
STATUTORY INSTRUMENTS

1966 No. 1172

AFRICA

The Lesotho Independence Order 1966

Made - - - - 20th September 1966
Coming into Operation Immediately before
4th October 1966

At the Court at Balmoral, the 20th day of September 1966

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 5 of the Lesotho Independence Act 1966(a) and of all other powers enabling Her in that behalf, 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 Lesotho Independence Order 1966. Citation, commencement and construction.

(2) This Order shall come into operation immediately before 4th October 1966 (in this Order referred to as "the appointed day").

(3) Save where the context otherwise requires, expressions used in sections 1 to 20 (inclusive) of this Order have the same meaning as in the Constitution set out in the Schedule to this Order and the provisions of section 139 of that Constitution shall apply for the purpose of interpreting those sections as they apply for the purpose of interpreting that Constitution.

(4) References in Chapter X of the said Constitution to any question as to the interpretation of that Constitution shall be construed as including references to any question as to the interpretation of any provision of this Order.

2.—(1) The Basutoland Order 1965(b) (hereinafter referred to as "the Revocations existing Order") is revoked.

(2) The Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal Order in Council 1954 and the Orders in Council amending that Order(c) (hereinafter referred to as "the existing Court of Appeal Orders") are revoked in so far as they have effect as part of the law of Basutoland.

3. Subject to the provisions of this Order, the Constitution set out in the Schedule to this Order shall come into effect at the commencement of this Order. Establishment of Constitution.

(a) 1966 c. 24. (b) 1965 I, p. 2571. (c) S.I. 1954/1369, 1964/1187, 1965/133, 1965/978 (1954 I, p. 167; 1964 II p. 2759; 1965 I, pp. 274, 2414).

Existing laws.

4.—(1) The existing laws shall, as from the appointed day, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Lesotho Independence Act 1966 and this Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the appointed day by or under the existing Order or the existing Court of Appeal Orders, that prescription or provision shall, as from the appointed day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Lesotho Independence Act 1966 and this Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The King may by regulations made at any time before 4th October 1967 make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Lesotho Independence Act 1966 and this Order or otherwise for giving effect or enabling effect to be given to those provisions.

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

(5) For the purposes of this section, the expression "existing law" means any proclamation, law, rule, regulation, order or other instrument made or having effect as if it had been made in pursuance of (or continuing in operation under) the existing Order or the existing Court of Appeal Orders and having effect as part of the law of Basutoland immediately before the appointed day or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council so having effect and includes the customary law of Basutoland and any other unwritten rule of law so having effect.

(6) For the avoidance of doubt it is hereby declared that nothing in this section is to be construed as continuing in force the Concessions Veto Proclamation(a).

Ministers and Assistant Ministers.

5.—(1) The persons who immediately before the appointed day hold office as Prime Minister or other Minister or Assistant Minister shall, as from the appointed day, hold the like offices as if they had been appointed thereto in accordance with the provisions of the Constitution and shall be deemed to have taken and subscribed any necessary oath under the Constitution.

(2) Any person holding the office of Prime Minister or other Minister by virtue of the provisions of subsection (1) of this section who, immediately before the appointed day, was charged with responsibility for any matter or department of Government under the existing Order shall, as from the appointed day, be deemed to have been assigned responsibility for that matter or department under section 74 of the Constitution.

(a) Proclamation No. 65 of 1922; Revised Laws of Basutoland 1960, p. 432.

6.—(1) The persons who immediately before the appointed day are members of the Senate constituted by the existing Order (in this section referred to as "the existing Senate") shall, as from the appointed day, be deemed to be members of the Senate in pursuance of the provisions of section 41 of the Constitution, and shall hold their seats in the Senate in accordance with the provisions of the Constitution. Parliament.

(2) The persons who immediately before the appointed day are members of the National Assembly constituted by the existing Order (in this section referred to as "the existing National Assembly") shall, as from the appointed day, be deemed to have been elected as members of the National Assembly in pursuance of the provisions of sections 42 and 43(1) of the Constitution, and shall hold their seats in the National Assembly in accordance with the provisions of the Constitution.

(3) The persons who immediately before the appointed day hold office as President or Vice-President of the existing Senate or Speaker or Deputy Speaker of the existing National Assembly shall, as from the appointed day, hold the like offices as if they had been elected thereto in accordance with the provisions of the Constitution.

(4) Any person who, by virtue of this section, is deemed as from the appointed day to be a member of the Senate or to have been elected as President or Vice-President thereof or to have been elected as a member of the National Assembly or as Speaker or Deputy Speaker thereof shall be deemed to have taken and subscribed any necessary oath under the Constitution.

(5) The Standing Orders of the existing Senate and the Standing Orders of the existing National Assembly in force immediately before the appointed day shall, until it is otherwise provided by the Senate or, as the case may be, the National Assembly under section 66(1) of the Constitution, be respectively the rules of procedure of the Senate and of the National Assembly, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(6) Notwithstanding anything contained in section 68(2) of the Constitution (but subject to subsection (3) of that section) Parliament shall, unless sooner dissolved, stand dissolved on 30th April 1970.

7.—(1) The High Court of Basutoland in existence immediately before the appointed day shall, as from that day, be the High Court for the purposes of the Constitution, and any proceedings pending before the High Court of Basutoland immediately before the appointed day may be continued before the High Court of Lesotho and any judgment of the High Court of Basutoland given, but not satisfied, before that day may be enforced accordingly. High Court.

(2) The provisions of section 10 of this Order shall apply in relation to the offices of Chief Justice and puisne judge as if those offices were public offices, and any person who, by virtue of the provisions of this subsection, holds or acts in any such office as from the appointed day shall be deemed to have taken and subscribed any necessary oath under the Constitution.

8.—(1) Any person who immediately before the appointed day holds the office of President or other judge of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal by virtue of having been appointed thereto in accordance with the provisions of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal Order 1954, shall be deemed to have taken and subscribed any necessary oath under the Constitution. Existing appointments of judges of Court of Appeal.

as amended from time to time, shall as from that day be deemed, subject to subsection (2) of this section, to have been appointed to hold office in the Court of Appeal established by the Constitution as if they had been appointed thereto in accordance with the provisions of proviso (a) to section 117(8) of the Constitution, in the case of the person holding the office of President, to the office of President of the Court, and, in the case of a person holding the office of such other judge, to the office of Justice of Appeal of the Court.

(2) A person deemed to have been appointed under subsection (1) of this section to the office of President or to the office of Justice of Appeal of the Court shall vacate his office at the expiration of two years from the commencement of this Order.

Transitional provisions respecting appeals.

9.—(1) Any proceedings pending immediately before the appointed day on appeal from the High Court of Basutoland to the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal may be continued and concluded after that day in the Court of Appeal established by the Constitution.

(2) Any judgment of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal in an appeal from the High Court of Basutoland given, but not satisfied, before the appointed day may be enforced after that day as if it were a judgment of the Court of Appeal established by the Constitution.

(3) Any Order made before the appointed day by Her Majesty in Council in an appeal from a decision of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal from a court of Basutoland shall be enforced in accordance with the law regulating the enforcement of such Orders that was in force in Basutoland immediately before that day.

Existing public officers.

10.—(1) Every person who immediately before the appointed day holds or is acting in a public office shall, as from the appointed day, hold or act in that office or the corresponding office established by the Constitution as if he had been appointed to do so in accordance with the provisions of the Constitution:

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

(2) In this section "existing law" has the same meaning as in section 4 of this Order.

(3) Without prejudice to the generality of subsection (1) of this section, the persons who, immediately before the appointed day, hold the following offices established by or under the existing Order, that is to say, the office of appointed member of the Judicial Service Commission and the office of Chairman or other member of the Public Service Commission shall be deemed as from that day to have been appointed to the corresponding office established by the Constitution.

11.—(1) The Public Service Commission, by notice which shall be published in the Gazette, may, in respect of appointments to hold or act in the office of Principal Legal Adviser to the Government of Lesotho or the office of Director of Public Prosecutions during the period of two years beginning with the appointed day, substitute for the period of five years that is mentioned in sections 130(2)(a) and 131(1)(a) of the Constitution such shorter period as may be specified in such notice.

Temporary provisions relating to Principal Legal Adviser and Director of Public Prosecutions.

(2) Any person who is appointed to hold or act in the office of Principal Legal Adviser or the office of Director of Public Prosecutions by virtue of subsection (1) of this section may continue to hold or act in that office after the expiration of the period of two years aforesaid notwithstanding that he still has not held for a total period of not less than five years one or other of the specified qualifications (which expression shall have the meaning attributed to it in sections 130(2)(b) and 131(1)(b) of the Constitution).

12.—(1) Any power that immediately before the appointed day is vested in an existing Service Commission (that is to say, the Judicial Service Commission or the Public Service Commission established by the existing Order) and that, under the existing Order, is then delegated to some other person or authority shall, as from the appointed day and so far as is consistent with the provisions of the Constitution, be deemed to have been delegated to such person or authority in accordance with those provisions.

Transitional provisions relating to existing Service Commissions.

(2) Any matter that immediately before the appointed day is pending before an existing Service Commission or before a person or authority to whom power to deal with that matter has been delegated by an existing Service Commission shall, so far as is consistent with the provisions of the Constitution, be continued before the corresponding Service Commission or, as the case may be, before the person or authority to whom that power was delegated :

Provided that, where the hearing of a disciplinary proceeding has begun but has not been completed immediately before the appointed day, the continued hearing shall not be held before any person unless the hearing that has already taken place was also held before him ; and where, by virtue of this proviso, the hearing cannot be continued it shall be re-commenced.

13.—(1) The following provisions of this section shall have effect for the purpose of enabling any officer to whom this section applies or his personal representatives to appeal against any of the following decisions—

Appeals in respect of certain decisions affecting pensions and like benefits.

- (a) a decision of the Public Service Commission to give such concurrence as is required by section 136(1) or section 136(2) of the Constitution in relation to the refusal, withholding, reduction in amount or suspending of any pensions benefits in respect of such an officer's service as a public officer ;
- (b) a decision, whether of a Commission established by the Constitution or some other person or authority, to remove such an officer from office if the consequence of the removal is that any pensions benefits cannot be granted in respect of the officer's service as a public officer ;

(c) a decision, whether of a Commission established by the Constitution or some other person or authority, to take some other disciplinary action in relation to such an officer if the consequence of the action is, or in the opinion of the Commission or other person or authority taking the decision might be, to reduce the amount of any pensions benefits that may be granted in respect of the officer's service as a public officer.

(2) In the following provisions of this section references to a Commission shall be construed—

(a) in relation to such a decision as is referred to in paragraph (a) of subsection (1) of this section, as references to the Public Service Commission ;

(b) in relation to such a decision as is referred to in paragraph (b) or paragraph (c) of subsection (1) of this section, being a decision taken by a Commission established by the Constitution, as references to that Commission ; and

(c) in relation to such a decision as is referred to in paragraph (b) or paragraph (c) of subsection (1) of this section, being a decision taken by some other person or authority, as references to that person or authority.

(3) The Commission shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of any decision such as is referred to in subsection (1) of this section stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the Commission for the case to be referred to an Appeals Board.

(4) If application is duly made within the time stated in the notice, the Commission shall notify the Prime Minister in writing of that application and the Prime Minister shall appoint an Appeals Board consisting of—

(a) one member, who shall not be a member of the Commission, selected by the Prime Minister ;

(b) one member selected by an association representative of public officers or by a professional body, nominated in either case by the applicant ; and

(c) one member selected by the two other members jointly (or, in default of agreement between those members, by the Judicial Service Commission) who shall be the Chairman of the Board.

(5) The Appeals Board shall enquire into the facts of the case, and for that purpose the Board—

(a) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing ;

(b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case ; and

(c) shall have access to, and shall consider, all documents that were available to the Commission and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the Commission.

(6) When the Appeals Board has completed its consideration of the case, then—

(a) if the decision that is the subject of the reference to the Board is such a decision as is referred to in paragraph (a) of subsection (1) of this section, the Board shall advise the Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice ; and

(b) if the decision that is the subject of the reference to the Board is such a decision as is referred to in paragraph (b) or paragraph (c) of subsection (1) of this section, the Board shall not have power to advise the Commission to affirm, reverse or modify the decision but—

(i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the pensions benefits that, under any law, might have been granted in respect of his service as a public officer if he had retired voluntarily at the date of his removal and that any law with respect to pensions benefits shall in any other respect have effect as if he had so retired ; and

(ii) where some other disciplinary action has been taken in relation to the officer the Board may direct that there shall be adopted with respect to the calculation of any pensions benefits that, under any law, may be granted in respect of his service as a public officer such measures as the Board may specify in order to offset all or any part of the reduction in the amount of such benefits that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary action,

and any direction given by the Board under this paragraph shall be complied with notwithstanding the provisions of any other law.

(7) In this section the expression “pensions benefits” has the meaning assigned to it in section 135(6) of the Constitution.

(8) This section applies to any officer who is the holder of a pensionable public office and—

(i) is designated under the Overseas Service Aid Scheme ; or

(ii) is, immediately before the commencement of this Order, a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary ; or

(iii) is not a citizen of Lesotho.

14.—(1) If the Prime Minister is satisfied that there are more local candidates qualified for appointment to, or promotion in, any branch of the public service mentioned in sections 129 and 133 of the Constitution than there are vacancies in that branch which could appropriately be filled by such local candidates, he may select officers in that branch to whom this subsection applies and whose retirement would cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and, by notice in writing, call upon officers so selected to retire from the public service ; and any officer who is so required to retire shall retire accordingly.

Compulsory retirement to facilitate appointment of local candidates.

(2) If the Prime Minister so requests, the Judicial Service Commission or Public Service Commission shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in, any branch of the service for which the Commission is responsible than there are vacancies in that branch that could appropriately be filled by such local candidates; and the Commission, if satisfied that such is the case, shall, if so requested by the Prime Minister, select officers in that branch to whom this subsection applies and whose retirement would in the opinion of the Commission cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the Prime Minister of the number of officers so selected; and if the Prime Minister specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), the Commission shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(3) Any notice given under subsection (1) or (2) of this section requiring any officer to retire from the public service shall—

(a) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify the date upon which he shall so retire which shall not be earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, when it would otherwise expire; and

(b) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives the notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that, with the consent of the officer, the notice may specify an earlier date or, as the case may be, a shorter period.

(4) An officer to whom this section applies shall not be compulsorily retired from the public service for the purpose of facilitating the appointment of local candidates except in accordance with the provisions of this section.

(5) This section applies to any officer who holds a pensionable public office and—

(a) is designated under the Overseas Service Aid Scheme; or

(b) is not a citizen of Lesotho.

College of
Chiefs,
Standing
Committee
of College
of Chiefs
and pending
proceedings.

15.—(1) Notwithstanding the provisions of section 89 of the Constitution, any person who, immediately before the appointed day, is an additional member of the College of Chiefs established by the existing Order, having been elected as such under section 73(2)(b) of the Basutoland (Constitution) Order in Council 1959(a), shall continue in office as from the appointed day as an additional member of the College of Chiefs established by the Constitution until—

(a) any circumstances arise which, under the law in force in that behalf immediately before the appointed day, would have caused him to vacate his office; or

(b) the proceedings referred to in subsection (3) of this section have been finally disposed of,

whichever is the earlier ; but a person continuing in office under this subsection may, subject to the provisions of paragraph (a) of the proviso to subsection (2) of this section, take part in the business of the College or of any of its committees only so far as may be necessary for the disposal of the said proceedings.

(2) The persons who, immediately before the appointed day, constitute the Standing Committee of the College of Chiefs established by the existing Order shall be deemed as from the appointed day to have been constituted under section 89(6) of the Constitution as a Standing Committee of the College of Chiefs established by the Constitution and that Committee shall thereafter, subject to the provisions of this section, perform such functions on behalf of the College of Chiefs as the College may confer upon it until such time as it is dissolved or reconstituted by the College :

Provided that—

(a) if the Chairman of the Standing Committee immediately before the appointed day is a person who was appointed as such from among persons who were not members of the College or from among the additional members of the College, he may continue to act as Chairman for the purpose of all the functions of the Committee but only until the proceedings referred to in subsection (3) of this section have been finally disposed of ;

(b) the College of Chiefs may, by its rules of procedure, provide for the election or appointment of a person (whether from among persons who are members of the College or from among other persons) to be Chairman of the Standing Committee when the office of Chairman becomes vacant or in the absence of the Chairman and for the tenure of office of any person so elected or appointed and any person elected or appointed in pursuance of this paragraph may act as Chairman for the purpose of all the functions of the Committee but only until the proceedings referred to in subsection (3) of this section have been finally disposed of ; and

(c) the College of Chiefs shall not dissolve or reconstitute the Standing Committee until the said proceedings have been finally disposed of.

(3) All proceedings that, in pursuance of the provisions of section 11(3) of the existing Order and in accordance with those provisions, are pending immediately before the appointed day before the College of Chiefs established by the existing Order or before its Standing Committee or before Motlotlehi or before the High Court of Basutoland may be continued and concluded on and after that day before the corresponding authorities or bodies under this Order and for that purpose the provisions of section 11(3) of the existing Order shall be construed with any necessary modifications, adaptations, qualifications and exceptions.

(4) References in the Constitution to a public officer shall not be construed as including references to the office of a person who is or who acts as Chairman of the Standing Committee of the College of

Chiefs under this section notwithstanding that he is not otherwise a member of the College.

Property
and assets.

16.—(1) Any property or assets which immediately before the commencement of this Order are vested in Her Majesty or, by or under the Basutoland Order 1965, in Motlotlehi or in the British Government Representative for the purposes of the Government of Basutoland, shall, from the commencement of this Order, vest in the Government of Lesotho.

(2) Any property which, immediately before the commencement of this Order, is liable to escheat or to be forfeited to Her Majesty for the purposes of the Government of Basutoland, shall, from the commencement of this Order, be liable to escheat or to be forfeited to the Government of Lesotho.

(3) Where, immediately before the commencement of this Order, any person holds any property or assets in trust for Her Majesty or for Motlotlehi or for the British Government Representative for the purposes of the Government of Basutoland, that person shall, from the commencement of this Order, hold such property or assets on the like trust for the Government of Lesotho.

Rights,
liabilities
and
obligations.

17.—(1) All rights, liabilities and obligations of—

(a) Her Majesty in respect of the Government of Basutoland; and

(b) Motlotlehi or the British Government Representative or the holder of any other office under the Crown in respect of the Government of Basutoland on behalf of that Government

shall, from the commencement of this Order be rights, liabilities and obligations of the Government of Lesotho and, subject to the provisions of any law, shall be enforceable by or against that Government accordingly.

