

1934

Kenya

CO-533/442

No. 23039/1

SUBJECT

CLOSED
UNTIL

~~1934~~

Constitutional Development

Native Representation on the

Legislative Council.

Previous

3198/1/33

Subsequent

23142/34 (Review Instruments)

1. Sir J. Byrnes (5-0)

3rd Jan. 34

Give details of various points under conser. regarding the personnel on the Legislative Council & recmd. that steps be taken to amend the Royal Instructions so as to implement the usual restriction limiting choice of native representative to members of Church of England & also the appointment of an extra native representative as recmd. by the Joint Committee.

? Before making any action under the beginning of the Royal Instructions, it is to be assumed that the up will be provided as a result of the Royal Instructions. The matter is to be discussed with Sir J. Byrnes.

I attach 31/1/33 which contains a list of the present members of leg. I also annex opposite a note.

* 1a

Wants to discuss
Matters: 7-1
Director 7

yes: but it is clear that we must now proceed to amend the Kenya L.P. & R.I. to secure the desired results.

If the Governor is satisfied with the official majority of one I think we should not cavil. If all the un-officials combined it would clearly be unwise to force matters without further consideration and consultation.

We might proceed to consider the necessary draft alterations which should be submitted to the Governor for consideration as soon as the S. of S. returns & give directions.

S. S. O. 7-2

7-2

Sir J. Moffat

The position is explained in the...
The position is explained in the...
The position is explained in the...

Sir J. Byrnie (no. 6 in 3181/33)

under the act

I send you for approval the instructions of the last instructions in the Royal Instructions of 28th March 1927. We need not provide for the case of necessity for issuing an assent vote. As a matter of fact it is unlikely: it might be possible to accept it: if not, we could lay it on the table, by order in Council and then modify the instructions so as to safeguard the future. That would be better than introducing public opinion in advance.

W.L.B. 8/2/34

Yes. But when we can hear a decision there will be time to be said in the matter. The hope may have become a reality.

W.L.B.
8/2

2. Sir J. Byrnie (S.O) _____ 12 Feb. 34

States S. of S. agrees with proposals in No 1 & implies necessary action may be taken.

3. Secretary of State _____ 13 February 34

States has decided that necessary instrument shall be issued at the earliest possible moment, without the appointment of a special commission, and that the number should not exceed the necessary.

No. mins. as to amendment of consolidation of Constitutional Instruments see on 23/4/34

- 4 Copy of Letters Patent — 29 3 34
- 5 Copy of G. M. S. — 22 3 34
- 6 Copy of Royal Instructions — 29 3 34

Don't record

(W)

Parliamentary Question by Mr. O. Grenfell

Answer 1996

4. To Government 219 (no. 9, A. War in 1934) — 27 April 34

8. Anti Slavery & Abolitionist Socy
State decision to appoint an additional member
to represent native interests has been observed with interest
& appreciation & urges the nomination of Native Councils
in connection with nomination of members & appointment
of native members.

? send a brief acct.,
copy come to the for. of info.
D. J. Norman Esq.
14/1/34

I suppose we must acknowledge this
subbit, but I wouldn't worry the
Socy with it.

J. H. ...
14/1/34

~~Recommendation~~

? act. net.

^{sent}
I had thought of sending this on, but
fuller cover shows that it would be
regarded as a serious statement of the views
of the Society. They surely can't mean (as the
and) that any effort should be given to the
cause of their extinction from here: 7 of the
(1930 White Paper (which by 20 years
contemplates early action in that
direction). And in a serious moment
they would rather pay than the
later joint Select Com. and the
point S. H.'s conclusion.

act. net

Wed. 16.5.34

C. O.

3039/1/34

5

Mr. Crossin

Mr. *Freston*

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Presnt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.
R 18 MAY.
D 28

DOUBLE

19

Sir,

I am, etc., to acknowledge

(8) the receipt of your letter of the
14th of May on the subject of the
representation of native interests
on the Legislative Council of
Korea.

I am, etc.,

(Signed) G. W. FLOON

DRAFT.

THE PARLIAMENTARY SECRETARY,
THE ANTI-SLAVERY AND ABORIGINES
PROTECTION SOCIETY.

FURTHER ACTION.

Telephone: 50
50 CITTIZENRY, CHURTON, LONDON
Telephone:
VICTORIA 6655

8⁶

The Anti-Slavery and Aborigines Protection Society

In which are incorporated the British and Foreign Anti-Slavery Society and the Aborigines Protection Society.

Joint Presidents:

THE RT. HON. THE EARL OF LYTTON, K.G., G.C.S.I., G.C.I.E. THE RT. HON. LORD MESTON, K.C.S.I. THE RT. HON. LORD ROSE-BUXTON.

Chairman: CHARLES H. ROBERTS, ESQ.

Vice-Chairman: CHARLES RODEN BUXTON, ESQ.

Vice-Chairman:

ROSE-BUXTON TRAVERS BUXTON, M.A.

Parliamentary Secretary: SIR JOHN HARRIS.

Assistant Secretary: MISS E. K. BATTY.

Joint Hon. Treasurers:

ALFRED BROOKS, ESQ., J.P.

SIR T. FOWELL BUXTON, BART

H. J. TAPSCOTT, ESQ.

DENISON HOUSE,

296 VAUGHALL BRIDGE ROAD,

LONDON, S.W.1.

(CLOSE TO VICTORIA STATIONS)

Robt. G.

10th May, 1934.

The Under-Secretary of State,
Colonial Office,
Downing Street,
S.W.1.

