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COLONY AND PROTECTORATE OF KENYA

ORDINANCES

ENACTED DURING THE YEAR

1949

VOL. XXVIII (NEW SERIES)



NAIROBI

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ORDINANCES, 1949
CHRONOLOGICAL TABLE

No.	TITLE	Date of Assent	Date of Commencement
1	Forest (Amendment)	28-1-49	28-1-49
2	Fish Protection (Amendment)	"	"
3	Mental Treatment	7-2-49	7-2-49
4	1949 Appropriation	"	1-1-49
5	Diamond Industry Protection	4-6-49	4-6-49
6	Municipalities (Amendment)	"	1-4-49
7	Local Government (Rating) (Amendment)	"	4-6-49
8	Vagrancy (Amendment)	"	"
9	Estate Duty (Consolidation) (Amendment)	"	"
10	Law Society of Kenya	"	By Notice
11	Widows' and Orphans' Pension (Amendment)	"	4-6-49
12	Eviction of Tenants (Control)	"	"
13	Shop Hours (Amendment)	"	"
14	Hospital Services (European) (Amendment)	"	"
15	Liquor (Amendment)	"	"
16	Nurses and Midwives Registration	"	"
17	Land and Water Preservation (Amendment)	"	"
18	Control of Grass Fires (Amendment)	"	"
19	Special Districts (Administration) (Amendment)	8-6-49	8-6-49
20	Immigration (Control) (Amendment)	"	"
21	Increase of Mortgage Interest (Restriction)	"	"
22	Increase of Rent (Restriction)	"	By Notice
23	Customs Tariff (Amendment)	30-8-49	30-8-49
24	Kenya Police Force Reserve (Amendment)	"	"
25	British Nationality (Offences and Fees)	"	"
26	Mombasa Shop Hours	"	"
27	Motor Vehicles Insurance (Third Party Risks) (Amendment)	8-9-49	8-9-49
28	Protected Areas	"	"
29	Native Trust Fund (Amendment)	"	"
30	Evidence (Bankers' Books) (Amendment)	"	"
31	Control of Hotels (Amendment)	"	"
32	Income Tax (Amendment)	"	"
33	Radio-active Minerals (Amendment)	"	"
34	Crown Lands (Amendment)	"	"
35	Trade Unions (Registration)	"	"
36	Deportation (Aliens)	"	"
37	Deportation (Immigrant British Subjects)	"	"
38	Land Control (Amendment)	"	"
39	Voluntarily Unemployed Persons (Provision of Employment)	"	By Notice
40	Departmental Offences	"	8-9-49
41	Increase of Rent (Restriction) (Amendment)	"	"
42	Kenya Regiment (Territorial Force) (Amendment)	11-11-49	By Notice
43	Customs Tariff (Amendment No. 2)	18-11-49	21-9-49
44	Customs Tariff (Amendment No. 3)	"	1-8-48
45	Townships (Amendment)	"	18-11-49
46	Marketing of Native Produce (Amendment)	"	"
47	Crop Production and Livestock (Amendment)	"	"
48	Diseases of Animals (Amendment)	"	"
49	European Agricultural Settlement (Amendment)	"	"

CHRONOLOGICAL TABLE—(Contd.)

No.	TITLE	Date of Assent	Date of Commencement
50	Resident Labourers (Amendment)	18-11-49	18-11-49
51	Companies (Amendment)	"	"
52	Coffee Industry (Financial Assistance) (Amendment)	"	"
53	Asiatic Widows' and Orphans' Pension (Amendment)	"	"
54	Pensions (Increase) (Amendment)	"	28-1-45
55	Advocates	"	By Notice
56	Income Tax (Amendment) (Relief)	"	18-11-49
57	Legislation (Application to High Commission) ..	"	By Notice
58	Excise Duties (Amendment)	9-12-49	9-12-49
59	Industrial Licensing (Amendment)	31-12-49	31-12-49
60	Eviction of Tenants (Control) (Amendment) ..	"	"
61	Increase of Rent (Restriction) (Amendment) ..	"	"
62	1950 Appropriation	"	1-1-50

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION

FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1949

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1949
Cap. 10	Legal Practitioners	Repealed.. .. .	55
" 61	Deportation	Repealed.. .. .	36
" 63	Vagrancy	Sections 2 and 10, amended	37
" 122	Lunacy	Repealed.. .. .	8
" 123	Removal of Lunatics (European)	Repealed	3
" 140	Crown Lands	Sections 35, 36, 37, amended; provision for objections by lessees and for notice of amounts payable	3
" 157	Diseases of Animals	Section 22, repealed and replaced	34
24 of 1925	Shop Hours	Section 9, amended	48
3 of 1926	Crop Production and Livestock	Section 4, amended	13
13 of 1926	Estate Duty (Consolidation)	Sections 2 and 20, amended; section 31, new; sections 31 to 34, renumbered as 32 to 35	47
20 of 1927	Asiatic Widows' and Orphans' Pension	Section 2, amended; sections 16, 18, repealed and replaced	9
19 of 1928	Municipalities	Section 88, amended	53
20 of 1928	Local Government (Rating)	Sections 2, 3, 6, 13, 28 and 29, amended	6
35 of 1928	Departmental Offences	Repealed.. .. .	7
63 of 1930	Townships	Section 33, amended	40
28 of 1933	Companies	Section 35A, new	45
13 of 1934	Special Districts (Administration)	Section 4, amended	51
19 of 1934	Diamond Industry Protection	Repealed.. .. .	19
28 of 1935	Marketing of Native Produce	Section 4, amended	5
40 of 1935	Excise Duties	Schedule, amended	46
4 of 1937	Kenya Regiment (Territorial Force)	Sections 8, 11, repealed; section 19, repealed and replaced; sections 21, 24, 34, 35, 36, amended	58
16 of 1937	Evidence (Bankers' Books)	Section 2, amended	42
29 of 1937	Mombasa Shop Assistants (Employment)	Repealed.. .. .	30
30 of 1937	Resident Labourers	Section 16, amended	26
32 of 1939	British Nationality and Status of Aliens	Repealed.. .. .	50
	Fees	Repealed.. .. .	25

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION
FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1949

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1949
39 of 1939 11 of 1940	Fish Protection Income Tax	Section 2, amended Application to assessments; section 27 and Third Schedule, amended Section 2, date of commencement; section 24, amended	2 32 56
12 of 1940	Increase of Rent and of Mortgage Interest (Restrictions)	Repealed	22
9 of 1941	Increase of Rent and of Mortgage Interest (Restrictions) (Amendment)	Repealed	22
26 of 1941	Forest	Section 2, amended; sections 3 and 4, repealed and replaced; sections 5, 6, 7, 8, 10, 11, 14 and 15, amended	1
37 of 1941	Increase of Rent and of Mortgage Interest (Restrictions) (Amendment No. 2)	Repealed	22
41 of 1941	Control of Grass Fires	Section 15, amended	18
16 of 1942	Increase of Rent and of Mortgage Interest (Restrictions) (Amendment)	Repealed	22
22 of 1942	Native Trust Fund	Sections 2 and 7, amended	29
1 of 1943	Trade Unions and Trade Disputes	Re-registration of trade unions	35
11 of 1943	Land and Water Preservation	Sections 2 and 3, amended; section 2A, new	17
12 of 1943	Increase of Rent and of Mortgage Interest (Restrictions) (Amendment)	Repealed	22
26 of 1943	Increase of Rent and of Mortgage Interest (Restrictions) (Amendment No. 2)	Repealed	22
4 of 1944	Coffee Industry (Financial Assistance)	Sections 7 and 10, amended	52
22 of 1944	Land Control	Section 7, repealed and replaced	38
4 of 1945	Increase of Rent and of Mortgage Interest (Restrictions) (Amendment)	Repealed	22
7 of 1945	Pensions (Increase)	Section 2, raising of limits and rates; section 3, and schedule, amended; section 6, cases where no increase is payable; section 4, amended; section 9, repealed and replaced	54

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION

FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1949

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1949
12 of 1945	Motor Vehicles Insurance (Third Party Risks)	Section 4, amended	27
47 of 1946	Hospital Services (European)	Section 3, amended	14
10 of 1947	Customs Tariff	Schedule, amended	23
		Schedule, amended	43
29 of 1947	Liquor (Amendment)	Schedule, amended	44
1 of 1948	Certification of Lunatics (Forces of the Crown)	Section 2, amended	15
7 of 1948	Immigration (Control)	Repealed	3
16 of 1948	Radio-active Minerals	Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, amended; sections 14 and 16, repealed and replaced	20
19 of 1948	Pensions (Increase) (Amendment)	Sections 3, 6, 7, 10, amended; section 4, repealed	33
26 of 1948	Industrial Licensing	Repealed	54
27 of 1948	Control of Hotels	Sections 10 and 14, amended; section 10A, new; section 15, repealed and replaced	59
38 of 1948	European Agricultural Settlement	Sections 5 and 16, amended; section 11A, new	31
41 of 1948	Increase of Rent and of Mortgage Interest (Restrictions) (Amendment)	Sections 5, 7, repealed and replaced; section 20, new	49
49 of 1948	Widows' and Orphans' Pension (Amendment)	Repealed	22
62 of 1948	Kenya Police Force Reserve	Section 2, amended	11
94 of 1948	Eviction of Tenants (Control)	Section 7, repealed and replaced; section 9, amended	24
95 of 1948	1949 Appropriation	Repealed	12
12 of 1949	Eviction of Tenants (Control)	Repealed	4
22 of 1949	Increase of Rent (Restriction)	Sections 2 and 4, amended; section 3, repealed and replaced	60
		Sections 7, 34, amended	41
Applied Ordinances	Indian Lunacy (District Courts) Act, 1858	Sections 1, 5, 13, 16, amended; section 22, repealed and replaced	61
	Indian Lunatic Asylums Act, 1858	Repealed	3

ORDINANCES, 1949

LIBRARY OF THE

COLONY AND PROTECTORATE OF KENYA

ORDINANCE No. 1 of 1949

Assented to in His Majesty's name this twenty-eighth day of January, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title.	7—Amendment of section 7 of the principal Ordinance.
2—Amendment of section 2 of the principal Ordinance.	8—Amendment of section 8 of the principal Ordinance.
3—Advisory Committee.	9—Amendment of section 10 of the principal Ordinance.
4—Forest areas.	10—Amendment of section 11 of the principal Ordinance.
5—Amendment of section 5 of the principal Ordinance.	11—Amendment of section 14 of the principal Ordinance.
6—Amendment of section 6 of the principal Ordinance.	12—Amendment of section 15 of the principal Ordinance.

AN ORDINANCE TO AMEND THE FOREST ORDINANCE, 1941

28th January, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Forest (Amendment) Ordinance, 1949, and shall be read as one with the Forest Ordinance, 1941, hereinafter referred to as the principal Ordinance.

Short title.

No. 26 of 1941.

2. Section 2 of the principal Ordinance is hereby amended—

Amendment of section 2 of the principal Ordinance.

(a) by deleting the definition "forest officer", and substituting therefor the following:—

" 'forest officer' means any forest officer, or any assistant forester, ranger, forest guard, assistant forest guard, or any person upon whom the Member may, in writing, confer the powers of a forest officer;";

(b) by inserting therein between the definition "forest produce" and the definition "timber" which appear therein the following new definition:—

" 'Member' means the Member of the Executive Council of the Colony, for the time being, responsible for Natural Resources;";

(c) by deleting the definition "unalienated and unreserved Crown Land", and substituting therefor the following:—

"unalienated and unreserved Crown Land' means Crown land which—

- (i) is not the subject of any conveyance, lease or occupation licence from the Crown, but includes the Crown land set out in the Sixth and Ninth Schedules to the Crown Lands Ordinance;
- (ii) has not been dedicated or set aside for the use of the public, but includes outspans;
- (iii) has not been declared to be a forest area or a demarcated forest."

Cap. 140.

Repeal and replacement of section 3 of the principal Ordinance.
"Advisory Committee.

3. Section 3 of the principal Ordinance is hereby repealed and the following substituted therefor:—

3. (1) The Member shall, by notice in the Gazette, appoint an Advisory Committee for the purpose of advising him on policy relating to forest matters, and upon such other matters as he may refer to the Committee for advice.

(2) Such Advisory Committee shall consist of the Conservator, as Chairman, and not less than three other members to be appointed by the Member, of whom at least one shall be representative of the timber milling industry.

(3) The members appointed under the provisions of sub-section (2) of this section, shall hold office for such time as the Member shall, by notice in the Gazette, prescribe."

Repeal and replacement of section 4 of the principal Ordinance.
"Forest areas.

4. Section 4 of the principal Ordinance is hereby repealed and the following substituted therefor:—

4. (1) The Governor in Council may, from time to time, by proclamation in the Gazette—

- (a) declare any unalienated and unreserved Crown Land and, subject to the provisions of the Native Lands Trust Ordinance, 1938, any area in the Native Lands or in any lands set out in the Fourth Schedule or Fifth Schedule to the Crown Lands Ordinance, to be a forest area;

No. 28 of 1938.

Cap. 140.

- (b) declare the boundaries of any forest area and from time to time alter such boundaries;
- (c) declare that any forest area shall cease to be a forest area.

(2) Before any proclamation is made, under the provisions of paragraphs (b) or (c) of sub-section (1) of this section, twenty-eight days' notice of the intention to make such proclamation shall be published, by the Member, in the Gazette."

5. Section 5 of the principal Ordinance is hereby amended—

Amendment of section 5 of the Principal Ordinance.

- (a) by deleting the first three lines of sub-section (2) and substituting therefor, the following:—

"(2) Before the Governor in Council exercises the powers conferred upon him by sub-section (1) of this section the Member shall require the Conservator—";

and

- (b) by substituting the word "Member" for the words "Governor in Council" where they appear in the seventh line of sub-section (3) thereof.

6. Sub-section (1) of section 6 of the principal Ordinance is hereby amended by substituting the words and commas "Member may, by notice in the Gazette, declare" for the words "Governor may by Proclamation declare", which appear in the first line thereof.

Amendment of section 6 (1) of the principal Ordinance.

7. Section 7 of the principal Ordinance is hereby amended by inserting, between the word "conditions" and the word "and", which appear in the fourth line thereof, the words "as may be approved by the Conservator with the approval of the Advisory Committee or upon such conditions".

Amendment of section 7 of the principal Ordinance.

8. Sub-section (1) of section 8 of the principal Ordinance is hereby amended—

Amendment of section 8 of the principal Ordinance.

- (a) by deleting sub-paragraph (ii) of paragraph (a) and substituting therefor, the following:—

"(ii) be or remain therein between the hours of 9 p.m. and 6 a.m. unless he is using a recognized road or footpath or is in occupation of a building authorized under the provisions of sub-paragraph (iii) of paragraph (a) of this section;";

(b) by deleting sub-paragraph (viii) of paragraph (a) and substituting therefor, the following:—

“(viii) capture or kill any animal, set or be in possession of any trap, snare, gin or net, or dig any pit, for the purpose of catching any animal, or use or be in possession of any poison or poisoned weapon:

No. 38 of 1937.

Provided that nothing in this sub-paragraph contained shall be deemed to prohibit the capturing or killing of any animal in accordance with the conditions of any valid licence or permit issued under the provisions of the Game Ordinance, 1937.”;

(c) by substituting the words “any person” for the word “trespassers”, which appears in the second line of sub-paragraph (x) of paragraph (a) thereof.

Amendment of section 10 (1) of the principal Ordinance.

9. Sub-section (1) of section 10 of the principal Ordinance is hereby amended by substituting the word “Member” for the word “Governor”, which appears in the second line thereof.

Amendment of section 11 of the principal Ordinance.

10. Section 11 of the principal Ordinance is hereby amended by deleting the words “found trespassing or”, which appear in the first line of paragraph (e) thereof.

Repeal and replacement of sub-section (1) of section 14 of the principal Ordinance.

11. Sub-section (1) of section 14 of the principal Ordinance is hereby repealed and the following substituted therefor:—

“(1) Any person who—

- (a) commits a breach of, or who fails to comply with, any of the provisions of this Ordinance or of any rules made thereunder;
- (b) commits a breach of, or fails to comply with, any of the terms or conditions of a licence issued to him under the provisions of this Ordinance or of any rules made thereunder;
- (c) fails to comply with any lawful requirement or demand made or given under the provisions of section 11 of this Ordinance; or
- (d) obstructs any person in the execution of his powers or duties under the provisions of this Ordinance or of any rules made thereunder.

shall be guilty of an offence" and shall, on conviction therefor, before a subordinate court of the first or second class, be liable to a fine not exceeding one hundred and fifty pounds or to a term of imprisonment not exceeding six months or to both such fine and such imprisonment, and to the forfeiture of any such licence."

12. Sub-section (1) of section 15 of the principal Ordinance is hereby amended—

Amendment of section 15 of the principal Ordinance.

(a) by inserting the word "regulating" at the beginning of sub-paragraph (ii) of paragraph (a) thereof;

(b) by deleting sub-paragraph (iii) of paragraph (a) thereof and substituting therefor the following:—

"(iii) regulating and controlling the manner and circumstances in which licences may be granted, refused or cancelled, the conditions and terms subject to which licences may be granted, and the manner in which any person, to whom a licence is granted, shall exercise any right or privilege conferred upon him by such licence, and providing for an appeal to the Member. Any rule made under the provisions of this sub-paragraph may empower the Conservator to require any licensee, as a term or condition of his licence, to provide assistance in the prevention and fighting of any fire in such demarcated forest or forest area, and to take such measures, as the Conservator may require, to report, control and eradicate such noxious insects or fungi as may, from time to time, be specified by the Conservator by notice in the Gazette;"

(c) by deleting the words "to trespassers", which appear in sub-paragraph (vi) of paragraph (a) thereof;

(d) by deleting sub-paragraph (viii) of paragraph (a) thereof; and

(e) by renumbering sub-paragraph (ix) of paragraph (a) thereof, as (viii).

ORDINANCE No. 2 of 1949

Assented to in His Majesty's name this twenty-eighth day of January, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION
1—Short title.

SECTION
2—Amendment of section 2 of the principal Ordinance.

**AN ORDINANCE TO AMEND THE FISH PROTECTION
ORDINANCE, 1939**

Date of
commencement.

28th January, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Fish Protection (Amendment) Ordinance, 1949, and shall be read as one with the Fish Protection Ordinance, 1939, hereinafter referred to as the principal Ordinance.

No. 39 of 1939.

Amendment of
section 2 of the
principal
Ordinance.

2. Section 2 of the principal Ordinance is hereby amended by substituting the word "fish" for the word "trout", which appears in the second line of the definition "Game Warden".

ORDINANCE No. 3 of 1949

Assented to in His Majesty's name this seventh day of
February, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

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22—Medical certificates.	
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25—Time and manner of medical examination of person.	
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27—Reception order may apply outside jurisdiction.	
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45—Managers to furnish inventory and annual accounts.	
46—Removal of managers and guardians.	
47—Termination of appointment of manager.	
48—If satisfied as to recovery of person previously of unsound mind, court may make such order as it considers necessary.	
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	PART XVI	
	73—Repeal and saving.	

AN ORDINANCE TO MAKE PROVISION FOR THE CARE OF PERSONS WHO ARE SUFFERING FROM MENTAL DISORDER OR MENTAL DEFECT, FOR THE CUSTODY OF THEIR PERSONS AND THE MANAGEMENT OF THEIR ESTATES, AND FOR THE MANAGEMENT AND CONTROL OF MENTAL HOSPITALS IN THE COLONY

Date of commencement.

7th February, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

PART I

PRELIMINARY

- Short title.** 1. This Ordinance may be cited as the Mental Treatment Ordinance, 1949.
- Interpretation.** 2. In this Ordinance, unless the context otherwise requires—
- “court” means the Supreme Court;
- “Director” means the Director of Medical Services;
- “magistrate” means a magistrate of the First or Second Class;
- “manager” means any person appointed under the provisions of Part XI of this Ordinance;

"medical practitioner" means any medical practitioner registered under the Medical Practitioners and Dentists Ordinance; Cap. 119.

"Member" means the Member of the Executive Council of the Colony, for the time being responsible for Health and Local Government;

"mental hospital" means any hospital or other place which has been authorized, or may hereafter be authorized, by the Director as a place for the reception, detention and treatment of two or more persons who are suffering from mental disorder or mental defect;

"person in charge" means any person appointed or approved by the Director to be in charge of a mental hospital;

"person of unsound mind" means any person who has been so found under the provisions of Part VI or of Part XI of this Ordinance;

"visiting committee" means a committee of visitors to a mental hospital appointed under the provisions of section 4 of this Ordinance.

PART II

RECEPTION OF PERSONS IN A MENTAL HOSPITAL

3. Subject to the provisions of the Criminal Procedure Code, no person shall be received or detained, for treatment in a mental hospital except under and in accordance with the provisions of this Ordinance. Reception into a mental hospital.

PART III

VISITING COMMITTEE

4. (1) The Member shall appoint, for every mental hospital, a visiting committee, which shall consist of not less than two male visitors and one female visitor, one of whom at least shall be a medical practitioner, for every one hundred patients in such hospital. Appointment of visiting committees.

(2) The members of such committee shall serve thereon at the Member's pleasure but for not more than two years at one time. A member shall be eligible for re-appointment.

(3) Notwithstanding anything contained in sub-section (2) of this section the Director shall be an *ex officio* member of every visiting committee but may appoint, to represent him upon any such committee, a Government medical officer. The Director may revoke any such appointment at his discretion.

Duty of visitors.

5. (1) Two or more of the visitors, one of whom shall be a medical practitioner, shall, once at least in every month, inspect every part of the mental hospital of which they are visitors, and examine, as far as circumstances will permit, every patient therein and the authority for the admission of every patient admitted since the last visit by the visitors, and shall record in a register to be kept for that purpose the wards they have visited and any remarks which they may deem proper to make in regard to the management and condition of such mental hospital and the patients therein.

(2) Any member of a visiting committee shall be at liberty to call at and inspect the mental hospital of which he is a visitor or any portion of it at any hour of the day or night he deems proper, and may examine any patient therein.

(3) A copy of all entries made in such register shall be made and forwarded monthly to the Director by the person in charge.

PART IV

VOLUNTARY PATIENTS

Power to receive
voluntary
patients.

6. (1) Any person who has attained the apparent age of sixteen years, who is desirous of voluntarily submitting himself to treatment for mental disorder and who makes to the person in charge a written application in duplicate in the form prescribed, accompanied by a medical recommendation in duplicate, may be received as a voluntary patient into a mental hospital.

(2) Any person who has not attained the apparent age of sixteen years and whose parent or guardian is desirous of submitting him to treatment for mental disorder or mental defect may, if the parent or guardian makes to the person in charge of a mental hospital a written application in duplicate in the form prescribed, accompanied by a medical recommendation in duplicate, be received as a voluntary patient.

(3) The medical recommendation referred to in subsections (1) and (2) of this section shall—

(a) be signed by a medical practitioner, who shall be either the usual medical attendant of the patient to whom the application relates, or a medical practitioner who has been approved by the Director for the purpose of making any such recommendation; and

(b) state the qualifications of the medical practitioner, the date or dates on which he examined the patient concerned and that such patient is likely to be benefited by being received as a voluntary patient.

(4) A medical recommendation shall cease to have effect, for the purposes of this section, upon the expiration of ten days from the last date on which the patient to whom the recommendation relates was examined by the medical practitioner.

(5) Any person received as a voluntary patient under the provisions of this section may leave the mental hospital, upon giving to the person in charge seventy-two hours' notice in writing of his intention so to do, or, if he is a person who has not attained the apparent age of sixteen years, upon such notice being given by his parent or guardian.

(6) For the purposes of this Part of this Ordinance, the expression "guardian", in relation to a person who has not attained the apparent age of sixteen years, includes any person having the charge of such person, and the expression "apparent age" means the age which is apparent to the medical practitioner concerned.

7. Where a person is received into a mental hospital as a voluntary patient under the provisions of section 6 of this Ordinance, or where a person so received dies in or departs from a mental hospital, information of his reception, death, or departure shall be given by the person in charge to the visiting committee at their next visit to such mental hospital.

Notification of reception, death or departure of voluntary patient

8. (1) If any person, received into a mental hospital as a voluntary patient under the provisions of section 6 of this Ordinance, becomes at any time incapable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be retained as a voluntary patient for a longer period than forty days thereafter, and shall be discharged on or before the expiration of that period, unless, in the meantime, he has again become capable of so expressing himself, or an application in respect of him has been made under the provisions of section 9, or a reception order has been made under the provisions of Part VI or of Part XI, of this Ordinance.

Voluntary patient not to be detained for more than forty days after becoming incapable of expression.

(2) If a patient who has not attained the age of sixteen years and who has been received as aforesaid ceases to have any parent or guardian, or if his parent or guardian is incapable of performing, or refuses or persistently neglects to

perform, his duty as such, the person in charge shall inform the visiting committee, at its next visit, of the circumstances of the case and the condition of the voluntary patient, and the visiting committee shall forthwith consider the report and give such directions for the retention or discharge of such patient as it may think fit.

(3) The person in charge shall act on any direction given by a visiting committee under the provisions of sub-section (2) of this section.

PART V

TEMPORARY TREATMENT

Provision for temporary treatment without certificate of certain persons.

9. (1) Subject to the provisions of this section, a person who is suffering from mental disorder or mental defect and is likely to benefit by temporary treatment in a mental hospital but is for the time being incapable of expressing himself as willing or unwilling to receive such treatment may, on a written application duly made in accordance with the provisions of this section, be received into a mental hospital as a temporary patient for the purpose of treatment.

(2) An application under the provisions of this section shall be made in duplicate, in the form prescribed, to the person in charge of such mental hospital and shall be made—

- (a) by the husband or wife, or by a relative of the person to whom it relates;
- (b) if there is no husband, wife or relative, by the Attorney General; or
- (c) if there is no husband, wife or relative, and no such application by the Attorney General, by any other person who shall, in his application state the reason why it is not made as provided in paragraphs (a) or (b) of this section, the connexion of the applicant with the person to whom such application relates and the circumstances in which he makes the application.

(3) The application shall be accompanied by a recommendation in duplicate, in the form prescribed, signed by a medical practitioner, who shall be either the usual medical attendant of the person to whom the application relates, or a medical practitioner approved by the Director for the purpose of making any such recommendation.

(4) The medical practitioner by whom a recommendation is made under the provisions of this section, shall, before

signing such recommendation, examine the person to whom such recommendation relates and shall specify in such recommendation the date or dates on which he examined such person and the grounds on which he bases such recommendation.

(5) A recommendation shall cease to have effect on the expiration of ten days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner.

(6) A person received as a temporary patient into a mental hospital may be detained therein for a period not exceeding twelve months but shall not be detained for any longer period.

(7) If a person who has been received as a temporary patient becomes capable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be detained for more than forty days thereafter unless, in the meantime, he has again become incapable of so expressing himself, or an application has been duly made by him under the provisions of section 6, or an order has been made for his reception, under the provisions of Part VI or of Part XI, of this Ordinance.

(8) Where a person has been received into a mental hospital as a temporary patient under the provisions of this section, or if a patient so received dies in or departs from the mental hospital, information of the reception, death, or departure shall be given by the person in charge to the visiting committee at their next visit.

10. Where any person has been received into a mental hospital under the provisions of Part IV or of this Part of this Ordinance, the Director may at any time order that any such person shall be discharged or otherwise dealt with under the provisions of this Ordinance.

Director's
powers of
discharge.

PART VI

RECEPTION ORDERS

11. (1) An application for a reception order shall be made by petition, accompanied by an affidavit of particulars in support thereof, to a magistrate within the local limits of whose jurisdiction the person alleged to be of unsound mind normally resides, should be in the form prescribed, and shall be supported by a certificate from a medical practitioner.

Application for
reception order.

(2) No such medical certificate shall be signed by any husband, wife, relative, partner or assistant of the person alleged to be of unsound mind.

(3) The petition shall state whether any previous application has been presented for a judicial inquiry into the mental capacity of the person alleged to be of unsound mind in any court and, if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

Application,
by whom to be
presented.

12. (1) A petition shall be presented by—

- (a) the husband or wife or any other relative of the person alleged to be of unsound mind;
- (b) where there is no known husband, wife or relative, by the Attorney General; or
- (c) where there is no known husband, wife or relative, and no action has been taken under the provisions of this sub-section by the Attorney General, by any other person, who shall state in his petition the reasons why it is not presented in accordance with the provisions of paragraphs (a) or (b) of this sub-section, the connexion of the petitioner with the person alleged to be of unsound mind, and the circumstances in which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority and has, within fourteen days before the presentation of the petition, personally seen the person alleged to be of unsound mind.

(4) A petition shall be signed by the petitioner and be supported by affidavit setting out the grounds of such petition and any other relevant particulars, and whether the particulars contained therein and in such affidavit are true or whether the person swearing such affidavit believes such particulars to be true to the best of his knowledge and belief.

Procedure upon
petition for
reception order.

13. (1) Upon receipt of a petition, presented under the provisions of section 12 of this Ordinance, the magistrate shall consider the allegations in such petition and in any affidavit in support of such petition, and the evidence of unsound mind contained in the medical certificate.

(2) If such magistrate considers that there are grounds for proceeding further, he shall personally examine the person

alleged to be of unsound mind unless, for reasons to be recorded in writing, he thinks it unnecessary or inexpedient so to do.

(3) If such magistrate is satisfied that the person is of unsound mind and that a reception order may properly be made forthwith, he may adjudge him to be of unsound mind and may make a reception order, in the form prescribed, for the admission of such person into a mental hospital.

(4) If such magistrate is not so satisfied, he shall fix a date, notice whereof shall be given to the petitioner and to any other person to whom in the opinion of such magistrate notice should be given, for the consideration of the petition, and he may make such further or other inquiries, of or concerning the person alleged to be of unsound mind, as he may think fit.

14. Upon receipt of a petition, the magistrate may make such order as he may think fit for the suitable custody of the person alleged to be of unsound mind, pending the conclusion of any necessary inquiry.

Detention of person pending inquiry.

15. A petition shall be considered in private in the presence of the petitioner, the person alleged to be of unsound mind (unless the magistrate in his discretion otherwise directs), any person appointed by the person alleged to be of unsound mind to represent him and such other persons as the magistrate may think fit. If no such person is appointed to represent the person alleged to be of unsound mind, the magistrate may appoint a person for such purpose.

Consideration of petition.

16. (1) After consideration of the petition, the magistrate may either adjudge such person to be of unsound mind and make a reception order, in the form prescribed, for the admission of such person into a mental hospital, or may dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the person alleged to be of unsound mind, or otherwise, as he may think fit.

Order.

(2) If the petition is dismissed, the magistrate shall record in writing his reasons for dismissing such petition and shall deliver or cause to be delivered to the petitioner and to the person (if any) representing the person alleged to have been of unsound mind, a copy of such order.

Powers and duties of police in respect of wandering or dangerous persons of unsound mind and such persons cruelly treated or not under proper care and control.

17. (1) Any police officer of or above the rank of assistant inspector, officer in charge of a police station, administrative officer or headman, may take or cause to be taken into his custody any person whom he has reason to believe to be suffering from mental disorder or mental defect and who is found within the limits of his jurisdiction wandering at large, and shall take into custody any person within the limits of his jurisdiction whom he has reason to believe to be dangerous to himself or to others, or who, by reason of such mental disorder or mental defect, acts or is likely to act in a manner offensive to public decency. Any person so taken into custody shall be taken forthwith before the nearest magistrate.

(2) Any officer in charge of a police station, administrative officer or headman who has reason to believe that any person within the limits of his jurisdiction is suffering from mental disorder or mental defect and is not under proper care and control, or is being cruelly treated or neglected by any relative or other person having the charge of him, shall forthwith report the fact to the nearest magistrate who may either visit such person at the place where he may happen to be or may order such person to be brought before him.

Duty of custodian of person of unsound mind.

18. Where any person having in his care and custody a person apparently of unsound mind, is, for any reason, no longer able properly to control such person or to prevent such person from doing injury to himself or others or from acting in a manner offensive to public decency, such first mentioned person shall make application to a magistrate, under the provisions of section 11 of this Ordinance or report the circumstances of the case to a police officer, an administrative officer or a headman, in order that proceedings under the provisions of this Ordinance may be taken in regard to such person.

Power of magistrate.

19. If a magistrate is satisfied by information on oath or affirmation that any person suspected of being of unsound mind is at large or is dangerous to himself or others or is acting or is likely to act in a manner offensive to public decency, or is not under proper care and control or is cruelly treated or neglected by any relative or other person having the care or charge of him, such magistrate may either visit such person suspected of being of unsound mind at the place where he may happen to be, or, by order under his hand, require a person specified in such order to bring such person before him.

20. Where a magistrate visits a person suspected of being of unsound mind, or such a person is brought before him under the provisions of sections 17 or 19 of this Ordinance, such magistrate shall examine such person, and, if he thinks that there are grounds for proceeding further, shall cause such person to be examined by a medical practitioner and may make such other inquiries as he may think fit; and, if satisfied by examination and inquiries and by the certificate of such medical officer that such person is a person of unsound mind and a proper person to be placed under care and treatment, he may adjudge such person to be of unsound mind and may make a reception order, in the form prescribed, for the admission of such person into a mental hospital:

Reception order
in case of
wandering and
dangerous
persons.

Provided that, instead of making a reception order, the magistrate may, if he thinks fit, make such person over to the care of any relative or friend upon such relative or friend entering into a bond, with or without sureties, for such sum of money as the magistrate may think fit, that such person shall be properly taken care of and prevented from doing injury to himself or others or from becoming a public nuisance.

21. Where a magistrate visits a person suspected of being of unsound mind, or such a person is brought before him under the provisions of sections 17 or 19 of this Ordinance, he may, by order in writing, authorize the detention of such person in a mental hospital, or in any place which he deems suitable for the purpose, for such period, not exceeding thirty days, as may, in his opinion, be necessary to enable a medical practitioner to determine whether or not such person is a person in respect of whom a medical certificate that he is of unsound mind may properly be given:

Detention of
person alleged
to be of unsound
mind pending
report by
medical officer.

Provided that no person shall be detained in any police station or prison if any other suitable accommodation is available.

22. (1) Every medical certificate given under the provisions of this Part of this Ordinance shall be in the form prescribed, in duplicate, and signed by a medical practitioner.

Medical
certificates.

(2) Every such medical certificate shall state the facts upon which it is founded, and shall distinguish facts observed by the medical practitioner giving such certificate from facts communicated to him by others, and no reception order shall be made upon any such certificate founded only upon facts communicated by others.

(3) Every medical certificate purporting to be given under, and in accordance with, the provisions of this Part of this Ordinance shall, for the purposes of this Ordinance, be received in evidence without further proof and be prima facie evidence of the facts and the opinion appearing therein.

Detention of person found to be of unsound mind.

23. Where a reception order has been made under the provisions of this Part of this Ordinance, the magistrate may, for reasons to be recorded in writing, direct that the person concerned, pending his removal to a mental hospital, be detained in suitable custody in such place and for such time as the magistrate may think fit:

Provided that no person shall be detained in any police station or prison if any other suitable accommodation is available.

Power to summon custodian of person suffering from mental disorder or defect.

24. (1) In any case arising under the provisions of sub-section (2) of section 17 of this Ordinance, the magistrate may summon before him any person who has, or ought to have, the charge of the person who is suspected of suffering from mental disorder or mental defect; and, if such person is legally bound to maintain the person who is suspected of suffering from mental disorder or mental defect, the magistrate may make an order requiring such person to cause the person who is suspected of suffering from mental disorder or mental defect to be properly cared for and treated.

(2) Any person who fails to comply with an order, made under the provisions of sub-section (1) of this section, shall be guilty of an offence against this Ordinance.

Time and manner of medical examination of person.

25. No reception order shall be made unless it appears from the medical certificate upon which such order is to be founded that the medical practitioner who signed the certificate personally examined the person to whom the certificate relates not more than ten days before the date of the order.

Authority for reception.

26. (1) A reception order, accompanied by a copy of the medical certificate upon which it is founded, shall be sufficient authority for any person authorized in the order to take the person of unsound mind named in such order and convey him, within forty days from the date of such order, to a mental hospital or to any other place of custody which is mentioned in the order, and for the person of unsound mind

to be received within such time and detained therein. Any such order may be acted upon without further evidence of the signature or of the jurisdiction of the magistrate making the order.

(2) The reception order and copy of the medical certificate shall accompany the person of unsound mind to whatever mental hospital or other place of custody he may be sent, and no person shall be received into any mental hospital or other place of custody under a reception order unless so accompanied.

27. A magistrate may make a reception order for the detention, care and treatment of a person, adjudged to be of unsound mind, in a mental hospital which is situated in a place outside the ordinary limits of such magistrate's jurisdiction; and a reception order shall authorize the detention, care and treatment of the patient at such mental hospital within the Colony at which it appears to the magistrate that sufficient accommodation is available and suitable treatment can be given, regard being had to the circumstances of the particular case.

Reception order may apply outside jurisdiction.

PART VII

ADMISSION OF MEMBERS OF THE ARMED FORCES

28. (1) Notwithstanding anything to the contrary in this Ordinance contained, any member of the armed forces of the Crown may be admitted into a mental hospital for observation upon the authority of a letter signed by two medical officers of such armed forces of the Crown. Such letter shall state that the two medical officers, whose signatures it bears, have examined the person named therein within a period not exceeding forty-eight hours before the signing of the letter, and that, in their opinion, for reasons which shall be recorded in such letter, he is a proper person to be detained in a mental hospital for observation.

Provision admitting member of armed forces into a mental hospital for observation and period of detention.

(2) Any member of the armed forces of the Crown who is admitted to a mental hospital under the provisions of subsection (1) of this section may be detained for an initial period not exceeding twenty days from the date of the letter of authority, and if, upon re-examination, by two such medical officers, at or before the expiration of such period, a further period of detention is deemed necessary, he may be detained for a second period not exceeding twenty days, and thereafter upon a further re-examination, by two such medical officers, he may be detained for a third period not exceeding twenty days:

Provided that no such member of the armed forces of the Crown shall be detained for a second or a third period, as provided in this sub-section, except upon the authority of a letter in respect of each such period, signed by two medical officers of the armed forces of the Crown and which complies with the provisions of sub-section (1) of this section.

(3) Any member of the armed forces of the Crown who is admitted to a mental hospital under the provisions of sub-section (1) of this section, may be discharged therefrom upon the authority of a letter signed by two medical officers of such armed forces of the Crown. Such letter shall state that the two medical officers, whose signatures it bears, have examined the person named therein within a period not exceeding forty-eight hours prior to the signing of such letter, and that in their opinion, for reasons which shall be recorded in such letter, it is desirable that such person be discharged from the mental hospital.

PART VIII

RECEPTION OF PATIENTS FROM EAST AFRICAN TERRITORIES

Admission into institutions in the Colony of patients from East African territories.

29. (1) The Governor may, upon the application of the officer administering the Government of any East African territory, admit into any mental hospital in the Colony for detention and treatment therein any person of unsound mind legally detained in such territory under the provisions of any law, for the time being in force in such territory, relating to the detention and treatment of persons suffering from mental disorder or mental defect.

(2) No such person shall be so admitted unless he is accompanied by a warrant or other document duly authorizing his detention in and removal from such territory, and such warrant or other document shall be sufficient authority for his conveyance to, reception and detention in, any mental hospital in the Colony:

Provided that no such person shall be detained in a mental hospital for a period longer than two months from the date of his admission thereto unless an application in respect of such person has been made under the provisions of Part IV, Part V, Part VI, or Part XI of this Ordinance.

(3) On the admission of such person into a mental hospital, not being a person transferred to such mental hospital under the provisions of section 32 of this Ordinance, the person in charge shall forthwith forward the said warrant

or other document, together with such certificate or statement in support of the facts on which it was issued as may be received by him, to the Director.

(4) For the purposes of this Part of this Ordinance "East African territory" means any territory in East Africa to which the Governor may, by notice in the Gazette, declare the provisions of this Part of this Ordinance to apply.

PART IX

DISCHARGE AND TRANSFER OF PATIENTS

30. Any three members of the visiting committee of any mental hospital of whom one at least shall be a medical practitioner, may, by order in writing, direct the discharge of any person detained in such mental hospital and such person shall thereupon be discharged as having recovered his sanity:

Order of discharge from mental hospital by visitors.

Provided that no order shall be made under the provisions of this section in the case of a person detained under the provisions of the Criminal Procedure Code.

31. (1) If any relative or friend of a person detained in any mental hospital, under a reception order made under the provisions of this Ordinance, desires that such person shall be delivered over to his care and custody, he may for that purpose make an application to the person in charge, and, if three members, including one medical practitioner, of the visiting committee of such hospital, consider that such application should be granted, they may order that the person be delivered into the care of such relative or friend upon such terms and conditions as they may in their discretion direct.

Undertaking of relative for due care of the person of unsound mind.

(2) Where any person, into whose care a person detained in a mental hospital under a reception order made under the provisions of this Ordinance has been delivered, is unable or unwilling to continue to take care of such person, he shall report the matter in writing to the person in charge of such mental hospital. The person in charge shall thereupon report the matter to the visiting committee which may revoke their order and readmit the person in respect of whom such order was made into the mental hospital under the original reception order as if the order had not been made.

(3) Any three members of the visiting committee of any mental hospital, of whom one at least shall be a medical practitioner, may, upon receipt of such medical and other evidence as is considered sufficient and in such form as may

be prescribed, discharge, as having recovered his sanity, any person in connexion with whom an order has been made under the provisions of sub-section (1) of this section.

Transfer of patients.

32. Any person detained in a mental hospital under the provisions of this Ordinance may be transferred by order of the Director from one mental hospital to another. Where a person is transferred under the provisions of this section the person responsible for conveying him shall produce to the person in charge of the mental hospital to which the transfer is made, a certified copy of the order of the Director.

PART X

REMOVAL OF PATIENTS TO OTHER COUNTRIES

Procedure for removal of British patients from the Colony.

33. (1) Where it appears to the Governor that it is likely that the life of any British subject, not being an African, whose district of origin is within the Colony, who is suffering from mental disorder or mental defect will be endangered or his recovery hindered by reason of there being no suitable mental hospital or other place in the Colony in which he can be properly detained or treated, or by reason of there not being any person in the Colony who can be properly made responsible for his safe keeping and treatment, or for any other cause, the Governor may by removal warrant under his hand and seal order that such a person be removed, in the safe custody of such person or persons, who shall be named in such warrant, to the United Kingdom, or to any British Dominion or to any territory to which the provisions of this Part have been applied, as may be specified in such warrant:

Provided that no person received into a mental hospital under the provisions of Part IV or of Part V of this Ordinance shall be removed from the Colony without the prior consent of the person on whose application such person was so received:

Provided further that, in the case of a person not born in the Colony, the place to which the person shall be removed shall, where possible, be the country from which he has, by birth or naturalization, derived his British nationality:

Provided further that no removal warrant shall be made in respect of any such person unless a prior consent to receive such person has been obtained from the appropriate authorities in the United Kingdom, the British Dominion or the territory concerned.

(2) The removal warrant of the Governor shall be sufficient authority to the person to whom it is directed or from time to time delivered for execution to receive and detain the person therein mentioned, in the manner therein prescribed, and to remove him to the place therein named.

34. Where a removal warrant has been made for the removal of a person from the Colony to the United Kingdom or to any British dominion, or to any territory, such person shall be detained in such custody as shall be specified in the warrant until a fit opportunity for his removal occurs, and shall then be conveyed in such manner, to such place as may be specified in such warrant.

Power to detain patient pending and during removal.

35. (1) Where any person in the Colony, other than a British subject or an African, is suffering from mental disorder or mental defect, the Director, upon application by a relative or friend of such person, may inquire into the circumstances of the case and report thereon to the Governor.

Removal of persons other than British subjects to their native countries.

(2) The Governor, if satisfied by such report that the person to whom the report relates is not a British subject or an African and is suffering from mental disorder or mental defect, that his removal is likely to be for his benefit and that proper arrangements have been made for such removal and for his subsequent care and treatment, may, by a removal warrant under his hand and seal, direct that such person be delivered to a person, named in such warrant, for the purpose of being removed to the country of which he is a subject or citizen; and every such warrant shall be obeyed by the person or authority in whose charge the patient may be:

Provided that no such warrant for the removal of any such person shall be made unless a prior consent, to receive such person, has been obtained from the proper authorities of the country to which it is proposed to remove such person.

36. The cost of the removal of any person, under the provisions of this Part of this Ordinance, of his maintenance after removal, of his return, and of his being sent, in the event of discharge after recovery, to any place, shall be paid in such manner as may be arranged between the Government of the Colony and the proper authorities in the United Kingdom, the British Dominion, or the territory, as the case may be:

Cost of removal and maintenance.

Provided that nothing in this Part of this Ordinance contained shall affect any power to recover any of the expenses hereinbefore mentioned from the property of the person removed or from any person legally liable to maintain him, or otherwise.

Definition of
"British
Dominion".

37. For the purposes of this Part of this Ordinance the term "British Dominion" includes any British Colony or Protectorate, any territory, in respect of which a mandate is being exercised by His Majesty's Government, and any territory administered on behalf of His Majesty's Government under any trust, to which the Governor may, by notice in the Gazette, apply the provisions of this Part of this Ordinance.

PART XI

JUDICIAL POWER OVER PERSONS AND ESTATES OF PERSONS OF UNSOUND MIND OR IN A MENTAL HOSPITAL

Custody and management of estates of, and, persons in mental hospitals or of unsound mind.

38. (1) The court may make orders—

- (a) for the custody of any person found by inquiry by the court to be of unsound mind, and for this purpose and without prejudice to the inherent powers of the court, may exercise all or any of the powers conferred upon a magistrate by Part VI of this Ordinance;
- (b) for the management of the estate of any such person; and
- (c) for the guardianship of such person by any near relative or by any other suitable person,

and may also make orders under the provisions of paragraphs (b) and (c) of this sub-section in the case of any person in respect of whom a reception order has been made under the provisions of Part VI of this Ordinance or in respect of any person who is suffering from mental disorder or mental defect.

(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee of the Colony be appointed manager of the estate and guardian of any such person.

(3) Where upon inquiry it is found that the person to whom the inquiry relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable

of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person of unsound mind.

39. (1) Where a manager is appointed under the provisions of this Part of this Ordinance, the court may direct by the order of appointment, or by any subsequent order, that such manager shall have such general or special powers for the management of the estate as to the court may seem necessary and proper, regard being had to the nature of the property, whether movable or immovable, of which the estate may consist:

Power of
manager in
respect of estate.

Provided that a manager so appointed shall not, without the special permission of the court—

(a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise, any immovable property of which the estate may consist;

(b) lease any such property for a term exceeding five years; or

(c) invest in any securities other than those authorized by section 4 of the Trustee Ordinance, 1929:

No. 28 of 1929.

Provided further that no manager may invest any funds belonging to the estate of which he is manager, in any company or undertaking in which he himself has an interest nor shall he invest any such funds on the purchase of immovable property, under the authority of paragraph (c) of section 4 of such Ordinance without the prior consent of the court.

(2) If the person appointed to be manager of an estate or guardian of a person, under the provisions of this Part of this Ordinance, is unwilling to act gratuitously, the court may fix such allowance or allowances to be paid out of the estate of the person in respect of whom the manager or guardian has been appointed as, in the circumstances of the case, the court may think fit.

(3) Any manager appointed under the provisions of any other law in force in the Colony prior to the coming into force of this Ordinance shall be deemed to have been appointed

under the provisions of this Ordinance as from the date of its coming into force but shall not be required to file any inventory or statement under the provisions of sub-section (1) of section 45 of this Ordinance if he has already done so prior to the coming into force of this Ordinance.

(4) For the purposes of this Ordinance and the Penal Code, a manager shall be deemed to be a trustee, but shall have none of the powers of a trustee under the provisions of any other law for the time being in force.

Power to make order concerning any matter connected with the person.

40. (1) The court may, upon application made to it by petition concerning any matter whatsoever connected with a person of unsound mind, or with a person who is suffering from mental disorder or mental defect, or with his estate, make such order, subject to the provisions of this Part of this Ordinance, regarding such application as, in the circumstances of the case, the court may think fit.

(2) The Member, the Public Trustee, or a manager, may take out, as of course, an originating summons returnable before a judge sitting in chambers for the determination of any question arising out of the management of any estate in respect of which an order has been made under this Part of this Ordinance.

Power to apply property for maintenance of person of unsound mind, etc., without appointing manager in certain cases.

41. (1) If it appears to the court that, having regard to the circumstances of a person of unsound mind or of a person who is suffering from mental disorder or mental defect and of his family and any other relevant circumstances, it is expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner, it may, instead of appointing a manager or notwithstanding such appointment, order that the property, if money, or, if of any other description, the proceeds thereof, when realized, be paid to such person as the court may think fit, to be applied for such maintenance.

(2) If it appears to the court that the unsoundness of mind, or the mental disorder or mental defect, of any person is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent upon him for their maintenance, the court may, in manner provided in sub-section (1) of this section, direct that his property or a sufficient part of it be applied for such purpose.

(3) The receipt of any person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the person of unsound mind or of the person suffering from mental disorder or mental defect, to the person so appointed.

42. Where no manager is appointed, the court may, if it appears to be just or for the benefit of the person of unsound mind or of the person suffering from mental disorder or mental defect, order that any property, whether movable or immovable, of such person and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied, or which has been applied, to all or any of the following purposes—

Powers of court in regard to property of person where no manager is appointed.

(a) the payment of the debts or engagements of such person;

(b) the discharge of any incumbrance on his property;

(c) the payment of any debt or expenditure incurred for the maintenance of such person or otherwise for his benefit;

(d) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent upon him for maintenance, including the expenses of his removal from the Colony if he is so removed, and all expenses incidental thereto;

(e) the payment of the costs of any inquiry under the provisions of this Ordinance and of any costs incurred by order or under the authority of the court.

43. Where any movable or immovable property is standing in the name of or vested in any person residing out of the Colony, the court may, upon being satisfied that such person has been declared to be of unsound mind and that a manager has been appointed for his estate according to the law of the place where he is residing, order some fit person to pay, deliver or transfer such property, or any part thereof, to the name of the person so appointed, as the court may think fit.

Power to order transfer of stock of person of unsound mind residing out of the Colony.

44. A manager, or such other person as the court may appoint for the purpose, shall, in the name and on behalf of the person of unsound mind or of the person suffering from mental disorder or mental defect, execute all such conveyances and instruments relative to any sale, mortgage or other

Execution of conveyances and powers by manager under order of court.

disposition of such person's estate as the court may order, and any conveyance or other instrument executed by such manager, or any other such person, with the sanction of the court, shall be as valid and effectual in all respects as if it had been executed by the person of unsound mind while he was of sound mind or, in the case of a person suffering from mental disorder or mental defect, while he was not so suffering.

Managers to furnish inventory and annual accounts.

o. 37/55

45. (1) Every person appointed by the court to be manager of the estate of a person under the provisions of this Part of this Ordinance shall, within six months after the date of his appointment, deliver to the court and to the Public Trustee, an inventory of the property belonging to the person of whose estate he has been appointed manager and of all such sums of money, goods and effects as he shall receive on account of the estate together with a statement of all debts due by or to such person, and every such manager shall furnish to the court and to the Public Trustee, annually, within three months after the close of the year, an account of the property in his charge, showing the sums received and disbursed on account of the estate during such year and the balance then remaining in his hands. Such inventory, statement and account shall be in the prescribed form.

