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Constitution of Swaziland Act

Act 50 of 1968

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Constitution of Swaziland Act

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Constitution of Swaziland Act

Act 50 of 1968

Commenced on 6 September 1968

[This is the version of this document at 1 December 1998.]

[Amended by [Appointment of Judges \(Amendment\) Order, 1975 \(Kings Order in Council 17 of 1975\)](#) on 1 May 1975]

[Repealed by [Legislative Procedure Order, No. 1 of 1973 \(Kings Order in Council 1 of 1973\)](#) on 12 April 1973]

This Constitution has been Repealed and portions of it reinstated by the King's Proclamation to the Nation of 12th April, 1973.

The Relevant Portions are Reproduced Hereunder

Chapter I

[Repealed]

Chapter II

[Repealed]

Chapter III

[Repealed]

Chapter IV The Monarchy

28. The office of King

- (1) The King of Swaziland is the Head of State.
- (2) The King may do all things that belong to his office in accordance with Swazi law and custom and any other law.

[Effective 12th April, 1973; Amended D.1/1982]

29. Succession to the throne of Swaziland

When an announcement is made to the Swazi nation in accordance with Swazi law and custom that the office of King is vacant by reason of the death of the holder thereof or any other cause, such person as, in accordance with Swazi law and custom, is declared to be King shall become King.

30. The Regent

- (1) Until the King has been installed, that is to say, until he has publicly assumed the functions and responsibilities of King in accordance with Swazi law and custom, or during any period when he is by reason of absence from Swaziland or any other cause unable to perform the functions of his office, those functions shall be performed, save as otherwise provided in this section, by the Ndlovukazi acting as Regent.
- (2) In the event of the Regent, by reason of critical ill-health, being unable to perform the functions of her office, the King, or in the absence of a King, the Liqoqo, may in accordance with Swazi law and custom appoint a person (hereinafter referred to as the "Authorized Person") to perform on behalf of the Regent the functions of her office for the duration of her illness as aforesaid.

For purposes of this subsection the Regent will only be regarded as being unable to perform the functions of her Office due to critical ill-health after this incapacity has been certified as such by three independent specialist medical Doctors.

[Amended D.1/1982; D.1/1985; D.1/1987]

31. The King's emoluments and Civil List

- (1) The King shall be paid such emoluments and shall have such Civil List as may be prescribed by Act of Parliament.
- (2) The emoluments of the King and his Civil List shall be a charge on and paid out of the Consolidated Fund and shall not be reduced during the King's continuance in office.

Effective 12th April, 1973

32. Remuneration of Regent and of authorised person

- (1) The Ndlovukazi shall, in respect of any period during which she acts as Regent, be entitled to such remuneration as may be prescribed by Act of Parliament.
- (2) An authorised person shall be entitled to such remuneration as may be prescribed by Act of Parliament.
- (3) Any remuneration prescribed under subsection (1) or (2) shall be a charge on and paid out of the Consolidated Fund and shall not be reduced during the Ndlovukazi's continuance in office as Regent or, as the case may be, during the period in which an authorised person is acting under [section 30\(2\)](#).

33. Immunities of King and Ndlovukazi

- (1) The King shall be entitled to immunity from taxation in respect of his emoluments and Civil List, all income accruing to him in his private capacity and all property owned by him in his private capacity.
- (2) The Ndlovukazi shall be entitled to immunity from taxation in respect of her emoluments or any income accruing to her in her private capacity and all property owned by her in her private capacity.
- (3) The King and the Ndlovukazi shall be entitled to immunity from compulsory acquisition of all property owned by them in their private capacities.

34. Immunities of authorised person

A person appointed under [section 30\(2\)](#) shall be entitled to immunity from taxation in respect of any remuneration to which he is entitled under [section 32](#), and all income accruing to him in his private capacity during any period in which he is performing on behalf of the Ndlovukazi her functions as Regent,

and, in so far as the taxation relates to the period concerned, all property owned by him in his private capacity.

[Amended D.1/1985]

34bis. Other immunities

The person appointed under [section 30\(2\)](#) shall have the same immunities as are conferred by [section 35](#) in respect of all things done or omitted to be done by him only in his official capacity and while performing such functions.

[Added A.1/1985]

35. Protection of King and of Ndlovukazi in respect of legal proceedings

- (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, 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 and to immunity from being summoned to appear as a witness in any civil or criminal proceeding.
- (2) The Ndlovukazi 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 her in her private capacity, to immunity from criminal proceedings in respect of all things done or omitted to be done by her in her official capacity or in her private capacity and to immunity from being summoned to appear as a witness in any civil or criminal proceedings.
- (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 Ndlovukazi 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, may be brought against that person.
- (4) For the avoidance of doubt it is hereby declared that any right, interest or function vested in the Nggwenyama in relation to Swazi nation land or minerals or mineral oils in Swaziland is so vested in him, in his capacity as Nggwenyama, and not as King or in his private capacity.

36. ***

[Repealed]

Chapter V

[Repealed]

Chapter VI

[Repealed]

Chapter VII The Executive

79. ***

[Repealed]

80. ***

[Repealed]

81. ***

[Repealed]

82. ***

[Repealed]

83. ***

[Repealed]

84. ***

[Repealed]

85. ***

[Repealed]

86. ***

[Repealed]

87. ***

[Repealed]

88. ***

[Repealed]

89. ***

[Repealed]

90. ***

[Repealed]

91. Attorney-General

- (1) There shall be an Attorney-General whose office shall be a public office.
- (2) *[Repealed Proclamation of 12th April, 1973.]*
- (3) The Attorney-General may, whenever requested so to do advise the King on any matter of law relating to any function vested in the King by this Constitution or any other law.

- (4) The Attorney-General 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.
- (5) The powers conferred on the Attorney-General by subsection (4)(b) and (c) 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.
- (6) Notwithstanding the provisions of subsection (5) the powers of the Attorney-General under subsection (4) may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.
- (7) For the purposes of this section, any appeal from any judgment in any 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 shall be deemed to be part of those proceedings:
- Provided that the power conferred on the Attorney-General by subsection (4)(c) 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.
- (8) In the exercise of the functions vested in him by subsection (4), the Attorney-General shall not be subject to the direction or control of any other person or authority.
- [the powers conferred in subsection (4) to (8) are presently exercisable by the Director of public Prosecution – see the Director of Public prosecutions Order, No. 17 of 1973]*

92. Prerogative of Mercy

- (1) The King may—
- (a) grant to any person convicted of any offence under the law of Swaziland 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 of any penalty or forfeiture otherwise due to the Government on account of such an offence.
- (2) There shall be a Committee on the Prerogative of Mercy which shall consist of—
- (a) three Ministers appointed by the King, acting in his discretion, one of whom shall be appointed by the King, acting as aforesaid, to be the chairman; and
 - (b) the Attorney-General; and
 - (c) two other persons appointed by the King, acting in his discretion.

