

1937

Kenya

C.O. 533/479

No. 38077

SUBJECT.

Executive Council

(Reorganisation)

Previous

Subsequent

*P. Q. File*

*1938.*

*From S. 264*

*17.1.66*

*L. M. M. Martin 11531*

C. L.  
EXECUTIVE COUNCIL

Sir R. Brooke-Popham (5% to 5.5%)  
Comment on reorganisation of Executive Council  
24.4.37

Extract signed  
on 15.2.19/37  
Econ.

one  
But that is the cause of  
Kenya. No one trusts even  
the Governor and hence the  
demands for representation  
of each section and the  
tearing up of Government with  
Tarrant's

It is very interesting to see what  
Sir Robert Brooke Popham says with regard to the  
Executive Council. A total of eight, with the  
Governor presiding, should be quite sufficient. I  
agree with him that it is desirable to get away from  
the idea of sectional representation and that the  
interests of the native population can be safely left  
in the hands of the Government people. The  
opposition to the removal of Archdeacon Bunn will  
come, not so much from the missionaries as from the  
members of Parliament who are interested in such  
matters as Kenya. They, of course, won't believe  
that any Government official can look after native  
concerns.

It is, I think, absolutely der...  
Indian member must remain on it. A...  
to have an Indian on Executive Council we...  
the 1922-23 discussions, and we could not go back...  
it even if we wanted to. It is a pity, of course,  
that such a pledge was given, but there it is.

What the Governor says in paragraph 5 of his  
letter, that some of the present official members  
won't like going off, is quite true. An Executive  
Council has a certain degree of precedence and wears  
a bit more gold braid round his neck. The reason  
of the present unwieldy <sup>Executive</sup> legislative Councils was the  
idea that certain departments should be accorded  
the "status" which followed upon their head being in  
Executive Council. It began with the doctors, and  
having the Chief Medical Officer on Executive Council  
was followed by demands that there should also be  
the Director of Agriculture, the Director of Education,  
the Director of Public Works, the head of the Survey  
Department.

Department and others. Each head of a Department used to say that he was a good as the next one and if one was on Council, the other ought to be. That is, of course, a ridiculous attitude to take up, but I am afraid that we here are partly responsible for it in that we put into various despatches remarks about giving the Director of Medical Services the greater status. If the said Director is removed from Executive Council we may expect trouble with the British Medical Association which will affect to see in this a studied insult to the medical profession.

It is, however, interesting to see that Sir Robert has found that the settlers are now getting prepared to criticise their elected representatives. I have heard this from other sources and it is therefore necessary to go very carefully in dealing with the elected members. If we pay too much attention to their views they will be able to get up and use that fact as evidence that they are really important people and that is a good card at their elections. I have been told in other quarters that the fact is that most people in the country are heartily sick of them. It must be remembered that Kenya's European population is going through a change. The day of the "play boy" white settler, by which I mean the man who was in Kenya to have a good time and was impatient of any kind of restraint and only engaged in farming as a hobby, is rapidly going. The bulk of the settlers now

are

are men who definitely have a stake in the country and wish to develop their properties and live in peace and comfort. They have no time for childish political controversies. Many of them are thoroughly ashamed of the antics of their representatives. I might perhaps mention that one unofficial said to me in conversation that ~~the~~ Lord Francis Scott's behaviour to ~~his Majesty's~~ representative ~~was~~ thoroughly ~~known~~ scandalous and his ~~eyes~~ <sup>eyes</sup> very ~~express~~ <sup>express</sup> comment all ~~over East Africa, not only in Kenya.~~ ~~His Majesty's representative~~ ~~was~~ ~~thoroughly~~ ~~known~~ ~~scandalous~~ ~~and~~ ~~his~~ ~~eyes~~ ~~very~~ ~~express~~ ~~comment~~ ~~all~~ ~~over~~ ~~East~~ ~~Africa~~ ~~not~~ ~~only~~ ~~in~~ ~~Kenya.~~

The settlers undoubtedly do, and always have done, dislike the Indian in Kenya. I don't, however, agree with Sir Robert that this attitude is illogical. The Kenya Indian is a low-class animal as a rule, being descended from those came over for the building of the Uganda rail. There are also small traders and such like and is no Indian of at all high caste. Then, as against the native population the Indian proceeded to give himself airs and claimed to be the equal of the white. The white resents this. Further, there can be no doubt about it that the Indian is a most unpleasant neighbour and in the case of the Indian in Nairobi has been a source of pestilence and general discomfort. One has only to recall Professor Simpson's report on the sanitation of Nairobi about the year 1912 to get a picture of what the Indian really is. Then the Indian, from political motives, starts to claim the right to occupy land in the white Highlands. This is an obsession, of course, <sup>with</sup> all the white settlers especially of the original pattern, <sup>who</sup> ~~have~~ <sup>are</sup> ~~clung~~ <sup>clung</sup> desperately to the European nature of the land they occupy and cannot listen to any arguments directed against

Department and others. Each head of a Department used to say that he was a good as the next one and if one was on Council, the other ought to be. That is, of course, a ridiculous attitude to take up, but I am afraid that we here are partly responsible for it in that we put into various despatches remarks about giving the Director of Medical Services ~~the~~ greater status. If the said Director is removed from Executive Council we may expect trouble with the British Medical Association which will affect to see in this a studied insult to the medical profession.

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are

a T.T. man.

are men who definitely have a stake in the country and wish to develop their properties and live in peace and comfort. They have no time for childish political controversies. Many of them are thoroughly ashamed of the antics of their representatives. I might perhaps mention that one unofficial said to me in conversation that ~~the~~ Lord Francis Scott's behaviour to ~~the~~ <sup>His Majesty's</sup> representative ~~was~~ <sup>was</sup> thoroughly ~~scandalous and had excited very adverse comment all over East Africa, not only in Kenya.~~ ~~scandalous and had excited very adverse comment all over East Africa, not only in Kenya.~~

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against them on this point. The Indian also is objected to on the ground that he has no real right to take part in the government of the country. Hence the demand that there should be no Indian on Executive Council.

With regard to the meat question, we have had a despatch from Kenya enclosing the report of a Committee which enquired into livestock and meat. The Committee point out that an export trade in meat was essential if the agricultural industry of Kenya was to develop in a satisfactory manner. It is the case that we have urged upon them from here that they ought to go in for mixed farming and dairy produce. There can be little doubt that if mixed farming is to prosper, an export trade in meat is necessary. When Liebig's came along and said they proposed to start a meat product factory in Kenya the Board of Trade wrote to us and said that there would be very considerable difficulty about any proposal to increase ~~our~~ <sup>the U.K.</sup> sources of supply of frozen and chilled meat. Here, as in many other instances, Kenya's competitor is the Dominions, as well as, of course, places like the Argentine Republic, and the question of getting a quota for Kenya becomes one of Imperial policy. Here Australia, New Zealand, and the Union of South Africa, especially the two former, would be very sticky customers to argue with, even though Kenya's possible export of cattle would be absolutely negligible compared with the output of the Dominions. Here, too,

comes

comes in the home production of beef and mutton, and the need for protecting the home farmer against competition from the Dominions. So far as Kenya is concerned it would undoubtedly be most desirable that Kenya should be allowed to export as much meat as it can produce (it will be very little) to this country. The political effect of refusal in Kenya would be very marked and it would do more to revive the old bad feeling than anything else almost. The people in Kenya may take a narrow view; they may not be able to look at the question from the broad Imperial standpoint; they may not be able to view it dispassionately in the light of economic laws; admitted. But they do feel that they are part of the Empire and that they ought not to be kept out of what is quite a legitimate trade on their part by agreements made which, they say, mean that their interests have been neglected.

J. G. H. [Signature]

5.5.1937

I was consulted then in Kenya on the meat question and met the Committee which was reporting on the question. The Chairman had been informed of the despatch to the effect that there would be little chance in obtaining a quota. This made the Committee consider whether it was worth going on with their report or not, but they eventually decided that they should place their views on record. The Report was finished a few days after my interview with the Committee & is from what I saw of it a very useful document. Personally I feel that the development of a meat industry in Kenya

is essential of mixed farming is to make progress in the European areas & that its development will help to assist the natives to appreciate that which has an economic value. Further, it is to be hoped that within the next few years mixed farming will be developed in the native reserves.

For therefore should do all we can to secure in the meat market a place for some from Kenya. It will be difficult to secure this, but we should make every endeavour on our behalf of Kenya.

J. H. Windle  
Ops.

The S. ops. will be familiar from the course of the Canadian & New Zealand negotiations with the acute difficulties about mixed quotas.

