



# Kenya Independence Act 1963

## 1963 CHAPTER 54

An Act to make provision for, and in connection with, the attainment by Kenya of fully responsible status within the Commonwealth, including provision for terminating the giving of financial and other assistance to the East African Common Services Organisation under the Colonial Development and Welfare Act 1959. [3rd December 1963]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Provision for fully responsible status of Kenya**

- (1) On and after 12th December 1963 (in this Act referred to as " the appointed day ") Her Majesty's Government in the United Kingdom shall have no responsibility for the government of Kenya or any part thereof.
- (2) No Act of the Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to Kenya, or any part of Kenya, as part of the law thereof; and on and after that day the provisions of Schedule 1 to this Act shall have effect with respect to legislative powers in Kenya.
- (3) In this Act " Kenya " includes the territories comprised immediately before the appointed day in the Kenya Protectorate.

### **2 Consequential modifications of British Nationality Acts**

- (1) On and after the appointed day, the British Nationality Acts 1948 and 1958 shall have effect as if—
  - (a) in section 1(3) of the said Act of 1948 (which provides for persons to be British subjects or Commonwealth citizens by virtue of citizenship of certain countries) there were added at the end the words " and Kenya ";

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- (b) in Schedule 1 to the British Protectorates, Protected States and Protected Persons Order in Council 1949 the words "Kenya Protectorate" were omitted:

Provided that a person who, immediately before the appointed day, is for the purposes of the said Acts and Order in Council a British protected person by virtue of his connection with the Kenya Protectorate shall not cease to be such a British protected person for any of those purposes by reason of anything in the foregoing provisions of this section, but shall so cease upon his becoming a citizen of Kenya under the law thereof.

- (2) Save as provided by section 3 of this Act, any person who immediately before the appointed day is a citizen of the United Kingdom and Colonies shall on that day cease to be such a citizen if on that day he becomes a citizen of Kenya.
- (3) On and after the appointed day, section 6(2) of the British Nationality Act 1948 (which provides for the registration as a citizen of the United Kingdom and Colonies of a woman who has been married to such a citizen) shall not apply to a woman by virtue of her marriage to a person who on the appointed day ceases to be such a citizen under subsection (2) of this section, or would have done so if living on the appointed day.
- (4) Part III of the British Nationality Act 1948 (which contains supplemental provisions) shall have effect for the purposes of the foregoing subsection and section 3 of this Act as if those provisions were included in that Act.

### **3 Persons retaining citizenship of United Kingdom and Colonies although becoming citizens of Kenya**

- (1) Any reference in subsection (2) or subsection (3) of this section to a colony, protectorate or protected state shall, subject to subsection (7) of this section, be construed as a reference to a territory which is a colony, protectorate or protected state (within the meaning of the British Nationality Act 1948) on the appointed day, and, accordingly, shall not include a reference to Kenya or any part thereof.
- (2) Subject to subsection (6) of this section, a person shall not cease to be a citizen of the United Kingdom and Colonies under section 2(2) of this Act if he, his father or his father's father—
- (a) was born in the United Kingdom or in a colony; or
  - (b) is or was a person naturalised in the United Kingdom and Colonies; or
  - (c) was registered as a citizen of the United Kingdom and Colonies; or
  - (d) became a British subject by reason of the annexation of any territory included in a colony.
- (3) A person shall not cease to be a citizen of the United Kingdom and Colonies under section 2(2) of this Act if he was born in a protectorate or protected state, or if his father or his father's father was so born and is or at any time was a British subject.
- (4) A woman who is the wife of a citizen of the United Kingdom and Colonies shall not cease /to be such a citizen under section 2(2) of this Act unless her husband does so.
- (5) Subject to subsection (6) of this section, the reference in subsection (2)(b) of this section to a person naturalised in the United Kingdom and Colonies shall include a person who would, if living immediately before the commencement of the British Nationality Act 1948, have become a person naturalised in the United Kingdom and

Colonies by virtue of section 32(6) of that Act (which relates to persons given local naturalisation before that commencement in a colony or protectorate).

- (6) Subsection (2) of this section shall not apply to a person by virtue of any certificate of naturalisation granted or registration effected by the governor or government of a territory outside the United Kingdom which is not a colony, protectorate or protected state (within the meaning of the said Act of 1948) on the appointed day.
- (7) The protectorates of Northern Rhodesia and Nyasaland shall be excepted from the operation of any reference in this section to a protectorate.