(2) In this section, rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise (other than any rights referred to in subsections (1), (2) and (3) of section 16 of this Order and any rights, liabilities or obligations of Her Majesty in respect of the Government of Basutoland arising under any treaty, convention or agreement with another country or with any international organisation).

Remunera-
tion of
certain
officers.

18. Until other provision is made by Parliament in pursuance of section 107 of the Constitution and subject to the other provisions of that section, there shall be paid to the holders of the offices to which that section applies the salaries payable to the holders of the corresponding offices immediately before the commencement of this Order.

Emergency
Powers
Order in
Council
1939.

19. The Emergency Powers Order in Council 1939(a) and any Order in Council amending that Order shall cease to have effect as part of the law of Lesotho.

(a) See S.I. 1952 I, at p. 621.

20.—(1) Parliament may alter any of the provisions of this Order (in so far as those provisions form part of the law of Lesotho) in the same manner as it may alter any of the provisions of the Constitution: (in Alteration of this Order.)

Provided that—

- (a) sections 3, 7, 8, 9(1) and (2), 15 and this section may be altered by Parliament only in the same manner as the provisions specified in paragraph (a) of section 70(3) of the Constitution; and
- (b) sections 6(6), 10, 11, 12, 13 and 14 may be altered by Parliament only in the same manner as the provisions specified in paragraph (b) of the said section 70(3).

(2) Section 70(4) of the Constitution shall apply for the purpose of construing references in this section to any provision of this Order and to the alteration of any such provision as it applies for the purpose of construing references in the said section 70 to any provision of the Constitution and to the alteration of any such provision.

W. G. Agnew.

SCHEDULE TO THE ORDER Section 3.
CONSTITUTION OF LESOTHO
ARRANGEMENT OF SECTIONS

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SCHEDULE 1 TO THE CONSTITUTION—Oaths.**SCHEDULE 2 TO THE CONSTITUTION—Principal and Ward Chiefs.****CONSTITUTION OF LESOTHO****CHAPTER I****THE KINGDOM AND ITS CONSTITUTION**

1.—(1) Lesotho shall be a sovereign democratic kingdom.

(2) The territory of Lesotho shall comprise all the areas that immediately before 4th October 1966 were comprised in the former Colony of Basutoland together with such other areas as may from time to time be declared by Act of Parliament to form part of Lesotho.

The kingdom and its territory.

2. This Constitution is the supreme law of Lesotho and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

The Constitution.

Official
languages,
National
Seal, etc.

3.—(1) The official languages of Lesotho shall be such as may be prescribed by or under an Act of Parliament and, accordingly, no instrument or transaction shall be invalid by reason only that it is expressed or conducted in one of those languages.

(2) The National Seal of Lesotho shall be such device, and the national anthem and national flag shall be such anthem and flag, as the case may be, as may be prescribed by or under an Act of Parliament.

CHAPTER II

PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Funda-
mental
human
rights and
freedoms.

4.—(1) Whereas every person in Lesotho is entitled, whatever his race, tribe, place of origin or residence, political opinions, colour, creed or sex, to fundamental human rights and freedoms, that is to say, to each and all of the following—

- (a) the right to life ;
- (b) the right to personal liberty ;
- (c) freedom of movement and residence ;
- (d) freedom from inhuman treatment ;
- (e) freedom from slavery and forced labour ;
- (f) freedom from arbitrary search or entry ;
- (g) the right to respect for private and family life ;
- (h) the right to a fair trial of criminal charges against him and to a fair determination of his civil rights and obligations ;
- (i) freedom of conscience ;
- (j) freedom of expression ;
- (k) freedom of assembly and association ;
- (l) freedom from arbitrary seizure of property ;
- (m) freedom from discrimination ; and
- (n) the right to equality before the law and the equal protection of the law,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

(2) For the avoidance of doubt and without prejudice to any other provision of this Constitution it is hereby declared that the provisions of this Chapter shall, except where the context otherwise requires, apply as well in relation to things done or omitted to be done by persons acting in a private capacity (whether by virtue of any written law or otherwise) as in relation to things done or omitted to be done by or on behalf of the Government of Lesotho or by any person acting in the performance of the functions of any public office or any public authority.

Right to life.

5.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Lesotho of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are herein-after mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is necessary in the circumstances of the case—

- (a) for the defence of any person from violence or for the defence of property ;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained ;
- (c) for the purpose of suppressing a riot, insurrection or mutiny ; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

6.—(1) Every person shall be entitled to personal liberty, that is to say, he shall not be arrested or detained save as may be authorised by law in any of the following cases, that is to say— Right to personal liberty.

- (a) in execution of the sentence or order of a court, whether established for Lesotho or for some other country, in respect of a criminal offence of which he has been convicted ;
- (b) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal ;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law ;
- (d) for the purpose of bringing him before a court in execution of the order of a court ;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Lesotho ;
- (f) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare ;
- (g) for the purpose of preventing the spread of an infectious or contagious disease ;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care and treatment or the protection of the community ;
- (i) for the purpose of preventing the unlawful entry of that person into Lesotho, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Lesotho or for the purpose of restricting that person while he is being conveyed through Lesotho in the course of his extradition or removal as a convicted prisoner from one country to another ; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Lesotho or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restrain-

ing that person during any visit that he is permitted to make to any part of Lesotho in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(a) for the purpose of bringing him before a court in execution of the order of a court ; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, the burden of proving that he has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained upon suspicion of his having committed, or being about to commit, a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Without prejudice to the generality of any other provision of this Constitution or any other law by virtue of which a person is entitled to redress for a contravention of this section, any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

Freedom of movement.

7.—(1) Every person shall be entitled to freedom of movement, that is to say, the right to move freely throughout Lesotho, the right to reside in any part of Lesotho, the right to enter Lesotho, the right to leave Lesotho and immunity from expulsion from Lesotho.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) for the imposition of restrictions in the interests of defence, public safety, public order, public morality or public health on the movement or residence within Lesotho of any person or any person's right to leave Lesotho:

Provided that a person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in this paragraph except to the extent to which he satisfies the

court that the provision or, as the case may be, the thing done under the authority thereof does not restrict the movement or residence within Lesotho or the right to leave Lesotho of the person concerned to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in this paragraph ; or

- (b) for the imposition of restrictions, by order of a court, on the movement or residence within Lesotho of any person or on any person's right to leave Lesotho either in consequence of his having been convicted of a criminal offence under the law of Lesotho or for the purpose of ensuring that he appears before a court at a later date for trial in respect of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Lesotho ;
- (c) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Lesotho ;
- (d) for the imposition of restrictions on the acquisition or use by any person of land or other property in Lesotho ;
- (e) for the imposition of restrictions upon the movement or residence within Lesotho or on the right to leave Lesotho of any public officer ;
- (f) for the removal of a person from Lesotho to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he has been convicted under the law of Lesotho ; or
- (g) for the imposition of restrictions on the right of any person to leave Lesotho that are necessary in a practical sense in a democratic society in order to secure the fulfilment of any obligations imposed on that person by law.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(a) of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such a request, as the case may be, his case shall be investigated by an independent and impartial tribunal presided over by a person appointed by the Chief Justice :

Provided that a person whose freedom of movement has been restricted by virtue of a restriction that is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any investigation by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

(6) Nothing contained in or done under the authority of any provision of the customary law of Lesotho shall be held to be inconsistent with or in contravention of this section to the extent that that provision authorises the imposition of restrictions upon any person's freedom to reside in any part of Lesotho.

Freedom from inhuman treatment.

8.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution.

Freedom from slavery and forced labour.

9.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(a) any labour required in consequence of the sentence or order of a court ;

(b) any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably required in the interests of hygiene or for the maintenance of the place at which he is detained ;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service ;

(d) any labour required during any period when Lesotho is at war or a declaration of emergency under section 21 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation ; or

(e) any labour reasonably required by law as part of reasonable and normal communal or other civic obligations.

Freedom from arbitrary search or entry.

10.—(1) Every person shall be entitled to freedom from arbitrary search or entry, that is to say, he shall not (except with his own consent) be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of mineral resources or the development or utilisation of any other property in such a manner as to promote the public benefit ;

(b) for the purpose of protecting the rights or freedoms of other persons ;

(c) that authorises an officer or agent of the Government of Lesotho or of a local government authority or of a body corporate established by law for public purposes to enter on the premises of any person for the purpose of inspecting those premises or anything thereon in connection with any tax, rate or due or for

the purpose of carrying out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be ; or

(d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the entry upon any premises by order of a court.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the freedom guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (2) of this section or for any of the purposes specified in paragraph (b), paragraph (c) or paragraph (d) of that subsection.

11.—(1) Every person shall be entitled to respect for his private and family life and his home. Right to respect for private and family life.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health ;

(b) for the purpose of protecting the rights and freedoms of other persons.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the right guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (2) of this section or for the purpose specified in paragraph (b) of that subsection.

12.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. Right to fair trial, etc.

(2) Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he is proved or has pleaded guilty ;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in adequate detail, of the nature of the offence charged ;

(c) shall be given adequate time and facilities for the preparation of his defence ;

(d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice ;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examina-

tion of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution ; and

- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial ; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within reasonable time.

(9) Except with the agreement of all parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the

age of eighteen years or the protection of the private lives of persons concerned in the proceedings ; or

(b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts ;

(b) subsection (2)(e) of this section to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of accused persons are to be paid their expenses out of public funds ; or

(c) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in subsection (2)(d) of this section shall be construed as entitling a person to legal representation at public expense.

(14) In this section “criminal offence” means a criminal offence under the law of Lesotho.

13.—(1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance. Freedom of conscience.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains ; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, public morality or public health ; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion.

(6) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (5) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the rights and freedoms guaranteed by this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (5) of this section or for the purpose specified in paragraph (b) of that subsection.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Freedom of expression.

14.—(1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, public morality or public health ; or
- (b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television ; or
- (c) for the purpose of imposing restrictions upon public officers.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the freedom guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (2) of this section or for any of the purposes specified in paragraph (b) or paragraph (c) of that subsection.

Freedom of assembly and association.

15.—(1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of assembly and association, that is to say, freedom to assemble and

associate with other persons and in particular to form or belong to trade unions and other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, public morality or public health ; or
- (b) for the purpose of protecting the rights and freedoms of other persons ; or
- (c) for the purpose of imposing restrictions upon public officers.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the rights and freedoms guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (2) of this section or for any of the purposes specified in paragraph (b) or paragraph (c) of that subsection.

16.—(1) No property, movable or immovable, shall be taken possession of compulsorily, and no interest in or right over any such property shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

Freedom from arbitrary seizure of property.

- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit ; and
- (b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property ; and
- (c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—

- (a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled ; and
- (b) the purpose of obtaining prompt payment of that compensation :

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section—

(a) to the extent that the law in question makes provision that is necessary in a practical sense in a democratic society for the taking of possession or acquisition of any property, interest or right—

- (i) in satisfaction of any tax, duty, rate, or other impost ;
- (ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Lesotho ;
- (iii) as an incident of a valid contract or of the terms and conditions of service of a public officer ;
- (iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations ;
- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants ;
- (vi) in consequence of any law with respect to prescription or limitation of actions ; or
- (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purpose of carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out) ; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of the following property (including an interest in or right over property), that is to say—

- (i) enemy property ;
- (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of 21 years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein ;
- (iii) property of a person adjudged insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property ; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

17.—(1) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision that is discriminatory either of itself or in its effect. Freedom
from
discrimination.

(2) Subject to the provisions of subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence, sex, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law to the extent that that law makes provision—

(a) with respect to persons who are not citizens of Lesotho ; or

(b) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description ; or

(c) for the application of the customary law of Lesotho with respect to any matter in the case of persons who, under that law, are subject to that law ; or

(d) for the appropriation of public revenues or other public funds ; or

(e) whereby persons of any such description as is mentioned in subsection (3) of this section may be made subject to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin or residence, sex, political opinions, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) No person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 10, 11, 13, 14 and 15 of this Constitution, being such a restriction as is authorised by paragraph (a) or paragraph (c) of section 7(3), section 10(2), section 11(2), section 13(5), section 14(2) or section 15(2), as the case may be.

(9) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(10) The provisions of this section shall be without prejudice to the generality of section 18 of this Constitution.

Right to equality before the law and the equal protection of the law.

18. Every person shall be entitled to equality before the law and to the equal protection of the law.

Derogation from fundamental human rights and freedoms.

19.—(1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 6, section 17 or section 18 of this Constitution to the extent that the Act authorises the taking during any period when Lesotho is at war or when a declaration of emergency under section 21 of this Constitution is in force of measures that are necessary in a practical sense in a democratic society for dealing with the situation that exists in Lesotho during that period.

(2) When a person is detained by virtue of any such law as is referred to in subsection (1) of this section the following provisions shall apply, that is to say—

- (a) he shall, as soon as reasonably practicable after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained ;
- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised ;
- (c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be investigated by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice ;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the investigation of the case of the detained person ; and

(e) at the hearing of his case by the tribunal appointed for the investigation of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On any investigation by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2)(d) or subsection (2)(e) of this section shall be construed as entitling a person to legal representation at public expense.

20.—(1) If any person alleges that any of the provisions of sections 4 to 19 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

Enforcement
of protective
provisions.

(2) The High Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section ; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section

and may make such orders, issue such process and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 4 to 19 (inclusive) of this Constitution :

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 4 to 19 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 121 of this Constitution to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee.

(5) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be

necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

Declaration
of
emergency.

21.—(1) The Prime Minister may, by proclamation which shall be published in the Gazette, declare that a state of emergency exists for the purposes of this Chapter.

(2) Every declaration of emergency shall lapse at the expiration of fourteen days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of each House of Parliament.

(3) A declaration of emergency may at any time be revoked by the Prime Minister by proclamation which shall be published in the Gazette.

(4) A declaration of emergency that has been approved by a resolution of each House of Parliament in pursuance of subsection (2) of this section shall, subject to the provisions of subsection (3) of this section, remain in force so long as those resolutions remain in force and no longer.

(5) A resolution of either House of Parliament passed for the purposes of this section shall remain in force for six months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, each extension not exceeding six months from the date of the resolution effecting the extension.

(6) Any provision of this section that a declaration of emergency shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.

(7) Before exercising his powers under this section, the Prime Minister shall whenever practicable consult with the King's Privy Council.

(8) The King may summon the two Houses of Parliament to meet for the purposes of this section notwithstanding that Parliament then stands dissolved, and the persons who were members of either House immediately before the dissolution shall be deemed, for those purposes, still to be members of that House, but, subject to the provisions of sections 47(4) and 49(4) of this Constitution, neither House shall, when summoned by virtue of this subsection, transact any business other than debating and voting upon resolutions for the purposes of this section.

Inter-
pretation
and savings.

22.—(1) In this Chapter, unless the context otherwise requires—

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means a court of law having jurisdiction in Lesotho other than a court established by a disciplinary law, and includes the Judicial Committee and, in sections 5 and 9 of this Constitution, a court established by a disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force ;

“disciplined force” means—

(a) a naval, military or air force ;

(b) the Police Force ; or

(c) a prison service ;

“legal representative” means a person entitled to practise as a legal practitioner in Lesotho ; and

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) Nothing contained in any of the provisions of section 7, section 16 or section 17 of this Constitution shall be construed as affecting any law for the time being in force relating to the allocation of land or the grant of any interest or right in or over land or as entitling any person to any greater such interest or right than he would otherwise have and, without prejudice to the generality of the foregoing, nothing done under the authority of Chapter VIII of this Constitution shall be held to be inconsistent with or in contravention of any of the provisions of any of those sections.

(3) In relation to any person who is a member of a disciplined force raised under a law made by any legislature in Lesotho, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 5, 8 and 9.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Lesotho, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER III

CITIZENSHIP

23.—(1) Every person who, having been born in Basutoland, is on 3rd October 1966 a citizen of the United Kingdom and Colonies shall become a citizen of Lesotho on 4th October 1966.

Persons who become citizens on 4th October 1966.

(2) Every person who, having been born outside Basutoland, is on 3rd October 1966 a citizen of the United Kingdom and Colonies shall, if his father becomes, or would but for his death have become, a citizen of Lesotho in accordance with the provisions of subsection (1) of this section, become a citizen of Lesotho on 4th October 1966.

(3) Every person who, on 3rd October 1966, is a citizen of the United Kingdom and Colonies—

(a) having become such a citizen under the British Nationality Act 1948(a) by virtue of his having been naturalised in Basutoland as a British subject before that Act came into force ; or

(b) having become such a citizen by virtue of his having been naturalised or registered in Basutoland under that Act, shall become a citizen of Lesotho on 4th October 1966.

Women entitled to be registered as citizens.

24. Any woman who, on 3rd October 1966, is or has been married to a person—

(a) who becomes a citizen of Lesotho by virtue of section 23 of this constitution ; or

(b) who, having died before 4th October 1966 would, but for his death, have become a citizen of Lesotho by virtue of that section, shall be entitled, upon making application and upon taking the oath of allegiance, to be registered as a citizen of Lesotho.

Persons born in Lesotho after 3rd October 1966.

25.—(1) Subject to the provisions of subsections (2) and (3) of this section, every person born in Lesotho after 3rd October 1966 shall become a citizen of Lesotho at the date of his birth.

(2) A person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth—

(a) neither of his parents is a citizen of Lesotho and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Lesotho ; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

(3) Unless he would thereby become stateless, a person born in Lesotho after 3rd October 1966 shall not become a citizen of Lesotho at the date of his birth by virtue of this section if his father is not on that date a Commonwealth citizen.

Persons born outside Lesotho after 3rd October 1966.

26. A person born outside Lesotho after 3rd October 1966 shall become a citizen of Lesotho at the date of his birth if at that date his father is a citizen of Lesotho otherwise than by virtue of this section or of section 23(2) of this Constitution.

Marriage to Lesotho citizen.

27. Any woman who, after 3rd October 1966, marries a citizen of Lesotho shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Lesotho.

Dual citizenship.

28.—(1) Any person who, upon the attainment of the age of twenty-one years, is a citizen of Lesotho and also a citizen of some country other than Lesotho shall cease to be a citizen of Lesotho upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Lesotho by virtue of section 23(2) or section 26 of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(2) Any person who—

(a) has attained the age of twenty-one years before 4th October 1966 ; and

(b) becomes a citizen of Lesotho on that day by virtue of section 23 of this Constitution ; and

(c) is immediately after that day also a citizen of some country other than Lesotho,

shall cease to be a citizen of Lesotho upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Lesotho by virtue of section 23(2) of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed.