Sir,

My Committee has observed with considerable interest and appreciation the decision to appoint two nominated unofficial members of the Legislative Council of Kenya Colony to represent native interests in the Legislature, instead of one, and the Committee is glad to learn that the additional member is to be Mr. Rupert Remsted.

We trust that in any changes of this kind that may take place in future, it may be possible to associate the Native Councils in some way with the nomination of members to the Legislative Council. Our Committee still believes that only an African can truly represent the aspirations of his own people, a fact which is recognised in most British Crown Colony territories. We know that it is asserted that throughout Kenya Colony there is no native capable of filling this position, and whilst agreeing that the appointment of an Englishman to represent the natives might do much in securing their welfare, and particularly the abolition of certain native systems, our Committee is most anxious to see some start made in the direction of native membership of the Legislative Council.

Our Committee desires to emphasise this feature, which we are glad to know is in harmony with the policy of His Majesty's Government, as set forth in White Paper Cmd. 3574, namely:-

Section 7. "The goal of constitutional evolution, in Kenya as elsewhere, is admittedly responsible government by a Ministry representing an electorate in which every section of the population finds an effective and adequate voice."

Section 9. "His Majesty's Government are of the opinion that the establishment of a common roll is the object to be aimed at and attained, with an equal franchise of a civilisation or education character open to all races."

Our Committee trusts that early opportunity may be taken to give effect at least to Section 7.

I have the honour to be, Sir,

Your obedient Servant,

John Harris
Parliamentary Secretary.

23039/34 Kenya

C. O.

J.D.
R 25 APR
D 26

Mr. Burt 25/4/34

Mr. Vermin 25/4/34

Mr.

Mr. Parkinson

Mr. Tomlinson

Sir C. Gillingham

Sir J. Shuckburgh

Parly. U.S. of S.

Parly. U.S. of S.

Secretary of State

Sir,

I have etc. to
for your information
transmit to you an
extract from the Official
Report of the Proceedings
of the House of Commons
on the 23rd of April
containing a question
by Mr D. Grenfell M.P.
regarding the representation
of native opinion on
the Kenya Legislative
Council, and the
reply which I have etc.

DRAFT.

KENYA

No. 319

GOVERNOR

FURTHER ACTION.

P.T.O.

2. You will, no

doubt, ~~consecrate~~ ^{forward} a copy

of the extract to Mr

Hemsted.

I have etc.

(22) P. C. B. L. 100

69

COLONY OF KENYA

INSTRUCTIONS passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Kenya.

Dated 29th March 1934.

GEORGE R.I.

INSTRUCTIONS TO OUR GOVERNOR AND COMMANDER-IN-CHIEF IN AND OVER OUR COLONY OF KENYA, OR OTHER OFFICER FOR THE TIME BEING ADMINISTERING THE GOVERNMENT OF OUR SAID COLONY.

WHEREAS by Letters Patent under the Great Seal bearing date at Westminster the Eleventh day of September, 1920, We did constitute, order, and declare that there should be a Governor and Commander-in-Chief (therein and hereinafter called the Governor) in and over Our Colony of Kenya (therein and hereinafter called the Colony):

Recites Letters Patent of 11th September, 1920.

AND WHEREAS We have thereby authorised, empowered and commanded the Governor to do and execute all things that belong to his said office, according to the tenour of Our said Letters Patent and of any Orders in Council relating to the territories formerly known as the East Africa Protectorate, save in so far as any provision of any such Order in Council may be repugnant to any of the provisions of Our said Letters Patent, and of such Commission as may be issued to him under the Royal Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under the Royal Sign Manual and Signet, or by Order in Council or by Us through one of Our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Colony:

AND WHEREAS We did issue to the Governor certain Instructions under Our Sign Manual and Signet bearing date the Eleventh day of September 1930 and have from time to time amended the aforesaid Instructions by Additional Instructions under Our Sign Manual and Signet.

Recites Instructions of 12th September 1930 and Additional Instructions.

AND WHEREAS We are minded to issue fresh Instructions under Our Sign Manual and Signet for the guidance of the Governor or other Officer administering the Government of the Colony:

INSTRUCTIONS to the Governor and Commander-in-Chief Colony of KENYA.

Substitution
fresh
Instructions
for Instruc-
tions of 11th
September
1920 as
amended by
Additional
Instructions
Governor to
administer
Oaths

NOW THEREFORE We do by these Our Instructions under Our Sign Manual and Signet, direct and enjoin and declare Our will and pleasure that, as from the date hereof, the following Instructions shall be substituted for the Instructions under Our Sign Manual and Signet bearing date the Eleventh day of September 1920, amended as aforesaid --

I. The Governor may, whenever he thinks fit, require any person in the public service of the Colony to take the Oath of Allegiance, in the form prescribed by the Act mentioned in the above recited Letters Patent bearing date the Eleventh day of September 1920, together with such other Oath or Oaths as may from time to time be prescribed by any laws in force in the Colony. The Governor is to administer such Oaths, or to cause them to be administered by some Public Officer of the Colony.

Instructions
to be obser-
ved by
Deputies

II. During the temporary absence of the Governor from the seat of Government or from the Colony these Instructions, so far as they apply to any matter or thing to be done, or any power or authority to be exercised, by a Deputy acting for the Governor, shall be deemed to be addressed to and shall be observed by such Deputy.

Deputies
may corre-
pond direct
with Secre-
tary of State
in urgent
cases

III. If in any emergency arising in the Colony during the temporary absence of the Governor for a short period from the seat of Government or from the Colony it is necessary that instructions should be obtained from Us without delay, the Deputy (if any) acting for the Governor may apply to Us, through one of Our Principal Secretaries of State, for instructions in the matter; but every such Deputy shall forthwith transmit to the Governor a copy of every despatch or communication which he has so addressed to Us.

