PACIFIC ISLANDS

The Fiji (Constitution) Order in Council 1963

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At the Court of Saint James the 27th day of February 1963

Present,

Her Majesty Queen Elizabeth The Queen Mother
His Royal Highness The Duke of Gloucester
Lord President Mr. Powell
Mr. Vosper Mr. Macpherson

Whereas Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the twenty-second day of January, 1963, to delegate to the following Counsellors of State (subject to the exceptions hereinafter mentioned) or any two or more of them, that is to say, His Royal Highness The Prince Philip, Duke of Edinburgh, Her Majesty Queen Elizabeth The Queen Mother, Her Royal Highness The Princess Margaret, Countess of Snowdon, His Royal Highness The Duke of Gloucester, His Royal Highness Prince William of Gloucester and His Royal Highness The Duke of Kent, full power and authority during the period of Her Majesty’s absence from the United Kingdom to summon and hold on Her Majesty’s behalf Her Privy Council and to signify thereat Her Majesty’s approval for anything for which Her Majesty’s approval in Council is required:

And whereas Her Majesty was further pleased to except from the number of the said Counsellors of State His Royal Highness The Prince Philip, Duke of Edinburgh, Her Royal Highness The Princess Margaret, Countess of Snowdon, His Royal Highness The Duke of Gloucester, His Royal Highness Prince William of Gloucester and His Royal Highness The Duke of Kent while absent from the United Kingdom:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness The Duke of Gloucester, being authorized thereto by the said Letters Patent, and in exercise of the powers enabling Her Majesty in that behalf, do hereby, by and with the advice of Her Majesty’s Privy Council, on Her Majesty’s behalf order, and it is hereby ordered, as follows:—

PART I

Introductory

1.—(1) This Order may be cited as the Fiji (Constitution) Order in Council 1963.

(2) This Order shall be published in the Gazette, and shall come into operation on such day (hereinafter called “the appointed day”) as the Governor, in his discretion, by Proclamation published in the Gazette shall appoint(a).

2.—(1) In this Order, unless the context otherwise requires—

“the Colony” means the Colony of Fiji, comprising all islands lying between the fifteenth and twenty-second degrees of south latitude and between the one hundred and seventy-seventh degree of west longitude and the one hundred and seventy-fifth degree of

(a) Date appointed, 1.3.63.
east longitude from the meridian of Greenwich, and the Island of Rotuma and its Dependencies, that is to say, all islands lying between the twelfth degree and the fifteenth degree of south latitude and between the one hundred and seventy-fifth degree and the one hundred and eightieth degree of east longitude from the meridian of Greenwich;

"the existing instruments" means the instruments set out in schedule 1 to this Order;

"the existing Legislative Council" means the Legislative Council established by the existing instruments;

"the Gazette" means the Fiji Royal Gazette;

"the Great Council" means the Great Council of Chiefs;

"the Governor" means the Governor and Commander-in-Chief of the Colony and, to the extent to which a deputy for the Governor is authorized to act, that deputy;

"meeting" in relation to the Legislative Council means all sittings of the Council commencing when the Council first meets after being summoned at any time, and terminating when the Council is adjourned sine die, or at the conclusion of a session;

"net annual income" means the gross income received by a person for his own use, less such payments made by him as would be allowable as deductions (not as allowances) in arriving at chargeable income under the provisions of any Income Tax Ordinance or regulations made thereunder, for the time being in force in the Colony;

"the Order of 1962" means the Fiji (Electoral Provisions) Order in Council 1962(a);

"public office" means an office of emolument in the public service;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"public seal" means the public seal of the Colony;

"the public service" means the service of the Crown in respect of the government of the Colony;

"session" in relation to the Legislative Council means the sittings of the Council commencing when the Council first meets after being constituted under this Order, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or is dissolved without having been prorogued;

"sitting" in relation to the Legislative Council means a period during which the Council is sitting continuously without adjournment, and includes any period during which the Council is in committee.

(2) Any reference in this Order to the holder of an office by the term designating his office includes, to the extent of his authority, any person who is for the time being authorised to perform the functions of that office.

(3) Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office—

(a) another person may be appointed to that office.

(a) S.1 1962 I, p. 1034.
(b) that person shall, for the purpose of any function attaching to that office, be deemed to be the sole holder of that office.

(4) For the purposes of this Order the resignation of a member of any body or a holder of any office established by this Order that is required to be addressed to any person shall be deemed to have effect from the time at which it is received by that person.

(5) For the avoidance of doubt it is hereby declared that any person who has vacated his seat in any body, or has vacated any office, established by this Order may, if qualified, again be appointed or elected as a member of that body or that office, as the case may be, from time to time.

(6) The Interpretation Act 1889(a) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

3. The instruments set out in schedule 1 to this Order are revoked, 
Revocation.
but this revocation shall not prejudice anything lawfully done thereunder.

