advice of the Judicial Service Commission, may permit a person whose appointment to act as a Justice of Appeal or puisne judge has expired or been revoked to continue to act as such a judge for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Tenure of office of judges of Court of Appeal and High Court.

100.—(1) Subject to the provisions of this section, a person holding the office of a judge of the Court of Appeal or the office of a judge of the High Court shall vacate that office on attaining the age of sixty-two years:

Provided that the President, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who has attained that age to continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A judge of the Court of Appeal or of the High Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(3) If the President considers that the question of removing a judge of the Court of Appeal or of the High Court under this section ought to be investigated then—

(*a*) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether the judge ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(4) Where a tribunal appointed under subsection (3) of this section advises the President that a judge of the Court of Appeal or of the High Court ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove such judge from office.

(5) If the question of removing a judge of the Court of Appeal or of the High Court from office has been referred to a tribunal under subsection (3) of this section, the President may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the judge ought not to be removed from office.

(6) The provisions of this section shall be without prejudice to the provisions of section 99(7) of this Constitution.

Oaths to be taken by judges.

101. A judge of the Court of Appeal or of the High Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

PART 2

Appeals to the Judicial Committee

Judicial Committee may be appeal court for the Republic.

102.—(1) The President may by order declare that the Judicial Committee shall be a court of appeal for the Republic.

(2) When any order by the President under subsection (1) of this section is in force, an appeal shall lie from the Court of Appeal to the Judicial Committee in such classes of cases and subject to such conditions as to leave or otherwise as may be prescribed by or under an Act of Parliament.

Supplementary.

103.—(1) Any decision given by the Judicial Committee in any appeal under this Part of this Chapter shall be enforced in like manner as if it were a decision of the Court of Appeal.

(2) Subject to the provisions of subsection (3) of this section, the Judicial Committee shall, in relation to any appeal to it under this Part of this Chapter in any case, have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal.

(3) An Act of Parliament made under section 102 of this Constitution may confer on the Judicial Committee powers additional to those conferred by this section and may make such other provision as may be necessary or expedient for regulating the exercise by the Committee of any jurisdiction conferred upon it under this Part.

PART 3

Judicial Service Commission

Judicial Service Commission.

104.—(1) There shall be a Judicial Service Commission for the Republic which shall consist of—

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

(*b*) the Chairman of the Public Service Commission or such other member of that Commission as may for the time being be designated in that behalf by the Chairman of that Commission;

(*c*) such Justice of Appeal or puisne judge as may for the time being be designated in that behalf by the Chief Justice; and

(*d*) one other member who shall be appointed by the President.

(2) The following provisions shall apply in relation to a member of the Judicial Service Commission appointed by the President—

(*a*) a person shall not be qualified for appointment as such unless he holds or has held high judicial office;

(*b*) subject to the provisions of this subsection, a person appointed as such shall vacate his office at the expiration of two years from the date of his appointment; and

(*c*) a person appointed as such may be removed from office by the President, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(3) The President may give to the Judicial Service Commission or to any person to whom the powers of the Commission are delegated under section 105 of this Constitution such general directions with respect to the exercise of the functions of the Commission under that section as the President may consider necessary and the Commission or that person shall comply with such directions.

(4) Except as provided in subsection (3) of this section, the Judicial Service Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions under this Constitution.

Appointment, etc., of judicial officers.

105.—(1) Power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Judicial Service Commission acting in the name and on behalf of the President.

(2) The Judicial Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission, any judge of the Court of Appeal or of the High Court, or to any person holding or acting in any office to which this section applies.

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

(*a*) the office of Registrar or Deputy Registrar of the Court of Appeal or of the High Court;

(*b*) the office of Senior Resident Magistrate, Resident Magistrate or Magistrate;

(*c*) the office of president or member of any subordinate court; or

(*d*) such other offices of president or member of any court of law or connected with any court of law as may be prescribed by or under an Act of Parliament.

(4) In this section references to the office of Magistrate do not include references to any administrative office the holders of which are, under the provisions of the Subordinate Courts Ordinance(a), entitled by virtue of that office to hold a subordinate court, and references to a court of law do not include references to a court-martial.

CHAPTER VIII

FINANCE

Imposition of taxation.

106.—(1) Subject to the provisions of this section, no taxation shall be imposed or altered except by or under an Act of Parliament.

