BASUTOLAND

1959 No. 1620

The Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council, 1959

Made - - - - 14*th September*, 1959
Laid before Parliament 17*th September*, 1959
Coming into Operation 5*th March*, 1960

At the Court at Balmoral, the 14th day of September, 1959

Present,

The Queen's Most Excellent Majesty in Council

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

Interpretation

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

" Gazette " means the Official Gazette of the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland ;

" High Commissioner " means the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland and includes any person appointed to act as High Commissioner and, to the extent to which a Deputy to the High Commissioner is authorised to act, that Deputy ;

" Southern Africa " means the Union of South Africa, South West Africa, the Territories, Southern Rhodesia, Northern Rhodesia, Nyasaland, and Mozambique ;

" the Territories " means Basutoland, the Bechuanaland Protectorate and Swaziland.

(2) Save as is in this Order otherwise provided, or required by the context, the Interpretation Act, 1889(b), shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Citation and commencement

2. This Order may be cited as the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council, 1959, and shall come into operation on a date to be appointed by the High Commissioner by notice published in the Gazette, which date shall not be earlier than the day after the day upon which this Order shall have been laid before both Houses of Parliament, nor earlier than the date appointed for the coming into operation of the Basutoland (Constitution) Order in Council, 1959.

(a) 53 & 54 Vict. c. 37. (b) 52 & 53 Vict. c. 63.

Revocation and interpretation

3.—(1) The instruments enumerated in the first column of the First Schedule to this Order are hereby revoked to the extent set out in the second column thereof, but without prejudice to anything lawfully done thereunder.

(2) In relation to Basutoland, this Order shall be read as one with the Basutoland (Constitution) Order in Council, 1959.

(3) In relation to the Bechuanaland Protectorate, this Order shall be read as one with the Order in Council dated 9th May, 1891(**a**), as amended by the Order in Council dated 30th July, 1891(**b**), the Bechuanaland Protectorate and Southern Rhodesia Amending Order in Council, 1909(**c**), and this Order.

(4) In relation to Swaziland, this Order shall be read as one with the Swaziland Order in Council, 1903(**d**), as amended by this Order.

Office of High Commissioner constituted

4. There shall be a High Commissioner in and over Basutoland, the Bechuanaland Protectorate and Swaziland, who shall be appointed to the said Office by Commission under Her Majesty's Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

High Commissioner's powers and duties

5. The High Commissioner shall have all such powers and duties as are conferred or imposed upon him by or under this Order or any other law, and such other powers and duties as Her Majesty may be pleased to assign to him, and, subject to the provisions of this Order and of any other law by which any such powers or duties are conferred or imposed, the High Commissioner shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may see fit to give him:

Provided that the question whether the High Commissioner has in any matter complied with such instructions shall not be enquired into in any court.

Oaths

6. A person appointed to the office of High Commissioner shall, before entering upon the functions of that office, make oaths or affirmations of allegiance and for the due execution of that office in the form set out in the Second Schedule to this Order, which oaths or affirmations the Chief Justice or some other Judge of the High Court of one of the Territories is hereby required to administer.

Administration of the Government of each of the Territories

7.—(1) There shall be in each of the Territories a Resident Commissioner, appointed by the High Commissioner by an instrument under his seal, who shall hold office during Her Majesty's pleasure and shall administer the Government of the Territory to which he is appointed.

(2) Whenever and so long as there shall be no person in the Territory appointed in accordance with subsection (1) of this section and capable of discharging the duties of administration, such person as the High Commissioner may appoint in writing shall act as Resident Commissioner.

(**a**) Rev. VIII, p. 349: S.R & O. 1891, p. 295. (**b**) Rev. VIII, p. 349: S.R. & O. 1891, p. 298. (**c**) S.R. & O. 1909/1231 (Rev. VIII, p. 353: 1909, p. 331). (**d**) S.R. & O. 1903/531 (Rev. VIII, p. 360: 1903 I, p. 781).

Powers of the Resident Commissioners

8.—(1) Each Resident Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such powers and duties as the High Commissioner may assign to him and subject to the provisions of this Order and any other law by which any such powers or duties are conferred or imposed, each Resident Commissioner shall do and execute all things that belong to his office according to such instructions as the High Commissioner may address to him for his guidance or may be specified in the terms of his appointment.