Recently in the case of mutton we have recently had an unexpected success in getting a small quota this year for Falkland sheep killed in 1961. The quota was very small - about 230 tons I think - and for one year only, with a prospect, but no guarantee, of renewal.

The difficulties I see about Kenya beef are

- (1) that chilled beef is a more difficult subject than mutton
- (2) that the industry will be unable to establish itself unless it can plan ahead, but it will be even more difficult to get a guarantee of a quota for some future year than it will be to get one for a current year.

Subsidary difficulties, e.g. to get chilled space at a price the trade will stand 5 (a) for the trains (b) on the boats, will also no doubt arise.

If the matter is to be taken up now, I think that the only possible way will be for the ~~Kenya Office~~ S. Ops. to write personally to the President of the Board of Trade & to ask him whether any guarantee for a quota can be given, pointing out that without such a guarantee it will be impossible to make any effective progress in planning mixed farming in Kenya.

A. L. M. Dawson  
1/5/57

I think I ought to try to get a beef quota for Kenya in the next 4 months, & I presume we should be for 1000 tons per annum. The case can be made out on political & economic grounds - all the more so as East African Miga exports will be restricted. I am quite prepared to sign

As to the kind of letter of the Chamber of Commerce is very anxious to see all commercial men not in leg to do. I see no reason why the heads of departments should not keep their backs to the wall of gold trade & precedence although not in the way. What I want to get away from is being

Enclosure Reg to remember  
 on the commercial side of  
 the case. One should normally  
 be a member of the League, as  
 an Indian & the other two  
 should be nominated  
 individuals preferably are  
 non-political settlers of standing,  
 & are commercial men.

10/5  
 28.5.37

Sam Cross  
 11/5

Mr Clayton 24/5  
 Sir C. Popham 25.5

Sir J. Moffatt

Mr. Boyd tells the S.ys. that he had better wait  
 for the new President of the B/T before tackling him.

I submit, with much diffidence, the draft of a reply  
 to Sir R. Brooke-Popham. The despatch is being  
 dealt with by Economics but the quantity Kenya  
 has in view for export is about 300,000 cwt. - 15,000 tons  
 a year. This is not much in the 14-million cwt. or so  
 that is imported, but it is a large amount. So I  
 may have gone a bit far in promising support but  
 I don't think so.

J. S. O. Flood  
 20.5.

I do not think that Mr. Flood has  
 gone too far, but I should have thought  
 that anything like 300,000 cwt., or 2%  
 of the imports trade, was quite out of  
 the question.

G. L. M. Popham  
 24/5

Much less would be expected  
 from the authorities, but this will  
 come up on the despatch.  
 I agree to the draft. One point  
 to be noted.

S.A.S

We may send B. Ross in regard to  
 the Lega Khans, recent in settlement  
 on the other side of the  
Permanent Indians in East Africa.  
 He has no use for the temporary  
 Indian, whether of the League or  
 the Congress variety, but he does  
 say that he shall have to regard  
 the Permanent people as having  
 rights of citizenship. And that  
 is what the Kenya European want  
 to get to admit without much  
 qualification.

S. O. C. S.

25.5.37

J. S. O. Flood  
 25/5/37  
 Secretary

Mr. Flood,

I think that E.A. S. should  
 have some estimate from the S.ys. Bureau  
 letter for record, with copy of the S.ys.  
 letter? The circular of the letter from  
 Sir R. B.P. might then be returned to  
 be placed in the file of private correspondence.

Estimate of  
 relative quantities  
 and composition  
 referred to  
 E.A. S. - sent  
 to S.ys. Bureau  
 15/2/1937

Ed. Flood  
 28/5/37

To Sir R. Brooke-Popham (Recd.)

27.5.37

EXECUTIVE COUNCIL

A.P. BY MR. CLEVEY JONES FOR ORAL REPLY ON 5.5.37

(REPLY AT 11.15 AM 5.5.37)

*[Handwritten signature]*

3. SIR ROBERT BROOKE-POPHAM (S/O TO S. OF S.) ..... 7.5.37.  
Indicates present position with regard to the reorganisation of Executive Council.

In the first place as regards the Executive Council there is no possible hurry about its reconstitution and indeed I should prefer the Governor to wait until Lord Francis Scott and Captain Schwartz have got back so that he may have the benefit of their advice, I don't think much of the former, but Captain Schwartz has a good brain and may be able to make some sensible suggestions.

It is important, however, that the Governor should realise that voting is not a particularly appropriate way of proceeding at an Executive Council.

Dr. Paterson is a very prolix speaker and a very annoying one, but as I have pointed out elsewhere, the Director of Medical Services was the first extra to be added to Executive Council so he would naturally feel upset at being pushed off it. I don't agree with Mr. Morris that the result of a change would necessarily put more power into the hands of the Unofficials since it must be remembered that the Executive Council has got no power and if the Governor wants the support of his Directors on any particular point he can invite them to be present and the Unofficial Members cannot query it.

(SIGNED) J.E.W. FLOOD

26.5.37.

*Mr. [unclear] states that S. of S. [unclear] the [unclear]*

*315*



Mr. Grossmith has raised the question whether an answer is required from the Secretary of State to the Governor's letter (No.3). In point of fact the Secretary of State has already dealt with the question of the Executive Council somewhat fully in his speech on the Colonial Office Vote, and has said that the proposal which now holds the field is that of having four Officials and four Unofficials. He has also endorsed the view ~~that~~ it is not necessary for members of Executive Council to be chosen from Elected Members or chosen to represent any particular section. I think, then, that a quite short acknowledgment will be sufficient as the matter is really dealt with in the long letter of the 27th of May, but a word or two of history may not be amiss.

Draft herewith.

J. E. W. Hunt 46

Submitted

W. W. S. 106

4 J. L. R. Bruce-Lapham (Steno) 15 June 37

5. GOV. KENYA.....CONF. No. 91.....26.6.37  
Trs. recommendation with regard to the reorganisation  
of the Executive Council.

#### Functions of the Executive Council.

The Governor's and the Secretary of State's views on the functions of the Executive Council coincide, viz. that each member should regard himself as representing the interests of all Kenya and of all its peoples, and that it would be wrong for any member, Official or Unofficial, to regard himself as representing any particular section, the interests of which it would be his duty to press.

Ex-officio Members. The presence of technical ex-officio members on such a body as an Executive Council tends, in the first place, to render it somewhat unwieldy, and in the second place, is sometimes liable to cause the deliberations of the Council to be concentrated on one particular aspect of a problem to the exclusion of others.

Present position. The existing Royal Instructions provide for eight ex-officio members which fall into two natural groups of four, viz:-

(a) The Chief Executive and Chief Advisory Officers of Government:-

- The Colonial Secretary
- The Attorney General
- The Treasurer
- The Chief Native Commissioner, and

(b) Directors of Technical Services:-

- The Commissioner for Local Government, Lands and Settlement.
- The Director of Medical Services
- The Director of Agriculture
- The Director of Education

It is the Governor's proposal that the latter group should be omitted. This has been accepted by the Secretary of State in principle.

The effect of the proposal would be to reduce the ratio between Official and Unofficial representatives from a proportion of 2:1 to equality. The Governor observes that an Official majority could, indeed, be maintained, if the Unofficial membership were reduced from four to three members by the elimination of one of the members representing European views, but since equal representation appears to afford the simplest and most acceptable means of bringing about a closer association and sympathy between Official and Unofficial opinion, the Governor would retain all four Unofficial members as at present. These consist of two members appointed to represent European views who would normally be selected from among the European Elected members of the Legislative Council, the third member representing Indian views on the problems of Kenya, also normally a member of Legislative Council, and the fourth selected as having a wide knowledge of native problems.

The position of the fourth member calls for particular attention. The Governor considers it desirable that the fourth member should be a member of the Executive Council, but does not regard it as essential. If he were not already a member, the Governor considers that an opportunity should be provided specially to nominate him. But this proposal might involve an increase in the present Unofficial membership of the Legislative Council, and thus upset the existing balance between the Official and Unofficial members. So it is proposed that

provision should be made for the nomination to the Legislative Council of an additional Unofficial member and for the simultaneous appointment of an additional nominated Official member.

Local views regarding re-constitution.

The heads of the Technical Departments are unanimously opposed to the suggested reduction. The Governor appreciates the force of their arguments, but is nevertheless of the opinion that the balance of advantage rests with the proposed reorganisation. He considers that their advice will be no less valuable when given by them as witnesses and as technical heads of departments, than in the past when given by them as members of Council.