Constitution
of Executive
Council

IV. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Treasurer, of Chief Native Commissioner, of Commissioner for Local Government, Lands and Settlement, of Director of Medical Services, of Director of Agriculture and of Director of Education, who shall be styled *ex officio* Members of the Executive Council, and such other persons holding office in the Public Service of the Colony as the Governor in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal, who shall be styled Official Members of the Executive Council, and further of such persons (if any) not holding office in the Public Service of the Colony as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may, from time to time, appoint by an Instrument under the Public Seal, who shall be styled Un-official Members of the Executive Council.

Provided that if any Official Member of the Council shall cease to hold office in the Public Service of the Colony his seat in the Council shall thereupon become vacant.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony or the Protectorate of Kenya relating to affairs in the Colony, he may, by an Instrument under the Public Seal, summon for such special occasion any such person to be an Extraordinary Member of the Executive Council.

Extra-
ordinary
Members

V. Whenever any Member, other than an *ex officio* Member, of the said Executive Council shall be writing under his hand, resign his seat in the said Executive Council, or shall die, or whenever the seat of any such Member shall otherwise become vacant, or whenever any such Member shall be suspended from the exercise of his functions as a Member of the Executive Council, or be declared by the Governor by an Instrument under the Public Seal to be incapable of exercising his functions as a Member of the Council, or be absent from the Colony and from the Protectorate of Kenya, or shall be acting in an office the holder of which is an *ex officio* Member of the Council, the Governor may, by an Instrument under the Public Seal, provisionally appoint some person to be temporarily a Member of the Council in the place of the Member so resigning or dying, or whose seat has otherwise become vacant, or who has been suspended or declared incapable, or who is absent, or acting as an *ex officio* Member.

Provisional
Appoint-
ments

Such person shall forthwith cease to be a Member of the said Council if his appointment is disallowed by Us, or revoked by the Governor, or superseded by the definitive appointment of a Member of the Council, or if the Member in whose place he was appointed shall be released from suspension, or, as the case may be, shall be declared by the Governor capable of again discharging his functions in the Council, or shall return to the Colony or the Protectorate of Kenya, or shall cease to sit in the Council as an *ex officio* Member.

Provided that when any person shall be lawfully discharging the functions of more than one of the offices the holders of which are *ex officio* Members of the said Council, the Governor may, by an Instrument under the Public Seal, appoint any fit person to be provisionally a Member of the Council so long as the functions of the said offices shall continue to be discharged by one person as aforesaid.

Provisional
appoint-
ments to be
immediately
reported.

VI. The Governor shall, without delay, report to Us, for Our confirmation or disallowance, through one of Our Principal Secretaries of State, every provisional appointment of any person as a Member of the said Executive Council. Every such person shall hold his place in the Council during Our pleasure, and the Governor may, by an Instrument under the Public Seal, remove any such appointment.

Precedence of Members

VII. The Members of the Executive Council shall have seniority and precedence as We may specially assign, and, in default thereof, first the *ex officio* Members, in the order in which their offices are above mentioned, then the Official Members, according to the priority of their respective appointments, or, if appointed by the same instrument, according to the order in which they are named therein, then the Unofficial Members (if any) according to the like priority and finally Extraordinary Members with like priority.

Governor to communicate Instructions to Executive Council

VIII. The Governor shall forthwith communicate these Our Instructions to the Executive Council, and likewise all such others, from time to time, as We may direct or as he shall find convenient for Our service to impart to them.

Executive Council not to proceed to business unless summoned by Governor's authority. Quorum

IX. The Executive Council shall not proceed to the despatch of business unless duly summoned by authority of the Governor, nor shall any Members at the least, exclusive of himself or of the Members present, be present and assisting throughout the whole of the meeting, at which any such business shall be despatched.

Who to preside

X. The Governor shall attend and preside at all meetings of the Executive Council, unless prevented by illness or other grave cause, and in his absence such Member as the Governor may appoint, or in the absence of such Member the senior Member of the Council then present shall preside.

Minutes of Executive Council to be kept

XI. Minutes shall be regularly kept of all the proceedings of the Executive Council, and at each meeting of the Council the Minutes of the last preceding meeting shall be confirmed or amended, as the case may require, before proceeding to the despatch of any other business.

Minutes to be sent home twice a year

XII. Twice in each year a full and exact copy of all Minutes for the preceding half year shall be transmitted to Us through one of Our Principal Secretaries of State.

Governor to consult Executive Council. Proviso. Urgent cases

XIII. In the execution of the powers and authorities granted to the Governor by Our above recited Letters Patent or otherwise he shall in all cases consult with the Executive Council, excepting only in cases which may be of such a nature that, in his judgment, Our service would sustain material prejudice by consulting the Council thereupon, or when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters. In all such urgent cases he shall, at the earliest practicable period, communicate to the Executive Council the measures which he may so have adopted, with the reasons thereof.

Governor alone entitled to submit questions

XIII. The Governor alone shall be entitled to submit questions to the Executive Council for their advice or decision; but if the Governor decline to submit a question to the Council when

requested in writing by any Member so to do, it shall be competent to such Member to require that there be recorded upon the Minutes his written application, together with the answer returned by the Governor to the same.