[Added D.3/1992]

- (3) An appointed member of the Committee shall vacate his seat on the Committee—
 - (a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment;
 - (b) if his appointment is revoked by the King, acting in his discretion; or
 - (c) if he ceases to be a Minister.
- (4) In the exercise of the powers conferred upon him by subsection (1), the King may act in accordance with the advice of the Committee.
- (5) The Committee shall not be summoned except by the authority of the chairman.
- (6) The chairman or, in his absence, such member of the Committee as the chairman may designate in that behalf shall preside at meetings of the Committee.
- (7) Subject to the provisions of this section, the Committee shall regulate its own procedure.
- (8) The Committee may act notwithstanding any vacancy in its membership or the absence of any member, and the validity of the transaction of business by the Committee shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.
- (9) Whenever any person has been sentenced to death by any court in Swaziland other than a court-martial, the chairman shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration at meeting of the Committee so that the Committee may advise the King whether or not to exercise his powers under subsection (1) in that case.
- (10) The provisions of this section shall not apply in relation to any conviction by a court established under a law of a country other than Swaziland that has jurisdiction in Swaziland in pursuance of arrangements made between the Government of Swaziland and another Government or an international organisation relating to the presence in Swaziland of members of the armed forces of that other country or in relation to any punishment imposed in respect of any such conviction or any penalty or forfeiture resulting from any such conviction.
- (11) Nothing in this section shall be construed as precluding an Act of Parliament from making provision of general application under which any sentence of imprisonment shall be reduced if such conditions (being conditions relating to good behaviour by the person on whom the sentence was imposed whilst serving that sentence) as are prescribed are fulfilled.

Chapter VIII

Land and minerals

93. Power to dispose of Government land

Subject to the provisions of any law for the time being in force in Swaziland, the Government may exercise all rights of ownership over Government land accorded by law including the power to make grants, leases or other dispositions, subject to such rights and interests and to such conditions as the Government may think fit.

94. Swazi nation land

- (1) All land which is vested in the Nggwenyama in trust for the Swazi nation shall continue so to vest to subsisting rights and interests which before 6th September 1968 have been granted to, or recognised as vested in, any person.

[Amended Proclamation of 12th April, 1973]

- (2) The Nggwenyama in Libandla may exercise all rights of ownership over such land including the power to make grants, leases or other dispositions, subject to such rights and interests and to such conditions as he may think fit:

Provided that no right to mortgage such land shall be exercisable save and except by a mortgage registered against land acquired by purchase or grant.

- (3) The rights and the powers conferred upon the Nggwenyama in Libandla by this section shall be subject to the provisions of any law for the time being in force in Swaziland but no such law shall operate to vest those rights or that power in any other person or authority.
- (4) For the avoidance of doubt it is hereby declared that Swazi nation land is subject to compulsory acquisition for public purposes under the law for the time being in force relating to the compulsory acquisition of land for such purposes.

95. Minerals and mineral oils

- (1) All minerals and mineral oils in, under or upon any land in Swaziland shall continue to vest in the Nggwenyama in trust for the Swazi nation, subject to any subsisting rights and interests which, before 6th September 1968, by or under any Order of Her Britannic Majesty in Council or any other law in force in Swaziland, or otherwise, have been granted to or recognised as vested in any other person.
- (2) The Nggwenyama may make grants, leases or other dispositions conferring rights or interests in respect of minerals or mineral oils in Swaziland, but the Nggwenyama shall not exercise any such power except after consultation with the Minerals Committee established by subsection (3).
- (3) There shall be a Minerals Committee which shall consist of not less than four nor more than six persons who shall be appointed by the Nggwenyama in Libandla.
- (4) Such member of the Minerals Committee as the Nggwenyama, acting in his discretion, may designate in that behalf shall be chairman of the committee.
- (5) The Minerals Committee shall not be summoned except upon the authority of the Nggwenyama.
- (6) Subject to the provisions of this section, the Minerals Committee may regulate its own procedure.

96. Interpretation

In this Chapter "Nggwenyama in Libandla" means the Nggwenyama acting in accordance with the advice of his Libandla.

Chapter IX The Judicature

Part 1 – The High Court

97. Establishment of High Court

- (1) There shall be a High Court for Swaziland and subject to the provisions of this Chapter, the judges of the High Court shall be the Chief Justice and such number of judges as may be prescribed.
- (2) The High Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of any judge of that court.

98. Appointment of judges of High Court

- (1) The holder of the office of Chief Justice or any office of judge of the High Court shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission, and subject to any other law, upon such terms and conditions as the King may determine on the advice of the Minister responsible for Justice.

[Amended D.1/1982]

- (2) (a) A person shall not be qualified for appointment as a judge of the High Court unless—
- (i) he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in any part of the Commonwealth or in the Republic of Ireland or in any other country outside the Commonwealth that may be prescribed by Act of Parliament, or a court having jurisdiction in appeals from any such court; or
 - (ii) he is and has been, for a period in the aggregate of at least six years, a barrister, an advocate or an attorney entitled to practise in any such court and has either so practised for not less than six years or, if he has not so practised he has, in Swaziland, engaged in any other profession relating to law for a period of not less than ten years; or

[Amended A.10/1979; D.2/1982]

- (iii) he is entitled to practise as a barrister, an advocate or an attorney in a court referred to in sub-paragraph (i) and has held for a period or periods amounting to not less than six years any one or more of the following offices, that is to say, Attorney-General, Deputy Attorney-General, Solicitor General, Director of Public Prosecutions, Deputy Director of Public Prosecutions, Principal Magistrate, Chief Magistrate, Senior Magistrate, Chief Crown Counsel, Principal Crown Counsel or Senior Crown Counsel.

[Amended P.1973; A.10/1979; D.2/1981]

- (b) For the purposes of this subsection, a barrister, an advocate or an attorney shall be regarded as entitled to practise, and as having practised as such during any period in which he held office as a judge, magistrate, Attorney-General, Deputy Attorney-General, Solicitor-General, Director of Public Prosecutions, Deputy Director of Public Prosecutions, Crown Counsel or State Counsel in any part of the Commonwealth or in any country outside the Commonwealth referred to in this subsection.
- (3) *[Repealed A.10/1979]*

99. Tenure of office of judges of High Court

- (1) Subject to the provisions of this Chapter, a person holding the office of a judge of the High Court shall vacate that office on attaining the retiring age.
- (2) Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person may sit as a judge for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him before he attained that age.
- (3) A judge of the High Court may at any time resign his office.
- (4) The office of any judge of the High Court shall not be abolished while there is a substantive holder thereof.