Objections. It has been suggested that the reduction in the number of Official members may give rise to a position in which the experience of Unofficial members of local conditions would out-weigh that of Official members, e.g. in the case of the Treasurer and Attorney General. To meet this possibility the Governor recommends that the provision in Clause IV of the Royal Instructions for the appointment of "Official" members as opposed to "Ex-officio" members should remain.

Individual selection of Unofficial members. Sir Robert Brooke-Popham regards it as of great importance that the powers of the Governor should remain free and unfettered.

Members

Members representing the European community. His only comment as regards the two members representing the European community is that it should be made clear that they are representing the whole of Kenya and not part of it.

Indian representative. The Governor's observations regarding the selection of the Indian representative appear somewhat startling, but they are not heretical so far as I can see. All the same, the Secretary of State's view is that it would be necessary to have an Indian. The Governor says that although the representative would normally be an Indian, he does not wish to lay down that this must necessarily be so, and although opportunity would be taken to seek the views of the leaders of the Indian community and their elected representatives, the Governor does not consider that any undue weight should be attached to their nominations.

"If, for instance, a permanent member of the Indian Civil Service were to settle in Kenya, he might be in a position to represent the views of the Indian community as a whole better than an Indian, who would usually be tinged with the opinions of his own particular section".

This has been discussed at length on 3024/33 and the memorandum on that file gives the history of the appointment of Indians to the Executive Council. Fourth Official member. The Governor observes that the fourth Official member has, up to the present, generally been a missionary. He considers that it would be wrong to lay down that this must be the case or even, as indicated in paragraph 5 of Part II

of Cmd. 1922/23, that it should be normally so. The following is the relevant extract from Cmd. 1922:-

"As regards the Executive Council, the present position as set forth in the Wood-Winterton report will be maintained, except that the Governor will be given authority to nominate as an additional Unofficial member a suitable person, preferably a missionary, whose advice on matters affecting Africans will, in the opinion of the Governor, be of value."

The Governor's view on this point more or less coincides with the views expressed in the Secretary of State's letter of the 27th of May.

Period of Appointment. The Governor is averse from appointing Unofficial members for any indefinite period, and recommends that this should rest in the discretion of the Governor, but normally be limited to a period corresponding approximately to the life of the Legislative Council, which is four years. This does not call for comment, since we have pointed out in the past that in other colonies the usual period for such an appointment is two, three, or even as much as five years.

Existing Officers of Executive Council.

The proposal that those four Ex-officio members who will not continue to serve in the new Council should retain, as personal to themselves, the precedence of Executive Councillors and the right to wear the distinctive uniform, is, I think,

wholly

wholly acceptable.

The following are a few of the principal points made by Official members at the Executive Council meeting on the 7th of May:-

The Director of Medical Services. - The Official composition envisaged by the Governor would result in the viewpoint of the mass of people in Kenya being lost sight of. The real welfare of the country would be subjugated to political expediency. The Director of Medical Services, the Director of Education, and the Director of Agriculture were in closer touch with the people than it was possible for the Colonial Secretary, the Treasurer, and the Attorney General to be.

The Director of Education. - Though he imputed no unworthy motives to the two European Elected members - who would form 25 per cent. of the proposed Council - it did not appear humanly possible for them to offer the Governor unbiased advice. They were not free agents, since they were responsible to their colleagues and constituencies. In fact 25 per cent. of the Governor's advisers would represent a population of 18,000 vis-a-vis the native population of 3,000,000.

From time to time, as had happened in the past, there would arise questions on which there would be a conflict between the Unofficial and Official communities. In such cases the Governor would be faced with either having to decide against Unofficial opinion or be driven to go against the advice of his senior Officials. This must eventually force the Governor into the political arena. He considered the responsibility was greater than a Governor should be called upon to bear.

Archdeacon Burns held no strong views, though in his opinion, a reduction in the size of Executive Council might be unwise. The country was composed of units and it seemed desirable that these units should be represented. In this connexion he did not feel that the size of Executive Council really hampered its deliberations. In seven years he had seen members seat themselves at the table with bitterly divided views and yet unanimous agreement was invariably reached.....his only desire was that native welfare should not suffer from lack of representation.

*The Col. Secy, the Attorney General & the Unofficials supported the Governor's proposal.*

So far as I can see there is no reason to withhold approval of the proposals generally, but it may be necessary to say something about the need for the selection of the Indian. Add that the

Secretary

Secretary of State will take steps for the amendment of the Royal Instructions and that, like the Governor, he trusts that a reformed Executive Council, on the lines proposed, will make for close association and sympathy between Official and Unofficial opinion, and dispel the feeling that the Unofficial members are the natural representatives of opposition to Government.

C. J. Crosswell

2.7.1937

As the Gov. recognises, there is a considerable amount of force in the reasons urged by the Directors of Technical Services for their retention in the Council, though not sufficient force to override the political considerations we have rendered a reorganisation of the Council imperative.

D. Patterson's main points were that when these Directors cease to be associated in Council, there will be a tendency for the work of the respective Departments to become uncoordinated, & that in their absence there wd. be nobody on the Council who wd. be in a post. to appreciate

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all the possible reactions, in these spheres for wh. they are responsible of policies wh. were being debated.

As regards the first point however, there are clearly many other methods of securing the coordination wh. is admittedly necessary, & wh. is that secured by personal contact. The obvious course is for the Departments concerned in the administration of the "social services" to be grouped under the same one of the proposed new "Secretaries", who in course of time might well come to be regarded as the "Secretary for Social Services" & in that capacity wd. be expected to acquire a sufficient acquaintance with the work of his group of departments not only to be able adequately to represent them as a point of view in Council, but also to ensure that policies were not adopted without due regard to the interests for wh. they are responsible.

A curious point about this deep is that while the proposed

reorganisation of the Govt machine  
by grouping depts. under three  
Secretaries to Govt. was repeatedly  
mentioned in the course of the  
discussion in Council, it is  
now being referred to in the Govt.  
proposals, wh. are submitted solely  
~~in relation to the~~  
present organisation of the Govt.  
machine.

This is a very curious  
omission in a Dep. wh. is  
supposed to deal with a permanent  
reorganisation of the Executive  
Council. The explanation wd. seem  
to be that it is more or less  
fairly understood that, granted  
the proposed reorganisation of the  
Secretariat, the Official side of the  
Council will <sup>essentially</sup> consist of the three  
Secretaries & the Attorney Genl.  
But it wd. have been much  
better if the Gov. had made  
some reference to this point.

It cannot be very long  
now before the Gov. is in a  
pos. to submit proposals for

13  
the reorganisation of the administrative  
machine; & if the 20 cases which  
in the meantime, it is worth while  
to go through the matter of producing  
revised Royal Instructions, to reduce  
the Official side of the Council to  
the Col. Sec., the A.G., the Treasurer,  
& the C.N.C., when (presumably)  
it ~~will~~ will as soon be necessary  
to revise them again to substitute  
the three Secretaries to Govt. & the A.G.

I shd. have thought that, so  
far as the Official side of the Council is concerned,  
the more practical course wd. have  
been to recommend that the  
Council shd. be reduced to 8  
members, (excluding the Govt.); that  
two of these 8, 4 shd. be ex-officio  
members who (assuming that the  
Plan reorganisation wd. be carried  
out) wd. be the 3 Secretaries & the A.G.  
& that in the meantime, pending  
the necessary consideration of the  
reorganisation, the effective strength  
of the Council shd. be reduced to  
the size proposed by omitting to  
summon any of the existing <sup>official</sup> members  
other than the Col. Sec., the A.G., the  
Treas. & the C.N.C., except when the  
presence of one or the other of the  
others was specially desired.

J.P. [Signature]  
13/

This is a rather good despatch and requires close consideration. The Governor, as has been foreshadowed, wants to reduce his Executive Council to four Officials and four Unofficials. He wants to make a clean sweep of the various departmental heads and reduce his official members to the Colonial Secretary, Attorney-General, Treasurer and Chief Native Commissioner. When the new Secretariat organization gets introduced, that will boil down to the Colonial Secretary, Attorney-General, Financial Secretary and Secretary for Native Affairs or whatever else he is called. With this there can be no quarrel. It has been foreshadowed, and the Secretary of State has said in the House of Commons that that was the way his mind was working.

With regard to the objections to the removal from Council of the heads of departments, the Governor deals with them in paragraphs 10 and 11. It is the case that they will, of course, be available to express their opinions and, with the new organization in the Secretariat, they should be able to express their views to the responsible Secretary dealing with their departments. They can, of course, always be called in as experts on anything, and provision exists in Clause IV of the Royal Instructions for their appointment as Extraordinary Members of the Executive Council when the Governor wishes to have the advice of any person. This gives power enough. It must be remembered that it only allows the man in question to be summoned

for

14  
for a particular meeting ("such special occasion" is how the Royal Instructions is worded), and I think myself that that would be rather better than appointing them for keeps as Official Members, as the Governor appears to suggest in paragraph 11.