(2) It shall be lawful for the High Commissioner to authorise, either generally or from time to time as occasion may arise, a Resident Commissioner, for the purpose of administering the government of a Territory, to exercise within the Territory any of the powers or perform any of the duties that belong to the office of High Commissioner:

Provided that the provisions of this subsection shall not apply—

(*a*) where, under any law in force, any act or decision of the Resident Commissioner is subject to the High Commissioner's approval ; or

(*b*) where, under any law in force, an appeal from an act or decision of the Resident Commissioner lies to the High Commissioner ; or

(*c*) to the powers conferred on the High Commissioner to make any Proclamation, or to exercise the power of pardon, remission or reprieve.

(3) Notwithstanding the other provisions of subsection (2) of this section, it shall not be competent to the High Commissioner to delegate any of the following powers vested in him by the undermentioned provisions of the Basutoland (Constitution) Order in Council, 1959, that is to say:—

(*a*) the appointment of Members and Temporary Members of Executive Council under sections 5 and 8 ;

(*b*) the suspension of Members of Executive Council under section 7 ;

(*c*) the appointment of Nominated Members of the Basutoland National Council under section 34

(*d*) the suspension of Chiefs and Nominated Members of the Basutoland National Council under section 37 ;

(*e*) the approval of Standing Orders under section 47 ;

(*f*) the use of reserved powers under section 55 ;

(*g*) the giving and withholding of Royal Assent and the reservation of Bills under section 58 ;

(*h*) the appointment and removal of Judges of the High Court under sections 66, 67 and 68 ; and

(*i*) the recognition of the Paramount Chief under section 70.

(4) If, in any proceedings, the question shall arise whether a Resident Commissioner has observed any such instructions as are mentioned in subsection (1) of this section or has been duly authorised under subsection (2) of this section to exercise within his Territory any of the powers or perform any of the duties of the High Commissioner, a certificate under the hand of the High Commissioner regarding such question shall be final and conclusive.

Acting High Commissioner

9.—(1) Whenever the office of High Commissioner is vacant or the High Commissioner is absent from Southern Africa or is from any other cause prevented from or incapable of performing the functions of his office, those functions shall during Her Majesty's pleasure, be performed—

(*a*) by such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State; or

(*b*) if there may be no person so designated, or if any person so designated is absent from Southern Africa or is not capable of discharging the functions of the office, by the person who holds the substantive appointment of Deputy High Commissioner for the Territories or if he is absent from Southern Africa or is not capable of discharging the functions of the office, by the senior of the persons holding the substantive appointment of Resident Commissioner.

(2) For the purposes of this section, the Resident Commissioners shall take seniority in the order of the respective dates of their first appointments as substantive Resident Commissioners in any of the Territories.

(3) Before assuming the functions of High Commissioner, any such person as aforesaid shall make oaths or affirmations of allegiance for the due execution of that office in the forms set out in the Second Schedule to this Order.

(4) Any such person as aforesaid shall hold his appointment during Her Majesty's pleasure or until such time as a duly appointed High Commissioner or some other person with a prior right to perform the functions of the High Commissioner notifies him that he is ready to assume or resume those functions.

(5) The High Commissioner shall not be regarded for the purposes of this section as absent from Southern Africa or prevented from or incapable of performing the functions of his office at any time when there is a subsisting appointment of a Deputy under section 10 of this Order.

Deputy to High Commissioner

10.—(1) If at any time the High Commissioner—

(*a*) has occasion to be absent from his Headquarter Offices (whether they be at Pretoria or Cape Town) but not from Southern Africa; or

(*b*) has occasion to be absent from Southern Africa for a period which he has reason to believe will be of short duration; or

(*c*) by reason of illness, which he has reason to believe will be of short duration, considers it desirable so to do;

he may, by instrument under his seal, appoint any person to be his Deputy for the purpose of performing during that absence or illness such of the functions of the High Commissioner as may be specified in that instrument.

(2) The power and authority of the High Commissioner shall not be abridged, altered or in any way affected by the appointment of a

Deputy under this section, and a Deputy shall observe all instructions which the High Commissioner in his discretion may from time to time address to him for his guidance:

Provided that the question whether or not a Deputy has observed any such instructions shall not be enquired into in any court.

(3) The appointment of a Deputy may be revoked at any time by Her Majesty or by the High Commissioner.

