

THE CONSTITUTION

The status of Jamaica as a Sovereign and Independent state became effective by virtue of the Jamaica Independence Act, 1962 and Section 5 of the West Indies Act, 1962 enabled Her Majesty the Queen in Council to make the Jamaica (Constitution) Order in Council, 1962, the second schedule of which is the Constitution of Jamaica.

2. The Order was made on the 23rd July, 1962, laid before the British Parliament on the 24th July, 1962 and came into operation as follows :-

Section 3(2) of the Order in Council and sections 80,81 94(1) and (2), 103, 104, 111, 124 and 125 (in part) of the Constitution on the 25th July, 1962, and the remainder immediately before the 6th August, 1962.

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A copy of the Order is annexed hereto.

3. At the State opening of Parliament on the 7th August, 1962 Her Royal Highness Princess Margaret, Countess of Snowdon, representing Her Majesty the Queen presented the Order to the Prime Minister who received it on behalf of the Government and people of Jamaica.

4. The Jamaica Independence Act, 1962 removes the remaining limitations on the exercise of complete sovereign power.

Shortly these limitations are as follows:

Residuary power and Imperial Government

(a) The residuary power of the United Kingdom Government to pass legislation affecting Jamaica.

Reservation.

(b) The power of the Governor as representative of the Queen to reserve certain legislation passed locally in order that the pleasure of Her Majesty in relation thereto may be ascertained.

Disallowance

(c) The power of the United Kingdom Government to disallow legislation passed locally.

Extra-Territorial Legislation

(d) The absence of any general power to pass extra-territorial legislation, i.e. legislation taking effect outside of Jamaica such as punishing crimes committed abroad.



Colonial  
Laws  
Validity  
Act, 1865.  
Repugnancy

(e) The effect of the Colonial Laws Validity Act, 1865, in declaring as void any law passed locally which is repugnant to an Act of the Imperial Parliament extending to Jamaica or any order or regulation made under such Imperial Act.

Foreign  
Affairs

(f) The absence of any power in the field of Foreign Affairs.

5. The Jamaica Independence Act, 1962

(i) Scope and Purpose of the Act

The Jamaica Independence Act seeks to provide for the attainment by Jamaica of full responsible Government by a number of provisions which may be conveniently classified into three categories, viz:

- (i) Those which seek to divest the United Kingdom Government of the remaining vestiges of jurisdiction in relation to Jamaica;
- (ii) Those which seek to confer unlimited jurisdiction on the Government of Jamaica exercisable within the framework of a written constitution; and
- (iii) Those which seek to modify provisions of United Kingdom Legislation in order to accord with Jamaica's new constitutional status as an Independent Dominion.

(ii) Contents of the Act

Firstly, the Act provides that from the 6th August, 1962, The United Kingdom Government will have **no responsibility** for the Government of Jamaica and that no Act of the United Kingdom Parliament passed after that date, shall extend to Jamaica. The consequences of these provisions are to divest the United Kingdom Government of its existing responsibility in the field of Foreign Affairs as well as its residuary power to pass legislation affecting Jamaica.

Secondly, the Act seeks to remove certain fetters on the legislative powers of the Government of Jamaica by a number of provisions contained in the First Schedule. In particular this Schedule provides that:

(i) The Colonial.....



- Repeal of  
Colonial Laws  
Validity Act, 1865
- (i) The Colonial Laws Validity Act, 1865, referred to above, shall not apply to Jamaica as from the date of Independence.
- Abolition  
of the  
Principle of  
Repugnancy
- (ii) That Laws passed in Jamaica on or after the date of Independence, shall not be **invalid** because they are repugnant to any Act of the United Kingdom Parliament.
- Legislative  
Autonomy
- (iii) That legislation may be passed locally repealing or amending any Act of the United Kingdom Parliament extending to Jamaica, but that so far as amendment to the provisions of the Constitution are concerned, such amendments can only be made in compliance with the amendment procedures contained in the Constitution itself.
- Extra-  
Territorial  
Legislation
- (iv) That the Legislature of Jamaica will have full power to make laws having extra-territorial operation.
- Merchant  
Shipping Act  
1894
- (v) (a) That Jamaica shall not be regarded as a British possession for the purposes of sections 735 and 736 of the Merchant Shipping Act, 1894 which authorises Colonial Legislatures to repeal with the approval of the United Kingdom Government, the provisions of that Act relating to ships registered in a Colonial Territory and to regulate coastal shipping subject to the exercise of the power of reservation.
- (b) That sections 4 and 7 of the Colonial Courts of Admiralty Act, 1890 (this Act is the source of Admiralty Jurisdiction of the High Court of Jamaica) shall cease to apply to Jamaica. These provisions authorise Colonial Legislatures to regulate Admiralty Jurisdiction and the practice and procedure relating thereto, but subject to the **control of the United Kingdom Government**.

The provisions at (a) and (b) are designed to reflect Jamaica's Constitutional advancement from the Colonial possession to an Independent Dominion.

/Thirdly.....



Nationality  
Provisions

Thirdly, the Independence Act provides for certain modifications to the British Nationality Acts which are designed to reflect the new position of Jamaica as a member of the Commonwealth and to separate on a practical basis citizenship of Jamaica from citizenship of the United Kingdom and Colonies. Under the Act, citizens of Jamaica will have the status of a British subject or Commonwealth citizen. The principal effects of this are :

- (a) To limit the criminal liability of Jamaican Citizens in relation to the Laws of the United Kingdom and Colonies in respect of acts committed abroad by placing such citizens in virtually the same position as aliens. This means that in general, Jamaican citizens will not be liable in England for offences committed on land abroad; and
- (b) That Jamaican citizens will be entitled as of right to be registered as citizens of the United Kingdom and Colonies provided they satisfy certain conditions as to residence in the United Kingdom or are in the service of the Crown under Her Majesty's Government in the United Kingdom.

