1973 No. 1758

PACIFIC ISLANDS

The New Hebrides Order 1973

Made - 24th October 1973
Laid before Parliament - 30th October 1973
Coming into Operation - On publication in accordance with the provisions of section 1(3)

At the Court at Buckingham Palace, the 24th day of October 1973

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act 1890(a) or otherwise in Her 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 New Hebrides Order 1973.
(2) This Order and the New Hebrides Orders in Council 1922 to 1970(b) may be cited together as the New Hebrides Orders 1922 to 1973.
(3) This Order shall be published in the New Hebrides in the British Service Gazette and shall come into operation on the date of such publication or on the 31st October 1973, whichever is the later.

2.—(1) In this Order, unless the context otherwise requires:
- "functions" includes rights, duties and powers;
- "the Protocol" means the Protocol made the 6th day of August 1914 between the Government of His late Majesty King George the Fifth and the Government of the French Republic in the terms set forth in the Schedule to the New Hebrides Order in Council 1922(c) as interpreted in accordance with the agreement to that effect, contained in the notes exchanged between the two Governments dated the 16th day of December 1922 and the 26th day of December 1922 respectively, and set out in the Schedule to the New Hebrides Order in Council 1923(d), and as modified, added to, or amended by any of the agreements set out in the Schedule to the New Hebrides Order in Council 1961(e) or in the Schedule to the New Hebrides Order in Council 1963(f) or as published in accordance with the provisions of section 10A of the New Hebrides Order in Council 1922 as amended(g).

(a) 51 & 54 Vict. c. 37.
(b) S.R. & O. 1922/717, 1923/356 (Rev. VIII, pp. 719, 757: 1922, p. 324; 1923, p. 337);
"public office" means an office of emolument in the service of Her Majesty in the New Hebrides but does not include the office of Judge of the High Court of the Western Pacific and "public officer" shall be construed accordingly.

(2) In this Order, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person who is for the time being lawfully acting in or performing the functions of that office.

(3) Subject to the provisions contained in Schedule 1 to this Order, 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. Sections 1 to 14 (inclusive) of the New Hebrides Order in Council 1922 shall be replaced by the provisions contained in Schedule 1 to this Order.

4.—(1) Any office constituted and subsisting immediately before the day this Order comes into operation shall, on and after that day, be deemed to be an office constituted by or under the provisions contained in Schedule 1 to this Order.

(2) Any person, who immediately before the day this Order comes into operation, holds or is acting in any such office or any public office otherwise constituted, shall, on and after that day, continue to hold or to act in his office as if he had been appointed to it in accordance with the provisions contained in Schedule 1 to this Order.

5. Subject to the provisions of this Order, all laws which, immediately before the coming into operation of this Order, are binding upon all persons over whom Her Majesty has jurisdiction within the New Hebrides shall so continue in force.

6. Without prejudice to anything done thereunder, the Orders in Council described in the first column of Schedule 2 to this Order are hereby revoked as respects the New Hebrides to the extent specified in the second column of that Schedule.

W. G. Agnew.

(a) 1889 c. 63.
Section 3.

SCHEDULE 1

Limits of the Order.

1. The limits of this Order shall include all the islands of the Pacific Ocean known as the New Hebrides and all the islands known as the Banks Islands and Torres Islands, and the said islands are hereinafter referred to as the New Hebrides.

The Protocol.

2. The Protocol shall have the force of law and shall be binding upon all persons within the New Hebrides over whom Her Majesty shall at any time have jurisdiction, and the provisions of this Order and of all laws made thereunder shall be read and construed subject to the terms of the Protocol in all respects.

Appointment of High Commissioner.

3.—(1) Her Majesty may appoint, by commission under Her Sign Manual and Signet, a High Commissioner for the New Hebrides who shall hold office during Her Majesty's pleasure.

(2) Whenever the office of High Commissioner is vacant or the person holding that office is for any reason unable to perform the functions of that office those functions shall be performed by such person as Her Majesty may have designated by instructions given through a Secretary of State.