PART II

The Governor

4.—(1) There shall be a Governor and Commander-in-Chief in and over the Colony, who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) The Governor shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law, and such other powers and duties as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office (including the exercise of any powers with respect to which he is empowered by this Order to act in his discretion) according to such instructions, if any, as Her Majesty may from time to time see fit to give him; but the question whether he has in any matter complied with such instructions shall not be enquired into by any court.

(3) A person appointed to the office of Governor shall, before assuming the functions of his office, make oaths or affirmations of allegiance and for the due execution of his office in the forms set out in schedule 2 to this Order.

5.—(1) During any period when the office of Governor is vacant or the Governor is absent from the Colony or is for any other reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed—

(a) by such person as Her Majesty may designate in that behalf by Instructions given under Her Sign Manual and Signet or through a Secretary of State; or

(a) 52 & 53 Vict. c. 63.
(b) if there is no person in the Colony so designated and able to perform those functions by the senior of the following officers (ranking for the purposes of this section in the order in which their offices are mentioned) who is in the Colony and so able—

(i) the person who holds the substantive appointment of Colonial Secretary;
(ii) the person who holds the substantive appointment of Attorney-General;
(iii) the person who holds the substantive appointment of Financial Secretary.

(2) Before assuming the functions of the office of Governor any such person as aforesaid shall make the oaths or affirmations directed by the last foregoing section to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform those functions has notified him that he is about to assume or resume those functions.

(4) The Governor or any other person as aforesaid shall not, for the purposes of this section, be regarded as absent from the Colony or as unable to perform the functions of the office of Governor—

(a) by reason only that he is in passage from one part of the Colony to another; or
(b) at any time when there is a subsisting appointment of a deputy under the next following section.

6.—(1) Whenever the Governor—

(a) has occasion to be absent from the seat of government but not from the Colony;
(b) has occasion to be absent from the Colony for a period which he has reason to believe will be of short duration;
(c) is suffering from an illness which he has reason to believe will be of short duration; or
(d) considers for any other reason that the public interest so requires,

he may, in his discretion, by instrument under the public seal, appoint any person to be his deputy, and in that capacity to perform on his behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The powers and authority of the Governor shall not be abridged, altered, or in any way affected by the appointment of a deputy under this section, and a deputy shall comply with all instructions that the Governor may from time to time address to him; but the question whether a deputy has in any matter complied with such instructions shall not be enquired into by any court.

(3) Any appointment under this section may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, in his discretion, by instrument under the public seal, and subject thereto, a person appointed as a deputy under this section shall hold that appointment for such period or periods as may be specified in the instrument by which he is appointed.
7.—(1) Subject to the provisions of any law for the time being in force in the Colony and of any instructions from time to time given to the Governor by Her Majesty, the Governor, in Her Majesty's name and on Her Majesty's behalf, may, in his discretion, make and execute grants and dispositions of any lands or other immovable property within the Colony which may lawfully be granted or disposed of by Her Majesty.

(2) (a) The powers conferred upon the Governor by this section may be exercised on behalf of the Governor by any person so authorized, whether by name or by reference to an office, by the Governor by notice published in the Gazette.

(b) Any such authority shall be subject to such conditions and restrictions (if any) as may be specified in the notice by which it is conferred, and may be varied or revoked by the Governor by notice published in the Gazette.

8. The Governor, in his discretion, may, in the name of and on behalf of Her Majesty, constitute such offices for the Colony as may lawfully be constituted by Her Majesty and may abolish any office so constituted, and, subject to the provisions of any law for the time being in force in the Colony, the Governor may likewise—

(a) make appointments, to be held at pleasure, to any office so constituted; and

(b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Governor may think fit.

9.—(1) Subject to the provisions of any Instructions given under Her Majesty's Sign Manual and Signet, the Governor, in his discretion, may, in Her Majesty's name and on Her Majesty's behalf—

(a) grant to any person concerned in the commission of any offence for which he may be tried in the Colony or to any person convicted of an offence in any court in the Colony a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person in any court in the Colony;

(c) substitute a less severe form of punishment for that imposed by any sentence of any such court; or

(d) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence in respect of which a person has been convicted by any court in the Colony.

10. The Governor shall keep and use the public seal for sealing all things whatsoever that shall pass the said seal.

PART III

Executive Council

11. There shall be an Executive Council for the Colony which, Executive subject to the provisions of this Order, shall consist of three ex-officio Council, members and certain appointed members.

12. The ex-officio members of the Executive Council shall be the Ex-officio Colonial Secretary, the Attorney-General and the Financial Secretary.
13. The appointed members of the Executive Council shall be such persons as may be appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

14.—(1) Subject to the provisions of this section, an appointed member of the Executive Council shall hold office as such during Her Majesty's pleasure.

