

85



COLONY AND PROTECTORATE OF KENYA

ORDINANCES

ENACTED DURING THE YEAR

1939

VOL. XVIII (NEW SERIES)

1940

PRINTED BY THE GOVERNMENT PRINTER
NAIROBI

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ORDINANCES, 1939
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I	Immigration Restriction (Amendment)	11-5-39	.. 11-5-39
II	Farmers Assistance (Amendment)	11-5-39	.. 11-5-39
III	Arms (Traffic with Abyssinia) (Repeal)	11-5-39	.. 11-5-39
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XII	Police (Amendment)	29-6-39	.. 29-6-39
XIII	Coffee Industry (Amendment) ..	29-6-39	.. 29-6-39
XIV	Electric Power (Amendment) ..	18-7-39	.. By Proclamation
XV	Kenya Indian and Arab (Territorial) Company	18-7-39	.. By Notice
XVI	Employment of Servants (Amendment)	18-7-39	.. By Notice
XVII	Employment of Women, Young Persons and Children (Amendment)	18-7-39	.. 18-7-39
XVIII	Resident Labourers (Amendment)	18-7-39	.. By Notice
XIX	Sisal Industry	18-7-39	.. By Notice
XX	Compulsory Service	4-9-39	.. 3-9-39
XXI	Trading with the Enemy	4-9-39	.. 3-9-39
XXII	Beer (Amendment)	14-11-39	.. 14-11-39
XXIII	Excise Duties (Amendment) ..	14-11-39	.. 14-11-39
XXIV	Customs Tariff (Amendment) ..	14-11-39	.. 14-11-39
XXV	Military Units	1-12-39	.. By Notice
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CHRONOLOGICAL TABLE—*Continued*

<i>No.</i>	<i>Title</i>	<i>Date of Assent</i>	<i>Date of Commencement</i>
XXIX	Tea (Amendment)	2-12-39 ..	2-12-39
XXX	Trading in Unwrought Precious Metals (Amendment)	2-12-39 ..	2-12-39
XXXI	European Civil Service Provident Fund (Amendment)	2-12-39 ..	2-12-39
XXXII	British Nationality and Status of Aliens Fees	2-12-39 ..	2-12-39
XXXIII	Matrimonial Causes	22-12-39 ..	By Notice
XXXIV	Penal Code (Amendment) ..	22-12-39 ..	By Notice
XXXV	Criminal Procedure Code (Amendment)	22-12-39 ..	By Notice
XXXVI	Adulteration of Produce (Amendment)	22-12-39 ..	22-12-39
XXXVII	Municipalities (Hospital Rate) ..	22-12-39 ..	22-12-39
XXXVIII	Marketing of Native Produce (Amendment)	22-12-39 ..	22-12-39
XXXIX	Fish Protection	22-12-39 ..	22-12-39
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XLII	War Taxation	30-12-39 ..	1-1-40

**TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION
FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1939**

<i>Year and No. of Ordinance Revised Edition</i>	<i>Short Title</i>	<i>How Affected</i>	<i>Ordinance of 1939</i>
Cap. 43	Currency	Repealed	34
" 62	Immigration Restriction	Section 5, proviso deleted and replaced; sections 11, 11A, 31, repealed and replaced; Schedules A and B, repealed	1
" 64	Official Secrets	Repealed	9
" 97	Adulteration of Produce	Section 2, amended; section 2A, new; sections 5, 6, 7, repealed and replaced by 5, 6, 7, 7A; section 10, repealed and replaced; section 14 and schedule, new	36
" 100	Beer	Section 4, amended	22
" 163	Fish Protection	Repealed	39
" 165	Electric Power	Section 2, repealed and replaced; section 3, amended; section 4 (1), repealed and replaced; sections 7, 8, amended; section 9 (1), repealed and replaced; section 10 (3), proviso added; sections 11, 13, amended; section 15, repealed and replaced; section 18 (1) amended; sections 19, 21, repealed and replaced; sections 22, 23, 24, 25, amended; section 25 (1) repealed and replaced; section 25 (5), repealed and replaced by (5), (6), and (7); section 26, amended; section 27, amended, and (1), (2) (b), repealed and replaced, (5) repealed and replaced by (6), and (7) added; sections 28 (1), 31, amended; section 33 (3), proviso added; section 34, amended, and (1), (4) (c) (vi), (4) (c) (vii) repealed and replaced; sections 35, 39 (4), 41, repealed and replaced; section 42, amended; section 43 (2), new; section 44 (1) (g), repealed; section 45, repealed and replaced; section 49, repealed; section 63, amended, and provisos added to (1)	36 22 39

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—Contd.

FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1939

Ordinance
of
1939

Year and No. of Ordinance Revised Edition	Short Title	How Affected	Ordinance of 1939
Cap. 165	Electric Power—Contd.	and (2); section 68, repealed and replaced; section 68A, new; section 69, repealed and replaced; section 69A, new; section 70, repealed and replaced; sections 71, 72, amended; sections 73, 77 (1), 87 (1) and (2), repealed and replaced; section 88 (1), amended; section 100A, new; section 105, amended; sections 109 (2), (3) and (4), repealed; section 112, amended; sections 119 (c), 122, repealed and replaced; section 125, amended; section 134 (1), repealed and replaced; section 135 (2), repealed and (3) renumbered (2); section 141 amended, and (2) added; section 142, repealed and replaced; section 147A, new; section 151, repealed and replaced; schedule to principal Ordinance, amended; second schedule to amending Ordinance contains minor and consequential amendments to 36 sections of principal Ordinance; authority given Attorney General to consolidate principal and amending Ordinances and reprint; such consolidated edition to be deemed authentic copies of principal and amending Ordinances	14 33
" 170 21 of 1928	Divorce Local Government (District Councils)	Repealed Section 2, definition of "standing committee" repealed and replaced; section 119 (1), repealed and replaced	8
19 of 1928	Local Government (Municipalities)	Section 6 (1), further proviso; section 69, amended	5
20 of 1928	Local Government (Rating)	Section 5, amended	10
35 of 1929	Water	Sections 2, 18 (12), 20 (3), 23 (a), amended; section 25, repealed and replaced; section 27, amended; section 88 (6), new; section 97 (2), new	4

