

At the Court at Balmoral

THE 17th DAY OF SEPTEMBER 1975

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

Whereas the Colonial Boundaries Act 1895(a) provides that where the boundaries of a Colony have, either before or after the passing of that Act, been altered by an Order in Council or by Letters Patent, the boundaries as so altered shall be, and be deemed to have been from the date of the alteration, the boundaries of the Colony:

And whereas it is expedient to establish as a separate colony the Ellice Islands, which hitherto formed part of the Gilbert and Ellice Islands Colony:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Tuvalu Order 1975.

Citation and commencement.

(2) This Order shall come into operation on the appointed day and shall on or as soon as practicable after that day be published in Tuvalu by exhibition at the Public Office of the Commissioner and printed in the Gazette as soon as may be after the date of such publication.

2.—(1) In this Order—

Interpretation.

“the appointed day” means the date appointed under section 1(2) of the Gilbert Islands Order 1975;

“the Constitution” means the Constitution set out in Schedule 2 to this Order;

“the Order of 1974” means the Gilbert and Ellice Islands Order 1974(b) as amended by the Gilbert and Ellice Islands (Amendment) Order 1975;

“the Order of 1893” means the Pacific Order in Council 1893(c) as from time to time amended;

“the Order of 1961” means the Western Pacific (Courts) Order in Council 1961(d) as from time to time amended;

“the existing Orders” means the Order of 1974, the Order of 1893 and the Order of 1961.

(a) 1895 c. 34. (b) S.I. 1974 I, p. 2942. (c) Rev. VIII, p. 597; S.R. & O. 1893, p. 312
(d) S.I. 1961/1506 (1961 II, p. 3066).

(2) References in this Order to "Tuvalu" shall be construed, in relation to any period before the appointed day, as references to that part of the Gilbert and Ellice Islands Colony which shall, as from the appointed day, comprise the colony of Tuvalu in accordance with section 3 of this Order.

(3) Unless the context otherwise requires, expressions used in sections 1 to 15 (inclusive) of this Order have the same meaning as in the Constitution and the provisions of section 83 of the Constitution shall apply for the purpose of interpreting those sections as they apply for interpreting the Constitution.

Establishment of Tuvalu as a separate colony.

3. As from the appointed day, the Ellice Islands which are more particularly described in Schedule 1 to this Order, being islands which immediately before the appointed day were part of the Gilbert and Ellice Islands Colony, shall form a separate colony which shall be known as Tuvalu.

Revocations

4. With effect from the appointed day, the existing Orders are revoked in so far as they have effect as part of the law of Tuvalu.

Establishment of Constitution.

5. The Constitution shall come into effect in Tuvalu on the appointed day.

Application of existing laws.

6.—(1) Except to the extent that they may be repealed, amended or modified by or under laws made under section 50 of the Constitution the existing laws shall on and after the appointed day continue in force in Tuvalu so far as the circumstances of Tuvalu and its inhabitants permit but shall be applied and construed with such adaptations, modifications, qualifications and exceptions as such circumstances render necessary or are necessary to bring them into conformity with the provisions of this Order (including the Constitution).

(2)(a) The Commissioner, acting in his discretion, may, by order published by exhibition at the Public Office of the Commissioner, at any time within twenty-four months after the appointed day provide that any existing law shall be read and construed with such adaptations, modifications, qualifications and exceptions as the circumstances of Tuvalu or its inhabitants may appear to him to render necessary or as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order (including the Constitution) or otherwise for giving effect or enabling effect to be given to those provisions; and any existing law shall have effect accordingly from such date as may be specified in the order.

(b) An order made under this subsection may be amended or revoked in relation to any law affected thereby by the authority competent to amend or revoke that law.

(3) Any existing law (including any rule of court) in force in Tuvalu immediately before the appointed day shall have effect on and after that day as if references to the High Court of the Western Pacific or to the Chief Justice or a judge or officer thereof were references to the High Court or to a judge or officer of the High Court, as the case may require.

(4) In the foregoing provisions of this section "existing law" means any law made for the Gilbert and Ellice Islands Colony by any

legislature established by Her Majesty in Council or any subsidiary instrument made under any such law, that has effect as part of the law of the Gilbert and Ellice Islands Colony immediately before the appointed day.

(5) Nothing in section 3 of this Order shall be construed as affecting the continued operation in Tuvalu on and after the appointed day of any law or instrument having effect as part of the law of the Gilbert and Ellice Islands Colony immediately before the appointed day.

7. All those persons who, immediately before the appointed day, were members of the House of Assembly established for the Gilbert and Ellice Islands Colony by the Order of 1974 elected to represent electoral districts in Tuvalu shall be deemed to have been elected on the appointed day as members of the House of Assembly established by the Constitution. House of Assembly.