- (5) For the purposes of subsection (1), the retiring age shall be the age of sixty-two years or such other age as may be prescribed by Act of Parliament:

Provided that—

- (a) a provision of an Act of Parliament, to the extent that it alters the age at which judges of the High Court shall vacate their offices, shall not have effect in relation to a judge after his appointment unless he consents to its having effect;
- (b) the King, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who attains the age prescribed by or under this subsection to continue in office for such fixed period as may be agreed between the King and that judge, and in relation to that person the provisions of this Constitution shall have effect as if he would attain the retiring age on the expiration of the fixed term so agreed.

100. Removal of judges

- (1) 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 removed except in accordance with the provisions of this section.
- (2) If the King, acting in his discretion in the case of the Chief Justice and in accordance with the advice of the Chief Justice in the case of a judge, considers that the question of removing a judge of the High Court from office for inability as aforesaid or misbehaviour, ought to be investigated, then—
 - (a) the King, acting in his discretion, shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the King 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 judge ought to be removed from office under this section for inability as aforesaid or for misbehaviour.
- (3) Where a tribunal appointed under subsection (2) advises the King that a judge of the High Court ought to be removed from office for inability as aforesaid or for misbehaviour, the King shall remove such judge from office.
- (4)
 - (a) All questions for decision by a tribunal appointed under subsection (2) shall be decided by a majority of its members; and the chairman shall have an original vote, and, if the votes are equally divided, a casting vote.
 - (b) The provisions of any law in force governing the procedure of commissions of enquiry shall apply to the tribunal as if the tribunal were a commission of enquiry, and references in that law to a commission shall be construed accordingly.
 - (c) Subject to the provisions of this subsection, the procedure to be followed by the tribunal shall be in the discretion of the tribunal.
- (5) If the question of removing a judge of the High Court from office has been referred to a tribunal under subsection (2) the King, acting in his discretion, may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the King and shall in any case cease to have effect if the tribunal recommends to the King that the judge should not be removed.

101. Acting Chief Justice

If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such one of the judges of the Court of Appeal or of the judges or by such other person

qualified for appointment as a judge of the High Court as the King, acting in accordance with the advice of the Judicial Service Commission, may appoint for that purpose:

Provided that a person may be so appointed notwithstanding that he has attained the age prescribed for the purposes of [section 99](#).

102. Acting judge

- (1) If the office of a judge is vacant or if a 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 requires that the number of judges of the Court should be temporarily increased, the King, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the High Court to act as a judge.
- (2) If the Chief Justice has occasion to be absent from Swaziland for a period which he considers will be of short duration or is unable to perform the functions of his office for any other cause which he considers will be of short duration, the Chief Justice may appoint a person qualified for appointment as a judge of the High Court to act as a judge during such period as he may specify as the period of that absence or inability:

Provided that the period of an appointment under this subsection shall not exceed seven days.

- (3) A person may be appointed to act as a judge under this section notwithstanding that he has attained the age prescribed for the purposes of [section 99](#).
- (4) A person appointed under subsection (1) to act as a judge shall, subject to the provisions of [section 100](#), continue to act until the expiration of 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.
- (5) A person appointed under subsection (2) to act as a judge shall, subject to the provisions of [section 100](#), continue to act until the expiration of the period of his appointment or until his appointment is revoked by the Chief Justice, whichever is the earlier.
- (6) A person whose appointment to act as a judge has expired or been revoked may, with the permission of the King, acting in accordance with the advice of the Chief Justice, continue to act as such for such a period 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.

103. Oaths by judges of High Court

A judge of the High Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that are set out in Schedule 2 or such other oaths as may be prescribed.

104. Jurisdiction of High Court

- (1) The High Court shall be a superior court of record and shall have—
 - (a) unlimited original jurisdiction in civil and criminal matters;
 - (b) such appellate jurisdiction as may be prescribed by or under any law for the time being in force in Swaziland;
 - (c) such revisional jurisdiction as the High Court possesses at the commencement of this Constitution in accordance with the provisions of this Constitution and any other law then in force in Swaziland; and
 - (d) such revisional jurisdiction, additional to the jurisdiction mentioned in paragraph (c), as may be prescribed by or under any law for the time being in force in Swaziland.

- (2) Subject to the provisions of this Constitution the Chief Justice may make rules for regulating the practice and procedure of the High Court and such rules may (without prejudice to the generality of the foregoing provisions of this subsection) include provision for any of the following purposes—
 - (a) for regulating the sittings of the High Court and the selection of judges for any purpose;
 - (b) for prescribing forms and fees in respect of proceedings in the High Court and regulating the costs of and incidental to any such proceedings;
 - (c) for regulating the right of representation of persons concerned in any proceedings in the High Court;
 - (d) for prescribing the time within which any requirement of the rules is to be complied with;
 - (e) for prescribing and regulating the powers and duties of registrars and officers of the court.
- (3) No rules of court made under this section which may involve an increase in the expenses of the High Court shall be made except with the concurrence of the Minister for the time being responsible for finance, but the validity of a rule of court shall not be called in question in any proceedings on the grounds that the concurrence of the Minister was not or does not appear to have been obtained.
- (4) In this section any reference to revisional jurisdiction shall be construed as including a reference to jurisdiction to determine reserved questions of law and cases stated.

Part 2 – The Court of Appeal

105. Establishment of Court of Appeal

- (1) There shall be a Court of Appeal for Swaziland, styled the Swaziland Court of Appeal, which shall be a superior court of record.
- (2) The judges of the Court of Appeal shall be—
 - (a) the Judge President;
 - (b) such number of Justices of Appeal, being not less than two or more than four, as may be prescribed; and
 - (c) the Chief Justice and the judges, if any, of the High Court.
- (3) The Court of Appeal shall be duly constituted notwithstanding any vacancy among the judges of the Court.

106. Appointment of judges of Court of Appeal

- (1) The holder of the office of Judge President shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission, and, subject to any other law, upon such terms and conditions as the King may determine on the advice of the Minister responsible for Justice.
[Amended D.1/1982]
- (2) The holder of any office of Justice of Appeal shall be appointed by the King, acting in accordance with the advice of the Judge President.
- (3) A person shall not be qualified for appointment as the Judge President or a Justice of Appeal unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in a country which has been designated in that behalf by Act of Parliament or a court having jurisdiction in appeals from any such court.
- (4) (a) Notwithstanding the provisions of [section 107](#) and subject to the provisions of this subsection, it shall be lawful to appoint a person to hold the office of Judge President or Justice of Appeal for a period of three years.