(2) An appointed member of the Executive Council shall vacate his office—

(a) at such time or in such circumstances as may be specified in the instrument by which he is appointed;

(b) if he resigns his office by writing under his hand addressed to the Governor; or

(c) if he is absent from the Colony for a period of more than four weeks without written permission given by the Governor, in his discretion.

15.—(1) Whenever a member of the Executive Council is unable, because he is ill or absent from the Colony or for any other reason, to perform his functions as a member of the Council, the Governor, in his discretion, may, by instrument under the public seal, appoint a person to be temporarily a member of the Council:

Provided that he shall appoint a person who is a public officer in place of an ex-officio member.

(2) The Governor shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

(3) A person appointed under this section to be temporarily a member of the Executive Council—

(a) shall hold office as such during Her Majesty's pleasure;

(b) shall cease to hold office as such when he is informed by the Governor that the member in whose place he was appointed is again able to perform the functions of his office, or when the office of the member in whose place he was appointed becomes vacant.

(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Executive Council as they apply in relation to the ex-officio member or the appointed member, as the case may be, in whose place he was appointed.

16.—(1) (a) The Governor may, in his discretion, by instrument under the public seal, suspend an appointed member from the exercise of his functions as a member of the Executive Council; and while such suspension is in force the person suspended shall not sit in, or take part in the proceedings of, the Executive Council.

(b) Every such suspension shall forthwith be reported by the Governor to Her Majesty through a Secretary of State and shall remain in force unless and until it shall be removed by the Governor by an instrument under the public seal or by Her Majesty, through a Secretary of State, or the person suspended ceases to be a member of the Executive Council.
2. The Governor may, in his discretion, by instrument under the public seal declare an appointed member to be, by reason of illness, temporarily incapable of discharging his functions as a member of the Executive Council; and thereupon such member shall not sit in, or take part in the proceedings of, the Executive Council until he is declared, in manner aforesaid, again to be capable of discharging his said functions.

17. Any question whether any person is a member of the Executive Council shall be determined by the Governor, in his discretion.

18. Before assuming the functions of his office a member of the Executive Council shall make before the Governor, or some person authorised in that behalf by the Governor, an oath or affirmation for the due execution of his office in the form set out in schedule 2 to this Order.

19. The Executive Council shall not be summoned except by the authority of the Governor, in his discretion.

20.—(1) The Governor shall, so far as is practicable, attend and preside at all meetings of the Executive Council.

(2) In the absence of the Governor there shall preside at any meeting of the Council—

(a) such member of the Council as the Governor may appoint; or

(b) in the absence of a member so appointed, the senior ex-officio member present.

(3) For the purpose of subsection (2) of this section the ex-officio members of the Council shall have seniority in the order in which they are mentioned in section 12 of this Order.

(4) No business shall be transacted in the Executive Council if objection is taken by any member present that there are less than two members of the Council present besides the Governor or other member presiding.

(5) Subject to the last foregoing subsection, the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council; and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

(6) (a) The Governor or other person presiding, when in his opinion the business before the Executive Council makes it desirable, may summon any person to a meeting of the Council, notwithstanding that the person is not a member of the Council.

(b) Any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Executive Council relating to the matter in respect of which he was summoned, except that he shall not have a right to vote.
21.—(1) Subject to the provisions of this section, the Governor shall consult the Executive Council in the formulation of policy and in the exercise of all powers conferred upon him by this Order or by any other law for the time being in force in the Colony, except—

(a) any power conferred upon him by this Order or by any other law that he is empowered to exercise in his discretion or in pursuance of instructions from Her Majesty;

(b) any power conferred upon him by any law that he is empowered, either expressly or by implication, to exercise without consulting the Council.

(2) The Governor shall not be obliged to consult the Executive Council in any case in which, in his judgment—

(a) it is in the public interest that he should act without consulting the Council;

(b) the matters to be decided are too unimportant to require their advice; or

(c) the urgency of the matter requires him to act before they can be consulted.

(3) In every case falling within subsection (2) (c) of this section the Governor shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons for those measures.

22.—(1) In any case in which the Governor is required by the last foregoing section to consult the Executive Council he may, if he thinks it right to do so, act against the advice given to him by the Council; but if he so acts he shall at the first convenient opportunity report the matter to a Secretary of State with the reasons for his action.

(2) Whenever the Governor acts against the advice of the Executive Council any member of the Council may require that there shall be recorded in the minutes any advice or opinion he may give upon the question at issue and his reasons.

23. The Governor, in his discretion, shall alone be entitled to submit questions to the Executive Council for their advice or decision; but if he declines to submit any questions 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.

24. The Governor, in his discretion, may grant leave of absence from his duties to any member of the Executive Council.

PART IV

Legislative Council

25. There shall be a Legislative Council for the Colony which shall consist of—

(a) a Speaker;

(b) three ex-officio members;

(c) not more than sixteen official members;

(d) four nominated members;
(e) fourteen elected members;
(f) such temporary members, if any, as may be appointed under section 36 of this Order.