One can agree with him in hoping that the Unofficial Members will gradually give up their idea that they are an Opposition. I fear, however, that as long as Lord Francis Scott and his school are in Kenya that attitude of mind will be very slow to change. It must be remembered that the present Kenya unofficial politician gets into the public eye by abuse of the Government and by describing himself as an Opposition, and if they once give this up there is a considerable risk that they will lose their position in the limelight, lose their seats on Council and lose the emoluments, direct and indirect, which they get out of that. Therefore, the change may be slow to come about, but we can hope that it will.

The difficulty about the thing is the Unofficial Membership. The Governor, very wisely I think, does not recommend any alteration in the present composition of the Unofficials, though he does suggest that the position of the Governor should be as free as possible to choose the best man. Here we are on absolutely unshakable ground, but there may be difficulty if the so-called leader of the European Unofficials happens to be, as he very well may be, an official who ought not to be on the Executive Council. Then there may be difficulty with the politically-minded if the Governor proceeds to appoint to Executive Council someone else. Either the European Unofficials will demand that the

Executive

*This is something of an argument in favour of keeping the present two men, who are independent of their position as Commissioners.*  
C. G. S.

Executive Councillor should take instructions from them (i.e. the Elected Members organization) in what he does in Executive Council, or they will insist that he should not accept appointment, in order that the Governor may be forced to appoint their leader. However, we can hope that that difficulty will not arise, and so long as it is not necessary, as it is not at present, to have any Unofficials at all, the situation can be dealt with, though it may be politically awkward. One can agree with the Governor that, though it is convenient that one of them should be living near Nairobi, there is no necessity for this to happen and both must represent as well as they can the whole of Kenya.

With regard to the Indian, the Secretary of State has told Sir Zafrullah Khan that there is no intention of removing the Indian Member from the Council. It therefore becomes necessary, not only to have someone who will be regarded as representing Indians, but to have that someone an actual Indian by race. Anything else would be regarded as a breach of faith and we could not convince either the local Indian population or, more difficult still, the Government of India that an ex-Indian civilian will represent the Indian community better than the usual Kenya Indian. The despatch from Lord Swinton, to which reference is made, does say that no distinction should be made between Europeans and Indians in deciding on the fitness of individuals to be Members of Executive Council, but the point of the remark was to deprecate

Kenya's

Kenya's tendency to refer to Abdul Wahid as "the Indian Member". It would be a breach of understanding not to appoint an Indian and I think we shall have to make this clear to the Governor, namely that, though the principle as enunciated by him is unexceptionable and though it might be possible to find someone not of Indian race who could represent the Indian community adequately, yet, having regard to the undertakings that have been given, the local position [and the suspicious nature of the Indians generally], it will not be advisable to appoint to Council anyone not of Indian race for at any rate a long time to come.

As regards the fourth Unofficial Member who was to be added to give advice on matters affecting Africans, the 1922 Command Paper stated he was to be "preferably" a missionary. One can agree with the Governor that it is by no means necessary that he should be a missionary. 14 years have passed since the White Paper was issued, and there are now many more people in Kenya with an understanding of Kenya's position and of native problems than there were in 1923, and there are also a sufficient number of people of detached outlook to represent native views. It may even be that before much longer there will be a native actually on the Executive Council, though to say so would horrify the Unofficials at present.

As regards the term of appointment, there is nothing prescribed in the Royal Instructions. In other colonies in the case of the appointment of Unofficials to Legislative Council by nomination, it is usually laid down that the term of appointment is for five years, when a second term may be granted

but

*Just a very brief summary  
solution*



but not a third, except in very exceptional cases. It would not do to have anything like this in the case of the Unofficial Members, since they may change with the composition of the new Council after each General Election. The Governor suggests then that the term of appointment should be at his discretion. I think this may be accepted but, for the sake of regularity, appointments must also be subject, I think, to the pleasure of the Crown, and we should say so.

The Governor contemplates that his fourth Member might, in certain circumstances, not be a Member of the Legislative Council. He thinks, however, that, if not a Member, it would be advisable to nominate him. At present this cannot be done because the numbers of the Council are strictly limited, and the number of Nominated Unofficials is confined to two to represent the African community and one to represent the Arabs. If one of the Nominated Unofficials has not been told off to represent that body. (I do not take into account the nomination of Indian Unofficials when the Indian elections have not produced the necessary number of Indian Elected Members.) There are, however, difficulties in adding to the composition of the Kenya Legislative Council. As the Governor points out, to add another Unofficial would involve the nomination of an Official to balance him, which of itself is objectionable. Further, it can hardly be expected that the Governor would nominate two people to Legislative Council to represent African affairs and would

at

at the same time, want to nominate somebody quite different to represent the Africans on the Council. I think that this aspect of the matter should be pointed out to the Governor, and the proposal to add a further Nominated Official (who would only be added if the Member of Executive Council nominated to represent native interests had not also been nominated to the Legislative Council for the same purpose) should be deprecated. If anything happened to the Unofficial Member of Executive Council so that he gave up his seat and if he were replaced by one of the Nominated Members in Legislative Council, then there would be a redundant Nominated Official who would have to be kicked out. This would be awkward.

Of course, it is a bit anomalous to have a man on Executive Council not on the Legislative Council, but Kenya's Constitution does not provide that all Executive Councillors are ex officio members of the Legislative Council, so there is not any particular objection to it.

Mr. Paskin has very properly called attention to the fact that no reference is made to the proposed new organization of the Secretariat. That is the case, but on consideration I think that the best thing to do is to take the thing as it stands, to produce revised Royal Instructions on the basis of the existing model, and then revise them afterwards to deal with the new titles. It may be that the new organization will come into being before we can get a revised through and, if so, that does not matter; but I think the chief thing is to accept the Governor's proposals, pointing out as regards the Indian and the undesirability of adding further nominated Officials to Council, and

remarking

*NO doubt become  
until the staff  
positions have  
been settled it is  
a little difficult  
to say what is the  
of the new  
arrangements  
only*

*W.C.S.*

remarking that if the European nominated to Executive Council for native purposes is not already nominated to the Legislative Council for the same purpose, it would seem better to wait until a vacancy occurred rather than to upset the Council.

J. C. O. Ford  
14.7.37.

I agree.

The Instructions as to unofficial Ex. Councillors will be in general terms and if the Indians ever want to be represented by a European there will be nothing to prevent it. But the more work come from them.

As to the 4th member, I think at all all events that the experiment of not opposing him specially to Leg. Co. might be tried, even if it means resigning the District of it is found unworkable.

W.C.O., 15.7.37

Secretary of State.

I must send forward to you for your instructions <sup>ON</sup> this file, which contains the proposals of the Governor of Kenya (No.5) for remodelling the Executive Council of Kenya. But the despatch itself is thirteen pages, and the minutes cover no less than seventeen pages, and it is quite out of the question that you should read through all this.

The main points which arise are:-

(1) Official Members. The Governor proposes to limit official membership to four officers, viz. Colonial Secretary, Attorney General, Treasurer and Chief Native Commissioner. This means that four others who are now on the Executive Council, viz. Commissioner for Local Government, Lands and Settlement, Director of Medical Services, Director of Agriculture and Director of Education, will cease to be members. Naturally these members do not agree with the proposal that they should leave the Council, and I am bound to say that it seems a retrograde measure for Kenya to dispense with these four officers. I attach opposite a note which I have had prepared showing the composition of Executive Councils in some of the more important Colonies. The proposed change would distinguish Kenya very markedly from Uganda, Tanganyika, Nigeria and the Gold Coast. But it may be that for political reasons equality of official and unofficial membership in the Kenya Executive Council is so important as to over-ride objections to the change?

and in any case, as I never see you <sup>hand</sup> given your blessing to this in the The Debate on 2/4/37.

Manard  
Vol. 324, No 114  
2/6/37.  
Col: 1083, 1084

The Governor proposes that while the present holders of the four offices which will no longer be represented on the Executive Council are serving in Kenya they should retain, as personal to themselves, their precedence as members of the Executive Council and should be permitted to wear the distinctive uniform. I see no objection to this, although I cannot help thinking that if I were one of these officers I should probably refuse to avail myself of this "concession".