(3) A citizen of Lesotho shall cease to be such a citizen if—

(a) having attained the age of twenty-one years, he acquires the citizenship of some country other than Lesotho by voluntary act (other than marriage); or

(b) having attained the age of twenty-one years, he otherwise acquires the citizenship of some country other than Lesotho and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intentions concerning residence as may be prescribed.

(4) A woman who—

(a) becomes a citizen of Lesotho by registration under the provisions of section 24 or section 27 of this Constitution; and

(b) is immediately after the day upon which she becomes a citizen of Lesotho also a citizen of some other country,

shall cease to be a citizen of Lesotho upon the specified date unless she has renounced the citizenship of that other country, taken the oath of allegiance, and made and registered such declaration of her intentions concerning residence as may be prescribed.

(5) For the purposes of this section, where, under the law of a country other than Lesotho a person cannot renounce his citizenship of that other country, he need not make such renunciation but he may instead be required to make such declaration concerning that citizenship as may be prescribed.

(6) In this section "the specified date" means, in respect of a person to whom subsection (1) or (2) or (3)(b) or (4), as the case may be, of this section refers, such date as may be specified in relation to that person by or under an Act of Parliament.

29.—(1) Every person who under this Constitution or any Act of Parliament is a citizen of Lesotho or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948 or continues to be a British subject under section 2 of that Act or is a British subject by virtue of section 1 of the British Nationality Act 1965(a) shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana,

Malaysia, Nigeria, Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Kenya, Malawi, Malta, Zambia, The Gambia, Guyana, Botswana, Singapore and Southern Rhodesia.

Powers of Parliament.

30.—(1) Parliament may make provision for the acquisition of citizenship of Lesotho by persons who are not eligible or who are no longer eligible to become citizens of Lesotho under the provisions of this Chapter.

(2) Parliament may make provision for depriving of his citizenship of Lesotho any person who is a citizen of Lesotho otherwise than by virtue of section 23(1), section 23(2), section 25 or section 26, of this Constitution, unless he would thereby become stateless.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Lesotho.

Inter-pretation.

31.—(1) In this Chapter—

“alien” means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

“British protected person” means a person who is a British protected person for the purposes of the British Nationality Act 1948;

“prescribed” means prescribed by or under any Act of Parliament.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 4th October 1966 and the birth occurred after 3rd October 1966 the national status that the father would have had if he had died on 4th October 1966 shall be deemed to be his national status at the time of his death.

CHAPTER IV

THE KING

The office of King.

32.—(1) There shall be a King of Lesotho who shall be the Head of State.

(2) The King shall do all things that belong to his office in accordance with the provisions of this Constitution and of all other laws for the time being in force.

(3) The person holding the office of Paramount Chief (styled Motlotlehi) under the Basutoland Order 1965 immediately before the coming into operation of this Constitution is hereby recognised and confirmed as the holder of the office of King as from the commencement of this Constitution.

33.—(1) The College of Chiefs may at any time designate, in accordance with the customary law of Lesotho, the person (or the persons, in order of prior right) who are entitled to succeed to the office of King upon the death or abdication of the holder of that office ; and if, upon the death or abdication of the holder of the office of King, there is a person who has previously been designated in pursuance of this section and who is capable under the customary law of Lesotho of succeeding to that office, that person (or, if there is more than one such person, that one of them who has been designated as having the first right to succeed to the office) shall become King. Succession
to the throne
of Lesotho.

(2) If, upon the death or abdication of the holder of the office of King, there is no person who becomes King under subsection (1) of this section, the College of Chiefs shall, with all practicable speed and in accordance with the customary law of Lesotho, proceed to designate a person to succeed to the office of King and the person so designated shall thereupon become King.

(3) Whenever the holder of the office of King or a Regent—

(a) has occasion to be absent from Lesotho for a period which the College of Chiefs has reason to believe will be of short duration ; or

(b) is suffering from an illness which the College of Chiefs has reason to believe will be of short duration,

the College of Chiefs may for the time being designate a person, in accordance with the customary law of Lesotho, to exercise the functions of the office of King, and any person for the time being so designated may exercise all the functions of the office of King during the absence or illness of the holder of that office or the Regent.

(4) Every designation made for the purposes of this section shall be published in the Gazette.

(5) Where any person has been designated to succeed to the office of King in pursuance of subsection (1) or subsection (2) of this section, any other person who claims that, under the customary law of Lesotho, he should have been so designated in place of that person may, by application made to the Court of Appeal within a period of six months commencing with the day on which the designation was published in the Gazette, apply to have the designation varied by the substitution of his own name for that of the first mentioned person, but the designation of any person for the purposes of this section shall not otherwise be called in question in any court on the ground that, under the customary law of Lesotho, the person designated was not entitled to be so designated.

(6) Pending the decision of the Court of Appeal in any application made to it under subsection (5) of this section, the designation that is the subject of the application shall remain of full force and effect.

34.—(1) The College of Chiefs may at any time designate, in accordance with the customary law of Lesotho, the person (or the persons, in order of prior right) who shall be Regent, that is to say, who shall exercise the functions of the office of King in any of the following circumstances— The Regent.

(a) when the holder of that office has not attained the age of twenty-one years ; or

(b) when the holder of that office (and any person who has been designated as having a prior right to be Regent) is unable by reason of absence from Lesotho or by reason of infirmity of body or mind to exercise the functions of that office ; or

(c) when, in the circumstances specified in section 33(2) of this Constitution, the College of Chiefs has not yet made a designation in pursuance of that subsection ;

and if, in any of those circumstances, there is a person who has previously been designated in pursuance of this subsection and who is capable under the customary law of Lesotho of becoming Regent, that person (or, if there is more than one such person, that one of them who has been designated as having the first right to be Regent) shall become Regent.

(2) If, in any of the circumstances specified in paragraph (a), paragraph (b) or paragraph (c) of subsection (1) of this section, there is no person who becomes Regent under that subsection, the College of Chiefs shall, with all practicable speed and in accordance with the customary law of Lesotho, proceed to designate a person to be Regent and the person so designated shall thereupon become Regent.

(3) If the College of Chiefs fails within a reasonable time to discharge the duty imposed on it by subsection (2) of this section, the Court of Appeal may, upon the application of any person, itself designate a person to be Regent in accordance with the customary law of Lesotho and the person so designated shall thereupon become Regent.

(4) A Regent shall not exercise the functions of the office of King at any time when a person is for the time being designated to exercise such functions in pursuance of section 33(3) of this Constitution.

(5) Every designation made for the purposes of this section shall be published in the Gazette.

Proceedings
in Court of
Appeal.

35.—(1) The Court of Appeal shall consider with all practicable speed every application made to it under section 33(5) or section 34(3) of this Constitution and the decision of the Court of Appeal therein shall not be subject to appeal.

(2) The President of the Court of Appeal may make rules with respect to the practice and procedure of the Court of Appeal in relation to the jurisdiction and powers conferred on it by or under subsection (5) of section 33 and subsection (3) of section 34 of this Constitution (including rules with respect to the time within which application may be made to the Court under those subsections).

Civil List of
the King
and
remuneration
of Regent.

36.—(1) The King shall have such Civil List as may be provided by Parliament and that Civil List shall be a charge upon the Consolidated Fund and shall not be reduced during the King's continuance in office.

(2) A person exercising the functions of the office of King as Regent shall, in respect of any period during which he exercises those functions, be entitled to such remuneration as may be prescribed by Parliament, and the remuneration prescribed under this subsection in relation to any person in respect of any such period shall be a charge on the Consolidated Fund and shall not be reduced after the commencement of that period.

37.—(1) The King shall be entitled to immunity from taxation in respect of his Civil List, all income accruing to him in his private capacity and all property owned by him in his private capacity.

Immunity of the King and Regent from taxation.

(2) A person who is exercising or who has exercised the functions of the office of King as Regent shall be entitled to immunity from taxation in respect of any remuneration to which he is entitled under section 36(2) of this Constitution, all income accruing to him in his private capacity during any period during which he is exercising those functions and, in so far as the taxation relates to that period, all property owned by him in his private capacity.

(3) The King shall be entitled to immunity from the compulsory taking possession of any property held by him in his private capacity and the compulsory acquisition of any interest in or right over any property, being an interest or right owned by him in his private capacity.

38.—(1) Whilst any person holds the office of King, he shall be entitled to immunity from suit and legal process in any civil cause in respect of all things done or omitted to be done by him in his private capacity and to immunity from criminal proceedings in respect of all things done or omitted to be done by him either in his official capacity or in his private capacity.

Protection of the King and of certain persons in respect of legal proceedings.

(2) Whilst any person exercises the functions of the office of King as Regent or by virtue of a designation under section 33(3) of this Constitution, no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity, and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him in respect of anything done or omitted to be done by him in his private capacity.

(3) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period during which that person has held the office of King or exercised the functions of the office of King shall not be taken into account in calculating the period of time prescribed by that law which determines whether any such proceedings as are mentioned in subsection (1) or (2), as the case may be, of this section may be brought against that person.

39.—(1) The King shall, as soon as is practicable after succeeding to the office of King and before entering upon the duties of his office (or, in the case of a person who when he so succeeded was below the age of twenty-one years, as soon as is practicable after attaining that age before entering upon the duties of his office), take and subscribe the oath for the due execution of his office which is set out in Schedule 1 to this Constitution.

Oaths.

(2) A Regent shall, before entering upon the duties of his office, take and subscribe the oath of allegiance and the oath for the due execution of his office which is set out in Schedule 1 to this Constitution.

(3) The person holding the office of Paramount Chief (styled Motlotlehi) under the Basutoland Order 1965 immediately before

the coming into operation of this Constitution shall take and subscribe the oath mentioned in subsection (1) of this section as soon as is practicable after the commencement of this Constitution.

(4) The oaths referred to in the foregoing provisions of this section shall be administered to the King or, as the case may be, to the Regent, by the Chief Justice (or, in the absence of the Chief Justice, by a judge of the Court of Appeal or some other judge, if any, of the High Court) in the presence of such of the judges of the Court of Appeal, such of the other judges, if any, of the High Court and such Ministers of the Government of Lesotho as are able to attend.

CHAPTER V

PARLIAMENT

Part I

Composition of Parliament

Establishment of Parliament.

40. There shall be a Parliament which shall consist of the King, a Senate and a National Assembly.

Composition of Senate.

41. The Senate shall consist of the twenty-two Principal Chiefs and Ward Chiefs and eleven other Senators nominated in that behalf by the King:

Provided that a Principal Chief or a Ward Chief may, by notice in writing to the President of the Senate, designate any other person to be a Senator in his place either generally or for any sitting or sittings of the Senate specified in the notice and may, by notice in like manner, vary or revoke any such designation.

Composition of National Assembly.

42. The National Assembly shall consist of 60 members elected in accordance with the provisions of this Constitution.

Elections to National Assembly.

43.—(1) Lesotho shall, in accordance with the provisions of section 50 of this Constitution, be divided into constituencies and each constituency shall elect one member to the National Assembly in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) Subject to the provisions of subsections (3) and (4) of this section, every person who, at the date of his application to be registered under a law in that behalf—

(a) is a citizen of Lesotho; and

(b) has attained the age of twenty-one years; and

(c) possesses such qualifications as to residence as may be prescribed by Parliament

shall be qualified to be registered as an elector in elections to the National Assembly under a law in that behalf; and no other person may be so registered.

(3) No person shall be qualified to be registered as an elector in elections to the National Assembly who, at the date of his application to be registered—

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

(b) is under sentence of death imposed on him by any court in Lesotho ; or

(c) is, under any law in force in Lesotho, adjudged or otherwise declared to be of unsound mind.

(4) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be registered as an elector in elections to the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(5) Subject to the provisions of subsections (6) and (7) of this section, every person who is registered in any constituency as an elector in elections to the National Assembly shall be qualified to vote in such elections in that constituency in accordance with the provisions of any law in that behalf ; and no other person may so vote.

(6) Parliament may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of an election in any constituency shall not be qualified to vote in that election in that constituency.

(7) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to vote in any election to the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

44.—(1) Subject to the provisions of section 45 of this Constitution, a person shall be qualified to be nominated as a Senator by the King or designated by a Principal Chief or a Ward Chief as a Senator in his place if, and shall not be so qualified unless, at the date of his nomination or designation, he is a citizen of Lesotho. Qualifications for membership of Parliament.

(2) Subject to the provisions of section 45 of this Constitution, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be so qualified unless, at the date of his nomination for election, he—

(a) is a citizen of Lesotho ; and

(b) is registered in some constituency as an elector in elections to the National Assembly and is not disqualified from voting in such elections ; and

(c) is able to speak and, unless incapacitated by blindness or other physical cause, to read and write either the English or the Sesotho language well enough to take an active part in the proceedings of the National Assembly.

45.—(1) No person shall be qualified to be nominated as a Senator by the King or designated by a Principal Chief or a Ward Chief as a Senator in his place and no person shall be qualified to be elected as a member of the National Assembly if, at the date of his Disqualifications for membership of Parliament.

nomination or designation or, as the case may be, at the date of his nomination for election, he—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or state ; or
- (b) is under sentence of death imposed on him by any court in Lesotho ; or
- (c) is, under any law in force in Lesotho, adjudged or otherwise declared to be of unsound mind ; or
- (d) is an unrehabilitated insolvent, having been adjudged or otherwise declared insolvent under any law in force in Lesotho ; or
- (e) subject to such exceptions and limitations as may be prescribed by Parliament, has any such interest in any such government contract as may be so prescribed.

(2) Parliament may provide that a person who, at the date of his nomination for election, holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the National Assembly or the compilation of any register of electors for the purposes of such an election shall not be qualified to be elected as a member of the National Assembly.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(4) Parliament may provide that, subject to such exceptions and limitations as may be prescribed by Parliament, a person shall not be qualified to be elected as a member of the National Assembly if—

- (a) he holds or acts in any office or appointment that is so prescribed ;
- (b) he is a member of any naval, military or air force that is so prescribed ; or
- (c) he is a member of a police force.

(5) No person shall be qualified to be elected as a member of the National Assembly who, at the date of his nomination for election as such a member, is a Principal Chief or a Ward Chief or is otherwise a Senator.

(6) In subsection (1)(e) of this section “government contract” means any contract made with the Government of Lesotho or with a department of that Government or with an officer of that Government contracting as such.

Tenure of
seats of
members of
Parliament.

46.—(1) A Senator (other than a Principal Chief or a Ward Chief) or a member of the National Assembly shall vacate his seat as such—

- (a) if he ceases to be a citizen of Lesotho ; or
- (b) if any circumstances arise that, if he were not such a Senator or a member of the National Assembly, would cause him to be

disqualified under section 45(1) of this Constitution to be nominated or designated as such or, as the case may be, to be elected as such ; or

(c) in the case of a member of the National Assembly, if he ceases to be registered in some constituency as an elector in elections to the National Assembly or if he ceases to be qualified to vote in some constituency in such elections ; or

(d) in the case of such a Senator, at the next dissolution of Parliament after his nomination ; or

(e) in the case of a member of the National Assembly, if any circumstances arise that, if he were not a member of the National Assembly, would cause him to be disqualified to be elected as such under section 45(5) of this Constitution or under any law made in pursuance of section 45(2), section 45(3) or section 45(4) of this Constitution.

(2) Parliament may, in order to permit any member of either House of Parliament who has been sentenced to death, adjudged or declared to be of unsound mind, adjudged or declared insolvent or convicted or reported guilty of any offence prescribed under section 43(4), section 43(7) or section 45(3) of this Constitution to appeal against the decision in accordance with any law, provide that, subject to such conditions as may be prescribed by Parliament, the decision shall not have effect for the purposes of this section until such time as may be so prescribed.

47.—(1) There shall be a President of the Senate who shall be elected by the Senate either from among the persons who are Senators or from among other persons. President of Senate.

(2) A Minister or an Assistant Minister shall not be qualified to be elected as President.

(3) The President shall vacate his office—

(a) if, having been elected from among the Senators, he ceases to be a Senator otherwise than by reason of a dissolution of Parliament ; or

(b) in the case of a President who was elected from among persons who were not Senators, if any circumstances arise that would cause him to be disqualified to be nominated or designated as a Senator under paragraph (b), paragraph (c) or paragraph (d) of section 45(1) of this Constitution ; or

(c) if he becomes a Minister or an Assistant Minister ; or

(d) when the Senate first meets after a dissolution of Parliament ; or

(e) if he is removed from office by resolution of the Senate supported by the votes of two-thirds of all the Senators.

(4) No business shall be transacted in the Senate (other than the election of a President) at any time when the office of President is vacant.

48.—(1) There shall be a Vice-President of the Senate who shall be elected by the Senate either from among the persons who are Senators or from among other persons. Vice-President of Senate.

(2) A Minister or an Assistant Minister shall not be qualified to be elected as Vice-President.

(3) The Senate shall elect a Vice-President—

(a) subject to the provisions of section 47(4) of this Constitution, when it first meets after a dissolution of Parliament ; and

(b) when it first meets after the office of Vice-President has otherwise become vacant,

or as soon thereafter as may be convenient.

(4) The Vice-President shall vacate his office—

(a) if, having been elected from among the Senators, he ceases to be a Senator otherwise than by reason of a dissolution of Parliament ; or

(b) in the case of a Vice-President who was elected from among persons who were not Senators, if any circumstances arise that would cause him to be disqualified to be nominated or designated as a Senator under paragraph (b), paragraph (c) or paragraph (d) of section 45(1) of this Constitution ; or

(c) if he becomes a Minister or an Assistant Minister ; or

(d) when the Senate first meets after a dissolution of Parliament ; or

(e) if he is removed from office by resolution of the Senate.

Speaker of
National
Assembly.

49.—(1) There shall be a Speaker of the National Assembly who shall be elected by the Assembly either from among the persons who are members thereof or from among other persons.

(2) A Minister or an Assistant Minister shall not be qualified to be elected as Speaker.

(3) The Speaker shall vacate his office—

(a) if, having been elected from among the members of the National Assembly, he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament ; or

(b) in the case of a Speaker who was elected from among persons who were not members of the National Assembly, if any circumstances arise that would cause him to be disqualified to be elected as such a member under paragraph (b), paragraph (c) or paragraph (d) of section 45(1) of this Constitution or under a law made in pursuance of section 45(3) of this Constitution ; or

(c) if he becomes a Minister or an Assistant Minister ; or

(d) when the National Assembly first meets after a dissolution of Parliament ; or

(e) if he is removed from office by resolution of the National Assembly supported by the votes of two-thirds of all the members thereof.

(4) No business shall be transacted in the National Assembly (other than the election of a Speaker) at any time when the office of Speaker is vacant.

Deputy
Speaker
of National
Assembly.

50.—(1) There shall be a Deputy Speaker of the National Assembly who shall be elected by the Assembly either from among the persons who are members thereof or from among other persons.