(2) Save as provided by subsections (3) and (4) of this section, Parliament shall not confer upon any other person or authority power to impose or to alter (otherwise than by reduction) any taxation.

(3) Parliament may make provision under which the President or a Minister may by order provide that, on or after the publication of a bill (being a bill approved by the President) that it is proposed to introduce into the National Assembly providing for the imposition or alteration of taxation, such provisions of the bill as may be specified in the order shall, until the bill becomes law, have the force of law for such period and subject to such conditions as may be prescribed by Parliament:

Provided that any such order shall, unless sooner revoked, cease to have effect—

(*a*) if the bill to which it relates is not passed within such period from the date of its first reading in the National Assembly as may be prescribed by Parliament;

(*b*) if, after the introduction of the bill to which it relates, Parliament is prorogued or dissolved;

(*c*) if, after the passage of the bill to which it relates, the President refuses his assent thereto; or

(*d*) at the expiration of a period of four months from the date it came into operation or such longer period from that date as may be specified in any resolution passed by the National Assembly after the bill to which it relates has been introduced.

(4) Parliament may confer upon any authority established by law for the purposes of local government power to impose taxation within the area for which that authority is established and to alter taxation so imposed.

(5) Where the Appropriation Act in respect of a financial year has not come into force at the expiration of six months from the commencement of that financial year, the operation of any law relating to the collection or recovery of any tax upon any income or profits or any duty of customs or excise shall be suspended until that Act comes into force:

(a) Laws of Northern Rhodesia c. 4.

Provided that—

(*a*) in any financial year in which Parliament stands dissolved at the commencement of that year the period of six months shall begin from the day upon which the National Assembly first sits following that dissolution instead of from the commencement of the financial year;

(*b*) the provisions of this subsection shall not apply in any financial year in which Parliament is dissolved after the laying of estimates in accordance with section 109 of this Constitution and before the Appropriation bill relating to those estimates is passed by the National Assembly.

Withdrawal of moneys from general revenues.

107.—(1) No moneys shall be expended from the general revenues of the Republic unless—

(*a*) the expenditure is authorised by a warrant under the hand of the President;

(*b*) the expenditure is charged by this Constitution or any other law on the general revenues of the Republic; or

(*c*) the expenditure is of moneys received by a department of government and is made under the provisions of any law which authorises that department to retain and expend those moneys for defraying the expenses of the department.

(2) No warrant shall be issued by the President authorising expenditure from the general revenues of the Republic unless—

(*a*) the expenditure is authorised by an Appropriation Act;

(*b*) the expenditure is necessary to carry on the services of the government in respect of any period (not exceeding four months) beginning at the commencement of a financial year during which the Appropriation Act for that financial year is not in force;

(*c*) the expenditure has been proposed in a supplementary estimate approved by the National Assembly; or

(*d*) no provision exists for the expenditure and the President considers that there is such an urgent need to incur the expenditure that it would not be in the public interest to delay the authorisation of the expenditure until such time as a supplementary estimate can be laid before and approved by the National Assembly.

(3) The President shall, immediately after he has signed any warrant authorising expenditure from the general revenues of the Republic, cause a copy of the warrant to be transmitted to the Auditor-General.

(4) The issue of warrants under subsection (2)(*d*) of this section, the investment of moneys forming part of the general revenues of the Republic and the making of advances from such revenues shall be subject to such limitations and conditions as Parliament may from time to time prescribe.

(5) For the purposes of this section the investment of moneys forming part of the general revenues of the Republic or the making of recoverable advances therefrom shall not be regarded as expenditure.

Supplementary estimates in respect of expenditure authorised by warrant.

108. Where in any financial year any expenditure has been authorised by a warrant issued by the President under section 107(2)(*d*) of this Constitution, the Minister responsible for finance shall cause a supplementary estimate relating to that expenditure to be laid before the

National Assembly for its approval before the expiration of a period of four months from the issue of the warrant or, if the National Assembly is not sitting at the expiration of that period, at the first sitting of the National Assembly thereafter.

Appropriation and Supplementary Appropriation Acts.

109.—(1) The Minister responsible for finance shall cause to be prepared and shall lay before the National Assembly within one month of the commencement of each financial year estimates of the revenues and expenditure of the Republic for that financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the general revenues of the Republic by this Constitution or any law) have been approved by the National Assembly, the heads of the estimates together with the amount approved in respect of each head shall be included in a bill to be known as an Appropriation bill which shall be introduced in the Assembly to provide for the payment of those amounts for the purposes specified out of the general revenues of the Republic.