High Commissioner's powers to constitute offices and make appointments thereto

11. Subject to the provisions of any law for the time being in force in the Territories, the High Commissioner may constitute and appoint in Her Majesty's name and on Her Majesty's behalf all such Judges and other officers as may be lawfully constituted or appointed by Her Majesty and may abolish such offices and may make appointments to any office so constituted and any person so appointed shall, unless otherwise provided by law, hold office during Her Majesty's pleasure.

Discipline

12. Subject to the provisions of any law or regulations for the time being in force and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the High Commissioner may, for cause shown to his satisfaction, dismiss or suspend from the exercise of his office any person holding any office under the High Commissioner or in the Government of any of the Territories, or may take such other disciplinary action as may to him seem desirable.

High Commissioner's powers of pardon, etc.

13. The High Commissioner may, in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant to any person concerned in the commission of any offence for which he may be tried within the Territories or to any person convicted of an offence in any court within the Territories 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 sentence passed on that person in any court within the Territories;

(*c*) substitute a less severe form of punishment for that imposed by any sentence of any such court; or

(*d*) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence in respect of which a person has been convicted by any court within the Territories.

Concurrent appointments

14.—(1) When the holder of any office constituted by or under this Order in Council is on leave of absence pending relinquishment of his office, the person having power to make appointments to that office may appoint another person to that office.

(2) Where two or more persons are holding the same office by reason of an appointment made pursuant to subsection (1) of this section, then—

(i) for the purposes of any function conferred upon the holder of that office, and

(ii) for the purposes of any reference in this Order to the absence, illness or inability to perform the functions of his office of the holder of that office,

the person last appointed to the office shall be deemed to be the sole holder of the office.

Existing officers to continue in office

15. The persons who immediately before the appointed day held the offices of High Commissioner, Resident Commissioner or other public office in or in connection with any of the Territories shall continue to hold their respective offices as if they had been appointed by or under this Order and, if they shall have already made the oaths or affirmations required to be made under the provisions of this Order or any law in force before entering upon the functions of any such office, they shall not be required to make a further oath or affirmation in pursuance of this Order.

Powers reserved to Her Majesty

16.—(1) Nothing in this Order shall affect the power of Her Majesty in Council to make laws for the peace, order and good government of any of the Territories.

(2) Her Majesty hereby reserves to Herself power with the advice of Her Privy Council to amend, add to or revoke this Order as to Her shall seem fit.

E. N. Landale.

FIRST SCHEDULE

Section 3.

Instrument.	*Extent of revocation.*
1. Order in Council, dated 9th May, 1891, relating to the Bechuanaland Protectorate.	Articles 3, 10 and 11.
2. The Bechuanaland Protectorate Order in Council, 1934(a).	The whole.
3. The Swaziland Order in Council, 1903.	Articles 4, 9 and 11.
4. The Swaziland Order in Council, 1906(b).	The whole.
5. The Swaziland Order in Council, 1934(c).	The whole.
6. The Basutoland Order in Council, 1934(d).	The whole.
7. The Basutoland, Bechuanaland Protectorate and Swaziland Order in Council, 1954(e).	The whole.

(a) S.R. & O. 1934/1478 (Rev. VIII, p. 354: 1934 I, p. 593).
(b) Rev. VIII, p. 363: S.R. & O. 1906, p. 891.
(c) S.R. & O. 1934/1479 (Rev. VIII, p. 364: 1934 I, p. 658).
(d) Rev. III, p. 80: S.R. & O. 1934 II, p. 758.
(e) S.I. 1954/1566 (1954 I, p. 165).

SECOND SCHEDULE

Section 6.

FORMS OF OATHS AND AFFIRMATIONS

1. Oath of Allegiance.

I, ...,
do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. Affirmation of Allegiance.

I, ...,
do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. Oath for due execution of office.

I, ...,
do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of Her Majesty's High Commissioner for Basutoland, Bechuanaland Protectorate and Swaziland. So help me God.

4. Affirmation for due execution of office.

I, ...,
do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of Her Majesty's High Commissioner for Basutoland, Bechuanaland Protectorate and Swaziland.

EXPLANATORY NOTE

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

This Order formally establishes the Office of High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland and provides for matters connected with the government of these Territories.

BECHUANALAND PROTECTORATE

1959 No. 1620

The Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council, 1959

For the Text of This Order, *see* Pt. I, p. 281, of this vol.