
STATUTORY INSTRUMENTS

1989 No. 842

SOUTH ATLANTIC TERRITORIES

The British Antarctic Territory Order 1989

<i>Made</i>	- - - -	<i>16th May 1989</i>
<i>Laid before Parliament</i>		<i>24th May 1989</i>
<i>Coming into force</i>	- -	<i>1st July 1989</i>

At the Court at Buckingham Palace, the 16th day of May 1989

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by the British Settlements Acts 1887 and 1945⁽¹⁾ or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement.

1. This Order may be cited as the British Antarctic Territory Order 1989 and shall come into force on 1st July 1989.

Interpretation.

2. In this Order—

“the British Antarctic Territory” means all islands and territories whatsoever between the 20th degree of west longitude and the 80th degree of west longitude which are situated south of the 60th parallel of south latitude;

“the existing Orders” means the British Antarctic Territory Order in Council 1962⁽²⁾ and the British Antarctic Territory (Amendment) Order 1964⁽³⁾;

“the Territory” means the British Antarctic Territory.

⁽¹⁾ 1887 c. 54 and 1945 c. 7 (9 & 10 Geo. 6).

⁽²⁾ S.I.1962/400.

⁽³⁾ S.I. 1964/1396.

Revocations.

3. The existing Orders and the British Antarctic Territory Royal Instructions 1962⁽⁴⁾ are revoked.

Establishment of office of Commissioner.

4. There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by instructions given through a Secretary of State and shall hold office during Her Majesty's pleasure.

Functions of Commissioner.

5. The Commissioner shall have such functions as are conferred upon him by or under this Order or any other law, and such other functions as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and any other law by which any such functions are conferred, shall do or execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Oaths to be taken by Commissioner.

6. A person appointed to hold the office of Commissioner shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and an oath for the due execution of his office in the form set out in Schedule 1 to this Order.

Discharge of Commissioner's functions during vacancy, etc.

- 7.—(1) Whenever the office of Commissioner is vacant or the Commissioner is for any reason unable to perform the functions of his office, those functions shall be performed by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of Commissioner under this section he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to the office of Commissioner.

(3) For the purposes of this section the Commissioner shall not be regarded as unable to perform the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of Commissioner's functions by deputy.

8.—(1) The Commissioner may, by Instrument under the Public Seal of the Territory, authorise a fit and proper person to discharge for and on behalf of the Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of Commissioner as may be specified in that Instrument.

(2) The powers and authority of the Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of Commissioner as the Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Commissioner by Instrument under the Public Seal.

(4) S.I. 1962 I, p. 1036.

Public Seal.

9. There shall be a Public Seal for the Territory. The Commissioner shall keep and use the Public Seal for sealing all things whatsoever that shall pass the said Seal.

Constitution of offices.

10. The Commissioner, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for the Territory and, subject to any law in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise—

- (a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted; and
- (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

Concurrent appointments.

11. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office—

- (a) another person may be appointed substantively to that office;
- (b) that other person shall, for the purpose of any function attaching to that office, be deemed to be the sole holder of that office.

Power of pardon, etc.

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

- (a) grant to any person concerned in or convicted of any offence against any law in force in the Territory a pardon, either free or subject to lawful conditions; or
- (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 any such offence; or
- (c) substitute a less severe form of punishment for any punishment imposed on that person for any such offence; or
- (d) remit the whole or any part of any punishment imposed on that person for any such offence or of any penalty or forfeiture otherwise due to Her Majesty on account of any such offence.

Power to make laws.

13.—(1) The Commissioner may make laws, to be styled Ordinances, for the peace, order and good government of the Territory.

(2) Subject to any instructions from time to time given by Her Majesty through a Secretary of State, the Commissioner shall in the making of Ordinances observe, so far as practicable, the rules set out in Schedule 2 to this Order:

Provided that the validity or effect of an Ordinance made by the Commissioner shall not be called in question by reason of the non-observance of any such rule.

(3) All Ordinances made by the Commissioner in exercise of the powers conferred by this Order shall be published in the Official Gazette for the Territory and in such manner and at such place or places in the Territory as the Commissioner may from time to time direct.

(4) Every such Ordinance shall come into operation on the date on which it is published in accordance with subsection (3) of this section unless it is provided, either in such Ordinance or in some other enactment, that it shall come into operation on some other date, in which case it shall come into operation on that date.

Disallowance of Ordinances.

14.—(1) Any Ordinance made by the Commissioner in exercise of the powers conferred by this Order may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any Ordinance has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in the Official Gazette for the Territory and in such manner and at such place or places in the Territory as the Commissioner may from time to time direct.

(3) Every Ordinance so disallowed shall cease to have effect as soon as notice of disallowance has been published as aforesaid; and thereupon any enactment repealed or amended by, or in pursuance of, the Ordinance so disallowed shall have effect as if such Ordinance had not been made, and, subject thereto, the provisions of section 16(1) of the Interpretation Act 1978⁽⁵⁾ shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

Establishment of courts.

15.—(1) The Commissioner may, by an Ordinance made under section 13 of this Order, establish such courts of justice for the Territory as he may think fit and may make such provision as he may think fit respecting the jurisdiction and powers of any such court, the proceedings in any such court, and the enforcement and execution of, and appeals from, the judgments, decrees, orders and sentences of any such court given or made in the exercise of such jurisdiction and powers.