26.—(1) The Speaker shall be appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State from among persons who are not ex-officio, official, nominated or elected members of the Legislative Council.

(2) The Speaker shall hold office during Her Majesty's pleasure and, subject thereto, for such period as may be specified in the instrument by which he is appointed, and shall not vacate his office by reason of a dissolution of the Legislative Council:

Provided that the Speaker may, by writing under his hand addressed to the Governor, resign his office.

(3) The Governor, in his discretion, may by instrument under the public seal appoint a person to act as Speaker during any period when the office of Speaker is vacant, or the Speaker is for any reason unable to perform the functions of his office; and the provisions of this Order, other than subsection (1) of this section, shall apply in relation to that person as they apply in relation to the Speaker.

27. The ex-officio members of the Legislative Council shall be the Colonial Secretary, the Attorney-General and the Financial Secretary.

28.—(1) The official members of the Legislative Council shall be persons who are public officers and shall be appointed by the Governor, in his discretion, by instrument under the public seal.

(2) The Governor shall forthwith report to Her Majesty through a Secretary of State the appointment of any person to be an official member of the Legislative Council.

29.—(1) Of the nominated members of the Legislative Council two shall be Europeans and two shall be Indians.

(2) The nominated members of the Legislative Council shall be persons who are qualified for appointment as such under the provisions of this Order and shall be appointed by the Governor, in his discretion, by instrument under the public seal.

(3) The Governor shall forthwith report to Her Majesty through a Secretary of State the appointment of any person to be a nominated member of the Legislative Council.

30.—(1) Of the fourteen elected members of the Legislative Council—

(a) twelve members shall be directly elected to represent constituencies, namely—

(i) four Europeans who shall be elected by Europeans,
(ii) four Fijians who shall be elected by Fijians,
(iii) four Indians who shall be elected by Indians,

(b) two members, who shall be Fijians, shall be elected by the Great Council.

(2) The elected members of the Legislative Council shall be persons who are qualified for election in accordance with the provisions of this Order and, subject to the provisions of subsection (3) of this section,
shall be directly elected in the manner provided by any law for the time being in force in the Colony.

(3) The two elected members of the Legislative Council referred to in subsection (1) (b) of this section shall be persons elected in pursuance of subsections (1) (a) and (2) (a) of section 3 of the Order of 1962, or in pursuance of regulations made under section 40 (1) (a) of this Order, but no such person shall (in either case) take his seat in the Council—

(a) before his name has been sent by the Great Council to the Governor, and

(b) before such day as the Governor has, by notice in the Gazette, declared to be the day on which he shall become a member of the Council.

31. Subject to the provisions of section 33 of this Order, a person shall be qualified to be appointed a nominated member of the Legislative Council, and shall not be qualified to be so appointed unless—

(a) he is a British subject who has attained the age of twenty-one years;

(b) in the case of a European nominated member, he is a person whose father or any of whose other male progenitors in the male line is or was a European;

(c) in the case of an Indian nominated member, he is a person whose father or any of whose other male progenitors in the male line is or was an Indian.

32.—(1) Subject to the provisions of section 33 of this Order, a person seeking to represent a constituency shall be qualified to be elected a member of the Legislative Council if, and shall not be qualified to be so elected unless, at the date of his nomination as a candidate for election he—

(a) is a British subject who has attained the age of twenty-one years;

(b) satisfies the appropriate authority that he is able to speak and unless incapacitated by blindness or other physical cause, to read the English language well enough to take an active part in the proceedings of the Legislative Council;

(c) has resided in the Colony for a period of, or periods amounting in the aggregate to, not less than two years out of the immediately preceding three years;

(d) is qualified to be registered under any law for the time being in force in the Colony, and is so registered, in the case of a European, as a European elector, in the case of a Fijian, as a Fijian elector, and in the case of an Indian, as an Indian elector;

(e) (i) is the owner, and has been the owner for the preceding twelve months, in his own right, of freehold property situate within the Colony of not less than the clear value of five hundred pounds, or of the annual value of not less than fifty pounds, over and above all charges and incumbrances in respect thereof; or

(ii) is, and has been for the preceding twelve months, in occupation in his own right of freehold or leasehold property situate within the Colony of not less than five hundred acres in extent; or
(iii) rents, and has rented for the preceding twelve months, in his own right, freehold or leasehold property situate within the Colony of the annual value of not less than one hundred pounds; or

(iv) is in receipt of a net annual income in his own right of not less than three hundred pounds.

(2) Subject to the provisions of section 33 of this Order, a person shall be qualified to be elected a member of the Legislative Council by the Great Council, if, and shall not be qualified to be so elected unless, he has the qualifications required under section 3 (2) of the Order of 1962 or such qualifications as may be prescribed under section 40 of this Order.