(2) A Minister or an Assistant Minister shall not be qualified to be elected as Deputy Speaker.

(3) The National Assembly shall elect a Deputy Speaker—

(a) subject to the provisions of section 49(4) of this Constitution, when it first meets after a dissolution of Parliament ; and

(b) when it first meets after the office of Deputy Speaker has otherwise become vacant,
or as soon thereafter as may be convenient.

(4) The Deputy Speaker shall vacate his office—

(a) if, having been elected from among the members of the National Assembly, he ceases to be a member of the National Assembly otherwise than by reason of a dissolution of Parliament ; or

(b) in the case of a Deputy Speaker who was elected from among persons who were not members of the National Assembly, if any circumstances arise that would cause him to be disqualified to be elected as such a member under paragraph (b), paragraph (c) or paragraph (d) of section 45(1) of this Constitution or under a law made in pursuance of section 45(3) of this Constitution ; or

(c) if he becomes a Minister or an Assistant Minister ; or

(d) when the National Assembly first meets after a dissolution of Parliament ; or

(e) if he is removed from office by resolution of the National Assembly.

51.—(1) There shall be a Clerk to the Senate and a Clerk to the National Assembly.

Clerks to
Houses of
Parliament
and their
staffs.

(2) The offices of the Clerks to the two Houses and of the members of their staffs shall be offices in the public service.

(3) Nothing in this section shall be construed as preventing the appointment of one person to the offices of Clerk to the Senate and Clerk to the National Assembly or the appointment of one person to any office on the staff of the Clerk to the Senate and any office on the staff of the Clerk to the National Assembly.

52.—(1) There shall be a Constituency Delimitation Commission which shall consist of—

Constituency
Delimitation
Commission.

(a) a Chairman, who shall be a person appointed by the King, acting in accordance with the advice of the Judicial Service Commission, from among the judges of the High Court or of the Court of Appeal ; and

(b) two other members, each of whom shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission, from among persons who hold or have held high judicial office.

(2) A person shall not be qualified to be appointed as a member of the Commission if—

(a) he is, or has at any time been, a member of either House of Parliament or a member of either House of the Parliament constituted under the Basutoland Order 1965 or a member (other than an official or a nominated member) of the Basutoland National Council constituted under the Basutoland (Constitution) Order in Council 1959(a) ; or

(b) he is, or has at any time been, nominated as a candidate for election as a member of the National Assembly constituted under this Constitution or the Basutoland Order 1965 or of the Basutoland National Council ; or

(c) he is, or has at any time been, the holder of an office in any political organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of the National Assembly constituted under this Constitution or the Basutoland Order 1965 or of the Basutoland National Council or of any local government authority ; or

(d) he is a public officer (other than a judge of the High Court or of the Court of Appeal).

(3) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

(a) at the expiration of five years from the date of his appointment ; or .

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(4) A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) A member of the Commission shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the King that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Chairman of the Commission represents to the King that the question of removing a member of the Commission under this section ought to be investigated, then—

(a) The King shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office ; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the member ought to be removed under this section.

(7) If the question of removing a member of the Commission has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Chairman of the Commission, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the King that that member should not be removed.

(8) The Chairman of the Commission and any other member of the Commission who is a judge of the High Court or of the Court of Appeal shall be removed by the King from his office as a member of the Commission if, and shall not be so removed unless, he is removed under section 112 or, as the case may be, section 117 of this Constitution from his office as a judge ; and, accordingly, the provisions of subsections (5) and (6) of this section shall not apply in relation to the Chairman or such a member.

(9) In the exercise of its functions under this Constitution the Commission shall not be subject to the direction or control of any other person or authority.

(10) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of Lesotho for the purpose of the discharge of its functions.

(11) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

53.—(1) For the purpose of elections to the National Assembly, Lesotho shall, in accordance with the provisions of this section, be divided into 60 constituencies having such boundaries as may be prescribed by order made by the Constituency Delimitation Commission. Constituencies.

(2) All constituencies shall contain as nearly equal numbers of inhabitants of or above the age of twenty-one years as appears to the Commission to be reasonably practicable, but the Commission may depart from this principle to such extent as it considers expedient in order to take account of—

- (a) the density of population, and in particular the need to ensure adequate representation of sparsely populated rural areas ;
- (b) the means of communication ;
- (c) geographical features ;
- (d) community of interest ; and
- (e) the boundaries of existing administrative areas :

Provided that the number of inhabitants, of or above the age of 21 years, of any constituency shall not exceed or fall short of the population quota by more than 10 per cent.

(3) The Commission shall review the boundaries of the constituencies into which Lesotho is divided—

- (a) in the case of its first review after the day on which this Constitution comes into operation, not less than four nor more than six years from that day ; and
- (b) in the case of any subsequent review, not less than eight nor more than ten years from the date of completing its last review,

and may, by order, alter the boundaries in accordance with the provisions of this section to such extent as it considers desirable in the light of the review :

Provided that whenever a census of the population has been held in pursuance of any law the Commission may carry out such a review and make such an alteration to the extent which it considers desirable in consequence of that census.

(4) Every order made by the Commission under this section shall be published in the Gazette and shall come into effect upon the next dissolution of Parliament after it was made.

(5) For the purposes of this section the number of inhabitants of any part of Lesotho of or above the age of twenty-one years shall be

ascertained by reference to the latest census of the population held in pursuance of any law:

Provided that if the Commission considers, by reason of the passage of time since the holding of the latest census or otherwise, that it is desirable so to do it may instead or in addition have regard to any other available information which, in the opinion of the Commission, best indicates the number of those inhabitants.

(6) In this section "the population quota" means the number obtained by dividing by 60 the number of the inhabitants of Lesotho of or above the age of twenty-one years.

Decision of questions as to membership of Parliament.

54.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

- (a) any person is validly nominated or designated as a Senator under section 41 of this Constitution;
- (b) any person has been validly elected as a member of the National Assembly; or
- (c) the seat in the National Assembly of any member thereof has become vacant.

(2) An application to the High Court for the determination of any question under subsection (1)(a) of this section may be made by any Senator or by any person who is registered as an elector in elections to the National Assembly or by the Principal Legal Adviser to the Government of Lesotho and, if it is made by a person other than the Principal Legal Adviser, the Principal Legal Adviser may intervene and may then appear or be represented in the proceedings.

(3) An application to the High Court for the determination of any question under subsection (1)(b) of this section may be made by any person qualified to vote in the election to which the application relates or by the Principal Legal Adviser to the Government of Lesotho and, if it is made by a person other than the Principal Legal Adviser, the Principal Legal Adviser may intervene and may then appear or be represented in the proceedings.

(4) An application to the High Court for the determination of any question under subsection (1)(c) of this section may be made by any member of the National Assembly or by any person registered as an elector in elections to the National Assembly or by the Principal Legal Adviser to the Government of Lesotho and, if it is made by a person other than the Principal Legal Adviser, the Principal Legal Adviser may intervene and may then appear or be represented in the proceedings.

(5) Parliament may make provision with respect to—

- (a) the circumstances and manner in which and the conditions upon which any application may be made to the High Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the High Court in relation to any such application,

but, subject to any provision in that behalf made by Parliament under this subsection, the practice and procedure of the High Court in relation to any such application shall be regulated by rules made by the Chief Justice.

(6) The determination by the High Court of any question under this section shall not be subject to appeal.

(7) In the exercise of his functions under this section, the Principal Legal Adviser to the Government of Lesotho shall not be subject to the direction or control of any other person or authority.

Part 2

Legislation and procedure in Parliament

55. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Lesotho. Power to make laws.

56.—(1) Every member of either House of Parliament shall, before taking his seat in that House, take and subscribe the oath of allegiance before the House, but a member may before taking and subscribing that oath take part in the election of the President or Speaker of the House. Oaths to be taken by members of Parliament.

(2) Any person elected as President or Vice-President or Speaker or Deputy Speaker of either House of Parliament shall, if he has not already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe that oath before the House before entering upon the duties of his office.

57. There shall preside at any sitting of the Senate—

Presiding in Senate.

(a) the President of the Senate ; or

(b) in the absence of the President, the Vice-President ; or

(c) in the absence of the President and the Vice-President, such Senator as the Senate may elect for that purpose.

58. There shall preside at any sitting of the National Assembly—

Presiding in National Assembly.

(a) the Speaker of the National Assembly ; or

(b) in the absence of the Speaker, the Deputy Speaker ; or

(c) in the absence of the Speaker and the Deputy Speaker, such member of the Assembly as the Assembly may elect for that purpose.

59.—(1) If objection is taken by any Senator who is present that there are present in the Senate (besides the person presiding) fewer than eight Senators and, after such interval as may be prescribed in the rules of procedure of the Senate, the person presiding ascertains that there are still fewer than eight Senators present, he shall thereupon adjourn the Senate. Quorum in Houses of Parliament.

(2) If objection is taken by any member of the National Assembly who is present that there are present in the Assembly (besides the person presiding) fewer than fifteen members of the Assembly and, after such interval as may be prescribed in the rules of procedure of the Assembly, the person presiding ascertains that there are still fewer than fifteen members of the Assembly present, he shall thereupon adjourn the Assembly.

60.—(1) Save as otherwise provided in this Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the votes of the members present and voting. Voting in Parliament.

(2) The person presiding in either House of Parliament shall, if he is a member thereof, have an original vote but he shall have no casting vote, and whenever there is an equality of votes on any question, the motion before the House shall be deemed to have been negatived.

(3) The rules of procedure of either House of Parliament may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.

Right of Ministers and Assistant Ministers to address, etc., either House.

61. A Minister or an Assistant Minister who is a member of the National Assembly shall be entitled to attend all meetings of the Senate and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the Senate; and a Minister or an Assistant Minister who is a Senator shall be entitled to attend all meetings of the National Assembly and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the National Assembly.

Unqualified persons sitting or voting.

62.—(1) Any person who sits or votes in either House of Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding 100 rands, or such other sum as may be prescribed by Parliament, for each day on which he so sits and votes in that House.

(2) Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

Mode of exercise of legislative power.

63.—(1) The power of Parliament to make laws shall be exercisable by bills passed by both Houses of Parliament (or, in the cases mentioned in section 65 of this Constitution, by the National Assembly) and assented to by the King.

(2) A bill may originate only in the National Assembly.

(3) When a bill has been passed by the National Assembly it shall be sent to the Senate; and—

(a) when it has been passed by the Senate and agreement has been reached between the two Houses on any amendments made to it by the Senate; or

(b) when it is required to be presented under section 65 of this Constitution,

it shall be presented to the King for assent.

(4) When a bill has been presented to the King for assent in pursuance of subsection (3) of this section, he shall signify that he assents or that he withholds assent.

(5) When a bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the King shall thereupon cause it to be published in the Gazette as a law.

(6) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(7) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of Lesotho".

64. Except with the consent of the Cabinet signified by a Minister, neither House of Parliament shall—

Restrictions with regard to certain financial measures.

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—

- (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction ;
- (ii) for the imposition of any charge upon the Consolidated Fund or any other public fund of Lesotho or the alteration of any such charge otherwise than by reduction ;
- (iii) for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Lesotho of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal ; or
- (iv) for the composition or remission of any debt due to the Government of Lesotho ; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

65.—(1) When a bill that is passed by the National Assembly and that is certified by the Speaker of the National Assembly under subsection (2) of this section as an Appropriation bill is sent to the Senate it shall forthwith be introduced in the Senate and shall be passed by the Senate without delay ; and if it is not passed by the Senate by the end of the day after the day on which it was sent to the Senate or if it is passed by the Senate with amendments to which the National Assembly does not by then agree, the bill, with such amendments, if any, as may have been agreed to by both Houses, shall, unless the National Assembly otherwise resolves, be presented to the King for assent.

Limitation of powers of Senate.

(2) When a bill that in the opinion of the Speaker of the National Assembly is an Appropriation bill is sent to the Senate from the National Assembly it shall bear a certificate of the Speaker of the National Assembly that it is an Appropriation bill.

(3) When a bill that is passed by the National Assembly is certified by the Speaker of the National Assembly under subsection (4) of this section as a money bill other than an Appropriation bill and, having been sent to the Senate at least thirty days before the end of the session, is not passed by the Senate within thirty days after it is so sent or is passed by the Senate with amendments to which the National Assembly does not agree within thirty days after the bill was sent to the Senate, the bill, with such amendments, if any, as may have been agreed to by both Houses, shall, unless the National Assembly otherwise resolves, be presented to the King for assent.

(4) When a bill that in the opinion of the Speaker of the National Assembly is a money bill other than an Appropriation bill is sent to the Senate from the National Assembly it shall bear a certificate of the Speaker of the National Assembly that it is a money bill other than an Appropriation bill.

(5) When a bill that has been passed by the National Assembly is not certified by the Speaker of the National Assembly either under

subsection (2) of this section as an Appropriation bill or under subsection (4) of this section as a money bill other than an Appropriation bill and, having been sent to the Senate at least ninety days before the end of the session, is not passed by the Senate within ninety days after it has been so sent or is passed by the Senate with amendments to which the National Assembly does not agree within the said ninety days, the bill, with such amendments, if any, as may have been agreed to by both Houses, shall, unless the National Assembly otherwise resolves, be presented to the King for assent.

(6) When a bill is presented to the King in pursuance of this section for assent it shall bear a certificate by the Speaker of the National Assembly that this section has been complied with.

(7) A certificate given by the Speaker of the National Assembly under this section shall be conclusive for all purposes and shall not be questioned in any court.

(8) Any function that, under this section, falls to be exercised by the Speaker of the National Assembly may, if he is absent or is for any other reason unable to exercise the functions of his office, be exercised by the Deputy Speaker.

(9) In this section "money bill" means a bill that contains only provisions dealing with—

- (a) the imposition, repeal, remission, alteration or regulation of taxation ;
- (b) the imposition of charges on the Consolidated Fund or any other public fund of Lesotho or the variation or repeal of any such charges ;
- (c) the grant of money to the King or to any other person or authority or the variation or revocation of any such grant ;
- (d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money ;
- (e) the raising or guarantee of any loan or the repayment thereof ;
or
- (f) subordinate matters incidental to any of those matters :

Provided that the expressions "taxation", "public money" and "loan" do not include any taxation, money or loan raised by local government authorities or other local bodies.

Regulation
of procedure
in
Parliament,
etc.

66.—(1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

(2) Each House of Parliament may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

(3) Parliament may, for the purpose of the orderly and effective discharge of the business of the two Houses, make provision for the powers, privileges and immunities of those Houses and the committees and the members thereof (including any person who is President or Vice-President or Speaker or Deputy Speaker of either House, having been elected from among persons who were not members thereof) :

Provided that no such powers, privileges or immunities shall exceed those of the Commons' House of the Parliament of the United Kingdom or, as the case may be, of the committees or of the members thereof.

Part 3

Summoning, prorogation and dissolution

67.—(1) Each session of Parliament shall be held at such place within Lesotho and shall begin at such time (not being later than twelve months from the end of the preceding session if Parliament has been prorogued or fourteen days from the holding of a general election of members of the National Assembly if Parliament has been dissolved) as the King shall appoint. Sessions of Parliament, etc.

(2) Subject to the provisions of subsection (1) of this section, the sittings of each House of Parliament shall be held at such time and place as that House may, by its rules of procedure or otherwise, determine:

Provided that the first sitting of each House of Parliament after Parliament has at any time been prorogued or dissolved shall begin at the same time as the first sitting of the other House.

68.—(1) The King may at any time prorogue or dissolve Parliament. Prorogation and dissolution of Parliament.

(2) Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date when the two Houses of Parliament first meet after any dissolution and shall then stand dissolved.

(3) At any time when Lesotho is at war Parliament may from time to time extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) In the exercise of his power to dissolve Parliament, the King shall act in accordance with the advice of the Prime Minister:

Provided that—

(a) if the Prime Minister recommends a dissolution and the King considers that the government of Lesotho can be carried on without a dissolution and that a dissolution would not be in the interests of Lesotho, he may refuse to dissolve Parliament;

(b) if the National Assembly passes a resolution of no confidence in the Government of Lesotho and the Prime Minister does not within three days thereafter either resign or advise a dissolution the King may dissolve Parliament; and

(c) if the office of Prime Minister is vacant and the King considers that there is no prospect of his being able within a reasonable time to find a person who is the leader of a political party or a coalition of political parties that will command the support of a majority of the members of the National Assembly, he may dissolve Parliament.

(5) A resolution of no confidence in the Government of Lesotho shall not be effective for the purposes of subsection (4)(b) of this section unless it proposes the name of a member of the National Assembly for the King to appoint in the place of the Prime Minister.

General
elections.

69.—(1) Subject to the provisions of subsection (2) of this section, a general election of members of the National Assembly shall be held at such time within three months after any dissolution of Parliament as the King may appoint.

(2) If, when Parliament has been dissolved, the Prime Minister advises the King that, owing to the existence of a public emergency, it would not be practicable to hold a general election within three months after the dissolution, the King, acting in accordance with the advice of the Prime Minister, may by Proclamation recall the Parliament that has been dissolved and the following provisions shall then have effect, that is to say—

- (a) both Houses of Parliament may meet at such date, not later than 14 days after the date of the Proclamation, as may be specified therein ;
- (b) the Prime Minister shall, subject to the provisions of sections 47(4) and 49(4) of this Constitution, introduce or cause to be introduced in each House as soon as it meets a resolution declaring that a public emergency exists and, subject as aforesaid, no other business shall be transacted in either House until that resolution has been passed by both Houses ;
- (c) if the resolution is passed by each House within five days after it has been introduced in that House, a general election shall be held at such time within twelve months after the original dissolution of the Parliament that has been recalled as the King, acting in accordance with the advice of the Prime Minister, may appoint ; and the Parliament that has been recalled shall be deemed to be the Parliament for the time being and may meet and be kept in session accordingly until the date fixed for the nomination of candidates in that general election and, unless previously dissolved, shall then stand dissolved ; and
- (d) if the resolution is not passed by each House within five days after it has been introduced in that House, the Parliament that has been recalled shall then be again dissolved and a general election shall be held at such time within three months after the date of the Proclamation by which Parliament was so recalled as the King may appoint.

CHAPTER VI

ALTERATION OF CONSTITUTION

Alteration
of
Constitution.

70.—(1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A bill for an Act of Parliament under this section shall not be passed by Parliament unless it is supported at the final voting in the National Assembly by the votes of a majority of the members of the Assembly present and voting and, having been sent to the Senate, has become a bill that, apart from this section, may be presented to the King for his assent under subsection (1) or subsection (3) or subsection (5), as the case may be, of section 65 of this Constitution.

