

TUVALU

[1978 Ed.]

SUPPLEMENT III

PROBATE AND ADMINISTRATION

1. British Solomon Islands and Gilbert and Ellice Islands (Probate and Administration) Order in Council 1914.

2. Pacific (Probate and Administration Order) 1977.

**1. THE BRITISH SOLOMON ISLANDS AND GILBERT AND ELLICE ISLANDS
(PROBATE AND ADMINISTRATION) ORDER IN COUNCIL 1914**

S.R. & O. 1914/150

AT THE COURT AT WINDSOR CASTLE

the 21st day of January, 1914

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY

ARCHBISHOP OF CANTERBURY
LORD PRESIDENT
VISCOUNT ALLENDALE
LORD STAMFORDHAM

LORD PARMOOR
SIR FRANCIS HOPWOOD
SIR G. FLEETWOOD WILSON
MR. W. H. DICKINSON

WHEREAS by an Order of Her late Majesty Queen Victoria, bearing date the 15th day of March, 1893, and known as "the Pacific Order in Council, 1893," provision was made for the exercise of the jurisdiction of Her Majesty, Her heirs and successors, within the limits prescribed by the said Order, under and by virtue of the provisions contained in the Act of Parliament in the said Order recited and set forth:

AND WHEREAS by Articles XXXVIII to XLVI inclusive of the said Order, provision was made for the exercise by the High Commissioner's Court of Probate jurisdiction within the said limits:

AND WHEREAS it is expedient to revoke the said Articles so far only as they relate to the Solomon Islands Protectorate and the Gilbert and Ellice Islands Protectorate and Ocean Island, and to substitute new provisions in lieu thereof and to provide more effectually for the custody and administration of unrepresented estates in the said Protectorates and in the said Island:

NOW THEREFORE His Majesty, by virtue and in exercise of the powers in this behalf by the British Settlements Act, 1887, the Pacific Islanders Protection Acts, 1872 and 1875, and the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased by and with the advice of His Majesty's Privy Council, to order, and it is hereby ordered, as follows-

1. (Revoked by S.I. 1977/1628).
2. This Order may be cited as the British Solomon Islands and Gilbert and Ellice Islands (Probate and Administration) Order in Council, 1914.
3. (Had effect).
4. (Revoked by S.I. 1977/1628).

PART I

5. (1) The Court shall be a Court of Probate and, as such, shall, as far as circumstances admit, have, for and within its jurisdiction, with respect to the property of persons subject to the jurisdiction of the Court appearing to the Court to have at the time of death their fixed places of abode in the jurisdiction of the Court, all such jurisdiction as for the time being belongs to any Court exercising probate jurisdiction in England.

(2) Probate or administration granted by a Court shall have effect over all property of the deceased within the jurisdiction and shall effectually discharge persons dealing with an executor or administrator thereunder, notwithstanding that any defect afterwards appears in the grant.

(3) A grant of probate or administration shall not be impeachable by reason only that the deceased had not, at the time of his death, his fixed place of abode within the jurisdiction.

6. (1) Any person having in his possession or under his control any paper or writing of a deceased person subject to the jurisdiction of the Court, being or purporting to be testamentary, shall forthwith deliver the original to the Court and deposit it there.

(2) Any person neglecting to do so for 14 days after having knowledge of the death of the deceased shall be liable to such penalty, not exceeding £50, as the Court thinks fit to impose.

7. From the death of a person subject to the jurisdiction of the Court, having at the time of his death his fixed place of abode in the jurisdiction of the Court, intestate, until administration granted, his personal property in the jurisdiction of the Court shall be vested in the Judge of the Court.

8. Subject to the provisions of Part II of this Order, if any person (other than an officer of the Court) entitled to a grant of probate or letters of administration takes possession of, or in any manner administers, any part of the personal property of any person deceased without obtaining probate or administration within 3 months after the death of the deceased, or within 1 month after the termination of any suit or dispute respecting probate or administration (if there is any suit or

dispute which is not ended within 2 months after the death of the deceased), he shall be liable to such penalty, not exceeding £100, as the Court having jurisdiction in the matter of the property of the deceased thinks fit to impose; and in every such case the same fees shall be payable by the person so administering as would have been payable by him if he had obtained probate or administration.