6. The Act also provides for the cesser of citizenship of the United Kingdom and Colonies by certain persons who qualify as Jamaican citizens on the date of Independence. In the light of the proposals contained in the Constitution regarding Jamaican citizenship, this provision will mainly affect a person who was born in Jamaica and who or whose father, or father's father was also born in Jamaica. The Act, however, provides for a number of exceptions in which citizenship of the United Kingdom and Colonies will not cease under the foregoing provisions. The principal exceptions relate to :

- (i) Jamaica citizens who or whose father or father's father were born in the United Kingdom, or in a place which remains a colony on the date of Independence;

//(ii) Jamaican.....



- (ii) Jamaica citizens who or whose father or father's father were naturalized in the United Kingdom and Colonies;
- (iii) Jamaican citizens who are the wives of citizens of the United Kingdom or Colonies and whose husbands do not cease to be such citizens by virtue of the provisions of the Independence Act; and
- (iv) Wives of Jamaica citizens who acquired citizenship of the United Kingdom and Colonies by registration.

It should be noted that these modifications to the British Nationality Acts do not in any way affect the provisions relating to the acquisition of Jamaica citizenship provided for in the Constitution and are identical with the changes effected by both the Nigeria Independence Act, 1960 and the Sierra Leone Independence Act, 1961.

Modifica-  
tions  
of United  
Kingdom  
Acts

7. Finally, the Act provides for modifications of certain Acts of the United Kingdom Parliament in order to reflect the status of Jamaica as an Independent Dominion within the Commonwealth. In particular it provides:

- (a) That the expression 'Colony' shall not include Jamaica in any Act of the United Kingdom Parliament passed after the date of Independence, nor shall that expression include Jamaica in the Acts regulating armed forces of the Crown, and which extend to Colonial forces, viz: Army Act, 1955, the Air Force Act, 1955, and the Naval Discipline Act, 1957. It also provides that in these Acts, Jamaica shall be regarded as a Commonwealth country and its forces as Commonwealth forces.
- (b) That the power to make Orders-in-Council under the West Indies Act, 1962 (which deals with the dissolution of the Federation) shall not extend to Jamaica after Independence except in relation to the question of compensation for Federal Civil Servants; and
- (c) That certain United Kingdom Acts mentioned in the Second Schedule shall be amended to the extent provided in that

/Schedule.....



Schedule in order that Jamaica may be dealt with on the basis that it is a Commonwealth country. Examples of the measures included in this Schedule are:

- (i) Provisions relating to the grant of Diplomatic immunities to Commonwealth representatives as contained in the Income Tax Act, 1952 (exemption from taxation), the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952, (which deals with the question of general immunities, such as immunities from suit and legal process) and the Diplomatic Immunities (Conference and Commonwealth countries and Republic of Ireland) Act 1961, (which provides for the grant of certain immunities to the representatives of Governments of Commonwealth countries and the Republic of Ireland when attending conferences in the United Kingdom).
- (ii) The Import Duties Act, 1958 dealing with the question of Commonwealth preferences.

#### 8. Legislation

- (a) The following laws have been enacted as a direct result of the provisions in the Constitution and the sovereign status of Jamaica :
  - (i) The Defence Law, Law 12 of 1962
  - (ii) The Judicature (Appellate Jurisdiction) Law, Law 15 of 1962
  - (iii) The Passport (Amendment) Law, Law 16 of 1962.
- (b) It is also proposed to lay on the table of this Honourable House in the near future the following Bills
  - (i) A Bill to provide for the acquisition of citizenship by persons who do not become citizens of Jamaica by virtue of the provisions of the Constitution, and to provide for the deprivation of citizenship of persons who become citizens otherwise than by virtue of the provisions of the Constitution in the manner provided for at Section 11



of the Constitution;

(ii) A Bill to supplement Chapter III of the Constitution Fundamental Rights and Privileges, in the manner provided for therein for the enforcement of the protective provisions;

(iii) A Bill to amend the Representation of the Peoples Law, Chapter 342 to implement ~~the provisions at Section 38 of the Constitution~~ and to come into operation on or after the ~~first day of January, 1964~~.

The Bill will

(a) contain provisions designed to ensure that so far as is practicable any person entitled to vote at an election of members of the House of Representatives shall have a reasonable opportunity of so voting: and

(b) contain provisions relating to the conduct of elections of members of the House of Representatives, including provisions relating to the identification of electors, designed to ensure that as far as is practicable no person shall vote at an election of a member of the House of Representatives -

(i) who is not entitled to vote; or

(ii) when he is not entitled to vote; or

(iii) where he is not entitled to vote;

(iv) A Bill to regulate the holding of any plebiscite under the provisions at Section 49(3)(d)(ii), Section 49(5) and Section 49(6) of the Constitution

(v) A Bill to codify the Customary International Law on Diplomatic Privileges and Immunities and the Vienna Convention on Diplomatic Privileges and Immunities 1961.

9. In addition to the consequential amendments to the Laws arising out of the Constitution and the sovereign status of Jamaica,



Government has under consideration the introduction of legislation to regulate the use of the Coat of Arms and the National Flag.

10. Finally, the variation order regarding the division of responsibilities between the Honourable Attorney General and the Director of Public Prosecutions has been made.

D.B. SANGSTER

MINISTER OF FINANCE

25th August, 1962.