4. The High Commissioner shall have such functions as may be conferred upon him by or under this Order or any other law for the time being in force in the New Hebrides and such other functions in relation to the New Hebrides as Her Majesty may assign to him and subject to the provisions of this Order and of any other law by which any such functions are conferred, shall perform all the functions of his office (including the functions conferred upon him by this Order) according to such instructions, if any, as he may receive from time to time from Her Majesty through a Secretary of State:

Provided that the question whether or not the High Commissioner has in any matter complied with any such instructions shall not be inquired into in any court.

High Commissioner's powers as respects offices.

5.—(1) Subject to the provisions of this Order and of any other law for the time being in force in the New Hebrides, the High Commissioner shall have power, in Her Majesty's name and on Her Majesty's behalf—

(a) to constitute such offices as may lawfully be constituted by Her Majesty and abolish any office so constituted by him;

(b) to make appointments (including appointments on promotion and transfer) to any office so constituted by him: and

(c) to terminate the appointment of or dismiss any person so appointed, or suspend him from performing the functions of his office or take such other disciplinary action with respect to him as may be necessary.

(2) A person appointed to an office constituted under this section shall, unless it is otherwise provided by law, hold office during Her Majesty's pleasure.

(3) The High Commissioner may delegate to the Resident Commissioner or to any other public officer in such manner and upon such conditions as he may deem fit any of the powers conferred upon him by this section.

Appointment of Resident Commissioner.

6.—(1) There shall be a Resident Commissioner in the New Hebrides who shall be appointed by the High Commissioner in pursuance of instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

(2) Whenever the office of Resident Commissioner is vacant or the person holding that office is absent from the New Hebrides or is for any other reason unable to perform the functions of his office those functions shall be performed by—
(a) such person as the High Commissioner may have designated with the
approval of a Secretary of State (hereinafter referred to as "the person
designated"); or

(b) if no person has been so designated, by the Assistant Resident
Commissioner.

(3) For the purposes of the preceding subsection the person holding
the office of Resident Commissioner shall not be regarded as absent from
the New Hebrides or unable to perform the functions of his office—
(a) by reason only of the fact that he is in passage from one part of the
New Hebrides to another; or
(b) at any time when there is a subsisting appointment of a deputy under
the next following section.

(4) The person designated or the Assistant Resident Commissioner, as the
case may be, shall not continue to perform the functions of the office of
Resident Commissioner after the person holding that office has informed
him that he is about to assume or resume the functions of his office.

7.- (1) Whenever the Resident Commissioner—
(a) has occasion to be absent from Villa but not from the New Hebrides ;
or
(b) has occasion to be absent from the New Hebrides for a period
which he has reason to believe will be of short duration; or
(c) is suffering from an illness which he has reason to believe will be of
short duration,
he may, by writing under his hand, appoint any public officer to be his
deputy during his absence or illness and in that capacity to perform on
his behalf such of the functions of his office, as he may specify.

(2) The powers and authority of the Resident Commissioner shall not
be abridged, altered or in any way affected by the appointment of a
deputy under this section otherwise than as the High Commissioner may
at any time think proper to direct by instructions to the Resident
Commissioner and the deputy shall conform to and observe all instructions
that may from time to time be given to him by the Resident Commissioner:
Provided that the question whether or not the deputy has in any matter
complied with any such instructions shall not be enquired into in any
court.

(3) A person appointed as deputy under this section shall hold that
office for such period as may be specified in the instrument by which he
is appointed but his appointment may be revoked at any time by the High
Commissioner by instructions given to the Resident Commissioner.

(4) In this section " Resident Commissioner " does not include a deputy
appointed under this section.

8. (1) The Resident Commissioner shall have such functions as may be
conferrered upon him by or under this Order or any other law for the time
being in force in the New Hebrides and such other functions as Her
Majesty may assign to him and, subject to the provisions of this Order and
of any other law by which any such functions are conferred, shall perform
all the functions of his office (including the functions conferred upon him
by this Order) according to such instructions as he may receive from
time to time from Her Majesty through a Secretary of State, or from the
High Commissioner:
Provided that the question whether or not the Resident Commissioner has
in any matter complied with any such instructions shall not be enquired into
in any court.

(2) The appointment of a Resident Commissioner shall not abridge, alter
or affect the right of the High Commissioner to perform the functions
conferrered upon him by or under this Order or any other law.
Concurrent Appointments.

