

4. Application of 1933 Act to Colonies, &c.

THE VISITING FORCES (BRITISH COMMONWEALTH) (APPLICATION TO THE COLONIES, &c.) ORDER IN COUNCIL, 1940.

1940 No. 1373

[This Order in Council (S.R. & O. 1940, I, p. 1092) is printed as amended by Order in Council, dated September 17, 1942 (S.R. & O. 1942 (No. 1905) I, p. 843).]

At the Court at Buckingham Palace, the 24th day of July, 1940.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas by subsections (1) and (2) of Section 5 of the Visiting Forces (British Commonwealth) Act, 1933 (hereinafter called "the Act"), it is provided that His Majesty may as regards any colony by Order in Council direct that the provisions of sections one to three of the Act, or such of those provisions as may be specified in the Order, shall, subject to such adaptations and modifications as may be so specified, apply in that colony in relation to forces visiting that colony

23 Geo. 5. c. 6.

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and in relation to deserters and absentees without leave, as they apply in the United Kingdom; and that His Majesty may as regards any colony by Order in Council direct that the provisions of section four of the Act shall, with such exceptions and subject to such adaptations and modifications as may be specified in the Order, apply in relation to all or any of the forces raised in that colony, and in relation to officers and members thereof, as they apply in relation to home forces and officers and members thereof:

And whereas by virtue of subsection (3) of section five and section six of the Act the powers aforesaid may likewise be exercised in respect of any territory which is under His Majesty's protection, including any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom:

Now, therefore, His Majesty, in pursuance of sections five and six of the Act and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

Short title.

1. This Order may be cited as the Visiting Forces (British Commonwealth) (Application to the Colonies, etc.) Order in Council, 1940.

2.—(1) In this Order—

Interpretation, etc.

“ Territory ” means a territory mentioned in the First Schedule to this Order; and in the application of the Act under this Order to any territory “ the territory ” means that territory;

“ Governor ” in relation to any territory, means the person administering the government of the territory or, in the case of Zanzibar, the British Resident or the person lawfully discharging his functions;

“ Colonial forces ” means, in relation to any territory any naval, military, or air forces raised in the territory, including any police force or other body raised therein which, by virtue of any law in force in the territory, has become a naval, military or air force; and “ colonial force ” includes any body, contingent or detachment of any colonial forces, wherever serving:

Provided that where any colonial forces or force raised in one territory shall be present in some other territory, such forces or force shall, for the purposes of this definition in so far as it relates to sections one to three of the Act as applied by this Order, be deemed to have been raised in that other territory.

(2) Subject to the provisions of this Order, sections one to four of the Act as applied by this Order shall be construed in accordance with the provisions of section eight of the Act, except that—

(a) the definition of “ visiting force ” shall have effect as if for the words “ with the consent of His Majesty's Government in the United Kingdom lawfully present in the United Kingdom ” there were substituted the words “ lawfully present in the territory ”; and

(b) the definition of “ member ” shall have effect as if the word “ territory ” were substituted for the words “ United Kingdom ”.

(3) An Order under the Act as applied by this Order may be revoked or varied by a subsequent Order.

(4) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament. 52 & 53 Vict. c. 63.

3. Sections one, two and three of the Act shall, subject to the adaptations and modifications specified in Article 2 and the Second Schedule to this Order, apply in each territory in relation to forces visiting the territory and in relation to deserters and absentees without leave, as they apply in the United Kingdom. Application of Sections 1 to 3 of the Act.

4. Section 4 of the Act shall, subject to the adaptations and modifications specified in Article 2 and the Third Schedule to this Order, apply in relation to colonial forces raised in any territory and in relation to officers and members thereof, as they apply in relation to home forces as defined in the Act and officers and members thereof. Application of Section 4 of the Act.

E. C. E. Leadbitter.

FIRST SCHEDULE(a)

Aden (Colony and Protectorate).

Bahamas.

Barbados.

Basutoland.

Bechuanaland Protectorate.

Bermuda.

British Guiana.

British Honduras.

Ceylon.

Cyprus.

Falkland Islands.

Fiji.

Gambia (Colony and Protectorate).

Gibraltar.

Gold Coast:—

(a) Colony.

(b) Ashanti.

(c) Northern Territories.

(d) Togoland under British Mandate.

Hong Kong.

Jamaica (including Turks and Caicos Islands and the Cayman Islands).