(2) Any person may, on payment of such fee as may be prescribed, inspect and obtain a copy of any inventory, statement or account delivered to the court and to the Public Trustee under the provisions of sub-section (1) of this section.

(3) The Public Trustee shall report to the Member annually on all such accounts.

(4) Where any person, by petition to the court, impugns the accuracy of any such inventory or statement, or of any annual account, the court may summon the manager and inquire summarily into the matter, and make such order thereon as it thinks proper, or the court in its discretion, may refer any such petition to a magistrate having jurisdiction in the place wherein the property belonging to the estate concerned is situate, for inquiry and report and upon receipt of such report the court may make such order as it thinks fit.

Removal of managers and guardians.

46. (1) The court may, for any cause which seems to it sufficient, remove any manager appointed by it under the provisions of this Part of this Ordinance, and may appoint any other fit person in his place; and may make such order as it considers necessary to ensure that the person so removed

makes over the property in his hands, and of which he was manager, to his successor and accounts to such successor for all money received or disbursed by him in connexion with such property.

(2) The court may also for any such cause, remove any guardian of a person so appointed by it and appoint any other fit person in his place.

47. (1) On the termination of the appointment of any manager for any reason whatsoever, such manager shall deliver an account, in the form prescribed, of the property of which he was manager, to the court which made his appointment.

Termination of appointment of manager.

(2) ~~Amend sub-section (2) of section 47 by inserting the words "who shall be entitled to charge such fee as may be prescribed"~~

(3) Any manager who, within a time fixed by the court, neglects or refuses to deliver such account, or to deliver to a person named by the court any property belonging to the estate of which he was manager, shall be guilty of an offence against this Ordinance.

48. Where any person has been found, under any of the provisions of this Ordinance to be of unsound mind, and it is subsequently shown to the court that there is reason to believe that such unsoundness of mind has ceased, the court may, after receiving evidence by affidavit or otherwise, make such order as, in the circumstances, it deems just and expedient.

If satisfied as to recovery of person previously of unsound mind, court may make such order as it considers necessary.

49. The attendance and examination of any person under the provisions of this Ordinance shall, if such person be a woman who, according to the custom or religion of such woman ought not to be compelled to appear in public, be regulated by the law and practice for the examination of any such woman in civil cases.

Examination of females.

50. Where a person alleged to be of unsound mind or to be suffering from mental disorder or mental defect is before the court or magistrate, such court or magistrate shall, wherever possible sit *in camera*.

Court procedure.

51. The Chief Justice may, by notice in the Gazette, confer upon any magistrate, either generally or in respect of a particular person or class of persons, all or any of the powers conferred upon or vested in the court under the provisions of this Ordinance.

Powers of Chief Justice to delegate power to magistrates.

PART XII

SPECIAL PROVISIONS RELATING TO MAINTENANCE

Application of property in the possession of a person of unsound mind found wandering.

52. Notwithstanding anything to the contrary in this Ordinance contained, any money in the possession of a person of unsound mind found wandering at large, may, on application in that behalf being made to a magistrate, be applied by such magistrate towards the payment of the cost of maintenance of such person or of any other expenses incurred on his behalf, and any movable property found on such person may, at the expiration of a period of six months from the date on which he was found wandering at large, be sold by order of such magistrate, and the proceeds thereof similarly applied.

Application to civil court for order of the payment of cost of maintenance out of the estate of the person of unsound mind.

53. (1) If a person, detained in a mental hospital under a reception order made under the provisions of Part VI or of Part XI of this Ordinance, has an estate which may be applied towards his maintenance, or if any person legally bound to maintain such person has the means to maintain him, the court which, or the magistrate who, made the reception order may, after summary inquiry, make an order against such estate or such person, as the case may be, for payment of the costs of maintenance of such person so detained, together with the costs of such inquiry.

(2) If a person, received in a mental hospital under the provisions of Part IV or of Part V of this Ordinance, has an estate which may be applied towards his maintenance, or if any person legally bound to maintain such person has the means to maintain him, a magistrate may, on application by the Director or by any person authorized by him in that behalf, after summary inquiry, make an order as provided in subsection (1) of this section.

(3) Such orders shall be enforced in the same manner, and shall be of the same force and effect and subject to the same right of appeal as a decree, made in a suit, in respect of the property or person therein mentioned.

Certain maintenance costs to be met from Colony's funds.

54. If and so far as the costs, or any portion thereof, of the maintenance of a person detained in a mental hospital under a reception order made under the provisions of Part VI or of Part XI of this Ordinance are not provided for by an order made by the court under the provisions of this Part of this Ordinance, such costs shall be met from public funds.

55. The liability of any relative or person to maintain any person who is of unsound mind or who is suffering from mental disorder or mental defect shall not be affected by any of the provisions of this Ordinance.

Saving of liability of relatives to maintain person of unsound mind.

56. Where any sum is payable, in respect of pay, pension, gratuity or other similar allowance, to any person by the Government of the Colony and the Director certifies that the person to whom the sum is payable is in a mental hospital and that no proceedings for the appointment of a manager of his estate have been instituted under the provisions of Part XI of this Ordinance, the Government department under whose authority such sum would be payable if the payee were not in a mental hospital, may pay so much of such sum as the head of such department for the time being thinks fit, to the person in charge of such mental hospital, and may pay the surplus, if any, or such part thereof as he thinks fit, for the maintenance of such members of the family of such person as are dependent upon him for maintenance and may accumulate any balance to the credit of such person.

Pension of person in mental hospital.

PART XIII

GENERAL

57. (1) The person in charge of a mental hospital or every person having charge of any patient therein shall forward all letters written by any such patient and addressed to the visiting committee, or to any member of the visiting committee, of such mental hospital, as soon as practicable after such letters come to his notice.

Letters of patients.

(2) Letters addressed by such patients to persons other than those mentioned in sub-section (1) of this section shall be forwarded as the person in charge may, in his discretion, decide.

(3) Every person in charge of a mental hospital and every person having charge of any patient therein shall be entitled to examine and, at his discretion, retain any letters addressed to persons other than to those mentioned in sub-section (1) of this section.

58. Notwithstanding anything in this Ordinance contained, a person in charge of a mental hospital may lawfully refuse to receive any person into such hospital on the ground that there is not sufficient, or suitable, accommodation available therein.

Power to refuse reception into mental hospital.

No liability in respect of act done in good faith in pursuance of this Ordinance.

59. (1) A person who does any act in pursuance or in intended pursuance of any of the provisions of this Ordinance shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of mistake of law or of fact or on any other ground, whether of a like nature to the foregoing or not, if the court is satisfied that he has acted in good faith and with reasonable care.

(2) Any proceedings taken against any such person for any such act may, upon application to the court in which they are taken, be stayed, if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious and such court may award to the defendant such costs or compensation or both, as it considers reasonable.

(3) No such proceedings shall be commenced after the expiry of six months from the act complained of, or, in the case of a continuance of injury or damage, after the expiry of six months from the discovery of such act.

(4) Nothing in this section contained shall be construed as depriving any person of any defence which he would have independently of this section.

(5) No criminal proceedings shall be commenced under the provisions of this Ordinance without the prior consent in writing of the Attorney-General.

Who may not give certificates.

60. No medical recommendation for admission of a person to a mental hospital and no medical certificate for the purpose of Part VI or of Part XI of this Ordinance shall be signed by any person in charge of, or by any person employed at or owning a financial interest in, such mental hospital, unless the person in respect of whom the recommendation or certificate is signed is, at the time of signing, an inmate of such mental hospital or is lawfully detained in some other suitable place for observation as to his mental condition, by the person who signs such certificate.

Amendment of order or certification.

61. If, after the reception of any person into any mental hospital, it appears to the person in charge that the medical certificate upon which the order for the reception of such person was founded or the medical recommendation upon which he was admitted is defective or incorrect, he may require the signatory to amend such certificate or recommendation, as the case may be, at any time within forty days after such reception.

62. Every person received into a mental hospital under the provisions of this Ordinance shall be detained therein until he leaves, is removed or discharged, in accordance with the provisions of this Ordinance; and, if any person detained in a mental hospital under a reception order made under the provisions of Part VI or of Part XI of this Ordinance escapes therefrom, he may be retaken by any police officer, by any person employed in such mental hospital or by any other person authorized in that behalf by the person in charge of such mental hospital, and conveyed to and received into such mental hospital.

Detention of
escapee.

PART XIV

OFFENCES

63. Any person who, not being a medical practitioner, knowingly and wilfully signs a medical certificate for the purposes of any of the provisions of this Ordinance, shall be guilty of an offence against this Ordinance.

Persons other
than medical
practitioner
signing certifi-
cate.

64. Any medical practitioner who knowingly, wilfully or recklessly in any certificate made under the provisions of this Ordinance, certifies anything which he knows to be untrue, shall be guilty of an offence against this Ordinance.

False certifi-
cates.

65. Any person who wilfully assists the escape of any person of unsound mind being conveyed to, from, or while under care and treatment in, a mental hospital, or who harbours any person of unsound mind who to his knowledge has escaped from a mental hospital, shall be guilty of an offence against this Ordinance.

Escape of person
of unsound
mind.

66. Any person in charge of, or any person employed at, a mental hospital who through wilful neglect or connivance permits any patient in a mental hospital to quit such hospital other than in accordance with the provisions of this Ordinance or of any other law for the time being in force, shall be guilty of an offence against this Ordinance.

Permitting
patient to quit
mental hospital
unlawfully.

67. Any person in charge of, or any person employed at, a mental hospital who strikes, ill-treats, abuses or wilfully neglects any patient in such mental hospital shall be guilty of an offence against this Ordinance:

Ill-treatment of
persons in
mental hospital.

PART XVI

REPEAL AND SAVINGS

73. The Indian Lunacy (District Courts) Act, 1858, and the Indian Lunatic Asylums Act, 1858, as applied to the Colony, the Lunacy Ordinance, the Removal of Lunatics (European) Ordinance and the Certification of Lunatics (Forces of the Crown) Ordinance, 1948, are hereby repealed:

Repeal and saving.
Cap. 122.
Cap. 123.
No. 1 of 1948.

Provided that all orders for the detention of persons of unsound mind made and all undertakings or orders given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Ordinance and by or to the authority empowered thereby in such behalf.

ORDINANCE No. 4 of 1949

Assented to in His Majesty's name this seventh day of February, 1949.

P. E. MITCHELL,
Governor.

AN ORDINANCE TO APPLY CERTAIN SUMS OF MONEY FOR THE SERVICE OF THE YEAR ENDING THE 31st DAY OF DECEMBER, 1949

Date of commencement.

1st January, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the 1949 Appropriation Ordinance, 1949.

Public revenue and other funds charged.

2. The public revenues for the year 1949 and other funds of the Colony and Protectorate of Kenya are hereby charged towards the service of the year ending the thirty-first day of December, one thousand nine hundred and forty-nine, with the sum of nine million, four hundred and eighteen thousand, eight hundred and twelve pounds in respect of the Colony, and with the further sum of five million, nine hundred and twenty-three thousand, one hundred and forty-six pounds in respect of the Development and Reconstruction Fund.

Application of moneys granted.

3. The moneys granted by this Ordinance shall be applied for the purposes and services expressed in the Schedules hereto.

Accountant General's authority for payment.

4. The Accountant General of the Colony is hereby authorized and required from time to time upon the warrant or order of the Governor to pay out of the Revenue and other funds of the Colony for the several services specified in the Schedules hereto, the said sum of nine million, four hundred and eighteen thousand, eight hundred and twelve pounds and the said further sum of five million, nine hundred and twenty-three thousand, one hundred and forty-six pounds, which will come in course of payment during the year ending the thirty-first day of December, one thousand nine hundred and forty-nine.

Repeal. Ordinance No. 95 of 1948.

5. The 1949 Appropriation Ordinance, 1948, is hereby repealed.

1949

Appropriation

No. 4

FIRST SCHEDULE

Head No.	Head	Amount £
		22,741
1.	The Governor	6,200
1A.	The Governor Extraordinary	70,453
2.	Judicial Department	45,612
3.	Audit Department	60
3A.	Audit Department Extraordinary	81,661
4.	Central Administration—Secretariat and Legislative Council	315,445
5.	Public Works Department	307,575
6.	Public Works Recurrent	312,965
7.	Public Works Extraordinary	25,180
8.	Immigration Department	200
8A.	Immigration Department Extraordinary	17,613
9.	Legal Department	1,405
9A.	Legal Department Extraordinary	652,325
10.	Police	66,667
10A.	Police Extraordinary	268,842
11.	Prisons	300
11A.	Prisons Extraordinary	13,445
12.	Registrar General's Department	57,736
13.	Accountant General's Department	163,980
14.	Customs Department	550
14A.	Customs Department Extraordinary	35,056
15.	Inland Revenue Department	7,500
15A.	Inland Revenue Department Extraordinary	260,221
16.	Miscellaneous Services	325,400
16A.	Miscellaneous Services Extraordinary	628,485
17.	Pensions and Gratuities	679,267
18.	Public Debt	16,000
19.	Rent and Interest to Sultan of Zanzibar	31,630
20.	Subventions	39,000
20A.	Subventions Extraordinary	8,920
21.	Office of the Member	35,535
22.	Services under the Member for Agriculture	99,768
22A.	Services under the Member for Agriculture Extraordinary	2,802
23.	Settlement	5,000
23A.	Settlement Extraordinary	277,268
24.	Agricultural Department	29,390
24A.	Agricultural Department Extraordinary	140,913
25.	Forest Department	75
25A.	Forest Department Extraordinary	41,391
26.	Game Department	10,275
26A.	Game Department Extraordinary	144,005
27.	Veterinary Services	9,775
27A.	Veterinary Services Extraordinary	533,854
28.	Administration General Staff	20,833
28A.	Administration Extraordinary	9,885
29.	Civil Aviation	11,760
30.	Coast Agency	775
30A.	Coast Agency Extraordinary	

FIRST SCHEDULE—Contd.

Head No.	Head	Amount £
31.	Education Department	1,004,573
31A.	Education Department Extraordinary	50,855
32.	Information Services	28,297
33.	Labour Department	91,277
33A.	Labour Department Extraordinary	10,810
34.	Lands Department	28,896
35.	Surveys Department	45,663
35A.	Surveys Department Extraordinary	9,200
36.	Military	243,517
37.	Miscellaneous Services	16,771
37A.	Miscellaneous Services Extraordinary	2,000
38.	Naval Expenditure	8,570
39.	Printing and Stationery	79,747
39A.	Printing and Stationery Extraordinary	38,000
40.	Registrar of Co-operative Societies	5,326
40A.	Registrar of Co-operative Societies Extraordinary	425
41.	Transport Licensing Board	3,052
42.	Health and Local Government Department	11,776
43.	Government Chemist	3,684
44.	Local Government Contributions	470,693
44A.	Local Government Contributions Extraordinary	19,000
45.	Medical Department	713,819
45A.	Medical Department Extraordinary	6,840
46.	Miscellaneous Services	2,430
46A.	Miscellaneous Services Extraordinary	5,000
47.	Mines and Geological Department	16,832
47A.	Mines and Geological Department Extraordinary	4,150
	High Commission Services	183,711
	High Commission Services Extraordinary	44,666
	War Expenditure Civil	433,494
	Total	£9,418,812

SECOND SCHEDULE

Head	Amount
Development and Reconstruction Fund	£5,923,146

ORDINANCE No. 5 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS**SECTION**

- 1—Short title.
- 2—Interpretation.
- 3—Unlawful possession of diamonds.
- 4—Payment of debts in diamonds.
- 5—Cutting and setting of diamonds prohibited except with Commissioner's authority.
- 6—Restriction on selling diamonds.
- 7—Restriction on buying diamonds.
- 8—No buying or selling at night or on Sundays.
- 9—Exception of transactions approved by the Commissioner.
- 10—Restriction on export and import of diamonds.
- 11—Issue of diamond dealer's licence.
- 12—Diamond Register to be kept.

SECTION

- 13—Payment of royalties by licensed diamond dealers.
- 14—Search warrants.
- 15—Stealing by servants.
- 16—Punishment for offences.
- 17—Attempts and abetment.
- 18—Burden of proof as to diamond.
- 19—Powers of entry, search and arrest.
- 20—Power to detain diamonds sent by post.
- 21—Persons finding diamonds to report forthwith to the Commissioner.
- 22—Restriction on trading within diamond areas.
- 23—Protection of officers acting with probable cause.
- 24—Power of Governor in Council to make regulations.
- 25—Repeal.

**AN ORDINANCE TO PROVIDE FOR THE
PROTECTION OF THE DIAMOND INDUSTRY**

4th June, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Diamond Industry Protection Ordinance, 1949.

Short title.

2. In this Ordinance, unless the context otherwise requires—

Interpretation

“authorized diamond miner” means the holder, under the provisions of the Mining Ordinance, 1940, of a “prospecting right” endorsed by the Commissioner, for diamonds, or of a “precious stones” lode location or a “precious stones” alluvial location of which the Certificate of Registration has been endorsed by the Commissioner, for diamonds, or of a mining lease for diamonds, or any person authorized in writing by the holder of such right, location or lease to act on his behalf for the purpose of this Ordinance, provided that such authorization has been previously communicated to and approved in writing by the Commissioner;

No. 29 of 1940.

“buy” and “sell” include barter, “buy” includes receive as a pledge or security, and “sell” includes deposit as a pledge or security;

“Commissioner” means the person for the time being performing the duties of Commissioner of Mines and Geology;

“diamond” means any rough and uncut diamond;

No. 29 of 1940. “diamond area” means any area or part thereof in respect of which any exclusive prospecting licence, location or lease has been granted or registered under the provisions of the Mining Ordinance, 1940, for the purpose of prospecting or mining for diamonds and includes—

- (a) the area of any right of occupancy granted to the holder of any such licence, location or lease for the purpose of his prospecting or mining operations; and
- (b) the area extending to a distance of two miles beyond the boundaries of any such location, lease or right of occupancy;

o. 9/52.

“diamond protection area” means an area established as such in pursuance of regulations made under section 25 of this Ordinance;

“licensed diamond dealer” means the holder of a diamond dealer’s licence, issued under the provisions of this Ordinance;

“prescribed” means prescribed by this Ordinance or by regulations made under this Ordinance.

Unlawful
possession of
diamonds.

3. (1) If any diamond is found in the possession, power or control of any person, such person shall, unless he proves that he obtained it lawfully, be guilty of an offence against this Ordinance, and shall be liable, on conviction therefor, to a fine not exceeding one thousand pounds or to imprisonment with or without hard labour for a term not exceeding ten years or to both such fine and such imprisonment.

(2) Any diamond in the course of transmission through the post, either within the Colony or from the Colony to a place beyond the Colony, shall while within the Colony be deemed for the purpose of this section to be in the possession of the person who dispatched such diamond by post.

Payment of
debts in
diamonds.

4. No person shall pay or satisfy any debt by means of diamonds:

Provided that this section shall not prevent an authorized diamond miner from satisfying a debt, due from him to a licensed diamond dealer, by means of diamonds.

5. No person shall cut, polish, break or alter in any manner the shape of, any diamond or shall set any diamond in any form of tool or other setting except with the written authority of the Commissioner and in accordance with such conditions as the Commissioner in his discretion may impose. The Commissioner may refuse to grant such authority without assigning any reason therefor.

Cutting and setting of diamonds prohibited except with Commissioner's authority.

6. (1) No person, other than an authorized diamond miner or a licensed diamond dealer, shall sell or otherwise dispose of any diamond.

Restriction on selling diamonds.

(2) No authorized diamond miner shall sell or otherwise dispose of any diamond which is not lawfully won by him or by some other authorized diamond miner for whom he is authorized in writing to act for the purpose of such sale or disposal.

(3) No licensed diamond dealer shall sell or otherwise dispose of any diamond except on behalf of an authorized diamond miner or another licensed diamond dealer or unless the diamond has been obtained from an authorized diamond miner or another licensed diamond dealer.

(4) No authorized diamond miner or licensed diamond dealer shall sell or otherwise dispose of any diamond to any person residing in the Colony other than a licensed diamond dealer.

(5) Any person contravening any of the provisions of this section shall be guilty of an offence and liable, on conviction therefor, to a fine not exceeding one thousand pounds or to imprisonment with or without hard labour for a term not exceeding fifteen years or to both such fine and such imprisonment.

7. (1) No person, other than a licensed diamond dealer, shall buy or otherwise acquire, except by lawful mining, any diamond.

Restriction on buying diamonds.

(2) No licensed diamond dealer shall buy or otherwise acquire any diamond except from an authorized diamond miner or another licensed diamond dealer.

(3) Any person contravening any of the provisions of this section shall be guilty of an offence and liable, on conviction

therefor, to a fine not exceeding one thousand pounds or to imprisonment with or without hard labour for a term not exceeding fifteen years or to both such fine and such imprisonment:

No buying or selling at night or on Sundays.

8. No person shall buy or sell any diamond on a Sunday or between the hours of six o'clock in the evening and six o'clock in the morning on any other day.

Exception of transactions approved by the Commissioner.

9. Sections 4 to 8, both inclusive, of this Ordinance shall not apply to any transaction which has previously been approved in writing by the Commissioner if all the conditions attached to such approval are observed in such transaction.

Restriction on export and import of diamonds.

10. (1) No person shall export or import any diamond unless he holds a permit so to do issued, in the prescribed form, by the Commissioner who may at any time, without assigning a reason, refuse to issue any such permit.

(2) The Commissioner may delegate to any other person, authority to issue or refuse the issue of any permit required under the provisions of sub-section (1) of this section.

(3) Every such permit shall be valid for such period and shall be subject to such conditions as may be prescribed or as may be specified therein.

(4) Except when in transmission by post, no diamond shall be carried by lake or coastwise by sea in the Colony or shall be shipped or taken aboard any aircraft in the Colony unless particulars thereof have previously been declared to a Collector of Customs in the manner required by him.

Issue of diamond dealer's licence.

11. (1) A diamond dealer's licence in the prescribed form may be issued by the Commissioner and shall expire on the thirty-first day of December following the date of issue.

(2) The fee for a licence shall be five pounds or, if such licence is issued after the thirtieth day of June in any year, such fee shall be three pounds:

Provided that no fee shall be payable by any person lawfully entitled to carry on the business of a banker.

(3) The Commissioner may, subject to a right of appeal to the Governor, without assigning a reason, refuse to issue any licence or may revoke any licence:

Provided that on any revocation made under the provisions of this sub-section, the Commissioner may refund such part of the fees paid for such licence as he thinks just.

(4) A licensed diamond dealer shall not buy, sell or store any diamond except on such premises as are prescribed or specified in his licence.

(5) Every licensed diamond dealer shall have affixed outside his premises a sign bearing his name and the words "Licensed Diamond Dealer", in a conspicuous place and in legible lettering, and any such dealer contravening the provisions of this sub-section shall be guilty of an offence and liable, on conviction therefor, to a fine not exceeding twenty-five pounds for a first offence and two hundred and fifty pounds for each subsequent offence:

Provided that the provisions of this sub-section shall not apply to any person lawfully entitled to carry on the business of a banker.

(6) It shall be lawful for the Commissioner, before issuing any such licence, to require the applicant therefor to supply evidence of his financial stability, and to provide security, by way of bond or cash deposit as the Commissioner shall require, for the due payment of any prescribed fees or royalties which may become payable by such dealer in the course of his business, under the provisions of this Ordinance.

12. Every licensed diamond dealer and every holder of an exclusive prospecting licence, location or lease granted under the provisions of the Mining Ordinance, 1940, for the purpose of prospecting or mining for diamonds, shall keep, in such form and manner as may be prescribed, a book to be known as a "Diamond Register", in which shall be entered such particulars in such manner as may be prescribed, and shall render monthly to the Commissioner, in such form and manner as may be prescribed, a copy of all entries in such Diamond Register for the previous month.

Diamond Register to be kept.
No. 29 of 1940.

13. (1) Every licensed diamond dealer shall be liable for the due payment of all prescribed fees and of royalties prescribed under the Mining Ordinance, 1940, which may be due in respect of any diamonds bought, sold, received or exported by him, and, if so required by the Commissioner, shall give security to the satisfaction of the Commissioner for the due payment of all such fees and royalties.

Payment of royalties by licensed diamond dealers.
No. 29 of 1940.

(2) Subject to any agreement to the contrary, a licensed diamond dealer who pays any fee or royalty in respect of any diamonds may recover or retain the amount from the

person on whose behalf he sold or exported such diamonds or from whom he received them.

Search warrants.

14. (1) Any magistrate who has reason to suspect that any diamond, with respect to which an offence against this Ordinance has been committed, is concealed in any place, may issue a warrant authorizing any police officer, at any time within one month from the date of such warrant, to enter and search such place and all buildings and things therein, using such force as may be necessary for that purpose, and to seize any diamond and arrest any person found therein.

(2) Any person arrested and any diamond seized under the authority of such warrant shall, as soon as possible, be brought before a court of competent jurisdiction, to be dealt with according to law.

Stealing by servants.

15. (1) Any person employed as a clerk or servant, who steals any diamond the property of or in the lawful possession of his employer or conceals or retains any such diamond with intent to convert the same to his own use, shall be guilty of an offence and liable, on conviction therefor, to a fine not exceeding one thousand pounds or to imprisonment, with or without hard labour, for a term not exceeding fifteen years, or to both such fine and such imprisonment; and any person inducing any other person, employed as a clerk or servant, to commit any such offence shall be guilty of an offence and liable, on conviction therefor, to the same punishment.

(2) Any diamond found in the possession of any person who is, at the time when the diamond is found in his possession, or was within three months previously, employed as a clerk or servant by any licensed diamond dealer, or authorized diamond miner, shall, unless the contrary be proved, be deemed to be the property of such employer and may be seized and taken possession of by such employer.

Punishment for offences.

16. (1) Any person who contravenes any of the provisions of this Ordinance or of any regulations made thereunder for the contravention of which no penalty is specially imposed, or who fails without reasonable excuse to comply with any lawful requirement thereunder, shall be guilty of an offence and liable, on conviction therefor, to a fine not exceeding one thousand pounds or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

(2) In any case where a person has been convicted of any offence against this Ordinance or against any regulations made thereunder the court may, if it think fit, declare that any diamond with respect to which the offence was committed shall be forfeited to His Majesty if there be no known person, other than the person convicted, who, in the opinion of the court is entitled thereto.

17. Any person who attempts to commit or abets an offence against this Ordinance shall himself be guilty of an offence against this Ordinance, and, on conviction therefor, shall be liable to the same punishment as provided for such offence.

Attempts and
abatement.

18. (1) If for the purposes of this Ordinance, the question is in issue as to whether any article is or is not a diamond, the burden of proof that such article is not a diamond shall be on the person who alleges such to be the case; and, in the absence of such proof, such article shall be deemed to be a diamond.

Burden of proof
as to diamond.

(2) A certificate purporting to be signed by or under the authority of the Commissioner that any article is or is not a diamond shall be admissible in evidence without further proof in any court for the purposes of this Ordinance and shall be prima facie evidence of the facts stated therein:

Provided always that the court may, in its discretion, summon as a witness the officer who signed such certificate.

19. (1) The Commissioner and any person duly authorized by him in writing in that behalf and any police officer may, subject, in the case of a person authorized by the Commissioner, to any restrictions upon the powers contained in such authorization, and, in the case of a police officer, to the provisions of sub-section (5) of this section, without warrant—

Powers of entry,
search and
arrest.

(a) for the purpose of preventing the commission of any offence against this Ordinance and any regulations made thereunder or of discovering and prosecuting persons who have committed any such offence, enter any diamond area and search any prospecting or opencast mining works, buildings, premises, structures, camps, places, articles, vehicles and persons situated or found therein;

- (b) stop and search, and detain for the purpose of searching, any person, vehicle, vessel and aircraft on or at any highway, street, road, public place, railway, wharf, landing-stage, aerodrome or landing-ground whenever there is reasonable ground to suspect that any diamond is unlawfully concealed or detained by or on such person or in such place, and for such purpose may enter any such place;
- (c) arrest any person who has been or is concerned in any of the offences described in sections 3, 4, 5, 6, 7, 8, 10, 11 and 15 of this Ordinance or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned;
- (d) arrest any person found within a diamond protection area whose presence therein is unlawful;
- (e) at any time seize and detain any diamond in connexion with which any offence has been committed against this Ordinance or in respect of which there are reasonable grounds for suspecting that such an offence has been or is being committed:

Provided that any diamond so seized shall as soon as possible be deposited with an administrative officer of the district in which such seizure occurred;

- (f) between six o'clock in the morning and six o'clock in the evening, enter any premises or place in which diamonds are stored or kept and require the owner or occupier thereof or the manager, agent or representative of such owner or occupier or other person for the time being in charge of such diamonds, forthwith to produce for inspection all diamonds in his possession or under his control and the Diamond Register and all records pertaining thereto and may make extracts from any such Register or record and require such owner or occupier or his manager, agent, representative or other person for the time being in charge of such diamonds to weigh in his presence any or all of the diamonds so produced and may himself weigh such diamonds.

(2) Where any diamonds are deposited in pursuance of the provisions of paragraph (e) of sub-section (1) of this

section, the administrative officer concerned shall, unless the ownership thereof is determined in the course of criminal proceedings taken in connexion with the seizure of such diamonds, proceed as provided by section 21 of this Ordinance in the case of found diamonds so deposited.

(3) All such force may be used as is reasonably necessary for the purpose of exercising any of the powers conferred by sub-section (1) of this section, but the power to search persons shall be exercised with due regard to privacy, and no female shall be searched except by a female and in the presence of females only.

(4) Every person arrested under the provisions of sub-section (1) of this section shall be brought before a court of competent jurisdiction as soon as is practicable.

(5) The powers conferred by paragraphs (a) and (f) of sub-section (1) of this section shall not be exercised by any police officer below the rank of assistant inspector.

(6) Notwithstanding anything contained in sections 85 to 88, both inclusive, of the Criminal Procedure Code, the Commissioner or any officer duly authorized by him in writing in that behalf may conduct or assist in conducting a prosecution before any subordinate court for any offence against this Ordinance and any regulations made thereunder.

20. (1) Any police officer of or above the rank of assistant inspector who has reasonable cause to believe that any article is being dispatched, through the Post Office, containing diamonds in connexion with which an offence against this Ordinance has been committed, may stop or cause such article to be stopped at any post office within the Colony either during transit or otherwise.

(2) If the person who has dispatched such article can be ascertained and is in the Colony such police officer shall thereupon, by notice in writing personally served upon such person, require him to attend, either personally or by an agent duly authorized by him in writing, at the post office at which such article is detained and at a time which shall be specified, and which shall allow reasonable opportunity for his attendance or that of such agent, in order that he or such agent may be present at the opening and examination of such article. At the time and place specified in such notice such police officer shall open the article in the presence of the person for the time being in charge of such post office and,

Power to detain
diamonds sent
by post.

if such person or such agent shall attend, in the presence of such person or such agent, and shall, after examination, either release such article for transmission through the post or require the same to be detained pending an order, of a magistrate of the first or second class, for the disposal thereof.

(3) If the person who has dispatched such article cannot be ascertained or is not in the Colony such police officer may at any time open such article in the post office at which it is detained in the presence of the person for the time being in charge of such post office, and may examine the same and shall, after examination, either release such article for transmission through the post or require the same to be detained pending an order, of a magistrate of the first or second class, for the disposal thereof.

Persons finding diamonds to report forthwith to the Commissioner.

21. (1) Any person who discovers any diamond without an apparent owner or on any land not held by him under a location or lease granted for the purpose of mining for diamonds or in respect of which he does not hold a right or a licence to prospect for diamonds thereon or thereunder, shall forthwith report such discovery to the Commissioner and shall deliver such diamond to the Commissioner who shall forthwith cause it to be deposited with an administrative officer of the district in which such diamond was discovered.

(2) Such administrative officer shall advertise such discovery in one issue of the Gazette, and unless, within three months from the date when such advertisement appears, any person proves, to the satisfaction of a magistrate of the first class his title to such diamond and that he was not concerned in any offence in connexion therewith, such magistrate shall declare the same to be forfeited to His Majesty:

Provided that such administrative officer may in his discretion and in the absence of any person proving his title to such diamond, in the manner provided in this subsection, and after giving full consideration to such representations as the finder of the diamond and the Commissioner, or an officer appointed by him in that behalf, may make, and to such other evidence regarding the matter as may be adduced by other persons, sell such diamond and pay to such finder a portion of the net proceeds of such sale, not exceeding one half, after deducting from the gross proceeds the costs of realization and such royalties as may be prescribed under any Ordinance for the time being in force.

(3) Every sale of a diamond in pursuance of sub-section (2) of this section, shall be conducted in such manner as may be prescribed.

22. Except with the consent of the Governor and in accordance with such conditions as the Governor may impose or as may be prescribed, no person shall—

Restriction on trading within diamond areas.

(a) within any diamond area (other than any part thereof within the boundaries of an exclusive prospecting licence) conduct any trade or business, other than mining, in respect of which a licence or permit is required under any Ordinance for the time being in force:

Provided that this prohibition shall not extend to any trade or business which is conducted on premises lawfully used for the purpose of banking or in respect of which a licence or permit to conduct such business was issued prior to the date on which this Ordinance came into force, or prior to the date when the land on which such premises are situated became a diamond area and during the continuance of the title of the holder of such licence or permit to the land on which such premises are situated; and

(b) whilst holding a diamond dealer's licence or a licence or permit to carry on any trade or business other than that of banking, hold or be eligible to become the holder of any right, licence, location or lease registered or granted for the purpose of prospecting

22A. (1) Any person, other than a person in the service of the Government or of the High Commission, who gives to the police any information leading to any other person being prosecuted to conviction for an offence against this Ordinance may, at the discretion and upon the written authority of the Commissioner of Police, be paid out of the general revenue of the Colony a monetary reward of such amount, not exceeding one-third of the proceeds derived from the sale of any diamond which the court convicting such person may have declared to be forfeited to His Majesty under sub-section (2) of section 16 of this Ordinance.

Rewards.

Protection of officers acting with probity.

(2) Nothing in this section shall confer on any person any right in law to a monetary reward.

24. Subject (Ordinance No. 9 of 1952.) Criminal Procedure Code, any offence against the provisions of this Ordinance or of any regulations made thereunder shall be triable by a magistrate of the first class.

Power of
Governor in
Council to make
regulations.

Gen. 1020/50.

25. (1) The Governor in Council may make regulations prescribing anything which is to be or may be prescribed under this Ordinance and generally for better carrying into effect the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may—

(a) provide for the establishment, maintenance, control and disestablishment of diamond protection areas; require the boundaries of such areas to be demarcated and notified to the public in the prescribed manner; and prohibit and restrict the entry of unauthorized persons therein:

Provided that no such area shall include any dwelling-house or ground lawfully occupied therewith unless the consent of the occupiers shall have been first obtained;

(b) regulate the issue and withdrawal of authorization to exercise the powers provided in sub-section (1) of section 19 of this Ordinance;

(c) confer on such persons as may be specified and to the extent specified therein powers of search and arrest of persons, vehicles and aircraft and search of buildings, places and articles within the boundaries of a diamond area;

(d) prescribe the place and manner in which diamonds shall be stored or kept and the persons who shall be responsible for the safe custody of diamonds;

(e) provide for the registration of diamonds and the submission of returns;

(f) provide for the valuation of diamonds and the payment of valuation and official agency fees;

(g) provide for the supervision of labour engaged in prospecting and mining for diamonds and in operations ancillary thereto, for the purpose of preventing the theft of diamonds, and prescribe the maximum number of labourers who may be supervised by a single supervisor.

Repeal.
No. 19 of 1934.

26. The Diamond Industry Protection Ordinance, 1934, is hereby repealed:

Provided that any licence, permit or authority issued or granted under the provisions of the Ordinance hereby repealed shall, during the validity thereof, be deemed to have been issued or granted under the provisions of this Ordinance.

ORDINANCE No. 6 of 1949

Assented to in His Majesty's name this fourth day of
June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title and commencement.	2—Amendment of section 88 (2) of Ordinance No. 19 of 1928.

AN ORDINANCE TO AMEND THE MUNICIPALITIES ORDINANCE, 1928

1st April, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Municipalities (Amendment) Ordinance, 1949, and shall be read as one with the Municipalities Ordinance, 1928, hereinafter referred to as the principal Ordinance, and shall be deemed to have come into operation on the 1st day of April, 1949.

Short title and
commencement.

No. 19 of 1928.

2. Sub-section (2) of section 88 of the principal Ordinance is amended by substituting the words "Such loans shall be a charge on the property and revenues of the Council" for the words "Such loans shall be secured on the property and revenues of the Council" occurring therein.

Amendment of
section 88 (2) of
Ordinance
No. 19 of 1928.

ORDINANCE No. 7 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS**SECTION**

- 1—Short title.
2—Amendment of section 2 of Ordinance 20 of 1928.
3—Amendment of section 3 of Ordinance 20 of 1928.
4—Amendment of section 6 of Ordinance 20 of 1928.

SECTION

- 5—Amendment of section 13 of Ordinance 20 of 1928.
6—Amendment of section 28 of Ordinance 20 of 1928.
7—Amendment of section 29 of Ordinance 20 of 1928.

AN ORDINANCE TO AMEND THE LOCAL GOVERNMENT (RATING) ORDINANCE, 1928

Date of commencement.

4th June, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Local Government (Rating) (Amendment) Ordinance, 1949, and shall be read as one with the Local Government (Rating) Ordinance, 1928, hereinafter referred to as the principal Ordinance.

No. 20 of 1928.

Amendment of section 2 of Ordinance No. 20 of 1928.

2. Section 2 of the principal Ordinance is amended—

(a) by inserting therein immediately after the definition “Mayor”, the following new definition:—

“‘Member’ means the Member of the Executive Council of the Colony for the time being responsible for Health and Local Government;”;

(b) by substituting for paragraph (d) of the definition “rateable property” the following paragraph—

“(d) any interest in land laid out and used for the purpose of sport and controlled in accordance with rules or regulations approved by the local authority:

Provided that an interest in land used as a sports ground conducted for profit or as a racecourse, shall not be entitled to the benefit of this exception;”;

(c) by inserting therein immediately after the definition "rateable property", the following new definition:—

"'time of valuation' means such date, within a period of twelve months prior to the commencement of the financial year for which such valuation roll is to come into operation, as may be determined by resolution of the local authority and approved by the Member, as the date at which all valuations shall be deemed to have been made for the purposes of a valuation roll prepared in accordance with the provisions of sub-section (1) of section 3 of this Ordinance;"

and

(d) by substituting the expression "time of valuation" for the expression "date of valuation" wherever it occurs in the definition "Value of improvements".

3. Section 3 of the principal Ordinance is amended by substituting the word "Member" for the word "Governor" wherever the latter word occurs therein. Amendment of section 3 of Ordinance No. 20 of 1928.
4. Section 6 of the principal Ordinance is amended by substituting the expression "time of valuation" for the expression "date of valuation" which occurs in the second proviso thereto. Amendment of section 6 of Ordinance No. 20 of 1928.
5. Paragraph (a) of section 13 of the principal Ordinance is amended by substituting the word "Member" for the word "Governor" which occurs therein. Amendment of section 13 of Ordinance No. 20 of 1928.
6. Section 28 of the principal Ordinance is amended by substituting the word "Member" for the word "Governor" wherever the latter word occurs in sub-section (5) thereof. Amendment of section 28 of Ordinance No. 20 of 1928.
7. Section 29 of the principal Ordinance is amended by substituting the word "Member" for the word "Governor" which occurs therein. Amendment of section 29 of Ordinance No. 20 of 1928.

ORDINANCE No. 8 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION

1—Short title.

2—Amendment of section 2 of Cap. 63.

SECTION

3—Amendment of section 10 of Cap. 63.

**AN ORDINANCE TO AMEND THE VAGRANCY
ORDINANCE**Date of
commencement.*4th June, 1949*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Vagrancy (Amendment) Ordinance, 1949, and shall be read as one with the Vagrancy Ordinance, hereinafter called the principal Ordinance.

Cap. 63.

Amendment of
section 2 of
Cap. 63.

2. Section 2 of the principal Ordinance is amended by inserting after the definition of "Magistrate" a new definition as follows:—

“‘Member’ means the Member of Executive Council for the time being responsible for Law and Order;”.

Amendment of
section 10 of
Cap. 63.

3. Section 10 of the principal Ordinance is amended by substituting for the words "Governor in Council" and "Governor" wherever they occur therein, the word "Member".

ORDINANCE No. 9 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title.	3—Amendment of section 20 of Ordinance No. 13 of 1926.
2—Amendment of section 2 of Ordinance No. 13 of 1926.	4—Power to remit payment of estate duty in cases of exceptional hardship.

**AN ORDINANCE TO AMEND THE ESTATE DUTY
(CONSOLIDATION) ORDINANCE, 1926**

4th June, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

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| <p>1. This Ordinance may be cited as the Estate Duty (Consolidation) (Amendment) Ordinance, 1949, and shall be read as one with the Estate Duty (Consolidation) Ordinance, 1926, hereinafter referred to as the principal Ordinance.</p> | <p>Short title.
No. 13 of 1926.</p> |
| <p>2. Section 2 of the principal Ordinance is amended by deleting the definition of "approved valuer" in paragraph (a) and inserting a new definition as follows:—
“(a) The expression 'principal value' means the price which the property would be estimated to fetch if sold at the time of the death of the deceased.”</p> | <p>Amendment of section 2 of Ordinance 13 of 1926.</p> |
| <p>3. Section 20 of the principal Ordinance is amended by deleting sub-section (3) thereof.</p> | <p>Amendment of section 20 of Ordinance No. 13 of 1926.</p> |
| <p>4. The principal Ordinance is amended by inserting therein next after section 30 the following new section 31 and by re-numbering sections 31, 32, 33 and 34 as sections 32, 33, 34 and 35 respectively:—
“31. The Governor in Council, on the application of any person accountable for estate duty or interested in any property on which estate duty is payable, may if he thinks fit, remit the payment of any estate duty or any part thereof or any interest thereon, in any case where, in the opinion of the Governor in Council, such payment would cause exceptional hardship.”</p> | <p>Insertion of new section.
Power to remit payment of estate duty in cases of exceptional hardship.</p> |

ORDINANCE No. 10 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

<p>SECTION</p> <p>PART I—PRELIMINARY</p> <p>1—Short title and commencement.</p> <p>2—Interpretation.</p> <p>PART II—ESTABLISHMENT</p> <p>3—Establishment of Law Society of Kenya.</p> <p>4—Objects.</p> <p>5—Dissolution and vesting of assets of Former Society.</p> <p>PART III—MEMBERSHIP</p> <p>6—Qualifications for membership.</p> <p>7—Subscription.</p> <p>8—Expulsion of members.</p> <p>9—Members ceasing to be qualified.</p> <p>10—Resignations.</p> <p>PART IV—COUNCIL</p> <p>11—Constitution of the Council.</p> <p>12—Powers of the Council.</p> <p>13—Committees and delegation.</p> <p>14—Procedure.</p>	<p>SECTION</p> <p>PART V—OTHER OFFICERS</p> <p>15—Officers.</p> <p>16—Advocates' Committee.</p> <p>PART VI—GENERAL MEETINGS</p> <p>17—General Meetings.</p> <p>18—Requisition.</p> <p>19—Voting.</p> <p>20—General Meeting to act by simple majority.</p> <p>21—Alteration of resolutions.</p> <p>22—Convening and procedure.</p> <p>PART VII—COMMON SEAL</p> <p>23—Custody and use of seal.</p> <p>PART VIII—MINUTES ACCOUNTS AND REPORTS</p> <p>24—Minutes.</p> <p>25—Accounts to be kept.</p> <p>26—Report and Accounts.</p> <p>PART IX—REGULATIONS</p> <p>27—Regulations.</p>
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AN ORDINANCE TO INCORPORATE THE LAW SOCIETY OF KENYA

Date of commencement.

By Notice

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

PART I—PRELIMINARY

Short title and commencement.

1. This Ordinance may be cited as the Law Society of Kenya Ordinance, 1949, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint.

Interpretation.

2. In this Ordinance, unless the context otherwise requires, "advocate" has the same meaning as in the Advocates Ordinance, No. 55 of 1949.

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1949

1949 Council (Ordinance No. 56 of 1952) published under the provisions of section 11 of this Ordinance;

"Former Society" means the existing Law Society of the Colony of Kenya;

"prescribed" means prescribed by regulations made under section 27 of this Ordinance;

"Society" means the body corporate established by section 3 of this Ordinance;

"special resolution" means a resolution passed by not less than two-thirds of such members of the Society as may be present and vote thereon at a General Meeting of the Society, duly convened with full notice of the intention to propose such resolution.

PART II—ESTABLISHMENT

3. There shall be a body corporate by the name of The Law Society of Kenya with perpetual succession and a common seal, with power to sue and be sued in its corporate name.

Establishment
of Law Society
of Kenya.

4. The objects for which the Society is established are—

Objects.

- (a) to maintain and improve the standards of conduct and learning of the legal profession in the Colony;
- (b) to facilitate the acquisition of legal knowledge by members of the legal profession and others;
- (c) to assist the Government and the Courts in all matters affecting legislation, and the administration and practice of the law in the Colony;
- (d) to represent, protect and assist members of the legal profession in the Colony as regards conditions of practice and otherwise;
- (e) to protect and assist the public in the Colony in all matters touching, ancillary or incidental to the law;
- (f) to acquire, hold, develop or dispose of properties of all kinds, whether movable or immovable, and to derive capital or income therefrom, for all or any of the foregoing objects;
- (g) to raise or borrow money for all or any of the foregoing objects in such manner and upon such security as may from time to time be determined by the Society;
- (h) to invest and deal with moneys of the Society not immediately required in such manner as may from time to time be determined by the Society;
- (i) to do all such other things as are incidental or conducive to the attainment of the foregoing objects or any of them.

Dissolution and vesting of assets of Former Society.

5. All property and assets of the Former Society shall be and are hereby, as at the date of commencement of this Ordinance, vested in the Society; and so soon as all formalities connected with the transfer of all such property and assets as aforesaid to the Society shall be declared by the secretary of the Former Society to have been completed, the Former Society shall automatically be dissolved.

PART III—MEMBERSHIP

6. The membership of the Society shall consist of the following— Membership.

0-34/61

(a) all advocates who are members of the Society by reason of the provisions of section 28 of the Advocates Ordinance, No. 55 of 1949.

(b) all persons admitted to membership of the Society under section 7 of this Ordinance:

7. Any of the following persons who applies for membership of the Society in the prescribed manner shall be admitted as a member of the Society, that is to say— Qualifications for membership.

Substituted by and schedule of 0-34/61

(a) the Attorney General, Solicitor General, Legal Draftsman, Deputy Public Prosecutor and Crown Counsel, for the time being of the Colony, and any person duly qualified as a barrister or solicitor holding office in the Attorney General's Department;

(b) the Legal Secretary and the Assistant Legal Secretary to the East Africa High Commission, and any person duly qualified as a barrister or solicitor holding office in the Legal Secretary's Department or in the East African Income Tax Department;

(c) any person duly qualified as a barrister or solicitor holding office in any municipality established under the Municipalities Ordinance; Cap. 136.

(d) the Registrar General and any person duly qualified as a barrister or solicitor holding office in his Department;

(e) the Native Courts Officer if duly qualified as a barrister or solicitor;

(f) such other legally qualified persons, for the time being resident in the Colony, as may from time to time be determined by special resolution:

Provided that, subject to the provisions of section 22 of the Advocates Ordinance, 1949, no person who has been duly expelled from membership of the Society shall thereafter be admitted again as a member thereof without the authority of a special resolution. No. 55 of 1949.

8. The Council may elect as honorary members of the Society such persons as it may think fit, either for life or for such period as the Council may in any case deem appropriate. Honorary membership.

9. Subject to the provisions of section 22 of the Advocates Ordinance, 1949, members of the Society shall pay into the funds of the Society such annual subscription as may from time to time be prescribed: Annual subscriptions. No. 55 of 1949

Provided that no honorary member shall be liable to pay any such subscription.

10. No entrance fee shall be payable by any person on becoming a member of the Society. No entrance fee payable, required by sub-section (2) of section 6 of this Ordinance shall thereupon automatically cease to be in force.

10A. No member of the Society shall resign or be permitted to resign his membership thereof at any time while he is entitled to practise as an advocate, but, save as aforesaid, and subject to the provisions of section 29 of the Advocates Ordinance, 1949, any member of the Society may resign his membership thereof in such manner as may be prescribed. Resignation. No. 55 of 1949.

10B. Subject to the provisions of section 29 of the Advocates Ordinance, 1949, any member of the Society, other than an honorary member, may be expelled therefrom in such manner, and upon such grounds, after being given a reasonable opportunity to answer all allegations made against him, as may from time to time be prescribed. Expulsion. No. 55 of 1949.

Provided that no member of the Society who is entitled to practise as an advocate shall be expelled from the Society at any time while entitled so to practise. regulations made under this Ordinance. the Council

10C. Any member of the Society other than an honorary member, who ceases to be qualified for membership shall thereupon automatically cease to be a member. Members ceasing to be qualified for membership. would have been valid if such regulations had not (Ordinance No. 56 of 1952)

13. The Council may from time to time appoint Committees consisting of members of the Society; and may, except as otherwise expressly provided by this Ordinance or by any regulations made under this Ordinance, delegate to any such Committee all or any of the powers of the Council. Committees and delegation.

14. The procedure of the Council, and of every Committee appointed as aforesaid, shall be as may from time to time be prescribed. Procedure.

PART V—OTHER OFFICERS

15. There shall be such Secretary, Treasurer and other officers of the Society, paid or unpaid, as the Council may from time to time appoint. Officers.

16. All representatives of the Society on the Rules Committee or on any Advocates Committee to be established under any Ordinance shall be elected by the Society in general meeting. Committees.

PART VI—GENERAL MEETINGS

17. The Council shall within six weeks after the 30th day of June and the 31st day of December in each year, and may at any other time or times at the discretion of the Council, convene a general meeting of the Society. General meetings.

Requisition.

18. Any fifteen members of the Society may at any time requisition a general meeting by written notice in that behalf signed by them, specifying the object of the proposed meeting, and deposited with the secretary of the Society; and thereupon the Council shall convene a general meeting of the Society accordingly. If the Council fails for fourteen days after such deposit to convene a general meeting in accordance with the requisition, to be held within thirty days after such deposit, the requisitioning members may themselves convene that general meeting to be held at any time within two months after such deposit.

Voting.

19. At every general meeting of the Society, every member present shall have one vote and the Chairman of that meeting shall also have a casting vote; but there shall be no voting by proxy.

General meeting to act by simple majority.

20. Except for any purpose for which a special resolution is expressly required by this Ordinance or by any regulation made under this Ordinance, all resolutions of the Society in general meeting shall be by simple majority vote.

Alteration of resolutions.

21. No resolution of the Society in general meeting shall be altered or rescinded within nine months after the passing thereof otherwise than by a special resolution of the Society.

Convening and procedure.