(2) Unofficial Membership. It is here that I find greatest difficulty, and the minutes hitherto do not refer to this. In your minute of the 8th May you said that normally, in your opinion, the unofficial composition of the Executive Council should be:- one Member of the Legislative Council, one Indian, one non-political settler of standing and one commercial man. This was explained to the Governor in your letter of the 27th May (No.2), which he must have had before sending his despatch of the 26th June. And yet the proposals which he makes appear to take no account of these views, i.e. he would make no change at present in the unofficial membership, and he says, in paragraph 5 of his despatch, that the two members appointed to represent European views would normally be selected from among the European Elected Members of the Legislative Council.

Clive

*Apart from this general consideration, ~~there are two specific points dealt with in the minutes on this file, and I agree on both:-~~*

(a) The member to represent Indian interests must be an Indian, unless the Indian community themselves desire someone else, e.g. a retired I.C.S. man who has settled in Kenya. It is quite clear, I think, that we should not risk avoidable agitation among the Indians in Kenya, and a quarrel with the Government of India by appointing now anyone other than an Indian for this purpose.

(b) The Governor suggests that if the fourth member (i.e., according to Cmd.1922-23, a suitable person, preferably a Missionary, whose advice on matters affecting Africans will be of value) is not a member of the Legislative Council, he should be nominated as an additional member of the Legislative Council, and that, in order to keep the balance, an additional nominated official should then be appointed to the Legislative Council. I should prefer to wait and see whether any difficulty arises in the event of the fourth member not being a member of the Legislative Council. If there is difficulty, we can revise the Instruments.

I suggest that, if you can find the time, it would really be best if the Department and I might discuss this with you. There are so many points that arise.

*and  
17.2.33  
I am pretty deeply committed &  
I like the tone & tenor of the Governor's  
despatch on his proposals. I do not see*

Why all members of  
Ex Co should be members  
of Leg Co also - or why Kenya  
should be like any other  
Colony

Our despatch will have  
to be published sooner or later  
& much depends on its drafting.

Clearly the Indian must be  
an Indian. It is desirable  
that at least one European  
& the Indian should be  
members of Ex Co - but with  
the latter the Governor should  
be as free as possible to  
choose individuals. I agree that  
a European may or may  
not be a member of Leg Co  
but the decision is a good  
idea. The Govt has special interest  
in the matter. It may be  
recommended by a nominated  
member of Leg Co.

I like to see despatch but  
we can do the eyes & ears  
that is about the individual & find  
responsibility of Ex Co members to give  
the Govt advice - which he can reject  
in Ex Co. I am prepared about appointing  
unofficials with the Govt, consultation  
between Government & present Ex Co can be  
elaborated. Draft for Govt. 28.7.37

It is  
we can

6 To Kenya Const. (5 amend)

29 JUL 1937

7. COPY OF MINUTES ON 7176/1/37 GENERAL TOGETHER WITH  
EXTRACT FROM NOTE OF INTERVIEW BETWEEN S.O.F S. AND  
SIR ZAFRULLAH KHAN ON 19TH JUNE, 1937.

8. SIR R. BROOKE-POPHAM (S/O TO S.O.F S.).....22.6.37.  
Ackd(4) with comments.

Mr Flood agrees that view of No 6  
no action is required on 7 & 8.  
what is now required is the  
preparation of a draft to amend the R. S.  
as indicated.  
J.P. Popham  
30/7

I submit draft Additional Instructions to  
give effect to the decision that the ex-officio  
Members of the Kenya ~~Executive~~ Legislative Council should be  
the Colonial Secretary, the Attorney General, the  
Treasurer and the Chief Native Commissioner.

In the last paragraph of 5 the Governor  
recommends that the Royal Instructions should be  
amended so as to limit the appointment of Unofficial  
Members to such period as the Governor may think  
fit. This presents some difficulty.

Under Article 6 of the Kenya Letters  
Patent of the 11th of September, 1920, Members of  
the Executive Council hold their places in the  
Council during His Majesty's pleasure. Under  
Article 4 of the Royal Instructions Unofficial  
Members are appointed by the Governor in pursuance  
of instructions from His Majesty through the

Secretary

Secretary of State, and I do not think that we can provide in the Royal Instructions that Members of the Council shall hold office for such period as the Governor may think fit. The difficulty can, however, easily be overcome without any amendment of the Royal Instructions. In submitting a recommendation for an appointment to the Executive Council the Governor would also say for what period he recommends that the appointment should be made. In conveying His Majesty's instructions for the appointment, we should say "His Majesty has been pleased to give instructions for the appointment of \_\_\_\_\_ to be a Member of the Executive Council for a period of \_\_\_\_\_. This would convey His Majesty's pleasure that the appointment should be for a certain period. It is already done in many Colonies in which no fixed period of appointment is laid down in the Royal Instructions. There is no precedent for amending the Royal Instructions in the manner suggested by the Governor.

? Print draft Additional Instructions.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

Mt. Harman should all as  
to para 5 of 6 in Commission  
for Commissioners for Local Govt,  
Lands Settlement, Districts, &  
Medical Services, Director of Agriculture

I see that it is  
already done in  
Kenya - see No 3  
on 3/8/37  
This is the reason  
with special  
J.

and Director of Education to  
continue to wear the uniform of  
Executive Councillors while they  
remain in Kenya, and to retain  
precedence as if they were still members  
of the Executive Council.

Megson

13/8/37

J. G. Mason  
13/8

Sir G. Bushe.

I think you should see this. The actual amendment of the Royal Instructions is a simple matter, subject to the points to which Mr. Megson refers in his minute; see paragraphs 17 and 18 of 5.

I am not sure whether the Governor wants merely (a) power to fix a term of office at the time of appointment, or whether he also suggests (b) that he should have power to determine an appointment at any time. I gather it is only (a) he has in mind, but, if so, since the practice of limiting <sup>terms of members of</sup> members by signification of His Majesty's pleasure has already been started in Kenya, I do not see what is to be gained by giving the Governor himself power to do what is already done by His Majesty. Moreover, I doubt whether it would be proper to do so. Membership of the Executive Council should be regarded as a position of considerable dignity. Members are

almost

almost invariably appointed on King's instructions (the only Colony in which, so far as I am aware, this is not done is the Leewards - see Article 9 of the Letters Patent of November 1936), and they hold office during His Majesty's pleasure, and I question the propriety of giving to the Governor a power which would appear to be hardly consistent with this position. If the Governor has (b) in mind the constitutional propriety of adopting his suggestion seems to be still more doubtful.

It is true some Royal Instructions provide <sup>that</sup> a member shall hold office for the term stated in the instrument appointing him or, if no term is so stated, for a period of, say, three years, but so long as Royal Instructions require an appointment to be made in pursuance of H.M.'s instructions I think the term of membership must be fixed by H.M., and I believe this is always done, usually, of course, in accordance with the Governor's recommendation. Further, you may remember that some time ago the question was raised whether such a provision could be made in Royal Instructions where the Letters Patent contained <sup>an</sup> article only on the lines of Kenya Article 6 and, in consequence, recent Letters Patent have been amplified by the addition of a sentence to the effect that the period and conditions of office of members may be specified in Royal Instructions. If, however, these Royal Instructions are to contain, as it is desirable they should,

the

the present proviso saying that an Official Member's seat should become vacant if he ceases to hold public office, it would not be a much bigger step for them to say that all appointed members shall hold office for a term of, say, four years, or for the period stated in the instrument of appointment. Perhaps both provisions can be regarded as an expression by Royal Instructions of His Majesty's pleasure for the purposes of the Letters Patent. On the other hand, the insertion of such a provision seems to have no advantage over the course outlined by Mr. Megson.

*Robert Wray*

14/8/37.

*I think we must advise for the time being to leave "provision" as the best course is that suggested by Mr. Megson.*

*H.B.  
16/8*

*This means that we must explain to the Gov. that it would be inadvisable to lay down in the R.I. that appointments are appointed for any term - a few and then as he thinks fit but that the desired result can be achieved by advising H.M. to his instructions as to the period in each case.*

*W. H. H. H. H.*

*Get a print of the app. certificate*

Royal Instruction

It will be desirable to  
be able to see the Gov.  
when we send out the  
new N.S. that permission  
has been granted etc. as  
in para 5 of No 6; Mr.  
Mason will advise  
action required for that  
purpose.

Then I should say  
sent out for separate  
action

see at  
no 11  
minutes  
there after

16.8.37

no record of letters

9 To: N.M. L.O. (for print) — 17.8.37

Pring and bustin hrs

? now submit to Council Office

as in drafts hrs

submit

There may not be a Council  
meeting for a few weeks and  
in view of the proposed reorganization  
of the Secretariat you may consider  
it desirable to hold this up  
until a Council meeting is  
announced. In the meantime

M. Thompson could see.

Gregson

26/8/37

Mr. Mackin had been on this after  
his return on 1 Sept.