#### **4 Consequential modification of other enactments**

- (1) Notwithstanding anything in the Interpretation Act 1889 the expression " colony " in any Act of Parliament of the United Kingdom passed on or after the appointed day shall not include Kenya or any part thereof.
- (2) On and after the appointed day—
  - (a) the expression " colony " in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 shall not include Kenya or any part thereof; and
  - (b) in the definitions of " Commonwealth force " in sections 225(1) and 223(1) respectively of the said Acts of 1955, and in the definition of " Commonwealth country " in section 135(1) of the said Act of 1957, at the end there shall be added the words " or Kenya ".
- (3) No Order in Council made after 31st December 1963 under section 1 of the Army and Air Force Act 1961 shall operate to continue either of the said Acts of 1955 in force as part of the law of Kenya or any part thereof.
- (4) On and after the appointed day, the provisions specified in Schedule 2 to this Act shall have effect subject to the amendments respectively specified in that Schedule, and Her Majesty may by Order in Council, which shall be subject to annulment in pursuance of a resolution of either House of Parliament, make such further adaptations in any Act of the Parliament of the United Kingdom passed before this Act, or in any instrument having effect under any such Act, as appear to Her necessary in consequence of section 1 of this Act; and any Order in Council made under this subsection may be varied or revoked by a subsequent Order in Council so made, and may, if made after the appointed day, be made so as to take effect on the appointed day.
- (5) Subsection (4) of this section, Schedule 2 to this Act and any Order in Council made under the said subsection (4) shall not extend to Kenya, or any part of Kenya, as part of the law thereof.

#### **5 Termination of assistance to East African Common Services Organisation**

- (1) Any scheme under section 1 of the Colonial Development and Welfare Act 1959 made with respect to the East African Common Services Organisation shall cease to have effect on the appointed day, without prejudice to the making of payments in pursuance of the scheme on or after that day in respect of any period falling before that day.
- (2) No loan under section 2 of the said Act of 1959 shall be made on or after the appointed day to the said Organisation; and section 4(3) of the Tanganyika Independence Act 1961 and section 4 of the Uganda Independence Act 1962 (by virtue of which loans may be made to that Organisation under the said section 2) shall cease to have effect

on the appointed day, without prejudice to anything done by virtue of the said sections 4(3) and 4, or either of them, before that day.

- (3) In this section "the East African Common Services Organisation" means the organisation established under that name by an agreement made on 9th December 1961 between the Governments of Tanganyika, Kenya and Uganda.

## **6 Judicial Committee of Privy Council**

- (1) Her Majesty may by Order in Council made before the appointed day confer on the Judicial Committee of the Privy Council such jurisdiction in respect of appeals from any court having jurisdiction under the law of Kenya or any part thereof, and in respect of any proceedings concerning judges of any such court, as appear to Her to be appropriate.
- (2) An Order in Council under this section may determine the classes of cases in which, and the conditions as to leave and otherwise subject to which, any such appeal or other proceedings may be entertained by the said Committee, and the practice and procedure to be followed in any such proceedings, and—
- (a) may confer on the said Committee any of the jurisdiction or powers possessed by any court under the law of Kenya,
  - (b) may require that the decisions of the said Committee in exercise of any jurisdiction conferred under this section shall be enforced in the same way as decisions of any court having jurisdiction under the law of Kenya or any part thereof,
  - (c) may exclude an appeal to Her Majesty in Council, whether as of right or by special leave, in all or any cases, and
  - (d) may contain transitional provisions as respects appeals to Her Majesty in Council and other proceedings which are pending on the appointed day, and may contain such other incidental or supplemental provisions as appear to Her Majesty to be expedient.
- (3) Except so far as otherwise provided by an Order in Council under this section, and subject to such modifications as may be so provided, the Judicial Committee Act 1833 shall apply in relation to appeals and other proceedings in respect of which any jurisdiction is conferred under this section as it applies in relation to appeals to Her Majesty in Council.
- (4) Provisions made in pursuance of this section may be included in any Order in Council revoking the existing Constitution Order.
- (5) So much of any Order in Council as is made under this section may be varied or revoked by a further Order in Council, whether made before or after the appointed day ; but any Order in Council made under this section on or after the appointed day shall not extend to Kenya, or any part of Kenya, as part of the law thereof.

## **7 Divorce jurisdiction**

- (1) On and after the appointed day no court having jurisdiction under the law of Kenya or any part thereof shall, by virtue of the Colonial and Other Territories (Divorce Jurisdiction) Acts 1926 to 1950, have jurisdiction to make a decree for the dissolution of a marriage, or as incidental thereto to make an order as to any matter, unless proceedings for the decree were instituted before the appointed day.

