

1928

Kenya

14

No. *10/128*

SUBJECT

CO 533/377

Legislative Council

Previous

X 10050/27

Subsequent

X 531/29

1 Gov. Grigg ----- 71 ----- 6th Feb 1928
Reports that provisional appointment of Major A.L. Kent-Lemon has been revoked and Lt. Col. R. Wilkinson has been provisionally appointed to fill the vacancy as nominated official member of the Legislative Council. Recommends name of Lt. Col. Wilkinson for definitive app't as a Nominated Official Member.

H. Allen

Subject to any orders by the Staff Officer on the Machinery

To C.C.D. for gazetting, then draft to Gov. saying that H. A. has been pleased to give directions for the app't

S. Steel

29.2.28

The I.S. objects to the presence of the O.C. in the Council for the reasons given on the 3rd page of the minutes on 21/2/27. Subsequently the matter was discussed with Sir E. Frigg. He agreed to app't someone in place of the O.C. (page 7 of minutes on 21/2/27) Major Kent-Lemon because in [unclear] was then app'd Kapoorji. This is now revoked & the O.C. is app'd without any reason given & without any indication that the I.S. agreement with R.A. has been consulted. It seems to require further explanation before approval

(100507/2)
10018

H. Allen

29/2/28

Yes: it is remarkable

in view of the many representations

from the late I.S. head of Col. Hamilton

Mr. Wilson advanced with the
P. will personally take the O.C.
Troops would be taken off the
Council (see Mr. Wilson's minutes
of 23/6/27) (see 8/34/27)

The new O.C. (Mr. Walker)
is at present in Kenya, but there
is no indication in his reports
that he has been conversed or
informed.

Guschie,
29.2.28

~~Richardson~~
L. 23/28

The reasons why the Govt of Kenya
want the O.C. Troops are given in
para 2 of 1. It is really a question
between Governor & I. I don't
know that any explanation will
arrange to move that. Perhaps Mr
G. Jones may have written s.o. about
it but it is a question whether, with
the matter of far greater importance
you are - the Land Trust Bill
it is worth pursuing this matter
other than by reporting that he has
given no reasons for the change of view
since the discussion referred to in
my dep. (No 2 - 18/136) Richardson
1.3.28

Mr. Wilson

Mr. Wilson is due home on Monday
24th and we had better wait in discussion
with him before reporting anything.
The temporary appointment of Mr.
Walker will not be affected by the
delay.

W.C.S. 1.2.28.

Yes wait till Walker's return.

J.H. 6
at once

5.3.28.

wait.

Mr. Jeffries

In principle I hold the same view as the late Mr
that the O.C. Troops should not sit in the L.C.
I am aware however of the forthcoming Report by the
Hilton - Young Commission. The Sir T. Carr case - certain
points raised in my report on 5th B. - all of which are
likely to be discussed in L.C. I am of opinion that
it would be advantageous, from the S.E.A.R. point of view,
for Mr. Walker to be on the L.C. temporarily. He
is an officer of experience with ability of putting a case
and answering questions clearly.

Mr. 16. Kar. 2/28

Done as proposed by Mr. Lee on

29.2.28.

R. W. Wilson
4.4.28

W.C.S. 4.4.28

DESTROYED UNDER STATUTE
1952
DESTROYED UNDER STATUTE
1952

28 April 28

Reports that Mr. Atkinson has resigned seat as Elected Member, and has been requested to submit resignation in writing. Requests telegraphic notification when notification is received.

Mr Howell

The telegram should apparently

read as I have altered in the red pencil. Have you any more news?

Under CL XVIII of the Royal Instructions of 11 Sept. 1920 the appointment of Elected Members is subject to the provisions of the Legislative Council Order of 1919. A. 18 of the Ordinance requires a member to resign "by writing under his hand," & no further action seems called for beyond notifying Government by tel. of date of such letter.

150 Aarman

3.5.28.

Insert the letter
EWS:15

3rd May 1928. Request for approval to appt. of Mr. Carthy vice Bruce as Nominated Official Member, and also for appointments of Wilkinson and Watkins.

14th April 1928. Recommendation for approval definite appointment of Lt Col Watkins as a Nominated Official Member while acting as Senior Commissioner of the Coast. Provisional appointment of Mr Montgomery has been revoked.