(2) A court established under this section shall sit in such place or places in the Territory as the Commissioner may appoint:

Provided that it may also sit in the United Kingdom, or in such place or places within any other colony as the Commissioner, acting with the concurrence of the Governor of such colony, may appoint, in which case it may exercise its jurisdiction and powers in like manner as if it were sitting within the Territory.

(3) The Commissioner may constitute all such judgeships and other offices as he may consider necessary for the purposes of this section and may make appointments to any office so established, and any person so appointed, unless otherwise provided by law, shall hold his office during Her Majesty's pleasure.

Disposal of land, etc.

16.—(1) Subject to any law in force in the Territory and to any instructions from time to time given to the Commissioner by Her Majesty through a Secretary of State, the Commissioner, in Her Majesty's name and on Her Majesty's behalf, may make and execute grants and dispositions of any lands or other immovable property within the Territory that may be lawfully granted or disposed of by Her Majesty.

(2) Before granting or disposing of any land or other immovable property belonging to Her Majesty within the Territory the Commissioner shall cause such reservations to be made therefrom as he may think necessary for any public purpose.

(3) The Commissioner shall not, directly or indirectly, purchase for himself any land or other immovable property within the Territory belonging to Her Majesty without the special permission of Her Majesty given through a Secretary of State.

(5) 1978 c. 30.

Existing laws.

17.—(1) Subject to the provisions of this section, the existing laws shall continue to have effect in the Territory after the commencement of this Order and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(2) Any reference to the High Commissioner in any existing law shall, with effect from the commencement of this Order, be construed as a reference to the Commissioner.

(3) Subsections (1) and (2) of this section shall be without prejudice to any powers conferred upon the Commissioner by section 13 of this Order.

(4) For the purposes of this section “existing laws” means all Ordinances, Regulations, rules, orders and other instruments having effect as part of the law of the Territory immediately before the commencement of this Order.

Existing offices.

18.—(1) Any office established under the existing Orders and existing immediately before the commencement of this Order shall continue as if it had been established under this Order.

(2) Any person who immediately before the commencement of this Order holds or is acting in any office referred to in subsection (1) of this section shall continue to hold or act in that office as if he had been appointed to hold or act in it under this Order and had taken any oath required by law.

Consequential amendment.

19. The British Antarctic Territory Court of Appeal Order 1965(6) shall have effect as if references therein to the High Commissioner were references to the Commissioner.

Power reserved to Her Majesty.

20. Her Majesty reserves to Herself power, with the advice of Her Privy Council, to make laws for the peace, order and good government of the Territory.

G. I. de Deney
Clerk of the Privy Council

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SCHEDULE 1

Section 6

OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF COMMISSIONER

I, DO SWEAR (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of Commissioner for the British Antarctic Territory.

SCHEDULE 2

Section 13(2)

RULES FOR THE ENACTMENT OF ORDINANCES

1. In all Ordinances the words of enactment shall be “Enacted by the Commissioner for the British Antarctic Territory”.

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

3. All Ordinances shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed in the margin a short indication of its contents.

4. All Ordinances shall be numbered consecutively in a separate series for each year commencing in each year with the number one, and the position of each Ordinance in the series shall be determined with reference to the day on which the Commissioner enacted it.

5. Copies of all Ordinances shall be printed and each Ordinance shall bear the following:—

- (a) particulars of the day on which the Commissioner enacted it;
- (b) particulars of the day on which the Ordinance was published in the Official Gazette for the Territory; and
- (c) particulars of the day on which the Ordinance came into operation or, if that day shall not have been determined, a reference to the provision in the Ordinance or otherwise whereby it may be determined.

6. The Commissioner shall not, without having previously obtained instructions through a Secretary of State, enact any Ordinance within any of the following classes, unless such Ordinance contains a clause suspending the operation thereof until the signification of Her Majesty’s pleasure thereon, that is to say—

- (a) any Ordinance for the divorce of married persons;
- (b) any Ordinance whereby any grant of land or money or other donation or gratuity may be made to himself;
- (c) any Ordinance affecting the currency of the Territory or relating to the issue of bank notes;
- (d) any Ordinance establishing any banking association or altering the constitution, rights or duties of any such association;
- (e) any Ordinance imposing differential duties;
- (f) any Ordinance the provisions of which appear to him to be inconsistent with obligations imposed upon the United Kingdom by treaty;
- (g) any Ordinance affecting the discipline or control of Her Majesty’s forces by land, sea or air;

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- (h) any Ordinance of an extraordinary nature and importance whereby Her Majesty's prerogative, or the rights or property of Her subjects not residing in the Territory, or the trade, transport or communications of any other territory under Her Majesty's sovereignty may be prejudiced;
- (i) any Ordinance whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions; and
- (j) any Ordinance containing provisions which have been disallowed:

Provided that the Commissioner may, without such instructions as aforesaid and although the Ordinance contains no such clause as aforesaid, enact any such Ordinance (except an Ordinance the provisions of which appear to him to be inconsistent with obligations imposed upon the United Kingdom by treaty) if he has satisfied himself that an urgent necessity exists requiring that the Ordinance be brought into immediate operation; but in any such case he shall forthwith transmit a copy of the Ordinance to a Secretary of State together with his reasons for so enacting the same.

7. When any Ordinance has been enacted, the Commissioner shall at the earliest convenient opportunity transmit through a Secretary of State, for the signification of Her Majesty's pleasure, a transcript in duplicate of the Ordinance duly authenticated under the Public Seal of the Territory and by his own signature, together with an explanation of the reasons and occasion for the enactment of the Ordinance.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes new provision for the administration of the British Antarctic Territory.