(3) Where any supplementary expenditure has been authorised in respect of any financial year for any purposes and—

(*a*) no amount has been appropriated for that purpose under any head of expenditure by the Appropriation Act for that financial year; or

(*b*) the amount of the supplementary expenditure is such that the total amount expended for the purposes of the head of expenditure in which expenditure for that purpose was included is in excess of the amount so appropriated under that head,

the Minister responsible for finance shall introduce in the National Assembly not later than fifteen months after the end of that financial year or, if the National Assembly is not sitting at the expiration of that period, within one month of the first sitting of the National Assembly thereafter, a bill, to be known as a Supplementary Appropriation bill, confirming the approval of Parliament of such expenditure, or excess of expenditure, as the case may be.

Financial report

110.—(1) The Minister responsible for finance shall cause to be prepared and shall lay before the National Assembly not later than nine months after the end of each financial year a financial report in respect of that year.

(2) A financial report in respect of a financial year shall include accounts showing the revenue and other moneys received by the Government in that financial year, the expenditure of the Government in that financial year, the payments made in that financial year otherwise than for the purposes of expenditure, a statement of the financial position of the Republic at the end of the financial year and such other information as Parliament may prescribe.

Remuneration of certain officers.

111.—(1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as may be prescribed by or under an Act of Parliament.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the general revenues of the Republic.

(3) The salary payable to the holder of any office to which this section 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 subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of judge of the Court of Appeal, judge of the High Court, Director of Public Prosecutions and Auditor-General.

Public debt.

112.—(1) There shall be charged on the general revenues of the Republic all debt charges for which the Government is liable.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans on the security of the revenues of the former Protectorate of Northern Rhodesia or the Republic and on the service and redemption of debt thereby created.

Auditor-General.

113.—(1) There shall be an Auditor-General for the Republic, whose office shall be a public office.

(2) It shall be the duty of the Auditor-General—

(*a*) to satisfy himself that the provisions of this Chapter of this Constitution are being complied with ;

(*b*) to satisfy himself that the moneys expended have been applied to the purposes for which they were appropriated by the Appropriation Act or in accordance with the approved supplementary estimates, as the case may be, and that the expenditure conforms to the authority that governs it ;

(*c*) to audit the public accounts of the Republic, including the accounts of all officers and authorities of the Government, the accounts of all courts of the Republic (other than courts no part of the expenses of which are paid directly out of the moneys provided by Parliament) and the accounts of the clerk of the National Assembly.

(3) The 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 subsection (2) of this section.

(4) The Auditor-General shall, not later than twelve months after the end of each financial year, submit a report on the public accounts referred to in subsection(2)(*c*) of this section in respect of that financial year to the President 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 Assembly ; and if the President makes default in laying the report before the Assembly, the Auditor-General shall submit the report to the Speaker of the 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 Assembly.

(5) The Auditor-General shall perform such other duties and exercise such other powers in relation to all accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under any law.

(6) In the exercise of his functions under subsections (2), (3) and (4) of this section, the Auditor-General shall not be subject to the direction or control of any other person or authority.

CHAPTER IX

THE PUBLIC SERVICE

Public Service Commission.

114.—(1) There shall be a Public Service Commission for the Republic which shall consist of a Chairman and not less than three or more than six other members.

(2) The members of the Public Service Commission shall be appointed by the President.

(3) A person shall not be qualified for appointment as a member of the Public Service Commission if he holds the office of President or is a member of the National Assembly or a public officer.

(4) Subject to the provisions of this section, the office of a member of the Public Service Commission shall become vacant—

(*a*) at the expiration of two years from the date of his appointment; or

(*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.

(5) A member of the Public Service Commission may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(6) A member of the Public Service Commission shall not be removed from office except in accordance with the provisions of this section.

(7) If the office of Chairman of the Public Service Commission is vacant or if the person holding that office 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 person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the other members of the Commission as may be designated in that behalf by the President.

(8) If at any time there are less than two members of the Public Service Commission besides the Chairman or if any such member is appointed to act as Chairman or is for any reason unable to perform the functions of his office, the President 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 paragraph (*b*) of subsection (4) of this section, continue to act until the office in which he is acting is filled, or as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the President.