(3) A bill to alter any of the following provisions of this Constitution, that is to say—

(a) this section ; sections 1(1) and 2 ; Chapter II ; sections 32 to 38 inclusive ; sections 71, 76, 77, 80, 88, 89, 92, 93, 110(1) and (2), 111(1), (2) and (5), 112, 114, 115(1), (2) and (3), 116(1), (2) and (5) and 117 ; sections 121 and 122 in their application to appeals to the Court of Appeal ; section 123 ; and section 139 in its application to any of the provisions mentioned in this paragraph ; and

(b) sections 40 to 45 inclusive ; sections 52, 53, 54(1) and (6), 55, 60(1), 63(1), (2), (3) and (4), 65(1), (2), (3), (4), (5) and (9), 67(1), 68 (other than subsection (5)) and 69 ; sections 125 to 129 inclusive ; sections 131, 132, 135 and 136 ; and section 139 in its application to any of the provisions mentioned in this paragraph ;

shall not be submitted to the King for his assent unless the bill, not less than two nor more than six months after its passage by Parliament, has, in such manner as may be prescribed by or under an Act of Parliament, been submitted to the vote of the electors qualified to vote in the election of the members of the National Assembly, and the majority of the electors voting have approved the bill :

Provided that if the bill does not alter any of the provisions mentioned in paragraph (a) of this subsection and is supported at the final voting in each House of Parliament by the votes of no less than two-thirds of all the members of that House it shall not be necessary to submit the bill to the vote of the electors.

(4) In this section—

(a) references to this Constitution or to any particular provision thereof include references to any other law in so far as that law alters the Constitution or, as the case may be, that provision ; and

(b) references to altering this Constitution or any particular provision thereof include references to repealing it, with or without re-enactment thereof or the making of different provision in lieu thereof, to modifying it and to suspending its operation for any period.

CHAPTER VII

THE EXECUTIVE

71.—(1) The executive authority of Lesotho is vested in the King and, subject to the provisions of this Constitution, may be exercised by him either directly or through officers or authorities of the Government of Lesotho. Executive authority of Lesotho.

(2) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the King.

72.—(1) There shall be a Prime Minister who shall be appointed by the King. Ministers of Government of Lesotho.

(2) There shall be, in addition to the office of Prime Minister, such other offices of Minister of the Government of Lesotho (not being less than seven in number and one of which shall be the office of Deputy Prime Minister) as may be established by Parliament or, subject to any provision made by Parliament, by the King, acting in accordance with the advice of the Prime Minister.

(3) The King shall appoint as Prime Minister the member of the National Assembly who appears to him to be the leader of the political party or coalition of political parties that will command the

support of a majority of the members of the National Assembly and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the National Assembly or from among the Senators who are nominated as Senators by the King under section 41 of this Constitution :

Provided that if occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament stands dissolved, a person who was a member of the National Assembly immediately before the dissolution may be appointed to the office of Prime Minister or any other Minister and a person who was, immediately before the dissolution, such a Senator as aforesaid, may be appointed to the office of any Minister other than the Prime Minister.

(4) The King may remove the Prime Minister from office—

(a) if a resolution of no confidence in the Government of Lesotho is passed by the National Assembly and the Prime Minister does not within three days thereafter either resign from his office or advise a dissolution of Parliament ; or

(b) if at any time between the holding of a general election to the National Assembly and the date on which the Assembly first meets thereafter, the King considers that, in consequence of changes in the membership of the Assembly resulting from that election, the Prime Minister will no longer be the leader of the political party or coalition of political parties that will command the support of a majority of the members of the Assembly.

(5) The office of the Prime Minister shall become vacant—

(a) if he ceases to be a member of the National Assembly otherwise than by reason of a dissolution of Parliament ; or

(b) if, when the National Assembly first meets after a dissolution of Parliament, he is not then a member thereof.

(6) The office of a Minister other than the Prime Minister shall become vacant—

(a) if he ceases to be a member of either House of Parliament otherwise than by reason of a dissolution of Parliament ; or

(b) if he becomes a Senator other than such a Senator as is referred to in subsection (3) of this section ; or

(c) if when the two Houses of Parliament first meet after a dissolution he is not then either a member of the National Assembly or such a Senator as is referred to in subsection (3) of this section : or

(d) if the King, acting in accordance with the advice of the Prime Minister, so directs ; or

(e) if the Prime Minister resigns from office within three days after the passage by the National Assembly of a resolution of no confidence in the Government of Lesotho or is removed from office under subsection (4) of this section ; or

(f) on the appointment of any person to the office of Prime Minister.

(7) A resolution of no confidence in the Government of Lesotho shall not be effective for the purposes of subsections (4)(a) and (6)(e) of this section unless it proposes the name of a member of the National Assembly for the King to appoint in the place of the Prime Minister.

Cabinet.

73.—(1) There shall be a Cabinet of Ministers, consisting of the Prime Minister and the other Ministers.

(2) The function of the Cabinet shall be to advise the King in the government of Lesotho, and the Cabinet shall be collectively responsible to the two Houses of Parliament for any advice given to the King by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of subsection (2) of this section shall not apply in relation to—

(a) the appointment and removal from office of Ministers and Assistant Ministers, the assignment of responsibility to any Minister under section 74 of this Constitution or the authorisation of another Minister under section 75 of this Constitution to exercise the functions of the Prime Minister during the latter's absence or illness; or

(b) the dissolution of Parliament.

74. The King, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government of Lesotho, including the administration of any department of Government:

Allocation of portfolios to Ministers.

Provided that authority to exercise any power or discharge any duty that is conferred or imposed by this Constitution or any other law on the King or on any other person or authority, not being the Minister concerned, shall not be conferred or imposed upon any Minister under this section.

75.—(1) Whenever the Prime Minister is absent from Lesotho or is by reason of illness unable to exercise the functions conferred on him by this Constitution, those functions (other than the functions conferred by this section) shall be exercised by—

Exercise of Prime Minister's functions during absence or illness.

(a) the Deputy Prime Minister; or

(b) if the office of Deputy Prime Minister is vacant or the Deputy Prime Minister is absent from Lesotho or is by reason of illness unable to exercise the functions of the office of Prime Minister, by such other Minister as the King may authorise in that behalf.

(2) A Minister who is authorised by the King in pursuance of subsection (1)(b) of this section to exercise the functions conferred on the Prime Minister by this Constitution may exercise those functions until his authority is revoked by the King.

(3) The powers of the King under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the King considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice.

76.—(1) Subject to the provisions of subsection (2) of this section, the King shall, in the exercise of his functions under this Constitution or any other law, act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of any person or authority other than the Cabinet.

Exercise of the King's functions.

(2) The King may act in accordance with his own deliberate judgment in the performance of the following functions, that is to say—

- (a) in the exercise of the powers relating to the appointment of Senators conferred on him by section 41 of this Constitution ;
- (b) in the exercise of the powers relating to the dissolution of Parliament conferred on him by the proviso to section 68(4) of this Constitution ;
- (c) in the exercise of the power to appoint the Prime Minister conferred on him by section 72(3) of this Constitution ;
- (d) in the exercise of the power to remove the Prime Minister from office conferred on him by section 72(4) of this Constitution ;
- (e) in the exercise of the powers conferred on him by section 75 of this Constitution (which relates to the performance of the functions of the Prime Minister during absence or illness) in the circumstances described in the proviso to subsection (3) of that section ;
- (f) in the exercise of the powers relating to his Privy Council conferred on him by section 80 of this Constitution other than the power conferred on him by subsection (2)(c) thereof ;
- (g) in the exercise of the power to designate members of the National Planning Board conferred on him by section 90(1)(a) of this Constitution ;
- (h) in the exercise of the powers relating to land conferred on him by Chapter VIII of this Constitution ;
- (i) in signifying his concurrence, for the purposes of section 128(4) of this Constitution, in the appointment of persons to or to act in offices on his personal staff ; and
- (j) save in so far as Parliament may otherwise provide, in the exercise of any powers conferred on him by or under any law to exercise disciplinary control over Chiefs :

Provided that, except in the cases specified in paragraphs (a), (f), (g), (h), (i) and (j) of this subsection (in which he may act in his absolute discretion), the King shall in the exercise of the said functions act, so far as may be, in accordance with any constitutional conventions applicable to the exercise of a similar function by Her Majesty in the United Kingdom.

(3) Nothing in subsection (2) of this section shall prejudice any other provision of this Constitution under which the King is authorised or required to consult with his Privy Council or any other person or authority before exercising any function specified in that subsection.

(4) Where the King is required by this Constitution to do any act in accordance with the advice of any person or authority and the Prime Minister is satisfied that the King has neglected or declined to do so, the Prime Minister may inform the King that it is the intention of the Prime Minister to do that act himself after the expiration of a period to be specified by the Prime Minister, and if at the expiration of that period the King has not done that act the Prime Minister may do that act himself and shall, at the earliest opportunity thereafter, report the matter to Parliament ; and any act so done by the Prime Minister shall be deemed to have been done by the King and to be his act.

(5) No act of the King shall be valid to the extent that it is inconsistent with an act deemed to be his act by virtue of subsection (4) of this section.

(6) Without prejudice to the generality of section 139(11) of this Constitution but subject to the provisions of subsections (2)(a) and (3)(a) of section 101 of this Constitution, where the King is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether he has received or acted in accordance with such advice or made such consultation shall not be enquired into in any court.

77. The King shall have the right to be consulted by the Prime Minister and the other Ministers on all matters relating to the government of Lesotho and the Prime Minister shall keep him fully informed concerning the general conduct of the government of Lesotho and shall furnish him with such information as he may request in respect of any particular matter relating to the government of Lesotho.

The King's right to be consulted and informed concerning matters of government.

78.—(1) The King, acting in accordance with the advice of the Prime Minister, may appoint Assistant Ministers, to assist Ministers in the performance of their duties, from among the members of the National Assembly or from among the Senators who are nominated as Senators by the King under section 41 of this Constitution:

Assistant Ministers.

Provided that, if occasion arises for making an appointment while Parliament stands dissolved, a person who immediately before the dissolution was a member of the National Assembly or was such a Senator as aforesaid may be appointed as an Assistant Minister.

(2) The provisions of section 72(6) of this Constitution shall apply in relation to an Assistant Minister as they apply in relation to a Minister.

79. A Minister or an Assistant Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

Oaths to be taken by Ministers and Assistant Ministers.

80.—(1) There shall be in and for Lesotho a Council (to be styled the King's Privy Council) to assist him in the discharge of his functions.

The King's Privy Council.

(2) The King's Privy Council shall consist of—

(a) the Prime Minister ;

(b) a person for the time being nominated in that behalf by the King ; and

(c) a person appointed by the King acting in accordance with the advice of the Prime Minister.

(3) It shall be the duty of the King's Privy Council, whenever it is requested so to do by the King, to advise him on the exercise of any of the functions specified in section 76(2) of this Constitution (which specifies the functions that the King may exercise in his discretion), and it shall have such other functions as may be conferred on it by this Constitution or any other law.

(4) The King shall not be required to act in accordance with the advice of his Privy Council in any case in which he has obtained its advice.

(5) Meetings of the King's Privy Council shall not be summoned except by his authority.

(6) The King may attend any meeting of the Council and, if he does attend, shall preside ; in the absence of the King the Prime Minister shall preside at meetings of the Council.

(7) The King's Privy Council may request any public officer or any other person holding or acting in any office established by or under this Constitution or any authority so established to assist it in the exercise of its functions (whether by way of attendance before the Council or otherwise) and any such officer or authority shall comply with any such request.

(8) Subject to the provisions of this section, the King's Privy Council may regulate its own procedure.

Permanent secretaries.

81. Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department and, subject to such direction and control, every department of government shall be under the supervision of a permanent secretary whose office shall be an office in the public service:

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

Secretary to the Cabinet.

82.—(1) There shall be a Secretary to the Cabinet whose office shall be an office in the public service.

(2) The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet, for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may from time to time direct.

Principal Legal Adviser.

83.—(1) There shall be a Principal Legal Adviser to the Government of Lesotho whose office shall be an office in the public service.

(2) It shall be the duty of the Principal Legal Adviser, whenever requested so to do, to advise the Government of Lesotho or any Minister thereof on any matter of law relating to the government of Lesotho and he shall have such other functions as may be conferred on him by this Constitution or any other law.

Director of Public Prosecutions.

84.—(1) There shall be a Director of Public Prosecutions whose office shall be an office in the public service.

(2) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person ;
- (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority ; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority :

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) For the purposes of this section, any appeal from a judgment in criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court (including the Judicial Committee) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(6) In the exercise of the functions vested in him by subsection (2) of this section and by section 62 of this Constitution, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

85. Subject to the provisions of this Constitution and of any other Constitution law, the King may constitute offices for Lesotho, make appointments of offices. to any such office and terminate any such appointment.

86.—(1) The King may—

- (a) grant to any person convicted of any offence under the law of Lesotho 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 punishment imposed on that person for such an offence ;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence ; and
- (d) remit the whole or part of any punishment imposed on any person for such an offence or any penalty or forfeiture otherwise due to the King on account of such an offence.

Prerogative
of Mercy.

(2) The powers of the King under subsection (1) of this section shall be exercised by him acting in accordance with the advice of the Pardons Committee.

(3) The powers conferred upon the King by subsection (1) of this section shall not extend to any trial before or any conviction in, or any sentence, penalty or forfeiture imposed by, any court-martial (however styled) other than a court-martial constituted by or under any law that was enacted by any legislature in Lesotho and that is applicable only to naval, military or air forces raised under any such law.

87.—(1) There shall be a Pardons Committee on the Prerogative of Mercy which shall consist of a Chairman and two other members appointed by the King acting in accordance with the advice of the Judicial Service Commission from among persons who are not public officers or members of either House of Parliament. Pardons
Committee
on Prerog-
ative of
Mercy.

(2) The office of the Chairman or of any other member of the Committee appointed under subsection (1) of this section shall become vacant

(a) at the expiration of three years from the date of his appointment ; or

(b) if the King, acting in accordance with the advice of the Judicial Service Commission, so directs ; or

(c) if any circumstances arise that, if he were not a member of the Committee, would cause him to be disqualified to be appointed as such under subsection (1) of this section.

(3) The Committee may act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(4) The Committee may regulate its own procedure.

Chiefs.

88.—(1) The twenty-two offices of Principal Chief or Ward Chief set out in Schedule 2 to this Constitution and the other offices of Chief recognised under the law in force immediately before the commencement of this Constitution are hereby established.

(2) Each Chief shall have such functions as are conferred on him by this Constitution or by or under any other law.

College of
Chiefs.

89.—(1) There shall be a College of Chiefs which, subject to the provisions of subsection (3) of this section, shall consist of the twenty-two Principal Chiefs and Ward Chiefs.

(2) The College of Chiefs shall have the functions conferred on it by section 33 and section 34 of this Constitution and the duty to maintain and safeguard the national archives in relation to those functions, and it shall also have such other functions as may be conferred on it by any other law.

(3) The College of Chiefs may, by resolution, co-opt members to assist it in the performance of its functions:

Provided that such co-opted members shall not exceed three in number at any one time.

(4) A co-opted member of the College of Chiefs may attend and take part in all meetings of the College but he shall not be entitled to vote on any question before the College.

(5) The College of Chiefs may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the College shall require the concurrence of a majority of all the members thereof (other than the co-opted members).

(6) Subject to the provisions of this section, the College of Chiefs may regulate its own procedure.

National
Planning
Board.

90.—(1) There shall be a National Planning Board which shall consist of the following members, that is to say—

(a) not more than three persons for the time being designated in that behalf by the King ;

(b) not more than three persons who are for the time being designated in that behalf by the Minister for the time being responsible for land and who possess such professional qualifications as, in the

- opinion of the Minister, will enable them to make a special contribution to the work of the Board ;
- (c) not more than three persons for the time being designated in that behalf by such other Minister or Ministers as may be so designated by the Prime Minister ; and
- (d) not more than three persons for the time being designated in that behalf by such organisations representative of local government authorities as may be so designated by the Minister for the time being responsible for local government.
- (2) The functions of the National Planning Board shall be—
- (a) to prepare plans for the economic development of Lesotho, including in particular the development, conservation and use of land and other natural resources ;
- (b) to co-ordinate and supervise the preparation of such plans by the Government of Lesotho and other public authorities ;
- (c) to advise the Government of Lesotho and other public authorities in relation to the economic development of Lesotho, including the matters particularly specified in paragraph (a) of this subsection ;
- (d) to advise the Government of Lesotho in relation to its policy in respect of land holding ; and
- (e) such other functions as may for the time being be conferred upon it by or under any law.

CHAPTER VIII

LAND

91. In this Chapter—

“ a rural area ” means any area that is not an urban area ; and

“ an urban area ” means any area that is for the time being so designated for the purposes of this Chapter by an Act of Parliament.

Interpre-
tation.

92. Without prejudice to any allocation of land that was made before the commencement of this Constitution and was subsisting immediately before such commencement or to any interests or rights in or over land that were otherwise vested in any person immediately before such commencement and without prejudice to any allocation of land or any grant of any interest or right in or over land that may, in accordance with the provisions of this Constitution and, subject thereto, of any other law, be made after the commencement of this Constitution, all land in Lesotho is vested in the Basotho Nation.

Land vested
in Basotho
Nation.

93.—(1) The power to allocate land that is vested in the Basotho Nation, to make grants of interests or rights in or over such land, to revoke or derogate from any allocation or grant that has been made or otherwise to terminate or restrict any interest or right that has been granted is vested in the King in trust for the Basotho Nation.

Power to
allocate
land, etc.
vested in
the King
in trust for
Basotho
Nation and

(2) The power that is vested in the King by subsection (1) of this section shall be exercised by him and, on his behalf, by the Chiefs in accordance with the provisions of this Constitution and any other law and the King and the Chiefs shall, in relation to the exercise of that power, be subject to such duties and have such further powers as may be imposed or conferred on them by this Constitution or any other law.

exercisable by
the King
and Chiefs.

Laws regulating principles on which land may be allocated, etc.

94. Parliament may make provision prescribing the allocations that may be made and the interests or rights that may be granted in exercise of the power conferred by section 93 of this Constitution, the grounds upon which and the circumstances in which such allocations or grants may or shall be so made or may or shall be revoked or derogated from or the interests or rights may or shall otherwise be so terminated or restricted and, generally, regulating the principles according to which and the manner in which the said power shall be exercised.

Primary authority in rural areas.

95.—(1) The power referred to in section 93 of this Constitution shall, in respect of any land in a rural area, be exercised in the first instance by the Headman within whose area of jurisdiction the land in question is situated.

(2) In exercising his functions under subsection (1) of this section, each Headman shall act after consultation with an advisory board consisting of five persons who shall be elected at a *pitso* by the adult inhabitants of the Headman's area of jurisdiction.