Kenya (Colony and Protectorate).

Leeward Islands:—

Antigua.

Montserrat.

St. Christopher and Nevis.

Virgin Islands.

Malta.

Mauritius.

(a) Schedule as amended by S. R. & O. 1942 No. 1905.

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Nigeria:—

- (a) Colony.
- (b) Protectorate.
- (c) Cameroons under British Mandate.

Northern Rhodesia.

Nyasaland Protectorate.

Palestine (excluding Trans-Jordan).

St. Helena.

Seychelles.

Sierra Leone (Colony and Protectorate).

Somaliland Protectorate.

Straits Settlements.

Swaziland.

Tanganyika Territory.

Trinidad and Tobago.

Uganda Protectorate.

Western Pacific:—

- (a) British Solomon Islands Protectorate.
- (b) Gilbert and Ellice Islands Colony.
- (c) Pitcairn Island.
- (d) Any other colony, or territory under His Majesty's protection, in or in relation to which jurisdiction may lawfully be exercised under the Pacific Order in Council, 1893(a).

Windward Islands:—

Dominica.

Grenada.

St. Lucia.

St. Vincent.

Zanzibar Protectorate.

Reference in this Schedule to any territory of which there are dependencies shall be construed as including a reference to such dependencies.

SECOND SCHEDULE

ADAPTATIONS AND MODIFICATIONS OF SECTIONS ONE, TWO AND THREE OF THE ACT

1. All references to the United Kingdom shall be construed as references to the territory.
2. All references to home forces or a home force shall be construed as including references to colonial forces or a colonial force, as the case may be.
3. In subsection (5) of Section one the words "the Governor" shall be substituted for the words "the Admiralty, Army Council or Air Council, as the case may be".
4. In subsection (1) of Section two—
 - (a) the words "the Governor may by Order" shall be substituted for the words "His Majesty may by Order in Council";
 - (b) the word "Officer" shall be substituted for the word "Minister" wherever it occurs; and
 - (c) the last paragraph shall be omitted.

(a) See the title "Foreign Jurisdiction".

5. In subsection (2) of Section two—
 - (a) the words “the Governor by Order” shall be substituted for the words “His Majesty by Order in Council”;
 - (b) the words “such person as may be specified in the Order” shall be substituted for the words “a Secretary of State or the Admiralty”;
 - (c) the words “the Governor may” shall be substituted for the words “His Majesty may”; and
 - (d) the words “be agreed between the Governor of the territory” shall be substituted for the words “with the consent of the Treasury, be agreed between the Secretary of State or the Admiralty”.
6. The proviso to subsection (3) of Section two shall in so far as it relates to enactments being statutes or parts of statutes made in the territory, have effect as if the words “the Governor may by Order” were substituted for the words “His Majesty may by Order in Council”.
7. In subsection (4) of Section two the words “or Order” shall be inserted between the words “Order in Council” and “under”.
8. In subsection (1) of Section three, the words “Order in Council” shall be construed as including any Order in Council made under that subsection before the date of this Order.
9. In subsection (4) of Section three the words “the Governor” shall be substituted for the words “the Secretary of the Admiralty, the Secretary of the Army Council, or the Secretary of the Air Council”.

THIRD SCHEDULE

ADAPTATIONS AND MODIFICATIONS OF SECTION FOUR OF THE ACT

1. The expressions “colonial forces” and “colonial force” shall be substituted for the expressions “home forces” and “home force” wherever they occur.
2. In subsection (2)—
 - (a) the words “The Governor” shall be substituted for the words “The Admiralty, Army Council or Air Council, as the case may be”; and
 - (b) the words “the disposal of the Government of the territory” shall be substituted for the words “their disposal”.
3. For subsection (3) the following subsection shall be substituted:—

“(3) Whilst a member of another force is by virtue of this section attached temporarily to a colonial force, he shall be treated, and shall have the like powers of command and punishment over members of the colonial force to which he is attached, and shall be subject in all respects to the law relating to the discipline and administration of that force, as if he were a member of that force of relative rank:

Provided that the Governor may by Order direct that in relation to members of a force of any part of the Commonwealth specified in the Order, such law shall apply with such exceptions and subject to such adaptations and modifications as may be so specified.”
4. In subsection (5) the words “by order of the Governor” shall be substituted for the words “by order of the Admiralty, the Army Council or the Air Council, according as the home force is a naval, a military or an air force”.