22. The manner of convening general meetings of the Society, and the procedure thereat, shall, subject as hereinbefore expressly provided, be as may, from time to time, be prescribed.

PART VII—COMMON SEAL

Custody and use of seal.

23. The common seal of the Society shall be kept in such custody and used in such manner as may from time to time be prescribed.

PART VIII—MINUTES, ACCOUNTS AND REPORTS

Minutes.

24. The Council shall cause proper minutes of all general meetings of the society, and of all meetings of the Council and of Committees appointed by the Council, to be taken and recorded; and shall make all such minutes available for inspection by any member of the Society at any reasonable time, on demand.

1949
 "The audited accounts shall be presented by the Council to the General Meeting convened, in accordance with the provisions of section 17 of this Ordinance, within six weeks after the 31st day of December in each year."
 (Ordinance No. 1 of 1954.)
 all assets of the Society to be kept, and to be audited as on the 31st day of December in every year. — added - 0.1/54.

Accounts to be kept.
 0.1/54

26. Within six weeks after the 30th day of June and the 31st day of December in each year, the Council shall present to the Society in general meeting a full report of the activities of the Society. ~~(including the activities of the Council, and of any Committee appointed by the Council), together with accounts duly audited as hereinbefore provided, in respect of the six months preceding that date.~~

Report and accounts.
 Deleted 0.1/54

PART IX—REGULATIONS

27. The Council may, subject to the provisions of this Ordinance and to approval by a special resolution, make regulations binding on members of the Society, prescribing all or any of the following matters—

Regulations.
 G.N. 815/49

- (a) annual subscriptions;
 (Ordinance No. 56 of 1952) Substituted - 0.56/52.
- (b) manner of application for membership of the Society;
- (c) grounds for expulsion of members from the Society, and procedure thereunto;
- (d) resignation of members;
- (e) regulation of powers exercisable by the Council and Committees, and delegation of powers;
- (f) manner of convening meetings of the Council and Committees, and quorums and procedure thereat;
- (g) manner of convening general meetings of the Society, and quorums and procedure thereat;
- (h) manner of election, removal, and replacement of the President, Vice-President and other members of the Council, and of representatives of the Society on the Advocates Committee;
- (i) custody and use of the common seal;
- (j) arbitration in disputes; and
- (k) such other matters as may be deemed by the Council to be necessary for the proper conduct and regulation of the affairs of the Society.

ORDINANCE No. 11 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION
1—Short title.

SECTION
2—Amendment of section 2 of the principal Ordinance.

**AN ORDINANCE TO AMEND THE WIDOWS'
AND ORPHANS' PENSION (AMENDMENT)
ORDINANCE, 1948**

Date of commencement.

4th June, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Widows' and Orphans' Pension (Amendment) Ordinance, 1949, and shall be read as one with the Widows' and Orphans' Pension (Amendment) Ordinance, 1948, hereinafter referred to as the principal Ordinance.

No. 49 of 1948.

Amendment of section 2 of the principal Ordinance.

2. Section 2 of the principal Ordinance is hereby amended—

- (a) by substituting the word "transferred" for the word "appointed" which appears in the fifth line thereof, and by substituting the word "transfer" for the word "appointment" which appears in the seventh line thereof; and
- (b) by deleting all words which occur after the words "Palestine Ordinance" which appear in the eleventh line thereof.

ORDINANCE No. 12 of 1949

Assented to in His Majesty's name this fourth day of
June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title.
- 2—Interpretation.
- 3—Control of tenancies.
- 4—Grounds of consent.
- 5—Penalty.

SECTION

- 6—Saving statutory powers and duties of Mombasa Municipal Board.
- 7—Duration.
- 8—Repeal.

**AN ORDINANCE TO CONTROL THE EVICTION OF
CERTAIN TENANTS IN THE COAST PROVINCE**

4th June, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Eviction of Short title.
Tenants (Control) Ordinance, 1949.

2. In this Ordinance, unless the context otherwise Interpretation.
requires—

“the Board” means the Rent Control Board for the Coast
Province;

“house” means any building or erection used as a place of residence and
constructed on land which is not owned by the owner of such building or erection.

3. (1) Notwithstanding anything to the contrary in the Increase of Rent (Restriction) Ordinance, 1949, or in any other law in force in the Colony, no person shall take any action for the eviction of an owner or of a tenant occupying a house in any of the areas set out in the Schedule to this Ordinance without the consent in writing of the Board. Restriction on eviction and raising of rents by ground landlord. No. 22 of 1949.

(2) No person shall raise the rent of the land upon which any house is built within any of the areas set out in the Schedule to this Ordinance above the rent payable therefor on the 6th day of September, 1949, without the consent of the Board.

(3) If any landlord of land to which sub-section (2) of this section applies has raised the rent of such land after the 6th day of September, 1949, and before the date of the commencement of the Eviction of Tenants (Control) (Amendment) Ordinance, 1949, any excess of rent paid to him over and above the rent payable to him on that date shall be recoverable and may be recovered by deduction from future rents. No. 60 of 1949.

(4) Any consent required under the two preceding sub-sections shall be given under the hand of the Chairman of the Board or his deputy.

(5) The Governor in Council may, by notice in the Gazette, add to, amend or vary the Schedule to this Ordinance.

see
verloof

No. 12 1949
 4. (1) The Board shall not give such consent except on the grounds of hardship or, in the case of a consent required under sub-section (1) of the last preceding section, on the grounds that any land upon which any house is situated is required by the owner of such land for the purpose of erecting a building containing permanent residential accommodation substantially superior in size and quality to such house and that such accommodation will be erected within the time approved by the Board or, in the case of any consent required under sub-section (2) of the last preceding section, on the grounds that the rates payable in respect of the land have been increased. shall be final and shall not be called in question in any court.

Penalty.

5. Any person who contravenes the provisions of section 3 of this Ordinance, or who makes any false statement to the Board or who fails to erect any such accommodation within the time approved for such purpose by the Board, shall be guilty of an offence and shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term which may extend to twelve months or to both such fine and imprisonment:

Provided that no proceedings shall be instituted against any such owner for failing to erect such accommodation within the time approved by such Board until the consent, in writing, of the Attorney General has first been obtained.

6. Nothing in this Ordinance shall prevent the Mombasa Municipal Board from executing any of its statutory duties or powers in relation to any land situated in any of the areas set out in the Schedule to this Ordinance.

7. This Ordinance shall continue in force until the 30th December, 1949, and shall then expire:

Provided that the Governor may, with the approval of the Legislative Council of the Colony, by notice in the Gazette, declare that this Ordinance shall remain in force until a date to be fixed in such notice or until repealed.

8. The Eviction of Tenants (Control) Ordinance, 1948, is repealed.

SCHEDULE

1. The Old Town of Mombasa bounded on the west by Salim Road North; on the north and east by Mombasa Harbour; and on the south by Makadara Road, Kilindini Road and Fort Jesus; including all land in Sections XXVII to XLVI inclusive.

2. Mombasa Section IX Plot 49; Section XI Plots 94, 97, 105, 106/R, 107, 123, 129, 134, 138, 140; Section XII Plots 3/R, 6/R, 13, 9, 10/R; Section XIII Plots 1, 2, 3, 6, 12, 18; Section XIV Plots 1, 2, 3; Section XV Plots 1, 2, 6, 7, 9; Section XVI Plots 1, 2, 5/R, 6, 8/R, 9, 10, 16, 17/R, 22, 24, 26, 19/R, 40, 41; Section XVII Plots 2/R, 32, 112, 57, 205/R; Section XXII Plot 33.

Saving of statutory powers and duties of Mombasa Municipal Board.

Duration.

Repeal.
 No. 94 of 1948.

3. An area on Mombasa Island bounded by a line:—

Commencing at the south-east corner of Plot 93 of Section XX at the junction of Kilindini Road and Salim Road;

proceeding thence northerly along the western boundary of Salim Road North to its intersection with Port Tudor Road;

thence north-westerly along the south-western boundary of Port Tudor Road to its intersection with the northern boundary of Kisauni Road;

thence south-west along the north-western boundary of Kisauni Road to its junction with the eastern boundary of Kaloleni Road;

thence north-west along the eastern boundary of Kaloleni Road to its junction with the southern boundary of Creek Road;

thence south-west along the south-eastern boundary of Creek Road to its intersection with the northern boundary of Kinyozi Road;

thence easterly and southerly along the eastern boundary of Kinyozi Road to its intersection with the northern boundary of Nazerali Road;

thence generally eastwards along the north boundary of that road to the south-eastern corner of Plot 195 of Section XVI;

thence in a straight line to the south-western corner of Plot 424 of Section XVIII on Jubilee Square;

thence southwards along the eastern boundary of Jubilee Square to its junction with Mvumoni Road;

thence south-eastwards along the northern boundary of that road to its junction with the northern boundary of Kilindini Road;

thence eastwards along the northern boundary of that road to the point of commencement.

To remain in force until the 31.12.1950 - G.N. 1220/49.

————— " ————— 31.12.1951 — " — 1294/50

————— " ————— 31.12.1952 — " — 1388/51.

————— " ————— 31.12.1953 — " — 1355/52.

————— " ————— 31.12.1954 — " — 1890/53.

ORDINANCE No. 13 of 1949

Assented to in His Majesty's name this fourth day of
June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION
1—Short title.

SECTION
2—Repeal and replacement of sub-section (7)
of section 9 of Ordinance 24 of 1925.

**AN ORDINANCE TO AMEND THE SHOP HOURS
ORDINANCE, 1925**

Date of
commencement.

4th June, 1949

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

Short title.

1. This Ordinance may be cited as the Shop Hours
(Amendment) Ordinance, 1949, and shall be read as one with
the Shop Hours Ordinance, 1925, hereinafter referred to as
the principal Ordinance.

No. 24 of 1925.

Repeal and
replacement
of sub-section
(7) of section 9 of
Ordinance 24 of
1925.

2. There shall be substituted for sub-section (7) of
section 9 of the principal Ordinance the following sub-
section:—

“(7) Notwithstanding anything contained in this
section any shop situated in any area which is now or
may hereafter be set aside as an African location may
remain open until 7 o'clock in the afternoon on every
day in each week other than Sunday:

Provided that a local authority may make an order
permitting any such shop to remain open until 9 o'clock
in the afternoon on every day in each week other than
Sunday.”.

ORDINANCE No. 14 of 1949

Assented to in His Majesty's name this fourth day of
June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION

1—Short title.

SECTION

2—Amendment of sub-section (2) of section
3 of Ordinance 47 of 1946.

**AN ORDINANCE TO AMEND THE HOSPITAL
SERVICES (EUROPEAN) ORDINANCE, 1946**

4th June, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Hospital Services
(European) (Amendment) Ordinance, 1949, and shall be read
as one with the Hospital Services (European) Ordinance,
1946, hereinafter referred to as the principal Ordinance.

Short title.
No. 47 of 1946.

2. Sub-section (2) of section 3 of the principal Ordinance is amended as follows:—

Amendment of
sub-section (2)
of section 3 of
Ordinance 47 of
1946.

(1) by substituting for paragraph (a) thereof the following
paragraph:—

“(a) the Commissioner for Local Government;”
and

(2) by inserting next after sub-section (6) thereof the
following new sub-section:—

“(7) The chairman of the Authority shall be
such person as the members of the Authority shall
elect annually not necessarily from their own
members.”.

ORDINANCE No. 15 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION
1—Short title.

SECTION
2—Repeal and replacement of sub-section (2) of section 2 of Ordinance 29 of 1947.

**AN ORDINANCE TO AMEND THE LIQUOR
(AMENDMENT) ORDINANCE, 1947**

Date of commencement.

4th June, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Liquor (Amendment) Ordinance, 1949, and shall be read as one with the Liquor (Amendment) Ordinance, 1947.

No. 29 of 1947.

Repeal and replacement of sub-section (2) of section 2 of the Liquor (Amendment) Ordinance, 1947.

2. Sub-section (2) of section 2 of the Liquor (Amendment) Ordinance, 1947, is hereby repealed and the following substituted therefor:—

“(2) There shall be paid for a non-spirituous liquor licence a fee of three hundred shillings for a yearly licence or one hundred and eighty shillings for a half-yearly licence, as the case may be:

Provided that if the person to whom such a licence is granted is the holder of a wine merchant's and grocer's liquor licence such licence shall be issued to him on payment of a fee of forty shillings for a yearly licence or twenty-five shillings for a half-yearly licence, as the case may be.”.

ORDINANCE No. 16 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title.
- 2—Interpretation.
- 3—Establishment of Nursing and Midwives Council.
- 4—Constitution of Council.
- 5—Disqualification, vacation of office and filling of vacancies.
- 6—Chairman and vice-chairman.
- 7—Meetings of Council.
- 8—Quorum and procedure.
- 9—Registrar.

SECTION

- 10—Register.
- 11—Use of title by registered persons.
- 12—Penalty for use of title by person not registered.
- 13—Certificate of Council.
- 14—Admission to Register of persons trained outside the Colony.
- 15—Penalty for procuring registration by false statement.
- 16—Removal from the Register.
- 17—Regulations.

AN ORDINANCE TO MAKE PROVISION FOR THE TRAINING AND REGISTRATION OF SUITABLE PERSONS AS NURSES AND MIDWIVES

4th June, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Nurses and Midwives Registration Ordinance, 1949. Short title.

2. In this Ordinance unless the context otherwise requires— Interpretation.

“Council” means the Nursing and Midwives Council of Kenya established under section 3 of this Ordinance; o. 40/51.

“enrolled midwife” means a person, not eligible to be registered as a midwife under this Ordinance, whose name appears on the Roll;

“enrolled nurse” means a person, not eligible to be registered as a nurse under this Ordinance, whose name appears on the Roll;

“Register” means the Register required to be kept by section 10 of this Ordinance;

“registered midwife” means a person whose name appears in the appropriate section of the Register;

“registered nurse” means a person whose name appears in the appropriate section of the Register;

“Roll” means the Roll required to be kept by section 10 of this Ordinance.

(Ordinance No. 40 of 1951.)

be a body corporate with perpetual succession and a common seal capable of suing and being sued and of acquiring, holding

o. 40/51.

Gr. 22/50

and alienating property movable and immovable in its corporate name and of performing all such acts as are necessary for or incidental to the carrying out of its functions and powers under the provisions of this Ordinance.

4. (1) The Council shall consist of the following ~~seventeen~~ ^{sixteen 0.40/51} members—

- 0.9/50
Constitution of Council.
- No. 47 of 1946.
- Substituted
0.40/51
- 0.9/50
- 9 & 10 Geo. 5,
c. 94
- (a) the Director of Medical Services;
 - (b) the Matron-in-Chief;
 - (c) one person appointed by the Member to represent the European community;
~~European) Ordinance, 1946, substituted 0.40/51~~
 - (d) two persons appointed by the Kenya Branch of the British Medical Association;
 - (e) the Matron in charge of the Indian Maternity Hospital, Nairobi;
 - (f) a Sister Tutor of the Medical Department;
 - (g) two persons appointed by the Member to represent the Missionary Societies operating in the Colony;
~~Missionary Societies operating~~ (Ordinance No. 40 of 1951.)
 - (h) one person appointed by the Member to represent the Asian Community;
 - (i) one person appointed by the Member to represent the African community;
 - (j) one person appointed by the General Nursing Council for England and Wales established under the Nurses Registration Act, 1919;
 - (k) six nurses or midwives elected by the nurses and midwives registered under section 10 of this Ordinance at the date of election from among themselves:

Provided that, in the case of the first Council, the members referred to in this paragraph shall be appointed by the Member.

(2) The Member shall give notice in the Gazette of the appointment or election of any member of the Council and the date from which his membership commences.

(3) The members of the Council shall be appointed or elected for three years but shall be eligible for re-appointment or re-election as the case may be:

Provided that, in the case of the first Council, the members referred to in paragraph (j) of sub-section (1) of this section shall hold office for two years.

5. (1) No person shall be appointed as a member of the Council if he—

- (a) is an undischarged bankrupt;
- (b) has been disqualified under the provisions of the Medical Practitioners and Dentists Ordinance from practising or carrying on his profession or calling.

Disqualification, vacation of office and filling of vacancies.

Cap. 119.

(2) A member of the Council shall vacate his office if he—

- (a) becomes subject to either of the disqualifications referred to in sub-section (1) of this section; or
- (b) has been absent for more than two consecutive ordinary meetings of the Council without its leave; or
- (c) gives notice in writing to the Council of his desire to resign office and his resignation is accepted.

(3) Every vacancy caused by the death of a member or by his vacation of office under sub-section (2) of this section shall be filled by the appointment or election as the case may require, of another member, and such other member shall hold office for the unexpired portion of the period for which the member whose office has become vacant had been appointed or elected.

6. (1) At its first meeting in each year the Council shall elect from among its members a chairman and a vice-chairman to hold office until the next such election has taken place.

Chairman and vice-chairman.

(2) The vice-chairman shall act as chairman whenever the chairman is unable to act and shall, when so acting, have all the powers and discharge all the duties of the chairman.

(3) If the chairman and vice-chairman are absent from any meeting, the members present shall elect one of their number to preside at that meeting and the person so elected shall during the absence from that meeting of the chairman and the vice-chairman exercise all the functions of the chairman.

(4) If any chairman or vice-chairman who has been elected by the Council vacates his office before the period thereof has expired, a new chairman or vice-chairman, as the case may be, shall be elected at the next meeting of the Council for the unexpired portion of the period for which the chairman or vice-chairman whose office has become vacant, had been elected.

Meetings of the Council.

7. (1) The first meeting of the Council shall be held on a day and at a place to be appointed by the Member.

(2) Subsequent meetings shall be held at such times and places as the Council may from time to time determine:

Provided that at least two ordinary meetings of the Council shall be held in every year.

(3) Special meetings may be convened by the chairman of the Council and shall be convened by him upon the requisition in writing of at least five members:

Provided that the said requisition shall state clearly the purposes for which the meeting is to be convened.

Quorum and procedure.

8. (1) Nine members, of whom three shall be nurses, shall form a quorum at any meeting of the Council.

(2) The decision of the majority of the members present at any meeting shall constitute the decision of the Council:

Provided that in the event of an equality of votes the chairman shall have a casting vote in addition to a deliberative vote.

Registrar

9. The Council shall, with the previous approval of the Registrar, keep—

Regist

(a) a Register of nurses and midwives qualified to be registered under this Ordinance; and

Register and Roll.

(b) a Roll of nurses and midwives entitled to be enrolled under this Ordinance,

and the Registrar shall, upon application and payment of the prescribed fee by any person qualified to be registered or entitled to be enrolled who has complied with such conditions as may be prescribed, enter the name of such person on the Register or Roll, as the case may be.

(2) The Register and the Roll shall each be in such form and divided into such parts as may be prescribed and each such part shall contain the names of nurses or midwives, as the case may be, who are qualified or entitled to be registered or enrolled, as the case may be, and who satisfy the prescribed conditions.

(3) The qualifications which will entitle a nurse or midwife to be registered or enrolled, and the conditions precedent to the entry in the Register or Roll of any nurse or midwife possessing such qualifications shall be prescribed by regulations made under section 17 of this Ordinance.

(Ordinance No. 40 of 1951.)

Use by registered persons

11. (1) Any person registered under this Ordinance may take and use the title "Registered Nurse" or "Registered Midwife", as may be appropriate.

Use of title by registered and enrolled persons.

(2) Any person enrolled under this Ordinance may take and use any of the following titles, that is to say, "Enrolled Nurse", "Assistant Enrolled Nurse, Grade I", "Assistant Enrolled Nurse, Grade II", "Enrolled Midwife", "Assistant Enrolled Midwife", as may be appropriate.

(Ordinance No. 40 of 1951.)

12. (1) Any person not registered or enrolled under the provisions of this Ordinance who makes use of any of the titles referred to in section 11 of this Ordinance or holds herself out directly or indirectly, as being so registered or enrolled, or wears any prescribed uniform, badge or other distinguishing device or any colourable imitation thereof shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding fifty pounds.

Penalty for use of title by person not registered.

(2) Any person who, ^{being} is not registered or enrolled under the provisions of this Ordinance, ~~but who is qualified to be so registered or enrolled, and who practises for gain as a nurse, midwife or assistant nurse,~~ as the case may be, shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding fifty pounds.

0.9/50.
0.40/51.

(3) Any person who is registered or enrolled in one part of the register referred to in sub-section (2) of section 10 of this Ordinance and who practises for gain as a nurse, ^{or} midwife ~~or assistant nurse~~ in a category higher than that part of the register in which she is registered shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding fifty pounds.

0.40/51

13. A certificate under the seal of the Council duly authenticated in the prescribed manner stating that any person is, or was at any date, or is not, or was not at any date, duly registered ^{or enrolled} under the provisions of this Ordinance shall be conclusive evidence in any court of the fact stated in the certificate.

Certificate of Council.

0.40/51.

14. Any person who proves to the satisfaction of the Council that she has been registered as a nurse or midwife in any part of His Majesty's dominions or in any country under the protection of His Majesty, ~~or in which His Majesty has~~ whose qualifications entitles her to be registered in the United Kingdom" and application in the prescribed manner and on payment of the prescribed fee to be registered under the provisions of this Ordinance.

Admission to Register of persons trained outside the Colony.

0.40/51

15. Any person who shall wilfully procure herself to be registered or enrolled under the provisions of this Ordinance by making or producing or causing to be made or produced any false or fraudulent representation or declaration either verbally or in writing, or any person aiding or assisting therein shall be guilty of an offence against this Ordinance

Penalty for procuring registration by false statement.

and shall be liable to a fine not exceeding one hundred and fifty pounds or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Removal from
the Register,
or Roll.

16. (1) The name of any person registered or enrolled under this Ordinance may, at the discretion of the Council and subject to the provisions of any regulations made under section 17 of this Ordinance, be removed from the Register or Roll, as the case may be.

Removal from
Register
or Roll.

(2) Any person aggrieved by the removal of her name from the Register or Roll may, within three months after the date on which notice is given to her by the Council that her name has been so removed, appeal to the Member whose decision shall be final.

(Ordinance No. 40 of 1951.)

Regulations.

17. The Member may, on the advice of the Council and with the approval of the Governor in Council, make such regulations and give such directions as he may think fit for the purpose of giving effect to the provisions of this Ordinance, and without prejudice to the generality of the foregoing words, such regulations may provide for—

- (a) the summoning of meetings of the Council and the proceedings of the Council;
- (b) the procedure for election of those members of the Council who are not nominated;
- (c) the formation, maintenance and publication of the Register and of the Roll;
- (d) the manner in which application may be made for, and the conditions of entry in the Register or Roll;
- (e) the conduct of any examination which may be prescribed as a condition of entry in the Register or Roll, and any matter ancillary to or connected with any such examination; ~~any matter ancillary to, or connected with, any such examination;~~ *Substituted - O. 40/51*
- (f) the curricula for examination, appointment of examiners and granting certificates;
- (g) the keeping of a register of student nurses and student midwives;
- (h) the conditions under which schools for nursing or midwifery or other places where nurses or midwives are trained will be approved by the Council;
- (i) the fees payable to the Council in respect of entry or re-entry in the Register or Roll, for examinations, and for the issue of certificates;
- (j) uniforms, badges and other distinguishing devices to be worn by nurses and midwives registered or enrolled under this Ordinance;

S.N. 702/52, 703/52.

(j) uniforms, badges and other distinguishing devices to be worn by nurses and midwives registered under the provisions of this Ordinance; *Substituted - O. 40/51*

(k) the manner in which categories of assistant nurses may be established and regulating their training and employment;

(l) the causes for which, the conditions under which, and the manner in which, the name of any nurse or midwife may be removed from the Register or Roll, and the procedure for restoration to the Register or Roll of the name of any nurse or midwife so removed; and,

(m) the manner in which any certificate issued by the Council may be authenticated.

ORDINANCE No. 17 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title.	3—Addition of new section 2A to Ordinance 11 of 1943.
2—Amendment of section 2 of Ordinance 11 of 1943.	4—Amendment of section 3 of Ordinance 11 of 1943.

AN ORDINANCE TO AMEND THE LAND AND WATER PRESERVATION ORDINANCE, 1943

Date of commencement.

4th June, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Land and Water Preservation (Amendment) Ordinance, 1949, and shall be read as one with the Land and Water Preservation Ordinance, 1943, hereinafter referred to as the principal Ordinance.

No. 11 of 1943.

Amendment of section 2 of Ordinance 11 of 1943.

2. Section 2 of the principal Ordinance is amended as follows:—

(a) by substituting the words "under the provisions of section 2A of this Ordinance" for the words "by notice in the Gazette" which appear in the definition "closed area"; and

(b) by inserting next after the definition "owner" the following definition:—

"Registrar of Titles" means the person appointed under any Ordinance for the purpose of the registration of title to land or of documents relating to land;"

Addition of new section 2A to Ordinance 11 of 1943.

3. The principal Ordinance is amended by inserting immediately after section 2 thereof the following new section:—

"Closed area.

2A. The Director shall have power, and shall be deemed always to have had power, by notice in the Gazette, to

declare any area, whether of land or water or of both land and water, specified in such notice, to be a closed area for the purposes of this Ordinance."

4. Section 3 of the principal Ordinance is amended by adding immediately after paragraph (e) of sub-section (1) thereof the following new paragraph:—

Amendment of
section 3 of
Ordinance 11
of 1943.

"(f) requiring the Registrar of Titles to register, without fee, against the title of any land concerned, any order made by the Director under the provisions of this Ordinance or any rule made thereunder."

ORDINANCE No. 18 of 1949

Assented to in His Majesty's name this fourth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION
1—Short title

SECTION
2—Amendment of section 15 of Ordinance
41 of 1941.

**AN ORDINANCE TO AMEND THE CONTROL OF
GRASS FIRES ORDINANCE, 1941**

Date of
commencement.

4th June, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Control of Grass Fires (Amendment) Ordinance, 1949, and shall be read as one with the Control of Grass Fires Ordinance, 1941, hereinafter referred to as the principal Ordinance.

No 41 of 1941.

Amendment of
section 15 of
Ordinance 41
of 1941.

2. Section 15 of the principal Ordinance is amended by substituting the words "two hundred pounds" for the words "one hundred pounds", and the words "twelve months" for the words "six months" appearing therein.

ORDINANCE No. 19 of 1949

Assented to in His Majesty's name this eighth day of
June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS**SECTION**

1—Short title.

SECTION2—Amendment of section 4 of Ordinance 13
of 1934.

**AN ORDINANCE TO AMEND THE SPECIAL
DISTRICTS (ADMINISTRATION)
ORDINANCE, 1934**

8th June, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Special Districts
(Administration) (Amendment) Ordinance, 1949, and shall be
read as one with the Special Districts (Administration) Ordin-
ance, 1934, hereinafter referred to as the principal Ordinance.

Short title.

No. 13 of 1934.

2. Section 4 of the principal Ordinance is amended
by adding thereto the following new definition—

Amendment of
section 4 of
Ordinance 13
of 1934.

“‘cattle’ includes camels, sheep, goats, mules and
donkeys.”

ORDINANCE No. 20 of 1949

Assented to in His Majesty's name this eighth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title and commencement.
- 2—Amendment of section 2 of Ordinance No. 7 of 1948.
- 3—Amendment of section 3 of Ordinance No. 7 of 1948.
- 4—Amendment of section 4 of Ordinance No. 7 of 1948.
- 5—Amendment of section 5 of Ordinance No. 7 of 1948.
- 6—Amendment of section 6 of Ordinance No. 7 of 1948.
- 7—Amendment of section 7 of Ordinance No. 7 of 1948.

SECTION

- 8—Amendment of section 8 of Ordinance No. 7 of 1948.
- 9—Amendment of section 9 of Ordinance No. 7 of 1948.
- 10—Amendment of section 11 of Ordinance No. 7 of 1948.
- 11—Repeals and replaces section 12 (4) of Ordinance No. 7 of 1948.
- 12—Amendment of section 13 of Ordinance No. 7 of 1948.
- 13—Repeals and replaces section 14 of Ordinance No. 7 of 1948.
- 14—Repeals and replaces section 16 of Ordinance No. 7 of 1948.

AN ORDINANCE TO AMEND THE IMMIGRATION (CONTROL) ORDINANCE, 1948

Date of commencement.

8th June, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title and commencement.

No. 7 of 1948.

1. (1) This Ordinance may be cited as the Immigration (Control) (Amendment) Ordinance, 1949, and shall be read and construed as one with the Immigration (Control) Ordinance, 1948, hereinafter referred to as the principal Ordinance.

(2) This Ordinance shall come into operation on such date as the Governor may appoint by notice published in the Gazette.

Amendment of section 2 of Ordinance No. 7 of 1948.

2. Sub-section (1) of section 2 of the principal Ordinance is hereby amended—

(a) by inserting after the definition of the word "African" the following definition:—

“‘deportation order’ means an order made under the provisions of section 9 of this Ordinance;” and

(b) by inserting after the definition of the words “permanent resident” the following definition:—

“‘Principal Immigration Officer’ includes a Deputy Principal Immigration Officer appointed under the provisions of section 3 of this Ordinance;”

1949

Immigration (Control)

No. 20

✓ 3. Section 3 of the principal Ordinance is hereby amended—

Amendment of
section 3 of
Ordinance No. 7
of 1948.

(a) by renumbering the said section as sub-section (1);

(b) by inserting the words "a Deputy Principal Immigration Officer and" after the words "Immigration Officer" occurring therein; and

(c) by adding the following new sub-section:—

"(2) The Principal Immigration Officer may by writing under his hand and subject or not to conditions delegate to an immigration officer all or any of his powers under this Ordinance."

✓ 4. Section 4 of the principal Ordinance is hereby amended—

Amendment of
section 4 of
Ordinance No. 7
of 1948.

(a) by inserting the words "or leaving for" after the words "vehicle arriving from" occurring in paragraph (d) thereof; and

(b) by inserting the words "or that his presence in the Colony is unlawful" after the word "Ordinance" occurring in paragraph (e) thereof.

✓ 5. Section 5 of the principal Ordinance is hereby amended—

Amendment of
section 5 of
Ordinance No. 7
of 1948.

(a) by substituting the words "their entry into or presence within the Colony is unlawful" for the words "it shall be unlawful for them to enter the Colony" occurring in sub-section (1) thereof;

(b) by substituting for paragraph (g) of sub-section (1) the following paragraph:—

"(g) Any person against whom there is in force an order of deportation from the Colony made under the provisions of this Ordinance or any other law;"

(c) by inserting the words "presence in or" after the words "any person whose" occurring in paragraph (h) of sub-section (1) thereof;

(d) by substituting a colon for the full stop occurring at the end of sub-section (1) thereof and adding the following proviso:—

"Provided that, subject to the provisions of sub-section (3) of this section—

(i) any person who is in possession of a valid pass or permit allowing such person to enter

the Colony issued under the provisions of any regulations made under this Ordinance shall not, during the period for which such pass or permit is issued be deemed to be a prohibited immigrant; and

- (ii) when such person shall be in possession of a valid permit issued to him under the provisions of sub-section (1) of section 7 of this Ordinance, or his name shall be endorsed upon a valid entry permit in accordance with the provisions of section 8 of this Ordinance, he shall cease to be a prohibited immigrant.”;

and

- (e) by substituting the words “has entered the Colony whether before or” for the words “enters the Colony” and by substituting the words “to have been a prohibited immigrant under the law in force at the time of his entry” for the words “be a prohibited immigrant” occurring in sub-section (3) thereof.

Amendment of section 6 of Ordinance No. 7 of 1948.

✓ 6. Section 6 of the principal Ordinance is hereby amended—

- (a) by substituting for paragraph (a) of sub-section (2) thereof the following paragraph:—

“(a) a serving member of His Majesty’s Forces, a civilian employee of any of His Majesty’s Departments of State and the wife and children of any such person;”;

and

- (b) by inserting the expression “civilian employee of any of His Majesty’s Departments of State,” after the expression “His Majesty’s Forces,” occurring in sub-section (3) thereof.

Amendment of section 7 of Ordinance No. 7 of 1948.

✓ 7. Section 7 of the principal Ordinance is hereby amended—

- (a) by substituting the words “or the East Africa High Commission” for the words “the East Africa High Commission or the Kenya and Uganda Railways and Harbours Administration” occurring in paragraph (iii) of Class A in sub-section (1) thereof;

- (b) by substituting the words "such sum as may be prescribed" for the expression "a capital sum of £800" occurring in paragraphs (ii) of Classes B, C, D, and for the expression "a capital sum of £2,500" occurring in Class E of sub-section (1) thereof;
- (c) by substituting a comma and the expression "business, or profession other than a prescribed profession" for the words "or business" wherever they occur in Class D of sub-section (1) thereof;
- (d) by repealing sub-section (2) thereof and substituting therefor the following:—

"(2) Where any person has been granted an entry permit under paragraph (iii) of Class A or under Class B, C, D, E, F or G of sub-section (1) of this section and at any time before the expiration of four years of the granting of such permit—

- (a) in the case of a person in the service of the Colony or the East Africa High Commission he fails to engage in or does not continue in such service; and
- (b) in any other case, he fails to engage in, or does not continue in the same occupation as, or in a similar occupation to, that in respect of which he obtained such entry permit,

then such person shall be deemed to be a person seeking to enter the Colony with effect from the date when he failed to engage in or ceased to continue in the said service or occupation or a similar occupation as the case may be.";

and

- (e) by repealing sub-section (3) thereof and substituting therefor the following:—

"(3) Any applicant who is aggrieved by a decision refusing him an entry permit under Class A of sub-section (1) of this section may appeal against such decision to the Supreme Court in accordance with any rules made in that behalf under the provisions of section 14 of this Ordinance."

Amendment of section 8 of Ordinance No. 7 of 1948.

8. Section 8 of the principal Ordinance is hereby amended by substituting the word "eighteen" for the word "sixteen" occurring therein.

Amendment of section 9 of Ordinance No. 7 of 1948.

9. Section 9 of the principal Ordinance is hereby amended—

(a) by repealing sub-section (1) thereof and substituting the following therefor:—

"(1) The Governor may make an order directing that any prohibited immigrant or any person whose presence within the Colony is, under the provisions of this Ordinance unlawful, shall be deported from and remain out of the Colony, either indefinitely or for a time to be specified in the order.";

and

(b) by adding the following new sub-sections thereto:—

"(4) Where any person is brought before a court under the provisions of this Ordinance and the court is informed that an application for an order under this section in respect of him is being made, the court may direct that such person be detained for any period not exceeding fourteen days.

(5) An order made under this section shall remain in force until such time as it is varied or revoked by the Governor."

Amendment of section 11 of Ordinance No. 7 of 1948.

10. Sub-section (1) of section 11 of the principal Ordinance is hereby amended by inserting the expression "certificate," immediately before the word "permit" occurring therein.

Repeals and replaces section 12 (4) of Ordinance No. 7 of 1948.

11. Sub-section (4) of section 12 of the principal Ordinance is hereby repealed and the following substituted therefor:—

"(4) Any person who, having been deported or ordered to leave the Colony under the provisions of this Ordinance or any other law at the time in force, returns to the Colony without the permission of the Governor, shall be liable to a fine not exceeding Sh. 10,000 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment, and may, on the expiration of the sentence of imprisonment (if any) imposed upon him, be deported again under the provisions of section 9 of this Ordinance."

12. Section 13 of the principal Ordinance is hereby amended—

Amendment of section 13 of Ordinance No. 7 of 1948.

- (1) by inserting a new paragraph (*m*) in sub-section (1) thereof as follows and by re-lettering the existing paragraphs (*m*) and (*n*) as (*n*) and (*o*) respectively—

“(m) prescribing the maximum capital sum which a person falling within paragraph (ii) of Class B, C, D or E, as the case may be, of sub-section (1) of section 7 must have in his full and free disposition;”;

- (2) by inserting in paragraph (*n*) (as re-lettered) after the word “issue” the word “or renewal”; and
- (3) by inserting in sub-section (2) of section 13 after the words and letter “provisions of paragraph (*h*)” the word and letter “or (*m*)”.

13. Section 14 of the principal Ordinance is hereby repealed and the following substituted therefor:—

Repeals and replaces section 14 of Ordinance No. 7 of 1948.

“14. The Supreme Court may make rules governing the time within which and the manner in which appeals may be made to a court under the provisions of this Ordinance and the venue, procedure, and the fees and costs to be paid in respect of such appeals.”

Supreme Court may make rules.

14. Section 16 of the principal Ordinance is hereby repealed and the following substituted therefor:—

Repeals and replaces section 16 of Ordinance No. 7 of 1948.

“16. Any person—

Certain persons deemed to be unlawfully in the Colony.

- (a) whose presence in the Colony is unlawful under the provisions of the Ordinance repealed by this Ordinance, or of any other law in force before the date of the coming into operation of this Ordinance; or

- (b) who, having entered the Colony to serve under a contract which provided for his departure from the Colony at the termination of such contract, and—

- (i) not having received the permission of a competent authority to remain in the Colony, has, before the date of the coming

into operation of this Ordinance, failed to leave the Colony after quitting such service; or

- (ii) not having been issued with a permit or pass, under the provisions of this Ordinance or any regulations made thereunder, as the case may be,

fails to leave the Colony after quitting the service of the employer to whom he is contracted; or

- (c) who, before the date of the coming into operation of this Ordinance, was permitted, under the provisions of any other law then in force, to enter and remain in the Colony—

- (i) subject to any condition with which condition he has failed, or with which he hereafter fails, to comply; or

- (ii) being out of the Colony fails to enter before the 31st day of December, 1949,

shall be deemed to be unlawfully in the Colony for the purposes of this Ordinance.”

Repealed - 0.39/50

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ORDINANCE No. 21 of 1949

Assented to in His Majesty's name this eighth day of June, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title.
- 2—Application.
- 3—Interpretation.
- 4—Restriction on increasing standard rate of interest.

SECTION

- 5—Restriction on calling in of mortgages.
- 6—Recovery of sums made irrecoverable.
- 7—Duration.

AN ORDINANCE TO RE-ENACT THE PROVISIONS OF THE LAW RELATING TO RESTRICTION ON THE INCREASE OF MORTGAGE INTEREST

8th June, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Increase of Mortgage Interest (Restriction) Ordinance, 1949.

Short title.

2. (1) This Ordinance shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses or business premises or any interest therein, except that it shall not apply—

Application.

(a) to any mortgage comprising one or more dwelling-houses or business premises and other land if the value of such dwelling-houses or business premises is less than one-tenth of the value of the whole of the land comprised in the mortgage; or

(b) to an equitable charge by deposit of title deeds or otherwise.

(2) When a mortgage comprises one or more dwelling-houses or business premises and other land, and the value of such dwelling houses or business premises is more than one-tenth of the value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses or business premises and such other land by giving one month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and, at the expiration of the said month's notice, this Ordinance shall not apply to the

mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling-houses or business premises and such other land, respectively, to which such portions were apportioned:

Provided that the mortgagor shall, before the expiration of the said month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by the court.

No. 12 of 1940.

(3) Where the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, 1940, was at the commencement of this Ordinance applicable to a mortgage on any premises, this Ordinance shall apply thereto, whether or not the premises would, but for the provisions of this sub-section, be premises to which this Ordinance, applies.

Interpretation.

3. For the purposes of this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them:—

“business premises” means a building or part of a building let for business, trade or professional purposes or for the public service and includes land within the curtilage of such building or part of a building and comprised in the letting;

“dwelling-house” means any house or part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and garden or other premises within the curtilage of the dwelling-house;

Cap. 142.

“mortgage” includes a charge under the Registration of Titles Ordinance;

“mortgagee” and “mortgagor” include any person from time to time deriving title under the original mortgagee or mortgagor;

“standard rate of interest” means in the case of a mortgage in force on the 1st day of January, 1940, the rate of interest payable at that date, or in the case of a mortgage created since that date, the original rate of interest, or in the case of a mortgage created on or after the 1st day of January, 1943, a rate not exceeding seven per centum per annum.

4. Where the rate of interest on a mortgage to which this Ordinance applies, is after the commencement of this Ordinance increased, then if the increased rate of interest exceeds the standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the mortgagor.

Restriction on increasing standard rate of interest.

5. It shall not be lawful for any mortgagee under a mortgage to which the provisions of this Ordinance apply, so long as—

Restriction on calling in of mortgages.

- (a) the standard rate of interest is not more than twenty-eight days in arrear; and
- (b) the covenants by which the mortgagor (other than the covenants for the repayment of the principal money secured) are performed and observed; and
- (c) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance,

to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

Provided that—

- (i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was, at the commencement of this Ordinance, a mortgagee in possession, nor in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage; and
- (ii) if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the court that his security is seriously diminished in value or is otherwise in jeopardy, and for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorize him to call in and enforce the same, and thereupon this section shall not apply to such mortgage; but any such order may be

No. 21*Increase of Mortgage Interest (Restriction)***1949**

made subject to a condition that it shall not take effect if the mortgagor, within such time as the court directs, pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security.

Recovery of
sums made
irrecoverable.

No. 12 of 1940.

No. 12 of 1940.

6. Where any sum has, after the 1st day of January, 1940, been paid on account of any mortgage interest, being a sum which is, under the provisions of this Ordinance or of the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, 1940, made irrecoverable by the mortgagee, the sum so paid shall be recoverable from the mortgagee who received the payment or his legal personal representative, by the mortgagor by whom it was paid, and any such sum which, under the provisions of this Ordinance, or the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, 1940, is recoverable from a mortgagee may be deducted by the mortgagor from any interest payable by him to the mortgagee:

Provided that nothing in this section shall operate to revive any debt which was barred by limitation at the commencement of this Ordinance.

Duration.

7. (1) This Ordinance shall continue in force until the 31st day of December, 1950, and shall then expire:

Provided that the Governor may, with the approval of the Legislative Council of the Colony, by notice in the Gazette, declare that this Ordinance shall remain in force until a date to be fixed in such notice or until repealed.

(2) The expiration of this Ordinance shall not render recoverable by the mortgagee any interest or other sum which during the continuance thereof was irrecoverable or affect the right of a mortgagor to recover any interest or other sum which during the continuance thereof was under this Ordinance recoverable by him.

ORDINANCE No. 22 of 1949

Re-numbered - Revision of Laws Ord. 39/48 - (Cap. 39) 5.3.

Assented to in His Majesty's name this eighth day of June, 1949.

P. E. MITCHELL, Governor.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title, commencement, duration and application of Ordinance.
- 2—Interpretation.
- 3—Establishment of Central Board, Coast Board, and other Boards.
- 4—Constitution of the Central Board and the Coast Board.
- 5—Powers of Central Board and Coast Board.
- 6—Constitution and powers of Rent Control Boards other than the Central Board or Coast Board.
- 7—Appeals.
- 8—Standard rent to be determined before first letting.
- 9—Investigation of complaints by Board.
- 10—Penalty for failure to comply with lawful order of the Board.
- 11—Restriction on increasing rent.
- 12—Penalty for accepting excess rent.
- 13—Permitted increases in rent.
- 14—Penalty for false statement in notice.
- 15—Limitation as to permitted increase in rent.
- 16—Restriction on right to possession.

SECTION

- 17—Restriction on levy of distress for rent.
- 18—Restriction on premiums.
- 19—Penalty for excessive charges for furnished lettings.
- 20—Statement to be supplied as to standard rent.
- 21—Recovery of sums made irrecoverable.
- 22—Failure to supply rent book and penalty for false entry.
- 23—Conditions of statutory tenancy.
- 24—Tenement houses to be registered.
- 25—Penalty for depriving tenant of service.
- 26—Notification of valuation.
- 27—Repairs.
- 28—Restriction on right to assign or sub-let premises.
- 29—Sub-letting by tenant.
- 30—Penalty for subjecting tenant to annoyance.
- 31—Jurisdiction of court.
- 32—Enforcement of determinations and orders.
- 33—Compensation in case of frivolous or vexatious applications.
- 34—Regulations.
- 35—Repeal.

AN ORDINANCE TO CONSOLIDATE AND AMEND THE LAW RELATING TO RENT RESTRICTION

By Notice

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. (1) This Ordinance may be cited as the Increase of Rent (Restriction) Ordinance, 1949, and shall come into force on such date as the Governor may, by notice in the Gazette, direct, and shall expire on the 31st day of December, 1950, unless extended for a further period or periods by resolution of the Legislative Council.

Short title, commencement, duration and application of Ordinance.

Extended until - 1.1.1952

G.N. 1325/50

Further from Extended until - 31.12.1954 - G.N. 1771 31.1.1950 - G.N. 1449 54

(2) This Ordinance shall apply to all premises, whether dwelling-houses or business premises, situate in any area in the Colony in which a Rent Control Board has been established, or

(a) premises of which the standard rent is in excess of ten thousand shillings per annum and which—

(i) were not rented at the commencement of this Ordinance and have not been rented between that date and the commencement of the Increase of Rent (Restriction) (Amendment No. 2) Ordinance, 1949; or

(ii) the landlord has lawfully recovered possession of after the commencement of this Ordinance.

landlord shall, after the commencement of this Ordinance, have recovered vacant possession under the provisions of this Ordinance;

- (b) business premises whereof the erection was commenced after the first day of January, 1949, and where premises the erection whereof was commenced after the first day of January, 1949, consist partly of a dwelling-house and partly of business premises, the provisions of this Ordinance shall not apply to the portion which consists of business premises;
- (c) to any premises which are the property of the Government or of the East Africa High Commission or of the East African Railways and Harbours Administration or of a local authority or of a Municipal Council or Municipal Board;
- (d) any building or erection in the Coast Province used as a place of residence built by the owner thereof on land rented by such owner as a monthly tenant; and *Ord. 61/49 - Deleted.*

0.61/49 (d) premises, or classes of premises, or premises in any area exempted from all or any of the provisions of this Ordinance by the Governor in Council;

Interpretation

Provided that this Ordinance shall cease to apply to any business premises, wheresoever situate in the Colony, with effect from the 25th day of December, 1954.

"the Board" (Ordinance No. 8 of 1953.) Board established under section 3 of this Ordinance in respect of the area specified in the notice establishing such Board;

Substituted - "business premises" means a building or part of a building let or to be let for the public service or for business, trade or professional purposes, and includes the land occupied therewith and comprised in the letting;

"the Central Board" means the Rent Control Board established under section 3 of this Ordinance in respect of the Central Province of the Colony;

"the Coast Board" means the Rent Control Board established under section 3 of this Ordinance in respect of the Coast Province of the Colony;

"court" means a subordinate court of the first class;

Substituted - "dwelling-house" means any house or part of a house or room let or to be let as a dwelling or place of residence, and includes the site of the house and the garden and other lands or buildings comprised in and incidental to the letting, but not let as a separate entity or source of profit;

more tenants) where such letting does not include any land other than the site of the dwelling-house and garden or other premises within the curtilage of the dwelling-house, but does not include any living-room which is shared by the landlord with one or more tenants;

"erect", with its grammatical variations and cognate expressions, means, in relation to a building, complete the construction of such building;

(Ordinance No. 8 of 1953.)
 the provisions of this Ordinance entitled to possession of the premises, and any person from time to time deriving title under the original landlord;

"let" includes "sublet";

"premises" means premises to which this Ordinance is applied by sub-section (2) of section 1 thereof;

"prescribed date" means the date set out in the second column of Part I or Part II, whichever is applicable, of the First Schedule to this Ordinance in respect of the area, district or place in which the premises are situate;

"standard rent" means—

(A) in respect of unfurnished premises—

(i) the rent at which the premises were let on the prescribed date: provided that where, in any agreement or lease entered into before the prescribed date, there is a provision for an increase in rent during the term of the agreement or lease, "standard rent" means such agreed increased rent from the date at which the increase is agreed to take effect; or

(ii) where the premises were in existence but were not let on the prescribed date and were subsequently let, or where the premises were, or are, erected after the prescribed date, a rent to be assessed by the Board ~~equal to a sum~~ not exceeding ten per centum per annum of the market cost of construction of the premises at the date of completing such construction plus the market value of the land at the prescribed date; *proviso — 0.8/53.*

0.8/53.

Provided that where the premises were or are erected after the 1st day of January, 1953, "standard rent" means a rent assessed by the Board not exceeding the sum of ten per centum per annum of the market cost of construction of the premises at the date of completing such construction plus five per centum per annum of the market value of the land at the date of completing such construction; *added - 0.34/51*

(Ordinance No. 8 of 1953.)

No. 20 of 1928.

(c) the original and additional rates and the improvement rate as defined in the Local Government (Rating) Ordinance, 1928, if any;

(d) the cost of repairs for which he is liable; and

(e) such other reasonable outgoings, if any, as the Board may determine;

added - 8/53

(B) in respect of furnished premises—

the standard rent which would be applicable to the premises if such premises were let unfurnished, plus a sum not exceeding fifteen per centum of the value, as determined by the Board, of the furniture (exclusive of the soft furnishings, linen, cutlery, kitchen utensils, glassware and crockery), and a sum not exceeding twenty-five per centum of the value, as determined by the Board, of such soft furnish-

For the purposes of this definition it shall be assumed that the landlord will pay—

(a) the ground rent, if any;

(b) the premium for insuring against fire risk;

Cap. 137.

(c) the original and additional rates and the improvement rate as defined in the Local Government (Rating) Ordinance, 1928, if any, ~~paragraph (b) of sub-section (1) thereof the words "to fix in the case of any premises, at its discretion and in accordance with the requirements of justice,"~~

added - 8/53

(Ordinance No. 8 of 1953.) declared that where in this Ordinance reference is made to the assessment of any rent by the Board, or to the determination of any sum by the Board, such assessment or, as the case may be, such determination shall, within the limits imposed by the definition, be at the absolute discretion of the Board and shall, for the purposes of section 7 of this Ordinance, be deemed to be a question of fact.

(Ordinance No. 8 of 1953.) es of which the landlord could, but for the provisions of this Ordinance, have recovered possession, includes the legal personal representative of the deceased or other person entitled to carry on or wind up the business of the deceased, for such period as the Board may decide to be reasonably necessary for winding up the business of the deceased;

"tenancy" includes sub-tenancy;

"tenement house" means any building containing dwelling-houses, in excess of such number as the Member may by notice in the Gazette specify, in respect of which any common service is provided;

Substituted - 0. 34/51

(2) Notwithstanding anything contained in the definition of "standard rent"—

- (i) in any case in which the Board is satisfied, having regard to the temporary nature of the construction of the premises concerned or to the temporary nature of the lease or licence under which the land on which the premises are situate is held, or to the fact that the premises can be expected to be let only during a certain period of the year, that the standard rent as defined in sub-section (1) of this section would yield an uneconomic return to the landlord, the Board may fix the standard rent at such figure, as the Board shall, in all the circumstances of the case, consider reasonable;
- (ii) in any case in which the Board is satisfied that it is not reasonably practicable to obtain sufficient evidence to enable the Board to ascertain—

- (a) the rent at which the premises were let; or
 (b) the market cost of the construction of the premises; or
 (c) the market value of the land on which the premises are built,

at the material date, the Board may determine the standard rent at such an amount as the Board thinks proper having regard to the standard rent of ^{comparable} premises in the neighbourhood.

The Governor shall, for the purposes of this Ordinance, by notice in the Gazette, establish a Rent Control Board for the Central Province of the Colony and a Rent Control Board for the Coast Province of the Colony, and such other Rent Control Boards as he shall think fit and each such Rent Control Board shall have power to act under this Ordinance in respect of the area specified in the notice establishing it.