- (2) Except as provided by the foregoing subsection, and subject to any provision to the contrary which may be made on or after the appointed day by or under any law made by any legislature established for Kenya or any part thereof, all courts having jurisdiction under the law of Kenya or any part thereof shall on and after that day have the same jurisdiction under the said Acts as they would have had if this Act had not been passed.
- (3) Any rules made on or after the appointed day under section 1(4) of the Indian and Colonial Divorce Jurisdiction Act 1926 for a court having jurisdiction under the law of Kenya or any part thereof shall, instead of being made by the Secretary of State with the concurrence of the Lord Chancellor, be made by such authority as may be determined by the law of Kenya, and so much of the said section 1(4) and of any rules in force thereunder as requires the approval of the Lord Chancellor to the nomination for any purpose of any judges of any such court shall cease to have effect.
- (4) The references in subsection (1) of this section to proceedings for the dissolution of a marriage include references to proceedings for such a decree of presumption of death and dissolution of marriage as is authorised by section 16 of the Matrimonial Causes Act 1950.

## **8 Interpretation**

- (1) In this Act " the existing Constitution Order " means the Kenya Order in Council 1963 as amended by the Kenya (Amendment) Order in Council 1963 ; and references in this Act to Kenya shall be construed in accordance with section 1(3) of this Act.
- (2) References in this Act to any enactment are references to that enactment as amended or extended by or under any other enactment.

## **9 Short title**

This Act may be cited as the Kenya Independence Act 1963.

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### LEGISLATIVE POWERS IN KENYA

- 1 The Colonial Laws Validity Act 1865 shall not apply to any law made on or after the appointed day by any legislature established for Kenya or any part thereof.
- 2 No law and no provision of any law made on or after the appointed day by any such legislature shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any Act of the Parliament of the United Kingdom, including this Act, or to any order, rule or regulation made under any such Act, and, subject to paragraph 6 of this Schedule, the powers of any such legislature shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of Kenya or any part thereof and in so far as it relates to matters within the legislative powers of that legislature.
- 3 Any legislature established for Kenya or any part thereof shall have full power to make laws having extra-territorial operation, so far as those laws relate to matters within the legislative powers of that legislature.
- 4 Without prejudice to the generality of the foregoing provisions of this Schedule, sections 735 and 736 of the Merchant Shipping Act 1894 shall be construed as if references therein to the legislature of a British possession did not include references to any legislature established for Kenya or any part thereof.
- 5 Without prejudice to the generality of the foregoing provisions of this Schedule, section 4 of the Colonial Courts of Admiralty Act 1890 (which requires certain laws to be reserved for the signification of Her Majesty's pleasure or to contain a suspending clause), and so much of section 7 of that Act as requires the approval of Her Majesty in Council to any rules of court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in Kenya.
- 6 (1) Nothing in this Act shall confer on any legislature established for Kenya or any part thereof any power to repeal, amend or modify the constitutional provisions otherwise than in such manner as may be provided for in those provisions.
  - (2) In this paragraph " the constitutional provisions " means the following, that is to say—
    - (a) this Act;
    - (b) any Order in Council revoking the existing Constitution Order and providing for a new constitution for Kenya to come into effect on the appointed day ;
    - (c) any law, or instrument made under a law, of any legislature established for Kenya or any part thereof which, being a law or instrument made on or after the appointed day, amends, modifies, re-enacts with or without amendment or modification, or makes different provision in lieu of, any provisions of this Act, of the Order in Council first mentioned in this sub-paragraph, or of any such law or instrument previously made.

SCHEDULE 2

Section 4.

AMENDMENTS NOT AFFECTING THE LAW OF KENYA

*Diplomatic immunities*

- 1 In section 461 of the Income Tax Act 1952 (which relates to exemption from income tax in the case of certain Commonwealth representatives and their staffs)—
- (a) in subsection (2), before the words " for any state" there shall be inserted the words " or Kenya ";
  - (b) in subsection (3), before the words " and ' Agent-General' " there shall be inserted the words " or Kenya "
- 2 In section 1(6) of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952, before the words " and the Republic of Ireland" there shall be inserted the word " Kenya ".
- 3 In section 1(5) of the Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961, before the words " and the Republic of Ireland" there shall be inserted the word " Kenya ".

*Financial*

- 4 In section 2(4) of the Import Duties Act 1958, before the words " together with " there shall be inserted the word " Kenya ".

*Visiting forces*

- 5 In the Visiting Forces (British Commonwealth) Act 1933, section 4 (which deals with attachment and mutual powers of command) shall apply in relation to forces raised in Kenya as it applies in relation to forces raised in Dominions within the meaning of the Statute of Westminster 1931.
- 6 In the Visiting Forces Act 1952—
- (a) in section 1(1)(a) (which specifies the countries to which that Act applies) at the end there shall be added the words " Kenya, or ";
  - (b) in section 10(1)(a) the expression " colony " shall not include Kenya or any part thereof;
- and, until express provision with respect to Kenya is made by Order in Council under section 8 of that Act (which relates to the application to visiting forces of law relating to home forces), any such Order for the time being in force shall be deemed to apply to visiting forces of Kenya.