- (b) A person may be appointed under this subsection who has attained the age prescribed for the purposes of [section 107](#) or who will attain that age before the expiration of the appointment.
- (c) The period of an appointment under this subsection shall be fixed and the appointment shall not be revoked or otherwise terminated:

Provided that the appointment of a person holding office as a Justice of Appeal shall terminate if he is appointed to hold the office of Judge President, but in that case, if he is appointed under this subsection, the period of his appointment as Judge President shall terminate on the date upon which his appointment to be a Justice of Appeal would have expired.

- (d) In relation to any person appointed under this subsection, the provisions of this Constitution shall have effect as if he would attain the age specified for the purposes of [section 107](#) on the expiration of the period of his appointment.

107. Tenure of office of Judge President and Justices of Appeal

- (1) Subject to the provisions of this section, a person holding the office of Judge President or Justice of Appeal shall vacate that office on attaining the retiring age.
- (2) Notwithstanding that he has attained the retiring age, a person may sit as a judge of the Court of Appeal for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him before he attained that age.
- (3) The Judge President or a Justice of Appeal may at any time resign his office.
- (4) The office of Judge President or Justice of Appeal shall not be abolished while there is a substantive holder thereof.
- (5) For the purposes of this section the retiring age shall be the age of sixty-two years or such other age as may be prescribed by Act of Parliament:

* Provided that a provision of an Act of Parliament, to the extent that it alters the age at which judges of the Court of Appeal shall vacate their offices, shall not have effect in relation to a judge after his appointment unless he consents to its having effect.

- (6) [Section 100](#) shall apply in relation to persons holding or acting in the office of Judge President or Justice of Appeal as it applies in relation to a person holding or acting in the office of judge of the High Court.

108. Acting judges of Court of Appeal

- (1) If the office of Judge President is vacant or the Judge President is for any reason unable to perform the functions of his office then, until a person has been appointed to and has assumed the functions of that office or until the Judge President has resumed those functions, as the case may be, those functions shall be performed by such one of the other judges of the Court of Appeal or such other person qualified for appointment as a judge of the Court as the King, acting in accordance with the advice of the Judicial Service Commission, may appoint.
- (2) If the office of any Justice of Appeal is vacant or if a Justice of Appeal is appointed to act as Judge President or is for any reason unable to perform the functions of his office or if the Judge 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 Judge President, may appoint a person who is qualified for appointment as a Justice of Appeal to act as a Justice of Appeal.

*

By Act No. 1/1972 the age of retirement of the Judge President and Justices of the Court of Appeal has been prescribed as seventy-five years.

- (3) A person appointed under subsection (2) to act as a Justice of Appeal shall, subject to the provisions of [section 100](#), 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 Judge President.
- (4) A person, other than a Justice of Appeal, whose appointment to act as Judge President has expired or been revoked and a person whose appointment to act as a Justice of Appeal has expired or been revoked may, with the permission of the King, acting in accordance with the advice of the Judge President, continue to act as a judge of the Court of Appeal for such a period as may be necessary to enable him to give judgment or to do any other thing in relation with proceedings that were commenced before him previously thereto.

109. Oaths by judges of Court of Appeal

The Judge President and any Justice of Appeal shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office that are set out in Schedule 2 or such other oaths as may be prescribed.

110. Appointment of assessors

The Court of Appeal may, in any case in which it appears to the Court to be expedient, call in the aid of one or more assessors with such special qualifications as the Court may think fit, and hear such case wholly or in part with the assistance of such assessors.

111. Jurisdiction of Court of Appeal

- (1) The Court of Appeal shall have—
 - (a) such jurisdiction to hear and determine such appeals from the courts of Swaziland and such powers and authority as the Court of Appeal possesses at the commencement of this Constitution in accordance with the provisions of this Constitution and of any other law then in force in Swaziland; and
 - (b) such jurisdiction to hear and determine appeals from the courts of Swaziland and such powers and authority (additional to the jurisdiction, powers and authority mentioned in paragraph (a)) as may be prescribed by or under any law for the time being in force in Swaziland.
- (2) Subject to the provisions of subsection (1), the Court of Appeal shall have, for all purposes of and incidental to the hearing and determination of any appeals in its jurisdiction, the power, authority and jurisdiction vested in the court from which the appeal is brought.
- (3) Any decision of the Court of Appeal shall be enforced in like manner as if it were a judgment of the court from which the appeal was brought.

112. Practice and procedure on appeals

- (1) Subject to the provisions of this Constitution, the Judge President may make rules for regulating the practice and procedure of the Court of Appeal with respect to appeals and, in connection with such appeals, for regulating the practice and procedure in any court from which such appeals are brought.
- (2) Without prejudice to the generality of subsection (1) rules of court may be made for the following purposes—
 - (a) for regulating the sittings of the Court of Appeal, whether in divisions or otherwise, and the selection of judges for any purpose;

- (b) for regulating the right of representation of persons concerned in any proceedings in the Court of Appeal;
 - (c) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court of Appeal shall be entitled to be present at the hearing of the appeal;
 - (d) for providing for summary determination of any appeal which appears to the Court of Appeal to be frivolous or vexatious or to be brought for the purposes of delay;
 - (e) for prescribing forms and fees in respect of proceedings in the Court of Appeal and regulating the costs of and incidental to any such proceedings;
 - (f) for prescribing and regulating the powers and duties of registrars and officers of the Court of Appeal;
 - (g) for prescribing the time within which any requirement of the rules is to be complied with;
 - (h) for providing for a reference from a decision of a single judge to the Court of Appeal.
- (3) Rules made under this section may fix the number of judges of the Court of Appeal who may sit for any purpose:
- Provided that—
- (a) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court of Appeal other than the summary dismissal of an appeal, shall not be less than three; and
 - (b) any determination by the Court of Appeal of any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.
- (4) No rules of court made under this section 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 of court shall not be called in question in any proceedings on the grounds that the concurrence of the Minister was not or does not appear to have been obtained.