XIV. The Governor may act in opposition to the advice given to him by the Members of the Executive Council, if he shall in any case deem it right to do so, but in any such case he shall fully report the matter to Us by the first convenient opportunity, with the grounds and reasons of his action. In every such case it shall be competent to any Member of the Council to require that there be recorded at length on the Minutes the grounds of his advice or opinion he may give upon the question.

XV. The Legislative Council of the Colony shall consist of the Governor as President, eleven *ex officio* Members, Nominated Official Members not exceeding nine in number, seven European Elected Members, Indian Elected Members not exceeding five in number, one Arab Elected Member, and two Nominated Unofficial Members to represent the interests of the African community.

Provided that if after a dissolution of the Council less than five persons are elected to be Indian Elected Members, or if at any time the number of Indian Elected Members is less than five, the vacancy or vacancies so arising may be filled by the appointment in the manner hereinafter provided of Nominated Indian Unofficial Members.

Provided further that the appointment of Nominated Unofficial Members to represent the interests of the African community shall be discontinued in pursuance of instructions from Us through one of Our Principal Secretaries of State when it shall appear to Us that such appointment is unnecessary.

Provided further that if one of the Nominated Official Members is not specially appointed to represent the interests of the African community there shall be a Nominated Unofficial Member to represent such interests.

XVI. The *ex officio* Members of the Legislative Council shall be the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Treasurer, of Chief Native Commissioner, of Commissioner for Local Government, Lands, and Settlement, of Director of Medical Services, of Director of Agriculture, of Director of Education, of General Manager of the Kenya and Uganda Railways and Harbours and of Director of Public Works, and of Commissioner of Customs.

Minutes of Executive Council to be kept

Minutes of Legislative Council

Ex officio Members of Legislative Council

Nominated Official Members.

XVII. The Nominated Official Members of the Legislative Council shall be such persons holding office in the Public Service of the Colony or of the Protectorate of Kenya as the Governor, in pursuance of instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal. They shall hold their places in the Council during Our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment, but may be re-appointed.

Provided that if any Nominated Official Member of the Council shall cease to hold office in the Public Service of the Colony or of the Protectorate of Kenya his seat in the Council shall thereupon become vacant.

European Elected Members.

XVIII. The European Elected Members of the Legislative Council shall be such fit persons as may be elected in accordance with the provisions of the Ordinance entitled "An Ordinance to provide for the election and nomination of Members to the Legislative Council of the East Africa Protectorate" passed by the Legislative Council of the East Africa Protectorate on the Tenth day of July 1919, or of any law adding to, amending or substituted for the same by the Legislative Council of the Colony and for the time being in force thereon.

Indian and Arab Elected Members.

XIX. The Indian and Arab Elected Members of the Legislative Council shall be such fit persons as may be elected in accordance with the provisions of any law enacted for the purpose by the Legislative Council of the Colony. The Nominated Unofficial Members to represent the interests of the African community shall be appointed by the Governor by an Instrument under the Public Seal in pursuance of instructions from Us through one of Our Principal Secretaries of State. The Nominated Unofficial Member (if any) of the Council to represent the interests of the Arab community shall be such Arab or other person representing such interests and not holding office in the Public Service of the Colony or of the Protectorate of Kenya as the Governor in pursuance of instructions from Us through one of Our Principal Secretaries of State may from time to time appoint under the Public Seal. All such Nominated Unofficial Members shall hold their places in the Council during Our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment, but may be re-appointed.

Nominated Unofficial Members to represent African Community Nominated Arab Unofficial Member.

The Nominated Indian Unofficial Members (if any) shall be nominated from among those persons whose names are entered on the register in force for the time being of voters for the election of Indian Elected Members, selected in accordance with the provisions of any law passed for the purpose by the Legislative Council of the Colony and shall be appointed by the Governor by an Instrument under the Public Seal in pursuance of instructions from Us through one

Nominated Indian Unofficial Members.

of Our Principal Secretaries of State. The Nominated Unofficial Members shall hold their places in the Council during Our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment, but may be re-appointed.

of Our Principal Secretaries of State. The Nominated Unofficial Members shall hold their places in the Council during Our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment or at the termination of such period as may, in accordance with any instructions from Us through one of Our Principal Secretaries of State, be provided in the Instrument by which they are appointed with less than a year earlier.

XX. The Members of the Legislative Council shall, in order of precedence as We may specially assign and in default thereof in order of precedence as *ex officio* Members in the order in which their respective offices are above mentioned; secondly, the Nominated Unofficial Members according to the priority of their respective appointments; thirdly, they are named therein; fourthly, the European Elected Members in order of date of election or if elected at the same date, in order according to the alphabetical order of their names; fifthly, the Indian Elected Members and the Nominated Unofficial Members of any in order of date of election or appointment or if elected or appointed on the same date according to the alphabetical order of their names; fifthly, the Arab Elected Members and the Nominated Unofficial Members representing the interests of the African community and the Nominated Unofficial Member representing the interests of the Arab community in order of priority of their respective appointments.

XXI. Whenever any Nominated Member of the Legislative Council shall, by writing under his hand, resign his seat in the Council, or shall die, or whenever the seat of any such Member shall become vacant from any cause other than the dissolution of the Council, or whenever any such Member shall be declared to be incapable from the exercise of his functions as a Member of the Council, or be declared by the Governor by an Instrument under the Public Seal to be incapable of exercising his functions as a Member of the Council, or be absent from the Colony and from the Protectorate of Kenya or shall be acting in an office the holder of which is an *ex officio* Member of the Council, the Governor may by an Instrument under the Public Seal provisionally appoint some person to be temporarily a Nominated Member of the Council in the place of the Member so resigning or dying or whose seat has become vacant, or who has been suspended or declared to be incapable of exercising his functions, or sitting as an *ex officio* Member.