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—*Contd.*
FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1939

<i>Year and No. of Ordinance</i>	<i>Short Title</i>	<i>How Affected</i>	<i>Ordinance of 1939</i>
1 of 1930	Customs Tariff	.. .. . Schedule, amended	24
10 of 1930	Penal Code	.. .. . Section 18, repealed and replaced; section 18A, new; sections 24, 27 (1), 28 (2), 32, amended; section 33B, new; section 52 (1), amended; section 53 (3), new; section 60, repealed and replaced; section 151, repealed; section 168A, new; section 192A, repealed and replaced; section 255, amended; section 293, repealed and replaced; section 296A, amended; section 296B, new; sections 307, 308, heading to Chapter XXXVI, amended; sections 339A, 339B, 344A, new; section 345, amended	34
11 of 1930	Criminal Procedure Code	.. .. . Section 2, amended; sections 7, 8, 9, 10, 11, 12, 20, 87, 88, repealed and replaced; sections 99, 116, amended; heading preceding section 132, new; sections 132, 132A, repealed and replaced by 132, 132A, 132B, 132C; section 134, repealed and replaced; section 169A, repealed; heading preceding section 173, new; sections 173 to 180, repealed and replaced by sections 173 to 180B; heading preceding section 181, amended; section 196A, new; section 197 (1), repealed and replaced; section 198, repealed and replaced by 198, 198A; section 199, repealed and replaced; sections 200, 202, amended; section 204 (1), repealed and replaced; section 214A, new; section 215 (4), repealed and replaced by (4), (5), (6), (7); sections 219 to 221, repealed and replaced; section 227 (1), amended; sections 234 and 235, repealed and replaced; sections 236, 240, amended; heading preceding section 241, amended; section 241, amended; sections 243, 244, repealed; section 289, amended; sections 291A, 304 (4), new; section 317, amended;	34

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—Contd.

FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1939

Year and No. of Ordinance	Short Title	How Affected	Ordinance of 1939
64 of 1930	Police	Section 318A, new; section 319 (1), repealed and replaced, and (4), (5), (6) added; section 336, amended; section 338, repealed and replaced; sections 342 (2), 353, amended; section 371A, new; first schedule, amended	35
29 of 1931	Arms (Traffic with Abyssinia)	Section 13 (3), repealed and replaced; section 29 (11), new proviso added; section 56 (3), amended; section 70, repealed and replaced	12
48 of 1932	King's African Rifles	Repealed	3
2 of 1933	Trading in Unwrought Precious Metals	Section 2, definition of "battalion" or "unit", repealed and replaced; section 76 (2), amended	6
14 of 1933	Employment of Women, Young Persons and Children	Section 12A, new	30
61 of 1933	Mining	Section 4 (1), amended	17
27 of 1934	European Civil Service Provident Fund	Section 2, amended; sections 7 (i), 17 (8), 86, repealed and replaced; new schedule added	7
46 of 1934	Tea	Section 10, repealed and replaced	31
54 of 1934	Coffee Industry	Section 3 (3) amended; section 5, repealed and replaced	29
11 of 1934	Sisal Industry	Section 2, definition of "coffee planter", repealed and replaced; section 3 (1), amended	13
28 of 1935	Marketing of Native Produce	Repealed	19
43 of 1935	Arms (Traffic with Abyssinia) (Amendment)	Sections 2, 3, 10, 16 (c), amended	38
40 of 1935	Excise Duties	Repealed	3
18 of 1936	Farmers Assistance	Schedule, amended	23
		Sections 4 (1) and (3), 9 to 18, repealed and replaced; section 20, amended; section 21 (1), proviso deleted and replaced; sections 22 (2), 23 (1), 25, 34 (1), amended; section 35A, new	2

TABLE SHOWING THE EFFECT OF THE YEAR'S LEGISLATION—*Contd.*
FORMER ORDINANCES (IN CHRONOLOGICAL ORDER) REPEALED OR AMENDED BY ORDINANCES OF 1939