Part 3 – Judicial Service Commission

[Repealed King's Proclamation of 12th April, 1973]

Chapter X The public service

115. Public Service Commission

- (1) There shall be a Public Service Commission for Swaziland 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.
- (2) No person shall be qualified to be appointed as a member of the Commission if—
 - (a) he is a Senator or member of the House of Assembly or is nominated for election to the House of Assembly;
 - (b) he is the holder of an office in any organisation that sponsors or supports, or that has at any time sponsored or supported, a candidate for election as a member of a Legislative Council established for Swaziland by Order of Her Britannic Majesty in Council or of the Senate or House of Assembly Established by this Constitution or the former Constitution;

- (c) during the period of two years immediately preceding the date of the appointment—
 - (i) he has been a member of a Legislative Council or of a Senate or House of Assembly established as aforesaid;
 - (ii) he has been nominated for election to a Legislative Council or Senate or House of Assembly established as aforesaid; or
 - (iii) he has been the holder of an office in such an organisation as is referred to in paragraph (b); or
- (d) he is a public officer, other than a judge of the High Court or the Court of Appeal:

Provided that a person shall not be so disqualified by reason only that he had been Speaker of a Legislative Council established as aforesaid or had been Speaker of the House of Assembly or Speaker or President of the Senate established as aforesaid having been elected as such from outside the House of Assembly or, as the case may be, the Senate.

- (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 or such lesser period, not being less than two years, from the date of his appointment as may be specified in his instrument of 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).
- (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) 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 Prime Minister in the case of the chairman 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.
- (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 Prime Minister, in the case of the chairman of the Commission or member for the time being acting as chairman or acting in accordance with the advice of the chairman of the Commission, in the case of any other member, may suspend the chairman, acting chairman or other 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 the chairman, acting chairman or other member should not be removed.
- (8) If the office of the chairman of the Commission is vacant or if the chairman is for any reason unable to exercise the functions of his office, those functions shall be performed by such one of the other members of the Commission as the King, acting in accordance with the advice of the Judicial Service Commission, may appoint.

- (9) If at any time there are less than two members of the Commission besides the chairman or if any such member is acting as chairman or is for any reason unable to perform the functions of his office, then, 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 continue to act until his appointment is revoked by the King, acting in accordance with the advice of the Judicial Service Commission.
- (10) A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath for the due execution of his office in the form set out in Schedule 2 or such other oaths as may be prescribed.
- (11) 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:
- Provided that the Commission shall act in a manner consistent with the general policy of the Government as conveyed to the Commission by the Prime Minister in writing.
- (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 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 all the members thereof.
- (14) Before tendering advice to the King for the purposes of any of the provisions of this section the Judicial Service Commission shall consult the Prime Minister.

116. Appointment, etc., of public officers

- (1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.
- (2) 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) to any member of the Commission or to any public officer.
- (3) The provisions of this section shall not apply in relation to any of the following offices—
- (a) the office of a judge of the High Court or Court of Appeal;
 - (b) any office to which [section 117](#) (which relates to Ambassadors, High Commissioners or principal representatives of Swaziland) applies;
 - (c) any office to which [section 118](#) (which relates to permanent secretaries and certain police officers) applies;
 - (d) the office of Attorney-General;
 - (e) except for the purpose of making appointments thereto or to act therein, the office of Auditor-General;
- [Amended K.O-I-C. 24/1973]*
- (f) any office appointment to which is within the functions of the Judicial Service Commission;

- (g) offices in the Police Force and offices in the Prison Service, to the extent provided by section [121](#) and [122](#).

117. Appointment and removal of Ambassadors, etc.

- (1) This section applies to the offices of Ambassador, High Commissioner or other principal representative of Swaziland in any other country or accredited to any international organisation.
- (2) Subject to the provisions of subsections [\(3\)](#) and [\(4\)](#), power to appoint persons to hold the offices to which this section applies and to remove such persons from office shall vest in the King, acting in accordance with the advice of the Prime Minister.
- (3) Before advising the King to appoint to any office to which this section applies any person who holds any public office which is not such an office the Prime Minister shall consult the Public Service Commission.
- (4) Before or as soon as practicable after advising the King to remove from an office to which this section applies any person who prior to his appointment to that office (or, if he has held more than one such office in succession, to those offices) held any public office which is not such an office the Prime Minister shall refer the question of that person's removal to the Public Service Commission and obtain the Commission's report.

118. Appointment, etc., of permanent secretaries and certain police officers

- (1) This section applies to the office of the Secretary to the Cabinet, the office of the Commissioner of Police, the office of the Deputy Commissioner of Police, and the offices of permanent secretary.
- (2) The power to appoint persons to hold or act in any office to which this section applies and, subject to the provisions of subsection [\(3\)](#), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the King, acting in accordance with the advice of the Prime Minister.
- (3) Before advising the King to exercise any power under subsection [\(2\)](#) to exercise disciplinary control over or remove from office any person the Prime Minister shall refer the question of the exercise of those powers in that case to the Public Service Commission and the following provisions shall apply —
 - (a) the Prime Minister shall cause the person concerned to be furnished with a statement of the grounds upon which it is proposed to exercise those powers;
 - (b) the Commission shall enquire into the facts of the case and shall, if the person concerned so requests, consider any representation that he wishes to make in person or in writing;
 - (c) the Commission shall report its findings on the facts of the case and its recommendation concerning the exercise of any powers under subsection [\(2\)](#).

119. Appointment of Attorney-General

- (1) The power to appoint a person to hold or act in the office of Attorney-General and to terminate the appointment of any person acting in the office of Attorney-General shall vest in the King, acting in accordance with the advice of the Judicial Service Commission.
- (2) A person shall not be qualified for appointment to hold or act in the office of Attorney-General unless he is qualified to be appointed as a judge of the High Court or has practised as an advocate or attorney in Swaziland for not less than ten years.

120. Removal from office of Attorney-General and Auditor-General

The provisions of [section 100](#) shall apply in relation to a person holding the office of Attorney-General or the office of Auditor-General as they apply in relation to a judge of the High Court but as if there were substituted for any reference in those provisions to the Chief Justice a reference—

- (a) in the case of the Attorney-General, to the Judicial Service Commission;
- (b) in the case of the Director of Audit, to the Public Service Commission.

[Amended K.O-I-C. 24/1973]

121. The Police Force

- (1) In relation to any officer in the Police Force below the rank of Inspector, any power vested in the Public Service Commission by [section 116](#) shall not apply to the extent to which that power is, by or under the provisions of any law in force in Swaziland, to be exercised by the Commissioner of Police or any other officer in the Police Force:

Provided that in the case of disciplinary proceedings an appeal shall lie to the Public Service Commission against the award by the Commissioner of Police or such other officer of the punishment of dismissal or of reduction in rank.