Provided that when any person shall be lawfully discharging the functions of more than one of the offices the holders of which are *ex officio* Members of the said Council, the Governor may by an Instrument under the Public Seal appoint any fit person to be provisionally a Member of the Council so long as the functions of the said offices shall continue to be discharged by one person as aforesaid.

Every such provisional appointment may be disallowed by Us through one of Our Principal Secretaries of State, or may be revoked by the Governor by any such Instrument as aforesaid.

Every person so provisionally appointed shall be to all intents and purposes a Nominated Member of the Council until his appointment shall be disallowed or revoked, or superseded by the permanent appointment in his place of a Nominated Member of the Legislative Council, or until the person in whose place he has been appointed shall be relieved from suspension, or declared by the Governor by an Instrument under the Public Seal to be capable of exercising the functions of a Member of the Legislative Council, or shall have returned to the Colony or the Protectorate of Kenya, or shall have ceased to sit in the Council as an *ex officio* Member, as the case may be.

Provisional appointments to be immediately reported.

XXII. The Governor shall, without delay, report to Us, for Our confirmation or disallowance, through one of Our Principal Secretaries of State, every provisional appointment of any person as a Nominated Member of the Legislative Council.

Oath of allegiance to be taken by Members of the Council.

XXIII. No Member of the Legislative Council shall sit or vote therein until he shall have taken and subscribed the following oath before the Governor, or some person authorised by the Governor to administer such oath:—

"I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King George the Fifth, His heirs and successors according to law."
"So help me God."

Provided that every person authorised by law to make an affirmation instead of taking an oath may make such affirmation instead of the said oath.

Standing Rules and Orders.

XXIV. The Governor shall frame and propose to the Legislative Council from time to time for their adoption such Standing Rules and Orders as may be necessary to ensure punctuality of attendance of the Members of the Council, and to prevent meetings of the Council being holden without convenient notice to the several Members thereof, and to maintain order and method in the despatch of business, and in the conduct of debates in the Council, and to secure due deliberation in the passing of Ordinances, and to provide that before the passing of any Ordinance intended to affect the interests of private persons due notice of the same is given to all persons concerned therein.

Until further Standing Rules and Orders shall have been made, the Standing Rules and Orders of the Legislative Council now in force shall remain in force and apply so far as the same are applicable to the Council established in accordance with these Our Instructions.

All such Rules and Orders, not being repugnant to any Orders in Council or to these Our Instructions, or to any other Instructions which the Governor may receive from Us, shall at all times be followed and observed, and shall be binding upon the said Council unless the same or any of them shall be disallowed by Us

XXV. The Governor, if present, or, in the absence of the Governor, such Member of the Legislative Council as the Governor shall from time to time appoint, or in default of such appointment or in the absence of the Member so appointed, the Member present who stands first in order of precedence, shall preside at the meetings of the Council.

Who shall preside at the meetings of the Council.

XXVI. All questions arising at meetings of the Legislative Council shall be determined by a majority of votes, and the Governor or other presiding Member shall have an original vote in common with the other Members of the Council and also a casting vote if upon any question the votes shall be equal.

Voting.

XXVII. The said Legislative Council shall not be disqualified from the transaction of business on account of any vacancies among the Members thereof; but the said Council shall not be competent to act in any case unless (besides the Governor or the Member presiding) there be present at and throughout the meetings of the Council six Members at the least.

Quorum may be transacted business notwithstanding vacancies.

XXVIII. It shall be competent for any Member of the Legislative Council to propose any question for debate therein, and such question, if seconded by any other Member, shall be debated and disposed of according to the Standing Rules and Orders. Provided always, that no Ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising within the Colony, or to revoke, alter, or vary any such disposition or charge, shall be proposed, except by the Governor or with his consent: And provided further, that no vote, resolution, or question, the object or effect of which may be to suspend the Standing Orders of the Council, shall be proposed except by the Governor or other presiding Member or with his consent.

Questions & for debate.

XXIX. The sessions of the Legislative Council shall be held at such times and places as the Governor shall from time to time by proclamation appoint. There shall be at least one session of the Council in every year, and there shall not be an interval of twelve months between the last sitting in one session and the first sitting in the next session.

Sessions of the Council.

XXX. The Governor may at any time, by proclamation, prorogue or dissolve the Legislative Council.

Governor may prorogue or dissolve Council.

Duration of Legislative Council

General Elections

Power under which Bills are introduced

Number of Members

Qualification of Members

Disqualification of Members

Temporary Ordinances

Description of Bills not subject to Assent

XXXI. The Governor shall dissolve the Legislative Council at the expiration of three years from the date of the last preceding general election of Elected Members: if the said Council at that time shall not have been sooner dissolved.

XXXII. A general election shall be held at least once within three months after every dissolution of the Legislative Council as the Governor shall by proclamation appoint.