8. The rules of procedure of the House of Assembly constituted for the Gilbert and Ellice Islands Colony by the Order of 1974 as in force immediately before the appointed day shall, until it is otherwise provided under section 51 of the Constitution, be the rules of procedure of the House of Assembly constituted for Tuvalu by the Constitution but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring those rules into conformity with this Order (including the Constitution). Rules of procedure of House of Assembly.

9. Until such time as it is otherwise provided by regulations made under section 42(a) of the Constitution, the Electoral Provisions (House of Assembly) Regulations 1974 of the Gilbert and Ellice Islands Colony shall have effect in Tuvalu on and after the appointed day as if they were a law made in pursuance of that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring those Regulations into conformity with this Order (including the Constitution). Electoral regulations.

10.—(1) Until such time as other provision is made under the Constitution or otherwise— Jurisdiction etc. of High Court and judges.

(a) the High Court and all judges thereof shall, without prejudice to any additional jurisdiction that is conferred by the Constitution, have the like jurisdiction as the High Court of the Western Pacific and the judges thereof would have had in and in relation to Tuvalu as if the Order of 1893 and the Order of 1961 had not been revoked, and shall exercise that jurisdiction as if subsections (1) and (3) of section 15 of the Order of 1961 were still in force and as if references in those subsections to the Order of 1961, to the High Court of the Western Pacific and to a territory were references to this Order (including the Constitution), to the High Court and to Tuvalu respectively;

(b) the judges and all officers of the High Court shall have and enjoy the same immunities from legal proceedings as the judges and corresponding officers of the High Court of the Western Pacific would have had if the Order of 1893 and the Order of 1961 had not been revoked.

(2) In this section, "jurisdiction" includes powers, authorities and other functions.

Rules of
court.

11. Until such time as it is otherwise provided under section 78 of the Constitution, the rules of court of the High Court of the Western Pacific having effect as part of the law of Tuvalu immediately before the appointed day shall continue in force on and after that day as the rules of court of the High Court but shall be construed subject to such modifications, adaptations, qualifications and exceptions as may be necessary to bring those rules into conformity with this Order (including the Constitution).

Pending
judicial pro-
ceedings.

12.—(1) Any proceedings originating in Tuvalu and pending immediately before the appointed day in the High Court of the Western Pacific may be continued and concluded on or after that day in the High Court.

(2) An appeal shall lie to the Court of Appeal on and after the appointed day from any judgment of the High Court of the Western Pacific given before the appointed day in any proceedings originating in Tuvalu as if it were a judgment of the High Court.

(3) Any judgment of the High Court of the Western Pacific that was given but not satisfied before the appointed day in any proceedings originating in Tuvalu may be enforced on or after that day as if it were a judgment of the High Court.

(4) Subject to the foregoing provisions of this section and to any law made under section 50 of the Constitution—

(a) any proceedings pending immediately before the appointed day in any court having jurisdiction in Tuvalu may be continued and concluded on or after the appointed day in that court in accordance with the law that was applicable thereto before that day;

(b) where, under the law in force in Tuvalu immediately before the appointed day, an appeal would lie from any judgment of a court having jurisdiction in Tuvalu, whether given before the appointed day or given on or after that day in pursuance of paragraph (a) of this subsection, such an appeal shall continue to lie and may be commenced and concluded in accordance with the law that was applicable thereto before that day;

(c) any judgments of a court having jurisdiction in Tuvalu that was given but not satisfied before the appointed day, and any judgment of a court given in any such proceedings as are referred to in paragraph (a) or paragraph (b) of this subsection, may be enforced on and after the appointed day in accordance with the law in force immediately before that day.

(5) In this section, "judgment" includes decree, order, conviction, sentence and decision.

Stamp of
the High
Court and of
Tuvalu.

13.—(1) Until such time as a seal for the High Court is provided and approved in accordance with section 76 of the Constitution, a stamp bearing the words "The High Court of Tuvalu" and countersigned by a judge or registrar of the High Court may be used instead of such seal.

(2) Until such time as a public seal is provided for Tuvalu, a stamp bearing the words "Government of Tuvalu" and countersigned by the Commissioner may be used instead of such seal.

14. All moneys received by the Government of Tuvalu representing the balance or part of the balance of moneys standing to the credit of any Special Fund closed by section 16 of the Gilbert Islands Order 1975 shall be paid into the Development Fund.

15. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of Tuvalu, including, without prejudice to the generality of the foregoing, laws amending or revoking this Order (including the Constitution).

N. E. Leigh