She Campbell  
26.8.37

I submit a draft to the  
Lord Chamberlain in regard  
to the retention of 2nd class  
uniform by the four Exe.  
Councillors who are being  
removed. It is not usual  
to submit precedence books  
of this kind separately to H.M.  
but to tell the Gov. that he  
can arrange provisionally  
pending the next submission  
of the local precedence table  
to H.M. As the Kenya table  
is at present under revision  
it will suffice to note on  
the relevant file (21003/Plone)  
that a footnote should be  
inserted to the effect that

in view of  
I presume  
these are the  
Officers involved  
with all leave  
except on P.O.R.  
10/2

class is M. Togan, G.R. Paterson  
H. B. Water and G. J. Morris  
are to be accorded the  
precedence which they held

as official members of the  
Executive Council

The removal of the posts  
of Commr. of Local Govt. Lands,  
Settlement, Dir. of Med. Services,  
Dir. of Agriculture, Dir. of  
Education from the Executive  
Council will also necessitate  
provision being made for  
them in the precedence  
Table and the list of  
holders of uniforms. As  
regards the latter they  
will, no doubt, jump down  
from class 2 to class 3,  
but it is for the Governor  
to recommend, and we  
could not even suggest  
where they should come in  
the precedence table

When we convey His  
Majesty's orders to the uniform  
authorities the precedence  
position for should be  
asked for his recommendation  
as to the precedence &  
uniform to be allotted to  
the holders of posts which have  
been removed from the Council  
officers.

I don't think  
it is necessary to say anything.

Not a precedence as  
there is provision for such in the table  
10  
had Chamberlain's office  
27/5/37  
3.9.37

11.4 SIR R. BROOKE-POPHAM (S/O TO S. OF S.) 3.8.37. 13  
Enquires whether there is any serious objection to  
the Estimates being submitted to the Executive Council.

Sir Edward Grigg's views will be found on  
pages 78, 79, and 80 of his printed despatch flagged  
in 25494/30 Part II. The view he took was the not  
unreasonable one that unofficial members in Executive  
Council owe a sort of double duty to the Governor-in-  
Council, and also to their colleagues, or one might  
almost call them constituents, outside Council.

Sir Edward pointed out that these unofficial members  
might dissent from the view of the majority in  
Council and actively pursue their dissent outside.  
He also pointed out that he had known cases where members  
expressed one opinion in Council and the opposite  
opinion outside. We are used to this in Kenya,  
and as Sir Edward Grigg said, there was nothing  
dishonourable in such inconsistency. His reason for  
removing the Estimates from discussion in Executive  
Council was that the unofficials would ~~not~~ then have  
the right of discussing the Estimates in their  
preparatory stage in Executive Council and at the same  
time having a free hand to attack them in the  
Legislative Council, and he said that unless the  
unofficials would support the Estimates in Legislative  
Council he thought they would have to be removed  
from the purview of the Executive. They would not  
give such an undertaking and the Estimates are not  
laid before Executive Council on the ground that the  
Government's services would sustain material prejudice  
if the Council were consulted.

Sir Edward Grigg does recognise that the  
position is unsatisfactory, since the Estimates  
reflect the whole policy of Government, but he cannot  
see any other way out of it.

On this point I think Sir Edward Grigg was  
wrong and Sir Robert Brooke-Popham entirely right.



If you are to have an Executive Council at all to advise the Governor, and manifestly you must have, surely it ought not to have its most important task of all in advising the Governor on the general financial policy of the whole place taken away from it? It may very well be thought preliminary discussion in Executive Council would provide the Governor and his staff with much needed criticisms, sanely expressed outside the heat of debate, which would ~~leave them~~<sup>allow</sup> to modification, and in any case it is a sorry comment on things in Kenya if the Executive Council is deprived of the duty of examining the Estimates simply because the unofficial members won't agree to support them blind in Legislative Council. How can they agree? We have repeatedly pointed out that the Executive Council is not a body where the majority rules, since it is open to the Governor to go against the whole outfit if he chooses, and it would therefore be absurd to have unofficial members in Executive Council where they would be in a minority, and have to be in a minority, and yet consider that they should be pledged to uphold the decisions of Council, even though they don't agree with them. That is going a bit too far, and in the interests of peace and good order I am quite certain that the best thing to do is to resume the practice of referring the Estimates to Executive Council. As Sir Robert says, the more chance one gives the Executive Council of working like a Cabinet the more value is to be got out of it.

What

What he says about the Standing Finance Committee is also very true, but before he does anything to interfere with that body, or with the practice of referring things to it, he will have to examine cautiously what "pledges" may or may not have been given by various Governors as to consultation with the Standing Finance Committee. If anything is taken away from it, that may be represented as an attempt to cut down the functions of authority of the Legislative Council, and it being Kenya, questions of political privilege and violation of undertakings and all kinds of unforeseen and unthought-of matter will be dragged into it.

I think the reply should be to the effect that the Secretary of State, while appreciating, as Sir Robert does, the arguments put forward by Sir Edward Grigg, thinks that the balance of advantage is beyond doubt on the side of Sir Robert Brooke-Popham, and that the Estimates ought to be submitted to Executive Council for consideration. We might go on to say that it is the proper duty of an Executive Council to advise on matters of such importance as the annual Estimates and agree with his view that the proper course of action is to trust the Council and make as much use of it as possible. Then we should go on to say, that, as regards the Standing Finance Committee, care should be taken not to say or do anything which might be represented as going back on any pledge or undertaking as to consultation with that body, unless the assent of the whole body of unofficals can be secured to such a course.

v. r. a. 7/20  
11.8.1937  
P.T.O.

1 agree generally.  
16.8.37  
atone

[Re-attach to file 38077137  
Ranaya Vastin]

12. To Sir R. Brooke-Popham 11.8.37 20.8.37

13. Kemp 114. 16.8.37  
Inquiries whether a certain statement made in  
the Co. is correct & asks to be given an opportunity  
to express his views on any alterations limiting  
the discretion of the Gov.

14. Extract from the Times 14.8.37

Nos. 13 and 14. It is a pity that we have not  
yet had the verbatim report of the Governor's speech  
on the reorganisation of the Executive Council. The  
"Times" report at No. 14 is, for a change, all too  
brief. The Governor is alleged to have said that no  
member of the Executive Council should be regarded as  
representing any particular section or interest, and  
then is supposed to have said that the unofficial  
members of the new Executive Council would comprise  
two selected, normally from among the elected members  
of the Legislature, as specially qualified to regard  
problems from the point of view of Europeans, another  
similarly qualified as to the Indian point of view,  
and a fourth selected for his knowledge of native  
matters.

matters. At this, there seems to have been some  
excitement on the part of the unofficials (possibly  
the Indians) because it was thought that the Governor  
was proposing a principle of racial representation.

The Governor tells us however that in a  
speech on the following day he emphasised that the  
choice of the unofficial members was entirely at the  
discretion of the Governor, and added that, to the  
best of his knowledge and belief no alteration was  
going to be made to the relevant portion of article IV  
of the Royal Instructions (quoted in No. 13), except in  
so far as an addition might be made referring to the  
time limit for which these members would be appointed.

The Governor's speech at 'A' above is, I  
think, perfectly in order, as long as he bears in mind  
the contents of paragraphs 6-10 of the S. of S's  
despatch of the 29th of July. With regard to 'B'  
there is no intention of amending the particular part  
of Article IV of the R.I. or to limit his discretion.  
The question of a time limit for the membership of the  
Council has been discussed in the minutes and it has  
been agreed that no provision in this respect should  
be made in the additional n.I. (See Mr. Flood's  
minute of the 16th of August).

? we can now inform the Governor accordingly.

I submit draft.

I notice that there is a draft letter to the  
Privy Council Office lying in the file submitting  
the

the draft additional Instructions. There is no immediate urgency about this letter as no meeting of the Privy Council has yet been announced. But I assume that it is not intended to hold out the draft additional R.I. on the chance that they can be further amended to provide for the substitution of the Financial Secretary for Treasurer and Secretary of Native Affairs for Chief Native Commissioner as ex-officio members. (See paragraph 4 of No. 6).

*C. J. Goswami*

3.9.37.

*J. J. Pascoe*  
9/9

The European unofficials don't like either an Indian or anyone representing "native interests". At present there is no compulsion to appoint either but it is general agreement that it should be so; and the best to be an Indian to implement past pledges. If this habit to be an Indian there would be no need for a pro-native & two unofficials would do.

Since the actual legal position - that the Government recommended whoever he likes - will remain unaltered there is no need to say very much.

S. C. G. Howard  
17.9.

S.P. J.P. submitted for approval  
The idea that Ex. Co. shall be governed by majority of a Leg. Co. is a little inconsistent with the principle that the Ex. Co. Ex.