XXXIII. In the making of Ordinances the Governor and the Council shall be guided by the following rules:-

1. All laws shall be passed by a majority of the voting members of the Council, and shall be subject to the assent of the Governor with the advice and consent of the Legislative Council.
2. All Ordinances shall be distinguished by titles, and shall be divided into sections, clauses or paragraphs, as the case may be, and numbered, and to every such clause there shall be assigned the assigned a short summary of its contents, and the obligations of each year shall be distinguished by sections, clauses and numbers, commencing in each year with the number one. Except in the case of Bills which are subject to the pleasure of Our pleasure, an Ordinance shall be subject to the assent of the Governor, and shall be subject to the assent of the Council in that year, and the assent of the Governor shall be notified as of the year in which the assent is given. Bills not so assented to by the Council shall be subject to the assent of the Governor, and shall be subject to the assent of the Council in that year, and the assent of the Governor shall be notified as of the year in which the assent is given.
3. Bills which are subject to the pleasure of Our pleasure shall be distinguished by titles, and shall be divided into sections, clauses or paragraphs, as the case may be, and numbered, and to every such clause there shall be assigned the assigned a short summary of its contents, and the obligations of each year shall be distinguished by sections, clauses and numbers, commencing in each year with the number one. Except in the case of Bills which are subject to the pleasure of Our pleasure, an Ordinance shall be subject to the assent of the Governor, and shall be subject to the assent of the Council in that year, and the assent of the Governor shall be notified as of the year in which the assent is given.

XXXIV. The Governor shall not, except in the cases hereunder mentioned, assent in Our name to any Bill of any of the following classes, to-wit:-

1. Any Bill for the divorce of persons joined together in holy matrimony.

2. Any Bill whereby any grant of land or money or other donation or gratuity, may be made to himself.
3. Any Bill affecting the currency of the Colony or relating to the issue of Bank Notes.
4. Any Bill establishing any Banking Association, or amending or altering the constitution, powers, or privileges of any Banking Association.
5. Any Bill imposing differential duties.
6. Any Bill the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty.
7. Any Bill interfering with the discipline or control of Our forces by land, sea or air.
8. Any Bill of an extraordinary nature and importance whereby Our prerogative or the rights and property of Our subjects not residing in the Colony, or the trade and shipping or any part of Our dominions, may be prejudiced.
9. Any Bill whereby persons not of European birth or descent may be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent are not also subjected or made liable.
10. Any Bill containing provisions to which Our assent has been once refused, or which have been disallowed by Us.

unless the Governor shall previously have obtained Our instructions upon such Bill through one of Our Principal Secretaries of State, or unless such Bill shall contain a clause suspending the operation of such Bill until the signification of Our pleasure thereupon, or unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such Bill be brought into immediate operation, in which case he is authorized to assent in Our name to such Bill, unless the same shall be inconsistent with any obligations imposed upon Us by Treaty: But he is to transmit to Us, by the earliest opportunity, the Bill so assented to, together with his reasons for assenting thereto.

XXXV. Every Bill intended to affect or benefit some particular person, association, or corporate body, shall contain a section saving the rights of Us, Our heirs and successors, all bodies politic and corporate, and all others, except such as are mentioned in the Bill and those claiming by, from, or under them. No such Bill, not being a Government measure, shall be introduced into the Legislative Council until due notice has been given by not less than two successive publications of the Bill in the Official Gazette of the Colony, and the Governor shall not assent thereto in Our name unless notice has been so published. A certificate under the hand of the Governor signifying that such publication has been made shall be transmitted to Us with the Bill.

Proviso in case of emergency for immediate operation of a Bill.

Private Bills.

Ordinances to be sent home duly authenticated.

XXXVI. When any Ordinance shall have been passed, or when any Bill shall have been reserved for the signification of Our pleasure, the Governor shall forthwith lay it before Us for our approval, disallowance, or other direction thereupon, and shall transmit to Us through one of Our Principal Secretaries of State a full and exact copy in duplicate of the same, together with a marginal summary thereof, duly authenticated under the Public Seal and by his own signature. Such copy shall be accompanied by such explanatory observations as may be required to exhibit the reasons and occasion for passing such Ordinance or Bill.

Collection of Ordinances to be published every year.

XXXVII. At the earliest practicable period at the commencement of each year, the Governor shall cause a complete collection to be published, for general information, of all Ordinances enacted during the preceding year.

Minutes of proceedings to be kept.

XXXVIII. Minutes shall be regularly kept of all the proceedings of the Legislative Council, and at each meeting of the said Council, the Minutes of the last preceding meeting shall be confirmed or amended, as the case may require, before proceeding to the despatch of any other business.

Minutes to be sent home.

The Governor shall transmit to Us, through one of Our Principal Secretaries of State, as soon as possible after every meeting, a full and exact copy of the Minutes of the said Council.

Appointments to be provisional and during pleasure.

XXXIX. All Commissions to be granted by the Governor to any person or persons for exercising any office or employment shall, unless otherwise provided by law, be granted during pleasure only.

Governor to promote religion and education amongst the Natives. Protection of persons and property.

XL. The Governor is, to the utmost of his power, to promote religion and education among the native inhabitants of the Colony, and he is especially to take care to protect them in their persons and in the free enjoyment of their possessions, and by all lawful means to prevent and restrain all violence and injustice which may in any manner be practised or attempted against them.

Regulation of power of pardon in capital cases. Judge's report to be laid before Executive Council.

Governor to consult Executive Council in such cases.

XLI. Whenever any offender shall have been condemned to suffer death by the sentence of any Court in the Colony, the Governor shall call upon the Judge who presided at the trial to make to him a written report of the case of such offender, and shall cause such report to be taken into consideration at the first meeting of the Executive Council which may be conveniently held thereafter, and he may cause the said Judge to be specially summoned to attend at such meeting and to produce his notes thereat. The Governor shall not pardon or reprieve any such offender unless it shall appear to him expedient so to do, upon receiving the advice of the Executive Council thereon; but in all such cases he is to

decide either to extend or to withhold a pardon or reprieve, according to his own deliberate judgment, whether the Members of the Executive Council concur therein or otherwise, entering, nevertheless, on the Minutes of the Executive Council a Minute of his reasons at length, in case he should decide any such question in opposition to the judgment of the majority of the Members thereof.