(3) Every Headman shall, after consultation with his advisory board, designate one or more persons (who may include the Headman himself and members of his advisory board) whose function it shall be to demarcate the boundaries of those parcels of land in respect of which an allocation or a grant has been or is to be made by the Headman under this section.

First level appeals in rural areas.

96.—(1) Any person who has applied to a Headman for the allocation of land or for the grant of any interest or right in or over land and who is aggrieved by the decision of the Headman in that matter given in pursuance of section 95 of this Constitution may appeal from that decision to the Chief who is the immediate superior of the Headman and within whose area of jurisdiction the land in question is situated:

Provided that when the Headman is himself a Principal Chief or Ward Chief, the appeal shall lie to the King and shall be disposed of by him as if it were an appeal made to him under section 99 of this Constitution.

(2) A Chief to whom an appeal is made under subsection (1) of this section shall consider the appeal without delay and shall then decide whether the decision that is the subject of the appeal shall be upheld, reversed or varied.

(3) In exercising his functions under subsection (2) of this section each Chief shall act after consultation with an advisory board consisting of five persons who shall be elected at a *pitso* by the adult inhabitants of the whole area within that Chief's jurisdiction:

Provided that where the Chief to whom the appeal is made is a Principal Chief or Ward Chief he shall act after consultation with such an advisory board as is specified in section 97(3) of this Constitution.

Second level appeals in rural areas.

97.—(1) Any person who has appealed to a Chief under section 96 of this Constitution and who is aggrieved by the decision given on that appeal by the Chief may appeal from that decision to the Principal Chief within whose area of jurisdiction the land in question is situated or, if it is situated within the area of jurisdiction of a Ward Chief, to that Ward Chief:

Provided that when the Chief is himself a Principal Chief or Ward Chief the appeal shall lie to the King and shall be disposed of by him as if it were an appeal made to him under section 99 of this Constitution.

(2) A Principal Chief or Ward Chief to whom an appeal is made under subsection (1) of this section shall consider the appeal without delay and shall then decide whether the decision that is the subject of the appeal shall be upheld, reversed or varied.

(3) In exercising his functions under subsection (2) of this section each Principal Chief or Ward Chief shall act after consultation with an advisory board consisting of—

- (a) seven persons elected at a *pitso* by the adult inhabitants of the whole area within that Principal Chief's or Ward Chief's jurisdiction ;
- (b) two persons for the time being designated in that behalf by the Principal Chief or Ward Chief ; and
- (c) two persons who are for the time being designated in that behalf by such Minister (or Ministers) as may be so designated by the Prime Minister and who possess such professional qualifications as, in the opinion of the Minister (or Ministers), will enable them to make a special contribution to the work of the board.

98.—(1) The power referred to in section 93 of this Constitution shall, in respect of any land in an urban area, be exercised in the first instance by the Principal Chief within whose area of jurisdiction the land in question is situated or, if it is situated within the area of jurisdiction of a Ward Chief, that Ward Chief. Primary authority in urban areas.

(2) In exercising his functions under subsection (1) of this section, each Principal Chief or Ward Chief shall act after consultation with the local government authority concerned, that is to say, the local government authority having jurisdiction over the area in which the land in question is situated or, if there is more than one such authority, such one of them as may for the time being be designated in that behalf by or under an Act of Parliament or, in default of such designation, by the Principal Chief or Ward Chief.

(3) Each Principal Chief or Ward Chief shall, after consultation with the local government authority concerned, designate one or more persons (who may include the Principal Chief or Ward Chief himself and members of that local government authority) whose function it shall be to demarcate the boundaries of those parcels of land in respect of which an allocation or a grant has been or is to be made by the Principal Chief or Ward Chief under this section.

99.—(1) Any person—

(a) who has appealed to a Principal Chief or Ward Chief under section 97 of this Constitution and who is aggrieved by the decision given on that appeal by the Principal Chief or Ward Chief ; or

(b) who has applied to a Principal Chief or Ward Chief for the allocation of land or for the grant of any interest or right in or over land and who is aggrieved by the decision of the Principal Chief or Ward Chief in that matter given by him in pursuance of section 98 of this Constitution,

Appeals to the King.

may appeal from that decision to the King.

(2) When an appeal is made to the King under subsection (1) of this section he shall consider the appeal without delay and shall then decide whether the decision that is the subject of the appeal shall be upheld, reversed or varied.

(3) In exercising his functions under subsection (2) of this section the King shall act after consultation with an advisory board consisting of—

- (a) such Minister as may for the time being be designated in that behalf by the Prime Minister (or any person for the time being nominated by that Minister to act in his place);
- (b) two persons who are for the time being designated in that behalf by the National Planning Board and who possess such professional qualifications as, in the opinion of the National Planning Board, will enable them to make a special contribution to the work of the advisory board;
- (c) two persons selected by the King in each case from among the Principal Chiefs and Ward Chiefs other than the Principal Chief or Ward Chief whose decision is the subject of the appeal; and
- (d) where the appeal is from a decision given by a Ward Chief, the Principal Chief who is superior to that Ward Chief.

Laws
regulating
procedure,
etc.

100. Parliament may make provision for the purpose of giving effect to the provisions of sections 95 to 99 (inclusive) of this Constitution and, without prejudice to the generality of the foregoing, may make provision for any of the following matters, that is to say—

- (a) the procedure for applications to the appropriate authority under section 95 or section 98 of this Constitution for an allocation of land or for a grant of any interest or right in or over land;
- (b) the procedure for the hearing of cases under section 95 or section 98 of this Constitution relating to the revocation of or a derogation from any allocation or grant or the termination or restriction of any interest or right;
- (c) the procedure in appeals under section 96, section 97 or section 99 of this Constitution;
- (d) the convening of *pitsos* for the purposes of section 95, section 96 or section 97 of this Constitution, the qualifications and disqualifications of persons for taking part in such *pitsos* and the conduct of elections of members of advisory boards at such *pitsos*; and
- (e) the entering upon and the inspection of land for purposes relating to the exercise of the power referred to in section 93 of this Constitution.

Jurisdiction
of courts.

101.—(1) Every decision given under section 95, section 96, section 97, section 98 or section 99 of this Constitution shall include a statement of the ground or grounds upon which that decision was given and that statement shall, subject to the provisions of subsections (2)(f) and (3)(g) of this section, be conclusive for all purposes and shall not be questioned in any court.

(2) Any person who has applied for the allocation of land or for the grant of any interest or right in or over land and who is aggrieved by any decision given in that matter under section 95, section 96, section 97, section 98 or section 99 of this Constitution may apply to the High Court for an order quashing that decision for any one or more of the following reasons, that is to say—

- (a) that the decision was not given after consultation with the appropriate advisory board (or, in the case of a decision given under section 98 of this Constitution, the local government authority concerned);
- (b) that the decision does not include an adequate statement of the grounds upon which it was given;
- (c) that the procedure by which the decision was arrived at was contrary to any provision regulating such procedure made in pursuance of section 100 of this Constitution or was contrary to the principles of natural justice (in so far as those principles are applicable to the case);
- (d) that the substance of the decision was in contravention of any provision in that behalf made in pursuance of section 94 of this Constitution;
- (e) that it appears on the face of the decision that it was otherwise given in contravention of any provision made in pursuance of section 94 of this Constitution; or
- (f) that the decision was given in bad faith, that is to say, with the intent to defeat or evade or otherwise to avoid giving effect to any provision made in pursuance of section 94 of this Constitution.

(3) Any person who is aggrieved by any decision given under section 95, section 96, section 97, section 98, or section 99 of this Constitution that an allocation of land or a grant of any interest or right in or over land should be revoked or derogated from or that any such interest or right should otherwise be terminated or restricted may apply to the High Court for an order quashing that decision for any one or more of the following reasons, that is to say—

- (a) that the decision was not given after consultation with the appropriate advisory board (or, in the case of a decision given under section 98 of this Constitution, the local government authority concerned);
- (b) that the decision does not include an adequate statement of the grounds upon which it was given;
- (c) that the procedure by which the decision was arrived at was contrary to any provision regulating such procedure made in pursuance of section 100 of this Constitution or was contrary to the principles of natural justice (in so far as those principles are applicable to the case);
- (d) that the grounds upon which the decision was given, or any of them, were not grounds upon which, under any provision made in pursuance of section 94 of this Constitution, it was lawful for that decision to be given;
- (e) that the substance of the decision was otherwise in contravention of any provision in that behalf made in pursuance of section 94 of this Constitution;
- (f) that it appears on the face of the decision that it was otherwise given in contravention of any provision made in pursuance of section 94 of this Constitution; or
- (g) that the decision was given in bad faith, that is to say, with the intent to defeat or evade or otherwise to avoid giving effect to any provision made under section 94 of this Constitution.

(4) The jurisdiction and powers conferred on the High Court by this section in any case shall be exercisable notwithstanding that there is a right of appeal in that case under section 96, section 97 or section 99 of this Constitution and that that right has not been exercised.

(5) Parliament may provide that all or any of the jurisdiction and powers conferred on the High Court by this section may be exercisable in addition or instead by any subordinate court but an appeal shall lie as of right to the High Court from any final decision given by any subordinate court in exercise of any jurisdiction or power conferred on it in pursuance of this subsection.

(6) An appeal from a decision given by a subordinate court in exercise of any jurisdiction or power conferred on it in pursuance of subsection (5) of this section—

(a) shall not lie direct to the Court of Appeal ; and

(b) shall not lie direct to the High Court if, under any law—

(i) an appeal lies as of right from that decision to another subordinate court ; or

(ii) an appeal lies from that decision to another subordinate court with the leave of the court that gave the decision or of some other court and that leave has not been withheld.

(7) The Chief Justice may make rules with respect to the practice and procedure of the High Court or of any subordinate court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time within which applications may be made to the court under this section).

(8) The provisions of subsections (2) and (3) of this section shall be without prejudice to any jurisdiction or powers that are vested by any law in any court to secure that the provisions of this Chapter are complied with (and in particular to secure the exercise by any person or authority of any duty imposed on that person or authority by or under this Chapter) or to any other jurisdiction or powers that are vested by any law in any court in relation to any power or duty that is conferred or imposed on any person or authority by or under this Chapter to allocate land, to make grants of interests or rights in or over land, to revoke or derogate from any allocation or grant that has been made or otherwise to terminate or restrict any interest or right that has been granted.

CHAPTER IX

FINANCE

Consolidated Fund. 102. All revenues or other moneys raised or received for the purposes of the government of Lesotho (not being revenues or other moneys that are payable, by or under an Act of Parliament, into some other fund established for any specific purpose or that may, by or under such an Act, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into and form a Consolidated Fund.

Withdrawals from Consolidated Fund or other public funds. 103.—(1) No moneys shall be withdrawn from the Consolidated Fund except—
(a) to meet expenditure that is charged upon the Fund by this Constitution or by any Act of Parliament ; or

(b) where the issue of those moneys has been authorised by an Appropriation Act or by an Act made in pursuance of section 105 of this Constitution.

(2) Where any moneys are charged by this Constitution or any Act of Parliament upon the Consolidated Fund or any other public fund, they shall be paid out of that fund by the Government of Lesotho to the person or authority to whom payment is due.

(3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law.

(4) Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Fund or any other public fund.

(5) The investment of moneys forming part of the Consolidated Fund shall be made in such manner as may be prescribed by or under an Act of Parliament.

(6) Notwithstanding the provisions of subsection (1) of this section, provision may be made by or under an Act of Parliament authorising withdrawals to be made from the Consolidated Fund, in such circumstances and to such extent as may be prescribed by or under an Act of Parliament, for the purpose of making repayable advances.

104.—(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before both Houses of Parliament in each financial year estimates of the revenues and expenditure of Lesotho for the next following financial year.

Authorisation of expenditure from Consolidated Fund by appropriation.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Constitution or by any Act of Parliament) have been approved by the National Assembly, a bill, to be known as an Appropriation bill, shall be introduced in the Assembly, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several heads of expenditure approved, to the purposes specified therein.

(3) If in respect of any financial year it is found—

(a) that the amount appropriated by the Appropriation Act to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act; or

(b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation Act or for a purpose to which no amount has been appropriated by that Act,

a supplementary estimate or, as the case may be, a statement of excess showing the sums required or spent shall be laid before both Houses of Parliament and, when the supplementary estimate or statement of excess has been approved by the National Assembly, a supplementary Appropriation bill shall be introduced in the Assembly, providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

105. Parliament may make provision under which, if it appears to the Minister for the time being responsible for finance that the Appropriation Act for any financial year will not come into operation by the beginning of that financial year, he may authorise the withdrawal

Authorisation of expenditure in advance of appropriation.

from the Consolidated Fund of moneys for the purpose of meeting expenditure necessary to carry on the government of Lesotho in respect of the period commencing with the beginning of that financial year and expiring four months thereafter or on the coming into operation of the Act, whichever is the earlier;

Provided that—

- (a) the moneys so authorised to be withdrawn in advance of the Appropriation Act for any financial year shall not exceed in total one-third of the sums included in the estimates of expenditure for the preceding financial year that have been laid before the Assembly;
- (b) no sums shall be so authorised to be withdrawn to meet expenditure on any head of expenditure in that financial year if no sums had been voted to meet expenditure on that head of expenditure in respect of the preceding financial year; and
- (c) any moneys so withdrawn shall be included, under separate votes for the several heads of expenditure in respect of which they were withdrawn, in the Appropriation Act.

Contingencies Fund.

106.—(1) Parliament may make provision for the establishment of a Contingencies Fund and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented and a supplementary Appropriation bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

107.—(1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as may be prescribed by or under an Act of Parliament.

(2) The salaries and allowances prescribed in pursuance of this section in respect of the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

(4) When a person's salary or other terms of service depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of the President of the Senate, the Speaker of the National Assembly, a judge of the Court of Appeal, a judge of the High Court, a member of the Constituency Delimitation Commission, a member of the Public Service Commission, the appointed member of the Judicial Service Commission, the Director of Public Prosecutions and the Director of Audit.

(6) Nothing in this section shall be construed as prejudicing the provisions of section 135 of this Constitution (which protects pensions rights in respect of service as a public officer).

108.—(1) All debt charges for which Lesotho is liable shall be a Public debt charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby.

109.—(1) There shall be a Director of Audit whose office shall be an office in the public service. Director of Audit.

(2) It shall be the duty of the Director of Audit—

(a) to satisfy himself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and

(b) at least once in every year to audit and report on the public accounts of the Government of Lesotho, the accounts of all officers and authorities of that Government, the accounts of all courts in Lesotho (other than courts no part of the expenses of which are defrayed directly out of moneys provided by Parliament), the accounts of every Commission established by this Constitution and the accounts of the Clerk to each House of Parliament.

(3) The Director of Audit and any officer authorised by him shall have access to all books, records, returns, reports and other documents that in his opinion relate to any of the accounts referred to in subsection (2) of this section and to all cash, stamps, securities, stores and other property of whatever kind that he considers it necessary to inspect in connection with any of those accounts and that is in the possession of any officer or authority of the Government of Lesotho.

(4) The Director of Audit shall submit every report made by him in pursuance of subsection (2) of this section to the Minister for the time being responsible for finance who shall, not later than seven days after each House of Parliament first meets after he has received the report, lay it before that House.

(5) The Director of Audit shall exercise such other functions in relation to the accounts of the Government of Lesotho or the accounts of other authorities or bodies established by law for public purposes as may be prescribed by or under an Act of Parliament.

(6) In the exercise of his functions under subsections (2), (3) and (4) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER X

THE JUDICATURE

Part 1

The High Court

110.—(1) There shall be for Lesotho a High Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or by or under any other law. Establishment of High Court.

(2) The judges of the High Court shall be the Chief Justice and such number, if any, of other judges (hereinafter referred to as "the puisne judges") as may be prescribed by Parliament:

Provided that the office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(3) The High Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(4) The High Court shall sit in such places as the Chief Justice may appoint.

Appointment
of judges of
High Court.

111.—(1) The Chief Justice shall be appointed by the King, acting in accordance with the advice of the Prime Minister.

(2) The puisne judges shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission.

(3)—(a) A person shall not be qualified to be appointed as a judge of the High Court unless—

(i) he holds or has held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament or a court having jurisdiction in appeals from such a court; or

(ii) he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than five years.

(b) In this subsection "the specified qualifications" means the professional qualifications specified by the Legal Practitioners Proclamation(a) (or by or under any law amending or replacing that Proclamation), one of which must be held by any person before he may apply under that Proclamation (or under any such law) to be admitted as a legal practitioner in Lesotho.

(4) If the office of Chief Justice is vacant or the Chief Justice is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the judges of the Court of Appeal or the puisne judges or such other person qualified to be appointed as a judge of the High Court as the King, acting in accordance with the advice of the Prime Minister, may appoint:

Provided that—

(a) a person may be appointed under this subsection notwithstanding that he has attained the age prescribed for the purposes of section 112(1) of this Constitution; and

(b) a person appointed under this subsection may, notwithstanding the assumption or resumption of the functions of the office of Chief Justice by the holder of that office, continue to act as Chief Justice for so long thereafter and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(a) Proclamation No. 93 of 1955; Revised Laws of Basutoland 1960, p. 1087.

(5) If the office of any puisne judge is vacant or if any such judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office or if the Chief Justice advises the King that the state of business in the High Court so requires, the King, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a judge of the High Court to act as a puisne judge of that court:

Provided that a person may act as a judge notwithstanding that he has attained the age prescribed for the purposes of section 112(1) of this Constitution.

(6) Any person appointed under subsection (5) of this section to act as a puisne judge shall, subject to the provisions of sections 112(1) and 112(7) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the King, acting in accordance with the advice of the Judicial Service Commission:

Provided that, notwithstanding the expiration of the period of his appointment or the revocation of his appointment, he may thereafter continue to act as a puisne judge for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

112.—(1) Subject to the provisions of this section, a person holding the office of a judge of the High Court shall vacate that office when he attains the prescribed age. Tenure of
office of
judges of
High Court.

(2) Notwithstanding that he has attained the age prescribed for the purposes of subsection (1) of this section, a person holding the office of a judge of the High Court may continue in office for so long after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) A judge of the High 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 so removed except in accordance with the provisions of this section.

(4) A judge of the High Court shall be removed from office by the King if the question of his removal has been referred by the King to the Judicial Committee under subsection (5) of this section and the Judicial Committee has advised the King that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the Prime Minister or, in the case of a puisne judge, the Chief Justice represents to the King that the question of removing a judge under this section ought to be investigated, then—

(a) the King shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected in accordance with the provisions of subsection (6) of this section from among persons who hold or have held high judicial office ;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the question of the removal of that judge from office should be referred by him to the Judicial Committee ; and

(c) if the tribunal so recommends, the King shall refer the question to the Judicial Committee which shall then advise him thereon.