- (2) The provisions of [section 116\(2\)](#) shall not apply in relation to offices in the Police Force.

122. The Correctional Services

The provisions of [section 121\(1\)](#) and (2) shall apply to persons holding offices in the Correctional Services below the rank of Chief Officer as they apply to persons holding offices in the Police Force below the rank of Inspector; and, for the purposes of this section, those subsections shall have effect as if there were substituted for the words "Police Force" the words "Correctional Services", for the word "Inspector" the words "Chief Officer" and for the words "Commissioner of Police" the words "Commissioner of Correctional Services".

123. Pensions laws and protection of pensions rights

- (1) The law to be applied with respect to any pensions benefits that were granted to any person before 12th April 1973 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.
- (2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection [\(1\)](#) 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 6th September 1968, be the law that was in force immediately before that day; 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 6th September 1968, 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 (except so far as they are a charge on some other fund and have been duly paid out of that fund to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

- (5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Swaziland may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Swaziland:

Provided that nothing in this subsection shall be construed as preventing—

- (a) the attachment, by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that apply in the case of that person; or
 - (b) the imposition of reasonable conditions relating to the form in which any payment is to be remitted.
- (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.
- (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 Swaziland, 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 Swaziland;
 - (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; and
 - (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*,

shall be regarded as offices in the public service.

124. Power of Commissions in relation to pensions, etc.

- (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 Prime Minister 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 Prime Minister concurs in his being granted benefits of a smaller amount.
- (3) The Prime Minister shall not concur under subsection (1) or subsection (2) in any action taken on the ground that any person who holds or has held the office of judge of the High Court, judge of the Court of Appeal, Attorney-General or Director of Audit has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.
- (4) *[Repealed K.O-I-C. 16/1973]*
- (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 Swaziland, 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 Swaziland;
 - (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; and
 - (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*,shall be regarded as offices in the public service.

125. Right of action for wrongful dismissal, etc.

- (1) If any person holding a public office is removed from office under any of the provisions of this Constitution, his removal as aforesaid shall be without prejudice to any right of action to which he may be entitled under the law for the time being in force in Swaziland for damages for wrongful dismissal or loss of status:

Provided that no such damages shall be recoverable if the holder of the office is offered appointment to another public office in respect of which the emoluments are not less than the emoluments of the office from which he is removed.
- (2) The law relating to rights of action for damages for wrongful dismissal or loss of status shall not be altered to the disadvantage of a public officer during his continuance in office.
- (3) Nothing in this section shall apply to the holder of the office of judge of the High Court, judge of the Court of Appeal, Attorney-General or Director of Audit or to any holder of an office to which [section 117](#) applies who immediately prior to his appointment to that office (or if he has held more than one such office in succession, to those offices) was not the holder of a public office.

Chapter XI Finance

126. Consolidated Fund

All revenues or other moneys raised or received for the purposes of the Government of Swaziland (not being revenues or other moneys that are payable by or under this Constitution or any other law into some other fund established for a specific purpose or that may by or under any law be retained by the department of Government that received them for the purposes of defraying the expenses of that department) shall be paid into and form one Consolidated Fund.

127. Withdrawals from Consolidated Fund or other public funds

- (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 other law in force in Swaziland;
 - (b) where the issue of those moneys has been authorised by an Appropriation Act, by a supplementary estimate approved by resolution of the House of Assembly or in such manner and subject to such conditions as may be prescribed in pursuance of [section 129](#).
- (2) No moneys shall be withdrawn from any public fund of Swaziland other than the Consolidated Fund or any Contingencies Fund established under [section 130](#) unless the issue of those moneys has been authorised by or under a law.
- (3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed.
- (4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and Administrations or the investment of any such moneys in securities in which, under the law for the time being in force in Swaziland, trustees are authorised to invest, or the making of advances to such extent and in such circumstances as may be prescribed shall not be regarded as withdrawal of those moneys from the Fund for the purposes of this section.

128. Authorisation of expenditure

- (1) The Minister responsible for finance shall cause to be prepared and laid before both chambers, before or not later than ninety days after the commencement of each financial year, estimates of the revenues and expenditure of Swaziland for that year.

[Amended A. 15/1972]

- (2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill to be known as an Appropriation bill which shall be introduced in the House of Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.
- (3) If in any financial year it is found—
 - (a) that the amount appropriated by the Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Act; or

- (b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation Act or for a purpose for which no amount has been appropriated by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the House of Assembly and shall be included in a motion or motions seeking approval for the supplementary expenditure in such manner as the House shall prescribe.
- (4) A final Supplementary Appropriation bill shall be introduced in the House of Assembly, not later than the end of the financial year next following, providing for the appropriation under each head of expenditure of any funds which it has proved necessary to spend in addition to those appropriated in the Appropriation Act.

129. Authorisation of expenditure in advance of appropriation

If the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may, to such extent and subject to such conditions as may be prescribed, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier:

Provided that the expenditure so authorised for any service shall not exceed one quarter of the amount authorised for that service in the preceding year.

130. Contingencies Fund

- (1) An Act of Parliament may make provision for the establishment of a Contingencies Fund and for authorising the Minister 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 laid before the House of Assembly, and a bill or motion shall be introduced therein, as soon as possible, for the purpose of replacing the amount so advanced.

131. Remuneration of certain officers

- (1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.
- (2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on and paid out of the Consolidated Fund.
- (3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances which, under the law for the time being in force relating to pensions, are not taken into account in computing pensions, shall not be altered to his disadvantage after his appointment.
- (4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3), 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 judge of the High Court, judge of the Court of Appeal, appointed member of the Judicial Service Commission, member of the Public Service Commission, Attorney-General and Director of Audit.

132. Public debt

- (1) All debt charges for which Swaziland is liable shall be a charge on and paid out of 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 revenues of Swaziland or the Consolidated Fund and on the service and redemption of debt thereby created.

133. Auditor-General

- (1) There shall be an Auditor-General, whose office shall be a public office.
- (2) The public accounts of Swaziland and of all officers, courts and authorities of the Government shall be audited and reported on by the Director of Audit and for that purpose the Auditor-General or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so provided by any law in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.
- (3) The Auditor-General shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before both chambers.
- (4) In the exercise of his functions under this Constitution the Auditor-General shall not be subject to the direction or control of any other person or authority.

[Amended K.O-I-C. 24/1973]

Chapter XII

[Repealed]

**Chapter XIII
Miscellaneous****135. Swazi National Council**

The Swazi National Council, which shall consist of the Nggwenyama, the Ndlovukazi, Bantfwabenhosi, Chiefs and all adult citizens, shall continue to exercise its functions of advising the Nggwenyama on all matters regulated by Swazi law and custom and shall exercise such functions either in Libandla or in Liqoqo, as the case may be, in accordance with Swazi law and custom.