Ex. Co. are present and not representative; but it might well happen that election results might include a change in Ex. Co. necessary for working purposes.

23.9.37

24.9.37

Received from Council office 1/10/37  
J. J. Pascoe  
(See memo of 24/10/37)

~~To Privy Council~~ 30 SEP 1937

No. 10 Kenya Conf - 13 Amend - 30 SEP 1937

- 17. SEC. LORD CHAMBERLAIN'S OFFICE..... 8.9.37. (10 ansd.) States that the Lord Chamberlain has obtained permission for the holders of appts. mentioned to continue to wear the Civil Uniform of the second class during period of their individual service in Kenya.
- 18. GOV. KENYA..... CONF. No. 131..... 14.9.37. Acks. (6) with comments & requests provision be made for possible nomination to Leg. Co. of person selected as adviser on native aspects in Exec. Council.

17. Gov. can be informed in the next days. wh. may be sent on this file.

18. although no particular point was seen in the Gov's proposal, the only objection urged against it in para 9 of No. 6 (viz. that the Leg. Co. is large enough already) is not of sufficient weight to override the Gov's decided preference for the arrangement which he desires. To give effect to it.

will however involve a further amendment of the R.I.

Fortunately the letter with the 3 additional instructions already agreed upon was sent to the Privy Council Office yesterday & it has been possible to arrange for the return of that letter without any action being taken upon it.

as regards the amendments that will be required in Article XV of the R.I. we have to provide for 1 more additional Nominated Unofficial Member & one additional Nominated Official Member.

As regards the Official Member this can easily be achieved by altering "nine" to "ten" in line 3 of Article XV.

The Unofficial Member is however a little more complicated. As it stands Article XV provides for two Nominated Unofficial Members to represent the interests of the African community. It will hardly do to alter "two" to "three", as this will make it appear that the additional member had been selected to represent the interests of the African community.

arranged by Mr. Pagan by telephone

on the Executive Council as well as in the Leg. Co.

While however the fourth Unofficial member of the Ex. Co. is to be a person having special knowledge of matters of community representation, the idea on Ex. Co. has been specifically repudiated.

a possible way out of the difficulty might be as suggested in pencil in the annexed copy of the R.I.

18A

X

However this can be gone into later, & for the present I submit for a decision on the part whether the Gov's proposal is to be accepted.

J.P. Pagan  
1/x

We didn't want to tinker with the Leg. Co., and to adopt the Gov's proposal involves adding two more "members of Government" - one official & one unofficial. If the unofficial really does represent native interests it would be natural that he would be regarded as "anti-settler" and so the elected members would prefer to think that would be to disturb the balance of power, not that it really matters since Gov. has an official majority of one as it is but it would be so represented.

The case of the Government is where he might want to put in a fourth member a man

who want already in the Leg. Council. The obvious thing to do would be to get one of the two nominated native members to retire & then nominate M. X. in his place. But the drawback is that to do so would stamp M. X. as being nominated to the Leg. Council to represent natives & in fact the Gov. might want to have a free hand and nominate to Ex. Co. someone who though not an elected member, is not identified with any "pro-steris" view. Or they might be two very good nominated members of Leg. Co. & the Gov. might not want to remove either. I expect this is the case here & that the Gov. wants to have someone who though not an elected member, is not identified with any "pro-steris" view. Or they might be two very good nominated members of Leg. Co. & the Gov. might not want to remove either. I expect this is the case here & that the Gov. wants to have someone who though not an elected member, is not identified with any "pro-steris" view.

So it reduces to this: are we to accept the Governor's view and allow for the addition of two more to Leg. Council, amending article XV of the R.I. as shown, and see whether there is much opposition? I think so, in deference to the Governor's request - after all he won't have to appoint the tenth nominated official unless he chooses to nominate to Ex. Council some one who isn't already nominated on Leg. Council.

It means another draft amending R.I. & a little delay, but -

? So passed

J. S. O. Reid

5.10.37

What we accept is the Governor's view that a new chosen not be on Ex. Co. unless he is a member of Leg. Co. or too - the rest follows. I am not sure, but is it possible? Wed. 6.10.37

See of State

I agree that the Governor's view should be accepted.  
 7.10.37

I am reluctant to agree to any change in the composition of the Leg. Co. in Kenya unless I can be assured that such change will not lead to an entry from the elected European or Indian Members. Subject to the proviso giving an assurance that this proposal will not mean a further row or a demand for further changes in the composition of the Leg. Co. I am prepared to agree. One possible however is that these European individuals nominally representing native interests are often out in touch with one small section of natives & do not visit the reserves council.

see [unclear] [unclear]

Wed 8.10.37

only official to balance the position. Ex. Council will be dominated by Leg. Co.

Who can't already in the Leg. Council. The obvious thing to do would be to get one of the two nominated native members to retire & then nominate M. X. in his place. But the drawback is that to do so would stamp M. X. as being nominated to the Leg. Council to represent natives & in fact the Gov. might wish to have a free hand and nominate to Ex. Co. someone who, though not an elected member, is not identified with any "pro natives" view. Or there might be two very good nominated members of Leg. Council & the Gov. might not want to remove either. I expect this is the case here & that the Gov. wants to have his <sup>Sanction</sup> fourth Ex. Co. unofficial someone who will see Kenya whole.

So it reduces to this: are we to accept the Governor's view and allow for the addition of two more to Leg. Council, amending article XV of the R.I. as shown, and see whether there is much opposition? I think so, in deference to the Governor's request. After all he won't have to appoint the tenth nominated official unless he chooses to nominate to Ex. Council some one who isn't already nominated on Leg. Council.

It means another draft amending R.I. & a little delay, but  
 ? So proceed

S. I. U. 2nd  
 5.10.37

What we accept in the Government view that a new member not be on Ex. Co. unless he is a member of Leg. Co. also - the rest follows from the Government view as proposed? 6.10.37

x one official to balance the additional Ex. Councillor who will be nominated to Leg. Co.

See 1/2 State  
 I agree that the Governor's view should be accepted.  
 7.10.37

I am reluctant to agree to any change in the composition of the Leg. Co. in Kenya unless I can be assured that such change will not lead to an entry from the elected European or Indian members. Subject to this for giving an assurance that this proposal will not mean another row or a demand for further changes in the composition of the Leg. Council I am prepared to agree. One possible however is that these European officials nominally representing native interests are often of a high rank and are small section of natives & do not visit the reserves generally  
 8.10.37

see 1/2 State  
 8.10.37

Sir A. Wade spoke to me about various things and mentioned the Executive Council. I told him the position as it was on receipt of the Governor's despatch, and he said that he thought the Governor's idea was not the best. The matter had been thrashed out and discussed locally and he (Sir A. Wade) had thought that the balance of opinion had come down in favour of not requiring the fourth unofficial to be in the Legislative Council. The idea in the minds of Sir A. Wade and those who thought with him was that the Governor might wish to appoint somebody like Dr. Jex-Blake, who would be a tower of strength in Executive Council and would command universal confidence, since he is well known as an honest and fearless person, without politics and without any axe to grind, but it was practically certain that Dr. Jex-Blake would not wish to become a member of the Legislative Council with all the bother which that would involve. There is a good deal in this, and there is no particular reason why the fourth member should be added to the Legislative Council if not already a member, but the Governor has had it all before him and has come down on the other side. Draft herewith.

s.c. 22

9.10.1937

W.B. 11.10.37

11.10.37

I really agree Wade with Sir A. as above W.B. 11.10.37

19. See Kenya Const. 18 Amend. 13/1/38  
 13 OCT 1937

In accordance with Mr. Pasken's minute of 1/10 I received 15 from the Privy Council Office. I have spoken to Mr. Pasken on Hood & as indicated in 19 the amendment of Article IV of the Royal Instructions is to amend the reply to 19

June 1937  
 14/10/37

SEE CORRES. 9 MINUTES OF DISCUSSION WITH LORD PRINCE SCOTT ON 28.10.37

20 Extract from 7/8 letter to Sir R. Brooks-Taylor dated 9.10.37 (Draft in 38300/37)

1311 (Kenya) 10/21 Gov. KENYA Corr. 110-158 15.11.37  
 action as at 1/10 (1937) In case does not wish to press his suggestion further - would be glad of early opportunity of presenting revised Instructions in written draft form before their final submission to H.M. in Council for approval.  
 27/8 2/10 2/10  
 copy of 10 sent 2/10/37

80: 8.11  
 298: 12

The question of amendment of the main Royal Instructions Law No 15 has settled the further unofficial member of the Leg. is not necessary to be also a member of the Leg.