(3) For the purposes of paragraph (b) of subsection (1) of this section "the appropriate authority" means the officer prescribed by law for the purpose or, if that officer decides that the candidate does not possess the qualifications required by that paragraph and the candidate appeals against the decision in such manner as may be prescribed, the Supreme Court.

33.—(1) No person shall be qualified to be elected as an elected member or appointed as a nominated member of the Legislative Council who

(a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state; or

(b) in the case of an elected or nominated member who is a European, or an elected or nominated member who is an Indian, holds or is acting in, a public office; or

(c) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged; or

(d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Colony; or

(e) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or

(f) in the case of an elected member, is disqualified for election by any law for the time being in force in the Colony by reason of his holding, or acting in, any office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election; or

(ii) any responsibility for the compilation or revision of any electoral register; or

(g) is disqualified for membership of the Legislative Council by any law in force in the Colony relating to offences connected with elections.
2. For the purpose of paragraph (e) of the last foregoing subsection—
(a) two or more terms of imprisonment that are required to be
served consecutively shall be regarded as a single term of imprison-
ment for the aggregate period of those terms;
(b) no account shall be taken of a sentence of imprisonment imposed
as an alternative to or in default of the payment of a fine.

34.—(1) Subject to the provisions of this Order, an official member
or a nominated member of the Legislative Council shall hold his seat
in the Council during Her Majesty’s pleasure.

(2) The seat of an official member of the Legislative Council shall
become vacant—
(a) if he ceases to be a public officer;
(b) upon a dissolution of the Council;
(c) if he resigns his seat by writing under his hand addressed to the
Governor;
(d) in the circumstances mentioned in the next following section.

(3) The seat of an elected member or a nominated member of the
Legislative Council shall become vacant—
(a) upon a dissolution of the Council;
(b) in the case of a nominated member, if he is absent from two
consecutive meetings of the Council without having obtained from
the Governor before the termination of either of such meetings,
permission to be or to remain absent therefrom;
(c) in the case of an elected member, if he is absent from two
consecutive meetings of the Council without having obtained from
the Speaker, or in the absence of the Speaker, the member presid-
ing, before the termination of either of such meetings, permission
to be or to remain absent therefrom;
(d) if, being an elected member, he resigns his seat by writing
under his hand addressed to the Speaker, or, being a nominated
member, he resigns his seat by writing under his hand addressed
to the Governor;
(e) (i) if, being an elected member representing a constituency, he
is appointed as a nominated member of the Legislative
Council, or is elected by the Great Council to be a member of
the Legislative Council and has become a member of the
Legislative Council by virtue of the provisions of section
30 (3) (b) of this Order;
(ii) if, being a nominated member, he is nominated as a candi-
date for election to represent a constituency; or
(iii) if, being a member of the Legislative Council who has been
elected by the Great Council, he is nominated as a candidate
for election to represent a constituency;
(f) if any of the circumstances arise that, if he were not a member
of the Legislative Council, would cause him to be disqualified for
election or, as the case may be, appointment thereto by virtue of
paragraph (a), (b), (c), (d), (f) or (g) of subsection (1) of the last
foregoing section; or
(g) in the circumstances mentioned in the next following section.
35.—(1) Subject to the provisions of this section, if an official member, a nominated member or an elected member of the Legislative Council is sentenced by a court in any part of the Commonwealth to death or imprisonment (by whatever name called) for a term exceeding twelve months he shall forthwith cease to perform his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter.

Provided that the Speaker may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Council signified by resolution.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted his seat in the Legislative Council shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Council.

(3) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

36.—(1) Whenever an ex-officio member, an official member of a nominated member of the Legislative Council, or a member of the Council who has been elected by the Great Council, is unable, because he is ill, or absent from the Colony, or for any other reason, to perform his functions as a member of the Council, the Governor, in his discretion, may, by instrument under the public seal, appoint to be temporarily a member of the Council—

(a) in place of an ex-officio member or an official member, a person who is a public officer;

(b) in place of a nominated member, a person qualified for appointment as a European or Indian nominated member, as the case may require;

(c) in place of a member who has been elected by the Great Council, a person who is qualified for appointment under the next following subsection.

(2) A person appointed by the Governor to be a temporary member of the Legislative Council under subsection (1) (c) of this section shall be a person whose name is on the list of persons elected by the Great Council for the purposes of this section under any law for the time being in force in the Colony, and who, in accordance with the provisions of any such law, is the person on such list who should be so appointed.

(3) A person appointed under this section to be temporarily a member of the Legislative Council—

(a) shall hold his seat in the Council during Her Majesty's pleasure;

(b) shall vacate his seat when he is informed by the Governor that the member in whose place he was appointed is again able to perform his functions as a member of the Council, or when the seat of the member in whose place he was appointed becomes vacant.
(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Legislative Council as they apply in relation to the ex-officio member, the official member, the nominated member or the member who has been elected by the Great Council, as the case may be, in whose place he was appointed.