[Amended [P 1/1981](#)]

136. Subordinate legislation

An Act of Parliament may make provision conferring functions on a joint sitting of the chambers of Parliament with respect to any subordinate legislation (that is to say any instruments having the force of law made under an Act of Parliament) and for the summoning and procedure of a joint sitting for the purpose of the exercise of those functions.

137. References to public office, etc.

- (1) In this Constitution, unless the context otherwise requires, the expression "public office"—
 - (a) shall be construed as including the offices of judges of the High Court or Court of Appeal, the offices of members of all other courts of law in Swaziland (other than courts-martial), and the offices of members of the Police Force and of members of the Prison Service; and
 - (b) shall not be construed as including the offices of President or Deputy President of the Senate, Speaker or Deputy Speaker of the House of Assembly, Minister, Assistant Minister, Senator, member of the House of Assembly or Member of any Commission established by this Constitution.
- (2) For the purposes of this Constitution, a person shall not be regarded as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of public service.

138. Acting appointments

- (1) 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 a reference to any person for the time being lawfully acting in or exercising the functions of that office.
- (2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

139. Removal from office

- (1) 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 and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:
Provided that—
 - (a) nothing in this subsection shall be construed as conferring on any person or authority power to require a judge of the High Court or of the Court of Appeal or the Attorney-General 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.
- (2) Any provision in this Constitution that vests in any person or authority 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 therein.

140. Resignations

Save as otherwise provided in this Constitution, any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the

person or authority by whom he was appointed; and the resignation shall take effect and the office shall accordingly become vacant—

- (a) at such time or on such date (if any) as may be specified in the writing; or
- (b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

141. Re-appointments and concurrent appointments

- (1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.
- (2) Where a power is conferred by this Constitution upon any person 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.

142. Saving for jurisdiction of courts

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 of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

143. Power to amend and revoke instruments, etc.

Where any power is conferred by this Constitution to make any order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such order, regulation, rule or direction.

144. Interpretation

- (1) In this Constitution unless the context otherwise requires—

"Act of Parliament" means an Act of the Parliament of Swaziland established by law and includes an Order-in-Council;

[Amended D.1/1982 – effective 12 April 1973]

"the Commissioner of Police" means the officer, by whatever title called, commanding the Police Force;

"the Commonwealth" means the countries that are independent members of the Commonwealth and territories for whose international relations any of those countries is wholly or in part responsible;

"financial year" means the period of twelve months ending on the thirty-first day of March in any year or such other day as may be prescribed;

"the former Constitution" means the Constitution of the Kingdom of Swaziland set out in the Schedule to the Swaziland Constitution Order 1967 as in force on 5th September 1968;

"the Gazette" means the Swaziland Government Gazette;

"the Government" means the Government of Swaziland;

"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 the Republic of Ireland or in any other country outside the Commonwealth that may be prescribed or the office of a judge of a court having jurisdiction in appeals from such a court;

"the King" includes any person lawfully performing the functions of the King in accordance with Chapter IV;

"Libandla" means Council consisting of advisers of the Nggwenyama and of representatives of the Swazi nation or part of that nation, meeting to discuss any matters of communal concern in accordance with Swazi law and custom;

"Liqoqo" means the King's Advisory Council which shall consist of Members appointed by the King to hold Office at his pleasure in accordance with such terms and conditions, (including emoluments and allowances) as he may determine and whose function it is to advise the King on all matters of State when requested to do so by the King:

Provided that no person shall be qualified to be member of Liqoqo solely by virtue of his holding another office whether or not such office is established by Law;

Amended D.1/1982; D.1/1987]

"the Ndlovukazi" means the person appointed as Ndlovukazi under Swazi law and custom;

"the Nggwenyama" means the person appointed as Nggwenyama under Swazi law and custom and includes any person for the time being exercising the functions of the Nggwenyama under Swazi law and custom;

"oath" includes affirmation;

"Parliament" means the Parliament of Swaziland established by law;

Amended D.1/1982]

"the Police Force" means the Swaziland Police Force and includes any other police force established in accordance with such provision as may be prescribed;

"prescribed" means prescribed in a law: provided that, in relation to anything that may be prescribed only by Act of Parliament, it means so prescribed;

"public office" means, subject to the provisions of [section 137](#) or any other law, an office of emolument in the public service;

[Amended D.1/1982]

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"public service" means service in a civil capacity in respect of the government of Swaziland;

"session" means, in relation to Parliament, the sittings of Parliament commencing when the House of Assembly first meets after any general election or when Parliament first meets after its prorogation at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means, in relation to a chamber, a period during which that chamber is sitting continuously without adjournment, and includes any period during which the chamber is in committee.

- (2) Save as otherwise provided in this Constitution, the Interpretation Act 1889 (a) 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 (Sections 18, 75, 76 and 134)

Summoning and procedure of joint sittings of Senate and House of Assembly

1. (1) The King shall summon a joint sitting of the Senate and the House of Assembly—
 - (a) whenever he is informed by the Prime Minister that it is necessary in order that a joint sitting may deliberate and vote upon the question of approval, extending approval, or revocation of a declaration of a state of emergency under section 18;
 - (b) in the circumstances mentioned in section 75(2) or 76(2);
 - (c) whenever he is informed by the President of the Senate or the Speaker of the House of Assembly that a member of the Senate or the House of Assembly, as the case may be, has given notice of the introduction of a bill to alter the Constitution; or
 - (d) whenever it is necessary in order that a joint sitting of the Senate and the House of Assembly may deliberate and vote upon a bill to alter the Constitution in accordance with section 134(1)(c).
- (2) Subject to sub-paragraph (4), the summons of a joint sitting shall be by message to the Senate and the House of Assembly through the President or Speaker, as the case may be, and shall state the business which the sitting is summoned to transact and shall appoint a day for the joint sitting, being not more than fourteen days after the date of the message in the case of a sitting for the purpose mentioned in sub-paragraph (1)(a) and not more than twenty-one days after the message in any other case.
- (3) The prorogation of Parliament shall not affect any business which a joint sitting of the Senate and the House of Assembly has, at the date of the prorogation, been summoned to transact in accordance with the provisions of this paragraph or, which is then under consideration by a joint sitting, but, subject to the provisions of sub-paragraph (4), any business pending for consideration or under consideration by a joint sitting when Parliament is dissolved shall lapse at the date of the dissolution.
- (4) The provisions of section 60 (which relates to the recall of the chambers of Parliament after a dissolution) shall apply for the purpose of authorising the recall of members of those chambers in a joint sitting as it applies for authorising the recall of the chambers of Parliament.
2. The members of the Senate and the House of Assembly shall meet together in joint sitting on the day appointed and on any succeeding day or days that may be necessary and may deliberate and shall vote together upon the business the joint sitting was summoned to transact.
3. Where a joint sitting of the Senate and the House of Assembly is summoned for the purpose of deliberating and voting upon a bill in the circumstances mentioned in section 75(2) the following provisions shall apply—
 - (a) the members of the Senate and the House of Assembly may deliberate and shall vote together upon the bill as last proposed in the chamber in which it was introduced and upon such admissible amendments to the bill as may be proposed in the joint sitting;
 - (b) if the bill, with such admissible amendments, if any, as are agreed to by the joint sitting, is affirmed by the joint sitting, the bill as so affirmed shall be deemed to have been duly passed;
 - (c) for the purposes of this paragraph—
 - (i) if the bill has not been passed by the chamber to which it was sent with amendments and returned to the chamber in which it was introduced, there shall be admissible only such amendments, if any, as are made necessary by the delay in the passage of the bill;