1. Wilkinson. Already approved. Both in regards temporary definitive appt. to No 2, which will not reach Kenya before 8 May.
2. Watkins, Lt. Col. (until recently Deputy Chief Native Commissioner - a post recently abolished, which Lt. Col. Watkins was merged into the estab. of Provincial Commissioners).
3. McCarthy, A.T. Crown Counsel acting as Solicitor General. His definitive appt. is not apparently asked for.

Mr Howell has pointed out that Mr. Montgomery was definitively appt'd to the new Council (see 5 on 10050/27). He can't revoke his appointment or leave a provisional appt. can be made in his place.

As time is short I submit draft telegram. Mr Howell will perhaps be good enough to amend it where

necessary, as it is I feel in view of urgency of situation. I have signed the draft. EWS:15

CO. [unclear] 7 2 Jan 28 - 5.1.28
draft (7)

DESTROYED UNDER STATUTE
Gov. George, Dec 1955 - [unclear]

(Request approved for app't of Deek as Nominated
official member vice Doherty)

A provisional app't as there
is no question of Mr. Doherty's resignation

Mr. Doherty was appointed defunct by
[unclear] in a flagged paper (X1005011)
There is no thing done to show
[unclear] and [unclear] anyone else has
been appointed to fill the vacancy
caused by his going on leave,
as drafted hereunder.

Patell
7.5.28

There is no need for the Gov to
telegraph in regard to these provisional
appointments unless he wants to get
approval beforehand, as the persons
provisionally appointed may sit on the
council without waiting for their
information. This I think has
already been pointed out to the
Governor. But note the different

forms of wording used. he [unclear] the Gov
states that he has provisionally appointed
Williamson. In No. 5 he asks for approval
of appointment of Mr. Culling vice Bruce. I
note that he has provisionally appointed
Montgomery & in 8 there is a further
request for approval.

Logically confirmation can hardly be
arranged until after the prov. app't
has been made but it is possible
that the phrase referred to above was
intended to convey the same meaning
as that set out in the despatches.
In which case the proposed reply might
be sent but it would be worth

what is trying to clear up later. The
procedure is usually followed in the
colony.

W. G. Towell
7/5/28

as proposed & initialed as suggested

J. W. Allen
7/5/28

(1) I agree that an app't cannot
be confirmed (in disallowed) - all
X. X. of [unclear] 11 Sept 1970 - wanted

it has been made in the
and I suggest alternative
for, in which, incidentally,
we can bring back the
attention of the Kenya
Council to Dip. No. 2
of 3/4/26 - No. 2 in AF 1772/16

(2) Review for content of letter
to Sir E. Denham to clear up
the procedure as suggested
by Sir Howell. This will need
care as we had better begin
by preparation of a note
in impersonal form setting
out the position ~~clearly~~
including a summary of
the variations in procedure
so far noticed.

All Pakistan
8.5.26
W.C.S.
8.5.26

DESTROYED UNDER STATUTE 80 (8 and 9) 8 May 1928.

As to (2) - Mr. P. ...
above, I attach a note as to
the procedure in the various cases
since the election of March last.
As to the original appointments (No. 4)

to ...
not ...
in ...
the ...
made ...
of ...
1/6

on X 10050/27) the Gov. could have saved a
... of people proposed
provisionally & then requesting that H.M.
shall approve their provisional appointment &
shall definitively appoint them. The
procedure as to the later definitive appointment
(class B) appears correct.

As regards the provisional & temporary
appointments, it seems that in class A the
procedure is ^{substantially} correct - apart from the fact
that the Gov. "requests" the S.O.S. to
accord his "sanction" or "request covering
approval" instead of "requesting H.M.'s
confirmation". In class C (the
latest telegrams) he falls into the error
of which he was warned as in no. 2 on
X 1772/26

I do not know whether it will be
thought worth while to say anything as to
the ^{form of the} original appointments. Even if the telegram
sent was technically incorrect or unnecessary

has is something to be said for our
knowing beforehand who is to be on
the Legislative Council. But
? a dep. sh^d be sent ^{referring to no 5 28} calling
attention to no. 2 on X 11/16, &
saying that in accordance with the
§ xxii of the R. I. of 11 sept 1920
the correct procedure for making
provisional & temporary appointments
is for the appoint to be made &
then reported to the J. of S. for H.C.
confirmation ~~or~~ a disallowance,
& to saying again that ^{any} ~~any~~ ^{concessions} ~~concessions~~
on the subject ^{where} ~~where~~ ^{may} ~~may~~
be necessary

Erskine
6/5

The more originally appts
could not have been made
provisionally by the governor
as he can only appoint provis-
ionally (Cl. XXI of R. I. of 1920)
on the occurrence of vacancies
in an already existing Council
Appts. of nominated members to

a new Council would be made
under Cl. XVII of the R. I.