37.—(1) Any question whether a person has become an elected member of the Legislative Council, or whether an elected member of the Legislative Council has vacated his seat therein shall be determined by the Supreme Court.

(2) Any question whether a person has become a nominated member of the Legislative Council or whether a nominated member of the Legislative Council has vacated his seat therein shall be determined by the Governor, in his discretion.

(3) A law enacted under this Order may make provision with respect to the persons who may apply for the determination of any question under this section, the circumstances and manner in which and the conditions on which any such application may be made, and the powers, practice and procedure of the Supreme Court in relation to any such application in respect of an elected member of the Legislative Council.

38.—(1) Any person who sits or votes in the Legislative Council knowing, or having reasonable grounds for knowing, that he is not entitled to do so shall be liable to a penalty not exceeding twenty-five pounds for every day upon which he so sits or votes.

(2) Any such penalty shall be recoverable by civil action in the Supreme Court at the suit of the Attorney-General.

39. Subject to the provisions of this Order, a law enacted under this Order may provide for the election of the members of the Legislative Council referred to in section 30 (1) (a) of this Order and in particular, and without prejudice to the generality of the foregoing power, may provide for—

(a) the qualifications and disqualifications of electors;

(b) the registration of electors;

(c) the ascertainment of the qualifications of electors and of candidates for election;

(d) the division of the Colony into constituencies for the purpose of elections, and the division of such constituencies for any purpose connected with elections;

(e) the holding of elections;

(f) the definition and trial of offences relating to elections and the imposition of penalties therefor, including disqualification for membership of the Legislative Council, or for registration of an elector, or for voting at elections, of any person concerned in any such offence; and

(g) the disqualification for election as members of the Legislative Council of persons holding, or acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections or the compilation or revision of any electoral register.
40.—(1) Subject to the provisions of this Order, the Governor Elects by the Great Council—

(a) of the elected members of the Legislative Council referred to in section 30 (1) (b) of this Order;

(b) of not less than three persons from whom the Governor may appoint temporary members of the Legislative Council under section 36 (1) (c) of this Order.

(2) Without prejudice to the generality of the foregoing power, regulations made under this section may include provision for the following matters, that is to say—

(a) the times at which and the manner in which such elections may be held;

(b) the qualifications of candidates for election;

(c) the method of ascertaining from the list of persons elected under subsection (1) (b) of this section the person who should be appointed by the Governor at any time as a temporary member of the Legislative Council;

(d) the definition and trial of offences relating to such elections and the imposition of penalties therefor; and

(e) the disqualification for election of persons holding or acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of any election.

41.—(1) For the purposes of this Part of this Order a person shall not be treated as holding, or acting in, a public office by reason only that he—

(a) is receiving any salary or allowance as a member of the Executive Council, or as a member of the Legislative Council;

(b) is receiving a pension or other like allowance from the Crown;

(c) is a member of the Special Constabulary;

(d) is on the retired list of any of Her Majesty’s Armed Forces.

(2) A provision in any law in force in the Colony that an office shall be deemed not to be a public office for any of the purposes of this Part of this Order shall have effect as if it were included in this Order.

**Part V**

*Legislation and Procedure in Legislative Council*

42. Subject to the provisions of this Order, the Governor, with the advice and consent of the Legislative Council, may make laws Power to make laws.

43. Subject to the provisions of this Order, the Governor and the Legislative Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under Her Majesty’s Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf.

44. Subject to the provisions of this Order and of any Instructions Rules and orders under Her Majesty’s Sign Manual and Signet, the Legislative Council...
may from time to time make, amend and revoke rules and orders for
the regulation and orderly conduct of their proceedings and the despatch
of business, and for the passing, intitulating and numbering of Bills and
for the presentation thereof to the Governor for assent; but no such
rules and orders, or amendment or revocation thereof, shall have effect
unless and until they have been approved by the Governor, in his
discretion.

45. No member of the Legislative Council shall be permitted to
take part in the proceedings of the Council (other than proceedings
necessary for the purpose of this section) until he has made before
the Council an oath or affirmation of allegiance in the form set out
in schedule 2 to this Order.

Presiding in
Legislative
Council.

46. There shall preside at any sitting of the Legislative Council the
Speaker, or in his absence the Acting Speaker, or in their absence a
member of the Council elected by the Council for the sitting.

Governor
may address
Legislative
Council.

47. The Governor, in his discretion, may attend and address the
Legislative Council at any time.

Council may
transact
business
notwithstanding
vacancies.

48. The Legislative Council shall not be disqualified for the trans-
action of business by reason of any vacancy in the membership
thereof including any vacancy not filled when the Council is first
constituted or is reconstituted at any time; and any proceedings
therein shall be valid notwithstanding that some person who was
not entitled to do so sat or voted in the Council or otherwise took
part in those proceedings.