(9) The President may give to the Public Service Commission or to any public officer to whom the functions of the Commission are delegated under section 115 of this Constitution such general directions with respect to the exercise of the functions of the Commission under that section as the President may consider necessary and the Commission or that public officer shall comply with those directions.

(10) The President may require the Public Service Commission or any public officer to whom the functions of the Commission are delegated to refer any matter relating to the functions of the Commission under section 115 of this Constitution which is under consideration by the Commission or that public officer, as the case may be, to the President and the President may himself in such a case exercise any of the powers conferred by subsection (1) of that section.

(11) Except as provided in subsections (9) and (10) of this section, the Public Service Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions under this Constitution.

Appointment, etc. of public officers.

115.—(1) Subject to the provisions of this section, power to appoint persons to hold or to act in any office in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the President.

(2) The President shall consult the Public Service Commission—

(*a*) before exercising the powers conferred by subsection (1) of this section in any case in relation to the office of Secretary to the Cabinet, Permanent Secretary or Commissioner of Police or to any person holding or acting in any of those offices ;

(*b*) before exercising the power to appoint to the office of Ambassador, High Commissioner or principal representative of Zambia in another country any person who holds an office in the public service other than such an office ;

(*c*) before exercising the power to exercise disciplinary control over or to remove from any office of Ambassador, High Commissioner or principal representative of Zambia in another country any person who, immediately before he was appointed to that office, held some other office in the public service.

(3) Subject to the following provisions of this section, the powers of the President to make appointments to any office in the public service (other than an office mentioned in subsection (2) of this section) and to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall be exercised by the Public Service Commission acting in the name and on behalf of the President.

(4) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its functions under subsection (3) of this section to any public officer.

(5) The provisions of this section shall not apply in relation to—

(*a*) any office to which section 105 of this Constitution applies ;

(*b*) any office in the Zambia Police Force below the rank of Assistant Superintendent ;

(*c*) any office in the Zambia prison service below the rank of Superintendent of Prisons ; or

(*d*) except for the purpose of making appointments thereto or to act therein, the office of Director of Public Prosecutions or Auditor-General.

(6) A person who holds or has held the office of Auditor-General shall not be appointed to hold or to act in any other public office.

Appointment, etc. of subordinate police officers.

116.—(1) Power to make appointments to hold or to act in offices in the Zambia Police Force below the rank of Assistant Superintendent and to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Commissioner of Police and, to such extent as may be prescribed by or under an Act of Parliament, in such other officers in that Force as may be so prescribed.

(2) Parliament may provide that, in such cases and subject to such conditions as Parliament may specify, an appeal shall lie to the President from decisions of the Commissioner or other officers of the Zambia Police Force to exercise disciplinary control over or remove from office any person holding or acting in any office in that Force below the rank of Assistant Superintendent.

Appointment, etc. of subordinate prison service officers.

117.—(1) Power to make appointments to hold or to act in offices in the Zambia prison service below the rank of Superintendent of Prisons, to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Commissioner of Prisons and, to such extent as may be prescribed by or under an Act of Parliament, in such other officers of the prison service as may be so prescribed.

(2) Parliament may provide that, in such cases and subject to such conditions as Parliament may specify, an appeal shall lie to the President from decisions of the Commissioner of Prisons or other officers of the Zambia prison service to exercise disciplinary control over or remove from office any person holding or acting in any office in the Zambia prison service below the rank of Superintendent of Prisons.

Tenure of office of Director of Public Prosecutions.

118.—(1) Subject to the provisions of this section, a person holding the office of Director of Public Prosecutions shall vacate his office when he attains the age of sixty years.

(2) A person holding the office of Director of Public Prosecutions may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) If the President considers that the question of removing a person holding the office of Director of Public Prosecutions from office ought to be investigated then—

(*a*) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether the person holding the office of Director of Public Prosecutions ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(4) Where a tribunal appointed under subsection (3) of this section advises the President that a person holding the office of Director of Public Prosecutions ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove such person from office.

(5) If the question of removing a person holding the office of Director of Public Prosecutions from office has been referred to a tribunal under this section, the President may suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the person ought not to be removed from office.

Tenure of office of Auditor-General.

