



THE TUVALU INDEPENDENCE ORDER 1978

At the Court at Buckingham Palace

THE 25th DAY OF JULY 1978

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

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 Independence Order 1978.

Citation
and
commence-
ment.

(2) This Order shall be published in the Gazette and shall come into operation on 1st October 1978 (in this Order referred to as "Independence Day"):

Provided that sections 4(2) and 6 of this Order shall come into operation forthwith.

2.—(1) In this Order—

"the Constitution" means the Constitution set out in the Schedule to this Order;

Interpreta-
tion.

"the existing Constitution" means the Constitution set out in Schedule 2 to the Tuvalu Order 1975(a) as amended by the Tuvalu (Amendment) Order 1977(b), the Tuvalu (Amendment) (No. 2) Order 1977(c) and the Tuvalu (Amendment) Order 1978(d);

"the existing laws" means any Acts of the Parliament of the United Kingdom, Orders of Her Majesty in Council, Ordinances, rules, regulations, orders or other instruments having effect as part of the law of Tuvalu immediately before Independence Day but does not include any Order revoked by this Order;

"the existing House of Assembly" means the House of Assembly established by the existing Constitution;

"the existing Orders" means the Orders revoked by section 3(1) of this Order.

(2) The provisions of sections 104, 105, 106(2) and 112 of the Constitution shall apply for the purposes of interpreting sections 1 to 11 of this Order and otherwise in relation thereto as they apply for the purposes of interpreting and in relation to the Constitution.

(a) S.I. 1975 III, p. 8537.

(b) S.I. 1977 II, p. 4356.

(c) S.I. 1977 III, p. 6222.

(d) S.I. 1978 I, p. 1700.

Revocations.

3.—(1) The Tuvalu Order 1975, the Tuvalu (Amendment) Order 1977, the Tuvalu (Amendment) (No. 2) Order 1977 and the Tuvalu (Amendment) Order 1978 are revoked.

(2) The Emergency Powers Order in Council 1939(a) and any Order in Council amending that Order shall cease to have effect as part of the law of Tuvalu on Independence Day.

Establishment of Constitution.

4.—(1) Subject to the provisions of this Order, the Constitution shall come into effect in Tuvalu on Independence Day.

(2) The Commissioner (as defined for the purposes of the existing Constitution) may at any time after this subsection comes into operation exercise any of the powers conferred upon the Governor-General by section 5 of this Order or by the Constitution to such extent as may in his opinion be necessary or expedient to enable the Constitution to function as from Independence Day.

Existing laws.

5.—(1) The revocation of the existing Orders shall be without prejudice to the continued operation of any existing laws made, or having effect as if they had been made, under any of those Orders; and the existing laws shall have effect on and after Independence Day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Tuvalu Act 1978(b) and this Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before Independence Day by or under the existing Orders that prescription or provision shall, as from that day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Tuvalu Act 1978 and this Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The Governor-General may, by order published in the Gazette, at any time before 1st October 1979 make such amendments to any existing law (other than the Tuvalu Act 1978 and this Order) as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) An order made under this section may be amended or revoked by Parliament or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(5) It is hereby declared, for the avoidance of doubt, that, save as otherwise provided either expressly or by necessary implication, nothing in this Order shall be construed as affecting the continued operation of any existing law.

(6) The provisions of this section shall be without prejudice to any powers conferred by this Order or any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

First Governor-General.

6.—(1) Notwithstanding the provisions of section 28(2) of the Constitution, the first Governor-General shall be appointed by Her Majesty acting in accordance with the advice of the Chief Minister tendered after the Chief Minister has in confidence consulted the elected members of the existing House of Assembly, and such appointment shall take effect as from Independence Day.

(2) In this section "Chief Minister" means the person holding the office of Chief Minister under the existing Constitution.

7.—(1) Any person who immediately before Independence Day holds office as Chief Minister or any other Minister under the existing Constitution shall as from that day hold office as Prime Minister or other Minister, as the case may be, as if he had been elected or appointed thereto under section 32 of the Constitution. Ministers.

(2) Any person holding office as Prime Minister or other Minister by virtue of the preceding subsection who immediately before Independence Day was assigned responsibility for any business of the Government shall be deemed to have been assigned responsibility for such business under section 38 of the Constitution.

(3) Any person who holds office as Prime Minister or other Minister by virtue of subsection (1) of this section shall be deemed to have complied with the requirements of section 36 of the Constitution.

8.—(1) Any person who immediately before Independence Day is a member of the existing House of Assembly shall on that day become a member of Parliament (whether or not he becomes a citizen of Tuvalu on that day) and shall be deemed to have complied with the requirements of section 62 of the Constitution and shall hold his seat in Parliament in accordance with the provisions of the Constitution. Parliament.

(2) The person who immediately before Independence Day holds the office of Speaker of the existing House of Assembly shall on that day become the Speaker of Parliament and shall hold office as such until a person is elected as Speaker in accordance with section 63 of the Constitution.

(3) The rules and orders of the existing House of Assembly as in force immediately before Independence Day shall, except as may be otherwise provided under section 59 of the Constitution, have effect after that day as if they had been made under that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(4) Notwithstanding anything in section 71(4) of the Constitution, Parliament shall, unless sooner dissolved, stand dissolved on 25th September 1981.

9.—(1) Every person who immediately before Independence Day holds or is acting in a public office shall, as from that day, hold or act in that office or the corresponding public office established by the Constitution as if he had been appointed to do so in accordance with the provisions of the Constitution and shall be deemed to have taken any oaths required upon such appointment by any existing law. Public officers.

Provided that any person who under the existing Constitution or any existing law would have been required to vacate office at the expiration of any period or on the attainment of any age shall vacate his office under the Constitution upon the expiration of that period or upon the attainment of that age.

(2) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and for the removal from office of persons holding or acting in any office.

10.—(1) All proceedings commenced or pending immediately before Independence Day before the High Court or the Court of Appeal established by the existing Constitution may continue on and after that day before the High Court or the Court of Appeal, as the case may be, established by the Constitution. Legal proceedings.

(2) Any decision given before Independence Day by the High Court or the Court of Appeal established by the existing Constitution shall for the purposes of its enforcement or, in the case of a decision given by the High Court, for the purpose of any appeal therefrom, have effect on and after that day as if it were a decision of the High Court or the Court of Appeal, as the case may be, established by the Constitution.

Alteration
of this
Order.

11.—(1) Parliament may alter any of the provisions of this Order in the same manner as it may alter any of the provisions of the Constitution.

(2) Section 61(3) of the Constitution shall apply for the purpose of construing references in this section to any provision of this Order and to the alteration of any such provision as it applies for the purpose of construing references in section 61 of the Constitution to any provision of the Constitution and to the alteration of any such provision.

N. E. Leigh,
Clerk of the Privy Council

EXPLANATORY NOTE

(This Note is not part of the Order.)

By virtue of the Tuvalu Act 1978, Tuvalu will attain independence within the Commonwealth on 1st October 1978. This Order makes provision for a Constitution for Tuvalu to come into effect on that day, including provision for the legislature, the executive government, the judicature and the public service. The Constitution also contains provisions relating to citizenship of Tuvalu and fundamental rights and freedoms of the individual.