<i>Year and No. of Ordinance</i>	<i>Short Title</i>	<i>How Affected</i>	<i>Ordinance of 1939</i>
50 of 1936	Non-Native Poll Tax	Surcharge on non-native poll tax	42
4 of 1937	Kenya Regiment (Territorial Force)	Section 2, amended; sections 23A and 36A, new	11
5 of 1937	Kenya Defence Force	Section 3, amended; section 12 (2), repealed and replaced; Part IV, new; sections 28, 31 (1), and paragraph (1) of schedule, amended	27
12 of 1937	Income Tax	Surcharge on income tax	42
30 of 1937	Resident Labourers	Section 3, definition of "native area" added; section 5, amended and (2) (k) repealed and replaced, (2) (n) new, (4), (7) and (10) repealed and replaced; section 6, amended; section 7, repealed and replaced; section 8 (1), amended; section 18, repealed and replaced; section 18A, new; section 24 (2), amended; section 25 (9), repealed and replaced; section 34, amended	18
2 of 1938	Employment of Servants, 1937	Section 2, definition of "juvenile" amended and replaced; .. 19, amended; sections 27, 28, 29, 30, repealed and replaced; section 73 (4), amended; section 28, certificate set out in schedule repealed; additional section regarding temporary identity certificates	16
20 of 1939	Compulsory Service (Amendment)	Sections 2 and 4, amended; section 9 (3) and (4), repealed and replaced; section 10 (4), new; section 15 (1), amended; section 18, new; schedule, amended	26

Colony and Protectorate of Kenya

ORDINANCE No. 1 of 1939

Assented to in His Majesty's name this eleventh day of May, 1939.

R. BROOKE-POPHAM,
Governor.

[11TH MAY, 1939.] Date of assent.

An Ordinance to Amend the Immigration Restriction Ordinance

11th May, 1939

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 Immigration Restriction (Amendment) Ordinance, 1939, and shall be read as one with the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Short title.

Cap. 62.

2. Section 5 of the Principal Ordinance is hereby amended by deleting therefrom the proviso thereto and substituting therefor the following proviso:—

Amendment of section 5 of the Principal Ordinance.

“Provided that the Governor may, notwithstanding the provisions of section 11 of this Ordinance, permit any of the persons mentioned in paragraphs (a), (b), (c), (d), (e) and (g) of this section to enter the Colony upon such conditions as the Governor may determine.”

3. Section 11 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 11 of the Principal Ordinance.

“11. (1) Any person who an immigration officer has reason to believe will, if necessary, be received back by the country from which such person has come or by any other country and appears to be a prohibited immigrant under paragraph (a) of section 5 of this Ordinance and not coming within the provisions of any of the paragraphs (b), (c), (d), (e), (f), (g) and (h) of the said section may, in the discretion of the immigration officer, be granted a conditional permit to enter the Colony upon depositing with the immigration officer—

Entry of persons who can return to the country from which they came or to any other country.

(a) if a native of Asia or Africa, the sum of ten pounds or such other sum as the Governor in

Council may from time to time by order determine;

(b) in the case of any other person, the sum of fifty pounds or such other sum as the Governor in Council may from time to time by order determine:

Provided that the immigration officer may, in lieu of requiring such deposit, require the intending immigrant to give security by bond, in such form as may be prescribed, to the amount of such deposit with one or more sureties resident in the Colony and who are approved by the immigration officer, conditional on the intending immigrant satisfying the immigration officer within such period, after the date of the entry into the Colony of such immigrant, as may be specified in the bond that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge.

(2) (a) Any person who an immigration officer has reason to believe will, if necessary, not be received back by the country from which such person has come or by any other country and who appears to be a prohibited immigrant under paragraph (a) of section 5 of this Ordinance and not coming within the provisions of any of the paragraphs (b), (c), (d), (e), (f), (g) and (h) of the said section, may, in the discretion of the immigration officer, be granted permission to enter the Colony upon depositing with the immigration officer such amount (not exceeding £500) as the immigration officer may consider necessary.

Entry of persons who cannot return to the country from which they came or to any other country.

(b) Notwithstanding the provisions of paragraph (a) of this sub-section the immigration officer may, in lieu of requiring such deposit, require the intending immigrant to give security, in such form as may be prescribed, to the amount of such deposit with one or more sureties resident in the Colony and who are approved by the immigration officer, conditional on the intending immigrant satisfying the immigration officer within such period, after the date of the entry into the Colony of such immigrant, as may be specified in the bond that he is not likely to become a pauper or a public charge.

(3) Whenever the condition of a bond taken under the provisions of either sub-section (1) or sub-section (2) of this section or under the provisions of the proviso to section 5 of this Ordinance has been broken the Attorney General or the Principal Immigration Officer may sue and recover for the use of His Majesty the amount secured by such bond.

(4) (a) If a person, who has entered the Colony under the provisions of sub-section (2) of this section, fails, at the conclusion of a period fixed by the immigration officer at the time of entry and notified by him to such person, to satisfy an immigration officer that he is not likely to become a pauper or a public charge, his deposit may be forfeited:

Provided that if at any time during the period aforesaid the Principal Immigration Officer is satisfied that such person has become a pauper or a public charge, then and in such case, the Principal Immigration Officer may order such person's deposit to be forfeited to His Majesty.

(b) If such person shall, at any time within such period or within the period specified in any bond given under paragraph (b) of sub-section (2) of this section, satisfy the Principal Immigration Officer that he is not likely to become a pauper or a public charge, the Principal Immigration Officer may, in his discretion, return to him his deposit or cancel his bond, as the case may be."

4. Section 11A of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

"11A. (1) Whenever an immigration officer under the provisions of sub-section (1) of section 11 of this Ordinance allows a person appearing to be a prohibited immigrant to enter the Colony, he shall grant to such person a conditional permit in such form as may be prescribed.

(2) Every person to whom a conditional permit has been granted shall report himself personally or by letter at such times as may be specified in such permit to the officer who issued such permit or to such officer in the public service of the Colony as the officer who issued the permit may from time to time direct:

Repeal and replacement of section 11A of the Principal Ordinance. Conditional permit.