*Ships and aircraft*

- 7 In section 427(2) of the Merchant Shipping Act 1894, as substituted by section 2 of the Merchant Shipping (Safety Convention) Act 1949, before the words " or in any " there shall be inserted the words " or Kenya ".
- 8 In the proviso to section 6(2) of the Merchant Shipping Act 1948, at the end there shall be added the words " or Kenya ".

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- 9 In the definition of " excepted ship or aircraft" in paragraph 3 of Schedule 3 to the Emergency Laws (Repeal) Act 1959, before the words " or in any" there shall be inserted the words " or Kenya ".
- 10 The Ships and Aircraft (Transfer Restriction) Act 1939 shall not apply to any ship by reason only of its being registered in, or licensed under the law of, Kenya or any part thereof; and the penal provisions of that Act shall not apply to persons in Kenya (but without prejudice to the operation with respect to any ship to which that Act does apply of the provisions thereof relating to the forfeiture of ships).
- 11 In the Whaling Industry (Regulation) Act 1934, the expression " British ship to which this Act applies " shall not include a British ship registered in Kenya.
- 12 In section 2(7)(b) of the Civil Aviation (Licensing) Act 1960, the expression " colony " shall not include Kenya or any part thereof.

*Commonwealth Institute*

- 13 In section 8(2) of the Imperial Institute Act 1925, as amended by the Commonwealth Institute Act 1958 (which relates to the power to vary the provisions of the said Act of 1925 if an agreement for the purpose is made with the governments of certain territories which for the time being are contributing towards the expenses of the Commonwealth Institute) at the end there shall be added the words " and Kenya ".

TABLE OF STATUTES REFERRED TO IN THIS ACT

Short Title	Session and Chapter
Judicial Committee Act 1833	3 & 4 Will. 4. c. 41.
Colonial Laws Validity Act 1865	28 & 29 Vict. c. 63.
Interpretation Act 1889	52 & 53 Vict. c. 63.
Colonial Courts of Admiralty Act 1890	53 & 54 Vict. c. 27.
Merchant Shipping Act 1894	57 & 58 Vict. c. 60.
Imperial Institute Act 1925	15 & 16 Geo. 5. c. xvii.
Indian and Colonial Divorce Jurisdiction Act 1926	16 & 17 Geo. 5. c. 40.
Statute of Westminster 1931	22 & 23 Geo. 5. c. 4.
Visiting Forces (British Commonwealth) Act 1933	23 & 24 Geo. 5. c. 6.
Whaling Industry (Regulation) Act 1934	24 & 25 Geo. 5. c. 49.
Ships and Aircraft (Transfer Restriction) Act 1939	2 & 3 Geo. 6. c. 70.
Merchant Shipping Act 1948	11 & 12 Geo. 6. c. 44.
British Nationality Act 1948	11 & 12 Geo. 6. c. 56.
Merchant Shipping (Safety Convention) Act 1949	12, 13 & 14 Geo. 6. c. 43.

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Short Title	Session and Chapter
Matrimonial Causes Act 1950	14 Geo. 6. c. 25.
Income Tax Act 1952	15 & 16 Geo. 6. and 1 Eliz. 2. c. 10.
Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952.	15 & 16 Geo. 6. and 1 Eliz. 2. c. 18.
Visiting Forces Act 1952	15 & 16 Geo. 6. and 1 Eliz. 2. c. 67.
Army Act 1955	3 & 4 Eliz. 2. c. 18.
Air Force Act 1955	3 & 4 Eliz. 2. c. 19.
Naval Discipline Act 1957	5 & 6 Eliz. 2. c. 53.
Import Duties Act 1958	6 & 7 Eliz. 2. c. 6.
British Nationality Act 1958	6 & 7 Eliz. 2. c. 10.
Commonwealth Institute Act 1958	6 & 7 Eliz. 2. c. 16.
Emergency Laws (Repeal) Act 1959	7 & 8 Eliz. 2. c. 19.
Colonial Development and Welfare Act 1959	7 & 8 Eliz. 2. c. 71.
Civil Aviation (Licensing) Act 1960	8 & 9 Eliz. 2. c. 38.
Army and Air Force Act 1961	9 & 10 Eliz. 2. c. 52.
Tanganyika Independence Act 1961	10 & 11 Eliz. 2. c. 1.
Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961.	9 & 10 Eliz. 2. c. 11.
Uganda Independence Act 1962	10 & 11 Eliz. 2. c. 57.