Quorum.

49.—(1) A quorum of the Legislative Council shall consist of nine
persons besides the person presiding at the sitting.

(2) If at any sitting of the Legislative Council any member who is
present draws the attention of the person presiding at the sitting to the
absence of a quorum and, after such interval as may be prescribed
in the rules and orders of the Council, the person presiding at the
sitting ascertains that a quorum of the Council is still not present,
the Council shall be adjourned.

(3) If at any sitting of the Legislative Council it appears to the
person presiding that a quorum of the Council is not present when
the votes of the members on any question proposed for decision are
counted, the voting on that question shall be invalid, that question
shall stand over until the next sitting of the Council and the attention
of the person presiding shall be deemed to have been drawn to the
absence of a quorum for the purpose of subsection (2) of this section.

Voting.

50.—(1) Save as otherwise provided in this Order, all questions pro-
posed for decision in the Legislative Council shall be determined by
majority of votes of the members present and voting.

(2) The Speaker shall not have an original vote but if upon any
question before the Legislative Council the votes are equally divided
he shall have and exercise a casting vote.

(3) Any member of the Legislative Council other than the Speaker
shall, when presiding in the Council, retain his original vote and
shall have and exercise a casting vote.
51.—(1) Subject to the provisions of this Order and to the rules and orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the Bill, motion or petition shall be debated and disposed of according to the rules and orders of the Council.

(2) Except on the recommendation of the Governor the Legislative Council shall not—

(a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council,

(i) makes provision for imposing or increasing any tax, rate or duty, for imposing or increasing any charge on the revenues or other funds of the Colony, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to the Colony;

(ii) effects any alteration in the salary, allowances or conditions of service (including leave, passages and promotion) of any public officer or in the law, regulations or practice governing the payment of pensions, gratuities or other like benefits to any public officer or former public officer or his widow, children, dependants or personal representatives; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision should be made for any of the purposes aforesaid; or

(c) receive any petition which, in the opinion of the person presiding in the Council, requests that provision be made for any of the purposes aforesaid.

(3) The Governor, in his discretion, may—

(a) send by message to the Speaker the draft of any Bill or motion which he considers should be introduced or proposed in the Legislative Council; and

(b) in the same or a later message require that the Bill or motion shall be introduced or proposed not later than a date specified in the message;

and if that requirement is not complied with, the Bill or motion shall be deemed for all purposes to have been introduced or proposed in the Council on the date so specified.

52.—(1) If the Governor considers that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of the Colony as a territory within the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the appointment, salary or other conditions of service of any public officer), that any Bill introduced, or any motion proposed in the Legislative Council should have effect, then, if the Council fail to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time he thinks fit, and notwithstanding any provisions of this Order or of any rules and orders of the Council, declare that the Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit that have been moved
or proposed in the Council, including any committee thereof: and the
Bill or motion shall have effect as if it had been so passed or carried,
and the provisions of this Order, and in particular the provisions relating
to assent to Bills and disallowance of laws shall have effect accordingly.

(2) The Governor shall forthwith report to a Secretary of State
every case in which he makes any declaration under this section and
the reasons therefor.

(3) If any member of the Legislative Council objects to any declara-
tion made under this section, he may, within seven days of the making
thereof, submit to the Governor a statement in writing of his reasons
for so objecting and, if he furnishes a copy of that statement, and
requests the Governor to do so, the Governor shall, as soon as practic-
able, forward the copy to a Secretary of State.

(4) Any declaration made under this section, other than a declara-
tion relating to a Bill, may be revoked by a Secretary of State, and the
Governor shall cause notice of the revocation to be published in the
Gazette; and from the date of such publication any motion that is
deemed to have been carried by virtue of the declaration shall cease
to have effect and section 38 (2) of the Interpretation Act 1889 shall
apply to the revocation as it applies to the repeal of an Act of
Parliament.

(5) The powers conferred on the Governor by this section shall be
exercised by him in his discretion.

53.—(1) A Bill shall not become a law until—

(a) the Governor has assented to it in Her Majesty’s name and on
Her Majesty’s behalf and has signed it in token of such assent, or
(b) Her Majesty has given Her assent to it through a Secretary of
State and the Governor has signed such assent by Proclamation
published in the Gazette.

(2) When a Bill is presented to the Governor for his assent, he shall,
in his discretion, but subject to the provisions of this Order and of any
Instructions addressed to him under Her Majesty’s Sign Manual and
Signet or through a Secretary of State, declare that he assents, or
refuses to assent, thereto, or that he reserves the Bill for the signifi-
cation of Her Majesty’s pleasure:

Provided that the Governor shall reserve for the signification of Her
Majesty pleasure any Bill—

(a) which appears to him, in his discretion, to be in any way
repugnant to or inconsistent with the provisions of this Order; or
(b) which determines or regulates the privileges, immunities or powers
of the Legislative Council or of its members;

unless he has been authorised by a Secretary of State to assent to it.