Provided that whenever a holder of a conditional permit at any time during the continuance of such permit changes his place of residence in the Colony he shall immediately report such change of residence in the manner hereinbefore provided.

(3) If such person shall, at any time within the period specified in such permit, satisfy the immigration officer that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge, the immigration officer may, in his discretion, cancel the conditional permit granted to such person and return to him his deposit or cancel the bond, as the case may be.

(4) If such person fails, at the conclusion of the period aforesaid, to satisfy an immigration officer that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge, his deposit may be forfeited and he may be treated as a prohibited immigrant:

Provided that if at any time during the period aforesaid it appears to an immigration officer that it is not likely that such a person will, at the conclusion of the period aforesaid, satisfy him that he is no longer a prohibited immigrant and that he is not likely to become a pauper or a public charge, then and in such case, the immigration officer may, if such person refuses to leave the Colony, bring such person before a magistrate and such magistrate may declare such person to be a prohibited immigrant, and shall order his deposit to be forfeited to His Majesty."

5. Section 31 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 31 of the Principal Ordinance.

"31. The Governor in Council may from time to time make rules prescribing anything required to be prescribed under this Ordinance and generally for the better carrying out of the provisions of this Ordinance."

Rules.

6. Schedule A of the Principal Ordinance is hereby repealed.

Repeal of Schedule A to the Principal Ordinance.

7. Schedule B of the Principal Ordinance is hereby repealed.

Repeal of Schedule B of the Principal Ordinance.

ORDINANCE No. II of 1939

Assented to in His Majesty's name this eleventh day of May, 1939.

R. BROOKE-POPHAM,
Governor.

[11TH MAY, 1939.] Date of assent.

An Ordinance to Amend the Farmers Assistance Ordinance, 1936

11th May, 1939

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 Farmers Assistance (Amendment) Ordinance, 1939, and shall be read as one with the Farmers Assistance Ordinance, 1936, hereinafter referred to as the Principal Ordinance.

Short title.

No. 18 of 1936.

2. Sub-sections (1) and (3) of section 4 of the Principal Ordinance are hereby repealed and the following sub-sections are respectively substituted therefor:—

Repeal and replacement of sub-sections (1) and (3) of section 4 of the Principal Ordinance.

“(1) Four members of the Board shall form a quorum and, in the absence of the Judge of the Supreme Court appointed under the provisions of the last preceding section from any meeting of the Board, a chairman for such meeting shall be chosen by the members present.

(3) The chairman, members of the Board, the agent appointed under section 6 of this Ordinance and any local representative of the agent shall not be personally liable for any act or default done or omitted to be done in good faith in exercise or supposed exercise of the powers given by this Ordinance or by any rules made thereunder.”

3. Sections 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of sections 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Principal Ordinance.

“9. Any farmer in the Colony may make application, through the agent, to the Board for assistance in accordance with the provisions of this Ordinance upon all or any of the following grounds—

Applications by farmers.

(a) that his liabilities exceed a reasonable valuation of his assets; or

- (b) that such action has been taken or has been threatened against him by his creditor or creditors as to render it impracticable for the farmer to continue his farming operations with a reasonable prospect of success; or
- (c) that by reason of the extent or nature of his obligations or because of lack of stock or absence of means of working his land in a proper manner or for any other good cause, he is unable to continue farming operations with a reasonable prospect of success.

10. (1) Every application for assistance under section 9 of this Ordinance shall be made in the form prescribed and shall be filed by the applicant in the office of the agent, together with an affidavit by the applicant in verification of the particulars contained in the application.

Form of application.

(2) The applicant shall at the time he makes such application forward a copy thereof to the nearest local representative of the agent, hereinafter referred to as "the local representative".

(3) The particulars in every application shall include—

- (a) a complete list of all the creditors and debtors of the applicant;
- (b) a statement of the assets and liabilities of the applicant; and
- (c) a list of the securities held by the secured creditors on the property of the applicant.

(4) As soon as possible after a copy of the application has been received by the local representative such local representative, after making such inquiries as he may deem fit, shall forward his report and recommendations regarding the application to the agent in writing. On receipt of such report and recommendations the agent shall forthwith refer the matter to the Board.

11. (1) The Board, after it has verified that the particulars furnished under section 10 of this Ordinance in respect of the applicant's secured creditors are complete and correct, shall consider the application and the report and recommendations thereon of the local representative.

Meeting of the Board.

(2) If it appears to the Board that the application is one which should not be granted the Board shall take no further action on such application except forthwith to notify the applicant in writing that his application is refused and to send a copy of such notification to the agent.

(3) (a) If it appears to the Board that the application is one which should be granted the Board having given fourteen days' notice to the applicant's secured creditors, shall meet with a view to obtaining their consent to the granting of the application.

(b) The secured creditors may attend such meeting either in person or by sending duly authorized agents.

(c) Any secured creditor who fails to attend such meeting shall be deemed to have consented to the granting of the application and shall, in the event of the application being granted, be deemed to have agreed to the arrangement.

(4) In any case where the granting of the application is agreed to by seventy-five per centum in value of the secured creditors of the applicant based on the assessed value of their security as determined by the Board, the applicant shall be notified in writing by the Board that, subject to the provisions of paragraph (a) of sub-section (2) of section 18 of this Ordinance and subject to the particulars furnished under section 10 of this Ordinance being found correct and in the absence of opposition to the granting of the application by a majority in value and in numbers of the unsecured creditors as have a claim for not less than five pounds, the Board is prepared to issue a Stay Order and to file with the Registrar a Deed of Adjustment in the prescribed form, containing the terms and conditions of the proposed arrangement.