1/51
 Establishment of Central Board, Coast Board and other Boards.

G.N. 1156/50

4. (1) The Central Board and the Coast Board shall each consist of a Chairman and such members, not exceeding The Governor may also in like manner appoint a Deputy Chairman of either or both such Boards.

Constitution of the Central Board and the Coast

(2) The Chairman of each such Board shall be a barrister or a solicitor, or an advocate of the Supreme Court of Kenya, in each case of not less than five years' standing, or shall be a person who has held high judicial office.

(3) The Governor may, if he thinks fit, appoint—

- (a) the same person to be Chairman of the Central and of the Coast Board;
 (b) the same person to be Deputy Chairman of the Central Board and of the Coast Board.

person to be Chairman of the Central Board and of the Coast Board.

Substituted - O. 20/51

(4) The Chairman or the Deputy Chairman, if any, and any two members of the Central Board or of the Coast Board, as the case may be, shall constitute a quorum. All matters considered by either of the said Boards shall be decided by the votes of the majority of the Chairman or the Deputy Chairman and members present and voting, and, in the event of an equality of votes, the Chairman or the Deputy Chairman, as the case may be, shall have a casting vote.

(5) The Member of the Executive Council for the time being responsible for Commerce and Industry may appoint, either generally or for any particular period, a person (who need not be a member of the Central Board or the Coast Board) to act as Chairman or Deputy Chairman, as the case may be, of either of those Boards or of both, in the absence or inability to act of the Chairman or Deputy Chairman respectively.

(6) A quorum of the Central Board or of the Coast Board presided over by the Deputy Chairman thereof may exercise all the powers and functions of any such Board notwithstanding that another quorum thereof presided over by the Chairman is at the same time exercising those powers and functions.

Powers of
Central Board
and Coast Board.

5. (1) The Central Board in its area and the Coast Board in its area, shall have power to do all things which it is required or empowered to do by or under the provisions of this Ordinance, and in particular shall have power—

(a) to assess the standard rent of any premises either on the application of any person interested or of its own motion;

0.8/53. (b) to fix the date from which the standard rent is payable;

(c) to apportion payment of the rent of premises among tenants sharing the occupation thereof;

0.61/49. (d) where the rent chargeable in respect of any furnished premises includes a payment for water, light, conservancy, sweeper, watchman, or other service charge in addition to the standard rent, to fix the amount of such payment or service charge;

(e) where a tenement house is occupied by tenants who enjoy common services, such as water, light, conservancy, sweeper or other common service, to fix a rent inclusive of the standard rent and a payment ~~the words~~ subject to the provisions of section 16 of this Ordinance,

(Ordinance No. 8 of 1953.)

0.8/53.

say—

(i) an order for the recovery of possession of premises whether in the occupation of a tenant or of any other person; and

(ii) an order for the recovery of arrears of rent, mesne profits or service charges;

(g) for the purpose of enabling additional buildings to be erected, to make orders permitting landlords to excise vacant land out of premises ~~of which, but for the provisions of this Ordinance, the landlord could have recovered possession~~, where such a course is, in the opinion of the Central Board or the Coast Board, as the case may be, desirable in the public interest;

0.8/53.

(h) to allocate to any suitable tenant at such rent as the Central Board or the Coast Board, as the case may be, may fix, any place of residence which without good cause has been left unoccupied for a period exceeding one month, and by order to direct the landlord, and any person who has entered into occupation of such place of residence subsequently to the allocation thereof as aforesaid, to deliver up possession of such place of residence to the tenant to whom the same has been allocated as aforesaid on or before such date as may be specified in the order;

- 0.8/53.

(ii) to recover the cost of finishing any such house and rendering it fit for habitation either from the owner thereof or by directing the tenant to whom the house has been allotted to pay rent therefor to the Central Board or the Coast Board, as the case may be, and the tenant shall be bound to pay such rent accordingly, and the receipt of such Board shall be a good discharge for any rent so paid;

(i) where the landlord fails to carry out any repairs for which he is liable, to order the landlord to carry out such repairs, and, if the landlord fails to carry out such repairs within the time specified in the order, then, without prejudice to any penalty to which the landlord may be liable under this Ordinance, to have the required repairs carried out and to recover the cost thereof either from the landlord or by requiring the tenant to pay the rent to the Central Board or the Coast Board, as the case may be, for such period as may be required to defray the cost of such repairs, and the receipt of such Board shall be a good discharge for any rent so paid;

(Ordinance No. 8 of 1953.)

(j) to permit the levy of distress for rent;

(k) to impose conditions in any order made by the Central Board or the Coast Board under the provisions of this section;

(l) to administer oaths, to order persons to attend and give evidence or to produce and give discovery and inspection of documents, in like manner as in the proceedings in the Supreme Court;

... added - 0.34/51

and may for any such purpose generally authorize the Chairman or Deputy Chairman to issue summonses to compel the attendance of persons before the Board.

(m) upon the determination of any application or other proceeding, in its discretion to order any party thereto to pay the whole or any part of the costs thereof and either itself to fix the amount of such costs or to direct taxation thereof by the taxing officer of the Supreme Court either on the Supreme Court scale or on the subordinate court scale.

(n) to exercise jurisdiction in all civil matters and questions under this Ordinance.

(o) on the application, made within one month of the date of the service of a notice to quit given consequent upon any demolition order made on or after the 1st January, 1951, of any person who, immediately prior to the date of such order was a tenant of any premises affected by such order, to make an order requiring the landlord of such premises to grant to such person a new tenancy of any premises or of any part thereof in any case in which the construction of such premises is commenced by such landlord on the site of the premises affected by the demolition order within three years of the date of the demolition order on such terms and conditions as the Board may, due regard being had to the cost of the erection of such premises, consider fair and reasonable;

(p) at any time, of its own motion, or for good cause shown on an application by any landlord or tenant, to reopen any proceedings in which it has given any decision, determined any question, or made any order, and to revoke, vary or amend such decision, determination or order:

Provided that nothing in this paragraph shall be deemed to prejudice or affect the right of any person under section 7 of this Ordinance to appeal to the Supreme Court from any such decision, determination or order as aforesaid, or from the revocation, variation or amendment of any such decision, determination or order:

And provided that the powers conferred on the Board by this paragraph shall not be exercised in respect of any decision, determination or order while an appeal therefrom is pending or in a manner inconsistent with or repugnant to the decision of the appellate court on such an appeal.

(Ordinance No. 8 of 1953.)

(5) Where, by virtue of the provisions of paragraph (i) of subsection (1) of this section, the Board is entitled to recover any sum of money from any person, the Board may make an order directing that person to pay such sum of money to the Board:

Provided that no such order shall be enforced under section 32 of this Ordinance unless and until, in addition to filing a certified copy thereof in the court, the Board also serves notice of such filing on the person against whom such order is made:

And provided that, notwithstanding the provisions of section 7 of this Ordinance, an appeal from any such order shall lie to the Supreme Court.

(Ordinance No. 8 of 1953.)

Constitution and powers of Rent Control Boards other than Central Board or Coast Board.

~~Ord. 12~~
Temp.
Sub. 9, 12.

(3) All matters considered by the Board shall, in the event of a difference of opinion, be decided by the votes of a majority of members present at any meeting, and, in the event of an equality of votes, the Chairman shall have a casting vote.

(4) A Rent Control Board, other than the Central Board or the Coast Board, shall have power to do all the things which it is required or empowered to do by or under the provisions of this Ordinance, and in particular shall have all or any of the powers conferred upon the Central Board or the Coast Board by paragraphs (a), (b), (c), (d), (e), (g), (h), (k), and (l) of sub-section (1), and by sub-sections (2) and (3), of section 5 of this Ordinance, and shall also have power to make eviction orders or orders for the recovery of premises where necessary to enable essential repairs to be effected or to enable the premises to be rebuilt or altered if such rebuilding or alterations will, in the opinion of the Board, be for the public benefit.

o.8/53.

(5) The provisions of sub-section (4) of section 5 of this Ordinance shall apply to Rent Control Boards other than the Central Board and the Coast Board as well as to the Central Board and the Coast Board.

7. Except as hereinafter provided, where any question is, under the provisions of this Ordinance, to be determined by a Rent Control Board, the determination by such Board shall be final and conclusive: Appeals.

in the case of premises where standard rent exceeds seventy shillings a month, of m... at and law*;

(a) from the Central Board... Coast Board, direct to the Court of Appeal for... Africa; and Substituted - o.41/49.

8. (1) It shall be the duty of the landlord of any premises which are let for the first time after the commencement of this Ordinance, or of which, if let before the commencement of this Ordinance, the rent has not been determined by the Board, to apply to have the rent of such premises determined by the Board. Duty of landlord of premises let

(2) Applications under sub-section (1) of this section shall be made... after the commencement... Standard rent to be determined before first letting. Substituted - o.34/51.

(a) in the case of premises which are let for the first time after the commencement of this Ordinance, as soon as possible after the premises are so let; and

(b) in the case of premises let before the commencement of this Ordinance, but of which the rent has not been determined by the Board, forthwith on the coming into force of this section in its present form.

(3) If any landlord to whom this section applies fails to comply with any of the provisions thereof, he shall be guilty of an offence and liable to imprisonment for a term not exceeding one month or to a fine not exceeding two thousand shillings, or to both such imprisonment and fine.

Investigation of complaints by the Board.

(4) Nothing contained in section 216 of the Criminal Procedure Code shall operate to preclude the trial of offences under this section by a subordinate court whensoever the charge or complaint relating thereto be laid.

(Ordinance No. 8 of 1953.)

(2) Any tenant or any landlord making any such complaint to the Board, shall pay such fee as may be prescribed.

(3) Nothing in this section shall be deemed to preclude the Board from taking cognizance of any infringement of this Ordinance or of any dispute or matter likely to lead to a dispute between a tenant and landlord, although such tenant or such landlord has not made a complaint to a Board under the provisions of this Ordinance.

(4) Where a complaint has been made against a tenant, or against a landlord, or against the agent or servant of either of them, or where the Board has taken cognizance of any dispute or of any facts which are likely to lead to a dispute between a landlord and a tenant, the Board may order the parties or the landlord or tenant, as the case may be, to appear before the Board at a time and place specified in such order for the purpose of investigating such complaint or dispute.

matter, being an order which it is by this Ordinance empowered to make,

(Ordinance No. 8 of 1953.)

under this sub-section may appeal in the same manner and to the same court as is provided by section 7 of this Ordinance.

Penalty for failure to comply with lawful order of the Board.

10. Any person who fails to comply with any lawful order or decision of the Board after the expiration of the time allowed for an appeal therefrom, or, if an appeal has been filed, after such order or decision has been upheld, shall be liable on conviction by the court to a fine not exceeding two thousand shillings or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Restriction on increasing rent.

11. Subject to the provisions of this Ordinance, where the rent of any premises has been, since the prescribed date, or is hereafter during the continuance of this Ordinance, increased, then, if the increased rent exceeds the standard rent

by more than the amount permitted under this Ordinance, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant.

12. Where, after the commencement of this Ordinance, the landlord of any premises, or any agent, clerk, or other person employed by him, accepts any rent in respect of such premises which exceeds the standard rent thereof by more than any amount permitted under this Ordinance, or, accepts an advance of rent exceeding two months' standard rent, then, without prejudice to any other remedy under this Ordinance, such landlord, agent, clerk, or other person shall be liable to a fine not exceeding four thousand shillings or to a term of imprisonment not exceeding six months or to both such fine and imprisonment; and the court by which he is convicted may order that the rent or advance so far as it exceeds the amount permitted under this Ordinance shall be irrecoverable, and that the amount of any such excess shall be repaid to the tenant.

Penalty for accepting excess rent.

13. (1) A landlord may, by notice in writing to the tenant, increase the rent of any premises as follows:—

Permitted increases in rent

(a) (i) where the premises were erected before the 1st day of January, 1953, but after the 31st day of December, 1945—

(A) in the case of a dwelling-house, by an amount not exceeding ten per centum of the standard rent; and

(B) in the case of business premises, by an amount not exceeding twenty per centum of the standard rent;

(ii) where the premises were erected before the 1st day of January, 1946, but after the prescribed date, by an amount not exceeding twenty per centum of the standard rent;

(iii) where the premises were erected before the prescribed date, by an amount not exceeding thirty-five per centum of the standard rent:

Provided that where such rent has previously been increased under the provisions of this Ordinance or of any Ordinance in force before the commencement of this Ordinance, the increase permitted shall be limited to such sum as is required to make the total increase up to the percentage increase now permitted by this paragraph;

(Ordinance No. 8 of 1953.)

(ii) in the case of premises in which rates payable by the landlord have become payable since the premises were let to the tenant, by the amount of such rates;

(c) in any case where the landlord has, since the prescribed date, incurred expenditure on the improvement or

See -
/49.

structural alteration of premises (not including expenditure on redecoration or repairs, whether structural repairs or not), by an amount calculated at a rate per annum not exceeding ten per centum of the expenditure so incurred.

(2) A notice served before the commencement of this Ordinance of an intention to make any increase of rent which is permissible only under this Ordinance shall not be a valid notice for the purpose of this section.

(3) Any transfer to the tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Ordinance, be treated as an alteration of rent, and where, as the result of any such transfer, the terms on which any premises are held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, but any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where as the result of any such transfer, the terms on which any premises are held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Ordinance:

Provided that the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

Penalty for false statement in notice.

14. If any notice served under the provisions of subsection (1) of section 13 of this Ordinance contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable to a fine not exceeding four hundred shillings, unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

Limitation as to permitted increase in rent.

15. (1) Nothing in this Ordinance shall be taken to authorize any increase of rent except in respect of a period during which, but for the provisions of this Ordinance, the landlord would be entitled to obtain possession.

(2) Notwithstanding any agreement to the contrary, where the rent of any premises is increased, no such increase shall be due or recoverable until, or in respect of any period prior to the expiry of, four weeks, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent:

Provided that where the rent of any premises is increased, under and by virtue of the provisions of paragraph (b) of sub-section (1) of section 13 of this Ordinance, on account of an increase in rates or of the imposition of rates not previously payable, such increase in rent shall be payable by the tenant, *all be payable as from the date when*

(i) if the notice in writing referred to in sub-section (1) of section 13 of this Ordinance is served on him by the landlord on or before the date on which the increase in rates became operative, or the rates become payable, as the case may be, with effect from such date; and *0.8/53*

(ii) if the said notice is not served on him before such date, with effect from the date of service on him of such notice by the landlord: *Restriction on right to possession*

Provided further that where, by virtue of the provisions of this Ordinance or of any law in force before the commencement of this Ordinance, the landlord has increased the rent of any premises on account of an increase in rates or of the imposition of rates not previously payable, the landlord may, on letting such premises to a new tenant, include in the rent payable by such new tenant any such increase as aforesaid.

(b) the tenant, or any person residing with him, has been guilty of conduct which is a nuisance or annoyance

to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the Central Board or the Coast Board or the court, as the case may be, deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any such person; or

(c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the Central Board or the Coast Board, or the court, as the case may be, be seriously prejudiced if he could not obtain possession; or

(d) the Central Board, the Coast Board or the court, as the case may be, is satisfied that the tenant has sublet the whole or any part of the premises (such part

being also premises to which this Ordinance applies) for a rent in excess of the rent recoverable under the provisions of this Ordinance;

- (e) (i) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself or for his wife or minor children, or for any person bona fide residing, or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him or for the occupation of the person who is entitled to the enjoyment of such dwelling-house under a will or settlement, and (except as otherwise provided by this sub-section) the Central Board, the Coast Board or the court, as the case may be, is satisfied that alternative accommodation, reasonably equivalent in all respects, is available or will be available at the time that the order takes effect; or
- (ii) the business premises are reasonably required by the landlord and (except as otherwise provided by this sub-section) the Central Board, the Coast Board or the court, as the case may be, is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects is available or will be available at the time that the order takes effect; or
- (f) the premises are reasonably required for the purpose of the execution of the statutory duties or powers of a local authority or statutory undertaking, or for any purpose which, in the opinion of the Central Board, the Coast Board or the court, as the case may be, is in the public interest; or
- (g) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the dwelling-house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the Central Board, the Coast Board or the court, as the case may be, as reasonably sufficient in the circumstances; or
- (h) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up

occupation in consequence of his service in any of His Majesty's forces during the war; or

- 0.6/49.
- (i) the tenant has, without the consent in writing of the landlord, at any time between the 1st day of December, 1941, or the prescribed date, whichever is the later, and the commencement of this Ordinance, assigned or sub-let the whole of the premises, the remainder being already sub-let; or, at any time after the commencement of this Ordinance, has, without the consent in writing of the landlord, assigned, sub-let or parted with the possession of the premises or any part thereof.
- or sub-let part of the premises*

A landlord who has obtained or is entitled to obtain an ejection order on this ground may at his option either obtain a similar order against the occupier or may regard such occupier as his tenant.

occupier as his direct tenant.

For the purposes of this paragraph, if the tenant is a private limited company or partnership the transaction (1) the words "of more than fifty per centum of the total par value of the issued shares".

or the interest of the partners in the partnership shall be deemed to be an assignment of the premises; or

0.34/51

- (j) the landlord is the owner of a dwelling-house which he has previously occupied as a residence for himself and reasonably requires such house for occupation as a residence for himself or for his wife or minor children, and has complied with the terms relating to the giving of notice contained in any lease into which he has entered with the tenant in respect of such house, or, in the absence of any such lease, has given the tenant ^{three} ~~one~~ month's notice to quit:
- 0.8/53.*

Provided that if, within twelve months next after the date upon which the landlord was, under the provisions of this paragraph, entitled to vacant possession of such dwelling-house, he wishes again to let such house (whether for a consideration or without consideration) he shall give to the tenant who, under the provisions of this paragraph, was required to give up possession of such house, the first option to let and take possession of the said

0.34/51.

house; ~~If any landlord fails to give such option, or to give up possession to the tenant accepting such option, he shall be liable to a fine not exceeding two thousand shillings or to a term of imprisonment not exceeding six months or to both such fine and imprisonment; or~~

(k) the landlord requires possession of the premises to enable the reconstruction or rebuilding thereof to be carried out, in which case the Central Board, the Coast Board or the court, as the case may be, may include in any ejection order for such purpose an order requiring the landlord to grant to the tenant ~~able conditions~~, whether relating to the matters aforesaid or to the provision or availability of alternative accommodation for the tenant or to the payment of compensation by the landlord to the tenant or otherwise, as the Board or the court, as the case may be, may think fit';

(Ordinance No. 8 of 1953.)

0.8/53.

conditions, ~~as the Board may think necessary;~~

0.8/53.

(l) the landlord is the owner[^] of the dwelling-house (not ~~words "the landlord is the owner,~~ or was prior to the prescribed date the lessee;";

(Ordinance No. 8 of 1953.)

and requires such dwelling-house for occupation as a residence for some person in his whole time employment; or

(m) the landlord is the owner of business premises which he had occupied prior to the prescribed date and who through circumstances directly attributable to the war in which His Majesty was engaged at the prescribed date was compelled to close his business, trade or profession and to let the premises on which the said business, trade or profession was formerly carried on; or

0.8/53.

(n) the landlord has, with the consent of the Board, let the premises for a definite period, ~~or the tenancy is for a term certain,~~ and the landlord requires the premises at the expiry of the said tenancy for his own occupation or for the occupation of his wife or minor children or for some person in his whole time employment; or

- (o) the premises are occupied by a larger number of persons than can reasonably be accommodated so that in the opinion of the Central Board, the Coast Board or the court, as the case may be, the premises are overcrowded or constitute, for any reason, a danger to the said premises or to the neighbours.
- (p) the application for recovery of possession of the premises is made by a person who, having been the tenant of the premises, has been unlawfully dispossessed thereof by the landlord, and any order made in such circumstances may include an order for compensation to be paid by the landlord to any tenant of the premises dispossessed thereof by such order.

(Ordinance No. 8 of 1953.)

(3) The existence of alternative accommodation shall not be a condition of the making of an order on any of the grounds specified in sub-paragraph (i) of paragraph (e) of sub-section (1) of this section—

- (i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or
- (ii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war in which His Majesty was engaged at the prescribed date; or
- (iii) where the landlord gave up the occupation of the dwelling-house for the purpose of taking leave outside the Colony and specifically entered into a contract with the tenant to lease such dwelling-house to him for a fixed period not exceeding one year and the landlord wishes himself to re-occupy such dwelling-house immediately upon the termination of the contract.

(4) Nothing in sub-paragraph (i) of paragraph (e) or paragraph (j) of sub-section (1) of this section shall be deemed to permit a landlord to recover possession of a dwelling-house if by such recovery he or his wife and minor children would be in occupation of, or would acquire the right to occupy, more than one ^{place of residence} dwelling-house at the same time.

0.8/53.

(5) At the time of the application for the making of any order for the recovery of possession of any such premises, or for the ejectment of a tenant therefrom, or in the case of any such order which has been made, whether before or after the passing of this Ordinance, and not executed at any subsequent time, the Central Board, the Coast Board or the court, as the case may be, at any time before the filing of the order in court, or the court making or executing the order, as the case may be, may adjourn the application, or stay or suspend execution on any such order, or postpone the date of possession for such period or periods as it thinks fit, and, subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, and otherwise as the Central Board, the Coast Board or the court thinks fit, and, if such conditions are complied with, the Central Board, the Coast Board or the court, as the case may be, may if it thinks fit, discharge or rescind any such order.

(6) An order against a tenant for the recovery of possession of any premises or ejectment therefrom under the provisions of this section shall not affect the right of any sub-tenant, to whom the premises or any part thereof have been lawfully sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under the provisions of this section, or be in any way operative against any such sub-tenant.

0.34/51
 (7) Any landlord who, in contravention of the proviso to paragraph (j) of sub-section (1) of this section, fails to give a first option to the tenant required to give up possession of the dwelling-house or fails to give up possession of the dwelling-house to the tenant who has accepted such option shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment and in addition the court may—

- (a) order the offender to pay to the tenant concerned compensation for any loss or damage suffered by him in consequence of having been required to give up possession;
- (b) order any person to whom the dwelling-house has been let or who is actually occupying it to give up possession thereof within such period as the court may consider reasonable; and
- (c) order the offender to reinstate the tenant in the dwelling-house.

(8) Any person who contravenes or fails to comply with any order made under sub-section (1) of this section shall

be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

17. No distress for the rent of any premises to which this Ordinance applies shall be levied except with the leave of the Central Board or the Coast Board within their respective areas or, in any other area, with leave of the court and the Central Board, the Coast Board and the court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement or otherwise as are conferred by subsection (5) of section 16 of this Ordinance in respect of an application for recovery of possession.

Restriction on levy of distress for rent.

0.34/51.

18. (1) No person shall, as a condition of the grant, assignment, renewal or continuance of a tenancy, lease, sub-lease, sub-letting or occupation of any premises require the payment of, or take ~~or give~~ any fine, premium or other like sum, or any pecuniary consideration, in addition to the rent; and, where any such payment or consideration has been made or given in respect of any premises under an agreement made after the prescribed date the amount or value thereof shall be recoverable by the person by whom it was made or given.

Restriction on premiums.

0.8/53.

(2) Any person requiring, taking ~~or giving~~ any payment or consideration in contravention of this section shall be liable to imprisonment for a term not exceeding twelve months without the option of a fine.

(3) This section shall not apply to the grant, assignment, renewal or continuance for a term of fourteen years or upwards of any tenancy; or to the assignment of any lease created not less than six months before the date of the commencement of this Ordinance and having at such date an unexpired term of not less than two years to run.

(4) Notwithstanding any rule of law or of practice to the contrary, in any prosecution for an offence under this section no person shall be deemed to be an accomplice or to be unworthy of credit, neither shall the uncorroborated evidence of any person be held to be insufficient to support a conviction, merely by reason of the fact that such person, whether before or after the coming into force of this section in its present form, paid, gave or offered, or agreed or attempted to pay or give, any such fine, premium or other like sum, or pecuniary consideration, as aforesaid to the person charged or to any other person.

Penalty for excessive charges for furnished lettings.

(Ordinance No. 8 of 1953.)

(2) Where the rent of business premises includes a payment for goodwill or for any other consideration, whether with or without a payment for the use of furniture or service, the Board may determine what part of the rent is attributable to the goodwill or other consideration and, if the balance of the rent exceeds the standard rent of the premises and any permitted service charge, the amount paid or charged in excess of the standard rent and of any permitted service charge shall, notwithstanding any agreement to the contrary, be irrecoverable by the landlord and, if already paid, shall be recoverable by the person by whom it was paid.

Statement to be supplied as to standard rent.

20. (1) A landlord of any premises shall, on being so requested in writing by any Rent Control Board or the tenant of the premises supply to the Board and to the tenant a statement in writing as to the amount of the standard rent of the premises and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable to a fine not exceeding one thousand shillings:

Provided that this sub-section shall only apply in cases where the premises were let at the prescribed date or where the standard rent has been determined by the Board.

(2) The expression "landlord" in sub-section (1) of this section shall include any agent, clerk or other person employed by the landlord, and if any such agent, clerk or other person fails to supply the Board or the tenant with a statement in writing as to the amount of the standard rent of the premises in accordance with the provisions of this section, the landlord shall be answerable for such omission, and the landlord and the agent, clerk or other person shall be jointly and severally liable to the penalty provided by sub-section (1) of this section.

Recovery of sums made irrecoverable.

21. (1) Where any sum has, since the prescribed date, been paid on account of any rent, being a sum which is, under the provisions of this Ordinance, irrecoverable by the landlord, the sum so paid shall be recoverable from the landlord who received payment or from his legal personal representative, by the tenant by whom it was paid, and any such sum, and any other sum which, under the provisions of this Ordinance is recoverable by a tenant from a landlord or payable or

repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord.

(2) If—

(a) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which under the provisions of this Ordinance is irrecoverable; or

(b) where any such entry has been made by or on behalf of any landlord, and the landlord on being requested by or on behalf of the tenant so to do refuses or neglects to cause the entry to be deleted within seven days, then

that person or landlord shall, on conviction by the court, be liable to a fine not exceeding four hundred shillings unless he proves that at the time of the making of the entry or the neglect or refusal to cause it to be deleted, the landlord had a bona fide claim that such sum was recoverable.

(3) Any sum paid by a tenant, which under sub-section (1) of this section is recoverable by him, shall be recoverable at any time within two years from the date of the payment thereof.

(4) Nothing in this section shall revive any claim which was barred by limitation at the commencement of this Ordinance.

(1) Any landlord or his agent or clerk who fails—

(a) to issue a receipt for rent paid by or on behalf of any tenant;

or

(b) on demand by a tenant to supply a rent book to such tenant;

or

(c) to enter or cause to be entered in any rent book supplied to a tenant the standard rent or any payment on account of rent;

or

(d) to sign or cause to be signed any such entry as is mentioned in paragraph (c) of this sub-section,

shall be guilty of an offence against this section and liable to a fine not exceeding four hundred shillings.

and shall be liable to a fine not exceeding four hundred shillings or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

and shall be entitled to give up possession of the

premises only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, then, notwithstanding any provision to the contrary in any law in force in the Colony, on giving not less than three months' notice:

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order for the recovery of possession of any premises or for the ejection of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(2) Any tenant retaining possession as aforesaid shall not, as a condition of giving up possession, ask for or receive payment of any sum, or any other consideration, from the landlord or any other person; and any tenant who asks or receives, any such sum or consideration shall be liable on conviction to a fine not exceeding two thousand shillings, and the court by which he was convicted may order any such payment or the value of such consideration to be returned to the person by whom the same was given, and any such order shall be in lieu of any other method of recovery.

(3) Where the interest of a tenant of any premises is determined either as the result of an order for possession or

Removal of furniture by landlord.

~~24~~ (1) Where a landlord of any furnished premises wishes to remove the furniture or soft furnishings, or any of them, with which such premises were let, he may apply to the Board for permission so to do.

(2) Upon any application being made under sub-section (1) of this section, the Board may, in its discretion, grant the application upon such terms and subject to such conditions as to the Board may seem reasonable, or may refuse the application.

registered.

(3) Where an application under sub-section (1) of this section has been granted and the furniture or the soft furnishings or any part thereof with which such premises were let is or are removed by the landlord the standard rent of the premises shall be reduced—

(i) if the whole of the furniture or the soft furnishings, or both, are removed, by the percentage or by the respective percentages of the value thereof which was or were added to the standard rent in accordance with paragraph (b) of the definition of "standard rent" in section 2 of this Ordinance;

(ii) if part only of the furniture or the soft furnishings or of both is removed, by such proportion as the Board may think reasonable of the percentage or of the respective percentages of the value thereof as was added to the standard rent in accordance with the aforesaid paragraph.

(4) In this section the expression "soft furnishings" shall be deemed to include linen, cutlery, kitchen utensils, glassware and crockery, if any.

a fine not exceeding four hundred shillings or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

26. (1) No landlord shall, except with the prior consent of the Board, ~~(1) thereof the words~~ and no person other than a landlord shall without lawful authority, do any act ~~directly or indirectly, be~~

deprived; or (Ordinance No. 8 of 1953.)

(b) any other person will be enabled, either directly or indirectly, to deprive any tenant,

of any water, light, conservancy, sweeper or other service. three hundred shillings or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

27. Where, for the purpose of determining the standard rent, an estimate of the market cost of construction of any premises at the date of completing such construction or of the market value of the land at the prescribed date has been made by order of the Board, the Board shall forthwith send written notification to the landlord and the tenant, or their representatives, that the details of such estimate are available for their information and that before the standard rent is determined any such party or his representative may appear before the Board on a date to be specified in the notification and object to the estimate.

Notification of estimate of market cost of construction or market value of land.

28. For the purposes of this Ordinance it shall be deemed to be the obligation of the landlord of any premises to maintain and keep the premises in a state of good structural repair and in a condition suitable for human habitation and it shall be deemed to be the obligation of the tenant of any premises, other than a tenement house, to maintain the premises in the same state, fair wear and tear and damage arising from irresistible force excepted, in which the premises were at the commencement of the tenancy.

Repairs.

29. Notwithstanding the absence of any covenant against the assigning or sub-letting of any premises no tenant shall have the right to assign, sub-let or part with the possession of such premises or any part thereof without the written consent of the landlord or, where such consent shall be unreasonably withheld, without the consent of the Board:

Restriction on right to assign or sub-let premises.

Provided that this section shall not apply to a tenant holding a tenancy commencing after the commencement of this Ordinance for a term exceeding one year or holding any tenancy the unexpired residue whereof at the commencement of this Ordinance exceeds one year.

Sub-letting by tenant.

~~30 29.~~ (1) Notwithstanding anything contained in this Ordinance, the tenant of any dwelling-house may—

- (a) with the consent in writing of the landlord (which consent shall not be unreasonably withheld) and with the consent of the Board; or
- (b) in any case where, in the opinion of the Board the consent of the landlord has been unreasonably withheld, with the consent of the Board alone,

sub-let for a period of not more than six months (which period may with the consent of the Board be extended for a further period of three months) any dwelling-house of which the tenant is in personal occupation; and upon the expiration of the period for which such dwelling-house has been sub-let, the tenant shall be entitled to resume personal occupation of the dwelling-house.

(2) Any sub-tenant to whom sub-section (1) of this section applies who fails, without the consent of the tenant, to give the tenant vacant possession of the dwelling-house upon the due date, shall be liable to pay to the tenant on demand in premises adversely to the tenant" substitute the words "a sum equal to five times the standard rent of the premises in respect of each day on which he continues to occupy the premises adversely to the tenant or such smaller sum in respect of each day as the Board may determine".

0.34/51

(3) (4) Notwithstanding anything contained in this Ordinance, the landlord of any dwelling-house in personal occupation of such dwelling-house may, with the consent of the Board let the dwelling-house for a period of not more than twelve months, and upon the expiration of the period for which such dwelling-house has been let, the landlord shall be entitled to resume personal occupation of the premises.

(5) (4) Any tenant to whom sub-section (4) of this section applies, who fails, unless excused by the landlord, to give to the landlord vacant possession of the dwelling-house upon the due date, shall be liable to pay to the landlord on demand in (5) (as renumbered) the words "sub-section (4)" and "a sum equal to five times the standard rent of the premises in respect of each day on which he continues to occupy the premises adversely to the landlord or such smaller sum in respect of each day as the Board may determine".

0.34/51.

(3) (5) If, at the date of expiry of the period specified in sub-section (1) of this section, the tenant has not re-entered

into personal occupation of the dwelling-house the person in occupation of the dwelling-house shall be deemed to be the tenant of the landlord from the date of expiry of the specified period and, from such date, the landlord shall have against such occupant all the rights and remedies which he would have against his own tenant and, in addition, the rights and remedies which the tenant would have against a sub-tenant under sub-sections (1) and (2) of this section.

³¹
30. Any landlord or his agent or servant who wilfully subjects a tenant to any annoyance with the intention of compelling the tenant to vacate the premises, or to pay, directly or indirectly, a higher rent for the premises shall be liable on conviction by the court to a fine not exceeding two thousand shillings or to a term of imprisonment not exceeding six months, or to both such fine and imprisonment.

Penalty for
subjecting
tenant to
annoyance.

³²
31. (1) Where jurisdiction or power to deal with any matter is conferred by this Ordinance on the Board no proceedings shall be taken before the court. Jurisdiction of court.

(2) The court shall have jurisdiction to deal with any offence under this Ordinance and, subject to the provisions of sub-section (1) of this section, with any claim or other proceeding arising out of this Ordinance notwithstanding that by reason of the amount of the penalty, or the nature or amount of the claim or otherwise the case would not, but for this provision, be within the jurisdiction of the court.

(3) If a person takes proceedings under this Ordinance in the Supreme Court—

(a) the provisions of sections 16 and 17 of this Ordinance shall apply in relation to such proceedings as if the Supreme Court had been specifically mentioned therein; and

(b) if such proceedings could have been taken in the court or before the Board he shall, if successful, only be entitled to recover costs on the subordinate court scale.

to the proceedings before such Board or by the Board and on such order being filed and notice of such filing being served on the Board by any party filing the same such determination or order may be enforced as a decree of the court.

(2) In any case in which such determination or order has been filed by a party the Board shall, on being served with notice of the filing of such determination or order, transmit to the court its record of the proceedings before it and the same shall be filed by the court along with the certified copy of the determination or order.

Compensation in case of frivolous or vexatious applications.

34. If on the dismissal of any application a Board shall be of opinion that the application was frivolous or vexatious, the Board may order the applicant to pay to any other party to the application a reasonable sum as compensation for the trouble and expense to which such party may have been put

35. Where under this Ordinance any summons, notice or other document is required to be served upon any person it shall be sufficiently served on such person if it is either served personally or if it cannot be so served if it is served in such other manner as the Chairman or Deputy Chairman of the Board may direct.

Service of documents.

36. The Board or any person authorized by it in writing in that behalf, may, for the purpose of carrying out its duties and functions under this Ordinance, at all reasonable times enter upon and inspect any dwelling-house or any business premises.

Right of entry.

37. Notwithstanding the provisions of section 4 and section 6 of this Ordinance the Governor in Council may by order empower the Chairman or Deputy Chairman (being qualified for appointment as Chairman) of the Board to exercise alone any of the powers or functions of the Board which may be specified in such Order.

Governor in Council may empower Chairman or Deputy Chairman to exercise powers of Board.

(Ordinance No. 34 of 1951.)

RENT CONTROL BOARDS IN EXERCISING THEIR POWERS UNDER THIS ORDINANCE;

(c) the circumstances or cases in which Rent Control Boards may grant or withhold consent under the provisions of this Ordinance; and

(d) the fees which shall be payable in respect of any matter or thing to be done under this Ordinance;

"Saving.

39. The continuity of the operation of the law relating to rent restriction shall not be deemed to have been affected by the substitution of this Ordinance for the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, 1940 (as amended), and accordingly—

No. 12 of 1940.

(a) any reference in this Ordinance to "the Board" shall, where the context so admits or requires, be construed as including a reference to the Board established under the said Ordinance; and

(b) every standard rent fixed or assessed under or by virtue of the provisions of the said Ordinance and subsisting at the date of the repeal thereof shall be deemed to be a standard rent fixed or assessed under or by virtue of the provisions of this Ordinance at the date of the commencement thereof, save that where the Board established under this Ordinance has purported to assess any such standard rent such assessment shall be deemed to have been validly effected and to be of full force and effect."

1.1.1954.

1949

Increase of Rent (Restriction)

No. 22

FIRST SCHEDULE

(Section 2).

PART I—DWELLING-HOUSES

<i>Name of area, district or place</i>	<i>Prescribed date</i>
The Municipalities of Nairobi, Mombasa, Nakuru, Kisumu and Kitale	3rd September, 1939.
The Township of Machakos and the Ngong-Kikuyu (No. 1) Ward of the Nairobi District Council Area	1st January, 1940.
The Township of Nanyuki	1st June, 1940.
The Municipality of Eldoret	31st December, 1940.
The Township of Thika	30th June, 1941.
The Nyeri Township and the Karatina Trading Centre	31st December, 1941.
All other areas in the Colony	31st March, 1942.

PART II—BUSINESS PREMISES

<i>Name of area, district or place</i>	<i>Prescribed date</i>
The Township of Machakos	1st January, 1940.
The Municipalities of Nairobi, Kisumu, Nakuru, Eldoret and the Township of Nanyuki	31st December, 1940.
The Municipality of Kitale, the Township of Nyeri and the Karatina Trading Centre ..	31st December, 1941.
All other areas in the Colony	31st March, 1942.

SECOND SCHEDULE

The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1941 (No. 9 of 1941).

The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment No. 2) Ordinance, 1941 (No. 37 of 1941).

The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1942 (No. 16 of 1942).

The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1943 (No. 12 of 1943).

The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment No. 2) Ordinance, 1943 (No. 26 of 1943).

The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1945 (No. 4 of 1945).

The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1948 (No. 41 of 1948).

ORDINANCE No. 23 of 1949

Assented to in His Majesty's name this thirtieth day of August, 1949.

J. D. RANKINE,
Governor's Deputy.

AN ORDINANCE TO AMEND THE CUSTOMS TARIFF ORDINANCE, 1947

30th August, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Customs Tariff (Amendment) Ordinance, 1949, and shall be read and construed as one with the Customs Tariff Ordinance, 1947 (hereinafter referred to as the principal Ordinance) and all amendments thereto.

Short title.

No. 10 of 1947.

2. Item 23 of the Schedule to the principal Ordinance is hereby deleted and the following item substituted therefor:—

Amendment of Schedule to principal Ordinance.

23. Sugar, refined or unrefined including jaggery, per 100 lb. Sh. 2".

No. 10 of 1947

3. Section 7 of the principal Ordinance is hereby repealed and the following section substituted therefor:—

Repeal and replacement of section 7 of the principal Ordinance.

7. (1) Subject to the provisions of sub-section (2) of this section, every person volunteering for service in the Reserve shall, on enrolment, make the following declaration of allegiance in such manner as he may declare to be most binding on his conscience:—

"Oath of allegiance and declaration of ordinance"

I, A.B., do solemnly and sincerely declare that I will be faithful and bear true allegiance to His Majesty King George the Sixth, his heirs and successors, and that I will faithfully serve His Majesty the King, his heirs and successors, during my service in the Kenya Police Force Reserve, and will obey all orders of the Governor and of the officers placed over me, and will subject myself to all Ordinances, orders and regulations, from time to time in force relating to the Reserve.

ORDINANCE No. 24 of 1949

Assented to in His Majesty's name this thirtieth day of August, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION

1—Short title.

2—Repeal and replacement of section 7 of the principal Ordinance.

SECTION

3—Amendment of section 9 (2) of the principal Ordinance.

AN ORDINANCE TO AMEND THE KENYA POLICE FORCE RESERVE ORDINANCE, 1948

Date of commencement.

30th August, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Kenya Police Force Reserve (Amendment) Ordinance, 1949, and shall be read and construed as one with the Kenya Police Force Reserve Ordinance, 1948 (hereinafter referred to as the principal Ordinance) and all amendments thereto.

No. 62 of 1948.

Repeal and replacement of section 7 of the principal Ordinance.

2. Section 7 of the principal Ordinance is hereby repealed and the following section substituted therefor:—

"Oath of allegiance and declaration of obedience.

7. (1) Subject to the provisions of sub-section (2) of this section, every person volunteering for service in the Reserve shall, on enrolment, make the following declaration of allegiance in such manner as he may declare to be most binding on his conscience:—

I, A.B., do solemnly and sincerely declare that I will be faithful and bear true allegiance to His Majesty King George the Sixth, his heirs and successors, and that I will faithfully serve His Majesty the King, his heirs and successors, during my service in the Kenya Police Force Reserve, and will obey all orders of the Governor and of the officers placed over me, and will subject myself to all Ordinances, orders and regulations, from time to time in force, relating to the Reserve.

Signature or thumb print of Reserve police officer

Declared } at this day of
Affirmed }
..... 19.....
Before me

(2) Where any person volunteering for service in the Reserve is not a British subject or a British protected person, he may, on enrolment, in the discretion of the Commissioner of Police, in lieu of making the declaration of allegiance required by sub-section (1) of this section make the following declaration of obedience in such manner as he may declare to be most binding on his conscience:—

I, A.B., do solemnly and sincerely declare that I will give faithful service while I remain a member of the Kenya Police Force Reserve, and that I will obey all orders of the Governor and of the officers placed over me, and will subject myself to all Ordinances, orders and regulations, from time to time in force, relating to the Reserve.

Signature or thumb print of Reserve police officer

Declared } at this day of
Affirmed }
..... 19.....
Before me

(3) Every declaration under sub-section (1) or sub-section (2) of this section shall be made before a magistrate, justice of the peace, officer of the Kenya Police Force of or above the rank of assistant inspector or a senior officer of the Reserve, and shall be signed by the person making the declaration or, if he is illiterate, such person shall affix his thumb print thereto."

3. Sub-section (2) of section 9 of the principal Ordinance is hereby amended by the insertion next after the words "considers that any imminent danger has arisen" where they occur of the words "or is likely to arise".

Amendment of section 9 (2) of the principal Ordinance.

ORDINANCE No. 25 of 1949

Assented to in His Majesty's name this thirtieth day of August, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS**SECTION**

- 1—Short title.
2—Interpretation.
3—Repeal of Ordinance No. 32 of 1939.

SECTION

- 4—Offences.
5—Fees regulations.

AN ORDINANCE TO REPEAL THE BRITISH NATIONALITY AND STATUS OF ALIENS FEES ORDINANCE, 1939; TO PROVIDE FOR THE PUNISHMENT OF CERTAIN OFFENCES; AND TO PROVIDE FOR THE CHARGING OF FEES UPON THE GRANT OF A CERTIFICATE OF NATURALIZATION AND UPON THE DOING OF OTHER ACTS UNDER THE BRITISH NATIONALITY ACT, 1948

Date of commencement.

30th August, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the **British Nationality (Offences and Fees) Ordinance, 1949.**

Interpretation.
11 and 12 Geo. 6
Ch. 56.

2. In this Ordinance "the Act" means the British Nationality Act, 1948.

Repeal of
Ordinance No. 32
of 1939.

3. The British Nationality and Status of Aliens Fees Ordinance, 1939, is hereby repealed.

Offences.

4. (1) Any person who, for the purpose of procuring anything to be done or not to be done under the Act makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular shall be liable to imprisonment for a term not exceeding three months.

(2) Any person who fails to comply with any requirement imposed on him by regulations made under the Act with respect to the delivering up of certificates of naturalization shall be liable to a fine not exceeding two thousand shillings and in default of payment to imprisonment for a term not exceeding six months.

5. The Governor in Council may make regulations for the charging and recovery of fees in respect of any application made under the Act or in respect of any registration, or the making of any declaration, or the grant of any certificate, or the taking of any oath of allegiance, authorized to be made, granted or taken, by or under the Act, and in respect of supplying a certificate, order, declaration or a certified or other copy of a certificate, order, declaration or entry given, granted or made as aforesaid; and for the application of any such fees.

Fees regulations.

1199/49

AN ORDINANCE TO REGULATE SHOP HOURS AND THE EMPLOYMENT OF SHOP ASSISTANTS AND JOURNEYMEN IN MOMBASA

30th August, 1949

ENACTED by the Governor of the Colony of Kenya with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the Mombasa Shop Hours Ordinance, 1949.
2. This Ordinance shall apply only to the Municipality of Mombasa.
3. In this Ordinance, unless the context otherwise requires—

"journeyman" includes any tailor, cutter, sewer, shoe-maker, joiner, cabinet maker, worker in jewellery or worker in curios or fancy goods and such other persons as the Member may, by order, declare to be journeymen for the purposes of this Ordinance;

~~"Member" means the Member of the Executive Council of the Colony for the time being responsible for Local Government.~~

"occupier" includes the person having charge of a shop or owning the business thereof or employing any person in or in connection therewith, and the manager, agent or other person acting or apparently acting in the management and control of the shop;

Section
 1—Short title
 2—Application
 3—Interpretation
 4—Closing of shops
 5—Intention to publish Order under section 4 (2) to be advertised beforehand and objections thereto to be lodged in 14 days
 6—Restrictions in the employment of shop assistants

Date of commencement

Short title

Application

Interpretation

Deleted - 1199/49

ORDINANCE No. 26 of 1949

Assented to in His Majesty's name this thirtieth day of August, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title.
- 2—Application.
- 3—Interpretation.
- 4—Closing of shops.
- 5—Intention to publish Order under section 4 (2) to be advertised beforehand and objections thereto to be lodged in 14 days.
- 6—Restrictions in the employment of shop assistants.

SECTION

- 7—Period of employment.
- 8—Restriction on continuous employment.
- 9—Allowance for meals.
- 10—Seats to be provided for females.
- 11—Right of entry.
- 12—Leave of absence.
- 13—Penalties.
- 14—Exemptions.
- 15—Rules.
- 16—Repeal.

**AN ORDINANCE TO REGULATE SHOP HOURS AND
THE EMPLOYMENT OF SHOP ASSISTANTS
AND JOURNEYMEN IN MOMBASA**

Date of commencement.

30th August, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Mombasa Shop Hours Ordinance, 1949.

Application.

2. This Ordinance shall apply only to the Municipality of Mombasa.

Interpretation.

3. In this Ordinance, unless the context otherwise requires—

“journeyman” includes any tailor, cutter, sewer, shoemaker, joiner, cabinet maker, worker in jewellery or worker in curios or fancy goods and such other persons as the Member may, by order, declare to be journeymen for the purposes of this Ordinance;

“Member” means the Member of the Executive Council of the Colony for the time being responsible for Local Government;

“occupier” includes the person having charge of a shop or owning the business thereof or employing any person in or in connexion therewith, and the manager, agent or other person acting or apparently acting in the management and control of the shop;

Deleted -
0.34/52.

"shop" includes any premises in which any retail or wholesale trade or business is carried on and any office, workshop or workroom whether in the same premises or otherwise which is used in connexion with such trade or business, but does not include a stall in a market;

"shop assistant" includes any person employed for hire or reward in a shop in connexion with the serving of customers or the receipt of orders or the dispatch of goods, or keeping the books of the business of the shop and any person under sixteen years of age employed in such connexion whether or not for hire or reward, but does not include any person employed solely as a caretaker or as a cleaner or other domestic servant;

"week" means the period from six o'clock in the morning on Sunday to six o'clock in the morning on the succeeding Sunday.

4. (1) Subject to the provisions of sub-section (2) of this section—

(a) no shop shall be kept open nor may any work be carried on therein by any shop assistant or journeyman on any Sunday nor after twelve-thirty o'clock in the afternoon on one other day in the week, nor after seven o'clock in the evening on any of the other five days in the week; and

(b) no shop shall be kept open nor may any work be carried on therein later than eleven o'clock in the morning on a public holiday.

(2) The Member may, with the advice of the Municipal Board of Mombasa in that behalf and with respect to the whole or part of the Municipality, by Order published in the Gazette—

(a) prescribe any shop or class of shop or shops situated in any area which shall close at twelve-thirty o'clock in the afternoon and the day upon which they shall so close;

(b) exempt, subject or not to conditions, any shop or class of shop from the provisions of sub-section (1) of this section; and

(c) prescribe the hours during which any shop or class of shop or shops situated in any area may be open for the serving of customers, or whether open or not for the employment of journeymen, and thereupon

Intention to
publish Order
under section
4 (2) to be
advertised
beforehand and
objections
therein to be
lodged within
14 days

Closing of shops.

Restrictions in
the employment
of shop
assistants

G.N. 1217/50
133/50

G.N. 133/50

no shop in the class or area for which such hours are prescribed shall be open for the serving of customers or used for the employment of journeymen except during the prescribed hours:

Provided that the total number of hours prescribed for any one day in the case of any shop shall not exceed nine hours.

Intention to publish Order under section 4 (2) to be advertised beforehand and objections thereto to be lodged within 14 days.

5. (1) The Municipal Board of Mombasa shall give notice by advertisement in one or more newspapers circulating in the Municipality of its intention to advise the Member to publish an Order under sub-section (2) of section 4 of this Ordinance and shall specify in such advertisement the terms of the proposed Order.

(2) Any objection to any such proposed Order shall be lodged with the Municipal Board within fourteen days after the publication of the notice as aforesaid.

(3) The Municipal Board shall, as soon as practicable after the receipt of any objection to any such proposed Order, forward a copy of the same, together with a statement in writing setting out the opinion of the Board and its advice as to whether any such proposed Order should be published in its original or amended form or withdrawn, to the Member, whose decision shall be final.

Restrictions in the employment of shop assistants.

6. (1) No shop assistant or journeyman shall be employed about the business of a shop for a longer period than forty-nine hours, excluding meal times, in any one week.

(2) The occupier of a shop shall fix and specify in a notice in the prescribed form in English, which must be affixed in the shop in such a manner and at such a time as may be prescribed, the day of the week on which his shop assistants or journeymen are not employed after twelve-thirty o'clock in the afternoon.

(3) Notwithstanding the provisions of sub-section (1) of section 4 of this Ordinance an occupier on giving reasonable notice to the officer in charge of the police station of the district in which the shop is situate of the names of the shop assistants and journeymen concerned and the dates upon which he intends to extend their working hours, may (on not more than two occasions in any year and solely for the purpose of stocktaking) permit such shop assistants and journeymen to work either on the afternoon of the half-day closing prescribed

under paragraph (a) of sub-section (2) of section 4 of this Ordinance or on the following Sunday or on both such half-day and the following Sunday. The provisions of this sub-section shall not apply to any Saturday or Sunday where the Monday immediately following such Sunday is a public holiday.