119.—(1) Subject to the provisions of this section, a person holding the office of Auditor-General shall vacate his office when he attains the age of sixty years.

(2) A person holding the office of Auditor-General may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) If the National Assembly resolves that the question of removing a person holding the office of Auditor-General from office under this section ought to be investigated then—

(*a*) the Assembly shall, by resolution, appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Assembly;

(*c*) the Assembly shall consider the report of the tribunal at the first convenient sitting of the Assembly after it is received and may, upon such consideration, by resolution, remove the Auditor-General from office.

(4) If the question of removing a person holding the office of Auditor-General from office has been referred to a tribunal under this section, the National Assembly may, by resolution, suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the Assembly by resolution and shall in any case cease to have effect if upon consideration of the report of the tribunal in accordance with the provisions of this section, the Assembly does not remove the Auditor-General from office.

Pensions laws and protection of pensions rights.

120.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before the coming into operation of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

(*a*) in so far as those benefits are wholly in respect of a period of service as a public officer, as any officer in the department of the Clerk of the National Assembly or as a member of the armed forces that commenced before the date on which this Constitution comes into operation, be the law that was in force immediately before that date; and

(*b*) in so far as those benefits are wholly or partly in respect of a period of service as a public officer, as any officer in the department of the Clerk of the National Assembly or as a member of the armed forces that commenced after the date on which this Constitution comes into operation, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(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 section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Northern Rhodesia Civil Service (Local Conditions) Contributory Pensions Ordinance(**a**), or the Widows and Orphans Pension Ordinance(**b**) or under any law amending or replacing those Ordinances, they are a charge on a fund established by or under those Ordinances or any other law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the general revenues of the Republic.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers, as officers in the department of the Clerk of the National Assembly or as members of the armed forces or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

(7) In this section references to service as a public officer include references to service as a public officer under the Government of the former Protectorate of Northern Rhodesia, references to service as an officer in the department of the Clerk of the National Assembly include references to service as an officer in the department of the Clerk of the Legislative Assembly of the former Protectorate of Northern Rhodesia and references to service as a member of the armed forces include references to service as a member of the armed forces of the former Protectorate of Northern Rhodesia.

Power of Commissions in relation to pensions, etc.

121.—(1) Where under any law any person or authority has a discretion—

(*a*) to decide whether or not any pensions benefits shall be granted; or

(*b*) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(**a**) Laws of Northern Rhodesia, c. 48. (**b**) Laws of Northern Rhodesia, c. 65.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of a judge of the Court of Appeal or of the High Court or the Auditor-General or Director of Public Prosecutions has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section " the appropriate Commission " means—

(*a*) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial Service Commission or that have been granted in respect of such service, the Judicial Service Commission ;

(*b*) in any other case, the Public Service Commission.

(5) In this section " pensions benefits " means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers (including service as public officers under the Government of the former Protectorate of Northern Rhodesia) or for the widows, children, dependents or personal representatives of such persons in respect of such service.

CHAPTER X

MISCELLANEOUS

Performance of functions of Commissions.

122.—(1) Any Commission established by this Constitution may, with the consent of the President, by regulation or otherwise regulate its own procedure or confer power or impose duties on any officer or authority of the Government for the purpose of discharging its functions.

(2) Any decision of any Commission established by this Constitution shall require the support of the votes of the majority of all the members of the Commission:

Provided that, if upon any question the votes of the members of the Judicial Service Commission are equally divided, the Chairman of that Commission shall have a casting vote.

(3) Subject to the provisions of subsection (2) of this section, any Commission established by this Constitution may act notwithstanding the absence of any member or, in the case of the Judicial Service Commission, any vacancy in the office of the member referred to in section 104(1)(*d*) of this Constitution.

(4) Subject to the provisions of this section, any Commission established by this Constitution may determine its own procedure.

(5) References in this section to a Commission established by this Constitution include references to an Electoral Commission established under section 67 of this Constitution.

Resignations.

123.—(1) Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected:

Provided that in the case of a person who holds office as President his resignation from that office shall be addressed to the Chief Justice, in the case of a person who holds office as Speaker or Deputy Speaker of the National Assembly his resignation from that office shall be addressed to the Assembly, and in the case of an elected member of the Assembly his resignation shall be addressed to the Speaker.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.

Reappointments and concurrent appointments.

124.—(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Interpretation.