9.—(1) When the holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office, it shall be lawful for another person to be appointed substantively to the same office.

(2) When two or more persons are holding the same office by reason of an appointment made pursuant to subsection (1) then for the purpose of any function conferred upon the holder of that office the person last appointed to the office shall be deemed to be the holder of the office.

Queen's Regulations.

10.—(1) It shall be lawful for the High Commissioner or the Resident Commissioner to make, alter, and revoke any regulations (to be called "Queen's Regulations") for the peace, order and good government of all persons who are British subjects or who, under the Protocol, or otherwise, are subject to the jurisdiction of Her Majesty, and such regulations shall, on publication in the New Hebrides, be binding on all persons, being British subjects or otherwise, subject to the jurisdiction of Her Majesty.

(2) Any regulation made by the High Commissioner or by the Resident Commissioner may be disallowed by a Secretary of State, and upon such disallowance being published as aforesaid in the New Hebrides, the said regulation shall become void and cease to have effect from the date of the publication, without prejudice to anything lawfully done thereunder.

Public Seal.

11. There shall be a public seal of the High Commissioner which he shall keep and use for sealing all things whatsoever that shall pass the seal.

Prerogative of Mercy.

12.—(1) The Resident Commissioner may, in Her Majesty's name and on Her Majesty's behalf—

(a) grant to any person in respect of any offence a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed by a court on that person for any offence;

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

(d) remit the whole or part of any punishment imposed by a court on any person for any offence or penalty or forfeiture otherwise due to Her Majesty on account of any offence.

(2) In this section—

"a court" means a court established by Her Majesty for the New Hebrides and includes Her Majesty in Council;

"offence" means an offence triable by a court.

Transfer of certain functions to Resident Commissioner.

13.—(1) Subject to the provisions of this section, all the functions of the High Commissioner for the Western Pacific under any law in force in the New Hebrides shall, in relation to the New Hebrides, be exercised and performed by the Resident Commissioner.

(2) The provisions of this section shall not affect the functions of the High Commissioner for the Western Pacific under:

(a) the Western Pacific (Courts) Order in Council 1961(a), as amended(b);

(b) the Fugitive Offenders (New Hebrides) Order 1968(c).

(3) For the purposes of sub-section (1) "law" does not include any Act of the Parliament of the United Kingdom or any Order in Council or other instrument made under such an Act.

(c) 1968/1091 (1968 II, p. 2974).
14. If the Resident Commissioner is informed by a Secretary of State that Her Majesty's Government and the Government of the French Republic have agreed by Exchange of Notes or otherwise to modify, add to or amend the Protocol, he shall cause the modification, addition or amendment to be published in the New Hebrides in the manner customarily adopted for the publication of regulations made under section 10 of this Order, and upon such publication the Protocol shall have the force of law and be binding within the New Hebrides subject to such modification, addition or amendment.

15. Judicial notice shall be taken of this Order and of the commencement thereof and of the appointment of the High Commissioner, the Resident Commissioner and of any other officers lawfully appointed and of the constitution and limits of any jurisdiction, court or district and of judicial and official seals and signatures and of any laws, regulations or rules lawfully made under this Order or otherwise and no proof shall be required of any such matters.

| SCHEDULE 2 | Section 6 |
| Orders Revoked |

<table>
<thead>
<tr>
<th>Title</th>
<th>Extent of Revocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Pacific Order in Council 1893(a) ...</td>
<td>Articles 80 and 115 to 136 (inclusive).</td>
</tr>
<tr>
<td>The New Hebrides Order in Council 1955(b).</td>
<td>The whole Order.</td>
</tr>
</tbody>
</table>

EXPLANATORY NOTE
(This Note is not part of the Order.)

This Order amends the New Hebrides Order in Council 1922, as amended in 1955 and 1970, by replacing provisions relating to the office and functions of the High Commissioner and of the Resident Commissioner.

(a) Rev. VIII, p. 597; 1893, p. 312.
PACIFIC ISLANDS

The New Hebrides Royal Instructions 1973


ELIZABETH R.

INSTRUCTIONS to Our Resident Commissioner in the New Hebrides or other Officer for the time being performing the functions of that office.

We do hereby direct and enjoin and declare Our will and pleasure as follows:—

1.—(1) These Instructions may be cited as the New Hebrides Royal Instructions 1973.