7. Unless otherwise prescribed, no shop assistant or journeyman shall be employed about the business of a shop before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening. Period of employment.
8. No shop assistant or journeyman shall be employed continuously for more than five hours. Restriction on continuous employment.
9. There shall be allowed to every shop assistant or journeyman for meals during the period of daily employment not less than two hours, of which one hour at least, taken without interruption, shall be before two o'clock in the afternoon. Allowance for meals.
10. Every female shop assistant or journeyman shall be provided with a chair, seat or other suitable appliance for use during the hours she is employed in the shop. Seats to be provided for females.
11. (1) Any administrative officer, labour officer or police officer not below the rank of Assistant Inspector, shall have power— Right of entry.
- (a) to enter upon, inspect and examine at any hour by day and by night a shop and every part thereof when he has reasonable cause to believe that any shop assistant or journeyman is employed therein;
- (b) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Ordinance are complied with; and
- (c) to examine, either alone or in the presence of any person as he thinks fit, with respect to matters under this Ordinance every shop assistant or journeyman whom he finds in such shop and to require every such person to sign a declaration of the truth of the matters respecting which he is so examined.
- (2) The occupier of any shop shall furnish all such means and information as the administrative officer, labour officer or police officer may require for the purpose of such inspection, examination or inquiry.
- (3) If any person wilfully delays or obstructs an administrative officer, labour officer or a police officer in the exercise of any power under this Ordinance, or fails to comply

with the requisition of such officer in pursuance of this section, or conceals or prevents a shop assistant or journeyman from appearing before or being examined by such officer, such a person shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding two hundred shillings.

Leave of absence.

12. There shall be allowed to every shop assistant or journeyman leave of absence amounting to not less than fourteen days in every year of his service without any deduction in salary or wages, and such leave of absence may be taken, at the option of the shop assistant or journeyman, either in one period or in two periods of seven days each.

Penalties.

13. Any person who contravenes or fails to comply with any of the provisions of sub-section (1) of section 4 or with any Order made under sub-section (2) of the same section, or who employs or permits to be employed any shop assistant or journeyman about the business of a shop in excess of the period mentioned in sub-section (1) of section 6, or fails to comply with the provisions of sub-section (2) of that section, or employs or permits to be employed a shop assistant or journeyman in contravention of the provisions of section 7, 8, 9 or 10 of this Ordinance or fails to allow the leave of absence required by section 12 thereof shall be guilty of an offence and shall be liable—

- (a) in the case of a first conviction, to a fine not exceeding one hundred shillings, or in default of payment, to imprisonment for fourteen days;
- (b) in the case of a second conviction, to a fine not exceeding two hundred shillings or, in default of payment, to imprisonment for one month;
- (c) in the case of a third or subsequent conviction, to a fine not exceeding six hundred shillings or, in default of payment, to imprisonment for two months.

Exemptions.

14. Nothing in this Ordinance shall apply to any sale of goods for charitable or other purposes from which no private profit is derived or to a hawkers.

Rules.

15. The Member may make rules for carrying this Ordinance into effect.

Repeal.
No. 29 of 1937.

16. The Mombasa Shop Assistants (Employment) Ordinance, 1937, is repealed.

ORDINANCE No. 27 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION

1—Short title.

SECTION

2—Amendment of section 4 of the principal Ordinance.

AN ORDINANCE TO AMEND THE MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) ORDINANCE, 1945

8th September, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Motor Vehicles Insurance (Third Party Risks) (Amendment) Ordinance, 1949, and shall be read and construed as one with the Motor Vehicles Insurance (Third Party Risks) Ordinance, 1945 (hereinafter referred to as the principal Ordinance).

Short title.

No. 12 of 1945.

2. The following sub-sections shall be substituted for sub-sections (2) and (3) of section 4 of the principal Ordinance:—

Amendment of section 4 of the principal Ordinance.

(2) If a person acts in contravention of this section he shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment, and a person convicted of an offence under this section may be disqualified from holding or obtaining a certificate of competency for a period of twelve months from the date of the conviction or for such longer period as the court thinks fit.

(3) This section shall not apply to any motor vehicle owned by the Government of the Colony or by the East Africa High Commission, or to a motor tractor or other motor vehicle used solely or mainly for agricultural purposes, if the use of such motor tractor or other motor vehicle on a road consists only of moving it by road from one part of the land of the owner thereof to another part of the land of such owner.

Protected areas.

ORDINANCE No. 28 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title.	6—Removal of unauthorized person.
2—Interpretation.	7—Failure to stop during hours of darkness.
3—Protected areas.	8—Warning of danger.
4—Permission to enter protected area.	9—Penalties.
5—Person entering protected area may be searched.	

AN ORDINANCE TO PREVENT THE ENTRY OF UN-AUTHORIZED PERSONS INTO AREAS WHICH HAVE BEEN DECLARED TO BE PROTECTED AREAS

Date of commencement. *8th September, 1949*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title. **1. This Ordinance may be cited as the Protected Areas Ordinance, 1949.**

Interpretation. **2. In this Ordinance, unless the context otherwise requires—**

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"Member" means the Member of the Executive Council of the Colony for the time being responsible for Law and Order;

"prescribed authority" means the person specified as such in any order issued under section 3 of this Ordinance;

"protected area" means any area, place or premises in relation to which an order made under section 3 of this Ordinance is in force;

"the hours of darkness" means the period from six-thirty o'clock p.m. to six-thirty o'clock a.m.

Protected areas.

3 (1) If, as respects any area, place or premises wherein are stored or kept any arms, ammunition or military stores, it appears to the Chief Secretary to be necessary or expedient in the public interest that special precautions should be taken to prevent the entry of unauthorized persons, he may by order published in the Gazette, declare such area, place or premises to be a protected area for the purposes of this Ordinance; and, so long as the Order is in force no person shall, subject to any exemptions for which provision may be made in the Order, be in such protected area without the permission of the prescribed authority or such other person as may be specified in the Order.

(Ordinance No. 24 of 1953.)

S.N 818/52, 1311/52

Order is in force, no person shall, subject to any exemptions for which provisions may be made in the Order, be in such protected area without the permission of the prescribed authority or such other person as may be specified in the Order.

Failure to stop during the hours of darkness.

(2) Any order made under sub-section (1) of this section shall be laid upon the table of the Council at its next sitting.

4. Where, in pursuance of section 3 of this Ordinance, any person is granted permission to be in a protected area, that person shall, while acting under such permission, comply with such directions for regulating his conduct as may be given by the prescribed authority or person granting the permission or by the police officer in charge of the district.

Permission to enter protected area.

5. (1) Any police officer or any person authorized in that behalf by the prescribed authority may search any person, conveyance, vehicle, vessel or container found in or found entering or leaving, or seeking to enter or leave, or reasonably suspected of having recently left, a protected area, and may stop and detain any such person, conveyance, vehicle, vessel or container for the purpose of searching him or it.

Person entering protected area may be searched.

(2) Any person detained for the purpose of being searched shall be deemed to be in lawful custody.

(3) If any conveyance, vehicle, vessel or container is found to contain arms, ammunition, explosives or stores which have been, or are being, abstracted or removed from any prescribed area unlawfully or without the permission of the prescribed authority or of any person authorized by him in that behalf, such conveyance, vehicle, vessel or container and its contents shall forthwith be forfeited to, and become the property of, Government, and shall abide the directions of the Member. The Member may, in his discretion direct that such conveyance, vehicle, vessel, container or contents be returned to its or their owner or may give such other direction regarding it or them as he thinks fit.

0.24/53.

6. If any person is in a protected area in contravention of this Ordinance, or, being lawfully in a protected area fails to comply with any direction given under this Ordinance, then, without prejudice to any proceedings which may be taken against him, he may be removed from the area by any police officer or any person authorized in that behalf by the prescribed authority.

Removal of unauthorized person.

Failure to stop during the hours of darkness.

7. Any person who is in a protected area within the hours of darkness who fails to stop after being challenged twice by any sentry or person authorized in that behalf by the prescribed authority so to do, may be arrested by force, which force may, if necessary to effect the arrest, extend to the voluntary causing of death.

Warning danger.

8. It shall be the duty of the prescribed authority in which the protected area is situate to cause such precautions to be taken as the prescribed authority and any person deputed by the Chief Secretary shall deem reasonably necessary to prevent inadvertent or accidental entry into any such protected area during the hours of darkness. Such precautions shall include the fencing of the protected area and the prominent display of warning notices, and where such precautions have been duly taken, no person shall be entitled to compensation or damages in respect of injury received or death caused as a result of any unauthorized entry into any such protected area.

Fencing of areas and warning of danger.

Substituted
0.24/53

(Ordinance No. 24 of 1953.)

Penalties.

9. (1) Any person who is in a protected area without permission contrary to the provisions of section 3 of this Ordinance or who fails to comply with any order issued under that section, or fails to comply with any direction given to him under section 4 of this Ordinance or refuses to allow himself to be searched under section 5 of this Ordinance shall be guilty of an offence against this Ordinance and shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand shillings or to both such imprisonment and fine.

(2) Any person who has been detained as a result of the exercise of the powers conferred by section 5 of this Ordinance and is found to have in his possession or to be conveying in any manner, any arms, ammunition, explosives or stores, and who on being charged shall not give an account to the satisfaction of the court that he came by the same lawfully shall be guilty of an offence against this Ordinance, and shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand shillings or to both such imprisonment and fine.

Removal of unauthorized person.

10. If any person is in a protected area in contravention of this Ordinance, or being lawfully in a protected area fails to comply with any direction given under this Ordinance, then without prejudice to any proceedings which may be taken against him, he may be removed from the area by any police officer or any person authorized in that behalf by the prescribed authority.

ORDINANCE No. 29 of 1949

Assented to in His Majesty's name this eighth day of
September, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION 1—Short title. 2—Amendment of section 2 of the principal Ordinance.	SECTION 3—Amendment of section 7 of the principal Ordinance.
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**AN ORDINANCE TO AMEND THE NATIVE TRUST
FUND ORDINANCE, 1942**

8th September, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Native Trust
Fund (Amendment) Ordinance, 1949, and shall be read and
construed as one with the Native Trust Fund Ordinance, 1942
(hereinafter referred to as the principal Ordinance) and all
amendments thereto.

Short title.

No. 22 of 1942.

2. Section 2 of the principal Ordinance is amended by
the insertion next after the definition of "the Fund" of the
following definition—

Amendment of
section 2 of
the principal
Ordinance.

"the Member" means the Member of the Executive
Council of the Colony for the time being responsible for
African Affairs;".

3. Section 7 of the principal Ordinance (as amended by
the Native Trust Fund (Amendment) Ordinance, 1948) is
amended by deleting the words "Governor in Council" where-
ever such words occur in the section and by substituting
therefor the word "Member".

Amendment of
section 7 of
the principal
Ordinance.
No. 92 of 1948.

ORDINANCE No. 30 of 1949

Assented to in His Majesty's name this eighth day of
September, 1949.

J. D. RANKINE,
Governor's Deputy.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION

1—Short title.

SECTION

2—Amendment of section 2 of the principal Ordinance.

**AN ORDINANCE TO AMEND THE EVIDENCE
(BANKERS' BOOKS) ORDINANCE, 1937**

Date of
commencement.

8th September, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Evidence (Bankers' Books) (Amendment) Ordinance, 1949, and shall be read as one with the Evidence (Bankers' Books) Ordinance, 1937, hereinafter referred to as the principal Ordinance.

No. 16 of 1937.

Amendment of
section 2 of
the principal
Ordinance.

2. Section 2 of the principal Ordinance is amended—
(a) by substituting for the definition of "bank" or "banker" occurring therein, the following:—

"'bank' or 'banker' means any person carrying on the business of banking in the Colony (including the Savings Bank established under the provisions of the Savings Bank Ordinance, 1936, and any branch thereof), and, for the purpose of sections 3, 4 and 5 this Ordinance, includes any person carrying on the business of banking in the Territory of Tanganyika, in the Uganda Protectorate or in the Zanzibar Protectorate;"

No. 29 of 1936.

and

(b) by substituting for the definition "legal proceeding" occurring therein the following:—

"'legal proceeding' means any civil or criminal proceeding or inquiry (including an arbitration) in which evidence is or may be given, in the Colony, and, for the purposes of section 7 of this Ordinance, includes any such proceeding or inquiry in the Territory of Tanganyika, in the Uganda Protectorate or in the Zanzibar Protectorate."

ORDINANCE No. 31 of 1949

Assented to in His Majesty's name this eighth day of
September, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title.	3—New section giving power to award costs. (11A—Power of Authority to order costs in frivolous proceedings).
2—Amendment of section 5 of the principal Ordinance.	4—Amendment of section 16 (2) of the prin- cipal Ordinance.

**AN ORDINANCE TO AMEND THE CONTROL OF
HOTELS ORDINANCE, 1948**

8th September, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Control of Hotels
(Amendment) Ordinance, 1949, and shall be read and construed
as one with the Control of Hotels Ordinance, 1948 (hereinafter
referred to as the principal Ordinance).

2. Section 5 of the principal Ordinance is amended by
deleting paragraph (b) of sub-section (4) thereof and substitut-
ing the following therefor:—

“(b) a licence to manage any hotel named in such licence,
remain in force for a period of one year from the date
of the issue thereof and, in the discretion of the
Authority, be renewable annually thereafter;”

3. The principal Ordinance is amended by inserting
therein immediately after section 11 thereof the following new
section:—

“11A. Where, after the determination of any applica-
tion, complaint or objection made to an Authority
under the provisions of this Ordinance, the Authority
considers that such application, complaint or objection is
frivolous, the Authority may order the applicant or the
person making such complaint or objection to pay to any
other party to the proceedings such sum by way of costs
as the Authority may consider to have been attributable
to the application, complaint or objection.”

4. Sub-section (2) of section 16 of the principal Ordinance
is amended by substituting the words “and that he
exercised all due diligence” for the words “or that he exercised
all due diligence” occurring therein.

ORDINANCE No. 32 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

**AN ORDINANCE TO AMEND THE INCOME TAX
ORDINANCE, 1940**

Date of
commencement.

8th September, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Income Tax (Amendment) Ordinance, 1949, and shall be read and construed as one with the Income Tax Ordinance, 1940 (hereinafter referred to as the principal Ordinance) and all amendments thereto.

No. 11 of 1940.

2. The provisions of this Ordinance shall apply to assessments in respect of the year of assessment commencing on the first day of January, 1948, and each subsequent year of assessment.

Amendment of
section 27 (1)
of the principal
Ordinance.
No. 69 of 1948.

3. Sub-section (1) of section 27 of the principal Ordinance (as inserted therein by the Income Tax (Amendment) Ordinance, 1948), is amended by substituting a full stop for the colon which appears before the proviso thereto, and by deleting the proviso therefrom.

Amendment of
Schedule III to
the principal
Ordinance.
No. 69 of 1948.

4. The Third Schedule to the principal Ordinance (inserted therein by the Income Tax (Amendment) Ordinance, 1948), is amended in the following respects—

(a) by deleting the figure "17,294" where it occurs in the sixth column and by substituting therefor the figure "17,284";

(b) by deleting the figure "23,874" where it occurs in the fourth column and by substituting therefor the figure "23,877".

No. 33

ORDINANCE No. 33 of 1949

Assented to in His Majesty's name this eighth day of
September, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title.	4—Amendment of section 6 of the principal Ordinance.
2—Amendment of section 3 of the principal Ordinance.	5—Amendment of section 7 of the principal Ordinance.
3—Repeal of section 4 of the principal Ordinance.	6—Amendment of section 10 of the principal Ordinance.

**AN ORDINANCE TO AMEND THE RADIO-ACTIVE
MINERALS ORDINANCE, 1948**

8th September, 1949

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Radio-active Minerals (Amendment) Ordinance, 1949, and shall be read and construed as one with the Radio-active Minerals Ordinance, 1948 (hereinafter referred to as the principal Ordinance).

2. Section 3 of the principal Ordinance is amended in the following respects:—

- (a) by re-numbering the present section as sub-section (1);
- (b) by substituting for the words "except under and in accordance with the terms and conditions of a licence granted to him by the Governor" occurring in sub-section (1) (as re-numbered by this section) the words "unless he is the holder of a valid prospecting right issued under section 13 of the Mining Ordinance, 1940, upon which there has been endorsed by the Commissioner or an officer duly authorized by him in that behalf authority to prospect for radio-active minerals."; and

(c) by adding a new sub-section (2) as follows:—

"(2) Any person aggrieved by the refusal of the Commissioner or any duly authorized officer to endorse on a prospecting right issued to him authority to prospect for radio-active minerals may appeal to the Governor and the decision of the Governor shall be final."

Date of commencement.

Short title.

No. 16 of 1948.

Amendment of section 3 of the principal Ordinance.

No. 29 of 1940.

Repeal of section 4 of the principal Ordinance.

3. Section 4 of the principal Ordinance is repealed.

Amendment of section 6 of the principal Ordinance.

4. Section 6 of the principal Ordinance is amended by the deletion of the words "a licence or" where those words occur in the section.

Amendment of section 7 of the principal Ordinance.

5. Section 7 of the principal Ordinance is amended by deleting the words "licence and" where such words occur therein.

Amendment of section 10 (1) of the principal Ordinance.

6. Sub-section (1) of section 10 of the principal Ordinance is amended in the following respects:—

(a) by substituting for the words "Where the grant of a licence or a permit has been refused by the Governor under the provisions of section 6 of this Ordinance" the words "Where endorsement of a prospecting right under section 3 of this Ordinance or the grant of a permit under section 6 of this Ordinance has been refused by the Governor"; and

(b) by the substitution of the word "endorsement" for the word "licence" where it occurs between the words "the unsuccessful applicant for such" and the words "permit or consent";

ORDINANCE No. 34 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title.
- 2—Amendment of sections 35, 36 and 37 of the principal Ordinance.
- 3—Any lessee who alleges that by reason of this Ordinance the rent payable by him is excessive may object.

SECTION

- 4—The lessee, who has objected under section 3 to be given notice of the amount payable under his lease.
- 5—Service of notices.

AN ORDINANCE TO AMEND THE CROWN LANDS ORDINANCE

8th September, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Crown Lands (Amendment) Ordinance, 1949, and shall be read and construed as one with the Crown Lands Ordinance (hereinafter referred to as the principal Ordinance).

2. Sections 35, 36 and 37 of the principal Ordinance are hereby respectively amended by the deletion (wherever such figures occur therein) of the figures "1950" (inserted therein by the Crown Lands (Amendment) Ordinance, 1945) and by the substitution therefor of the figures "1960".

3. Any lessee who objects that by reason of this Ordinance the rent payable under his lease for the period 1st day of January, 1951, to 31st day of December, 1960, is excessive, shall notify the Commissioner of Lands, in writing, to that effect on or before the 31st day of March, 1951, and upon receipt by him of such notification, the Commissioner of Lands shall, notwithstanding the provisions of the principal Ordinance, determine the rent which shall be payable under such lease for such period.

4. (1) When the Commissioner of Lands has determined, under the provisions of section 3 of this Ordinance, the rent which shall be payable under any lease, he shall, before the 30th day of June, 1951, cause a notice to be served upon the

Date of commencement.

Short title.

Cap. 140.

Amendment of sections 35, 36 and 37 of the principal Ordinance. No. 37 of 1945.

Any lessee who alleges that by reason of this Ordinance the rent payable by him is excessive may object.

The lessee, who has objected under section 3 to be given notice of the amount payable under his lease.

lessee setting forth the rent payable in respect of the land, the subject of the lease, for the period 1st day of January, 1951, to the 31st day of December, 1960.

(2) If, within three months of the date of the service of the notice mentioned in sub-section (1) of this section, the lessee does not notify the Commissioner of Lands, in writing, that he objects to the amount of rent which the Commissioner of Lands has determined shall be payable in respect of the land, the subject of the lease, rent shall be payable as so determined.

(3) If, within three months of the date of the service of the notice mentioned in sub-section (1) of this section, the lessee notifies the Commissioner of Lands, in writing, that he objects to the amount of rent which the Commissioner of Lands has determined shall be payable in respect of the land, the subject of the lease, the question of the amount of rent which shall be payable in respect of such land shall be referred to and determined by arbitration in accordance with the provisions of section 150 of the principal Ordinance.

Service of notices.

5. (1) The notice given under the provisions of sub-section (1) of section 4 of this Ordinance may be served on the lessee either personally or by being sent by registered post to his last known place of business or private address.

(2) Where the notice is served by registered post, it shall be deemed to be served not later than the seventh day succeeding the day on which the notice would have been received in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.

4. (1) When the Commissioner of Lands has determined under the provisions of section 3 of this Ordinance, the rent which shall be payable under any lease, he shall, before the 30th day of June, 1951, cause a notice to be served upon the lessee, in writing, setting forth the amount of rent payable in respect of the land, the subject of the lease, for the period 1st day of January, 1951, to the 31st day of December, 1960, and upon receipt of such notice the lessee shall, before the 31st day of March, 1951, notify the Commissioner of Lands, in writing, to that effect or, before the 31st day of March, 1951, and upon receipt of such notice the Commissioner of Lands shall, notwithstanding the provisions of the principal Ordinance, determine the rent which shall be payable under such lease for such period.

4. (1) When the Commissioner of Lands has determined under the provisions of section 3 of this Ordinance, the rent which shall be payable under any lease, he shall, before the 30th day of June, 1951, cause a notice to be served upon the lessee, in writing, setting forth the amount of rent payable in respect of the land, the subject of the lease, for the period 1st day of January, 1951, to the 31st day of December, 1960, and upon receipt of such notice the lessee shall, before the 31st day of March, 1951, notify the Commissioner of Lands, in writing, to that effect or, before the 31st day of March, 1951, and upon receipt of such notice the Commissioner of Lands shall, notwithstanding the provisions of the principal Ordinance, determine the rent which shall be payable under such lease for such period.

ORDINANCE No. 35 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title.	4—No fee payable for re-registration.
2—Interpretation.	5—Consequences of failure to apply for re-registration.
3—Trade Unions registered before 20th April may apply for re-registration.	

AN ORDINANCE TO REQUIRE RE-REGISTRATION OF TRADE UNIONS REGISTERED BEFORE THE 20TH DAY OF APRIL, 1948

8th September, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Trade Unions (Registration) Ordinance, 1949.

2. In this Ordinance unless the subject or context otherwise requires—

“the principal Ordinance” means the Trade Unions and Trade Disputes Ordinance, 1943, as amended by the amending Ordinance; and “the amending Ordinance” means the Trade Unions and Trade Disputes (Amendment) Ordinance, 1948.

3. (1) Any seven or more members of a trade union which was registered under the Trade Unions and Trade Disputes Ordinance, 1943, before the 20th day of April, 1948, that is to say before the entry into force of the amending Ordinance, may, within one month from the commencement of this Ordinance, apply for re-registration under the principal Ordinance.

(2) Such application shall be deemed to be an application for a new registration under section 7 of the principal Ordinance and the principal Ordinance shall apply accordingly, except that the trade union shall not be registered unless the application is made within the period aforesaid instead of the period of three months from its formation mentioned in sub-section (1) of section 8 of the principal Ordinance.

Date of commencement.

Consequences of failure to apply for re-registration.

Short title.

Interpretation.

No. 1 of 1943.

No. 33 of 1948.

Trade unions registered before 20th April, 1948, may apply for re-registration.

(3) The registration may be granted and ante-dated to the date of the original registration or may be refused upon any ground upon which registration could be refused or cancelled under the provisions of the principal Ordinance or on the ground that since the date of its original registration the trade union has not complied with the provisions of the Trade Unions and Trade Disputes Ordinance, 1943, and, in case of refusal, the provisions of sub-section (1) of section 8 of the principal Ordinance regarding dissolution of the trade union shall have effect as if the period of three months from the date of a notification by the Registrar that he has refused registration under this Ordinance were substituted for the period of three months mentioned in paragraph (a) thereof.

No. 1 of 1943.

No fee payable for re-registration.

4. No fee for re-registration shall be payable by any trade union to which this Ordinance applies.

Consequences of failure to apply for re-registration.

5. (1) If no application for re-registration is made within one month from the commencement of this Ordinance by any trade union to which this Ordinance applies, the Registrar shall cancel the registration of such trade union and, thereupon, the trade union shall be an unregistered trade union and the provisions of section 5 of the principal Ordinance and any other provisions of the principal Ordinance relating to unregistered trade unions shall apply thereto.

(2) A cancellation of a registration under this section shall not be subject to appeal or be called in question in any Court.

ORDINANCE No. 36 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION	SECTION	
1—Short title.	10—Execution of orders.	
2—Interpretation.	11—Expenses.	
DEPORTATION ORDERS		
3—Power to make deportation orders and contents thereof.	12—Persons undergoing sentence.	
4—Master of ship, etc., to receive alien for deportation.	13—Revocation and variation of orders.	
5—Power to make order.	MISCELLANEOUS	
6—Recommendation varied on appeal.	14—Penalties for breach of order.	
RESTRICTION ORDERS: SECURITY ORDERS		
7—Restriction Orders, Security Orders.	15—Penalty for harbouring.	
DETENTION PENDING DECISION: CONTENTS AND EXECUTION OF ORDERS		
8—Detention in custody pending decision.	16—Evidence.	
9—Contents of orders.	17—Member may make orders in relation to persons subject to restriction orders.	
	18—Rules.	
	19—Repeal.	

AN ORDINANCE TO REGULATE THE DEPORTATION OF ALIENS

8th September, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Deportation (Aliens) Ordinance, 1949.

2. In this Ordinance, unless the context otherwise requires—

“alien” has the same meaning as in the British Nationality Act, 1948;

“deportation order” means an order requiring the person in respect of whom it is made to leave and remain out of Kenya;

“Kenya” means the Colony and Protectorate of Kenya;

“Member” means the Member of Executive Council for the time being responsible for Law and Order;

“restriction order” means an order prohibiting the person in respect of whom it is made from entering or leaving an area within Kenya without the consent of the officer specified in the order;

Date of commencement.

Short title.

Interpretation.

“security order” means an order requiring the person in respect of whom it is made to give security in two or more sureties in such amount and for such time as may be therein specified to keep the peace and to be of good behaviour, and for indemnifying public funds for all costs, charges and expenses incurred in his regard, or for both such purposes, as may be appropriate in the case;

“undesirable person” means a person who is or has been conducting himself so as to be dangerous to peace, good order, good government, or public morals, or is or has been attempting, or conducting himself in a manner calculated, to raise discontent or disaffection amongst His Majesty’s subjects or inhabitants of the Colony, or to promote feelings of ill-will and hostility between different classes of the population of the Colony.

DEPORTATION ORDERS

Power to make
deportation
orders and
contents
thereof.

3. (1) The Member may, if he thinks fit, in any of the cases mentioned in this Ordinance, make a deportation order in respect of any alien.

(2) A deportation order shall be in the prescribed form and may be made subject to any condition which the Member may think fit to impose.

(3) A deportation order may be expressed to be in force for a time limited therein or for an unlimited time, and, when the person charged is not taken into custody pending the execution thereof, shall prescribe a time within which the person charged may of his own volition comply therewith.

Master of
ship, etc., to
receive alien for
deportation.

4. (1) The master of a ship or aircraft, guard of a train or person in charge of a vehicle, about to call at any port or place outside Kenya shall, if so required by the Member or by an immigration officer or police officer, receive an alien against whom a deportation order has been made and his dependants, if any, on board the ship, aircraft, train or other vehicle, and afford him and them a passage to that port or place and proper accommodation and maintenance during the passage.

(2) Any person who fails to comply with the provisions of sub-section (1) of this section shall be guilty of an offence against this Ordinance and liable to a fine not exceeding four thousand shillings.

5. A deportation order may be made in any of the following cases:—

Power to make order.

- (a) if any court certifies to the Member that the alien has been convicted either by that court, or by any inferior court from which the case of the alien has been referred for sentence or brought by way of appeal, of any of the offences specified in the Schedule to this Ordinance and that the court recommends that a deportation order should be made in his case either in addition to or in lieu of sentence; or
- (b) if any court certifies to the Member that the alien is an undesirable person and recommends that a deportation order should be made in his case; or
- (c) if any court certifies to the Member after proceedings taken for the purpose within four years after the alien has last entered Kenya that the alien has been sentenced in a foreign country for an extradition crime within the meaning of the Extradition Act, 1870; or
- (d) if the member deems it to be conducive to the public good to make a deportation order against the alien.

Contents of restriction or security orders.

6. Where any case in which a court has made a recommendation for deportation is brought by way of appeal against conviction or sentence before any higher court, and that court certifies to the Member that it does not concur in the recommendation, such recommendation shall be of no effect, but without prejudice to the power of the Member to make an order of deportation under the last foregoing provision.

Recommendation varied on appeal.

RESTRICTION ORDERS: SECURITY ORDERS

7. The Member may, if he thinks fit, in lieu of making a deportation order, make a restriction order, or a security order, or both, in relation to any alien in respect of whom he could make a deportation order under this Ordinance.

Restriction Orders, Security Orders.

DETENTION PENDING DECISION: CONTENTS AND EXECUTION OF ORDERS

8. Where a Judge or magistrate or a court recommends the making of a deportation order or restriction or security order on the grounds that the person charged is an undesirable person or a person convicted of any of the offences specified in the schedule to this Ordinance, the person charged may, if the Judge, magistrate or court, as the case may be, shall so

Detention in custody pending decision.

order, be detained in such manner as the Judge, magistrate or court may direct pending the decision of the Member, for a period not exceeding twenty-eight days, and shall be deemed to be in legal custody whilst so detained.

Contents
of restriction
and security
orders.

9. (1) Every restriction order and every security order shall be in the prescribed form.

(2) Every restriction order shall state the area or areas which the person to whom it relates is prohibited from entering or leaving.

(3) A restriction order or security order may be expressed to be in force for a time limited therein or for an unlimited time, and, when the person charged is not taken into custody pending the execution thereof, shall prescribe a time within which the person charged may of his own volition comply therewith.

(4) A restriction order may require the person charged to report himself to the nearest administrative officer or officer of police at intervals of not less than seven days or such longer intervals as may be stated in the order.

Execution
of orders.

10. (1) As soon as practicable after a deportation order or restriction order or security order is made, a copy thereof shall be served upon the person charged.

(2) A person with respect to whom a security order has been made may be detained in such manner as may be directed by the Member until such order shall have been complied with:

Provided that, without prejudice to the provisions of sub-sections (3) and (4) of this section, where the security order is not complied with, no person shall be detained under this sub-section for a period exceeding twenty-eight days.

(3) Subject to the provisions of sub-section (5) of this section, a person with respect to whom a deportation order is in force may be detained in such manner as may be directed by the Member, and may be placed on a ship, aircraft, train or other vehicle about to leave Kenya and shall be deemed to be in legal custody while so detained and until the ship, aircraft, train or other vehicle finally leaves Kenya.

(4) Subject to the provisions of sub-section (5) of this section, a person with respect to whom a restriction order is in force may be detained in such manner as may be directed

by the Member so far as necessary for the purpose of removing him from any place which he is prohibited from entering or to any place which he is prohibited from leaving, and shall be deemed to be in legal custody while so detained.

(5) No person shall be detained under sub-section (3) or (4) of this section for a period exceeding ninety days, and, if at the expiration of such period he has not been removed or deported as aforesaid, the restriction order or deportation order as the case may be shall cease to have effect.

11. (1) Where a deportation order is made, the Member may, if he thinks fit, apply any money and may sell any property of the person charged and apply the proceeds in payment of the whole or any part of the expenses of or incidental to the voyage from Kenya and the maintenance until departure of that person and his dependants (if any). Expenses.

(2) Where a restriction order is made, the Member may, if he thinks fit, apply any money and may sell any property of the person charged and apply the proceeds in payment of the whole or any part of the expenses of or incidental to the removal of that person to any place in pursuance of that order and, if necessary, the maintenance of that person while the order is in force.

(3) Any sale or disposal of property by a person in respect of whom a deportation order or restriction order has been made shall be void and ineffectual to pass any title to such property, unless the expenses mentioned in sub-section (1) or (2) of this section have been paid or the Member has consented in writing to such sale.

(4) Except so far as they are defrayed under the preceding sub-sections, any such expenses shall be payable out of public funds.

12. If a person in respect of whom a security order or restriction order or deportation order is made under this Ordinance has been sentenced to any term of imprisonment, such sentence shall be served before the order is carried into effect unless the Governor otherwise directs. Persons undergoing sentence.

13. (1) The Member by order—

(a) at any time revoke any deportation order or restriction order or security order; Revocation and variation of orders.

(b) vary any restriction order so as to permit the person therein mentioned to enter or leave any area which he is prohibited from entering or leaving, or to permit him to leave the Colony, and may attach to the permission a condition suspending the operation of the order during the absence of such person from any such area or from the Colony, or conditions as to security for good behaviour or otherwise, and may also vary, cancel or add a condition requiring such person to report himself;

(c) vary a deportation order so as to permit the person mentioned therein to enter Kenya and may attach to such permission conditions as to security or otherwise.

(2) Subject to the provisions of sub-section (1) of this section, any deportation order, restriction order or security order made by the Member under this Ordinance shall be final and shall not be called in question, reviewed, quashed or varied by any court in the Colony.

(3) Any order made under paragraph (b) or paragraph (c) of sub-section (1) of this section may be expressed to have effect for the duration of the order thereby varied or for any lesser period.

(4) As soon as practicable after an order has been made under this section, a copy thereof shall be served upon or sent to the person in respect of whom it is made.

(5) The ~~Governor in Council~~^{Member} may exercise the powers conferred upon him by sub-section (1) of this section in respect of a deportation order made under the Deportation Ordinance (now repealed), as if such deportation order were a deportation order or a restriction order made under this Ordinance.

(Ordinance No. 57 of 1950.)

enter any area in contravention of the provisions of the order, or wilfully neglects or refuses to report himself as ordered, or having, in pursuance of permission given as hereinbefore provided, left or entered any place, wilfully fails to observe any condition attached to such permission, he shall be liable on conviction to imprisonment not exceeding twelve months or a fine not exceeding five thousand shillings or both such imprisonment and fine, and to be again removed under the original order, or the Member may forthwith make a deportation order in respect of him, and the provisions of sections 10, 11 and 12 of this Ordinance shall apply accordingly.

0-21/51

Cap. 61 of the
1926 Edition of
the laws of
Kenya.

1949

(2) If a person in respect of whom a deportation order is in force returns or attempts to return to Kenya in contravention of the provisions of the order, or having entered Kenya in pursuance of permission given as hereinbefore provided, wilfully fails to observe any condition attached to such permission, he shall be liable on conviction to imprisonment for a period not exceeding ten years or a fine not exceeding ten thousand shillings or both such imprisonment and fine, and to be again deported under the original order, and the provisions of sections 10, 11 and 12 of this Ordinance shall apply accordingly.

(3) Nothing in this section shall prevent the making of a restriction order or a deportation order in accordance with the provisions of this Ordinance in consequence of a conviction for an offence under this Ordinance.

15. Any person who, without lawful excuse, knowingly harbours or conceals any person who—

Penalty for harbouring.

(a) is within Kenya or an area thereof in contravention of the terms of a deportation order or restriction order; or

(b) having entered Kenya or any area thereof in pursuance of permission given as hereinbefore provided, has wilfully failed to observe any condition attached to such permission,

shall on conviction be liable to a fine not exceeding four thousand shillings.

16. In any proceedings under this Ordinance—

Evidence.

(i) a document purporting to be an order made under this Ordinance shall, until the contrary is proved, be presumed to be such an order; and

(ii) any order made under this Ordinance shall be presumed, until the contrary is proved, to have been validly made and to have been made on the date upon which it purports to have been made.

17. (1) The Member may by order impose, in relation to persons in respect of whom restriction orders are in force, and either generally or in any specific case, such restrictions as to residence within the area specified in the order, reporting to the police, registration, occupation, employment, visitors, censorship and receipt or dispatch of communications, use or possession of any vehicle, boat, aircraft, machine, radio, or

Member may make orders in relation to persons subject to restriction orders.

other apparatus, camera, arms and explosives, or other article, or such other like restrictions, as he may deem necessary in the public interest, and any person in relation to whom any such order is made shall comply with the terms of the order.

(2) If any person in respect of whom a restriction order is in force shall fail to comply with the terms of any order made under the provisions of sub-section (1) of this section, he shall be guilty of an offence and liable on conviction before a magistrate of the first or second class to imprisonment for a term which may extend to six months or to a fine not exceeding five hundred shillings or to both such imprisonment and fine, and the Member may forthwith make a deportation order in respect of him, and the provisions of sections 10, 11 and 12 of this Ordinance shall apply accordingly.

Rules.

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18. (1) The Member may make rules for the better carrying out of the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing sub-section, the Governor in Council may make rules—

(a) prescribing the form of certificate to be used by a court certifying a conviction and recommending the making of a deportation order, restriction order or security order under paragraph (a), (b) or (c) of section 5 of this Ordinance;

(b) prescribing forms of deportation orders, restriction orders and security orders.

Repeal.
-Cap. 61.

19. The Deportation Ordinance is hereby repealed.

SCHEDULE

OFFENCES IN RESPECT OF WHICH A COURT MAY RECOMMEND A DEPORTATION ORDER

Any offence for which the court has power to impose imprisonment without the option of a fine.

ORDINANCE No. 37 of 1949

Assented to in His Majesty's name this eighth day of
September, 1949.

J. D. RANKINE,

Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION	SECTION
1—Short title.	13—Persons undergoing sentence.
2—Interpretation.	14—Revocation and variation of orders.
3—Power to make deportation orders.	15—Penalties for breach of order.
4—Power to make restriction orders.	16—Penalty for harbouring.
5—Power to make security orders.	17—Institution of proceedings.
6—Procedure for making orders.	18—Evidence.
7—Service notice and arrest.	19—Report to Secretary of State.
8—Powers of Judges or magistrates.	20—Member may make orders in relation to persons subject to restriction orders.
9—Detention in custody pending decision.	21—Rules.
10—Contents of orders.	22—Appointment of magistrates.
11—Execution of orders.	23—Repeal, Cap. 61.
12—Expenses.	

**AN ORDINANCE TO REGULATE THE DEPORTATION
OF UNDESIRABLE IMMIGRANT BRITISH
SUBJECTS AND FOR SIMILAR PURPOSES**

8th September, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Deportation (Immigrant British Subjects) Ordinance, 1949.
2. (1) In this Ordinance, unless the context otherwise requires—

Short title.

Interpretation.

“British subject” means any person who is a British subject under the British Nationality Act, 1948, and, for purposes of this Ordinance, references to a British subject refer also to a British protected person as defined in that Act, and to a citizen of the Republic of Ireland;

“convicted person” means a person in respect of whom any court certifies to the Governor that he has been convicted, either by that court or by any inferior court from which his case has been brought by way of appeal, of any offence punishable with imprisonment otherwise than only in default of payment of a fine;

“deportation order” means an order requiring the person in respect of whom it is made to leave and remain out of Kenya;

“Judge” means a Judge of the Supreme Court;

“Kenya” means the Colony and Protectorate of Kenya;

“magistrate” means a person possessing the qualifications required by the Kenya Colony Order in Council, 1921, as amended by the Kenya Colony Order in Council, 1939, to be possessed by a Judge of the Supreme Court of Kenya, and appointed by the Governor by notification in the Gazette or by writing under his hand, to be a magistrate for the purposes of this Ordinance;

“Member” means the Member of Executive Council for the time being responsible for Law and Order;

“person charged” means a person in respect of whom it is alleged that there are grounds for making a deportation order or restriction order or security order under this Ordinance and includes a person in respect of whom such an order has been made;

“restriction order” means an order prohibiting the person in respect of whom it is made from entering or from leaving an area within Kenya without the consent of the officer specified in the order;

“security order” means an order requiring the person in respect of whom it is made to give security in two or more sureties in such amount and for such time as may be therein specified to keep the peace and to be of good behaviour, or for indemnifying public funds for all costs, charges and expenses incurred in his regard, or for both such purposes, as may be appropriate in the case;

“undesirable person” means a person who is or has been conducting himself so as to be dangerous to peace, good order, good government, or public morals, or is or has been attempting, or conducting himself in a manner calculated, to raise discontent or disaffection amongst His Majesty’s subjects or inhabitants of the Colony, or to promote feelings of ill-will and hostility between different classes of the population of the Colony;

“war refugee” means any person who entered the Colony, Tanganyika, Northern Rhodesia, the Nyasaland Protectorate, the Uganda Protectorate, the Belgian Congo or the Mandated Territory of Ruanda Urundi after the third day of September, 1939, in pursuance of an arrangement made by the Government of any such country for the reception of persons from any war

area, and has been permitted to enter the Colony without observing the laws relating to immigration, but does not include any person married to a permanent resident of the Colony.

(2) For the purposes of this Ordinance a person shall be deemed to belong to Kenya if he or she is a British subject and—

(a) was born in Kenya or of parents who at the time of his or her birth were ordinarily resident in Kenya; or

(b) has been ordinarily resident in Kenya continuously for a period of seven years or more and, since the completion of such period of residence, has not been ordinarily resident in any other part of His Majesty's dominions or in India or in any territory under His Majesty's protection or in which His Majesty has jurisdiction continuously for a period of seven years or more; or

(c) has obtained the status of a British subject by reason of the grant by the Governor of a certificate of naturalization under the British Nationality and Status of Aliens Act, 1914, or the British Nationality Act, 1948; or

(d) is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of a competent court or a deed of separation; or

(e) is a legitimate child, stepchild or adopted child having been adopted in a manner recognized by law, under the age of eighteen years, of a person to whom any of the foregoing paragraphs applies.

(3) For the purposes of this Ordinance a person shall be deemed to be an immigrant British subject if, at the date of the service upon him of a notice under section 7 of this Ordinance, or, in the case of a convicted person, the date upon which he is charged with the offence, he is a British subject and has been resident continuously in Kenya for less than a period of five years:

Provided that—

(i) in determining whether any person is an immigrant British subject, any period during which a deportation order, a restriction order or a security order made under this Ordinance has been in force as respects that person, or any period during which that person was in prison or in a detention camp or at large

Power to make
deportation
orders

Power to make
restriction
orders

Power to make
security
orders

after a warrant for his arrest had issued, or interned, or a war refugee, shall not be taken into account; and

(ii) any British subject in respect of whom the approval of the Secretary of State shall have been given to the making of a deportation order at any time before it is made shall be deemed to be an immigrant British subject notwithstanding that he may have been resident in Kenya for more than the period mentioned in this sub-section; and

(iii) residence in Kenya shall not be deemed to have ceased to be continuous merely by reason of the fact that it has been interrupted by a period or periods of absence from Kenya on leave or business, if such period does not exceed, or such periods do not in the aggregate exceed, twelve months.

Power to make deportation orders.

3. Subject to the provisions of this Ordinance, the Governor in Council may, if he thinks fit, make a deportation order in respect of an immigrant British subject who does not belong to Kenya and who is—

(a) a convicted person in respect of whom the court certifying to the Governor that he has been convicted recommends that a deportation order should be made in his case, either in addition to or in lieu of sentence; or

(b) an undesirable person.

Power to make restriction orders.

4. Subject to the provisions of this Ordinance, the Governor in Council may, if he thinks fit, make a restriction order in respect of any British subject who is—

(a) a convicted person in respect of whom the court certifying to the Governor that he has been convicted recommends that a deportation order or a restriction order should be made in his case, either in addition to or in lieu of sentence; or

(b) an undesirable person.

Power to make security orders.

5. (1) Subject to the provisions of this Ordinance, the Governor in Council may, if he thinks fit, either in addition to making a restriction order under section 4 of this Ordinance or separately, make a security order in respect of any British subject who is—

(a) a convicted person in respect of whom the court certifying to the Governor that he has been convicted

recommends that a deportation order or a restriction order or a security order either separately or in conjunction with either of those orders should be made in his case, either in addition to or in lieu of sentence; or

(b) an undesirable person.

(2) Where a security order is made as aforesaid, a deportation order or a restriction order, as in the case may be lawful and desirable, shall be made in conjunction therewith to come into force upon default of compliance with the security order within a time therein fixed.

(3) Where a security order has been complied with, the order shall, for the purposes of this Ordinance, be deemed to remain in force so long as the security given thereunder subsists, and where a security order is revoked the said security shall cease to have effect.

6. Except where a court has, in accordance with the provisions of this Ordinance, given a certificate recommending that an order should be made, no deportation order, restriction order or security order shall be made under this Ordinance except where a Judge or magistrate has, in accordance with the provisions of the next following two sections, made a report on the case and the Governor in Council is satisfied, having regard to the findings of fact and any conclusions of law as stated in the report, that such order may lawfully be made.

Procedure for making orders.

7. (1) A notice in the prescribed form shall be served upon the person charged specifying, with sufficient particulars to give him reasonable information as to the nature of the facts alleged against him, the grounds upon which it is proposed that an order may be made against him under this Ordinance, and requiring him to show cause, before a Judge or magistrate at a place and time to be stated in the notice, why such order should not be made in respect of him.

Service notice and arrest.

(2) In the case where it is proposed that a deportation order should be made but such order cannot be made without the approval of the Secretary of State, the notice shall contain information to that effect.

(3) In any case where it is intended to take proceedings against any person under this Ordinance on the ground that he is an undesirable person, and it is represented on oath or

affidavit to a Judge or magistrate that that person is an undesirable person, the Judge or magistrate may issue a warrant for his arrest, and if the notice mentioned in sub-section (1) of this section shall not have already been served upon him, it shall be so served not later than twenty-four hours after his apprehension.

(4) In any case where it is intended to take proceedings against any person under this Ordinance on the ground that he is an undesirable person, and it is represented on oath or affidavit to a Judge or magistrate that, in fact or according to reasonable suspicion, anything which is necessary to the conduct of the proceedings or tending to throw light on the question of whether or not the person is an undesirable person, is in any building, ship, aircraft, vehicle, box, receptacle or place, the Judge or magistrate may by warrant (called a search warrant) authorize a police officer or other person therein named, to search the building, ship, aircraft, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing, and if anything searched for be found, to seize it and carry it before the Judge or magistrate issuing the warrant.

(5) The provisions of sections 102 (1) and (3), 104, 106, 119 and 120 of the Criminal Procedure Code shall apply to search warrants issued under sub-section (4) of this section and any magistrate issuing a search warrant under that sub-section shall be deemed to have jurisdiction throughout Kenya. When any thing is seized and brought before a Judge or magistrate, it may be detained until the conclusion of the investigation, reasonable care being taken for its preservation and, after the order of the Governor in Council is known, it shall be returned to the person in whose possession it was found, or otherwise dealt with as the Governor in Council may direct or, in default of such direction, as the Judge or magistrate shall direct.

(6) Notwithstanding the provisions of section 77 of the Criminal Procedure Code, the Attorney General may request the Judge or magistrate to direct that any proceeding under this Ordinance in respect of a person charged with being an undesirable person, or any part of such proceeding, shall be held *in camera*; and, if the Attorney General shall certify to the Judge or magistrate that it is in his opinion desirable in the public interest that the proceeding, or such part thereof as the Attorney General may specify, shall be held *in camera*.

the public generally or any particular person or class of persons specified by the Attorney General shall not have access to, or be or remain in, any room or building in which such proceeding is held during such proceeding or part thereof.

8. (1) At the time appointed in the notice served under the foregoing section or at any adjournment of the hearing the Judge or magistrate shall take or consider such evidence upon oath or subject to the provisions of sub-section (3) of this section upon affidavit as is tendered in support of the charges, and where the evidence is on affidavit, the accused shall be informed of the general nature of such evidence, and where the evidence of witnesses is taken orally at the hearing, the witnesses may be cross-examined by the accused or his counsel, and the accused may on his own behalf call such witnesses and tender such other evidence as may be relevant upon the question at issue.

(2) The Judge or magistrate after considering the evidence adduced before him and making any further investigations which he may consider to be desirable, shall make a report to the Governor setting out his findings of fact and his conclusions on any questions of law involved, and, if he thinks fit, making a recommendation as to the issue in the case of any order or orders under this Ordinance.

(3) Notwithstanding the provisions of sub-section (1) of this section a judge or magistrate may, before permitting evidence to be given on affidavit, require production, by the party tendering such evidence, of a certificate signed by the Member that it is, in his opinion, necessary that the evidence be given on affidavit, and upon production of any such certificate the evidence on affidavit shall be received.

9. Where a Judge, magistrate or a court recommends the making of a deportation order or restriction order or security order on the grounds that the person charged is an undesirable person or a convicted person, the person charged may, if the Judge, magistrate or court, as the case may be, shall so order, be detained in such manner as the Judge, magistrate or court may direct pending the decision of the Member for a period not exceeding twenty-eight days and, where reference to the Secretary of State is necessary before a deportation order is made, such further period as may be necessary for that purpose, and shall be deemed to be in legal custody whilst so detained.

Orders
of
Orders

Powers of Judges
or magistrates.

Execution
of
Orders

Detention in
custody pending
decision.

o. 56/50.

Contents
of orders.

10. (1) Every security order and every deportation order shall be in the prescribed form.

(2) Every restriction order shall be in the prescribed form and shall state the area or areas which the person to whom it relates is prohibited from entering or leaving.

(3) A deportation order or restriction order may be expressed to be in force for a time limited therein or for an unlimited time, and, when the person charged is not taken into custody pending the execution thereof, shall prescribe a time within which the person charged may of his own volition comply therewith.

(4) A restriction order may require the person charged to report himself to the nearest administrative officer or officer of police at intervals of not less than seven days or such longer intervals as may be stated in the order.

Execution
of orders.

11. (1) As soon as practicable after a deportation order or restriction order or security order is made, a copy thereof shall be served upon the person charged.

(2) A person with respect to whom a security order has been made may be detained in such manner as may be directed by the Member until such order shall have been complied with:

Provided that, without prejudice to the provisions of sub-sections (3) and (4) of this section, where the security order is not complied with, no person shall be detained under this sub-section for a period exceeding twenty-eight days.

(3) Subject to the provisions of sub-section (5) of this section, a person with respect to whom a deportation order is in force may be detained in such manner as may be directed by the Member, and may be placed on a ship, aircraft, train or other vehicle about to leave Kenya and shall be deemed to be in legal custody while so detained and until the ship, aircraft, train or other vehicle finally leaves Kenya.

(4) Subject to the provisions of sub-section (5) of this section a person with respect to whom a restriction order is in force may be detained in such manner as may be directed by the Member so far as necessary for the purpose of removing him from any place which he is prohibited from entering or to any place which he is prohibited from leaving, and shall be deemed to be in legal custody while so detained.

(5) No person shall be detained under sub-section (3) or sub-section (4) of this section for a period exceeding ninety days and, if at the expiration of such period he has not been removed or deported as aforesaid, the restriction order or deportation order as the case may be shall cease to have effect.

(6) The master of a ship, or aircraft, or the guard of a train, or person in charge of a vehicle about to call at any port or place outside Kenya shall, if so required by the Member or by a police officer or an immigration officer, receive a person against whom a deportation order has been made and his dependants (if any) on board the ship, aircraft, train or vehicle and afford him and them a passage to that port or place and proper accommodation and maintenance during the passage.

(7) Any person who fails to comply with the provisions of sub-section (6) of this section, shall be guilty of an offence against this Ordinance and liable to a fine not exceeding four thousand shillings.

12. (1) Where a deportation order is made, the Member may, if he thinks fit, apply any money, and may sell any property of the person charged and apply the proceeds, in payment of the whole or any part of the expenses of or incidental to the voyage from Kenya and the maintenance until departure of that person and his dependants (if any).

(2) Where a restriction order is made, the Member may, if he thinks fit, apply any money, and may sell any property of the person charged and apply the proceeds, in payment of the whole or any part of the expenses of or incidental to the removal of that person to any place in pursuance of that order and, if necessary, the maintenance of that person while the order is in force.