(6) When the question of removing the Chief Justice is to be investigated the members of the tribunal shall be selected by the Chairman of the Public Service Commission, and when the question of removing a puisne judge is to be investigated they shall be selected by the Chief Justice.

(7) If the question of removing a judge from office has been referred to a tribunal under subsection (5) of this section, the King, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice and in accordance with the advice of the Chief Justice in the case of a puisne judge, may suspend the judge from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect—

(a) if the tribunal recommends to the King that the question of the removal of the judge from office should not be referred to the Judicial Committee ; or

(b) if the Judicial Committee advises the King that the judge should not be removed from office.

(8) The prescribed age for the purposes of subsection (1) of this section is the age of sixty-two years or such other age as may be prescribed by Parliament :

Provided that an Act of Parliament, to the extent to which it alters the prescribed age after the appointment of a person to be a judge of the High Court, shall not have effect in relation to that person unless he consents that it should have effect.

Oath by
judges of
High Court.

113. Before entering upon the duties of his office, a judge of the High Court shall take and subscribe such oath for the due execution of his office as may be prescribed by Parliament.

Reference to
High Court
in cases
involving
interpreta-
tion of
Constitution.

114.—(1) Where any question as to the interpretation of this Constitution arises in any proceedings in any subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 121 of this Constitution to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, the Judicial Committee.

Part 2

The Court of Appeal

Establish-
ment of
Court of
Appeal.

115.—(1) There shall be for Lesotho a Court of Appeal which shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The judges of the Court of Appeal shall be—

(a) the President ;

(b) such number, if any, of Justices of Appeal as may be prescribed by Parliament ; and

(c) the Chief Justice and the puisne judges, if any, of the High Court ex officio :

Provided that Parliament may make provision for the office of President to be held by the Chief Justice ex officio.

(3) The office of a Justice of Appeal shall not be abolished while there is a substantive holder thereof.

(4) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(5) The Court may, in accordance with any directions issued from time to time by the President, sit in Lesotho or elsewhere to dispose of any matter in relation to an appeal, not involving the decision of the appeal, which may be disposed of by a single judge.

116.—(1) Subject to the provisions of the proviso to section 115(2) of this Constitution, the President shall be appointed by the King, acting in accordance with the advice of the Prime Minister. Appointment of judges of Court of Appeal.

(2) The Justices of Appeal shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission.

(3) (a) A person shall not be qualified to be appointed as the President or as a Justice of Appeal unless—

(i) he holds or has held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament or a court having jurisdiction in appeals from such a court ; or

(ii) he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.

(b) In this subsection “the specified qualifications” means the professional qualifications specified by the Legal Practitioners Proclamation (or by or under any law amending or replacing that Proclamation), one of which must be held by any person before he may apply under that Proclamation (or under any such law) to be admitted as a legal practitioner in Lesotho.

(4) If the office of President is vacant or the President is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the judges of the Court of Appeal or such other person qualified to be appointed as a judge of the Court of Appeal as the King, acting in accordance with the advice of the Prime Minister, may appoint:

Provided that—

(a) a person may be appointed under this subsection notwithstanding that he has attained the age prescribed for the purposes of section 117(1) of this Constitution ; and

(b) a person appointed under this subsection may, notwithstanding the assumption or resumption of the functions of the office of President by the holder of that office, continue to act as President

for so long thereafter and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(5) If the office of a Justice of Appeal is vacant or if any such Justice of Appeal is appointed to act as President or is for any reason unable to perform the functions of his office or if the President advises the King that the state of business in the Court of Appeal so requires, the King, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a Justice of Appeal to act as a Justice of Appeal:

Provided that a person may act as a Justice of Appeal notwithstanding that he has attained the age prescribed for the purposes of section 117(1) of this Constitution.

(6) Any person appointed under subsection (5) of this section to act as a Justice of Appeal shall, subject to the provisions of sections 117(1) and 117(7) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the King, acting in accordance with the advice of the Judicial Service Commission:

Provided that, notwithstanding the expiration of the period of his appointment or the revocation of his appointment, he may thereafter continue to act as a Justice of Appeal for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Tenure of
office of
appointed
judges of
Court of
Appeal.

117.—(1) Subject to the provisions of this section, a person holding the office of an appointed judge of the Court of Appeal shall vacate that office when he attains the prescribed age.

(2) Notwithstanding that he has attained the age prescribed for the purposes of subsection (1) of this section, an appointed judge may continue in office for so long after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) An appointed judge 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 so removed except in accordance with the provisions of this section.

(4) An appointed judge shall be removed from office by the King if the question of his removal has been referred by the King to a tribunal appointed under subsection (5) of this section and the tribunal has advised the King that the appointed judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the Prime Minister or, in the case of a Justice of Appeal, the President recommends to the King that the question of removing an appointed judge under this section ought to be investigated, then—

(a) the King shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected in accordance with the provisions of subsection (6) of this section from among persons who hold or have held high judicial office;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the King and advise the King whether the appointed

judge ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(6) When the question of removing the President is to be investigated the members of the tribunal shall be selected by the Chairman of the Public Service Commission, and when the question of removing a Justice of Appeal is to be investigated they shall be selected by the President.

(7) If the question of removing an appointed judge from office has been referred to a tribunal under subsection (5) of this section, the King, acting in accordance with the advice of the Prime Minister in the case of the President and in accordance with the advice of the President in the case of a Justice of Appeal, may suspend the appointed judge from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal advises the King that the appointed judge should not be removed from office.

(8) The prescribed age for the purposes of subsection (1) of this section is the age of sixty-two years or such other age as may be prescribed by Parliament:

Provided that—

(a) a person may be appointed as President or as a Justice of Appeal for a fixed period of three years notwithstanding that he has attained the age referred to in this subsection or that he will before the expiry of his appointment have attained that age; and

(b) an Act of Parliament, to the extent to which it alters the prescribed age after the appointment of a person to be the President or a Justice of Appeal, shall not have effect in relation to that person unless he consents that it should have effect.

(9) In this section the expression "appointed judge of the Court of Appeal" and the expression "appointed judge" mean a person appointed under subsection (1) or, as the case may be, subsection (2), of section 116 of this Constitution.

118. Before entering upon the duties of his office, a judge of the Court of Appeal shall take and subscribe such oath for the due execution of his office as may be prescribed by Parliament.

Oath by judges of Court of Appeal.

119.—(1) The President may make rules for regulating the practice and procedure of the Court of Appeal in relation to appeals to the Court (including the practice and procedure of any court from which such appeals are brought) whether before or after final judgment in the Court of Appeal:

Supplementary.

Provided that no rule which may involve an increase in the expenses of the Court of Appeal shall be made except with the concurrence of the Minister for the time being responsible for finance, but the validity of a rule shall not in any proceedings in any court be called in question either by the court or by any party to the proceedings on the ground only that it was a rule in which the concurrence of that Minister was necessary and that he did not concur or is not expressed to have concurred in the making thereof.

(2) The Court of Appeal shall, when determining any matter other than an interlocutory matter, be composed of an uneven number of judges, not being less than three.

*Part 3**Subordinate courts and courts-martial*

Establishment of other courts.

120.—(1) Parliament may establish courts subordinate to the High Court and courts-martial, and any such court shall, subject to the provisions of this Constitution, have such jurisdiction and powers as may be conferred on it by or under any law.

(2) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court-martial and may make such orders, issue such process and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by subsection (2) of this section.

*Part 4**Appeals*

Appeals on constitutional questions and questions relating to fundamental human rights.

121.—(1) Subject to the provisions of section 54(6) of this Constitution, an appeal shall lie as of right to the Court of Appeal from decisions of the High Court in the following cases, that is to say—

(a) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;

(b) final decisions given in exercise of the jurisdiction conferred on the High Court by section 20 of this Constitution (which relates to the enforcement of fundamental human rights and freedoms); and

(c) final decisions of the High Court in the determination of any of the questions for the determination of which a right of access to the High Court is guaranteed by section 16 of this Constitution (which relates to the rights of persons whose property is compulsorily acquired);

and an appeal shall lie as of right direct to the Judicial Committee from any decision of the Court of Appeal in any such case.

(2) In this section—

(a) references to final decisions of the High Court shall be construed as including references to decisions given in pursuance of section 20(4) or section 114(2) of this Constitution; and

(b) references to decisions of the Court of Appeal in any cases specified in subsection (1) of this section shall be construed as including references to decisions given by that Court on appeal from decisions of the High Court in any such cases.

Other appeals from High Court and Court of Appeal.

122.—(1) Subject to the provisions of section 54(6) of this Constitution, an appeal shall lie as of right to the Court of Appeal from any decision given by the High Court in any of the cases to which this subsection applies and to the Judicial Committee from any decision given in any such case by the Court of Appeal.

(2) The cases to which subsection (1) of this section applies are—

(a) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of 1000 rands or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of 1000 rands or upwards;

- (b) final decisions in proceedings for dissolution or nullity of marriage ; and
- (c) such other decisions in civil proceedings as may be prescribed by Parliament.

(3) Subject to the provisions of section 54(6) of this Constitution, an appeal shall lie, with the leave of the court that gave the decision, from the High Court to the Court of Appeal and from the Court of Appeal to the Judicial Committee in the following cases, that is to say—

- (a) decisions in any civil proceedings where, in the opinion of the court that gave the decision, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Appeal or to the Judicial Committee, as the case may be ; and
- (b) such other decisions in civil proceedings as may be prescribed by Parliament.

(4) Subject to the provisions of section 35 of this Constitution, an appeal shall, with the special leave of the Judicial Committee, lie to the Judicial Committee from the decision of the Court of Appeal in any civil or criminal matter.

123.—(1) Subject to the provisions of subsection (2) of this section, an appeal shall lie as of right to the High Court from final decisions given by any subordinate court or a court-martial in any civil or criminal proceedings on questions as to the interpretation of this Constitution (not being questions that have been referred to the High Court in pursuance of section 114(1) of this Constitution) or as to the contravention of any of the provisions of sections 4 to 19 (inclusive) of this Constitution (not being questions that have been referred to the High Court in pursuance of section 20(3) of this Constitution).

Appeals from subordinate courts and courts-martial.

(2) An appeal from a decision given by a subordinate court or a court-martial in any of the cases referred to in subsection (1) of this section—

- (a) shall not lie direct to the Court of Appeal ; and
- (b) shall not lie direct to the High Court if, under any law—
 - (i) an appeal lies as of right from that decision to another subordinate court or court-martial ; or
 - (ii) an appeal lies from that decision to another subordinate court or court-martial with the leave of the court that gave the decision or of some other court and that leave has not been withheld.

(3) An appeal shall lie as of right to the High Court from final decisions given by any subordinate court in any case in which, if the decision of the subordinate court were a decision of the High Court, an appeal would lie as of right to the Court of Appeal under section 122 of this Constitution :

Provided that—

- (a) an appeal shall not lie to the High Court from a decision given by a subordinate court in any such case if, under any law—
 - (i) an appeal lies as of right from that decision to the Court of Appeal ; or

- (ii) an appeal lies from that decision to the Court of Appeal with the leave of the court that gave the decision or of some other court and that leave has not been withheld ; and
- (b) an appeal shall not lie direct to the Court of Appeal or direct to the High Court from a decision given by a subordinate court in any such case if, under any law—
 - (i) an appeal lies as of right from that decision to another subordinate court ; or
 - (ii) an appeal lies from that decision to another subordinate court with the leave of the court that gave the decision or of some other court and that leave has not been withheld.
- (4) An appeal shall lie from a subordinate court or a court-martial to—
 - (a) the High Court ; or
 - (b) the Court of Appeal

in such cases (other than the cases referred to in subsection (1) or subsection (3) of this section) as may be prescribed by any law.

Supple-
mentary.

124.—(1) Any decision given by the Judicial Committee in any appeal under this Chapter shall be enforced in like manner as if it were a decision of the court from whose decision the appeal to the Judicial Committee was made.

(2) Subject to the provisions of subsection (1) of this section, the Judicial Committee shall, in relation to any appeal to it under this Chapter in any case, have all the jurisdiction and powers possessed in relation to that case by the court from whose decision the appeal to the Judicial Committee was made.

Part 5

Judicial Service Commission

Judicial
Service
Commission.

125.—(1) There shall be a Judicial Service Commission which shall consist of—

- (a) the Chief Justice, as Chairman ;
- (b) the Chairman of the Public Service Commission or some other member of that Commission designated by the Chairman thereof ; and
- (c) a member who shall be styled the appointed member and who shall be appointed by the King, acting in accordance with the advice of the Chief Justice, from among persons who hold or have held high judicial office :

Provided that in relation to the appointment of a person to hold or to act in the office of Justice of Appeal, the President of the Court of Appeal shall be a member of the Commission.

(2) A person shall not be qualified to be the appointed member of the Commission if—

- (a) he is, or has at any time been, a member of either House of Parliament or a member of either House of the Parliament constituted under the Basutoland Order 1965 or a member (other than an official or a nominated member) of the Basutoland National Council constituted under the Basutoland (Constitution) Order in Council 1959 ; or

(b) he is, or has at any time been, nominated as a candidate for election as a member of the National Assembly constituted under this Constitution or the Basutoland Order 1965 or of the Basutoland National Council ; or

(c) he is, or has at any time been, the holder of an office in any political organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of the National Assembly constituted under this Constitution or the Basutoland Order 1965 or of the Basutoland National Council or of any local government authority.

(3) The appointed member of the Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office.

(4) Subject to the provisions of this section, the office of the appointed member of the Commission shall become vacant—

(a) at the expiration of five years from the date of his appointment ; or

(b) if any circumstances arise that, if he were not the appointed member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(5) The appointed member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(6) The appointed member of the Commission shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the King that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the Chairman of the Commission represents to the King that the question of removing the appointed member of the Commission under this section ought to be investigated, then—

(a) the King shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chairman of the Commission from among persons who hold or have held high judicial office ; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the appointed member ought to be removed under this section.

(8) If the question of removing the appointed member of the Commission has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Chairman of the Commission, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the King that that member should not be removed.

(9) If the office of the appointed member of the Commission is vacant or if the person holding that office is for any reason unable to

exercise the functions of his office, the King, acting in accordance with the advice of the Chief Justice, may appoint a person who is qualified to be the appointed member to act as that member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting is filled or, as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the King, acting in accordance with the advice of the Chief Justice.

(10) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.

(11) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of Lesotho for the purpose of the discharge of its functions.

(12) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

Appoint-
ment, etc.
of judicial
officers.

126.—(1) The power to appoint persons to hold or act in any offices to which this section applies (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Judicial Service Commission.

(2) The Judicial Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more of its members or to any judge of the High Court or to any person holding or acting in an office to which this section applies.

(3) The offices to which this section applies are—

(a) the office of Registrar or Assistant Registrar of the High Court or Registrar or Assistant Registrar of the Court of Appeal;

(b) the office of magistrate;

(c) the office of member of any subordinate court (other than the court of any magistrate who is authorised, by or under any law, to hold such a court by virtue of his holding or acting in any other public office); or

(d) such other offices connected with any court as may be prescribed by or under an Act of Parliament.

(4) Save in so far as Parliament otherwise provides, references in this section to a member of any court shall not be construed as including references to an assessor whose functions are advisory or consultative only.

(5) In this section references to a court do not include references to a court-martial.

CHAPTER XI

THE PUBLIC SERVICE

127.—(1) There shall be a Public Service Commission which shall consist of a Chairman and not less than two nor more than four other members, who shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission. Public
Service
Commission.

(2) A person shall not be qualified to be appointed as a member of the Commission if—

(a) he is, or has at any time been, a member of either House of Parliament or a member of either House of the Parliament constituted under the Basutoland Order 1965 or a member (other than an official or a nominated member) of the Basutoland National Council constituted under the Basutoland (Constitution) Order in Council 1959; or

(b) he is, or has at any time been, nominated as a candidate for election as a member of the National Assembly constituted under this Constitution or the Basutoland Order 1965 or of the Basutoland National Council; or

(c) he is, or has at any time been, the holder of an office in any political organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of the National Assembly constituted under this Constitution or the Basutoland Order 1965 or of the Basutoland National Council or of any local government authority; or

(d) he is a public officer.

(3) A member of the Commission shall not, within the period of three years commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office.

(4) Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

(a) at the expiration of five years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.

(5) A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(6) A member of the Commission shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the King that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(7) If the Prime Minister in the case of the Chairman of the Commission or the Chairman in the case of any other member represents to the King that the question of removing a member of the Commission under this section ought to be investigated, then—

- (a) the King shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office ; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the member ought to be removed under this section.

(8) If the question of removing a member of the Commission has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Chief Justice, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the King that that member should not be removed.

(9) If the office of Chairman of the Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the other members of the Commission as may for the time being be designated in that behalf by the King, acting in accordance with the advice of the Judicial Service Commission.

(10) If at any time there are less than two members of the Commission besides the Chairman or if any such member is appointed to act as Chairman or is for any reason unable to exercise the functions of his office, the King, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the King, acting in accordance with the advice of the Judicial Service Commission.

(11) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(12) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister, may confer powers or impose duties on any public officer or on any authority of the Government of Lesotho for the purpose of the discharge of its functions.

(13) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of its members.

Appoint-
ment, etc.
of public
officers.

128.—(1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), the power to exercise

disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

(2) Subject to the provisions of this Chapter, the Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the Prime Minister, to any public officer.

(3) The provisions of this section shall not apply in relation to the following offices, that is to say—

- (a) the office of a judge of the Court of Appeal or of the High Court ;
- (b) except in relation to appointments thereto or to act therein, the offices of Director of Public Prosecutions and Director of Audit ;
- (c) so far only as concerns appointments thereto or to act therein, the office of permanent secretary, the Secretary to the Cabinet and the Principal Legal Adviser to the Government of Lesotho ;
- (d) any office to which section 126 of this Constitution (which relates to offices within the jurisdiction of the Judicial Service Commission) applies ;
- (e) the office of Ambassador, High Commissioner or other principal representative of Lesotho in any other country ; and
- (f) to the extent provided for by section 134 of this Constitution, offices in the Police Force.

(4) No person shall be appointed under this section to or to act in any office on the King's personal staff except with the concurrence of the King.

(5) Before any of the powers conferred by this section in relation to the Clerk of a House of Parliament or a member of his staff are exercised by the Public Service Commission or any other person or authority, the Commission or that person or authority shall consult with the President or Speaker of that House.