I agree with Mr. Eastwood's
conclusion as to Class A
As regards Class B, the
procedure in 1920 on this file
is all right as far as it goes, so
long as it is realized that the
H.C. appointment requires to be
sanctioned by the ^{the concurrence of} H.C. instructions
for appointment. In No. 12 of
10050/27 there was no need necessarily
for the definitive appt. to be made
prior to the next session, a person
provisionally appointed by the gov-
ernor to all intents & purposes
a member of the Council (Cl. XXI)
(This was not a new session after
a dissolution)

W. H. Eastwood
1875/28

After speaking to Mr. Allen & I about
a dt for custom papers with a note
in a form suitable for sending to H.C.

Eastwood
257
75

I think dt is now
submitted with the case
All Parkman
J. E. Eastwood 15.6.28
1875/28

10. To Sir to Denham of } 20 JUN 1928
(in city note.)

DESTROYED UNDER STATUTE 285. ----- 28th May 1928
Reports that Mr Atkinson does not now propose to
resign his seat.

Note 19/5/28
Kougel. C.

Prof. Edmund
1/6 doney

DESTROYED UNDER STATUTE 334. 22 June 1928

(Recommends definite appointment of
Mr. S. F. Deek, Acting Senior Commr,
Macao Province, vice Mr. C. W. Dobb's who
is absent on leave)

What the Governor ^{apparently} seems to
~~wishes~~ ^{would} to do ^{is} to appoint
Mr. S. F. Deek
Acting Senior Commr. Provisionally
(and not "definitely" as he
puts it) during the absence on
leave of Mr Montgomery & Mr
Dobb's respectively. The second
& third pars. of this despatch
are his answers to the S. G. P.
requests on 7/5/28 that he should
appoint provisionally & report
for confirmation. They do not
quite satisfy those requests.
Moreover Gov. has not realized
that his des. 199 was already
in the S. G. P. hands when telegram
sent on 5 May was sent.
It is to be hoped that the L.
to Mr Denham, which has crossed
his despatch, will enlighten
the local authorities as to the

proper procedure.

In view of 7/5/28 it must be
inferred that the Gov. has made
the provisional appt.

? confirm them in His
name (on this assumption), & say
that if, as I suppose, ^{it} ~~there~~
is as intended that Mr Montgomery
& Mr Dobb's should resume their
places on their return from
leave, ~~it would have been better~~
to avoid using the expression
"definite appointment" in this
connection is misleading.

W. H. Apperance
9/7/28

I doubt if we can assume anything
? enquire (by tel. if necessary) whether Gov.
is to understand that the Gov. has
provisionally appt'd Dobb's & Deek,
vice Montgomery & Dobb's on leave respectively,
& now desires Gov's confirmation

W. H. Howell
20/7/28

W. H. Howell
9/8

W. H. Howell
23 July 1928

DESTROYED UNDER STATUTE 334

98 K

The Governor has not yet
replied to No. 13

11/17/28

? Given to Dept of War
replies to

of Edward
12/8

At Newark
S. H. Allen

176 apace

2/18

13 Aug 1928

DESTROYED UNDER STATUTE

DESTROYED UNDER STATUTE

Memorandum Telegram 16 Aug 28
Has provisionally appointed Watkins &
Deck and for the present, proposes no
further action

? confirm provisional
appts. in his name

S. H. Basman
20/8/28

acc'd
10/10/28
Allen

DESTROYED UNDER STATUTE

To Ser. 623. 15 Aug - 24 AUG 1928

DESTROYED UNDER STATUTE

GOVERNOR 642

18 NOV 1928

Reports that Mr. E. B. Horne has been provisionally
appointed to be temporarily a Nominated Official
Member in the place of T. C. L. Dobbs now acting in
the office of Chief Justice of the Court, and that the
appt. of Mr. S. R. Deck was dated on Mr. Dobbs' ^{return to Newark}

W. H. Allen
11/17/28

(subject for the court)