(3) Any sale or disposal of any property by a person in respect of whom a deportation order or restriction order has been made shall be void and ineffectual to pass any title to such property, unless the expenses mentioned in sub-section (1) or (2) of this section have been paid and the Member has consented in writing to such sale.

(4) Except so far as they are defrayed under sub-section (1) or (2) of this section, any such expenses shall be payable out of public funds.

Persons under-
going sentenceRevocation and
variation
of orders

Penalty.

Expenses.

Penalties for
breach of order

Persons under-
going sentence.

13. If a person in respect of whom a security order or restriction order or deportation order is made under this Ordinance has been sentenced to any term of imprisonment, such sentence shall be served before the order is carried into effect unless the Governor otherwise directs.

Revocation and
variation
of orders

14. (1) The Governor in Council by order may—

(a) at any time revoke any deportation order or restriction order or security order;

(aa) at any time vary any restriction order in respect of the area or areas which the person to whom it relates is prohibited from entering or leaving and in respect of any matters arising out of such variation;

and may attach to the permission a condition suspending the operation of the order during the absence of such person from any such area or from the Colony, or conditions as to security for good behaviour or otherwise, and may also vary, cancel or add a condition requiring such person to report himself;

(c) vary a deportation order so as to permit the person mentioned therein to enter Kenya and may attach to such permission conditions as to security or otherwise.

(2) Subject to the provisions of sub-section (1) of this section, any deportation order, restriction order or security order made by the Governor in Council under this Ordinance shall be final and shall not be called in question, reviewed, quashed or varied by any court in the Colony.

(3) Any order made under paragraph (b) or paragraph (c) of sub-section (1) of this section may be expressed to have effect for the duration of the order thereby varied or for any lesser period.

(4) As soon as practicable after an order has been made under this section a copy thereof shall be served upon or sent to the person in respect of whom the order is made.

(5) The Governor in Council may exercise the powers conferred upon him by sub-section (1) of this section in respect of a deportation order made under the Deportation Ordinance (now repealed), as if such deportation order were a deportation order or a restriction order made under this Ordinance.

(Ordinance No. 56 of 1950.)

as ordered, or having, in pursuance of permission given as hereinbefore provided, left or entered any place, wilfully fails

Pena
break

Cap. 61 of the
1926 Edition of
the Laws of
Kenya.

to observe any condition attached to such permission, he shall be liable on conviction to imprisonment not exceeding twelve months or a fine not exceeding five thousand shillings or both such imprisonment and fine, and to be again removed under the original order, or if he is an immigrant British subject, the Governor in Council may forthwith and without any further report by a Judge or magistrate make a deportation order in respect of him, and the provisions of section 11, 12 and 13 of this Ordinance shall apply accordingly.

(2) If a person in respect of whom a deportation order is in force returns or attempts to return to Kenya in contravention of the provisions of the order, or having entered Kenya in pursuance of permission given as hereinbefore provided, wilfully fails to observe any condition attached to such permission, he shall be liable on conviction to imprisonment for a period not exceeding ten years or a fine not exceeding ten thousand shillings or both such imprisonment and fine, and to be again deported under the original order, and the provisions of sections 11, 12 and 13 of this Ordinance shall apply accordingly.

(3) Nothing in this section shall prevent the making of a restriction order or a deportation order in accordance with the provisions of this Ordinance in consequence of a conviction for an offence under this Ordinance.

16. Any person who, without lawful excuse, knowingly harbours or conceals any person who—

Penalty for harbouring.

(a) is within Kenya or an area thereof in contravention of the terms of a deportation order or restriction order; or

(b) having entered Kenya or any area thereof in pursuance of permission given as hereinbefore provided, has wilfully failed to observe any condition attached to such permission,

shall on conviction be liable to a fine not exceeding five thousand shillings.

17. No proceedings shall be instituted under this Ordinance except by the Attorney General or with his previous sanction in writing.

Institution of proceedings.

18. In any proceedings under this Ordinance—

Evidence.

(i) the burden of proof that the person charged belongs to Kenya shall be upon that person;

Report to
Secretary of
State.
Member may
make orders in
relation to
persons subject
to restriction
orders.

Rules.
2/2/50

- (ii) a document purporting to be an order made under this Ordinance shall, until the contrary is proved, be presumed to be such an order;
- (iii) any order made under this Ordinance shall be presumed, until the contrary is proved, to have been validly made and to have been made on the date upon which it purports to have been made; and
- (iv) any certificate under sub-section (3) of section 8 of this Ordinance purporting to be signed by the Member shall, until the contrary is proved, be deemed to have been so signed.

Report to Secretary of State.

19. The Governor shall forthwith report to the Secretary of State every order made by him under this Ordinance on the grounds thereof and the proceedings thereunder.

Member may make orders in relation to persons subject to restriction orders.

20. (1) The Member may by order impose, in relation to persons in respect of whom restriction orders are in force, and either generally or in any specific case, such restrictions as to residence within the area specified in the order, reporting to the police, registration, occupation, employment, visitors, censorship and receipt or despatch of communications, use or possession of any vehicle, boat, aircraft, machine, radio or other apparatus, camera, arms and explosives, or other article, or such other like restrictions as he may deem

G.N. 590/53, 107/118, 10/118

and may from time to time by order vary or revoke any such restrictions.

(2) If any person in respect of whom a restriction order is in force shall fail to comply with the terms of any order made under the provisions of sub-section (1) of this section, he shall be guilty of an offence and liable on conviction before a magistrate of the first or second class, to imprisonment for a term which may extend to six months or to a fine not exceeding five hundred shillings or to both such imprisonment and fine, and, if he is an immigrant British subject, the Governor in Council may, forthwith, and without any further report by a Judge or magistrate, make a deportation order in

to notify the proceedings

(3) The Member may exercise the powers conferred upon him by sub-section (1) of this section in relation to any person in respect of whom a deportation order has been made under the Deportation Ordinance (now repealed) as if such deportation order were a restriction order made under this Ordinance."

Rules.

G.N. 536/50

(2) In particular and without prejudice to the generality of the foregoing sub-section, the Governor in Council may make rules—

(a) prescribing the form of certificate to be used by a court certifying a conviction and recommending the making of a deportation order, restriction order or security order under section 3, 4 or 5 of this Ordinance;

(b) prescribing the form of notice to be served under section 7 of this Ordinance;

(c) regulating the procedure at inquiries by a Judge or magistrate under section 8 of this Ordinance; and

(d) prescribing forms of deportation orders, restriction orders and security orders.

22. The Governor may appoint any magistrate possessing the qualifications required to be possessed by a Judge of the Supreme Court, to be a magistrate for the purposes of this Ordinance.

23. The Deportation Ordinance shall cease to apply to British subjects.

Appointment of magistrates.

Repeal.

Cap. 61.

7. (1) No person shall, except with the consent in writing of the Board in the exercise of its powers under sub-section (1) of section 8 of this Ordinance—
(a) sell, lease, sub-lease, assign, mortgage or otherwise dispose of, or in any manner whatsoever, whether of a like nature to the foregoing or not, any land, or any right, title or interest, whether vested or contingent, in or over any land to any other person;
(b) acquire any right, title or interest in or over any land for or on behalf of any person or of any company registered under the Companies Ordinance, 1933;
(c) sell, assign, transfer or otherwise dispose of, in any manner whatsoever, any share, share warrant, debenture or stock in any company which owns

No person to acquire land without consent of Board.

No. 37 of 1949

ORDINANCE No. 38 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION
1—Short title.

SECTION
2—Repeal and replacement of section 7 of the principal Ordinance.

Date of commencement.

AN ORDINANCE TO AMEND THE LAND CONTROL ORDINANCE, 1944

8th September, 1949

Short title.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

No. 22 of 1944.

1. This Ordinance may be cited as the Land Control (Amendment) Ordinance, 1949, and shall be read and construed as one with the Land Control Ordinance, 1944 (hereinafter referred to as the principal Ordinance).

Repeal and replacement of section 7 of the principal Ordinance.

2. The following section shall be substituted for section 7 of the principal Ordinance:—

No person to alienate land without consent of Board.

7. (1) No person shall, except with the consent in writing of the Board in the exercise of its powers under sub-section (1) of section 8 of this Ordinance—

- (a) sell, lease, sub-lease, assign, mortgage or otherwise by any means whatsoever, whether of a like nature to the foregoing or not, alienate, encumber, charge or part with the possession of any land, or any right, title or interest, whether vested or contingent, in or over any land to any other person;
- (b) acquire any right, title or interest in or over any land for or on behalf of any person or of any company registered under the Companies Ordinance, 1933;
- (c) sell, assign, transfer or otherwise dispose of, in any manner whatsoever, any share, share warrant, debenture or stock in any company which owns

No. 28 of 1933.

1949

Land Control (Amendment)

No. 38

any interest in any land situated in the Highlands, or in any company which may hereafter acquire any interest in any such land:

Provided that nothing in this sub-section shall apply to—

- (i) any gift of land by way of testamentary disposition;
- (ii) any such transaction made by or in favour of the Crown;
- (iii) any such transaction to which the Commissioner has given his consent since the date on which this Ordinance is deemed to have come into operation.

(2) The secretary and every director of any company mentioned in paragraph (c) of sub-section (1) of this section shall refuse to register the transfer of any share, share warrant, debenture or stock in, or mortgage or charge over, the assets of such company unless the Board has given its consent to such transaction.

(3) Every agreement for sale, lease, mortgage or for any other transaction referred to in sub-section (1) of this section shall be reduced into writing and every such agreement shall be void for all purposes—

- (a) if the Board refuses its consent thereto, as from the date of such refusal; or
- (b) if the Board has not signified its consent thereto within a period of four months from the date of the agreement, as from the expiration of that period,

and, if any money has been paid under any agreement which becomes void as aforesaid, such money shall be recoverable as a civil debt from the party to whom it has been paid.

(4) Nothing in this section shall be deemed to preclude any person, without the consent of the Board from—

- (a) mortgaging any of his land to the Land and Agricultural Bank of Kenya;
- (b) depositing, by way of equitable mortgage or charge, his title deeds to any land, or any share, share transfer, debenture or stock in any company mentioned in paragraph (c) of sub-section (1) of this section, with

No. 38

Land Control (Amendment)

any branch of Barclays Bank (Dominion, Colonial and Overseas), the National Bank of India, Limited, the Standard Bank of South Africa, Limited, or with any bank or body of persons, whether corporate or unincorporate, approved by the Governor in Council;

(c) mortgaging or charging any part of his land to a mortgagee or chargee, as the case may be, who enters into a covenant in the mortgage or charge to the effect that he will not exercise his powers of sale or foreclosure except with the consent of the Board.

... his consent since the date on which this Ordinance is deemed to have come into operation.

(2) The secretary and every director of any company mentioned in paragraph (a) of sub-section (1) of this section shall refuse to register the transfer of any share, share warrant, debenture or stock in, or mortgage or charge over, the assets of such company unless the Board has given its consent to such transaction.

(3) Every agreement for sale, lease, mortgage or for any other transaction referred to in sub-section (1) of this section shall be reduced into writing and every such agreement shall be void for all purposes.

(a) If the Board refuses its consent thereto, as from the date of such refusal, or
(b) If the Board has not signified its consent thereto within a period of four months from the date of the agreement, as from the expiration of that period,

and, if any money has been paid under any agreement which becomes void as aforesaid, such money shall be recoverable as a civil debt from the party to whom it has been paid.

(4) Nothing in this section shall be deemed to preclude any person, without the consent of the Board from—
(a) mortgaging any of his land to the Land and Agricultural Bank of Kenya;

(b) depositing, by way of equitable mortgage or charge, his title deeds to any land, or any share, share warrant, debenture or stock in any company mentioned in paragraph (a) of sub-section (1) of this section, with

Date of operation - 1st January 1950

ORDINANCE No. 39 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

See G.O. 1275/49.

ARRANGEMENT OF SECTIONS

- | | |
|--|--|
| SECTION | SECTION |
| 1—Short title, commencement and duration. | 11—Powers of committee. |
| 2—Interpretation. | 12—Certificate of exemption. |
| 3—Application. | 13—Adult male may be declared a voluntarily unemployed person. |
| 4—Labour Exchange Committees. | 14—Powers of committee when adult male declared a voluntarily unemployed person. |
| 5—Labour reception centres. | 15—Adult males may be kept in labour reception centre. |
| 6—Unemployed persons to report. | 16—Appeal. |
| 7—Registration of unemployed persons. | 17—Evidence, burden of proof. |
| 8—Arrest for disobedience of order. | 18—Rules. |
| 9—Administrative officer may arrest adult male if he has reason to believe he has failed to comply with section 6. | 19—Exemptions. |
| 10—Court may order convicted adult males to be taken before committee. | 20—Penalty. |

AN ORDINANCE TO MAKE PROVISION FOR THE EMPLOYMENT OF CERTAIN VOLUNTARILY UNEMPLOYED PERSONS

By Notice

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title, commencement and duration.

1. This Ordinance may be cited as the Voluntarily Unemployed Persons (Provision of Employment) Ordinance, 1949, and shall come into force by notification in the Gazette and shall expire at the expiration of a period of one year from that date:

Provided that, if at any time while this Ordinance is in force a resolution or resolutions of the Legislative Council is or are passed praying that this Ordinance should be continued in force for further period or periods of one year at a time from the time at which it would otherwise expire, the Governor in Council may by order direct that this Ordinance shall continue in force for that further period or periods as the case may be.

31. 12. 1951

2. (1) In this Ordinance, unless inconsistent with the context—

31. 12. 1952 Interpretation - G.N. 1429

“adult male” means a male person who has attained the age of eighteen years and has not attained the age of forty-five years, other than a person who is of unsound mind, blind,

31. 12. 1953 - G.N. 1401/52
31. 12. 1954 - G.N. 2000/53

crippled or infirm or who is certified by a Government Medical Officer to be so unfit as to be incapable of engaging in labour;

"certificate of exemption" means an exemption certificate in the prescribed form issued by the Member or by a committee or by any other person authorized in writing in that behalf by the Member or a committee, exempting any person from the provisions of this Ordinance;

"committee" means a Labour Exchange Committee appointed under the provisions of section 4 of this Ordinance;

No. 16 of 1931. "court" means any court mentioned in section 3 of the Courts Ordinance, 1931, and includes a Native Tribunal;

"declared area" means any area in the Colony to which the provisions of this Ordinance are applied;

No. 2 of 1938. "labour exchange" means a labour exchange established under the provisions of the Employment Ordinance, 1938;

"labour reception centre" means any place established by the Member, by notice in the Gazette, to be a labour reception centre for the purposes of this Ordinance;

"Member" means the Member of the Executive Council of the Colony for the time being responsible for labour matters;

"national employment" means any employment, which a committee considers to be of national importance, in any civilian capacity with His Majesty's Forces, in the service of the Government of the Colony, of the East Africa High Commission, or of any Local Government;

"unemployed person" means an adult male other than a person—

(a) who is in regular employment; or

(b) who has a lawful and regular means of livelihood other than an income derived from employment; or

(c) who has, up to a date during the previous three months, been in receipt of a lawful and regular income sufficient for his livelihood whether or not derived from employment.

"voluntarily unemployed person" means an unemployed person who is not genuinely seeking employment.

(2) Any committee, officer in charge of a labour exchange or any other body or person concerned with the

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Voluntarily Unemployed Persons

No. 39

administration or enforcement of this Ordinance may determine the age of any male person by his physical appearance and by such other evidence (if any) as may be available, and the age so determined shall, in the absence of satisfactory evidence to the contrary, be deemed to be the age of that person for the purposes of this Ordinance.

Registration of unemployed persons

3. The Governor may, by notice in the Gazette, apply the provisions of this Ordinance to any area in which a labour exchange has been established, from such date as may be specified in such notice.

Application. G.O. 1275/49. 46/50

4. (1) After consultation with the local authorities concerned, the Member may, by notice in the Gazette, appoint Labour Exchange Committees and, in such notice, shall specify the areas over which such committees shall have jurisdiction.

Labour Exchange Committees.

(2) Separate committees may be appointed to deal with each community and the chairman and other members of each committee shall hold office during the pleasure of the Member.

Arrest for disobedience of order

(3) Each committee shall act by majority and the chairman of each committee shall have a casting vote.

(4) One-third of the members of a committee shall constitute a quorum.

Administrative officer may arrest adult male if he has reason to believe he has failed to comply with section 6

(5) In any case of urgency the chairman may exercise all or any of the powers of the committee, reporting to the committee at its next meeting any action taken by him.

5. The Member may, by notice in the Gazette, establish labour reception centres in any declared area.

Labour reception centres. G.O. 71/50. 46/50

6. (1) All unemployed persons within any declared area, shall within seven days of arriving in such area, or within seven days of becoming unemployed in such area, or within seven days after such area has become a declared area, whichever shall be the later, report to the officer in charge of a labour exchange within such area, unless the unemployed person is in possession of a certificate of exemption from the operation of this Ordinance or is exempted under the provisions of section 19 thereof.

Unemployed persons to report.

Powers of committee.

(2) Failure to report as provided by sub-section (1) of this section shall be an offence against this Ordinance.

Certificate of exemption.

No. 39

Registration
of unemployed
persons.

7. The officer in charge of a labour exchange shall register, in such manner as may be prescribed, any unemployed person who reports to him, and shall either offer such unemployed person suitable employment or shall issue to him a certificate, in the prescribed form, setting out the date upon which he reported and the date upon which he shall again report to such officer or present himself to the committee:

Provided that should any such unemployed person refuse to accept an offer of employment made to him by the officer in charge of a labour exchange and should such officer be of the opinion that he is a voluntarily unemployed person, such officer shall order such unemployed person to report to the committee for the declared area in which such labour exchange is situated, and endorse such order upon such certificate.

Arrest for
disobedience of
order.

8. Any unemployed person who, without reasonable cause, fails to report as required by a certificate issued under the provisions of section 7 of this Ordinance, or disobeys any order issued under the provisions of that section shall be guilty of an offence against this Ordinance and may be arrested, without a warrant, by any of the persons mentioned in section 9 of this Ordinance, and shall then be taken before a committee.

Administrative
officer may
arrest adult
male if he has
reason to
believe he
has failed to
comply with
section 6.

9. Any administrative officer, or person authorized in writing so to do by an administrative officer, may arrest without a warrant, any adult male whom he has reason to believe is an unemployed person who has committed an offence under section 6 of this Ordinance and take him before a committee.

Court may
order convicted
adult male to be
taken before
committee.

10. A court, upon convicting any adult male of any offence against this Ordinance may, in addition to any punishment which may be imposed for such offence, order that the adult male so convicted shall, either forthwith, or on the expiry of any such punishment, be taken before a committee.

Powers of
committee.

11. Where any adult male appears, or is brought, before a committee, the committee may require him to show cause why he should not be declared by such committee to be a voluntarily unemployed person.

Certificate
of exemption.

12. If an adult male shows cause, as required by section 11 of this Ordinance, to the satisfaction of the committee, he shall be furnished, by the committee, with a certificate of exemption.

13. If an adult male fails to show cause, as provided by section 11 of this Ordinance, to the satisfaction of the committee, the committee may declare him to be a voluntarily unemployed person.

Adult male may be declared a voluntarily unemployed person.

14. When any adult male has been declared to be a voluntarily unemployed person, a committee may—

Powers of committee when adult male declared a voluntarily unemployed person.

(a) permit him to engage in any employment approved by the committee for such period as the committee may approve;

(b) direct him to enter into a written contract of service, for any period not exceeding six months, in any paid national employment;

(c) direct him to go to, and remain in, for such time as may be directed, a rehabilitation or training centre; or

(d) if such adult male is not domiciled within the declared area in respect of which the committee has jurisdiction and he has a regular place of residence outside such area, and if he has refused or failed to engage in employment approved by the committee under paragraph (a) of this section, or has failed to comply with any direction given under paragraph (b) or (c) of this section, then the committee may direct him to be repatriated to such place of residence and order him, in writing, to remain outside such declared area and any other declared area, for such period as may be specified in such order.

Any adult male who fails to comply with any direction or order given to him under the provisions of paragraph (b), (c) or (d) of this section, or who, without reasonable cause, leaves any employment in which he has been permitted to engage under the provisions of paragraph (a) of this section within the period approved by the committee or any national employment to which he has been directed under paragraph (b) of this section or any rehabilitation or training centre to which he has been directed under paragraph (c) of this section, shall be guilty of an offence against this Ordinance.

15. (1) A committee may direct that any adult male appearing, or brought, before it shall reside in a labour reception centre for any period not exceeding seven days, while such inquiries as the committee may consider necessary are

Adult males may be kept in labour reception centre.

being conducted or while such adult male is awaiting transport to the place of employment to which he has been directed, or to his regular place of residence.

(2) Failure to comply with a direction made under subsection (1) of this section shall be an offence against this Ordinance.

Appeal.

16. (1) Any adult male who is aggrieved by a declaration made under section 13, or by a direction of a committee, made under paragraph (b) of section 14 of this Ordinance, may appeal against such declaration or direction to a first class magistrate.

(2) On any such appeal, the magistrate may, after recording evidence—

- (a) quash or vary the declaration or direction; or
- (b) remit it to the committee to be reconsidered or for further facts to be found; or
- (c) make such other order as the justice of the case may require.

Evidence
burden of
proof.

17. In any proceeding under this Ordinance, either in court or before a committee, in which it is in issue whether any adult male had, or had not, been in a declared area for over seven days from the date of his arrival, or from the date of his becoming unemployed, therein, as the case may be, the burden of proving that he had been in the declared area for less than seven days shall rest upon such adult male.

Rules.

G.O. 72/50.
73/50.

18. (1) The Member may make rules—

- (a) providing for the procedure to be followed by committees;
- (b) for the proper feeding of adult males residing in labour reception centres;
- (c) for the management of labour reception centres and the attendance, control and discipline of adult males residing therein;
- (d) prescribing anything which, under the provisions of this Ordinance, may be prescribed;
- (e) generally for the better carrying out of the provisions of this Ordinance;

1949 *Voluntarily Unemployed Persons*

No. 3

(f) prescribing a penalty not exceeding a fine of one hundred shillings or one month's imprisonment, with or without hard labour, for breach of any provision of such rules.

(2) Such rules shall be laid on the table of the Legislative Council at its next meeting.

19. The Member or any person authorized by him in that behalf by notification in the Gazette may, in his discretion, exempt any person, or class of persons, from the operation of this Ordinance or any part thereof.

20. Any person who is guilty of an offence against this Ordinance, shall be liable, for a first offence, to imprisonment, with or without hard labour, for a period which may extend to three months, or to a fine not exceeding Sh. 500 or to both such fine and imprisonment, and for a second or subsequent offence, shall be liable to imprisonment for a term which may extend to twelve months and to a fine not exceeding Sh. 2,000, or to both such fine and imprisonment.

as follows:—

1. This Ordinance may be cited as the *Voluntarily Unemployed Persons Ordinance, 1949*.

2. (1) In this Ordinance, unless the context otherwise requires—

“officer” means any person in the service of the Government of the Colony whose salary does not exceed—

(a) in the case of a European officer, £840 per annum;

(b) in the case of an Asian officer, £220 per annum;

(c) in the case of an African officer, £348 per annum.

(2) The powers conferred upon the head of a department by this Ordinance may be exercised by such other senior officer of the department as the Governor may, by notice published in the Gazette, appoint.

3. If any officer—

(a) wilfully or negligently contravenes or fails to comply with any regulation or instruction in force in the department in which he is serving; or

Exemptions
Short title
Interpretation
Department
Evidence may be on oath
Payment of fine by deduction from salary
Penalty

Date of commencement

Short title

Interpretation

Departmental offences

27/12/49
11/24/50
1/11/52

ORDINANCE No. 40 of 1949

Assented to in His Majesty's name this eighth day of
September, 1949.

J. D. RANKINE,
Governor's Deputy.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title.
- 2—Interpretation.
- 3—Departmental offences.
- 4—Evidence may be on oath.
- 5—Payment of fine by deduction from salary.

SECTION

- 6—Monthly returns and review by Governor.
- 7—Ordinance not to affect powers otherwise conferred.
- 8—Power to make rules.
- 9—Saving.
- 10—Repeal.

**AN ORDINANCE TO REPEAL THE DEPARTMENTAL
OFFENCES ORDINANCE, 1928, AND TO MAKE
BETTER PROVISION FOR THE PUNISHMENT OF
DEPARTMENTAL OFFENCES**

Date of
commencement.

8th September, 1949

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

Short title.

1. This Ordinance may be cited as the Departmental
Offences Ordinance, 1949.

Interpretation.

2. (1) In this Ordinance, unless the context otherwise
requires—

“officer” means any person in the service of the Govern-
ment of the Colony whose salary does not exceed—

- (a) in the case of a European officer, £840 per annum;
- (b) in the case of an Asian officer, £550 per annum;
- (c) in the case of an African officer, £348 per annum.

(2) The powers conferred upon the head of a department
by this Ordinance may be exercised by such other senior
officer of the department as the Governor may, by notice
published in the Gazette, appoint.

Departmental
offences.

3. If any officer—

- (a) wilfully or negligently contravenes or fails to comply
with any regulation or instruction in force in the
department in which he is serving; or

G.N. 1243/49
" 279/50.
" 1154/50.
" 1411/55.

- (b) disobeys or neglects to obey any lawful order of any officer in authority over him; or
- (c) is impertinent or disrespectful to any officer in authority over him or to any member of the public; or
- (d) is intoxicated or is under the influence of drink or drugs while on duty; or
- (e) in any other way conducts himself or acts in a manner calculated to prejudice the work or efficiency of the department in which he is serving, or so as unnecessarily to interfere with the work of another department,

the head of the department in which any such officer is serving may, after such investigation as may be prescribed, fine such officer an amount not exceeding one-quarter of the officer's monthly salary:

Provided, however, that where an officer commits more than one departmental offence, the fines imposed shall not in the aggregate exceed one-quarter of such officer's monthly salary.

4. The evidence adduced at an investigation held pursuant to section 3 of this Ordinance may, in the discretion of the head of the department, be taken upon oath or affirmation, as the case may be.

5. Any fine imposed under section 3 of this Ordinance may be paid by monthly instalments by deduction from the officer's salary. Where the head of the department authorizes payment of any fine by monthly instalments, he shall specify the number of instalments in which such fine shall be paid.

6. (1) The head of every department shall, at the end of each month, submit to the Governor, through the Chief Secretary, a return, in such form as may be prescribed, giving particulars of all investigations held and fines imposed on officers during the month.

(2) The Governor shall review such investigations and fines and if necessary for this purpose may require any

Ordinance
not to affect
powers other
wise conferred.

Power to
make rules.
Evidence may
be on oath.

Payment of
fine by
deduction
from salary.

Monthly
returns and
review by
Governor.

additional information from the head of the department and may set aside the finding of the head of the department and cancel or reduce any fine imposed.

(3) The decision of the Governor under sub-section (2) of this section shall be final and conclusive and shall operate as an appeal from the finding of the head of a department and no other appeal shall lie from such finding.

(4) Where the Governor has, pursuant to sub-section (2) of this section, cancelled or reduced any fine imposed on an officer, a refund of such fine or part thereof, as the case may be, shall be made to the officer.

Ordinance
not to affect
powers other-
wise conferred.

7. Nothing in this Ordinance shall be deemed—

(a) to derogate from the powers otherwise conferred upon any Government officer to impose a fine upon any person in the service of the Government; or

(b) to apply to any fine so imposed.

Power to
make rules.

G.N. 1178/49
455/50

8. The Governor may make rules generally to carry out the provisions of this Ordinance, and, in particular, but without prejudice to the generality of the powers hereby conferred, for—

(a) regulating the exercise of the powers conferred on a head of department;

(b) prescribing the type of investigation to be made by a head of department and regulating the procedure thereat;

(c) prescribing the purpose for which and the manner in which fines imposed under this Ordinance shall be applied.

Saving.

9. (1) Nothing in this Ordinance shall relieve any person from any of the consequences of any act or default punishable both under this Ordinance and under any other Ordinance or law, so, however, that a person shall not be twice punished in respect of the same offence.

(2) Notwithstanding the provisions of sub-section (1) of this section, in any case in which the Governor shall declare by writing under his hand that he had set aside a finding and cancelled the fine imposed on a person in respect of an offence against this Ordinance in order that criminal proceedings may be taken against such person in a court of law, such person shall not be deemed to have been punished for, or to have expiated, such offence, and the defence of *autrefois* convict shall not be open to such person.

10. The Departmental Offences Ordinance, 1928 is repealed.

Repeal.
No. 35 of 1928.

1. This Ordinance may be cited as the Increase of Rent (Restriction) (Amendment) Ordinance, 1949, and shall be read and construed as one with the Increase of Rent (Restriction) Ordinance, 1949 (hereinafter referred to as the principal Ordinance).

Short title.

No. 22 of 1949.

2. Section 7 of the principal Ordinance is amended by deleting the proviso and substituting therefor the following:—
Provided that an appeal from any such determination shall lie on any point of law, or of mixed fact and law, to the Supreme Court.

Amendment of section 7 of the principal Ordinance.

3. Sub-section (3) of section 34 of the principal Ordinance is amended by deleting the words "or the Court of Appeal for Eastern Africa" where they occur therein.

Amendment of section 34 (3) of the principal Ordinance.

ORDINANCE No. 41 of 1949

Assented to in His Majesty's name this eighth day of September, 1949.

J. D. RANKINE,
Governor's Deputy.

AN ORDINANCE TO AMEND THE INCREASE OF RENT (RESTRICTION) ORDINANCE, 1949

Date of commencement.

8th September, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Increase of Rent (Restriction) (Amendment) Ordinance, 1949, and shall be read and construed as one with the Increase of Rent (Restriction) Ordinance, 1949 (hereinafter referred to as the principal Ordinance).

No. 22 of 1949.

Amendment of section 7 of the principal Ordinance.

2. Section 7 of the principal Ordinance is amended by deleting the proviso and substituting therefor the following:—

Provided that an appeal from any such determination shall lie on any point of law, or of mixed fact and law, to the Supreme Court.

Amendment of section 34 (3) of the principal Ordinance.

3. Sub-section (3) of section 34 of the principal Ordinance is amended by deleting the words "or the Court of Appeal for Eastern Africa" where they occur therein.

ORDINANCE No. 42 of 1949

Assented to in His Majesty's name this eleventh day of November, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS**SECTION**

- 1—Short title.
- 2—Repeal of sections 8 and 11 of Ordinance 4 of 1937.
- 3—Repeal and replacement of section 19 of Ordinance 4 of 1937.
- 4—Amendment of section 21 of Ordinance 4 of 1937.

SECTION

- 5—Replacement of paragraph (b) of section 24 of Ordinance 4 of 1937.
- 6—Amendment of section 34 of Ordinance 4 of 1937.
- 7—Amendment of section 35 of Ordinance 4 of 1937.
- 8—Amendment of section 36 of Ordinance 4 of 1937.

**AN ORDINANCE TO AMEND THE KENYA
REGIMENT (TERRITORIAL FORCE)
ORDINANCE, 1937**

By Notice

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Kenya Regiment (Territorial Force) (Amendment) Ordinance, 1949, shall be read as one with the Kenya Regiment (Territorial Force) Ordinance, 1937, hereinafter referred to as the principal Ordinance, and shall come into operation upon such date as the Governor may, by notice in the Gazette, appoint.
2. Sections 8 and 11 of the principal Ordinance are repealed.

Short title and commencement.

No. 4 of 1937.

22.5.50 —
G.O. 619/50

3. Section 19 of the principal Ordinance is repealed and the following substituted therefor:—

Repeal of sections 8 and 11 of Ordinance 4 of 1937.

Repeal and replacement of section 19 of Ordinance 4 of 1937.

Retirement of officers.

“19. (1) The Governor may place officers on the retired list.

(2) The ages of compulsory retirement of officers of the Regiment shall be as prescribed.

(3) Officers on the retired list who have served for ten years in the Regiment as commissioned officers on the active list may, with the approval of the Governor, retain their rank and wear the prescribed uniform:

Provided that, in exceptional circumstances, the Governor may, with the approval of the Secretary of State, grant such privileges to officers with less than ten years' service in the Regiment as commissioned officers on the active list.

Amendment of
section 21 of
Ordinance 4
of 1937.

4. Section 21 of the principal Ordinance is amended—

- (i) by substituting for the last sentence of sub-section (1) thereof the following words:—

“The allowance payable to such members for the maintenance of their uniforms shall be such as may be prescribed.”;

- (ii) by repealing sub-section (2) thereof, and substituting therefor the following:—

“(2) Arms, ammunition, and equipment, shall ordinarily be kept in armouries, under guard, but may, under prescribed conditions be issued to officers and members, and each officer or member to whom a rifle or other firearm has been issued shall be bound to keep it in his personal possession, shall be responsible for its safe keeping and maintenance in good order and condition, and shall produce it for inspection whenever called upon to do so.”;

- (iii) by adding thereto the following new sub-sections:—

“(4) Any officer or member of the Regiment to whom any rifle or other firearm, ammunition, grenade, or explosive has been issued who sells or otherwise disposes of, or makes away with, the same without lawful authority shall be guilty of an offence against this Ordinance and, on conviction by a subordinate court of the first class, shall be liable to imprisonment for a term which may extend to five years.

(5) Any officer or member of the Regiment to whom any rifle or other firearm or ammunition, grenade, or explosive has been issued who negligently loses the same or fails to produce it when called upon to do so, or wilfully and without lawful authority expends such ammunition, shall be guilty of an offence against this Ordinance, and on conviction by a subordinate court of the first or second class, shall be liable for a first offence to a fine

not exceeding fifty pounds, and for a second or subsequent offence to imprisonment for a term which may extend to one month or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

(6) A subordinate court of the first class shall, notwithstanding anything contained in Part II of the Criminal Procedure Code, have power to impose any sentence which may be imposed under sub-section (4) of this section."

5. Paragraph (b) of section 24 of the principal Ordinance is repealed and the following substituted therefor:—

Replacement of paragraph (b) of section 24 of Ordinance 4 of 1937.

"(b) no sentence of a court martial upon the trial of an officer or a member of the Regiment or Reserve shall be carried into execution unless confirmed by the Governor or such officer as he may appoint on his behalf;"

6. Section 34 of the principal Ordinance is amended—

Amendment of section 34 of Ordinance 4 of 1937.

- (i) by inserting the brackets and figure "(1)" immediately after the figures "34" where they occur therein;
- (ii) by inserting the words "after consultation with the General Officer Commanding East Africa Command" immediately after the word "Governor" where it occurs therein; and
- (iii) by adding the following new sub-section:—

"(2) The Governor may employ orderlies, cooks, sweepers, drivers, and such other civilian staff as he may deem necessary, upon such terms and conditions as may be prescribed."

7. Section 35 of the principal Ordinance is amended—

Amendment of section 35 of Ordinance 4 of 1937.

- (i) by repealing sub-section (3) thereof; and
- (ii) by re-numbering sub-section (4) as sub-section (3).

8. Section 36 of the principal Ordinance is amended as follows:—

Amendment of section 36 of Ordinance 4 of 1937.

- (i) by inserting the words "after consultation with the General Officer Commanding East Africa Command" immediately after the word "Governor" where it occurs therein;

(ii) by substituting for paragraph (4) the following:—

“(4) the terms and conditions of service of the civilian staff;”;

(iii) by deleting the word “and” where it occurs at the end of paragraph (14) thereof and inserting the following:—

“(15) the allowance to be paid to members of the Regiment for maintenance of uniforms; and”
and

(iv) by renumbering paragraph “(15)” thereof as paragraph “(16)”.

ORDINANCE No. 43 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

AN ORDINANCE TO AMEND THE CUSTOMS TARIFF ORDINANCE, 1947

21st September, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Customs Tariff (Amendment, No. 2) Ordinance, 1949, and shall be read and construed as one with the Customs Tariff Ordinance, 1947, hereinafter referred to as the principal Ordinance, and shall be deemed to have come into operation on the 21st day of September, 1949.

Short title and commencement.

No. 10 of 1947.

Am. 449/49.

2. The Schedule to the principal Ordinance is amended:—

Amendment of the Schedule to the principal Ordinance.

(1) by substituting for the words "animals, living" where they occur in item I the words "animals and birds, living";

(2) by inserting in paragraph (a) of item 4 next after the word "skins" the word "shells";

(3) by renumbering paragraphs (d) and (e) of item 7 as paragraphs (e) and (f) and by inserting the following new paragraph as paragraph (d):—

(d) malted grain and flour Ad valorem 22%

(4) by inserting next after item 8 the following new item:—

8A. Eggs for hatching Free

(5) by adding after the word "flavouring" where it occurs in item 9 the letters "n.e.e.";

(6) by substituting for paragraph (c) of item 11 the following paragraph:—

(c) Cod liver and other fish oils either alone or mixed with malt extracts or fruit juices Free

(7) by substituting for item 15 the following item:—

15. Hops, hop extract and hop oil .. Ad valorem 11%

- (8) by substituting for item 20 the following item:—
- ✓ 20. Rennet, excluding junket, flavoured and unflavoured Free
- ✓ (9) by substituting for the words "*Ad valorem 40%*" where they occur in paragraph (d) of item 21 the following words:—
"*Ad valorem 22%*";
- ✓ (10) by substituting for item 28 the following item:—
- | | | |
|--|---------------------|-------------------------|
| 28. Waters, mineral, aerated and table | Per imperial gallon | <i>Sh. cts.</i>
3 00 |
|--|---------------------|-------------------------|
- (11) by substituting for item 37 the following item:—
- ✓ 37. Battery cloth and baize, bolting cloth, gauze, matting, mining corduroy, sieving and screening for use in connexion with machinery, brattice cloth, filter cloth, wool tops for fibre squeezing presses, filter pulp and mill silk .. Free
- ✓ (12) by substituting for the words "*Ad valorem 60%*" where they occur in item 38 the words "*Ad valorem 22%*";
- (13) (i) by inserting next after the word "jerseys" where it occurs in paragraph (iii) of item 39 the words "jumpers, slipovers";
- (ii) by adding after the word "singlets" where it occurs in paragraph (v) of item 39 the words "and vests";
- (14) by substituting for paragraph (c) of item 43 the following paragraph:—
- (c) Mosquito and sandfly nets and netting, white Free
- (15) by adding at the end of item 44 the following new paragraphs:—
- (d) Cotton and flax thread for sewing sacks and bags Free
- (e) Cotton and flax twine for making or repairing fishing lines and fishing nets and netting Free
- (16) by adding after the words "and accessories thereof" where they occur in item 45 the words "including tyres and tubes for aircraft";
- (17) by substituting for item 47 the following item:—
- ✓ 47. Buckets (sanitary), dustbins, incinerators, destructors and other similar appliances and apparatus used for the collection and disposal of refuse Free

(18) by substituting for paragraph (e) of item 48 the following item:—

- (e) Sanitary and lavatory appliances (metal); lavatories, sinks, water-closets, baths, water heating systems and appliances, cisterns, and taps, plugs, traps, overflows, and other fittings therefor Free

(19) by substituting for paragraph (h) of item 50 the following new paragraphs:—

- (h) Baby carriages, bath chairs, invalid chairs and similar carriages, whether self-propelled or not .. Free
 (i) Other wheeled vehicles, n.e.e. and parts and accessories thereof (not including rubber tyres and tubes imported separately) *Ad valorem* 15%

(20) by substituting for item 56 the following item:—

56. Fire escapes, fire hydrants and identification plates therefor, fire engines and fire extinguishing apparatus and parts and refills therefor Free

(21) (i) by adding after the words "and platforms" where they occur in paragraph (c) of item 58 the words "and plates and girders used in foundations for machinery";

(ii) by deleting paragraph (h) of item 58 and re-numbering paragraph (i) as paragraph (h);

(22) by inserting next after item 58 the following new item:—

- 58A. Machinery, apparatus, appliances and instruments (not including tools, or domestic or toilet machines, or appliances elsewhere provided for) and electrical material used in connexion therewith, for the generation, measurement, transformation, storage, transmission, distribution of, or lighting by, gas or electric power, and parts thereof, but not including electroliers, gasoliers, lamps, lampshades or reflectors, portable batteries or electrical appliances for use in connexion with vehicles **Free**

(23) (i) by adding after the words "and platforms" where they occur in sub-paragraph (iii) of paragraph (c) of item 59 the words "and plates and girders used in foundations for machinery";

(ii) by adding to paragraph (c) of item 59 the following new sub-paragraph as sub-paragraph (v):—

(v) Steel shafting, whether key wayed
or not Free

(iii) by substituting for paragraph (j) of item 59 the following paragraph:—

(j) Linotype, monotype and stereo
metal Free

(24) by deleting item 60;

(25) by substituting for item 62 the following item:—

62. (a) Motor, steam and electric lorries, trucks, vans and vehicles, including trailers therefor, chassis therefor, and their appropriate initial equipment, if commercial vehicles specially designed and constructed for the transport of goods or for use in connexion with agricultural, forestry, mining or other local industries, but not including estate cars, shooting brakes, station wagons and motor caravans designed and equipped for the transport of persons Free
- (b) Motor, steam and electric omnibuses, coaches and charabancs and their appropriate initial equipment Free
- (c) Motor cycles, motor tricycles and power driven bicycles including sidecars and trailers therefor, and their appropriate initial equipment *Ad valorem* 15%
- (d) Motor cars and the chassis therefor, not elsewhere provided for, together with their appropriate initial equipment *Ad valorem* 15%

(26) by substituting for the words "*Ad valorem* 10%" where they occur opposite item 66 the word "Free";

- (27) by substituting for item 70 the following item:—
70. Refrigerating machinery, refrigerators, air conditioning and cold storage plant, including parts and accessories Free
- (28) by substituting for item 71 the following item:—
71. Sprayers, sprinklers, traps, and other apparatus and appliances used for the prevention or destruction of pests and animals, or of diseases in stock, plants or trees Free
- (29) by substituting for item 72 the following item:—
72. Tanks, complete or in sections .. Free
- (30) by substituting for paragraphs (b) and (c) of item 75 the following paragraphs:—
- (b) Steel, lead, iron and tin wire n.e.e. *Ad valorem* 11%
- (c) Gauze, wire and plastic netting .. Free
- (31) by substituting for item 77 the following item:—
77. Asbestos and asbestos cement manufactures—
- (a) Sheets, plain or corrugated, slates, tiles, washers, gaskets and asbestos packing .. *Ad valorem* 10%
- (b) Ridgings and gutterings .. Free
- (32) by inserting next after the word “tiles” where it occurs in item 80 the words “including plastic and glass tiles”;
- (33) by substituting for paragraph (c) of item 81 the following paragraph:—
- (c) Substances used for proofing, hardening or colouring cement or other surfaces *Ad valorem* 10%
- (34) by substituting for the words “and scythe-stones” where they occur in item 84 the words “not including scythe-stones”;
- (35) by substituting for paragraph (c) of item 88 the following paragraph:—
- (c) Sheet, n.e.e. *Sh. cts.*
Per 100 square feet.. 2 00
- (36) by substituting for item 90A the following item:—
- 90A. Lime and building plaster, excluding lime proved to the satisfaction of the Commissioner of Customs to have been imported as an insecticide or fertilizer .. *Ad valorem* 11%

- (37) by inserting next after the words "of earthenware" where they occur in item 92 the words "or of asbestos cement";
- (38) by adding after the words "sacking or similar material" where they occur in paragraph (b) of item 101 the words "or in tanning or in the spinning of wool or other fibres";
- (39) by substituting for item 102 the following item:—
102. Oils, tars, creosotes and other substances for the preservation of wood, not including wood preserving ornamental stains .. Free
- (40) by inserting after the words "lamp black," where they occur in item 104 the word "Kaolin";
- (41) by substituting for item 111 the following item:—
111. (a) Medicated dressings and antiseptics Free
- (b) Drugs and medicinal preparations prepared according to the British Pharmacopeia or the Codex or the United States Pharmacopeia and such other drugs and medicinal preparations admitted as such by the Commissioner of Customs .. Free
- (42) by substituting for the words "*Ad valorem* 22%" where they occur opposite paragraph (d) of item 112 the words "*Ad valorem* 11%";
- (43) by adding after the words "red phosphorus" where they occur in item 116 the words "and nitric acid";
- (44) by substituting for the comma after the word "saltpetre" in item 118 a semi-colon;
- (45) by substituting for the words "Tyres and tubes, rubber, not attached to wheels or vehicles," where they occur in item 121 the words "Tyres and tubes, rubber, not attached to wheels or vehicles, excluding tyres and tubes for aircraft—";
- (46) by substituting for item 125 the following item:—
125. Handles of wood or of a composite material for tools and implements *Ad valorem* 11%
- (47) by substituting for item 127 the following item:—
127. Plywood, pulpboard, plastic and other composite boarding .. *Ad valorem* 11%

(48) by substituting for paragraph (b) of item 136 the following paragraph:—

(b) Stencil ink *Ad valorem* 11%

(49) by substituting for item 137 the following item:—

137. Paper—

(a) cigarette paper *Ad valorem* 45%

(b) Printing paper in reels or in the flat *Ad valorem* 11%

(c) Plain or composite paper n.e.e., in reels of not less than 9 inches wide, or flat and folded in the original mill ream wrapper, of a size not less than 16 inches by 15 inches *Ad valorem* 11%

(50) by inserting next after the words "As prizes at" where they occur in paragraph (a) of item 142 the word "schools,";

(51) by substituting for item 145 the following item:—

145. Baggage, the *bona fide* baggage of a passenger, the property of and accompanied by such passenger, as defined below Free

Bona fide baggage shall consist of necessary and appropriate wearing apparel and personal effects: binoculars, cameras, sports requisites, portable typewriters, toys and articles for household use (such as sewing machines, furniture, carpets, pictures, glassware, linen, cutlery, crockery and plate) which are proved to the satisfaction of the Commissioner of Customs to have been in personal or household use by the passenger and are not for sale; instruments and tools for the personal use of the passenger in his profession or trade.

Bona fide baggage shall not include such articles as the following: arms, ammunition, beverages, cigars, cigarettes or tobacco, perfumed spirits, carriages, motor vehicles, bicycles, musical instruments (unless elsewhere provided for), saddlery, provisions.

Note.—(1) Duty will not be levied on alcoholic liquors or perfumed spirits not exceeding one pint of each, or on cigars, cheroots, cigarillas, cigarettes, snuff or tobacco not exceeding in all one half-pound in weight, in the possession of any passenger over the age of sixteen years. The free allowances do not apply in the case of any passenger who has in his possession any quantity in excess of such allowances and duty is leviable in such cases on the full quantity in his possession.

(2) *Bona fide* baggage landed at any Customs port within two months of the arrival of the passenger, or such further period as the Commissioner of Customs may allow, may be included in the above exemption at the discretion of the Commissioner.

(52) by substituting for the words "by scientific or educational institutions" where they occur in item 147 the words "by scientific, educational or religious institutions";

(53) by substituting for item 148 the following item:—

148. Church decorations, altars, bells, fonts, lecterns, pulpits and other church furniture and vestments imported for use in the conduct of religious services Free

(54) by substituting for the words "the Kenya and Uganda Railways and Harbours Administration" where they occur in paragraph (d) of item 160 the words "the East African Railways and Harbours Administration";

(55) by inserting next after the words "officers in the service of the Government" where they occur in subparagraph (ii) of paragraph (e) of item 160 the words "and of warrant officers of the King's African Rifles".

(56) by substituting for item 161 the following item:—

161. Packing materials including metal drums and tins, empty; tin plates; multiple and waterproof bags; cardboard boxes, cartons and discs, out-of-date periodicals and newspapers; and other articles, not specially provided for, imported for the packing of oil, kerosene or motor spirit, or of goods the product of agricultural, manufacturing or industrial operations within the territory .. Free

(57) by substituting for item 163 the following item:—

163. School stationery, instruments, appliances and requisites, including furniture used in the classroom, workshop or laboratory and imported by or on behalf of educational institutions approved for the purpose of such importation by the Director of Education Free

(58) by substituting for item 167 the following item:—

167. Surgical, medical and dental instruments, appliances and equipment, including hospital, nursing home and surgery furniture, for use in the diagnosis or treatment of the diseases or affections of the human or animal body Free

(59) by substituting for item 168 the following item:—

168. Umbrellas, including sports umbrellas, and parasols other than paper parasols Each — 80
Sh. cts.
 (or 40% *ad valorem* whichever is higher)

(60) by adding next after item 172 the following new items:—

173. Articles imported by or on behalf of the British Council for official and public use or for donation to institutions approved by the Governor Free
174. Signs or name plates bearing any commercial advertisement or the name and qualifications or professional attainments of the importer; warning signs to protect the public from danger or to protect property; street lighting equipment and licence plates and badges imported for or on behalf of, and not for resale, by a municipality or other public body . . Free

ORDINANCE No. 44 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

Governor.
P. E. MITCHELL,

**AN ORDINANCE TO AMEND THE CUSTOMS TARIFF
ORDINANCE, 1947**

Date of
commencement.

1st August, 1948

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title and
commencement.

No. 10 of 1947.

1. This Ordinance may be cited as the Customs Tariff (Amendment, No. 3) Ordinance, 1949, and shall be read and construed as one with the Customs Tariff Ordinance, 1947, hereinafter referred to as the principal Ordinance, and shall be deemed to have come into operation on the first day of August, 1948.

Amendment of
Item 160 (c) (iv)
of the Schedule
to the principal
Ordinance.

2. Sub-paragraph (iv) of paragraph (c) of Item 160 of the Schedule to the principal Ordinance is amended by inserting next after the words "Port Welfare Committee, Mombasa" the words "the Young Men's Christian Association, Mombasa, the Mission to Mediterranean Garrisons".

ORDINANCE No. 45 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE TOWNSHIPS
ORDINANCE, 1930**

18th November, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Townships (Amendment) Ordinance, 1949, and shall be read and construed as one with the Townships Ordinance, 1930, hereinafter referred to as the principal Ordinance.

Short title.
No. 63 of 1930.

2. Section 33 of the principal Ordinance is amended by inserting next after paragraph (25) the following new paragraph:—

Amendment of
section 33 of
the principal
Ordinance.

(25A) For prohibiting or regulating the keeping of stock generally or of any particular class of stock in any township or in any specified area of a township and for empowering a court to order, in addition to any other penalty which may be prescribed under section 34 of this Ordinance, the confiscation and sale of any stock in respect of which an offence against any rules duly made under this paragraph has been committed, and, in the discretion of the court to order that the proceeds of sale or any portion thereof be paid to the person appearing to the court to be the owner of such stock.

ORDINANCE No. 46 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

AN ORDINANCE TO AMEND THE MARKETING OF NATIVE PRODUCE ORDINANCE, 1935

18th November, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Marketing of Native Produce (Amendment) Ordinance, 1949, and shall be read and construed as one with the Marketing of Native Produce Ordinance, 1935, (hereinafter referred to as the principal Ordinance).

No. 28 of 1935.

Amendment of section 4 of the principal Ordinance.

2. Section 4 of the principal Ordinance is amended in the following respects—

(a) by substituting for paragraph (i) of sub-section (2) the following paragraph—

(i) be subject to the payment to the licensing authority of such fee as may be prescribed, and different fees may be prescribed in respect of different declared areas or parts thereof, and the proceeds of such fees shall be paid into the revenue of the local native council concerned;

and

(b) by substituting for sub-section (3) the following sub-section:—

(3) The provisions of sections 10, 11, 12, 13 and 15 of the Traders Licensing Ordinance, 1936, shall apply, *mutatis mutandis*, to licences granted under paragraph (a) of sub-section (1) of this section.