(5) The Board shall at the time of notifying the applicant under the provisions of sub-section (4) of this section forward a copy of such notification to the chairman of the appropriate local committee.

12. In any case where the consent of the secured creditors in the terms of the last preceding section has not been obtained, the application shall be refused and the Board shall forthwith inform the applicant accordingly.

Refusal of application where consent of secured creditors not obtained.

13. (1) (a) If the applicant wishes to proceed with his application he shall, within thirty days of the Board's notification under sub-section (4) of section 11 of this Ordinance, inform the chairman of the appropriate local committee in writing of his intention so to proceed.

Interim Stay Order and temporary supervisor.

(b) In the event of the applicant not informing the chairman of the appropriate local committee in accordance with the provisions of paragraph (a) of this sub-section the application shall be deemed to have been withdrawn and no further action shall be taken thereon except with the leave of the Board for good cause shown.

(2) Immediately upon the receipt of information from the applicant in accordance with the provisions of paragraph (a) of sub-section (1) of this section the chairman of the local committee concerned shall, in respect of the applicant's estate—

(a) issue an Interim Stay Order in the prescribed form; and

(b) by writing under his hand appoint a temporary supervisor of the estate who shall be subject to the instructions of the agent.

(3) The chairman shall forthwith cause notices relating to the making of the Interim Stay Order and to the appointment of the temporary supervisor to be published in the Gazette and to be sent to the Registrar. The chairman shall also forthwith forward a copy of every such Interim Stay Order to the Principal Registrar of Titles, who shall file the same in a register to be kept for the purpose, and such register shall be open to the public for inspection free of cost.

14. (1) An Interim Stay Order shall remain in force until a meeting of the Board confirms or removes the Interim Stay Order.

Interim Stay Order.

(2) While an Interim Stay Order is in force—

(a) it shall have the effect of vesting all the property of the applicant in the agent; and

(b) all suits, actions, executions or other proceedings whether judicial or extra judicial against the farmer shall be stayed.

(3) Notwithstanding anything contained in paragraph (b) of sub-section (2) of this section the grant of an Interim Stay Order shall not prevent and shall be deemed never to have prevented any person—

(a) from instituting or proceeding with any suit, action or other proceeding for the purpose of determining the farmer's liability—

(i) for any tort committed by the farmer; or

(ii) for any injury suffered by a workman in the employ of the farmer; or

(iii) under the Divorce Ordinance or for the support of the wife or children of the farmer; or Cap. 170.

(iv) in respect of any unliquidated demand other than a demand arising out of default or for or upon breach of covenant under any mortgage or other security for money or under an agreement for sale and purchase or lease of any movable or immovable property or under a hire-purchase agreement; or

(b) from prosecuting any suit or other proceeding against the farmer for the administration of the trusts of any will, deed or other instrument, or for any breach of such trusts, or for the removal of the farmer from the position of executor or administrator or trustee.

15. A temporary supervisor appointed under section 13 of this Ordinance may make such arrangements with regard to the property (including crops and produce) of the applicant as the agent shall direct and, until otherwise directed by the agent, shall have all the powers and be responsible for exercising all the functions of the agent as set out in sections 24 and 27 of this Ordinance until his appointment is terminated. Temporary supervisor.

16. Prior to the calling of a meeting convened in accordance with section 17 of this Ordinance, the chairman of a local committee may, in his discretion, direct an approved valuer appointed under the Land and Agricultural Bank Ordinance, 1930, to visit the farm of the applicant and to make a report to the chairman upon the assets of the applicant: Valuation of applicant's assets.
No. 3 of 1931.

Provided that in the case of any wasting security of the type referred to in section 25 of this Ordinance which is subject to an instrument registered under the Chattels Transfer Ordinance, 1930, the chairman shall direct such a valuer to value such security. No. 24 of 1930.

17. (1) When he is satisfied that the provisions of section 13 of this Ordinance have been complied with the chairman of the local committee shall call a meeting of the local committee. Reasonable notice of such meeting shall be given to the applicant and all his creditors. Meeting of the
Local
Committee.

(2) Subject to the provisions of sub-section (3) of this section, the applicant and/or his authorized agent shall be present at the meeting and the creditors of the applicant may attend either in person or by duly authorized agents or they may forward their views, in writing, to the chairman. No other person shall be permitted to be present at the meeting.

(3) At such meeting the local committee shall first discuss the application and the Board's proposals notified to the chairman in accordance with the provisions of section 11 of this Ordinance. No creditor shall be permitted to be present during such discussion but the applicant and/or his authorized agent may, with the permission of the chairman, be permitted to be present.

(4) If, after such discussion, the local committee is in substantial agreement, either with or without modifications, with the Board's proposals, the chairman shall summon to the meeting such creditors of the applicant or their duly authorized agents as may be present and waiting to attend such meeting and thereupon it shall be the duty of the chairman to encourage a free discussion of the applicant's financial position and he shall endeavour to obtain the view of the applicant and of his creditors upon any proposed adjustment of the applicant's position which appears desirable and equitable to the local committee.

(5) As soon as may be after the conclusion of the meeting, the chairman shall transmit the report and recommendations of the local committee to the Board.