125.—(1) In this Constitution, unless the context otherwise requires—

"Act of Parliament" means a law enacted by Parliament;

"Barotseland" means the territory that, on 23rd October 1964, was comprised in the former Barotseland Protectorate;

"Chief" means—

(*a*) the Litunga of Barotseland;

(*b*) an African who is recognised by the Litunga and Council to be a member of a ruling tribal family in Barotseland and who is recognised by the President to be of Chiefly status in Barotseland; or

(*c*) an African who is recognised by the President under the provisions of the Native Authority Ordinance(a) or any law amending or replacing that Ordinance as a Paramount Chief, Senior Chief, Chief or Sub-Chief or an African who is appointed as a Deputy Chief;

"the Commonwealth" includes any dependency of a country which is a member of the Commonwealth;

"financial year" means the period of twelve months ending on 30th June in any year or on such other day as may be prescribed by or under an Act of Parliament;

"the former Protectorate of Northern Rhodesia" means the territory that, on 23rd October 1964, was comprised in the Protectorate of Northern Rhodesia;

"the Gazette" means the official Gazette of the Government;

(a) Laws of Northern Rhodesia, c. 157.

" high judicial office " means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or the office of judge of a court having jurisdiction in appeals from such a court ;

" the Judicial Committee " means the Judicial Committee of the Privy Council established by the Judicial Committee Act 1833(a) as from time to time amended by any Act of Parliament of the United Kingdom ;

" junior Minister " means a Minister of State, a Parliamentary Secretary or an Under-Minister ;

" the Litunga of Barotseland " means the person recognised as such by the President under the provisions of the Barotse Native Authority Ordinance(b) or any law amending or replacing that Ordinance ;

" meeting " means all sittings of the National Assembly held during a period beginning when the Assembly first sits after being summoned at any time and terminating when the Assembly is adjourned sine die or at the conclusion of a session ;

" oath " includes affirmation ;

" the oath of allegiance " means such oath of allegiance as may be prescribed by law ;

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

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

" the public service " means, subject to the provisions of subsections (2) and (3) of this section, the civil service of the Government ;

" session " means the sittings of the National Assembly beginning when it first sits after the coming into operation of this Constitution or after Parliament is prorogued or dissolved at any time and ending when Parliament is prorogued or is dissolved without having been prorogued ;

" sitting " means a period during which the National Assembly is sitting without adjournment and includes any period during which it is in committee ;

" statutory instrument " means any proclamation, regulation, order, rule or other instrument (not being an Act of Parliament) having the force of law ;

" subordinate court " means any court established for the Republic other than—

(*a*) the Judicial Committee ;

(*b*) the Court of Appeal ;

(*c*) the High Court ; or

(*d*) a court-martial.

(2) In this Constitution references to offices in the public service shall be construed as including references to the offices of judges of the Court of Appeal, judges of the High Court and to the offices of members of the Zambia Police Force.

(a) 3 & 4 Will. 4. c. 41. (b) Laws of Northern Rhodesia c. 159.

(3) In this Constitution references to an office in the public service shall not be construed as including references to the office of the Attorney-General, of a member of any Commission established by this Constitution or any office in the department of the Clerk of the National Assembly.

(4) For the purposes of this Constitution, 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 Government of Zambia or of the former Protectorate of Northern Rhodesia.

(5) A person shall not be regarded as disqualified for election to the National Assembly or for appointment to any office to which a public officer is not qualified to be appointed by reason only that he holds a public office if he is on leave of absence pending relinquishment of that office.

(6) In this Constitution, unless the context otherwise requires, a reference 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:

Provided that nothing in this subsection shall apply to references to the President or Vice-President in sections 35, 36, 38 or 41 of this Constitution.

(7) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that nothing in this subsection shall be construed as conferring on any person or authority power to require a judge of the Court of Appeal or the High Court, the Auditor-General or the Director of Public Prosecutions to retire from the public service.

(8) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

(9) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(11) References in this Constitution to the Northern Province, the Southern Province, the Eastern Province, the North-Western Province, the Luapula Province, the Central Province or the Western Province are references to those Provinces as from time to time delimited by or under the provisions of any law.

(12) Where any power is conferred by this Constitution to make any Proclamation, order, regulation or rule, or to issue any direction or certificate or confer recognition, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such Proclamation, order, regulation, rule, direction or certificate or to withdraw any such recognition:

Provided that nothing in this subsection shall apply to the power to issue a certificate conferred by section 35(2) of this Constitution.