No. 51 of 1936.

ORDINANCE No. 47 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE CROP
PRODUCTION AND LIVESTOCK
ORDINANCE, 1926**

18th November, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Crop Production and Livestock (Amendment) Ordinance, 1949, and shall be read and construed as one with the Crop Production and Livestock Ordinance, 1926, hereinafter referred to as the principal Ordinance.

Short title.

No. 3 of 1926.

2. Section 4 of the principal Ordinance is amended in the following respects—

Amendment of
section 4 of
the principal
Ordinance.

(a) by substituting for paragraph (f) thereof a paragraph as follows:—

(f) Assisting and, if necessary, controlling transportation, grading, preparation for market and marketing of any crop or agricultural produce;

(b) by re-lettering paragraphs (h), (i), (j), (k) and (l) as (i), (j), (k), (l) and (m); and

(c) by inserting next after paragraph (g) the following new paragraph as paragraph (h)—

(h) The regulation, licensing and control of trading in any agricultural produce or crop.

ORDINANCE No. 48 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE DISEASES OF
ANIMALS ORDINANCE**

Date of
commencement.

18th November, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Diseases of Animals (Amendment) Ordinance, 1949, and shall be read and construed as one with the Diseases of Animals Ordinance, hereinafter referred to as the principal Ordinance.

Cap. 157.

Repeal and
replacement of
section 22 of
the principal
Ordinance.

Disposal of
forfeited animal.

2. There shall be substituted for section 22 of the principal Ordinance the following section:—

22. (1) Where any animal is forfeited under the provisions of section 21 of this Ordinance it shall be slaughtered, sold or otherwise dealt with as the court shall direct.

(2) Where any forfeited animal is ordered to be sold the court may direct that the proceeds of sale or any portion thereof shall be paid to any person appearing to be the owner of such animal. Where no such direction is given the proceeds of sale shall be paid into the general revenues of the Colony.

ORDINANCE No. 49 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

AN ORDINANCE TO AMEND THE EUROPEAN AGRICULTURAL SETTLEMENT ORDINANCE, 1948

18th November, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the European Agricultural Settlement (Amendment) Ordinance, 1949, and shall be read and construed as one with the European Agricultural Settlement Ordinance, 1948, hereinafter referred to as the principal Ordinance.

Short title.

No. 38 of 1948.

2. There shall be substituted for section 5 of the principal Ordinance the following section:—

Repeal and replacement of section 5 of the principal Ordinance.

5. (1) There shall be established a European Agricultural Settlement Fund, which shall, subject to any special directions of the Governor in Council, be under the control of the Member, and out of which shall be paid all expenditure (including the repayment of any loans and any interest thereon) which may be incurred in carrying into effect the provisions of this Ordinance.

European Agricultural Settlement Fund.

(2) There shall be paid into the Fund established under sub-section (1) of this section—

- (a) all moneys allocated by the Legislative Council for the purpose;
- (b) all rentals, interest on advances, repayments of advances or instalments thereof;
- (c) all moneys derived from the sale of any land acquired by the Member for the purpose of any approved settlement scheme;
- (d) the proceeds derived from the sale of any surplus assets which may have been acquired by the Member in the exercise of any of the powers contained in this Ordinance;

No. 49*European Agricultural Settlement (Amendment) 1949*

(e) all moneys derived from the re-sale to any person of any land;

(f) all other payments or receipts of whatsoever description derived from or arising out of the operation of any approved settlement scheme.

Amendment of section 6 of the principal Ordinance.

3. Section 6 of the principal Ordinance is amended by—

(a) inserting immediately after sub-paragraph (iv) of paragraph (b) of sub-section (1) the following new sub-paragraph:—

(v) the purchase of any land for re-sale to any person;
and

(b) inserting immediately after sub-section (2) the following new sub-section:—

(3) The Member may dispose of any surplus assets which may have been acquired in the exercise of any of the powers contained in this Ordinance, and shall pay the proceeds of such disposal into the Fund.

Repeal and replacement of section 7 of the principal Ordinance.

4. There shall be substituted for section 7 of the principal Ordinance the following new section:—

Security for any advances and registration thereof.

7. (1) All moneys advanced to an assisted owner under the provisions of this Ordinance, together with interest thereon and all charges incidental thereto and to the repayment thereof, shall, subject to any prior mortgage or charge, duly registered in accordance with the provisions of the Crown Lands Ordinance or the Registration of Titles Ordinance, as the case may be, be a first charge upon the interest of such assisted owner in the land in respect of which the advance has been made and shall be secured by a legal mortgage or charge duly registered or by an agreement to execute a legal mortgage or charge entered into by such assisted owner.

Cap. 140.

Cap. 142.

(2) (a) All moneys advanced to a tenant farmer under the provisions of this Ordinance together with interest thereon and all charges incidental thereto and to the repayment thereof shall, subject to any prior charge duly registered under the provisions of the

Chattels Transfer Ordinance, 1930, be a first charge on the chattels of such tenant farmer and shall be secured by a notification in the prescribed form of such advance which shall be forwarded by the Chairman of the Board to the Registrar General who shall, forthwith upon receipt thereof, and without charge, register such notification as if it were an instrument within the meaning of the Chattels Transfer Ordinance, 1930, and the provisions of that Ordinance as modified by the provisions of this section shall apply.

No. 24 of 1930.

No. 24 of 1930.

(b) Notwithstanding the provisions of section 10 of the Chattels Transfer Ordinance, 1930, registration of the notification pursuant to paragraph (a) of this sub-section shall remain in force until cancelled.

No. 24 of 1930.

(3) No portion of any advance to an assisted owner or to a tenant farmer shall be made until the security for such advance has been completed and, except where any such advance is secured by an agreement to execute a legal mortgage or charge, registered.

5. There shall be inserted next after section 19 of the principal Ordinance the following new section:—

Insertion of new section in the principal Ordinance.

20. Notwithstanding anything to the contrary contained in the Limitation Ordinance, 1934, or in any other law in force in the Colony, no suit, application or proceeding by the Board shall be rejected or dismissed on the grounds only that such suit, application or proceeding is barred by limitation under any of the provisions of such Ordinance or other law.

Limitation Ordinance, 1934, not to apply. No. 21 of 1934.

ORDINANCE No. 50 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE RESIDENT
LABOURERS ORDINANCE, 1937**

18th November, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Resident Labourers (Amendment) Ordinance, 1949, and shall be read and construed as one with the Resident Labourers Ordinance, 1937, hereinafter referred to as the principal Ordinance.

No. 30 of 1937.

Repeal and replacement of section 16 (1) of the principal Ordinance.

2. There shall be substituted for sub-section (1) of section 16 of the principal Ordinance the following sub-section:—

(1) (a) Where any stock is found grazing on any farm or railway land in contravention of this section, a magistrate may, in addition to imposing any other penalty provided in this Ordinance, order that such stock shall be confiscated and sold.

(b) Where a magistrate orders the confiscation and sale of any stock, he may direct that the proceeds of sale or any portion thereof shall be paid to any person appearing to be the owner of such stock. Where no such direction is given, the proceeds of sale shall be paid into the general revenues of the Colony.

ORDINANCE No. 51 of 1949

Assented to in His Majesty's name this eighteenth day of
November, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE COMPANIES
ORDINANCE, 1933**

18th November, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council
thereof, as follows:—

1. This Ordinance may be cited as the Companies (Amendment) Ordinance, 1949, and shall be read and construed as one with the Companies Ordinance, 1933, hereinafter referred to as the principal Ordinance.

Short title.

No. 28 of 1933.

2. There shall be inserted next after section 35 the following new section:—

Insertion of
new section 35A.

35A. Every prospectus issued by or on behalf of a company or in relation to an intended company shall contain the following statement—

Declaration to
be included in
prospectus.

“The directors and proposed directors jointly and severally accept responsibility for the accuracy of the information and statements in this prospectus and declare that, to the best of their knowledge and belief, there are no other facts the omission of which would make any statement in the prospectus misleading and that they have made all reasonable enquiries to ascertain the existence of any such other fact.”

ORDINANCE No. 52 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE COFFEE INDUSTRY
(FINANCIAL ASSISTANCE) ORDINANCE, 1944**

Date of commencement.

18th November, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Coffee Industry (Financial Assistance) (Amendment) Ordinance, 1949, and shall be read and construed as one with the Coffee Industry (Financial Assistance) Ordinance, 1944, hereinafter referred to as the principal Ordinance.

No. 4 of 1944.

Amendment of section 7 of the principal Ordinance.

2. Section 7 of the principal Ordinance is amended in the following respects—

(a) by substituting for the words and figures "31st day of March, 1945" where they occur in sub-section (1) the words and figures "30th day of June, 1950"; and

(b) by substituting for the words and figure "the sum of £7" where they occur in the proviso to sub-section (2) the words and figures "the sum of £15".

Amendment of section 10 of the principal Ordinance.

3. There shall be substituted for the provisos to sub-section (2) of section 10 of the principal Ordinance the following provisos:—

Provided that—

(i) if in any case the Board is satisfied that the provisions of the Ordinance and any special conditions attached to any advance have been observed, a person to whom any such advance has been made shall not be required in any of the years 1st July, 1949, to 30th June, 1950, 1st July, 1950, to 30th June, 1951, and 1st July, 1951, to 30th June, 1952, to repay to the Board more than thirty cents for each pound of coffee sold in any such year by or on behalf of such person unless in any such year the

average yield of his crop exceeds four hundred-weight of coffee per acre when the repayment for every pound of coffee sold in that year in excess of such average yield shall be increased by an additional thirty cents;

- (ii) nothing in this section shall preclude any person from repaying the balance due from him to the Bank at any time or shall prejudice the right of the Board to recover the balance of any advance which may remain unpaid after the 30th day of June, 1952.

ORDINANCE No. 53 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

AN ORDINANCE TO AMEND THE ASIATIC WIDOWS' AND ORPHANS' PENSION ORDINANCE, 1927

Date of commencement.

18th November, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Asiatic Widows' and Orphans' Pension (Amendment) Ordinance, 1949, and shall be read and construed as one with the Asiatic Widows' and Orphans' Pension Ordinance, 1927, hereinafter referred to as the principal Ordinance, and all amendments thereto.

No. 20 of 1927.

Amendment of section 2 of the principal Ordinance.

2. There shall be substituted for the definition of "beneficiary" in section 2 of the principal Ordinance the following definition—

"beneficiary" means one or more of the following persons, as the case may be—

(a) the widow, or if more than one the widows, of a contributor;

(b) the children of a contributor, by his marriage with any wife who dies in his lifetime, which children are alive and are of a pensionable age at the death of the contributor.

Repeal and replacement of section 16 of the principal Ordinance.

Information to be furnished by contributors and beneficiaries.

3. There shall be substituted for section 16 of the principal Ordinance the following section:—

16. (1) Every contributor who marries while he is a contributor shall, within three months after his marriage or after each marriage, as the case may be, notify the fact of his marriage to the Accountant General in writing, and shall state the date of the birth of his wife or of each wife, as the case may be.

(2) Every contributor shall, within three months from the date of the event, notify to the Accountant General in writing—

(a) the birth of any child born to him;

(b) the marriage, under the age of twenty-one years, of any female child of the contributor;

(c) the death of his wife, or of any of his wives, as the case may be;

(d) the death of any child of a pensionable age.

(3) After the death of any married contributor, the widow, or each widow, as the case may be, shall, within three months from the date of the event, notify the Accountant General in writing—

(a) the date of the death of the contributor, if he was not at the time of his death in the service of the Government;

(b) the birth of any posthumous child born to the contributor;

(c) the marriage, under the age of twenty-one years, of any female child of the contributor;

(d) the death of any child of the contributor of a pensionable age.

(4) Any such statement or notice shall be proved by the production of a birth, death or marriage certificate or by an affidavit or otherwise, to the satisfaction of the Accountant General.

4. There shall be substituted for section 18 of the principal Ordinance the following section:—

Repeal and replacement of section 18 of the principal Ordinance.

18. (1) Where the beneficiary is a widow or widows of a contributor, the pension payable to such beneficiary shall, subject to any deduction in respect of partial forfeiture under sub-section (2) of section 17 of this Ordinance, be paid to such widow or widows, as the case may be, and shall, in respect of any such widow, cease on her death, bankruptcy or re-marriage, or on the forfeiture of the whole of such benefits under that sub-section.

Lapsed pensions—

(2) If on such pension ceasing as aforesaid, there are no children of the marriage with the contributor of any such widow living and of a pensionable age, the pension shall lapse.

(3) If on such pension ceasing as mentioned in sub-section (1) of this section, there are children of the marriage with the contributor of such widow living and of pensionable age, the pension shall be continued and shall be paid to such children in the manner hereinbefore provided and such children shall be deemed to constitute a beneficiary within the meaning of this Ordinance.

Repealed - o. 44/51.

ORDINANCE No. 54 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title.
- 2—Raising of limits for, and rates of pensions increases.
- 3—Amendment of section 3 of the principal Ordinance.
- 4—Amendment of the Second Schedule to the principal Ordinance.
- 5—Amendment of section 3 of the principal Ordinance.
- 6—Cases where no increase of pension is payable.

SECTION

- 7—Amendment of section 3 (5) of the principal Ordinance.
- 8—Amendment of section 4 of the principal Ordinance.
- 9—Repeal and replacement of section 9 of the principal Ordinance.
- 10—Amendment of Second Schedule to the principal Ordinance.
- 11—Repeal.

AN ORDINANCE TO AUTHORIZE FURTHER INCREASES UNDER, AND OTHERWISE TO AMEND, THE PENSIONS (INCREASE) ORDINANCE, 1945, AND TO CONTINUE THAT ORDINANCE IN FORCE AS AMENDED

Date of commencement.

28th January, 1945

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short titles.

No. 7 of 1945.

1. This Ordinance may be cited as the Pensions (Increase) (Amendment) Ordinance, 1949, and shall be read as one with the Pensions (Increase) Ordinance, 1945, hereinafter referred to as the principal Ordinance, and the principal Ordinance and this Ordinance may together be cited as the Pensions (Increase) Ordinances, 1945 and 1949, and shall be deemed to have come into force on the 28th day of January, 1945, and to have continued in force from that date.

Raising of limits for, and rates of pensions increases.

2. The limit specified in the proviso to sub-section (1) of section 3 of the principal Ordinance, under which an increase of pension is not to be made under that section where the income of the pensioner exceeds such limit, and in paragraph 4 of the Second Schedule to the principal Ordinance, which restricts any such increase to the amount required to

raise the income of the pensioner to such limit, shall be increased as follows—

(a) where the pension is a pension specified in Part I of the First Schedule to the principal Ordinance—

(i) in the case of a pensioner who is married or has at least one dependant, from four hundred and fifty pounds a year to six hundred and forty-five pounds a year;

(ii) in the case of any other pensioner, from three hundred and fifty pounds a year to six hundred and forty-five pounds a year;

(b) where the pension is a pension specified in Part II of the First Schedule to the principal Ordinance—

(i) in the case of a pensioner who is married or has at least one dependant, from two hundred and forty-seven pounds ten shillings a year to three hundred and eighty-seven pounds a year;

(ii) in the case of any other pensioner, from one hundred and ninety-two pounds ten shillings a year to three hundred and eighty-seven pounds a year.

3. Sub-section (3) of section 3 of the principal Ordinance is amended in the following respects—

(a) by inserting at the end of paragraph (b) next after the words "sixteen years" the words "or, having attained that age, is receiving full time instruction at any educational institution or undergoing training for any trade, profession or vocation"; and

(b) by substituting for the full stop at the end of paragraph (d) a colon and by adding to the sub-section the following proviso:—

Provided, however, that the pension of a pensioner within the meaning of paragraph (b) of this sub-section shall not be increased after he has ceased to receive full time instruction or training as aforesaid or after he has attained the age of twenty-one years, whichever is the earlier.

4. Paragraphs 2 and 3 of the Second Schedule to the principal Ordinance are repealed and the following substituted therefor:—

2. (1) Where the pension is a pension specified in Part I of the First Schedule to this Ordinance and the

Amendment of section 3 of the principal Ordinance.

Amendment of the Second Schedule to the principal Ordinance.

pensioner is married or has at least one dependant or the pension is payable for the benefit of at least two dependants in the category referred to in paragraph (a) of sub-section (5) of section 3 of this Ordinance, then, subject to the provisions of this Schedule—

- (a) if the pension does not exceed one hundred pounds a year, the authorized increase shall be forty per centum of the amount of the pension;
- (b) if the pension exceeds one hundred pounds a year but does not exceed one hundred and fifteen pounds a year, the authorized increase shall be the amount of forty pounds a year;
- (c) if the pension exceeds one hundred and fifteen pounds a year but does not exceed one hundred and fifty pounds a year, the authorized increase shall be thirty-five per centum of the amount of the pension;
- (d) if the pension exceeds one hundred and fifty pounds a year but does not exceed two hundred pounds a year, the authorized increase shall be thirty per centum of the amount of the pension;
- (e) if the pension exceeds two hundred pounds a year but does not exceed two hundred and twenty-five pounds a year, the authorized increase shall be twenty-seven-and-a-half per centum of the amount of the pension;
- (f) if the pension exceeds two hundred and twenty-five pounds a year but does not exceed two hundred and seventy-five pounds a year, the authorized increase shall be twenty-five per centum of the amount of the pension;
- (g) if the pension exceeds two hundred and seventy-five pounds a year but does not exceed three hundred pounds a year, the authorized increase shall be twenty per centum of the amount of the pension;
- (h) if the pension exceeds three hundred pounds a year but does not exceed three hundred and ninety pounds a year, the authorized increase shall be the amount of sixty pounds a year;
- (i) if the pension exceeds three hundred and ninety pounds a year but does not exceed four hundred

and fifteen pounds a year, the authorized increase shall be twelve-and-a-half per centum of the amount of the pension;

- (j) if the pension exceeds four hundred and fifteen pounds a year but does not exceed four hundred and fifty pounds a year, the authorized increase shall be ten per centum of the amount of the pension;
- (k) if the pension exceeds four hundred and fifty pounds a year but does not exceed five hundred pounds a year, the authorized increase shall be seven-and-a-half per centum of the amount of the pension;
- (l) if the pension exceeds five hundred pounds a year but does not exceed five hundred and seventy-five pounds a year, the authorized increase shall be five per centum of the amount of the pension; and
- (m) if the pension exceeds five hundred and seventy-five pounds a year, the authorized increase shall be four per centum of the amount of the pension.

(2) Where the pension is a pension specified in Part II of the First Schedule to this Ordinance, and the pensioner is married or has at least one dependant or the pension is payable for the benefit of at least two dependants in the category referred to in paragraph (a) of sub-section (5) of section 3 of the Ordinance, then, subject to the provisions of this Schedule—

- (a) if the pension does not exceed sixty pounds a year, the authorized increase shall be forty per centum of the amount of the pension;
- (b) if the pension exceeds sixty pounds a year but does not exceed sixty-nine pounds a year, the authorized increase shall be the amount of twenty-four pounds a year;
- (c) if the pension exceeds sixty-nine pounds a year but does not exceed ninety pounds a year, the authorized increase shall be thirty-five per centum of the amount of the pension;
- (d) if the pension exceeds ninety pounds a year but does not exceed one hundred and twenty pounds

a year, the authorized increase shall be thirty per centum of the amount of the pension;

- (e) if the pension exceeds one hundred and twenty pounds a year but does not exceed one hundred and thirty-five pounds a year, the authorized increase shall be twenty-seven-and-a-half per centum of the amount of the pension;
- (f) if the pension exceeds one hundred and thirty-five pounds a year but does not exceed one hundred and sixty-five pounds a year, the authorized increase shall be twenty-five per centum of the amount of the pension;
- (g) if the pension exceeds one hundred and sixty-five pounds a year but does not exceed one hundred and eighty pounds a year, the authorized increase shall be twenty per centum of the amount of the pension;
- (h) if the pension exceeds one hundred and eighty pounds a year but does not exceed two hundred and thirty-four pounds a year, the authorized increase shall be the amount of thirty-three pounds a year;
- (i) if the pension exceeds two hundred and thirty-four pounds a year but does not exceed two hundred and forty-nine pounds a year, the authorized increase shall be twelve-and-a-half per centum of the amount of the pension;
- (j) if the pension exceeds two hundred and forty-nine pounds a year but does not exceed two hundred and seventy pounds a year, the authorized increase shall be ten per centum of the amount of the pension;
- (k) if the pension exceeds two hundred and seventy pounds a year but does not exceed three hundred pounds a year, the authorized increase shall be seven-and-a-half per centum of the amount of the pension;
- (l) if the pension exceeds three hundred pounds a year but does not exceed three hundred and forty-five pounds five shillings a year, the authorized increase shall be five per centum of the amount of the pension; and

(m) if the pension exceeds three hundred and forty-five pounds five shillings a year, the authorized increase shall be four per centum of the amount of the pension.

3. (1) Where the pension is a pension specified in Part I of the First Schedule to this Ordinance, and the pensioner is unmarried and has no dependants, then, subject to the provisions of this Schedule—

(a) if the pension does not exceed seventy-five pounds a year, the authorized increase shall be forty per centum of the amount of the pension;

(b) if the pension exceeds seventy-five pounds a year but does not exceed one hundred pounds a year, the authorized increase shall be the amount of thirty pounds a year;

(c) if the pension exceeds one hundred pounds a year but does not exceed one hundred and fifty pounds a year, the authorized increase shall be thirty per centum of the amount of the pension;

(d) if the pension exceeds one hundred and fifty pounds a year but does not exceed three hundred and five pounds a year, the authorized increase shall be the amount of forty-five pounds a year;

(e) if the pension exceeds three hundred and five pounds a year but does not exceed three hundred and twenty-five pounds a year, the authorized increase shall be ten per centum of the amount of the pension;

(f) if the pension exceeds three hundred and twenty-five pounds a year but does not exceed three hundred and seventy-five pounds a year, the authorized increase shall be seven-and-a-half per centum of the amount of the pension;

(g) if the pension exceeds three hundred and seventy-five pounds a year but does not exceed four hundred and fifty pounds a year, the authorized increase shall be five per centum of the amount of the pension;

(h) if the pension exceeds four hundred and fifty pounds a year but does not exceed five hundred pounds a year, the authorized increase shall be four per centum of the amount of the pension;

- (i) if the pension exceeds five hundred pounds a year but does not exceed five hundred and seventy-five pounds a year, the authorized increase shall be three per centum of the amount of the pension; and
 - (j) if the pension exceeds five hundred and seventy-five pounds a year, the authorized increase shall be two-and-a-half per centum of the amount of the pension.
- (2) Where the pension is a pension specified in Part II of the First Schedule to this Ordinance, and the pensioner is unmarried and has no dependants, then, subject to the provisions of this Schedule—
- (a) if the pension does not exceed forty-five pounds a year, the authorized increase shall be forty per centum of the amount of the pension;
 - (b) if the pension exceeds forty-five pounds a year but does not exceed sixty pounds a year, the authorized increase shall be the amount of eighteen pounds a year;
 - (c) if the pension exceeds sixty pounds a year but does not exceed ninety pounds a year, the authorized increase shall be thirty per centum of the amount of the pension;
 - (d) if the pension exceeds ninety pounds a year but does not exceed one hundred and eighty-three pounds fifteen shillings a year, the authorized increase shall be the amount of twenty-seven pounds fifteen shillings a year;
 - (e) if the pension exceeds one hundred and eighty-three pounds fifteen shillings a year but does not exceed one hundred and ninety-five pounds fifteen shillings a year, the authorized increase shall be ten per centum of the amount of the pension;
 - (f) if the pension exceeds one hundred and ninety-five pounds fifteen shillings a year but does not exceed two hundred and twenty-five pounds five shillings a year, the authorized increase shall be seven-and-a-half per centum of the amount of the pension;
 - (g) if the pension exceeds two hundred and twenty-five pounds five shillings a year but does not

exceed two hundred and seventy pounds a year, the authorized increase shall be five per centum of the amount of the pension;

(h) if the pension exceeds two hundred and seventy pounds a year but does not exceed three hundred pounds a year, the authorized increase shall be four per centum of the amount of the pension;

(i) if the pension exceeds three hundred pounds a year but does not exceed three hundred and forty-five pounds a year, the authorized increase shall be three per centum of the amount of the pension; and

(j) if the pension exceeds three hundred and forty-five pounds a year, the authorized increase shall be two-and-a-half per centum of the amount of the pension.

5. Section 3 of the principal Ordinance is amended by substituting the word "fifty" for the words "fifty-five" where they appear in paragraph (a) of sub-section (2) and in paragraph (a) of sub-section (3) thereof.

Amendment of section 3 of the principal Ordinance.

6. Where the amount of a pension is determined by reference to emoluments which have been revised in accordance with—

Cases where no increase of pension is payable.

(a) the revised scales of salary and conditions of service approved by the Legislative Council of the Colony on the third day of September, 1948, and any amendments or additions thereto; or

(b) any similar revision of scales of salary and conditions of service approved by any other Legislature which the Member for Finance may, either generally or in any specific case, declare to be applicable for the purposes of this section,

no increase of the pension shall be payable to the pensioner under the terms of this or of the principal Ordinance:

Provided that, if his old pension (that is to say the pension which would have been payable to the pensioner if any such revised scale had not become applicable to him, increased by any sum which would have been payable to him under the terms of the principal Ordinance before its amendment by this Ordinance) exceeds his new pension (that is to say the pension payable to the pensioner by virtue of any such revised scale as

is mentioned in paragraph (a) or paragraph (b) of this section), an increase of pension shall be paid to the pensioner of the amount by which his old pension exceeds his new pension.

Amendment of section 3 (5) of the principal Ordinance.

7. Sub-section (5) of section 3 of the principal Ordinance is amended by substituting the words "one hundred and fifty pounds a year in the case of a pension specified in Part I of the First Schedule to this Ordinance and ninety pounds a year in the case of a pension specified in Part II of the First Schedule to this Ordinance" for the words "fifty-two pounds a year", which appear in the sixth line thereof.

Repeal and replacement of section 4 (2) of the principal Ordinance.

8. Sub-section (2) of section 4 of the principal Ordinance is repealed and the following substituted therefor:—

(2) (a) In the case of a pensioner who is married or has one dependant and a pension specified in Part I of the First Schedule to this Ordinance the first three hundred pounds a year or any lower sum that the Governor in Council may prescribe, of any income accruing to any pensioner otherwise than in respect of a pension specified in the First Schedule to this Ordinance may, if the Governor in Council so directs, be disregarded.

(b) In the case of any other pensioner and a pension specified in Part I of the First Schedule to this Ordinance the first two hundred pounds a year or any lower sum that the Governor in Council may prescribe, of any income accruing to any pensioner otherwise than in respect of a pension specified in the First Schedule to this Ordinance may, if the Governor in Council so directs, be disregarded.

(c) In the case of a pensioner who is married or has at least one dependant and a pension specified in Part II of the First Schedule to this Ordinance the first one hundred and eighty pounds a year or any lower sum that the Governor in Council may prescribe, of any income accruing to any pensioner otherwise than in respect of a pension specified in the First Schedule to this Ordinance may, if the Governor in Council so directs, be disregarded.

(d) In the case of any other pensioner and a pension specified in Part II of the First Schedule to this Ordinance the first one hundred and twenty pounds a year or any lower sum that the Governor in Council may prescribe, of any income accruing to any pensioner otherwise than in

1949

Pensions (Increase) (Amendment)

No. 54

respect of a pension specified in the First Schedule to this Ordinance may, if the Governor in Council so directs, be disregarded.

9. Section 9 of the principal Ordinance is repealed and the following substituted therefor:—

Repeal and replacement of section 9 of the principal Ordinance.

9. This Ordinance shall continue in force until the thirty-first day of December, 1950, and shall then expire:

Duration of principal Ordinance.

Provided that the Governor may, with the approval of the Legislative Council of the Colony, by proclamation, declare that this Ordinance shall remain in force until a date to be fixed in such proclamation or until repealed:

Provided further that upon the expiry of this Ordinance sub-section (2) of section 10 of the Interpretation and General Clauses Ordinance, 1948 (which relates to the effect of repeals), shall have effect as if this Ordinance had then been repealed.

No. 32 of 1948.

10. Paragraph 7 of the Second Schedule to the principal Ordinance (as amended by the Pensions (Increase) (Amendment) Ordinance, 1945), is amended—

Amendment of Second Schedule to the principal Ordinance.
No. 33 of 1945.

(a) by adding after the words “determining the percentage” which occur in the first line thereof, the words “or amount”; and

(b) by deleting the proviso thereto.

11. The Pensions (Increase) (Amendment) Ordinance, 1948, is hereby repealed.

Repeal.
No. 19 of 1948.

ORDINANCE No. 55 of 1949

Assented to in His Majesty's name this eighteenth day of
November, 1949.

Repealed by 034/61 from 26.12.61 P. E. MITCHELL,
Governor.

ARRANGEMENT OF SECTIONS**SECTION**

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Certain officers exempt from provisions of the Ordinance.

PART I—ADVOCATES COMMITTEE

- 4—Establishment of an Advocates Committee.

PART II—ROLL OF ADVOCATES

- 5—The Registrar to keep the Roll of advocates.
- 6—The Roll and precedence of existing advocates.
- 7—Admission and enrolment of advocates.
- 8—Precedence of advocates.

PART III—REMOVAL FROM AND RESTORATION TO THE ROLL

- 9—Removal from the Roll and procedure of Committee.
- 10—Rules governing Committee.
- 11—Power of Court under sections 12, 14 and 15 to be exercised by two judges.
- 12—Consideration of the report by the Court.
- 13—Representation by advocate.
- 14—Reference of report back to Committee.
- 15—Power of Court to admonish or suspend advocate or to strike his name off Roll.
- 16—Disciplinary powers of Court or judge apart from inquiry by the Committee.
- 17—Power of Registrar to draw up orders.
- 18—Orders of Court to be produced to Registrar.
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- 20—Restoration to the Roll.

PART IV—PRACTISING CERTIFICATES

- 21—Registrar to issue practising certificates.
- 22—Applications for practising certificates.
- 23—Discretion of Registrar to refuse certificate in special cases.
- 24—Date and period of validity of practising certificates.
- 25—List published by Registrar to be prima facie evidence of advocate holding certificate.

PART V—PRIVILEGES, RESTRICTIONS AND OFFENCES IN CONNEXION WITH PRACTICE

- 26—Qualifications for practising as advocate.
- 27—Rights of practising.
- 28—Unqualified person not to act as advocate.

SECTION

- 29—Penalty for pretending to be an advocate.
- 30—Penalty for unqualified persons preparing certain instruments.
- 31—Instruments to be endorsed with name and address of drawer.
- 32—Penalty on unqualified person acting in preparation of papers for probate, etc.
- 33—No costs recoverable where unqualified person acts as advocate.
- 34—Advocate not to act as agent for unqualified person.
- 35—Employment by advocate of persons struck off the Roll or suspended.
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- 37—Offences by bodies corporate.
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- 39—Power to exclude touts from precincts of Courts.

PART VI—THE KEEPING OF ACCOUNTS BY ADVOCATES

- 40—Interpretation.
- 41—Advocates' accounts.
- 42—Client's money to be paid in bank.
- 43—What money to be paid into client account.
- 44—Withdrawing of money from client account.
- 45—What money may not be paid into client account.
- 46—Complaint in respect of advocate's failure to comply with provisions.
- 47—Evidence and deposit of costs before instituting inspection of accounts.
- 48—Notice to advocate: how made.
- 49—Penalty for breach of Part VI.
- 50—Saving.
- 51—Power to refuse to issue certificate until penalty paid.
- 52—Relief to banks.

PART VII—REMUNERATION OF ADVOCATES

- 53—Power to make general orders as to remuneration of advocates.
- 54—Scale of rates of commission and percentage.
- 55—Security for payment of remuneration, and regulating interests.
- 56—Taxation of bills of costs.
- 57—Agreements with respects to remuneration for non-contentious business.
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ARRANGEMENT OF SECTIONS—(Contd.)

SECTION

CONTENTIOUS BUSINESS

- 59—Power to make agreements as to remuneration for contentious business.
- 60—Miscellaneous provisions as to agreements with respect to costs of contentious business.
- 61—In certain circumstances taxing officer may reduce amount payable under agreement.
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GENERAL PROVISIONS AS TO REMUNERATION

- 65—Power of Court to order advocate to deliver his bill and to deliver up deeds.

SECTION

- 66—Action to recover advocates' costs.
- 67—Taxation of bills on the application of the party chargeable or the advocate.
- 68—Taxation on application of third parties and beneficiaries under trusts, etc.
- 69—General provisions as to taxation.
- 70—Charging orders.

PART VIII—MISCELLANEOUS

- 71—Advocates to be officers of Court.
- 72—Payment of expenses of Committee.
- 73—Authentication of regulations and other documents.
- 74—Power to make general regulations.
- 75—Saving of other laws.
- 76—Repeal.

AN ORDINANCE TO CONSOLIDATE AND AMEND THE LAW RELATING TO ADVOCATES IN THE COLONY

By Notice

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Advocates Ordinance, 1949, and shall come into force upon such date as the Governor may, by notice in the Gazette, appoint.

Short title and commencement.

2. In this Ordinance, unless the context otherwise requires—

Interpretation.

“advocate” means any person whose name is duly entered as an advocate upon the Roll;

“client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to retain or employ, and retains or employs, or is about to retain or employ, an advocate and any person who is or may be liable to pay to an advocate any costs;

the “Committee” means the Advocates Committee to be established pursuant to section 4 of this Ordinance;

“contentious business” includes any business done by an advocate in any court;

the “Court” means His Majesty’s Supreme Court of Kenya;

“costs” includes fees, charges, disbursements, expenses and remuneration;

"non-contentious business" means any business in which an advocate is employed other than contentious business;

"practising certificate" means a certificate issued by the Registrar to an advocate, authorizing him to practise as such within the Colony pursuant to the provisions of Part IV of this Ordinance;

the "Registrar" means the Registrar of the Supreme Court of Kenya;

the "Remuneration Committee" means the Committee to be established to deal with the remuneration of advocates, pursuant to the provisions of Part VII of this Ordinance;

the "Roll" means the list of advocates kept in accordance with the provisions of this Ordinance.

Certain officers exempt from provisions of the Ordinance.

3. (1) Every officer to whom this section applies shall, in connexion with the duties of his office, be entitled to practise in any court in the Colony, and shall not, except as in this Ordinance expressly provided, be subject to the provisions of this Ordinance.

(2) The officers to whom this section applies are—

- (a) the Attorney General, the Solicitor General and Crown Counsel, and any person duly qualified as a barrister or solicitor holding office in the Attorney General's
- (b) the Legal Secretary and Assistant Legal Secretary to the East Africa High Commission and any person duly qualified as a barrister or solicitor holding office in the Legal Secretary's Department or in the East Africa Income Tax Department;
- (c) any person duly qualified as a barrister or solicitor and holding office in the East African Railways and Harbours Administration, or in any municipality established under the Municipalities Ordinance, 1928;
- (d) the Registrar General and any person duly qualified as a barrister or solicitor holding office in his department, and
- (e) the Native Courts Officer, if duly qualified as a barrister or solicitor.

PART I—ADVOCATES COMMITTEE

4. (1) There shall be established for the purposes of this Ordinance a committee to be called the Advocates Committee, consisting of—

- (a) the Attorney General and the Solicitor General *ex officio*, and
- (b) three unofficial members, being practising advocates nominated by the Law Society of Kenya.

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No. 19 of 1928.

Establishment of an Advocates Committee.

(2) Every unofficial member shall hold office for twelve months from the date of his nomination and shall be eligible for re-nomination.

(3) During the temporary absence from the Colony of any unofficial member the Committee may nominate any practising advocate to act as a temporary unofficial member in the place of such absentee until his return or until the expiration of his period of office, whichever first occurs.

(4) The Attorney General shall be chairman of the Committee and shall preside at all meetings at which he is present. In the absence of the Attorney General from any meeting the Solicitor General shall be chairman of that meeting.

(5) Three members of the Committee, one of whom shall be the Attorney General or the Solicitor General, shall form a quorum.

(6) Any question before the Committee shall be decided by a majority of votes of the members present and voting and the chairman of the meeting shall, in addition to his own vote as a member of the Committee, have a casting vote in cases where the votes of the members are equally divided.

(7) The Secretary of the Law Society of Kenya shall be the Secretary to the Committee, and his remuneration, if any, as such shall be paid by the said Law Society:

Provided that the Committee may, in the case of absence or inability to act as the Secretary of the said Law Society, appoint any person to act as Secretary to the Committee during the period of such absence or inability to act, and in such case the remuneration, if any, of the person so appointed shall be paid by the said Law Society.

(Ordinance No. 55 of 1952)
such commencement; and the order of entry of such names shall be according to the precedence of such persons as between themselves before such commencement.

7. (1) Any of the following persons may if he has resided in the Colony for a period of at least twelve months since obtaining his qualification, apply to the Chief Justice to be admitted as an advocate, that is to say—

(i) Members of the Bar of England, Scotland, Northern Ireland or the Republic of Ireland;

(ii) Persons who have been admitted and are qualified to practise as advocates before—

(a) the Supreme Court of Canada, Ceylon, New Zealand, the Union of South Africa; or

(b) the Federal High Court of Australia; or

(c) one of the High Courts of India or Pakistan; or

(d) the Supreme or High Court of any self-governing Colony within the British Commonwealth;

The Registrar to
keep the Roll of
advocates.

The Roll and
precedence of
existing
advocates.

Admission and
enrolment of
advocates.

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(iii) Solicitors, Attorneys, or Law Agents of a Superior Court in a British Possession to which the Colonial Solicitors Act, 1900, is applied by Order in Council and who by virtue of the said Act and of any Order in Council thereunder may be admitted as Solicitors of the Supreme Court in England, Scotland, Northern Ireland or the Republic of Ireland, without examination and without service of articles of clerkship;

(iv) Solicitors of the Supreme Court in England, Northern Ireland or the Republic of Ireland, ~~to practise in Scotland~~ the words "Writers to Her Majesty's Signet and Solicitors admitted to practise in Scotland".

(Ordinance No. 20 of 1952.)

Without prejudice to the provisions of the foregoing proviso, any application under this section may be made after completion of eleven months of the aforesaid period of twelve months' residence.

(Ordinance No. 49 of 1954.)

may be prescribed and forthwith upon the filing thereof the Registrar shall deliver a copy to the Council of the Law Society of Kenya which body may require the applicant to appear before it for the purposes of an interview; and such Council shall, after making or causing to be made such inquiries into the character, qualification and experience of the applicant as it shall deem necessary, forward to the Chief Justice a confidential report regarding the suitability or otherwise of such applicant for admission as an advocate.

(3) Upon an application being made under this section and after considering the confidential report submitted by the Council of the Law Society of Kenya and upon proof to his satisfaction of the qualification and suitability of the applicant and upon production of such testimonials as to character as he may require, the Chief Justice, shall, unless cause to the contrary is shown to his satisfaction by the said confidential report or otherwise, by writing under his hand and in such manner and form as he may, from time to time, think fit, admit the applicant to be an advocate.

(4) The Registrar, upon production of an admission signed by the Chief Justice, and on payment to the Registrar of a fee of four hundred shillings, shall enter on the Roll the name of the person admitted.

(5) Nothing in this section shall prejudice or affect the qualification or status of any person who immediately before

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the commencement of this Ordinance was qualified to act as an advocate according to the law then in force.

(6) All reports and communications under this section shall be absolutely privileged.

8. Advocates will take precedence among themselves according to the order of entry of their respective names on

Precedence of advocates.

Provided that the Attorney General, the Solicitor General and Queen's Counsel shall in that order take precedence of all other advocates.

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(Ordinance No. 49 of 1954.)

PART III REMOVAL FROM THE ROLL AND RESTORATION TO THE ROLL

9. (1) Any application—

(a) by an advocate to procure his name to be removed from the Roll; or

Removal from the Roll and procedure of Committee.

(b) by ^{any} another person to strike the name of an advocate off the Roll, or to require an advocate to answer allegations contained in an affidavit,

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shall be made to and heard by the Committee in accordance with the rules. Provided that where, in the opinion of the Committee an application under paragraph (b) of this sub-section does not disclose any prima facie case, the Committee may refuse such application without requiring the advocate to whom the application relates to answer the allegations and without hearing the applicant;

such other order in relation to the case as it may think fit.

(3) On the hearing of an application under paragraph (b) of sub-section (1) of this section—

(i) the Committee shall give the advocate whose conduct is the subject matter of the application an opportunity to appear before it, and shall furnish him with a copy of any affidavit made in support of the application, and shall give him an opportunity of inspecting any other relevant document not less than seven days before the date fixed for the hearing;

substituted - 20/52

a copy of any affidavit made in support of the application, and shall be given an opportunity of inspecting any other relevant document, not less than seven days before the date fixed for the hearing;

(ii) the Committee on the termination of the hearing shall embody their findings in the form of a report to the Court which shall be signed and filed with the Registrar, and shall be open to inspection by the advocate ^{to whom the application relates} charged and his advocate (if any) and also by the applicant, but shall not be open to public inspection;

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Subst. *0.20/52*

(iii) if the Committee is of the opinion that a prima facie case for the application, or a prima facie case of any misconduct on the part of the advocate to whom the application relates, has been made out, the Committee may, as it sees fit, either—

(a) admonish the advocate to whom the application relates; and in such case the Committee shall record such admonition in its report to be filed with the Registrar under paragraph (ii) of this sub-section, and may give or cause to be given such publicity as it seems fit to such admonition and to its findings in the case; or

(b) lay a signed copy of its report before the Court, together with the evidence taken and the documents put in evidence at the hearing, for the consideration of the Court;

Committee under this Part of this Ordinance.

(2) For the purposes of any application made to it under this Part of this Ordinance the Committee may administer oaths and the applicant and the advocate ^{to whom the application relates} ~~charged~~ may take out a summons to give evidence or to produce documents, but no person shall be compelled under any such summons to produce any document which he could not be compelled to produce on the trial of an action.

(3) The hearing of an application under section 9 of this Ordinance shall for the purpose of Chapter XI of the Penal Code be deemed to be a judicial proceeding.

11. (1) The powers conferred upon the Court by sections 12, 14 and 15 of this Ordinance shall be exercised by not less than two of the judges of the Court.

12. (1) The Court shall set down for consideration any report of the Committee laid before it under paragraph (iii) of sub-section (3) of section 9 of this Ordinance, and may, on the application of the advocate to whom the application relates made within thirty days of the filing of the report with the Registrar, set down for consideration any report of the Committee filed with the Registrar under ^{this Ordinance} in such form as may be prescribed.

(2) Where the Court sets down for consideration a report of the Committee which has not been laid before it under paragraph (iii) of sub-section (3) of section 9 of this Ordinance, the Committee, on receiving notice under the section of the date for such consideration, shall lodge with the Registrar the record of the evidence taken and the documents put in evidence at the hearing before it.

(Ordinance No. 49 of 1954.)

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Commit

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0.20/52

Power of
Court under
sections 12, 14
and 15 to be
exercised by
two judges

Consideration
of the report
by the Court.

Consider
the report
the Court

to whom
0.20/52
Subst.

15 (1) The Court, after considering the evidence taken by the Committee and the report, and having heard the advocate for the Committee and the advocate to whom the application relates or his advocate, and after taking any further evidence, if it thinks fit to do so, may confirm or quash any admonition administered by the Committee, may confirm, reverse or alter any order for costs or witness expenses made by the Committee, may admonish the advocate to whom the application relates, and, whether or not it does one or more of the aforesaid things, may make any such order as to removing or striking the advocate's name from or off the Roll, as to suspending him from practice, as to payment by him of a fine not exceeding ten thousand shillings, as to the payment by any person of costs and otherwise in relation to the case as it may think fit.

(Ordinance No. 49 of 1954.)

or offences by advocates.

17. Where an order has been made by the Court upon an application to remove from, or strike off, the Roll the name of an advocate, or to require an advocate to answer allegations con-

Reciprocal enforcement of suspensions and strikings-off in East African Territories.

18A. (1) If any advocate who is also an advocate or legal practitioner by whatsoever name or style designated, of, or is entitled to practise as such in, any East African Territory, is suspended from practice in such Territory by order of a competent court or other competent authority of or in such Territory, he shall be deemed to have been suspended from practice as an advocate in the Colony for the period for which his suspension from practice in such Territory remains effective, and the Registrar shall cause a note of such suspension to be entered against the name of the advocate on the Roll.

(2) If the name of any such advocate as aforesaid is, by order of a competent court or other competent authority of or in any East African Territory made otherwise than on the application or at the request of the advocate himself, removed or struck from or off the Roll or list of advocates or legal practitioners, by whatsoever name or style designated, of such Territory, or if by any such

Gazette, that he is satisfied that reciprocal effect will be given under the law thereof to orders made by the Court under this Ordinance for the suspension of advocates from practice or for removing or striking the names of advocates from or off the Roll.

(Ordinance No. 49 of 1954.)

Representation by advocate. 0-20/52

Inference of report made to Committee

Power of Court to admonish or suspend advocate like 0-43/50

led - 49/54

Order this to the

Court or judge apart from inquiry by the Committee.

Power of Registrar to draw up orders. 0-43/50

if the be the 0-49/54

added - 0-49/54

Limitation of time for certain applications to strike names off the Roll.

Restoration to the Roll. 1344-45

No. 55

20A. (1) (a) Where a person who is or was a clerk to an advocate but is not himself an advocate has been convicted of larceny, embezzlement, fraudulent conversion or any other criminal offence in respect of any money or property belonging to or held or controlled by the advocate by whom he is or was employed or any clerk of such advocate; or

Disciplinary powers as to clerks.

(b) where it appears to the Law Society of Kenya (hereinafter referred to as "the Society")—

(i) in the course or as a result of any proceedings before the Committee under this Ordinance; or

(ii) in the exercise of their powers under rules made under this Ordinance,

that a person who is or was a clerk to an advocate but is not himself an advocate, has been a party to any act or default of such advocate, in respect of which an application or complaint has been or might be made against such advocate to the Committee, an application may be made by or on behalf of the Society to the Committee that an order be made directing that as from a date to be specified in such order, no advocate shall in connexion with his practice as an advocate take or retain the said person into or in his employment or remunerate the said person without the written permission of the Society, which may be given for such period and subject to such conditions as the Society may think fit.

(2) An application under this section shall be made to and be heard by the Committee in accordance with rules made under this section, and on the hearing of any such application the Committee shall have power to make such order as is referred to in this section and an order as to payment by any party of costs.

(3) Every order made by the Committee under this section shall be prefaced by a statement of their findings in relation to the facts of the case and shall be signed by the Chairman of the Committee. Any order made under this section shall be in force from the date of its making. Any order made under this section shall be in force from the date of its making. Any order made under this section shall be in force from the date of its making. Any order made under this section shall be in force from the date of its making.

(9) Proceedings under the last preceding sub-section may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor, but no such proceedings shall be commenced by any person other than the Society or a person acting on behalf of the Society, except with the consent of the Attorney General.

(10) If any advocate knowingly acts in contravention of the provisions of an order of the Committee under this section as made and not appealed against or as confirmed upon appeal, as the case may be, or in contravention of any condition subject to which any such permission as aforesaid has been given by the Society, a complaint in respect of that contravention may be made by or on behalf of the Society to the Committee. Any such complaint shall be dealt with in the same manner as an application under paragraph (b) of sub-section (1) of section 9 of this Ordinance.

(Ordinance No. 20 of 1952.)

Registrar to issue practising certificates.

Application practising certificates.

(b) ~~by~~
0.20/52.
(Date of operation)

Discretion of Registrar to refuse certificate in special cases.

(d) when the practising certificate of an advocate has become suspended by virtue of his adjudication in bankruptcy or by virtue of an order of the Chief Justice, the Registrar shall forthwith cause a notice of such suspension to be published in the Gazette and shall cause a note thereof to be entered against the name of such advocate in the Roll;

(e) when the suspension of the practising certificate of an advocate has been terminated by annulment of the adjudication in bankruptcy of the advocate and service upon the Registrar of an office copy of the Order annulling the adjudication or by order of the Registrar or Chief Justice under this section, the Registrar shall forthwith cause a note of the termination of the suspension to be entered against the name of such advocate in the Roll, and, if so requested, in writing by such advocate, cause a notice thereof to be published in the Gazette.

Date and period
of validity of
practising
certificates.

24. (1) Every practising certificate shall, subject as hereinafter provided, take effect on the day on which it is issued by the Registrar:

Provided that every practising certificate issued between the first day of January and the first day of February in any year shall have effect for all purposes from the first day of January in that year.

(2) Every certificate shall continue in force from the day from or on which it has taken or takes effect in accordance with this section until the 31st day of December next following (both days inclusive) and shall then expire.

(3) It shall be the duty of the Registrar to enter upon the Roll a note of the date of issue to any advocate of a practising certificate.

List published
by Registrar to
be prima facie
evidence of
advocate holding
certificate.

25. (1) Any list purporting to be published by authority of the Registrar and to contain the names of advocates who have obtained practising certificates for the current year before the first day of February in that year shall, until the contrary is proved, be evidence that the persons named therein as advocates holding such certificates as aforesaid for the current year are advocates holding such certificates.

(2) The absence from such list of the name of any person shall, until the contrary is proved, be evidence that the person is not qualified to practise as an advocate under a

22. (1) Every advocate applying for a practising certificate shall—

Application for and issue of practising certificates.

(a) deliver to the Registrar a written declaration in the prescribed form stating the name and place of business of the applicant and the date of his admission and signed by the applicant or his partner; and

(3) On the issue of a practising certificate to an advocate, he shall pay to the Registrar—

(a) such fee in respect of such certificate as may be prescribed by regulation made under section 74 of this Ordinance; and

(b) the annual subscription payable for the time being by members of the Society,

No. 10 of 1949
Sho 60/-
S.N. 1382/52
(1.1.1953)

and he shall thereupon, notwithstanding anything in the Law Society of Kenya Ordinance, 1949, or in any regulation thereunder, become, by virtue of this Ordinance and without election, admission, or appointment, a member of the Society and be subject to any provision of law for the time being affecting such member:

No. 10 of 1949.

Provided that every advocate to whom a practising certificate is issued before the 1st day of February in any year shall, if he was an advocate on the 1st day of January of that year, be deemed, on payment of the said annual subscription, to have become a member of the Society on the said 1st day of January.

(4) The Registrar shall withhold the issue of a practising certificate until the fee therefor and the aforesaid annual subscription are paid.

(5) Every advocate who shall become a member of the Society under sub-section (3) of this section shall, subject to the provisions of sub-section (6) of this section, remain a member until the end of the current year.

(6) When an advocate who is a member of the Society by reason of the provisions of sub-section (3) of this section has his name, whether at his own request or otherwise, removed or struck off the Roll by an order of the Court or of the Committee, he shall thereupon cease to be a member of the Society.

(7) An advocate who is a member of the Society by reason of the provisions of sub-section (3) of this section and who is suspended from practice shall not be entitled during the period of such suspension to any of the rights or privileges of such membership.