18. (1) If, after the discussion referred to in sub-section (3) of section 17 of this Ordinance has taken place, the local committee is of opinion that the application is one which should not be granted, the chairman Procedure when
Local Com-
mittee is not in
substantial
agreement with
the Board's
proposals.

shall postpone the meeting with the creditors and shall forthwith report such opinion, together with the reasons therefor, to the Board.

(2) On receipt of such report the Board—

(a) if it agrees with the opinion of the local committee, shall refuse the application and shall forthwith remove the Interim Stay Order and shall terminate the appointment of the temporary supervisor, and shall publish a notice in the Gazette to that effect and shall notify the Registrar and the Principal Registrar of Titles;

(b) if it does not agree with the opinion of the local committee, shall inform the chairman of the local committee accordingly, whereupon such chairman shall call a further meeting of the local committee at which the applicant and/or his authorized agent shall, and the creditors of the applicant or their duly authorized agents may, be present. Reasonable notice of such further meeting shall be given to the applicant and all his creditors.

(3) At such further meeting the procedure set forth in sub-section (4) of section 17 of this Ordinance shall be followed and as soon as may be after the conclusion of the meeting, the chairman shall transmit the report and recommendations of the local committee to the Board.

18A. If at the meeting of the Local Committee the application is opposed by a majority in value and in numbers of the unsecured creditors as have a claim for not less than five pounds the chairman shall forthwith report such opposition to the Board. On receipt of such report the Board shall refuse the application and do all such other acts as are specified in paragraph (a) of sub-section 2 of section 18 of this Ordinance.

Application opposed by majority of unsecured creditors.

18B. (1) Immediately on the receipt of the report and recommendations of the Local Committee forwarded in accordance with the provisions of section 17 or section 18 of this Ordinance the Board shall meet to consider such report and recommendations.

Granting of application.

(2) Subject to the provisions of section 18A of this Ordinance, in any case where, at such meeting, the arrangement proposed for the adjustment of the applicant's affairs is agreed to by the Board, the Board shall confirm the arrangement and grant the application."

4. Section 20 of the Principal Ordinance is hereby amended by deleting the word "success" which occurs at the end thereof and by substituting therefor the words "meeting his obligations to his creditors in full or at such an amount as may be fixed in the Deed of Adjustment within a period of not more than five years".

Amendment of section 20 of the Principal Ordinance.

5. Sub-section (1) of section 21 of the Principal Ordinance is hereby amended by deleting the proviso thereto and substituting therefor the following proviso:—

Amendment of section 21 of the Principal Ordinance.

"Provided that—

(a) where an advance is to be applied towards the cost of permanent improvements (as defined in the First Schedule to the Crown Lands Ordinance) and/or movable assets essential to farming operations the amount of such advance shall not exceed sixty per centum of the value of the security as assessed by the Board;

Cap. 140.

(b) where an advance is made for the purpose of—

(i) erecting a fence in an area not proclaimed under the Fencing Ordinance, 1929, or

No. 31 of 1929.

(ii) erecting a dipping tank in an area not proclaimed under the Cattle Cleansing Ordinance, 1929,

No. 32 of 1929.

such advance shall be a first charge on the land on which such fence or dipping tank, as the case may be, has been erected, and shall have priority over all existing mortgages or charges upon such land."

6. Sub-section (2) of section 22 of the Principal Ordinance is hereby amended by deleting the figures "12" which occur in the first line thereof and by substituting therefor the figures "14".

Amendment of section 22 (2) of the Principal Ordinance.

7. Sub-section (1) of section 23 of the Principal Ordinance is hereby amended by deleting the figures "17" which occur in the fourth line thereof and by substituting therefor the figures and letter "18B".

Amendment of section 23 (1) of the Principal Ordinance.

8. Section 25 of the Principal Ordinance is hereby amended—

Amendment of section 25 of the Principal Ordinance.

- (a) by deleting the figures "12" which occur in the first line of sub-section (1) thereof and by substituting therefor the figures "14";
- (b) by deleting the figures "14" which occur in the eighth line of sub-section (1) thereof and by substituting therefor the figures "16"; and
- (c) by deleting the figures "16" which occur in the fourth lines of sub-section (3) and (4) thereof and by substituting therefor the figures "11".

9. Sub-section (1) of section 34 of the Principal Ordinance is hereby amended—

Amendment of section 34 (1) of the Principal Ordinance.

- (a) by deleting the words "the chairman of the Local Committee concerned or" which occur in the fourth and fifth lines thereof;
- (b) by deleting the words and commas ", as the case may be," which occur in the sixth line thereof; and
- (c) by deleting the words "chairman or to the" which occur in the tenth line thereof.

10. The Principal Ordinance is hereby amended by inserting therein, immediately after section 35 thereof, the following new section:—

Amendment of the Principal Ordinance.

"35A (1) Any person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information, returns and forms relating to applications for advances or the making of advances under this Ordinance as secret and confidential.

Secrecy.

(2) Any person having possession of or control over any documents, information, returns or forms relating to any of the matters aforesaid who communicates or attempts to communicate such information or anything contained in such documents, returns or forms to any person—

- (a) other than a person to whom he is authorized by the Governor to communicate it; or
- (b) otherwise than for the purposes of this Ordinance, shall be guilty of an offence, and shall be liable on conviction before a magistrate of the first class to a fine of one hundred pounds or to imprisonment for six months or to both such fine and imprisonment."

ORDINANCE No. III of 1939

Assented to in His Majesty's name this eleventh day of
May, 1939.