XLII. The Governor shall punctually forward to Us, from year to year, through one of Our Principal Secretaries of State, the annual book of returns, commonly called the Blue Book, relating to the Revenue and Expenditure, Defence, Public Works, Legislation, Civil Establishments, Pensions, Population, Schools, Commerce, Exchange, Imports and Exports, Agricultural Produce, Manufactures, and other matters in the said Blue Book more particularly specified, with reference to the state and condition of the Colony.

XLIII. Except in the cases provided for in the above recited Letters Patent of the Eleventh day of September 1920, the Governor shall not upon any pretence whatever quit the Colony without having first obtained leave from Us for so doing, under Our Sign Manual and Signet, or through one of Our Principal Secretaries of State.

XLIV. The Instructions under Our Sign Manual and Signet bearing date the Eleventh day of September 1920, and Additional Instructions bearing date respectively the Twenty eighth day of March 1927, the Seventh day of July 1928 and the Twentieth day of January 1930, are hereby revoked, but without prejudice to any thing lawfully done thereunder.

XLV. In these Our Instructions the term "The Governor" shall, unless inconsistent with the context, include every person for the time being administering the Government of the Colony.

Given at Our Court at Saint James's, this Twenty-ninth day of March 1934, in the Twenty-fourth Year of Our Reign.

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Order of the King in Council amending Clause XVI of the
Kenya Protectorate Order in Council 1920.

AT THE COURT AT BUCKINGHAM PALACE,

The 22nd day of March, 1934.

Present,

**THE KING'S MOST EXCELLENT MAJESTY
IN COUNCIL.**

WHEREAS by the Kenya Protectorate Order in Council 1920 provision was made for the administration of the government of the Protectorate of Kenya:

Replaces
Kenya Pro-
tectorate
Order in
Council
1920

AND WHEREAS it is expedient to make other provision than is contained in Clause XVI of the Kenya Protectorate Order in Council 1920:

NOW, THEREFORE, His Majesty, by virtue and in exercise of the powers by the Foreign Jurisdiction Act 1890 or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

I. This Order may be cited as the Kenya Protectorate (Amendment) Order in Council 1934.

Title of
Order.

II. Clause XVI of the Kenya Protectorate Order in Council 1920 is hereby revoked but without prejudice to anything lawfully done thereunder, and the following Clause is hereby substituted therefor:

Substituted
fresh Clause
for Clause
XVI of
Kenya Pro-
tectorate
Order in
Council
1920.

" XVI. The Governor may, subject to such instructions as may from time to time be given to him by His Majesty through one of His Majesty's Principal Secretaries of State, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any person holding any public office within the Protectorate, or, subject as aforesaid, may take such other disciplinary action as may seem to him desirable."

Dismissal
and suspension
of
officers.

III. This Order shall come into operation forthwith.

Date of
coming into
operation.
Power to
revoke etc

IV. His Majesty may from time to time revoke, alter, add to or amend this Order.

AND the Right Honourable Sir Philip Cunliffe-Lister, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

M. P. A. Hankey.

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Letters Patent passed under the Great Seal of the Realm amending Clause XVIII of the Letters Patent of the 11th September 1920 constituting the Office of Governor and Commander-in-Chief of the Colony of Kenya.

GEORGE THE FIFTH by the Grace of God of Great Britain Ireland, and the British Dominions beyond the Seas King Defender of the Faith, Emperor of India

By His
Letters
Patent of the
11th
September
1920

To all to whom these Presents shall come, Greeting :

WHEREAS by certain Letters Patent under the Great Seal bearing date at Westminster the Eleventh day of September 1920 We did constitute the Office of Governor and Commander-in-Chief in and over Our Colony of Kenya

AND WHEREAS We did reserve to Ourselves Our heirs and successors, full power and authority from time to time to revoke, alter or amend the said Letters Patent as to Us or them shall seem fit :

AND WHEREAS We are minded to make other provision than contained in Clause XVIII of Our said Letters Patent :

NOW KNOW YE that We do hereby declare Our will and pleasure as follows :

I. Clause XVIII of the said Letters Patent of the Eleventh day of September 1920 is hereby revoked but without prejudice to anything lawfully done thereunder, and the following Clause is substituted therefor :

" XVIII. The Governor may, subject to such instructions as may from time to time be given to him by Us through one of Our Principal Secretaries of State, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any person holding any public office within the Colony, or subject as aforesaid, may take such other disciplinary action as may seem to him desirable "

Dismissed
and suspended
from office

II. And We do hereby reserve to Ourselves Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem fit.

III. And We do direct and enjoin that these Our Letters Patent shall come into operation as from the date hereof and shall be read and proclaimed at such place or places within Our said Colony of Kenya as the Governor or other officer for the time being administering the Government of the said Colony shall think fit.

IN WITNESS whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster, the Twenty-ninth day of March, 1934, in the Twenty-fourth year of Our Reign.

By Warrant under The King's Sign Manual.

Schuster.

Per AIR MAIL.

12th February, 1931.

My dear Bottomley,

The Secretary of State a few days ago asked me about the question of appointing in addition a Unofficial Member to represent Natives in Legislative Council.

A. I then told him what I had written to you on this subject on the 3rd January. He entirely agreed with my proposals, and asked me to write to you, and set you to take the necessary action.

As a few weeks delay is not of much importance, perhaps you might think it desirable to wait until Sir Philip arrives home, when he can confirm the instructions he gave me.