- (ii) if the bill has been passed by the chamber to which it was sent with amendments and returned to the chamber in which it was introduced, there shall be admissible only such amendments, if any, as are made necessary by the delay in the passage of the bill and such other amendments as are relevant to the matters with respect to which the chambers have not agreed;
 - (iii) the decision of the person presiding in the joint sitting as to the amendments that are admissible under the provisions of this sub-paragraph shall be final.
- 4. (1) Where a joint sitting of the Senate and the House of Assembly is summoned for the purpose of considering a bill referred back by the King in accordance with section 76(2) the following provisions shall apply:—
 - (a) if the whole bill has been referred back, the joint sitting may deliberate and shall vote upon the bill as presented to the King for assent together with any amendment to any provision of the bill which may be proposed in the joint sitting;
 - (b) if the bill has been referred back for consideration of provisions of the bill specified by the King, the joint sitting may deliberate and shall vote upon the bill as presented to the King for assent together with any admissible amendment which may be proposed in the joint sitting;
 - (c) if the bill is affirmed with such amendments (if any) as are mentioned in the preceding subparagraphs and are agreed by the joint sitting, it shall be deemed to be duly passed.
- (2) For the purposes of sub-paragraph (1)(b) there shall be admissible only amendments to the provisions specified by the King and such other amendments as are relevant to the matters contained in the King's message, and the decision of the person presiding in the joint sitting as to the amendments that are admissible shall be final.
- 5. The Speaker of the House of Assembly and the President of the Senate shall, in that order, preside alternately at joint sittings of the Senate and the House of Assembly and for the purpose of this paragraph the sitting or sittings necessary to dispose respectively of any motion for the purpose of section 18, of the business relating to any bill referred to a joint sitting in accordance with section 75(2) or 76(2), or of the business relating to any bill to alter the Constitution shall be regarded as a single sitting.
- 6. A joint sitting shall not be disqualified for the transaction of business by reason of any vacancy in the membership of either chamber.
- 7. If objection is taken by a member of either chamber who is present that there are present in that sitting (besides the person presiding) fewer than twenty-five members of the chambers of Parliament and, after such interval as may be prescribed in the rules of procedure applying to a joint sitting, the member presiding ascertains that there are still fewer than twenty-five members of the chambers of Parliament present, he shall thereupon adjourn the joint sitting.
- 8. (1) Save as otherwise provided in this Constitution, any question proposed for decision in a joint sitting of the Senate and the House of Assembly shall be determined by a majority of the votes of the members of Parliament present and voting.
- (2) A President elected from among persons who are Senators or a Speaker elected from among persons who are members of the House (whether or not he is presiding in a joint sitting) shall have an original but not a casting vote.
- (3) A President or Deputy President of the Senate elected from among persons who are not Senators or a Speaker or a Deputy Speaker of the House of Assembly elected from among persons who are not members of the House shall have no vote.
- (4) The Attorney-General shall have no vote.
- (5) Subject to the provisions of sections 18(5) and 134(1)(d), if upon any question before a joint sitting the votes of the persons entitled to vote are equally divided the motion shall be lost.

- (6) If the rules of procedure of a chamber of Parliament 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, those rules of procedure shall have effect for determining whether a member of that chamber has voted in a joint sitting.
9. Subject to the provisions of this Schedule, the rules of procedure for the time being of the House of Assembly shall apply, with the necessary modifications, for regulating any proceedings of a joint sitting under this Constitution which correspond to proceedings of the House of Assembly.

Schedule 2 (Sections 36, 54(6), 63, 88, 103, 109, 113(9) and 115(10))

Oaths

(Oath or affirmation for the due execution of the office of King of Swaziland)

I _____ do swear [or solemnly affirm] that I, in the office of King of Swaziland will, under the Constitution of the Kingdom of Swaziland, preserve, protect and defend the said Constitution; that I will, as King, govern the people of Swaziland according to the said Constitution and the other laws of Swaziland; 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 Swaziland.

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 Swaziland, will, under the Constitution of the Kingdom of Swaziland, well and truly serve the King of Swaziland, 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 Swaziland according to the said Constitution and the other laws of Swaziland; 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 Swaziland.

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.]*

(Oath or affirmation for due execution of office)

I _____ do swear [or solemnly affirm] that I will well and truly serve King _____, his heirs and successors, in the office of *[here insert the description of the office]*.

So help me God. *[To be omitted in affirmation.]*

(Judicial oath or affirmation)

I _____ do swear [or solemnly affirm] that I will well and truly serve King _____, his heirs and successors, in the office of *[here insert the description of the judicial office]* and I will do right to all manner of people according to the law without fear or favour, affection or ill-will.

So help me God. *[To be omitted in affirmation.]*

Schedule 3 (Section 62(2))**Matters which shall continue to be regulated by Swazi law and custom**

- (a) The office of Nggwenyama.
- (b) The office of Ndlovukazi (the Queen Mother).
- (c) The authorisation of a person to perform the functions of Regent for the purposes of section 30 of this Constitution.
- (d) The appointment, revocation of appointment and suspension of Chiefs.
- (e) The composition of the Swazi National Council, the appointment and revocation of appointment of members of the Council, and the procedure of the Council.
- (f) The Ncwala Ceremony.
- (g) The Libutfo (regimental) system.

Schedule 4

[Repealed]