The right form appears to have been sent

yes

S. H. Basman
12/12

of Edward

12/12/28

Allen 12/12/28

acc'd

14. 11. 28

Allen

DESTROYED UNDER STATUTE

To Ser. 910

11/17 Aug

17 DEC 1928

10 10

F. 15128/28 Kenya.

- Mr. Rhetwood 25.5.
- Mr. Harman 12.6.
- Mr. Allen 15.6.28
- Mr. Bottomley 16.6.28
- Mr. E. J. Harding
- Mr. J. Shackles
- Mr. G. Grindle
- Mr. O. Davis
- Sir B. Wilson
- Mr. Ormsby-Gore
- Lord Lovat
- Mr. Amery

*Mark envelope
Please open if away*

Semi-official for Mr. Parkinson's signature.

18 JUN 1928

Downing Street,
20 June, 1928.

Dear Denham,

For reason.

In the Governor's telegram

DRAFT

SIR EDWARD DENHAM, K.B.E.,
G.M.C.

dated the 3rd May (No.102) and the 5th May (No.105) approval was requested for the appointment of McCarthy and Deek to act provisionally as Nominated Official Members of the Legislative Council. Replies were sent on the 5th and 8th May respectively, but in order to avoid unnecessary correspondence by telegram in future, I think I ought to remind you of the Secretary of State's despatch No. 244 of the 3rd 21st March, 1926, in which it was pointed out that as the Governor is

empowered

Note
(companion diff.)

X 177216
No 2

empowered to make provisional appointments, it is not necessary in ordinary circumstances for the filling of such vacancies to be made the subject of telegraphic correspondence.

~~Further, some recent inconsistencies~~

It wd. seem ~~clear~~ that there is some

~~in the procedure adopted in the case of both provisional and definitive~~

there is occasion for the ~~the Governor~~ to make provisional a definitive appointment of Non-Executive Official members of the Council

~~appointments indicate that the correct procedure is imperfectly appreciated in Kenya. A note, of which I enclose~~

~~a copy, has accordingly been prepared here comparing the correct normal~~

proceeding which ~~shows~~ will,

~~procedure and the actual procedure followed in some recent instances.~~

Herewith

~~which I hope may be of use to you when dealing with similar cases~~ *in future.*

now to be dealt with

I might add that there is,

of course, no reason why the Governor should not consult the Secretary of State -

by

empowered to make provisional appointments, it is not necessary in ordinary circumstances for the filling of such vacancies to be made the subject of telegraphic correspondence.

~~Further, some recent inconsistencies in the procedure adopted in the case of both provisional and definitive appointments indicate that the correct procedure is not fully appreciated~~

in Kenya. A note, of which I enclose a copy, has accordingly been prepared here comprising the correct normal procedure and the actual procedure followed in some recent instances.

~~This note~~ which I hope may be of use to you when dealing with similar cases in future.

I might add that there is, of course, no reason why the Governor should not consult the Secretary of State -

by

There is occasion for the ~~the Governor~~ to make provisional or definitive appointments of Nominated Official members to the Council.

by telegram, if necessary - if he
thinks it desirable to do so before
making a provisional appointment;
but, as the Governor is naturally
in ordinary circumstances
in the best position to make the
choice of the most suitable individual
and as he can himself revoke
provisional appointments, the need for
such reference to the Secretary of
State will presumably only arise very
exceptionally.

Yours sincerely,

(Signed) A. C. C. PARKINSON.

54/11

Notes as to the procedure for the nomination of Official Members of the Kenya Legislative Council.

K. Eastwood 29/6

Order 14
14/6

Theresa 15/6/48

W. D. Bottrill 16/6/48
clerk

20 JUL 1928
copy to C. & De. Kan

The following variations in procedure have occurred in the various appointments to the Legislative Council since ^{the} elections in ~~1927~~, 1927.

A. Actual ~~Kenya~~ Procedure adopted.
I Provisional Appointments.

The Governor reports the provisional appointment of Mr. L. A. ^{N.L.} McIlwaine, Canon ^{N.L.} Jessup and Major ^{N.L.} Kant-Lemon to be temporarily nominated Official Members, and requests that the Secretary of State will accord his sanction.

(Kenya despatches of 1927, Nos. 263, 510, 549.)
The Governor reports the provisional appointment of Major H. H. Brassey Edwards and Mr. W. F. G. Campbell, and requests the covering approval of the Secretary of State.

(Kenya despatches 1927, Nos. 545, 558.)