(2) These Instructions shall be published in the British Service Gazette and shall take effect on the day of such publication, which shall not be before 31st October 1973.

2. The provisions of section 2 of the New Hebrides Order 1973(a) (in these Instructions referred to as "the Order") shall apply for the purpose of interpreting these Instructions as they apply for the purpose of interpreting the Order.

3. In the making of regulations under the powers conferred by section 9 of the New Hebrides Order in Council 1922, as amended (b), the following rules shall be observed as far as practicable:—

(a) All regulations shall be styled "Queen's Regulations" and the words of enactment shall be—

"Made by Her Britannic Majesty's Resident Commissioner in the New Hebrides in pursuance of the powers contained in the New Hebrides Orders".

(b) All regulations shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed in the margin or at its head a short indication of its contents.

(c) All regulations shall be numbered consecutively in a separate series for each year, commencing with the number one, so that a

(a) S.I. 1973/1758 (1973) II, p. 5380.
regulation is included in the series for the year in which it is made and its position in the series is determined with reference to the day on which it has been made.

(d) Copies of regulations shall bear the following:
   (i) particulars of the day on which each was made;
   (ii) particulars of the day on which each has come into operation,
        or, if that day has not been determined, a reference to any
        provision in the regulation whereby it may be determined.

(e) Matters having no proper relation to each other shall not be provided for by the same regulation: no regulation shall contain anything foreign to what the title of the regulation imports: and no provision having indefinite duration shall be included in any regulation expressed to have limited duration.

4.—(1) The Resident Commissioner shall not, without having previously obtained Our instructions through a Secretary of State, make any regulation within any of the following classes, unless the regulation contains a provision suspending its operation until the signification of Our pleasure, that is to say, any regulation—
   (a) for the divorce of married persons;
   (b) whereby any grant of land or money or other donation may be made to himself;
   (c) affecting the currency which is legal tender in the New Hebrides or relating to the issue of bank notes;
   (d) establishing any banking association, or altering the constitution, powers or privileges of any banking association;
   (e) imposing differential duties;
   (f) affecting the discipline or control of Our naval, military or air forces;
   (g) the provisions of which appear to him to be inconsistent with obligations imposed on Us by treaty, convention, agreement or arrangement relating to any country or international or similar organization outside the New Hebrides;
   (h) whereby persons of any racial or religious community may be subjected or made liable to any disabilities or restrictions to which persons of other such communities are not also subjected, or made liable, or may be granted advantages which are not enjoyed by persons of other such communities;
   (i) of an extraordinary nature and importance whereby Our prerogative, or the rights or property of Our subjects not residing in the New Hebrides, or the trade, transport or communications of any part of Our dominions or any territory under Our protection or in which We have for the time being jurisdiction, may be prejudiced;
   (j) containing provisions which have been disallowed by Us.

(2) Notwithstanding the provisions of the last foregoing paragraph, if the Resident Commissioner is satisfied that it is urgently necessary
in the public interest that a regulation falling within any of the said classes (other than a regulation falling within sub-paragraph (g) of that paragraph) be brought into immediate operation. He may make the regulation without such instructions as aforesaid and although the regulation contains no such provision as aforesaid; but he shall forthwith transmit to Us the regulation together with his reasons for so making it.

5. When any regulation has been made or has been reserved for the signification of Our pleasure, the Resident Commissioner shall forthwith transmit to Us through a Secretary of State, for the signification of Our pleasure, a transcript in duplicate of the regulation duly authenticated in such manner as the Secretary of State shall specify, together with an explanation of the reasons and occasion for the making of the regulation.

6. As soon as practicable after the commencement of each year the Resident Commissioner shall cause a complete collection of all regulations enacted during the preceding year to be published for general information.

7. The Resident Commissioner shall not, directly or indirectly, purchase for himself any land or building in the New Hebrides to Us belonging without Our special permission given through a Secretary of State.

8. The Resident Commissioner may, whenever he thinks fit, require any person in the service of Her Majesty in the New Hebrides to make such oath or affirmation of allegiance as may be prescribed by law.

Given at Our Court at St. James's this nineteenth day of November in the twenty-second year of Our Reign.