54.—(1) Any law to which the Governor has given his assent may be
disallowed by Her Majesty through a Secretary of State.

(2) Whenever such a law has been disallowed by Her Majesty the
Governor shall cause notice of such disallowance to be published in
the Gazette and the law shall be annulled with effect from the date of
the publication of the notice.
(3) Section 38 (2) of the Interpretation Act 1889 shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

55. A law enacted under this Order may determine and regulate the privileges, immunities and powers of the Legislative Council and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland or of the members thereof.

56. The sessions of the Legislative Council shall be held at such place and begin at such time as the Governor may from time to time by Proclamation published in the Gazette appoint; but a period of twelve months shall not elapse between the date when the Council last sat in one session and the date appointed for its first sitting in the next session.

57.—(1) The Governor, in his discretion, may at any time by Proclamation published in the Gazette, prorogue or dissolve the Legislative Council.

(2) The Governor shall dissolve the Legislative Council at the expiration of five years from the date when the Council first meets after any general election unless it has been sooner dissolved.

58. There shall be a general election at such time within three months after the appointed day, and thereafter within three months after every dissolution of the Legislative Council, as the Governor by Proclamation published in the Gazette shall appoint.

PART VI

The Judicature

59.—(1) The Chief Justice and any other judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be removed except in accordance with the provisions of the next following subsection.

(2) A judge of the Supreme Court shall be removed from office by the Governor by order under the public seal if the question of removing him from office has, at the request of the Governor, made in pursuance of the next following subsection, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833(a) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(3) If the Governor considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(a) the Governor shall by order under the public seal (which he may vary or revoke by another such order) appoint a tribunal,

(a) 3 & 4 Will. 4. c. 41.
which shall consist of a chairman and not less than two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether he should request that the question of removing the judge from office should be referred by Her Majesty to the Judicial Committee; and

(c) if the tribunal so recommends, the Governor shall request that the question should be referred accordingly.

(4) Subject to the provisions of the last foregoing subsection, the provisions of the Commissions of Inquiry Ordinance(a), as in force on the appointed day, shall apply in relation to a tribunal appointed by an order made under that subsection as if the tribunal were commissioners appointed by a commission issued under the Ordinance, and references in the Ordinance to commissioners and a commission shall be construed accordingly.

(5) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under subsection (3) of this section the Governor may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

(a) if the tribunal recommends to the Governor that he should not request that the question of removing the judge from office should be referred by Her Majesty to the Judicial Committee; or

(b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(6) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

PART VII

Miscellaneous and Transitional Provisions

60.—(1) Persons who immediately before the appointed day are holding or acting in offices established by or under the existing instruments shall, on and after that day, continue to hold or to act in their respective offices as if they had been appointed thereto by or under this Order and had made any oaths or affirmations required by or under this Order.

(2) The reference in subsection (1) of this section to offices established by or under the existing instruments does not include a reference to a member of the Executive Council or a member of the Legislative Council.

(a) Laws of Fiji, 1955, c. 116.
61. Notwithstanding the revocation by this Order of the existing instruments, the Executive Council established by the existing instruments—

(a) shall continue to exist until such time as the Executive Council established by this Order has been constituted; and

(b) shall, until that time, perform its functions and be consulted by the Governor in accordance with the provisions of the existing instruments and of any instructions under Her Majesty’s Sign Manual and Signet for the time being in force immediately before the appointed day.

62. The rules and orders of the existing Legislative Council as in force immediately before the appointed day shall, as from the appointed day and until it is otherwise provided under section 44 of this Order, continue to be the rules and orders of the Legislative Council established by this Order, but shall be construed with such modifications and adaptations, if any, as may be necessary to bring them into conformity with this Order.

63.—(1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the existing instruments, have effect after the appointed day as if they had been made in pursuance of this Order and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(2) The Governor, in his discretion, may, by order published in the Gazette, at any time within six months after the appointed day, provide that any existing law shall be read and construed with such adaptations and modifications 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; and any existing law shall have effect accordingly from such date as may be specified in the order.

(3) An order made under this section may be amended, revoked or replaced by a further order so made, or, in relation to any law or instrument affected thereby, by the authority having power to amend, repeal or revoke that law or instrument.

(4) For the purposes of this section, the expression “the existing laws” means all Ordinances, laws, rules, regulations, orders and other instruments made in pursuance of, or kept in force by, the existing instruments, and having effect as part of the law of the Colony immediately before the appointed day.

64. Her Majesty hereby reserves to Herself power, with the advice of Her Privy Council, to revoke, add to or amend this Order and to make laws for the peace, order and good government of the Colony.

E. N. Landale.