(13) Any reference in this Constitution to a law made before 24th October 1964 shall, unless the context otherwise requires, be construed as a reference to that law as it had effect on 23rd October 1964.

(14) Any reference in this Constitution to a law that amends or replaces any other law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, or makes different provision in lieu of that other law.

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

Section 87.

THE SCHEDULE TO THE CONSTITUTION

ELECTION OF MEMBERS OF HOUSE OF CHIEFS TO REPRESENT PROVINCES

Notice of Election

1. For the purpose of electing the members of the House of Chiefs in each province there shall be a Chiefs Provincial Council, which shall consist of all Chiefs resident within that province.

2. Whenever he is informed by the President of the House of Chiefs that a vacancy or vacancies have occurred among the members of the House of Chiefs elected in the province, the Resident Secretary of the province shall, by notice published in such manner as may be prescribed by any law,—

(*a*) appoint a day, not being less than fourteen days after the notice is so published, as nomination day for an election to fill the vacancy or vacancies and prescribe the latest hour on that day by which nomination papers shall be delivered to him;

(*b*) appoint a day, not being less than fourteen days after the day appointed as nomination day, on which, and prescribe a place at which and the hour at which a meeting of the Chiefs Provincial Council shall be held to take a ballot if the election is contested.

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

Nomination

3.—(1) No person shall be qualified to be nominated as a candidate in an election of a member of the House of Chiefs in a province unless he is a member of the Chiefs Provincial Council of the province.

(2) Each candidate in the election shall be nominated by a separate nomination paper delivered to the Resident Secretary not later than the expiration of the time prescribed for the delivery of nomination papers under paragraph 2.

(3) A nomination paper shall—

(*a*) be in the prescribed form and state the full name and place of residence of the candidate;

(*b*) contain a statement signed by the candidate that he is willing to stand for election;

(*c*) be signed by two members of the Chiefs Provincial Council as proposer and seconder.

4.—(1) The Residing Secretary may hold a nomination invalid but only on one of the following grounds, that is to say—

(*a*) that the nomination paper is not in the prescribed form;

(*b*) that the nomination paper is not signed by the persons required by the provisions of this Schedule; or

(*c*) that the nomination paper was not delivered as required by the provisions of this Schedule.

(2) The decision of the Resident Secretary that a nomination is valid shall be final and shall not be questioned in any court.

5. A candidate in respect of whom a nomination paper has been delivered to the Resident Secretary within the time allowed for the delivery of nomination papers may withdraw his candidature if notice in writing signed by him is delivered to the Resident Secretary not later than the expiration of the time allowed for the delivery of nomination papers.

Method of Election

6.—(1) If, at the expiration of the time allowed for the delivery of nomination papers, the number of persons remaining validly nominated is more than the number of vacancies to be filled at the election, the persons to fill the vacancies in the House of Chiefs shall be elected from among the candidates so nominated by the votes of the Chiefs Provincial Council which shall be taken by ballot in accordance with the provisions of this Schedule.

(2) If, at the expiration of the time allowed for the delivery of nomination papers, the number of persons remaining validly nominated is equal to or less than the number of vacancies to be filled at the election the Resident Secretary shall declare those persons to be elected.

7. Where at an election it is necessary for a ballot to be taken the Resident Secretary shall cause a statement to be prepared (showing the persons who, at the expiration of the time allowed for the delivery of nomination papers, remain validly nominated) and to be delivered to the members of the Chiefs Provincial Council.

8. Where in a contested election a candidate in respect of whom a ballot is to be held dies before the commencement of the ballot the Resident Secretary shall countermand the ballot and a fresh election to fill the vacancy or vacancies in the House of Chiefs shall be commenced in accordance with the provisions of this Schedule.

The ballot

9. The ballot of a member of the Chiefs Provincial Council shall consist of a ballot paper, in the prescribed form, containing the names of the persons remaining validly nominated at the election, as given in their nomination papers, and opposite the name of each person a blank space in which the vote of the member of the Chiefs Provincial Council may be recorded.

10.—(1) The Resident Secretary shall preside at any meeting of the Chiefs Provincial Council at which a ballot is taken.