9. Where it appears to the Court that the value of the property or estate of a deceased person does not exceed £100, the Court may, without any probate, or letters of administration, or other formal proceeding, pay thereout any debts or charges, and pay, remit, or deliver any surplus to such persons and in such manner as the High Commissioner from time to time directs, and shall not be liable to any action, suit, or proceedings in respect of anything done under this Article.

10. (1) Where probate, administration, or confirmation is granted in England, Ireland, or Scotland, and therein, or by a memorandum thereon signed by an officer of the Court granting the same, the testator or intestate is stated to have died domiciled in England, Ireland, or Scotland (as the case may be), and the probate, administration, or confirmation, is produced to, and a copy thereof is deposited with, the Court, the Court by a Judicial Commissioner shall write thereon a certificate of that production and deposit, and thereupon the probate, administration, or confirmation shall, in respect of the property within the limits of this Order of the testator or intestate, have the like effect as if he had been resident within the limits of this Order at his death and probate or administration to his property there had been granted by the Court.

(2) Any person who, in reliance on an instrument purporting to be a probate, administration, or confirmation, granted in England, Ireland, or Scotland, and to bear the said certificate of the Court, makes or permits any payment or transfer, in good faith, shall be, by virtue of this Order, indemnified and protected in respect thereof, within the limits of this Order, notwithstanding anything affecting the validity of the probate, administration or confirmation.

11. (1) A person claiming to be a creditor or legatee, or the next of kin, or one of the next of kin, of a deceased person may apply for and obtain a summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend before the Court and show cause why an order for the administration of the property of the deceased should not be made.

(2) On proof of service of the summons, or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court thinks fit, the Court may, if it thinks fit, make an immediate order for the administration of the property of the deceased.

(3) The Court shall have full discretionary powers to make or refuse or postpone the making of any such order, or to give any special directions respecting the carriage or execution of it; and in the case of applications for such an order by 2 or more different persons or classes of persons, to grant the same to such 1 or more of the claimants, or classes of claimants, as the Court thinks fit.

(4) If the Court thinks fit, the carriage of the order may subsequently be given to such person, and on such terms, as the Court thinks fit.

(5) On making such order, or at any time afterwards, the Court may, if it thinks fit, make any further or other order for compelling the executor or administrator to bring into Court for safe custody all or any part of the money or securities or other property of the deceased, from time to time coming into his hand, or otherwise for securing the safe keeping of the property of the deceased, or any part thereof.

(6) If the extreme urgency or other peculiar circumstances of the case appear to the Court so to require (for reasons recorded in the minutes), the Court may of its own motion issue such a summons and make orders and cause proper proceedings to be taken thereon.

PART II

12. For the purposes of this part of this Order the expression "unrepresented estate" means-

(a) the estate of a deceased person-

(i) who has died intestate as to the whole or any part of his estate; or

(ii) whose will cannot be found; or

(iii) who has not appointed an executor of his will; or

(iv) whose executor or executors has or have pre-deceased him or is or are not in the Protectorate in which the estate of the testator is situate; or

(v) whose executor or executors refuses or refuse or is or are unable to act;

and who, in each of these cases, has left him surviving in the Protectorate no person (other than the official administrator hereinafter named) entitled by law to a grant of and able and willing to take administration of his estate or administration thereof with the will annexed;

(b) the estate, or any part of the estate, of a deceased person which at any time after the grant of probate or letters of administration has been made is unadministered, and in respect whereof there is no representative in law in the Protectorate where that estate or part of that estate is.

13. (1) Subject to the approval of a Secretary of State, the High Commissioner may, for and in respect of each Protectorate, appoint a fit and proper person to be the official administrator of unrepresented estates therein.

(2) Subject to confirmation by a Secretary of State, the High Commissioner may remove any person so appointed.

(3) Until the appointment aforesaid is made, the Resident Commissioner in each Protectorate shall be the official administrator therefor and therein.

14. The official administrator shall, as soon as possible after his right to do so accrued under the provisions of this Order, take possession of any unrepresented estate of a deceased person in the Protectorate and apply forthwith to the Court for an order for letters of administration thereof, or of administration thereof with the will annexed (as the case may be) to issue to him, and the Court if satisfied that there is no person in the Protectorate other than the official administrator entitled to and able and willing to take the said grant, shall make a grant to the official administrator accordingly.