The Governor telegraphs requesting approval to the appointment of McCarthy and Beck to be nominated Official Members (3rd May and 5th May, 1928)

II Definitive Appointments.

The Governor submits the name of Mr. D. H. Bruce for definitive appointment and requests His Majesty's decision.

(Kenya despatches, 1927, No. 466.)

The Governor reports that he has provisionally

X. 10050. 27
Nov 8/14/47

X. 10050. 27
Nov 16 + 14

X. 15128. 28
Nov 5 + 8

X. 10050. 27
Nov 12

Lieut.
 provisionally appointed/Colonel R. Wilkinson
 and Lieut. Colonel ^{O.F.} Watkins to be temporarily
 Nominated Official members; ~~and~~ ^{he} submits their
 names for definitive appointment and ~~reports~~ ^{asks}
 that these appointments ~~will~~ ^{may} receive the
Secretary of State's approval.
 (Kenya despatches 1920. Nos. 71 and 199).

X. 19728.
400 1 & 6.

B. Correct procedure.

Royal Instructions

I Provisional Appointments on the occurrence of any of the events mentioned in Article 201 of the R. Ord. of 11 Sept. 1920.

The correct procedure is for the
 Governor to appoint provisionally an officer
 to be temporarily a Nominated Official
 Member, and then to report his action to the
 Secretary of State with a request for *the assent*
to be submitted to
 His Majesty's confirmation or disallowance.
 (See Clause ~~22~~ ^{XVII} of the *Royal Instructions*
 Order in Council of
 the 11th September, 1920).

II Definitive Appointments.

The correct procedure is for the
 Governor to submit ^{to the Secretary of State} the name of an officer
 for definitive appointment, and to request
 that His Majesty's ^{pleasure} ~~pleasure~~ ^{assent} may be obtained.
 (See Clause ~~22~~ ^{XVII} of the *Royal Instructions*
 Order in Council of
 the 11th September, 1920).

- Mr. Sackville
- Mr. Howell 5/1/28
- Mr. Allen Satacc
- Mr. Bottomley
- Mr. E. J. Harding
- Sir J. Shackburgh
- Sir G. Grenville
- Sir C. Davis
- Sir S. Wilson
- Mr. Ormsby Gore
- Lord Local
- Mr. Amery

~~Rev. X 15.12.28 Kenya~~
 230h 5/1/28

for con. so. see minutes
DRAFT Cde. Tel.

Governor
 Nairobi

Mr. Ray
 your telegram 3rd May 1928

Mr. Ray has been
 pleased to confirm
 provisional appointment of
 Wilkison and (maybe) O'Connell
 as the Wilkison ^{maybe} definitively
 appointed see my telegram
 18 April No 274

~~Recc'd~~
~~for forgotten~~
 Wilkison and O'Connell
 already been appointed
 the provisional appointment
 are no longer
 needed
 15/5/28
 116

As Montgomery definitively
 appointed see my telegram
 26 February 1927 you have
 no power to appoint but
 as he is absent on leave
 provisional appointment

of Watkins in his place
may be made and reported
for confirmation.

Secur



15
GOVERNMENT HOUSE,
NAIROBI,
KENYA

KENYA

AS. No. 71

6th February
January, 1928.

RECEIVED
27 1928
COL. OFFICE

Sir,

X
10050/27
u18

With reference to your despatch No. 783 of the 14th September, I have the honour to inform that I have revoked the provisional appointment of Major A.L. Kent-Lemon and have provisionally appointed Lieutenant-Colonel Roger Wilkinson, D.S.O., Officer Commanding Troops, to be temporarily a nominated Official Member of the Legislative Council.

cc
8134
27
H.A.R.

2. I have not overlooked the suggestion referred to in para. 2. of your despatch No. 566 of the 9th July that the Officer Commanding Troops should not be required to attend the Legislative Council as a Nominated Official Member but I consider that for the present the officer holding the post of Officer Commanding Troops should continue to sit in Legislative Council.

3. I have the honour, therefore, to recommend the name of Lieutenant-Colonel Roger Wilkinson, D.S.O., for definitive appointment as a Nominated Official Member and I trust that this appointment will receive your approval.

I have the honour to be,
Sir,
Your most obedient, humble servant,

Edward Gigg.

THE RIGHT HONOURABLE
LIEUTENANT-COLONEL L.C.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

18 APR 1928

Ans 9-274