(2) The Resident Secretary shall provide a ballot box which shall at all times during the taking of the ballot be kept locked.

(3) The Resident Secretary shall cause a ballot paper to be delivered to each member of the Chiefs Provincial Council who is present at the meeting of the Council when the ballot commences (other than a person to whom a ballot paper has been sent in accordance with paragraph 14).

(4) A member of the Chiefs Provincial Council, on receiving a ballot paper, shall cast his vote by placing the mark "X" (and no other mark or writing) in the space on the ballot paper opposite the name of the candidate or candidates for whom he wishes to vote and shall then fold the paper so as to conceal his vote and proceed to the ballot box and insert the paper so folded into the box.

(5) A member of the Chiefs Provincial Council shall be entitled to cast the number of votes equivalent to the number of vacancies to be filled, but he shall not cast more than one vote for any one candidate in any ballot.

11. A member of the Chiefs Provincial Council who, by reason of blindness or other physical cause, is unable to mark a ballot paper delivered to him may request the assistance of the Resident Secretary (but no other person) in casting his vote and the Resident Secretary shall, if so requested, mark the ballot paper in the manner directed by the member.

12. A member of the Chiefs Provincial Council who, having received a ballot paper, inadvertently deals with it in such a manner that it cannot be used as a ballot paper may, on returning it to the Resident Secretary, obtain another ballot paper in its place.

13. The Resident Secretary shall, when he is satisfied that all members of the Chiefs Provincial Council present at the meetings at the commencement of the poll have had an opportunity to cast their votes, announce that the taking of the poll is concluded.

14.—(1) If the Resident Secretary is satisfied that any member of the Chiefs Provincial Council will be unable to attend a meeting of the Council at which a ballot is to be taken by reason of physical incapacity or of the nature of the journey from that person's residence to the place of meeting he may cause to be sent to that member a postal ballot paper in the prescribed form.

(2) Any chief to whom a postal ballot paper has been sent in accordance with the provisions of this paragraph may cast his vote in the election to which the ballot paper relates by marking the ballot paper in the manner specified in paragraph 10(4) and by causing the ballot paper to be delivered to the Resident Secretary not later than 9.00 a.m. on the day appointed for the taking of the ballot in the election.

Counting of Votes

15. Immediately after the close of the poll the votes shall be counted by the Resident Secretary.

16. A ballot paper shall be void and shall not be counted if—

(*a*) there are recorded on it more votes than one for any candidate ;

(*b*) there are recorded on it more votes than the member of the Chiefs Provincial Council is entitled to cast in the ballot ;

(*c*) there appears on it any writing, sign or mark by which the voter can be identified ;

(*d*) it is unmarked or the marking is uncertain ; or

(*e*) in the case of a postal ballot paper, it is not received by the Resident Secretary within the time prescribed by paragraph 14.

17.—(1) When the result of the ballot has been ascertained, the Resident Secretary shall cause to be prepared a list showing the candidates in order according to the number of votes received by each of them, the candidate or candidates who received the highest number of votes being placed first and those who received any lower number of votes being placed in descending order, those who received no votes being omitted from the list.

(2) The Resident Secretary shall declare as elected the candidates who stand in the first and each successive place on the list until the number of vacancies in respect of which the ballot was taken are filled.

(3) Where, by reason of an equality of votes between them, the number of candidates in any place on the list who would otherwise fall to be declared elected under sub-paragraph (2) of this paragraph exceed the number of vacancies to be filled, the Resident Secretary shall decide between those candidates by lot in such manner as he may determine and shall declare the candidate or candidates (equal in number to the vacancies to be filled) on whom the lot falls to be elected.

(4) Where any vacancies remain unfilled by reason that votes were given for a less number of candidates than the number of vacancies the Resident Secretary shall cause a further ballot to be held to fill those vacancies.

18. The Resident Secretary shall send to the Clerk of the House of Chiefs a statement in writing certifying the result of the election.

19. In this Schedule " the prescribed form " means such form as may be prescribed by any law and until such form is so prescribed the corresponding form prescribed by the House of Chiefs Regulations 1962.

EXPLANATORY NOTE

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

By virtue of the provisions of the Zambia Independence Act 1964 the present Protectorate of Northern Rhodesia will attain fully responsible status within the Commonwealth on 24th October 1964 under the name of Zambia. This Order makes provision for a Constitution for Zambia from that date.