(6) Before the Public Service Commission or any other person or authority exercises its powers under this section to appoint to or to act in any public office any person who holds or is acting in any office the power to make appointments to which is vested by this Constitution in the Judicial Service Commission, the Public Service Commission or that person or authority shall consult with the Judicial Service Commission.

(7) A public officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of a judicial function conferred on him unless the Judicial Service Commission concurs therein.

129.—(1) The power to appoint a person to hold or act in any office to which this subsection applies shall vest in the Prime Minister, acting after consultation with the Public Service Commission :

Provided that the power to appoint a person to hold or act in any such office upon transfer from another such office carrying the same emoluments shall vest in the Prime Minister.

Permanent
secretaries
and
Secretary
to the
Cabinet.

(2) The offices to which subsection (1) of this section applies are the office of any permanent secretary and the office of the Secretary to the Cabinet.

Principal
Legal
Adviser.

130.—(1) The power to appoint a person to hold or act in the office of Principal Legal Adviser to the Government of Lesotho shall vest in the Public Service Commission, acting after consultation with the Prime Minister.

(2)(a) A person shall not be qualified to be appointed to hold or act in the office of Principal Legal Adviser unless he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than five years.

(b) In this subsection "the specified qualifications" means the professional qualifications specified by the Legal Practitioners Proclamation (or by or under any law amending or replacing that Proclamation), one of which must be held by any person before he may apply under that Proclamation (or under any such law) to be admitted as a legal practitioner in Lesotho.

Director
of Public
Prosecutions.

131.—(1)(a) A person shall not be qualified to be appointed to hold the office of Director of Public Prosecutions unless he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than five years.

(b) In this subsection "the specified qualifications" means the professional qualifications specified by the Legal Practitioners Proclamation (or by or under any law amending or replacing that Proclamation), one of which must be held by any person before he may apply under that Proclamation (or under any such law) to be admitted as a legal practitioner in Lesotho.

(2) If the office of Director of Public Prosecutions is vacant or if the Director of Public Prosecutions is for any reason unable to exercise the functions of his office, a person qualified for appointment to that office may be appointed to act therein, and any person so appointed shall, subject to the provisions of subsections (3), (5) and (7) of this section, continue to act until a person has been appointed to the office of Director of Public Prosecutions and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

(3) Subject to the provisions of subsection (5) of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.

(4) A person holding the office of Director of Public Prosecutions may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) The Director of Public Prosecutions shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the King that he ought to be removed for inability as aforesaid or for misbehaviour.

(6) If the Prime Minister or the Chairman of the Public Service Commission represents to the King that the question of removing the Director of Public Prosecutions under this section ought to be investigated, then—

(a) the King shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the Director of Public Prosecutions ought to be removed under this section.

(7) If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Public Service Commission, may suspend the Director of Public Prosecutions from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the King that the Director of Public Prosecutions should not be removed.

(8) The prescribed age for the purposes of subsection (3) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that an Act of Parliament, to the extent to which it alters the prescribed age after the appointment of a person to be or to act as Director of Public Prosecutions, shall not have effect in relation to that person unless he consents that it should have effect.

132.—(1) If the office of Director of Audit is vacant or if the Director of Audit is for any reason unable to exercise the functions of his office, a person may be appointed to act as Director of Audit, and any person so appointed shall, subject to the provisions of subsections (2), (4) and (6) of this section, continue to act until a person has been appointed to the office of Director of Audit and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions. Director of Audit.

(2) Subject to the provisions of subsection (4) of this section, the Director of Audit shall vacate his office when he attains the prescribed age.

(3) A person holding the office of Director of Audit may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(4) The Director of Audit shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (5) of this section and the tribunal has recommended to the King that he ought to be removed for inability as aforesaid or for misbehaviour.

(5) If the Prime Minister or the Chairman of the Public Service Commission represents to the King that the question of removing the Director of Audit under this section ought to be investigated, then—

(a) the King shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommend to him whether the Director of Audit ought to be removed under this section.

(6) If the question of removing the Director of Audit has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Public Service Commission, may

suspend the Director of Audit from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the King that the Director of Audit should not be removed.

(7) A person who holds or has held the office of Director of Audit shall not be eligible to be appointed to or to act in any other public office.

(8) The prescribed age for the purposes of subsection (2) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that an Act of Parliament to the extent to which it alters the prescribed age after the appointment of a person to be or to act as Director of Audit, shall not have effect in relation to that person unless he consents that it should have effect.

Principal
representa-
tives of
Lesotho
abroad.

133.—(1) The power to appoint persons to hold or act in offices to which this section applies and to remove from office persons holding or acting in such offices shall vest in the King, acting in accordance with the advice of the Prime Minister.

(2) Before tendering advice for the purposes of this section in relation to any person who holds any office in the public service, other than an office to which this section applies, the Prime Minister shall consult the Public Service Commission.

(3) The offices to which this section applies are the offices of Ambassador, High Commissioner or other principal representative of Lesotho in any other country.

Police.

134.—(1) Parliament may provide that any of the powers vested in the Public Service Commission by section 128 of this Constitution shall, in relation to the offices to which this section applies, be vested in the Commissioner of Police and in such officers subordinate to him as may be specified by or under an Act of Parliament.

(2) Any power that is vested, in pursuance of subsection (1) of this section, in the Commissioner or any other officer of the Police Force shall, unless Parliament otherwise provides, be so vested to the exclusion of the Public Service Commission, but provision may be made by or under an Act of Parliament that the exercise of that power shall be subject to confirmation by, or to appeal to, the Public Service Commission or any officer of the Police Force of higher rank than the officer by whom it was exercised.

(3) The provisions of section 128(2) of this Constitution shall not apply in relation to offices in the Police Force.

(4) This section applies to all offices in the Police Force of or below the rank of Inspector.

(5) In this section "the Commissioner of Police" means the officer, by whatever name called, commanding the Police Force.

(6) If provision is made by or under an Act of Parliament—

(a) altering the ranks into which the Lesotho Mounted Police established under the Police Proclamation(a) is divided; or

(a) Proclamation No. 27 of 1957; Revised Laws of Basutoland 1960, p. 1253.

(b) establishing a police force other than the Lesotho Mounted Police or altering the ranks into which any such police force is divided, the Public Service Commission may, by notice published in the Gazette, specify some rank (other than the rank of Inspector) in the Lesotho Mounted Police or, as the case may be, in that other police force as being equivalent to the rank of Inspector as it existed in the Basutoland Mounted Police under the law in force immediately before the coming into operation of this Constitution and the reference in subsection (4) of this section to the rank of Inspector shall then be construed as if it were, in relation to the Lesotho Mounted Police or, as the case may be, in relation to that other police force, a reference to the rank for the time being so specified.

135.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before the coming into operation of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person. Pensions laws and protection of pensions rights.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

(a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before the date on which this Constitution came into operation, be the law that was in force immediately before that date; and

(b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after the date on which this Constitution came into operation, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Widows' and Orphans' Pensions Proclamation^(a) or under any law amending or replacing that Proclamation or under any other law providing for the funding of pensions benefits, they are a charge on a fund established by that Proclamation or by any such law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the Consolidated Fund.

(5) All sums that, under the Widows' and Orphans' Pensions Proclamation or under any law amending or replacing that Proclamation or under any other law providing for the funding of pensions benefits, are to be paid by the Government of Lesotho into any fund established by that Proclamation or by any such law or are otherwise to be paid by the Government of Lesotho for the purposes of that Proclamation or any such law shall be a charge on the Consolidated Fund.

(6) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(a) Proclamation No. 25 of 1949; Revised Laws of Basutoland 1960, p. 1150.

(7) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

(8) For the purposes of this section—

- (a) to the extent to which the emoluments attaching thereto were payable by Basutoland, the office of judge of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal ;
- (b) to the extent aforesaid, the office of Registrar of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal, or other officer of that Court, for Basutoland ;
- (c) to the extent aforesaid, any office under the High Commissioner for South Africa or the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland ;
- (d) to the extent aforesaid, any office in the joint audit service of Basutoland, the Bechuanaland Protectorate and Swaziland ;
- (e) to the extent aforesaid, the office of Agent for the High Commission Territories, Witwatersrand Agencies, or any office under the Agent or any office for the time being succeeding to the functions of any such office ;
- (f) to the extent aforesaid, any office in the service of such body, authority, department, service or other organisation as the King may designate by notice under his hand which shall be published in the Gazette ; and
- (g) any office in any naval, military or air force established by or under any Act of Parliament

shall be regarded as offices in the public service.

Power to withhold pensions, etc.

136.—(1) Where under any law any person or authority has a discretion—

- (a) to decide whether or not any pensions benefits shall be granted ;
- or
- (b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in his being granted benefits of a smaller amount.

(3) The Public Service Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of judge of the Court of Appeal, judge of the High Court, Director of Public Prosecutions or Director of Audit has been guilty of misbehaviour in that office unless he has been removed from that office by reason of such misbehaviour.

(4) Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held any office to which, at the time of such action, section 126 of this Constitution applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial Service Commission.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) For the purposes of this section—

- (a) to the extent to which the emoluments attaching thereto were payable by Basutoland, the office of judge of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal;
- (b) to the extent aforesaid, the office of Registrar of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal, or other officer of that Court, for Basutoland;
- (c) to the extent aforesaid, any office under the High Commissioner for South Africa or the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland;
- (d) to the extent aforesaid, any office in the joint audit service of Basutoland, the Bechuanaland Protectorate and Swaziland;
- (e) to the extent aforesaid, the office of Agent for the High Commission Territories, Witwatersrand Agencies, or any office under the Agent or any office for the time being succeeding to the functions of any such office;
- (f) to the extent aforesaid, any office in the service of such body, authority, department, service or other organisation as the King may designate by notice under his hand which shall be published in the Gazette; and
- (g) any office in any naval, military or air force established by or under any Act of Parliament

shall be regarded as offices in the public service.

CHAPTER XII

MISCELLANEOUS

137.—(1) Any person who is appointed, elected or otherwise selected to any office established by this Constitution or any office of Minister established under this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or otherwise selected: Resignations.

Provided that—

- (a) the resignation of a person from the office of President or Speaker or Vice-President or Deputy Speaker of either House of Parliament shall be addressed to that House; and
- (b) the resignation of any person from the office of member of either House of Parliament shall be addressed to the President or Speaker of that House.

(2) The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it.

Re-appointments and concurrent appointments.

138.—(1) Where any person has vacated any office established by this Constitution or any office of Minister established under this Constitution, he may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.

(2) Where this Constitution vests in any person or authority the power to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Interpretation.

139.—(1) In this Constitution, unless the context otherwise requires—
“Basutoland” means the former Colony of Basutoland;

“Chief” does not include the King but includes Principal Chief, Ward Chief and Headman and any other Chief whose office is established by section 88(1) of this Constitution, and references to a Chief are references to the person who, under the law for the time being in force in that behalf, is recognised as entitled to exercise the functions of the office of that Chief;

“the Commonwealth” means Lesotho, any country to which section 29 of this Constitution applies and any dependency of any such country;

“court-martial” means any court-martial established by Parliament under section 120 of this Constitution;

“the financial year” means the period of twelve months ending on 31st March in any year or on such other day as Parliament may prescribe;

“high judicial office” means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament or the office of a judge of a court having jurisdiction in appeals from such a court;

“the Gazette” means the Lesotho Government Gazette;

“the Judicial Committee” means the Judicial Committee of the Privy Council established by the Judicial Committee Act 1833(a) as from time to time amended by any Act of the Parliament of the United Kingdom;

“law” includes—

(i) any instrument having the force of law made in exercise of a power conferred by a law; and

(ii) the customary law of Lesotho and any other unwritten rule of law,

and “lawful” and “lawfully” shall be construed accordingly;

“oath” includes affirmation;

“the oath of allegiance” means the oath of allegiance set out in Schedule 1 to this Constitution or such other oath as may be prescribed by Parliament;

“Parliament” means the Parliament of Lesotho established by this Constitution ;

“the Police Force” means the Lesotho Mounted Police established under the Police Proclamation and includes any other police force established by or under an Act of Parliament to succeed to or to supplement the functions of the Lesotho Mounted Police but does not, save in the definition of a “disciplined force” in section 22(1) of this Constitution, include any police force forming part of any military or air force or any police force for the protection of railways ;

“Principal Chief” means a Chief whose office is among those set out in Schedule 2 to this Constitution and is therein described as that of a Principal Chief ;

“public office” means any office of emolument in the public service ;

“public officer” means a person holding or acting in any public office ;

“the public service” means, subject to the provisions of this section, the service of the King in respect of the government of Lesotho ;

“session” means the period beginning when the two Houses of Parliament first meet after the coming into operation of this Constitution or after Parliament has at any time been prorogued or dissolved and ending when Parliament is prorogued or when Parliament is dissolved without having been prorogued ;

“sitting” means, in relation to a House of Parliament, the period during which that House is sitting continuously without adjournment and includes any period during which it is in committee ;

“subordinate court” means any court of law established for Lesotho other than—

- (a) the Judicial Committee ; or
- (b) the Court of Appeal ; or
- (c) the High Court ; or
- (d) a court-martial ; and

“Ward Chief” means a Chief whose office is among those set out in Schedule 2 to this Constitution and is therein described as that of a Ward Chief.

(2) In this Constitution, unless the context otherwise requires, references to an office in the public service shall be construed as including references to the office of a judge of Court of Appeal, of a judge of the High Court and the office of a member of any subordinate court (being an office the emoluments attaching to which, or any part of the emoluments attaching to which, are paid directly out of monies provided by Parliament) but shall not be construed as including references to the office of assessor in any court.

(3) In this Constitution references to a public office shall not be construed as including—

- (a) references to the office of King, the Regent, the President or Speaker or the Vice-President or Deputy Speaker of either House of Parliament, the Prime Minister or any other Minister, an Assistant Minister or a member of either House of Parliament ; or
- (b) references to the office of a member of any Commission established by this Constitution, a member of the King’s Privy Council, a Chief or a member of the College of Chiefs ; or

- (c) save in so far as may be provided by Parliament, references to the office of a member of any other council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law; or
- (d) except for the purposes of sections 52(2)(d), 125(2)(d), 125(3), 127(2)(d), 127(3) and 132(7) of this Constitution (which relate to disqualification for election or appointment to certain offices), references to an office in a naval, military or air force.
- (4) For the purposes of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other like allowance.
- (5) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office.
- (6) Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some specified person or authority, no person may, without his consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.
- (7) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:
- Provided that—
- (a) nothing in this subsection shall be construed as conferring on any person or authority the power to require a judge of the Court of Appeal or a judge of the High Court or the Director of Public Prosecutions or the Director of Audit to retire from the public service; and
- (b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.
- (8) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.
- (9) Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof (or any other person having a prior right to exercise those functions) is himself unable to exercise those functions, no such appointment shall be called in question on the ground that the holder of the office (or that other person) was not unable to exercise those functions.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(11) Where, under any provision of this Constitution, any person or authority is authorised or required to exercise any function after consultation with some other person or authority, the person or authority first referred to shall not be required to act in accordance with the advice of the other person or authority and, subject to the provisions of subsections (2)(a) and (3)(a) of section 101 of this Constitution, the question whether such consultation was made shall not be enquired into in any court.

(12) Without prejudice to the provisions of section 32(3) of the Interpretation Act 1889(a) (as applied by subsection (15) of this section), where any power is conferred by this Constitution to make any order, regulation or rule or pass any resolution or give any direction or make any declaration or designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, resolution, direction, declaration or designation.

(13) Any reference in this Constitution to a law made before the day on which this Constitution came into operation shall, unless the context otherwise requires, be construed as a reference to that law as it had effect immediately before that day.

(14) Any reference in this Constitution to a law that amends or replaces any other law or any provision of any other law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, suspends, repeals, adds new provisions to or makes different provision in lieu of that other law or that provision.

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

SCHEDULE 1 TO THE CONSTITUTION

Sections 39
and 139(1).

OATHS

(Oath or affirmation for the due execution of the office of King of Lesotho)

I do swear [or solemnly affirm] that I, in the office of King of Lesotho will, under the Constitution of Lesotho, preserve, protect and defend the said Constitution; that I will, as King, govern the people of Lesotho according to the said Constitution and the other laws of Lesotho; and that I will, as King and so far as lies within my power, cause law and justice to be administered in mercy to the people of Lesotho.

So help me God. [To be omitted in affirmation.]

(Oath or affirmation for the due execution of the office of Regent)

I do swear [or solemnly affirm] that I, in the office of Regent of Lesotho, will, under the Constitution of Lesotho, well and truly serve the King of Lesotho, his heirs and successors; that I will, as Regent, preserve, protect and defend the said Constitution; that I will, as Regent, govern the people of Lesotho according to the said Constitution and the other laws of Lesotho; and that I will, as Regent and so far as lies within my power, cause law and justice to be administered in mercy to the people of Lesotho.

So help me God. [To be omitted in affirmation.]

(Oath or affirmation of allegiance)

I do swear [or solemnly affirm] that I will be faithful and bear true allegiance to King, his heirs and successors, according to law.

So help me God. [To be omitted in affirmation.]

**Sections 88(1) SCHEDULE 2 TO THE CONSTITUTION
and 139(1).**

PRINCIPAL AND WARD CHIEFS

The Principal Chief of Butha Buthe.

The Principal Chief of Makhoakhoeng.

The Principal Chief of Leribe.

The Ward Chief of Tsikoane and Kolbere.

The Principal Chief of Mamathe's, Thupakubu, Teyateyaneng and Jordan.

The Principal Chief of Majara's.

The Principal Chief of Koeneng and Mapoteng.

The Principal Chief of Matsieng.

The Principal Chief of Ramabanta's and Kubake.

The Principal Chief of Rothe, Masite, Serooeng, Letseng, Kolo ha Mohlalefi and Thaba-Tseka ha Ntaote.

The Principal Chief of Thaba-Bosiu.

The Principal Chief of Maama's.

The Principal Chief of Tebang, Tsakholo and Seleso.

The Principal Chief of Tajane, Ramoetsana's and Mohale's.

The Principal Chief of Matelile.

The Principal Chief of Likhoele.

The Principal Chief of Phamong.

The Principal Chief of Taung.

The Principal Chief of Quthing.

The Principal Chief of Qacha's Nek.

The Principal Chief of Mokhotlong.

The Ward Chief of Malingoaneng.

EXPLANATORY NOTE

(This Note is not part of the Order.)

By virtue of the provisions of the Lesotho Independence Act 1966 the present Colony of Basutoland will attain fully responsible status within the Commonwealth on 4th October 1966 under the name of Lesotho. This Order makes provision for a Constitution for Lesotho from that date and also contains provision relating to citizenship of Lesotho and fundamental rights and freedoms of the individual.