15. (1) Any person by law entitled to a grant of probate or to letters of administration (with or without the will annexed) of the estate of any deceased person, the administration whereof has been granted to the official administrator, may, within 5 years from the date of the last-mentioned grant, apply to the Court for revocation thereof and for a grant to him of probate, or of administration of that estate, or such part thereof as is still unadministered, and the Court, if satisfied that the applicant is entitled thereto, shall make the appropriate grant.

(2) Nothing done by the official administrator under the grant or administration to him shall be rendered invalid, or be liable in any way to be impeached by reason only of the subsequent revocation thereof.

16. (1) After the expiration of 5 years from the date of an order for administration of any unrepresented estate of a deceased person by the official administrator, that estate or so much thereof as has descended or is distributable and is then unclaimed, or the person or persons entitled to which is or are unknown, shall, on the application of the official administrator to the Court, be transferred to and vested in the Resident Commissioner in that capacity and shall be held by him and his successors; in office for the use and benefit of His Majesty's Government of the Protectorate.

(2) If within 5 years from the date of the transfer and vesting aforesaid, any person shall lay claim to the estate, or any part thereof, and shall prove his title thereto to the satisfaction of the Resident Commissioner, who may require the claimant to prove his claim before a court of law, the estate, or part thereof, after deduction therefrom of a commission of 21/2 per cent on the value of the estate originally sworn for the purposes of administration, shall be transferred, or paid without interest from the general revenue of the Protectorate, to the claimant.

(3) After the expiration of the last mentioned period of 5 years, no claim to the estate, or any part thereof, shall be entertained by the Resident Commissioner or by any court of law, and the same shall be deemed to have been transferred to, and to have vested in, the Resident Commissioner for the use and benefit aforesaid, absolutely.

17. The official administrator shall keep an account, called the unrepresented estates account, in which shall appear an account of all receipts and payments in respect of each estate of which he is the administrator under this Order, and the account shall be subject to inspection and audit from time to time by the auditor of the Protectorate's Government.

18. This Order shall commence and come into operation on a day to be proclaimed by the High Commissioner.

Proclamation under Article 18

The Order was brought into operation on 1st April 1914.

Proclamation No. 1 of 1914

2. THE PACIFIC (PROBATE AND ADMINISTRATION) ORDER 1977

S.I. 1977/1628

Made: 11th October 1977

Laid before Parliament: 19th October 1977

Coming into Operation: 10th November 1977

At the Court at Buckingham Palace, the 11th day of October 1977

Present,

The Queen's Most Excellent Majesty in Council.

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act 1890 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-

1. This Order may be cited as the Pacific (Probate and Administration) Order 1977 and shall come into operation on 10th November 1977.

2. (1) In this Order, "the 1914 Order" means the British Solomon Islands and Gilbert and Ellice Islands (Probate and Administration) Order in Council 1914.

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(2) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

1889 c. 63

3. Articles 1 and 4 of the 1914 Order are revoked.

4. Subject to the provisions of this Order, the 1914 Order shall continue to apply to the territories of the Solomon Islands, the Gilbert Islands, and Tuvalu.

5. *(Applies to the Solomon Islands only.)*

6. *(Applies to the Gilbert Islands only.)*

7. (1) In the application of the 1914 Order to Tuvalu-

(a) all the functions of the High Commissioner or the Resident Commissioner shall be exercised and performed by the Commissioner for Tuvalu;

(b) any reference to the Court shall be construed as a reference to the High Court of Tuvalu, and any reference to a Judge or Judicial Commissioner shall be construed as a reference to a judge of the High Court of Tuvalu; and

(c) any reference to the Protectorate shall be construed as a reference to the territory of Tuvalu.

(2) If he is satisfied that proper and adequate provision has been made in the law of Tuvalu with respect to any matter provided for in the 1914 Order, the Commissioner for Tuvalu, acting in his discretion, may by order direct that as from such day as shall be specified in such order such provisions of the 1914 Order as he considers are no longer required shall cease to apply to Tuvalu on such conditions and subject to such exceptions and qualifications as may be prescribed in such order.

N. E. Leigh,

Clerk of the Privy Council.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order modifies the application of the British Solomon Islands and Gilbert and Ellice Islands (Probate and Administration) Order in Council 1914 in the Solomon Islands, the Gilbert Islands and Tuvalu to take account of changes in the administration of those territories.