Yours sincerely,

SIR CECIL BOTTOMLEY,
K.C.M.G., C.B., G.B.E.,
The Colonial Office,
Downing Street,
LONDON, S.W. 1.

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Native Representation.

The Joint Committee recommended in para.101 of their Report that the "nominated representation of native opinion should be increased without prejudice to the power of the Governor at his discretion to nominate for inclusion among them persons of African descent, when he considered suitable representatives available."

Commenting upon this in his despatch of the 6th of February, 1932, (page 30 of No.9 in Cmd.4141) Sir Joseph Byrne said; "I am in complete agreement with the recommendation of the Committee that the nominated representation of native opinion should be increased, and consider that that recommendation should be fulfilled at the earliest possible moment by increasing the number of Unofficial members nominated to represent native interests from 1 to 2. No increase in the number of Official members of Leg. Co. to counter-balance this proposed increase in Unofficial members will be necessary at present, though I consider the whole question of the constitution of Leg. Co. requires to be reviewed at an early date with a view to eliminating the disadvantages which arise from the necessity for many senior Officials to absent themselves from their departmental duties for considerable periods in attending Sessions, I agree that the door should be kept open to the nomination of persons of African descent, but the time for such an innovation has not yet been reached.... I am of opinion that the time has come when the restriction which limits the choice of the representatives of native interests to Christian Missionaries may with advantage be removed."

To this the Secretary of State replied in his despatch of the 13th of July, 1932 (No.12 in Cmd.4141, page 55)

"I agree that the nominated representatives of
native interests should be in receipt of a
I also agree that the nomination of persons of African descent for
nomination of persons of African descent for the
and that within the time is not yet ripe for
representation. The restriction will be lifted
of the representatives of native interests
Missionaries may now be removed."

The Removal from Lepidof. of Joint Officers

There is a reference to this in the
despatch of the 13th July 1941, page 55, paragraph
the top of page 4. It shows that
officers must be retained on the ground
sake of the official majority.

The Maintenance of the Official Majority

This is probably the most important aspect of
the matters raised in the despatch of the 13th July.
In paragraph 6 of their report the Joint Committee
said, "The Government has a official majority, and the
Unofficial members sit on the same side as the official
advisers who can always be outvoted. The official
majority should be governed and not the other way round.
There is nothing here in the nature of a responsible
Government. The official majority see that the
wishes of the Governor are carried out and
necessary. In the final resort, the wishes of the
Secretary of State, with whom the ultimate responsibility
rests.

In his despatch of the 13th of July 1941
(No. 12 in Cmd. 4141, page 55) the Secretary of State said that the

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did not propose that any change should be made in the present arrangement which secures an official majority in the Leg. Co.

In view especially of this definite statement it seems to me very questionable whether it is desirable to reduce the official majority to one plus the casting vote, or possibly to the very casting vote itself. In the first place, so small a majority will presumably lead to inconvenience from time to time, in that it will necessitate every member making a special point of being present at all Sessions. Secondly, the Governor's remark that if it should happen that the whole of the Unofficials combined against the Government it would then be unwise for the issue to be forced to a decision by means of the official majority, does not seem at all convincing. Cases might quite possibly arise when it would be necessary to force through a Bill, whatever the opposition. Thirdly, the reduction of the official majority might be interpreted as a move towards giving the Unofficials a majority and Kenya a representative constitution, and if it proved to cause inconvenience it would be difficult to go back on it.

Unless there are very grave objections, it would seem much better to appoint an extra official member to counterbalance the second representative of the native interests.

GOVERNMENT HOUSE
KENYA
EAST AFRICA

3rd January, 1934.

My dear Holtomley,

N 66

3198/1/33

With reference to your letter of the 5th December, I have not had an opportunity of reviewing the position regarding the personnel on Legislative Council. The points under consideration are:-

- (a) The removal of the restriction limiting the choice of the native representative to members of the Church Missions.
- (b) The appointment of an extra native representative as recommended by the Joint Committee.
- (c) The removal from our Council - except where matters affecting their departments are being considered - of joint officers, i.e., the Postmaster General, the Commissioner of Customs and the Officer Commanding Northern Brigade.
- (d) The general question of remodelling the whole Council.

As regards (a), I considered that there should be no further delay in removing this restriction.

As regards (b), I consider that an extra native representative should be appointed forthwith.

As regards.....

GOVERNMENT HOUSE,
KENYA,
EAST AFRICA

As regards (c), however desirable this may be I see no possibility of making the change now - it would quite upset the balance between officials and unofficials and moreover these officers often have to intervene unexpectedly in debates.

As regards (d), I have racked my brains without any result - any radical change would mean putting the clock back which would be undesirable at the present time.

I therefore recommend that steps be now taken to amend the Royal Instructions so as to implement (a) and (b). This will result in reducing the Official Majority to one plus my casting vote. Indeed it may be reduced to my casting vote if I again appoint Sir Ali bin Salim to represent the Arabs, a matter which I am now considering. But so long as the Official Majority is maintained I am not very anxious about the smallness of this majority for if it should happen that the whole of the unofficials, European, Indian, Native and Arabs, combined against the Government, it would be unwise for the issue to be forced to a decision.

These are.....

GOVERNMENT HOUSE
KENYA,
EAST AFRICA

3rd January, 1934.

These are my considered views which, if I get an opportunity, I will lay before the Secretary of State.

May I wish you the best of luck in 1934.

Yours very sincerely,



SIR CECIL BOTTOMLEY, K.C.M.G., C.B., O.B.E.,
THE COLONIAL OFFICE,
DOWNING STREET, S.W.1.
LONDON.