R. BROOKE-POPHAM,
Governor.

[11TH MAY, 1939.] Date of assent.

**An Ordinance to Repeal the Arms (Traffic with
Abyssinia) Ordinance, 1931**

11th May, 1939

Date of com-
mencement.

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

- | | |
|---|---|
| <p>1. This Ordinance may be cited as the Arms (Traffic with Abyssinia) (Repeal) Ordinance, 1939.</p> | Short title. |
| <p>2. The Arms (Traffic with Abyssinia) Ordinance, 1931, as amended by the Arms (Traffic with Abyssinia) (Amendment) Ordinance, 1935, is hereby repealed.</p> | Repeal.
No. 29 of 1931.
No. 43 of 1935. |

ORDINANCE No. IV of 1939

Assented to in His Majesty's name this eleventh day of
May, 1939.

R. BROOKE-POPHAM,
Governor.

[11TH MAY, 1939.] Date of assent.

An Ordinance to Amend the Water Ordinance, 1929

11th May, 1939

Date of commencement.

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

- | | |
|---|---|
| <p>1. This Ordinance may be cited as the Water (Amendment) Ordinance, 1939, and shall be read as one with the Water Ordinance, 1929, hereinafter referred to as the Principal Ordinance.</p> | <p>Short title.
No. 35 of 1929.</p> |
| <p>2. Section 2 of the Principal Ordinance is hereby amended—</p> <p>(a) by deleting therefrom the definition of "operator" and by substituting therefor the following definition—</p> <p style="padding-left: 40px;">"operator" means any person authorized to construct works under this Ordinance by authorization or to divert, abstract or use water by licence or sanction"; and</p> <p>(b) by adding thereto, immediately after the definition of "Riparian", the following new definition—</p> <p style="padding-left: 40px;">"sanction-holder" means the person to whom a sanction which has not lapsed or been determined has been issued."</p> | <p>Amendment of section 2 of the Principal Ordinance.</p> |
| <p>3. Sub-section (12) of section 18 of the Principal Ordinance is hereby amended by deleting the full stop which occurs at the end thereof and by substituting a comma therefor and by adding immediately after such comma the following words—</p> <p style="padding-left: 40px;">"who may, by writing under his hand, authorize any person employed in the public service, or any servant, agent or contractor of such person to perform any of the powers, duties or obligations so deputed."</p> | <p>Amendment of section 18 (12) of the Principal Ordinance.</p> |
| <p>4. Sub-section (3) of section 20 of the Principal Ordinance is hereby amended by deleting the words "the Principal" which occur in the ninth line of paragraph (a) thereof and by substituting therefor the word "this".</p> | <p>Amendment of section 20 (3) of the Principal Ordinance.</p> |

5. Paragraph (a) of section 23 of the Principal Ordinance is hereby amended by deleting the words "the point of diversion, abstraction, storage, or use, the purpose for which water is required, an estimate of the normal and minimum flow of the stream from which diversion or abstraction or storage is applied for" which occur in the seventh, eighth, ninth, tenth and eleventh lines thereof, and by substituting therefor the words "the purpose for which water is required".

Amendment of section 23 (a) of the Principal Ordinance.

6. Section 25 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 25 of the Principal Ordinance.

"25. (1) Upon receipt of the application, maps and plans (if any) by the Water Board or at any time subsequent thereto and whether objections have been received or not the Water Board shall have the power to amend or vary the application, maps or plans in any respect.

Amendment of application.

(2) The application, maps and plans (if any) filed under section 23 of this Ordinance or as amended or varied by the Water Board under sub-section (1) of this section or a true copy thereof, shall be open for inspection by the public at all times during office hours at the office of the Director, and at any other place deemed desirable by the Water Board."

Applications open for inspection.

7. Section 27 of the Principal Ordinance is hereby amended—

Amendment of section 27 of the Principal Ordinance.

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

"(1) If the application (with maps and plans if any) has been conditionally approved as provided in the last preceding section, the Water Board shall prepare a draft notice setting forth—

- (a) the name and address of the applicant;
- (b) the body of water from which it is proposed to abstract or divert water, or on which it is proposed to impound water;
- (c) the place at which the water is proposed to be used;
- (d) the purpose for which the water is proposed to be used;
- (e) a statement that any objection must be filed with the Water Board within thirty days from the first publication of the notice and a copy of any objection served on the applicant;

(f) any information considered necessary by the Water Board to enable the applicant's proposals to be understood.”;

- (2) by deleting the word “fifty” which occurs in the third line of sub-section (2) thereof and by substituting therefor the word “twenty-one”;
- (3) by inserting the words “unless such time is extended by the Water Board” between the word “notice” and the comma which occur in the third line of sub-section (2) thereof;
- (4) by deleting the words “not less than on two occasions within one fortnight, and in two successive issues of the Gazette” which occur in the seventh and eighth lines of sub-section (2) thereof and by substituting therefor the words “and in an issue of the Gazette”; and
- (5) by deleting the word “sixty” which occurs in the second line of sub-section (5) thereof and by substituting therefor the word “thirty”.

8. Section 88 of the Principal Ordinance is hereby amended by adding thereto, immediately after sub-section (5) thereof, the following sub-section:—

Amendment of section 88 of the Principal Ordinance.

“(6) The provisions of all or any part of sections 13, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 35, 36, 37, 38, 40, 78 and 81 of this Ordinance shall apply *mutatis mutandis* to sanctions or to sanction-holders unless the Water Board endorse any such application for a sanction or a sanction to the contrary.”