(8) If in any case, not being a case to which sub-section (4) of this section or section 23 of this Ordinance applies, the Registrar, on application duly made to him, refuses or neglects to issue a practising certificate, the applicant may apply to the Court or any Judge thereof or the Chief Justice, which or who may make such order in the matter, including an order for payment of costs by or to either the Registrar or the applicant, as shall be just.

terminate the suspension subject to any terms or conditions, such advocate may appeal against such decision to the Chief Justice who may either affirm the decision of the Registrar or by order vary any terms or conditions imposed by the Registrar or terminate the suspension unconditionally or subject to such terms and conditions as he may think fit;

certificate for the current year, but in the case of any such person an extract from the Roll certified as correct by the Registrar shall be evidence of the facts appearing in the extract.

PART V—PRIVILEGES, RESTRICTIONS AND OFFENCES IN CONNEXION WITH PRACTICE

26. Subject as hereinafter provided, no person shall be qualified to act as an advocate unless his name is on the Roll and he has in force a practising certificate, and a person who is not so qualified is in this Part referred to as an "unqualified person":

Qualifications for practising as advocate.

Provided that notwithstanding anything to the contrary

(a) the Chief Justice may, in his absolute discretion, on payment of the appropriate fee hereinafter specified, admit to practise as an advocate for the purpose of any one case or matter any of the persons mentioned in

stated -
0-49/54

Disciplinary powers in regard to persons admitted to practise as advocates for the purpose of one case.

26A. (1) Any person admitted, under the provisions of paragraph (a) of the proviso to section 26 of this Ordinance, to practise as an advocate for the purpose of one case or matter shall, in regard to such practice, be deemed to be an advocate for the purposes of Part III of this Ordinance and of any Rules made thereunder:

Provided that, in respect of any such person, references in the said Part III of this Ordinance or in any Rule made thereunder to removing or striking the name of an advocate from or off the Roll shall be construed as references to disqualifying such person for practising as an advocate.

(2) Notwithstanding anything contained in sub-section (1) of this section or in Part III of this Ordinance or any Rule made thereunder, where an application relating to any such person as aforesaid has been made to the Committee under paragraph (b) of sub-section (1) of section 9 of this Ordinance, it shall be lawful for the Court in its discretion, at the instance of the applicant or of the Law Society of Kenya, to make an order suspending such person from practice as an advocate pending the determination of the application; and for the purposes of this sub-section, an application such as aforesaid shall be deemed to be determined—

(i) if the Committee refuses the application under the proviso to sub-section (1) of section 9 of this Ordinance, on such

Rights of
practising.

27. Subject to the limitations contained in the proviso to section 26 of this Ordinance, every person qualified as aforesaid may practise as an advocate in the Court or in any court subordinate thereto constituted under the Courts Ordinance.

Unqualified
person not to
act as advo

27A. Notwithstanding anything contained in this Ordinance, no advocate who has the rank of Queen's Counsel shall perform any of the functions which, in England, are performed by a solicitor and are not performed by a barrister; but an advocate who has the rank of Queen's Counsel shall not be precluded from continuing or engaging in partnership with another advocate by reason only that such last-mentioned advocate performs any functions as aforesaid.

Queen's Counsel
debarred from
performing
certain
functions.

(2) If an (Ordinance No. 55 of 1952) provisions of this section, he shall be guilty of an offence against this Ordinance and of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly, and shall be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting, and shall, in addition to any other penalty or forfeiture and any disability to which he may be subject, be liable on conviction by a subordinate court of the first class for each such offence to a fine of two thousand shillings.

Penalty for
pretending to be
an advocate.

29. Any person, not having in force a practising certificate, who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or recognized by law as qualified to act as an advocate, shall be liable on conviction by a subordinate court of the first class to a fine of five hundred shillings for each such offence.

Penalty for
unqualified
persons
preparing
certain
instruments

30. (1) Any person, not being an advocate, who, unless he proves that the act was not done for, or in expectation of, any fee, gain or reward, either directly or indirectly draws or prepares any instrument—

(a) relating to movable or immovable property or any legal proceeding;

(b) for or in relation to the formation of any limited liability company whether private or public,

(c) for or in relation to the making of a deed of partnership or the dissolution of a partnership,

shall be liable on conviction by a subordinate court of the first class to a fine of four thousand shillings.

(2) This section shall not extend to—

(a) any public officer drawing or preparing instruments in the course of his duty; or

(b) any person employed merely to engross any instrument, application or proceeding.

secu-
refusal

(3) For the purposes of this section the expression "instrument" does not include—

- (a) a will or other testamentary instrument; or
- (b) a letter or power of attorney; or
- (c) a transfer of stock or shares containing no trust or limitation thereof.

31. Every person who draws or prepares any instrument referred to in the last preceding section shall endorse or cause to be endorsed thereon his name and address; and any such person omitting so to do or falsely endorsing or causing to be endorsed any of the said requirements shall be liable on conviction by a subordinate court of the first class to a fine of two hundred shillings; and it shall not be lawful for the Registrar, the Registrar of Titles, the Registrar of Crown Lands or any other registering authority to accept or recognize any such instrument unless it purports to bear the name of the person who prepared it endorsed thereon.

Instruments to be endorsed with name and address of drawer.

32. Any person, not being an advocate, who unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly, or as an agent of any person other than a person qualified as above-mentioned takes instructions for or draws or prepares any papers on which to found or oppose a grant of probate or of letters of administration shall, without prejudice to any liability or disability to which he may be subject under any other section of this Ordinance or any other Ordinance, be liable on conviction by a subordinate court of the first class to a fine of two thousand shillings for each offence.

Penalty on unqualified person acting in preparation of papers for probate, etc.

33. No costs in respect of anything done by any person who acts as an advocate at a time when he has not in force a practising certificate shall be recoverable in any action, suit or matter by any person whomsoever.

No costs recoverable where unqualified person acts as advocate.

34. (1) No advocate shall wilfully and knowingly act as agent in any action, or in any matter in bankruptcy for any unqualified person, or permit his name to be made use of in any such action, or matter upon the account, or for the profit, of any unqualified person, or send any process to any unqualified person, or do any other act enabling any unqualified person to appear, act or practise in any respect as an advocate in any such action or matter.

Advocate not to act as agent for unqualified person.

(2) Where it appears to the Court that an advocate has acted in contravention of this section, the Court may, in the absence of a satisfactory explanation from such advocate, order his name to be struck off the Roll.

(3) Where the Court orders the name of an advocate to be struck off the Roll in respect of an offence under this section, it may further order that the unqualified person who was enabled by the conduct of the offender to act or practise as an advocate shall pay a fine of four thousand shillings or in default of payment to undergo imprisonment for a term not exceeding one year.

Employment by advocate of persons struck off the Roll or suspended.

35. (1) No advocate shall, in connexion with his practice as an advocate, without the written permission of the Committee, which may be given for such period and subject to such conditions as the Committee thinks fit, employ or remunerate any person who to his knowledge is disqualified from practising as an advocate by reason of the fact that his name has been struck off the Roll, otherwise than at his own request, or is suspended from practising as an advocate.

(2) An advocate aggrieved by the refusal of the Committee to grant any such permission as aforesaid, or by any conditions attached by the Committee to the grant thereof, may appeal to the Chief Justice who may confirm the refusal or the conditions, as the case may be, or may, in lieu of the Committee, grant such permission for such period and subject to such conditions as he thinks fit.

(3) If any advocate acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given thereunder his name shall be struck off the Roll or he shall be suspended from practice for such period as the Court thinks fit.

Penalty on failure to disclose fact of having been struck off, etc.

36. (1) Any person who, whilst he is disqualified from practising as an advocate by reason of the fact that he has been struck off the Roll, otherwise than at his own request, or is suspended from practising as an advocate, seeks or accepts employment by an advocate in connexion with that advocate's practice without previously informing him that he is so disqualified as aforesaid, shall, on conviction by a subordinate court of the first class, be liable, for each offence, to a fine of five hundred shillings.

(2) Proceedings under this section may be commenced at any time before the expiration of six months after the first

discovery of the offence by the prosecutor, but no such proceedings shall be commenced except by, or with the consent of, the Attorney General.

37. (1) If any act is done by a body corporate or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognized by law as qualified, to act as an advocate, the body corporate shall be liable on conviction by a subordinate court of the first class to a fine of five hundred shillings for each such offence and, in the case of an act done by any director, officer or servant of the ~~the words~~ "he shall, without prejudice to the liability of the corporation, be liable on conviction by the said court to a fine of five hundred shillings for each offence".

Offences by
bodies corporate

(2) In this Part, wherever the context so admits, reference to unqualified persons and reference to persons include references to bodies corporate.

38. (1) No advocate shall—

Offences by
advocates.

(a) take instructions in any case except from the party on whose behalf he is retained or some person who is the recognized agent of such party within the meaning of the Civil Procedure Ordinance, and any rules made thereunder for the time being in force, or some servant, relation or friend authorized by the party to give such instructions; or

Cap. 5.

Repealed.
0.20/52.

^{knowingly} (b) mislead or allow any court to be misled, so that such court makes an order which such advocate knows to be wrong or improper; or

(c) tender, or give or consent to the retention out of any fee paid or payable to him for his services of any gratuity for procuring or having procured the employment in any legal business of himself or any other advocate; or

(d) directly or indirectly procure or attempt to procure the employment of himself or his partner or assistant as an advocate, through or by the intervention of any person to whom remuneration for obtaining such employment has been given by him, or agreed or promised to be so given; or

(e) accept any employment in any legal business through a person who has been proclaimed as a tout, as in the next succeeding section mentioned; or

- (f) advertise himself in any wise in relation to his profession or business as an advocate, except so far as may be necessary to mark his office or to give his address to persons having business communications or dealings with him; or
- (g) directly or indirectly hold himself out or permit himself to be held out, whether by name or otherwise, as being prepared to undertake professional business for any fee or consideration which shall be less than the scale of charges (if any) for the time being prescribed or approved by the Remuneration Committee; or
- (h) agree with his client either before, during or after the conduct of any non-contentious professional business to undertake such business for any fee or consideration whatsoever that shall be less than that set out in the scale of charges (if any) for the time being prescribed or approved by the Remuneration Committee; or
- (i) commit any breach of any of the provisions of Part VI of this Ordinance; or
- (j) deceive or mislead any client or allow him to be deceived or misled in any respect material to such client; or
- (k) commit any contempt of court.

(2) Any advocate who contravenes any of the provisions of sub-section (1) of this section shall be deemed to be guilty of professional misconduct, and the Court may, in its discretion, either admonish such advocate, or suspend him from practice, or cause his name to be struck off the Roll pursuant to section 15 of this Ordinance:

Provided that nothing in this section contained shall supersede, lessen or interfere with the powers vested in the Court, under or by virtue of section 15 of this Ordinance or otherwise, to deal with misconduct or offences by advocates of whatsoever nature or kind, whether mentioned in subsection (1) of this section or otherwise.

39. (1) The Chief Justice may, by general or special order, exclude from the precincts of the Court or any court subordinate thereto any person declared by him to be a tout:

Provided that no such order shall be made unless the party concerned shall have had opportunity of showing cause against such order.

(2) For the purposes of this section "tout" means a person who, in consideration of any payment or other advantage to himself, procures the employment in any legal business of any advocate, or proposes to an advocate to procure his employment in any legal business in consideration of such payment or other advantage.

~~PART VI - THE KEEPING OF ACCOUNTS BY ADVOCATES~~

40. In this Part of this Ordinance the word "client" means any person or body of persons corporate or unincorporate, on whose behalf an advocate in connexion with his practice receives money; and the word "advocate" includes an advocate acting as an agent, bailee, stakeholder, or in any capacity in connexion with his practice as an advocate.

*Repeated
0.20/52.
Interpretation.
(Sections 40 to
51 both
inclusive.)*

41. Every advocate shall keep such books and accounts as may be necessary to show and distinguish in connexion with his practice as an advocate—

*Advocates' accounts
to be
52 referred
to as 75A.*

- (a) the moneys received from or on account of and the moneys paid to or on account of each of his clients; and
- (b) the moneys received and the moneys paid on his own account.

42. Every advocate, who holds or receives money on account of a client (save money hereinafter expressly exempted from the application of this section), shall without undue delay pay such money into a current or deposit account at a bank, to be kept in the name of the advocate in the title of which the word "Client" or the word "Trust" shall appear (hereinafter referred to as "a client account"). Any advocate may keep one client account or as many such accounts as he thinks fit:

*Client's money
to be paid in
bank.*

Provided that, when an advocate receives a cheque or draft representing in part money belonging to the client and in part money due to the advocate, he may where practicable split the cheque or draft and pay to the client account that part only which represents money belonging to the client. In any other case he shall pay the whole of such cheque or draft into the client account.

43. No money shall be paid into a client account other than—

*What money to
be paid into
client account.*

- (i) money held or received on account of a client;

- (ii) such money belonging to the advocate as may be necessary for the purpose of opening or maintaining the account;
- (iii) money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of section 44 of this Ordinance;
- (iv) a cheque or draft received by the advocate representing in part money belonging to the client and in part money due to the advocate where such cheque or draft has not been split as provided for in section 42 of this Ordinance.

Withdrawing of money from client account.

44. No money shall be drawn from a client account other than—

- (i) money properly required for payment to or on behalf of a client or for or towards payment of a debt due to the advocate from a client or money drawn on the client's authority, or money in respect of which there is a liability of the client to the advocate, provided that the money so drawn shall not in any case exceed the total of the money so held for the time being for such client;
- (ii) such money belonging to the advocate as may have been paid into the account under paragraph (ii) or paragraph (iv) of section 43 of this Ordinance;
- (iii) money which may by mistake or accident have been paid into such account in contravention of section 43 of this Ordinance.

What money may not be paid into client account.

45. Sections 42, 43 and 44 of this Ordinance shall not apply to money which—

- (i) the client, for his own convenience, requests an advocate to withhold from a client account;
- (ii) an advocate pays into a separate account or to be opened in the name of a client or some person named by that client or the duly authorized agent of that client;
- (iii) in the ordinary course of business upon receipt is paid on behalf of the client to a third party;
- (iv) is upon receipt paid to the client;
- (v) is paid to an advocate expressly on account of costs;

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(vi) the Committee upon an application made to it in writing by an advocate specifically authorizes to be withheld or withdrawn from a client account.

46. (1) If an advocate fails to comply with any of the provisions made under the preceding sections of this Part of this Ordinance any person aggrieved thereby may make a complaint in writing in respect of that failure to the Committee.

Complaint in respect of advocate's failure to comply with provisions.

(2) In order to consider, pursuant to section 9 of this Ordinance, whether the provisions of this Part of this Ordinance have been complied with the Committee, acting either on its own motion or on written complaint lodged with it as provided for in sub-section (1) of this section, may require any advocate to produce at some convenient time and place, his books of account, bank pass books, statements of account, vouchers and any other necessary documents for the inspection of any person appointed by the Committee, and any such person shall prepare for the information of the Committee a report on the result of such inspection. Such report may be used as a basis for any report by the Committee pursuant to sub-section (3) of section 9 of this Ordinance.

0.43/50

(3) Before making any such appointment the Committee shall consider any objection made by any such advocate to the appointment of a particular person on personal or other proper grounds.

47. Before instituting an inspection on a complaint made by a third person, the Committee shall require prima facie evidence that a ground of complaint exists, and may require the payment by such person to the Committee of a reasonable sum to be fixed by it to cover the costs of inspection, and the costs of the advocate against whom the complaint is made. The Committee may deal with any sum so paid in such manner as it thinks fit.

Evidence and deposit of costs before instituting inspection of accounts.

48. Every requirement, authorization and notification to be made or given by the Committee to an advocate under this Part of this Ordinance shall be made in writing under the hand of such person as may be appointed by the Committee for the purpose and left at or sent by registered post to the last address of the advocate appearing in the Roll and when so made and sent shall be deemed to have been received by the advocate within forty-eight hours of the time of posting.

Notice to advocate: how made.

Penalty for
breach of
Part VI.

~~49.~~ In addition to the powers conferred by section 15 of this Ordinance the Court shall have the power to impose on an advocate a fine not exceeding ten thousand shillings in respect of any breach of the provisions of this Part of this Ordinance.

Saving.

~~50.~~ Nothing in this Part of this Ordinance shall deprive an advocate of any recourse or right, whether by way of lien, set-off, counter-claim, charge or otherwise, against moneys standing to the credit of a client account.

Power to refuse
to issue
certificate until
penalty paid.

~~51.~~ Section 23 of this Ordinance (which gives a discretion to the Registrar to refuse to issue certificates in special cases) shall, in addition to the cases mentioned therein, apply to the case where an advocate applies for a certificate to practise without having paid any penalty imposed upon him under section 49 of this Ordinance or any costs lawfully ordered to be paid by him either by the Committee or by the Court.

Relief to banks.

0.20/52
(To be read after
Section 74
of this ordinance
on Page 248)

~~75A. 52 (1)~~ Subject to the provisions of this section no bank shall, in connexion with any transaction on any account of any advocate kept with it or with any other bank (other than an account kept by an advocate as trustee for a specified beneficiary) incur any liability or be under any obligation to make an inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Provided that nothing in this sub-section contained shall relieve a bank from any liability or obligation to which it would be subject apart from this Ordinance.

(2) Notwithstanding anything in the preceding sub-section contained, a bank at which an advocate keeps an account for clients' moneys shall not, in respect of any liability of the advocate to the bank, not being a liability in connexion with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided that nothing in this sub-section contained shall deprive a bank of any right existing at the commencement of this Ordinance.

PART VII—REMUNERATION OF ADVOCATES

53. (1) For the purposes of this Part there shall be a committee to be known as the Remuneration Committee which shall consist of five advocates to be nominated by the Law Society of Kenya, of whom three shall form a quorum.

(2) The Chief Justice on the recommendation of the Remuneration Committee may make general orders prescribing and regulating in such manner as he thinks fit the remuneration of advocates in regard to both contentious and non-contentious business and may revoke or alter any such order or any order, made before the commencement of this Ordinance, which provides for the remuneration of advocates.

(3) Any order made under the provisions of this section shall be submitted to the Governor in Council for approval, and, if approved, it shall be published in the Gazette and shall come into force on the date of such publication unless some later date is specified in such order.

54. Any order made under section 53 of this Ordinance in respect of non-contentious business may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say—

- (i) the position of the party for whom the advocate is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, chargor or chargee, and the like;
- (ii) the place where, and the circumstances in which, the business or any part thereof is transacted;
- (iii) the skill, labour and responsibility involved therein on the part of the advocate;
- (iv) the number and importance of the documents prepared or perused, without regard to length.

55. An order made in respect of non-contentious business may authorize and regulate—

- (i) the taking by an advocate from his client of security for payment of any remuneration, to be ascertained

Power to make general orders as to remuneration of advocates.

S.N. 1572/55.
(22.H.55)

Scale of rates of commission and percentage.

Security for payment of remuneration, and regulating interests.

by taxation or otherwise, which may become due to him under any such order; and

(ii) the allowance of interest.

Taxation of bills of costs.

56. As long as any order made as aforesaid is in operation the taxation of bills of costs of advocates shall, subject to the provisions of the next succeeding section with respect to agreements as to remuneration, be regulated by that order.

Agreements with respect to remuneration for non-contentious business.

57. (1) Whether or not any order is in force under the last preceding section, an advocate and his client may, either before or after or in the course of the transaction of any non-contentious business by the advocate, make an agreement as to the remuneration of the advocate in respect thereof.

(2) The agreement may provide for the remuneration of the advocate by a gross sum, or by commission or percentage, or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration therein stipulated for either shall or shall not include all or any disbursements made by the advocate in respect of searches, plans, travelling, stamps, fees or other matters.

(3) The agreement shall be in writing and signed by the person to be bound thereby or his agent in that behalf.

(4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of an advocate:

Provided that if on any taxation of costs the agreement is relied on by the advocate and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the Court and if on that certificate it appears just to the Court that the agreement should be cancelled, or the amount payable thereunder reduced, the Court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as it thinks fit.

(5) This section shall be read subject to the provisions of section 38 of this Ordinance.

Remuneration of advocate who is a mortgagee.

58. (1) If a mortgage is made to an advocate, either alone or jointly with any other person, he, or the firm of which he is a member, shall be entitled to recover from the mortgagor in respect of all business transacted and acts done by him or them in negotiating the loan, deducting and investi-

gating the title to the property, and preparing and completing the mortgage, such usual costs as he or they would have been entitled to receive if the mortgage had been made to a person who was not an advocate and that person had retained and employed him or them to transact the said business and do the said acts.

(2) If, whether before or after the commencement of this Ordinance, a mortgage has been made to, or has become vested by transfer or transmission in an advocate, either alone or jointly with any other person, and if after the commencement of this Ordinance any business is transacted or acts are done by that advocate, or by the firm of which he is a member, in relation to that mortgage, or the security thereby created or the property comprised thereunder, then he or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security such usual costs as he or they would have been entitled to receive if the mortgage had been made to and had remained vested in a person who was not an advocate and that person had retained and employed him or them to transact the said business and do the said acts.

(3) In this section the expression "mortgage" includes any charge on any property for securing money or money's worth.

CONTENTIOUS BUSINESS

59. Notwithstanding anything to the contrary in section 53 of this Ordinance, an advocate may make an agreement in writing with his client as to his remuneration in respect of any contentious business done or to be done by him, providing that he shall be remunerated either by a gross sum or by salary, or otherwise.

Power to make agreements as to remuneration for contentious business.

60. (1) Such an agreement—

(i) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof:

Miscellaneous provisions as to agreements with respect to costs of contentious business.

Provided that the client shall not be entitled to recover from any other person under any order

for the payment of any costs to which the agreement relates more than the amount payable by him to his advocate in respect thereof under the agreement;

(ii) shall be deemed to exclude any claim by the advocate in respect of the business to which it relates other than—

- (a) a claim for the agreed costs; or
- (b) a claim for such costs as are expressly excepted therefrom.

(2) A provision in such an agreement that the advocate shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as an advocate, shall be void.

0.4 (3) ~~No application shall be brought upon any such agreement~~ ~~Committee may~~ the words "but the Court, after hearing the Remuneration Committee if it wishes to be heard, may" ~~and in sub-section (4)~~ any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be, liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect thereof.

Court (4) On any such application, the ~~Remuneration Com-~~ ~~mittee~~—

- (a) if it is of opinion that the agreement is in all respects fair and reasonable, may enforce it;
- (b) if it is of opinion that the agreement is in any respects unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered thereby to be taxed as if the agreement had never been made;
- (c) in any case, may make such orders as to the costs of the application as it thinks fit.

61. (1) If the business covered by any such agreement is business done, or to be done, in any action, the amount payable under the agreement shall not be received by the advocate until the agreement has been examined and allowed by a taxing officer of the Court, and if the taxing officer is of opinion that the agreement is unfair or unreasonable, he may require the opinion of the Remuneration Committee to be taken thereon and may on receipt of such opinion reduce

In certain circumstances taxing officer may reduce amount payable under agreement.

the amount payable thereunder, or order the agreement to be cancelled and the costs recovered thereby to be taxed as if the agreement had never been made.

(2) When the amount agreed for under any such agreement has been paid by or on behalf of the client or by any person entitled so to do, the person making the payment may at any time within twelve months after payment apply to the Court and the Court, if it appears to it that the special circumstances of the case require the agreement to be re-opened, may, on such terms as may be just, re-open the agreement and may order the costs covered thereby to be taxed and the whole or any part of the amount received by the advocate to be repaid by him.

(3) Where any such agreement is made by the client as the guardian or committee of, or as a trustee under a deed or will for, any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the taxing officer of the Court, and that officer shall examine the agreement and may disallow any part thereof, or may require the opinion of the Court to be taken thereon.

(4) Any such client as is mentioned in the last preceding sub-section who pays the whole or any part of the amount payable under the agreement without the agreement having been allowed by the officer or by the Court, shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the advocate who accepts the payment may be ordered by the Court to refund the amount received by him.

62. (1) If, after some business has been done under an agreement made in pursuance of the provisions of section 59 of this Ordinance but before the advocate has wholly performed it, the advocate dies or becomes incapable of acting, then any party to, or the representative of any party to, the agreement, may apply to the Court and the Court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the advocate had not died or become incapable of acting:

Provided that the Court may, notwithstanding that it is of opinion that the agreement is in all respects fair and

Death,
incapability, or
change of
advocate, etc.

reasonable, order the amount due in respect of the business done thereunder to be ascertained by taxation, and in that case—

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
- (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.

(2) The provisions of the last preceding sub-section shall apply in the event of the client changing his advocate (as, notwithstanding the agreement, he shall be entitled to do) before the conclusion of the business to which the agreement relates in the same manner as they apply when the advocate dies or is incapacitated, with this modification, that if an order is made for the taxation of the amount due to the advocate in respect of the business done under the agreement, the Court shall direct the taxing officer to have regard to the circumstances under which the change of advocate has taken place, and the taxing officer, unless he is of opinion that there has been no default, negligence, improper delay or other conduct on the part of the advocate affording to the client reasonable ground for changing his advocate, shall not allow to the advocate the full amount of the remuneration agreed to be paid to him.

Agreement
excludes
taxation.

63. Subject to the provisions of the two last preceding sections, the costs of an advocate in any case where an agreement has been made in pursuance of the provisions of section 59 of this Ordinance shall not be subject to taxation, nor to the subsequent provisions of this Part of this Ordinance with respect to the signing and delivery of an advocate's bill.

Miscellaneous
provisions as to
remuneration for
contentious
business.

64. (1) Nothing in sections 59, 60, 61, 62 or 63 of this Ordinance shall give validity to—

- (a) any purchase by an advocate of the interest, or any part of the interest, of his client in any action, suit or other contentious proceeding; or
- (b) any agreement by which an advocate retained or employed to prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success of that action, suit or proceeding; or

- (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or composition.
- (2) An advocate may, with respect to any contentious business to be done by him, take security from his client for his costs to be ascertained by taxation or otherwise.
- (3) Subject to the provisions of any rules of court, upon every taxation of costs with respect to any contentious business, the taxing officer may—
- (a) allow interest at such rate and from such time as he thinks just on moneys disbursed by the advocate for the client, and on moneys of the client in the hands of, and improperly retained by, the advocate;
- (b) in determining the remuneration of the advocate, have regard to the skill, labour and responsibility involved in the business done by him.

GENERAL PROVISIONS AS TO REMUNERATION

65. (1) The jurisdiction of the Court to make orders for the delivery by an advocate of a bill of costs and for the delivery up of, or otherwise in relation to, any deeds, documents or papers in his possession, custody or power, is hereby declared to extend to cases in which no business has been done by him in the Court.

Power of Court to order advocate to deliver his bill and to deliver up deeds.

(2) In this and the three next succeeding sections the expression "advocate" includes the executors, administrators, and assignees of the advocate in question.

66. (1) Subject to the provisions of this Ordinance, no action shall be brought to recover any costs due to an advocate until one month after a bill thereof has been delivered in accordance with the requirements of this section:

Action to recover advocates' costs.

Provided that, if there is probable cause for believing that the party chargeable with the costs is about to quit the Colony, or to become a bankrupt, or to compound with his creditors, or to do any other act which would tend to prevent or delay the advocate obtaining payment, the Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence an action to recover his costs and may order those costs to be taxed.

(2) The said requirements are as follows—

- (i) the bill must be signed by the advocate, or if the costs are due to a firm, one partner of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and
- (ii) the bill must be delivered to the party to be charged therewith, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling house, or last known place of abode,

and where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill, which shall be presumed until the contrary is shown, to be a bill bona fide complying with this Ordinance.

Taxation of bills on the application of the party chargeable to the advocate

Substituted - 49/

67. (1) (a) Within one month of the delivery of an advocate's bill, the party chargeable therewith may, by notice in writing a copy of which shall be served by the person giving the same on the advocate, require the Registrar to fix a date for the taxation of the bill, and the Registrar shall thereupon fix a date accordingly and shall give notice thereof to the party chargeable with the bill and to the advocate.
- (b) The advocate, on receipt of a copy of the notice as aforesaid, shall forthwith forward to the Registrar a copy of the bill to be taxed, and, if the bill is not fully itemized, shall forthwith forward to the Registrar and to the party chargeable therewith a fully itemized statement of account in support of the bill.
- (c) On the date so fixed, or on such other date as the Registrar may fix in lieu thereof, the bill shall be taxed.
- (d) Where the party chargeable with an advocate's bill gives notice as provided in paragraph (a) of this sub-section, no action shall be commenced on the bill to which the notice relates, and any action already commenced thereon shall be stayed, until the taxation thereof is completed.;

is made, it may contain such terms as regards the costs of the taxation as the Court may think fit;

(ii) in no event shall any such order be made after the expiration of twelve months from the payment of the bill.

(3) On every taxation of a bill, the taxing officer shall tax not only the bill but also the costs of the taxation and shall certify what is due to or from the advocate in respect of the bill and in respect of the costs of the taxation.;

Substituted -
O. 49/54

(4) If after due notice of any taxation, either party thereto fails to attend, the officer may proceed with the taxation *ex parte*.

(5) Unless—

(a) ^{on} the order for taxation was made on the application of the advocate and the party chargeable does not attend the taxation; or

O. 49/54

(b) the order for taxation ^{if any} otherwise provides,

— —

the costs of the taxation shall be paid according to the event of the taxation, that is to say, if one-sixth of the amount of the bill is taxed off, the advocate shall pay the costs, but otherwise the party chargeable shall pay the costs:

Provided that the taxing officer may certify any special circumstances relating to the bill or the taxation thereof to the Court, and the Court may make thereon any such order as it thinks fit respecting the payment of the costs of the taxation.

68. (1) Where a person other than the person who is the party chargeable with the bill for the purposes of the last preceding section, has paid, or is, or was, liable to pay, the bill either to the advocate or to the party chargeable with the "under sub-section (2) of section 67 of this Ordinance",

Taxation on application of third parties and beneficiaries under trusts, etc.

(Ordinance No. 49 of 1954.)

O. 49/54

may apply to the Court for an order for the taxation of the bill as if he were the party chargeable therewith, and the Court may make thereon the same order, if any, as it might have made if the application had been made by that party:

Provided that in cases where the Court has no power to make an order except in special circumstances the Court may,

in considering whether there are special circumstances sufficient to justify it in making an order, take into account circumstances affecting the applicant, but which do not affect the party chargeable with the bill.

(2) If a trustee, executor or administrator has become liable to pay the bill of an advocate, the Court may, upon the application of any person interested in the property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill, and upon such terms, if any, as it thinks fit, order the bill to be taxed, and may order such payments, in respect of the amount found due to or from the advocate, or to the executor, administrator or trustee, as it thinks fit:

Provided that, in considering any such application, the Court shall have regard to—

(a) the provisions of the last preceding section as to applications by the party chargeable with the taxation of an advocate's bill so far as they are capable of being applied to an application made under this sub-section;

(b) the extent and nature of the interest of the applicant.

(3) If an applicant under the last preceding sub-section pays any money to the advocate, he shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the advocate had.

(4) The following provisions shall apply to applications made under this section—

(a) except in special circumstances no order shall be made for the taxation of a bill which has already been taxed;

(b) the Court may, if it orders taxation of the bill, order the advocate to deliver to the applicant a copy of the bill upon payment of the costs of that copy.

General provisions as to taxation.

69. (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation

thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

(3) — added - 0.49/54.

70. Any court in which an advocate has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the advocate entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the said costs and for raising money to pay or for paying, the said costs out of the said property as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate:

Charging orders.

Provided that no order shall be made if the right to recover the costs is barred by limitation.

PART VIII—MISCELLANEOUS

71. Any person duly admitted as an advocate shall be an officer of the Court and shall be subject to the jurisdiction thereof.

Advocates to be officers of Court.

72. (1) The Court may on the application of the Committee order that any expenses incurred by the Committee in carrying out any provisions of this Ordinance, or in supporting any report before the Court, shall be paid by the advocate concerned or by any party on whose application such expenses have been incurred.

Payment of expenses of Committee.

(2) Where any such expenses have been ordered to be paid and are not paid within twelve months from the date of the order, they shall, provided the Attorney General certifies that such expenses are not likely to be recovered, be paid out of general revenue by the Financial Secretary on the warrant of the Governor.

72A. All admission fees received by the Registrar under sub-section (4) of section 7 of this Ordinance, and all fees for practising certificates, and all annual subscriptions to the Law Society of Kenya, received by the Registrar under section 22 of this Ordinance, shall be paid to the Law Society of Kenya and may be applied by the Society to all or any of the objects of the Society.

Payment of fees, etc., to the Law Society of Kenya.

(Ordinance No. 55 of 1952)

Power to make general regulations.

S.N. 1302/51 (Revoked)
785/52
786/52
1382/52

74. The Committee, with the concurrence of the Chief Justice, may for the purposes of this Ordinance make general regulations with respect to the following matters or any of them—

- (i) the keeping of accounts by advocates;
- (ii) the determination of what acts or omissions shall constitute misconduct on the part of an advocate;
- (iii) practice and etiquette,

and all such further or other general regulations as may be deemed necessary or proper for giving full force and effect to the provisions of this Ordinance.

Saving of other laws.

75. Nothing in this Ordinance shall prejudice or affect—

- (a) the provisions of any Ordinance or rules made thereunder, empowering any person, not being an advocate, to conduct, defend or otherwise act in relation to any proceedings; or
- (b) any existing rules or regulations touching the remuneration of advocates, except only so far as they conflict or are inconsistent with any of the provisions of this Ordinance. Such existing rules and regulations shall be revoked upon the request of the Remuneration Committee, but shall, pending any such request, except only as aforesaid, be deemed to represent an order made by the Remuneration Committee pursuant to the provisions of section 53 of this Ordinance.

75A - See page 236 - (Formerly Section 52 of this ORD.)

0-20/52 - Repeal.

76. The following Ordinance and rules are hereby respectively repealed and revoked, that is to say—

- (i) The Legal Practitioners Ordinance; and
- (ii) The Rules of Court (Legal Practitioners), being Part I of the Rules of His Majesty's Supreme Court of Kenya.

Cap. 10.
Orders, Proclamations, Rules and Regulations, Vol. I.

ORDINANCE No. 56 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE INCOME TAX
ORDINANCE, 1940**

18th November, 1949

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Income Tax (Amendment) (Relief) Ordinance, 1949, and shall be read and construed as one with the Income Tax Ordinance, 1940, hereinafter referred to as the principal Ordinance, and all amendments thereto.

Short title.

No. 11 of 1940.

2. The provisions of this Ordinance shall apply to assessments in respect of the year of assessment commencing on the 1st day of January, 1950, and to each subsequent year of assessment.

Date of commencement of application of Ordinance.

3. There shall be added to section 24 of the principal Ordinance the following new sub-section:—

Amendment of section 24 of the principal Ordinance.

(4) In the case of an individual resident in the Colony in the year immediately preceding the year of assessment who satisfies the Commissioner that in the year immediately preceding the year of assessment he had attained the age of 65 years or upwards in the case of a man, or the age of 60 years or upwards in the case of a woman, there shall (in addition to any other deduction allowable under sub-section (3) of this section) be allowed a deduction of—

(a) in the case of an individual to whom paragraph (a) of sub-section (1) of this section applies, £175:

Provided that where the total income of such individual exceeds £350 the amount of such deduction shall be reduced by one-half of the amount by which the total income exceeds £350;

(b) in any other case, £100:

Provided that where the total income of such individual exceeds £200 the amount of such deduction shall be reduced by one-half of the amount by which the total income exceeds £200.

Date of coming into operation - 21st June 1950 - G.N. 748/50.

ORDINANCE No. 57 of 1949

Assented to in His Majesty's name this eighteenth day of November, 1949.

Governor.
P. E. MITCHELL,

ARRANGEMENT OF SECTIONS

SECTION

1—Short title and commencement.

SECTION

2—Authority of Governor in Council to extend to the East Africa High Commission and its purposes certain provisions of law.

AN ORDINANCE TO MAKE PROVISION FOR EXTENDING CERTAIN PROVISIONS OF LAW TO THE EAST AFRICA HIGH COMMISSION AND ITS PURPOSES

Date of commencement.

By Notice

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title and commencement.

1. This Ordinance may be cited as the Legislation (Application to High Commission) Ordinance, 1949, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint.

Authority of Governor in Council to extend to the East Africa High Commission and its purposes certain provisions of law.

2. Where any reference to the Government of the Colony or to public purposes occurs in any Ordinance or in any instrument made under or by virtue of any Ordinance, the Governor in Council may, if he considers it expedient so to do, by order published in the Gazette, provide that such reference shall, to such extent and subject to such modifications, if any, as may be specified in such order, be read and construed as including a reference to the East Africa High Commission or to the purposes of the East Africa High Commission, as the case may be; and such reference shall thereupon be read and construed accordingly.

G.N. 1007/51, 936/52

*Repealed - 0.5/54.***ORDINANCE No. 58 of 1949**

Assented to in His Majesty's name this ninth day of
December, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE EXCISE DUTIES
ORDINANCE, 1935**

9th December, 1949

Date of
commencement.

ENACTED by the Governor of the Colony of Kenya,
with the advice and consent of the Legislative Council thereof,
as follows:—

1. This Ordinance may be cited as the Excise Duties
(Amendment) Ordinance, 1949, and shall be read and construed
as one with the Excise Duties Ordinance, 1935 (hereinafter
referred to as the principal Ordinance).

Short title.

No. 40 of 1935

2. The Schedule to the principal Ordinance is amended
by adding thereto the following:—

Addition to
Schedule to
principal
Ordinance.

Matches—

Sh. cts.

(a) in boxes or packages containing not more than 100 matches, per gross of boxes or packages	1 44
(b) in boxes or packages containing more than 100 but not more than 200 matches, per gross of boxes or packages	2 88
(c) in boxes or packages containing more than 200 matches, for every gross of 100 matches	1 44

*Repealed - O. 14/53.***ORDINANCE No. 59 of 1949**

Assented to in His Majesty's name this thirty-first day of December, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE INDUSTRIAL
LICENSING ORDINANCE, 1948**

Date of
commencement.

31st December, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title

1. This Ordinance may be cited as the Industrial Licensing (Amendment) Ordinance, 1949, and shall be read and construed as one with the Industrial Licensing Ordinance, 1948 (hereinafter referred to as the principal Ordinance).

No. 26 of 1948.

Amendment of
section 10 of
the principal
Ordinance.

2. Section 10 of the principal Ordinance is amended in the following respects—

(a) by re-numbering the present section as sub-section (1);

(b) by substituting for the words "A decision of the Council that a licence should not be granted shall only be made upon one or more of the following grounds:" the words "Subject to the provisions of sub-section (2) of this section, a decision of the Council that a licence should not be granted shall only be made upon one or more of the following grounds—"; and,

(c) by adding to the section the following sub-section—

(2) Where under section 9 of this Ordinance the Council decides that a licence shall be granted in respect of any article, then it may, on the application of the applicant, declare that, subject to the provisions of section 7 of this Ordinance, no other licence to establish and operate a factory for the manufacture for sale, or to manufacture for sale, any such article shall be granted during such period, not exceeding five years from the date of such declaration, as the Council may determine.

✓3. The principal Ordinance is amended by inserting therein immediately after section 10 the following section—

Insertion of section 10A in the principal Ordinance.

10A. Where prior to the 1st day of September, 1949, a licence in respect of any article has been granted under section 11 of this Ordinance, then the licensee may apply to the Council for a declaration that, subject to the provisions of section 7 of this Ordinance, no other licence to establish and operate a factory for the manufacture for sale, or to manufacture for sale, such article shall be granted in respect of such period, not exceeding five years from the 1st day of September, 1949, as the Council may determine to any person who was not on that date a licensee in respect of such article.

Power of existing licensee to apply for declaration.

✓4. Section 14 of the principal Ordinance is amended by inserting therein immediately before the word "refused" the words "granted or".

Amendment of section 14 of the principal Ordinance.

✓5. The following section shall be substituted for section 15 of the principal Ordinance—

Repeal and replacement of section 15 of the principal Ordinance.

15. If the Appeal Tribunal decides under the provisions of section 14 of this Ordinance—

Action consequent upon decision of Appeal Tribunal.

(a) that the licence should be granted, the Registrar shall grant the licence subject to such conditions, if any, as the Appeal Tribunal may, after consultation with the Council, direct to be attached thereto;

(b) that the licence should not be granted, the Registrar shall refuse to grant the licence or, if it has already been granted, shall cancel the licence with effect from the date of such decision.

ORDINANCE No. 60 of 1949

Assented to in His Majesty's name this thirty-first day of December, 1949.

P. E. MITCHELL,
Governor.

AN ORDINANCE TO AMEND THE EVICTION OF TENANTS (CONTROL) ORDINANCE, 1949

Date of commencement.

31st December, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Eviction of Tenants (Control) (Amendment) Ordinance, 1949, and shall be read and construed as one with the Eviction of Tenants (Control) Ordinance, 1949 (hereinafter referred to as the principal Ordinance).

No. 12 of 1949.

Amendment of section 2 of the principal Ordinance.

2. There shall be substituted for the definition of "house" in section 2 of the principal Ordinance the following definition:—

"house" means any building or erection used as a place of residence and constructed on land which is not owned by the owner of such building or erection.

Repeal and replacement of section 3 of the principal Ordinance.

3. There shall be substituted for section 3 of the principal Ordinance the following:—

Restriction on eviction and raising of rents by ground landlord.
No. 22 of 1949.

3. (1) Notwithstanding anything to the contrary in the Increase of Rent (Restriction) Ordinance, 1949, or in any other law in force in the Colony, no person shall take any action for the eviction of an owner or of a tenant occupying a house in any of the areas set out in the Schedule to this Ordinance without the consent in writing of the Board.

(2) No person shall raise the rent of the land upon which any house is built within any of the areas set out in the Schedule to this Ordinance above the rent payable therefor on the 6th day of September, 1949, without the consent of the Board.

(3) If any landlord of land to which sub-section (2) of this section applies has raised the rent of such land after the 6th day of September, 1949, and before the date of the commencement of the Eviction of Tenants (Control) (Amendment) Ordinance, 1949, any excess of rent paid to him over and above the rent payable to him on that date shall be recoverable and may be recovered by deduction from future rents.

No. 60 of 1949.

(4) Any consent required under the two preceding sub-sections shall be given under the hand of the Chairman of the Board or his deputy.

(5) The Governor in Council may, by notice in the Gazette, add to; amend or vary the Schedule to this Ordinance.

4. There shall be substituted for sub-section (1) of section 4, of the principal Ordinance the following:—

Repeal and replacement of section 4 (1) of the principal Ordinance.

(1) The Board shall not give such consent except on the grounds of hardship or, in the case of a consent required under sub-section (1) of the last preceding section, on the grounds that any land upon which any house is situated is required by the owner of such land for the purpose of erecting a building containing permanent residential accommodation substantially superior in size and quality to such house and that such accommodation will be erected within the time approved by the Board or, in the case of any consent required under sub-section (2) of the last preceding section, on the grounds that the rates payable in respect of the land have been increased.

ORDINANCE No. 61 of 1949

Assented to in His Majesty's name this thirty-first day of December, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO AMEND THE INCREASE OF
RENT (RESTRICTION) ORDINANCE, 1949**

Date of commencement.

31st December, 1949

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Increase of Rent (Restriction) (Amendment, No. 2) Ordinance, 1949, and shall be read and construed as one with the Increase of Rent (Restriction) Ordinance, 1949 (hereinafter referred to as the principal Ordinance).

No. 22 of 1949.

Amendment of section 1 (2) of the principal Ordinance.

2. Sub-section (2) of section 1 of the principal Ordinance is amended in the following respects—

(a) by substituting for paragraph (a) the following paragraph—

(a) premises of which the standard rent is in excess of ten thousand shillings per annum and which—

(i) were not rented at the commencement of this Ordinance and have not been rented between that date and the commencement of the Increase of Rent (Restriction) (Amendment, No. 2) Ordinance, 1949; or

(ii) the landlord has lawfully recovered possession of after the commencement of this Ordinance;

No. 61 of 1949.

and

(b) by deleting paragraph (d) and by re-lettering paragraph (e) as paragraph (d).

Amendment of section 5 (1) (d) of the principal Ordinance.

3. Sub-section (1) of section 5 of the principal Ordinance is amended by deleting from paragraph (d) thereof the word "furnished".

1949

Increase of Rent (Restriction)

No. 61

✓ 4. There shall be substituted for paragraph (a) of sub-section (1) of section 13 of the principal Ordinance the following paragraph—

Repeal and replacement of section 13 (1) (a) of the principal Ordinance.

(a) in the case of a dwelling house, by an amount not exceeding ten per centum, and in the case of business premises, by an amount not exceeding twenty per centum, of the standard rent as at the commencement of this Ordinance.

✓ 5. Paragraph (i) of sub-section (1) of section 16 of the principal Ordinance is amended by inserting after the words "assigned or sub-let the whole of the premises," the words "or sub-let part of the premises".

Amendment of section 16 (1) (i) of the principal Ordinance.

✓ 6. Section 22 of the principal Ordinance is repealed and the following substituted:—

Repeal and re-enactment of section 22 of the principal Ordinance.

22. (1) If a landlord or his agent or clerk fails to supply his tenant with a rent book on demand or fails to enter or to cause to be entered therein the standard rent, or any payment on account of rent or fails to sign or cause to be signed any such entry, such landlord or such agent or clerk shall be liable to a fine not exceeding four hundred shillings, unless he proves that he acted innocently and without intent to deceive.

Rent books.

(2) A Board, in its discretion, may order a landlord or the agent or clerk of such landlord to supply the tenant of such landlord with a rent book, or may order such landlord or such agent or clerk to enter or cause to be entered in such tenant's rent book the standard rent and all payments on account of rent and to sign such entry; and any person who fails to comply with an order made by a Board under the provisions of this sub-section shall be liable to a fine not exceeding four hundred shillings or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

7. The provisions of sections 2, 4 and 5 of this Ordinance shall be deemed to have come into operation on the 6th day of September, 1949.

Date of commencement of sections 2, 4 and 5.

ORDINANCE No. 62 of 1949*Repealed - 0.8/50.*

Assented to in His Majesty's name this thirty-first day of
December, 1949.

P. E. MITCHELL,
Governor.

**AN ORDINANCE TO APPLY CERTAIN SUMS OF
MONEY FOR THE SERVICE OF THE YEAR
ENDING THE 31ST DAY OF DECEMBER, 1950**

Date of
commencement.

1st January, 1950

ENACTED by the Governor of the Colony of Kenya, with
the advice and consent of the Legislative Council thereof, as
follows:—

Short title.

1. This Ordinance may be cited as the 1950 Appropria-
tion Ordinance, 1949.

Public Revenue
and other
funds charged.

2. The public revenues for the year 1950 and other funds
of the Colony are hereby charged towards the service of the
year ending the thirty-first day of December, one thousand nine
hundred and fifty, with the sum of ten million, nine hundred
and eighty-three thousand and eighty-eight pounds in respect of
the Colony, and with a further sum of six million, one hundred
and sixty-two thousand, one hundred and twenty-nine pounds
in respect of the Development and Reconstruction Fund.

Application
of moneys
granted.

3. The moneys granted by this Ordinance shall be applied
for the purposes and services specified in the First and Second
Schedules hereto.

Accountant
General's
authority for
payment.

4. The Accountant General of the Colony is hereby
authorized and required from time to time upon the warrant or
order of the Governor to pay out of the revenue and other
funds of the Colony for the several services specified in the First
and Second Schedules hereto the said sum of ten million, nine
hundred and eighty-three thousand and eighty-eight pounds,
and the said further sum of six million, one hundred and sixty-
two thousand, one hundred and twenty-nine pounds which
will come in course of payment during the year ending the
thirty-first day of December, one thousand nine hundred and
fifty.

1949

Appropriation

FIRST SCHEDULE

Head No.	Head	Amount £
1	The Governor	24,142
1A	The Governor Extraordinary	6,745
2	Judicial Department	78,917
3	Audit Department	53,225
3A	Audit Department Extraordinary	90
4	Central Administration—Secretariat and Legisla- tive Council	110,445
4A	Central Administration—Secretariat and Legisla- tive Council Extraordinary	60
5	Public Works Department	497,640
6	Public Works Recurrent	354,800
7	Public Works Extraordinary	273,424
8	Office of the Member for Law and Order	4,545
8A	Office of the Member for Law and Order Extra- ordinary	50
9	Immigration Department	27,925
9A	Immigration Department Extraordinary	50
10	Legal Department	15,255
10A	Legal Department Extraordinary	1,405
11	Police	729,535
11A	Police Extraordinary	57,555
12	Prisons	302,570
12A	Prisons Extraordinary	3,640
13	Registrar General's Department	12,170
14	Accountant General's Department	69,868
14A	Accountant General's Department Extraordinary	280
15	Loans from Revenue	11,961
16	Inland Revenue Department	46,930
16A	Inland Revenue Department Extraordinary	230
17	Miscellaneous Services	275,938
17A	Miscellaneous Services Extraordinary	825,400
18	Pensions and Gratuities	585,700
19	Public Debt	562,875
20	Rent and Interest to Sultan of Zanzibar	16,000
21	Subventions	44,131
21A	Subventions Extraordinary	33,230
22	Office of the Member for Agriculture and Natural Resources	10,820
23	Services under the Member for Agriculture and Natural Resources	35,359
23A	Services under the Member for Agriculture and Natural Resources Extraordinary	91,630
24	Agricultural Department	290,744
24A	Agricultural Department Extraordinary	29,040
25	Forest Department	167,555
25A	Forest Department Extraordinary	1,700
26	Game Department	48,770
26A	Game Department Extraordinary	6,725
27	Veterinary Services	235,492
27A	Veterinary Services Extraordinary	24,625

Appropriation

1949

Head No.	Head	Amount £
28	Administration, General Staff	612,445
28A	Administration Extraordinary	31,880
29	Civil Aviation	18,695
30	Coast Agency	11,848
30A	Coast Agency Extraordinary	50
31	Education Department	1,092,039
31A	Education Department Extraordinary	56,750
32	Information Services	29,490
33	Labour Department	107,970
33A	Labour Department Extraordinary	7,800
34	Lands Department	50,775
34A	Lands Department Extraordinary	1,000
35	Survey Department	45,940
35A	Survey Department Extraordinary	6,200
36	Military	510,245
37	Miscellaneous Services	23,541
37A	Miscellaneous Services Extraordinary	4,890
38	Printing and Stationery	104,124
38A	Printing and Stationery Extraordinary	36,000
39	Registrar of Co-operative Societies	9,028
39A	Registrar of Co-operative Societies Extraordinary	100
40	Transport Licensing Board	3,177
41	Health and Local Government Department	14,330
42	Government Chemist's Department	3,950
43	Local Government Contributions	493,945
43A	Local Government Contributions Extraordinary	31,400
44	Medical Department	780,109
44A	Medical Department Extraordinary	16,390
45	Miscellaneous Services (Health and Local Govern- ment)	9,730
45A	Miscellaneous Services (Health and Local Govern- ment) Extraordinary	5,000
46	Mines and Geological Department	20,205
46A	Mines and Geological Department Extraordinary	4,100
	High Commission Services	416,762
	High Commission Services Extraordinary	12,248
	War Expenditure Civil	441,741
	Total	£10,983,088

SECOND SCHEDULE

Head	Amount £
Development and Reconstruction Fund	6,162,129