Gov asks for a copy of the draft additional P.C. before submission to the King. 1st amendment herewith for action.

This opportunity can conveniently be taken for giving Gov the benefit of No 17, as suggested in the minute of 1/10/37

Action on 17 and as at 1/10 2/10 after consulting to Leg.

P.T.O.

1/10/37

Clifford White

Sir C. Cottonley  
So must the latter. The Governor accepts  
the 8.11.37. view and I am sure it is best all  
round. I hope they will derive profit from the  
draft R.I. which is a very simple document and can be  
as a matter of interest & importance  
1.11.37  
29.11.37

22. 1/4 Kenya Ord. (i.e. Draft additional Royal Instructions) - 21 thousand  
3/12/37

Review by Mr. Meeson  
11.11.37  
K201 for action rule  
draft (22)  
K80 8.11  
K298 1.12

Sir Cosmo Parkinson spoke to me about  
the words "Colony or Protectorate of Kenya"  
which occur in the last paragraph of the new  
clause 4 of the draft additional Instructions,  
but not in the first paragraph.

Section 6 of the Kenya Protectorate  
Order in Council 1920 provides that the  
Executive Council of the Colony shall be and  
be deemed to be the Executive Council of the  
Protectorate.

Section 7 empowers the Legislative  
Council of the Colony to legislate for the  
Protectorate.

Section 5 provides that in the  
absence of special instructions the Colony  
Royal Instructions shall be observed by the  
Governor in the exercise of his powers as  
Governor of the Protectorate.

As I understand the position, the  
territory

Unless there is a  
separate R.I. clause  
(which I think is not)  
this must be so  
J.M.G.

territory which forms the Protectorate is leased  
by the Colony from the Sultan of Zanzibar, and  
Government officials serving in the Protectorate  
are nevertheless still in the "public service of  
the Colony". In these circumstances there is no  
need to refer to the "Public Service of the Colony  
and the Protectorate", but in speaking of  
persons residing in Kenya  
as in the last paragraph of the new Clause 4, we  
ought to refer to "Any person within the Colony  
or the Protectorate". Logically, I suppose, we  
ought to say: "affairs in the Colony or the  
Protectorate" or "affairs therein", although  
Section 5 of the Kenya Protectorate Order might  
be held to cover this.

I notice, however, that this principle  
is not followed throughout the Royal Instructions  
of the 29th of March 1934, for in the clauses  
relating to the Legislative Council we say:-  
"Public Service of the Colony or of the Protectorate"  
but this might be left for the present.

J. Meeson  
14/12/37

I agree. Having regard to clause 4 of  
the Protectorate Ord. it is unnecessary  
in the R.I. to refer to the "Protectorate"  
as well as to "the Colony" in any place  
where the latter is used to describe Government  
persons in such a way that the draft R.I.  
for Protectorate Government can simply  
substitute the name of the Colony in the last  
paragraph of the amending R.I. It is necessary



to refer to both as that of Colony  
 matter the Gov could remove anyone  
 in either the Post or the Colony, & vice versa  
 for similar reasons both Col. & Post  
 are referred to in Clauses XVII & XIX  
 I agree that the reference to the both  
 words Post in clauses XVII and XIX  
 is inconsistent, & it seems to be unnecessary.  
 The point seems to turn on a question  
 of fact - are all officers appointed  
 to one combined service of Post  
 (Col and Post)? If so they are  
 all in the service of the Colony.  
 Even if this is not so I doubt whether  
 the distinction has any practical  
 importance in this connection - because  
 an officer who is of sufficient  
 standing to be appointed Ex Co (or  
 Leg Co) presumably is not held  
 an office relating solely to the  
 Post. It has, I believe, not even  
 a Provincial Commission & is not

A. Roberts Wray  
 21/12

\*PS. And the Gov would be hardly likely  
 to appoint an officer in the Post  
 Service as an unofficial member of  
 Ex Co even if he were a person not  
 holding office in the public service of the  
 Colony.

The only officials in respect of whom  
 I should have thought there was any  
 room for doubt are the Divals,  
 Kothis & members of the Coast Province  
 I see however that provision for their  
 salaries is included in Head II  
 (Administration) of the Estimates of  
 the Colony & Protectorate of Kenya.  
 Similarly under Head (XIV) (Judicial)  
 of those Estimates there is provision  
 for a Chief Kothis etc.  
 It is therefore I think safe to  
 say that there are no officials of  
 the Protectorate who are not officers  
 "in the public service of the Colony".  
 The only question at issue is  
 whether advantage should be taken  
 of the proposed amendment of the P.D.  
 to amend also the references  
 clauses XVII & XIX to the Public Service  
 of the Colony or of the Protectorate of  
 Kenya; & I gather from  
 Mr. Roberts Wray's remarks that he sees  
 no necessity for any such amendment

W. B. Pass  
 23/12

I think the purpose of the reference to Protectorate  
 in XVII & XIX was to cover also Sir A. L. Salmon  
 or someone like him. In a sense he was an official  
 but if he is an unpaid officer he is the Sultan of Zanzibar  
 I think any still it might be argued that he was not

office in the past. (whose office I don't know)

I do not think the point is material and I would leave XV 11 & XIX alone.

J. L. Hand  
25.12.

I agree - except that I don't want  
the position that Sir H. and Selim  
was the Sultan's Officer. The Sultan  
is the ground law lord but the  
administration is not the Sultan's.

W.L.H.

24.12.

Very well let us leave  
it alone. Let by  
and

24.12.37

W.L.H.

A  
K301 for action  
via draft 22

R80 8. 11

R298 12

23. H. G. Pelling (9/6 to 12<sup>th</sup> Dec) 31.12.37  
Explains why no provision is made in draft Royal  
Instruction for "limiting the appointment of the unoffical  
members to such period as the Governor may think fit"

This point was considered in the minutes of  
13/8, 14/8 and 16/8 above and then apparently,  
forgotten. Reply as outlined in Mr Flood's  
minutes of 16/8. C. W. White 10/1

The explanation was given

in para 3 of 16

J. L. Hand  
10/1/38

J. L. Hand  
11/1

A. M. ...

LH To H. Pelling (23 and), 5.0. 17.1.38

K301 for  
action via  
draft 22  
K301  
R298

No reply received to No 22  
wait another month

J. L. Hand  
R. 299  
4.11.38

Yes. C. W. White 4/5  
How see No 10 to 5/11

W.L.H.

35077/37

C.O.

Mr. Paskin. 12/1/38.

Mr. Dave 12.1

Mr.

S.O. for Mr. Dave's signature.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Colonial Office,

Downing Street, S.W. 1.

17. January, 1938.

See (4) m 35077/38

DRAFT.

O. D.  
R T2JAN  
D 14

Dear Pilling,

H. G. PILLING, ESQ., C.M.G.

Thank you for your letter

Kenya

No. D/Ex. Co. 17/II. of the 31st  
December, and your welcome to me on  
my arrival in the East African  
Department.

B. y. by

As regards the Royal  
Instructions to give effect to the  
revised constitution of the Executive  
Council, I am grateful to you for  
having let me down with such an easy  
question to answer. You will find  
the explanation of the omission of any  
provision for limiting the period of  
the appointment of unofficial members

FURTHER ACTION.

in paragraph 3 of the Secretary of  
State's confidential despatch of the  
30th September, from which you will  
see that it is contemplated that  
when submitting a name for

(16)

appointment to a vacancy on the Executive  
Council, the Governor will specify  
the period for which he desires  
the appointment to be made.

Yours sincerely,

(Signature) A. J. DAWE

The Secretariat,

Nairobi,

Kenya Colony

31st December, 1937

Dear *Dawe*.

Welcome to the East Africa Department! I hope that you will not have too troublesome a time therein!

There is a small matter which needs clearing up.

In the draft "Royal Instructions" enclosed in your confidential despatch of the 3rd December, no provision is made for "limiting the appointment of the unofficial members to such period as the Governor may think fit"

as recommended in paragraph 18(2) of our confidential despatch No. 91 of the 26th June. Also, no explanation of the omission was given in the covering despatch.

Harragin and I both consider that the omission is due to the fact that the power of limitation of the period of appointment is inherent in the Instrument which empowers the Governor to make appointments "from time to time," and that therefore any specific provision of such power in the Royal Instructions would be redundant.

His/

A. J. Dawe, Esq., O.B.E.,  
Colonial Office,  
London

22

5

*Handwritten note:*  
A. J. Dawe

His Excellency is, however, not quite satisfied on the point, and would prefer to have it cleared up rather than have it go by default in case any unfortunate incident should arise in the future,

Yours sincerely,

*A. H. Murray*