9. Section 97 of the Principal Ordinance is hereby amended—

Amendment of section 97 of the Principal Ordinance.

(a) by inserting the brackets and figure “(1)” immediately after the figures “97” which appear in line one thereof; and

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

“(2) All Rules made under this section shall have the same force and effect as if they had been enacted in this Ordinance and shall be laid as soon as conveniently may be before the Legislative Council; and if a resolution is passed within forty days of their being so laid before the Legislative Council praying that any such Rules shall be revoked or amended, such Rules shall thenceforth be deemed to be revoked or amended, but without prejudice to anything done thereunder.”

ORDINANCE No. V of 1939

Assented to in His Majesty's name this eleventh day of
May, 1939.

R. BROOKE-POPHAM,
Governor.

[11TH MAY, 1939.] Date of assent.

An Ordinance to Amend the Local Government (Municipalities) Ordinance, 1928

11th May, 1939

Date of com-
mencement.

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 Local Govern- Short title.
ment (Municipalities) (Amendment) Ordinance, 1939, and
shall be read as one with the Local Government (Municipalities) Ordinance, 1928, hereinafter referred to as the No. 19 of 1928.
Principal Ordinance.

2. Sub-section (1) of section 6 of the Principal Ordinance is hereby amended by deleting the full stop at the end of the second proviso thereto and by substituting a colon therefor and by adding immediately after such colon the following further proviso:—

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

“Provided also that, notwithstanding the provisions of this sub-section, on the publication in the Gazette of the notice referred to in the second proviso to section 5 of this Ordinance the councillors nominated under the provisions of sub-section (2) of the said section and the councillors re-nominated under the provisions of this sub-section shall be deemed to have been nominated and re-nominated during the Governor's pleasure and shall cease to be members of the Nairobi Municipal Council from such date as the Governor may by notice in the Gazette declare.”

3. Section 69 of the Principal Ordinance is hereby amended—

Amendment
of section 69 of
the Principal
Ordinance.

(a) by the addition immediately after sub-section (30) thereof of the following sub-section:—

“(30)A. For requiring and regulating the branding of cattle kept within the municipality;”

Branding of
cattle.

and

(b) by repealing paragraph (g) of sub-section (86) thereof and by substituting therefor the following paragraph:—

“(g) (i) For vesting the property, money or/and assets pertaining to such funds in trustees for the purpose of administration thereof as directed by any committee of management by and against whom all actions at law relating to the fund shall be brought;

(ii) For permitting a trustee, when a bank, transacting any banking business in connexion with such funds on the same terms as would be made with a customer in the ordinary course of business, without such trustee being liable to account for any profit or share of brokerage;

(iii) For prescribing that no trustee is liable to enforce payment of any contribution to such funds;”.

ORDINANCE No. VI of 1939

Assented to in His Majesty's name this eleventh day of
May, 1939.

R. BROOKE-POPHAM,
Governor.

[11TH MAY, 1939.] Date of assent.

An Ordinance to Amend the King's African Rifles Ordinance, 1932

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 King's African Rifles (Amendment) Ordinance, 1939, and shall be read as one with the King's African Rifles Ordinance, 1932, hereinafter referred to as the Principal Ordinance, and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

Short title and commencement.
No. 48 of 1932.

2. Section 2 of the Principal Ordinance is hereby amended by deleting therefrom the definition of "battalion" or "unit" and by substituting therefor the following new definition:—

Amendment of section 2 of the Principal Ordinance.

"battalion" or "unit" includes the Somaliland Camel Corps, the Transport Corps, the Northern Brigade Headquarters, the Northern Brigade Signal Company and the Coast Defence Battery;"

3. Sub-section (2) of section 76 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and replacement of section 76 (2) of the Principal Ordinance.

"(2) Any soldier other than a bandsman who has—

- (a) completed the term of his engagement with the colours and has not re-engaged for a further term of service with the colours;
- (b) re-engaged for a further term of service with the colours,

shall, with the approval of the commanding officer, be allowed to proceed on furlough for such period on full pay or half pay, at the discretion of his commanding officer, as may be prescribed by regulations made under this Ordinance."

ORDINANCE No. VII of 1939

Assented to in His Majesty's name this eleventh day of
May, 1939.

R. BROOKE-POPHAM,
Governor.

[11TH MAY, 1939.] Date of assent.

An Ordinance to Amend the Mining Ordinance, 1933

11th May, 1939

Date of com-
mencement.

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 Mining (Amend- Short title.
ment) Ordinance, 1939, and shall be read as one with the
Mining Ordinance, 1933, hereinafter referred to as the
Principal Ordinance.

2. Section 2 of the Principal Ordinance is hereby Amendment of
amended— section 2 of
the Principal
Ordinance.

(a) by adding immediately after the definition of
“minerals” contained in sub-section (1) thereof the
following new definition:—

“Native Area” means land within native lands,
native reserves, temporary native reserves and
native leasehold areas as defined in the Native
Lands Trust Ordinance, 1938;

No. 28 of 1938.

(b) by deleting from sub-section (1) thereof, the definition
of “Native Lands Trust Board” and by substituting
therefor the following definition:—

“Native Lands Trust Board” has the same mean-
ing as the term “Trust Board” in section 2 of
the Native Lands Trust Ordinance, 1938;

No. 28 of 1938.

(c) by deleting from sub-section (1) thereof the definition
of “Native Reserve”; and

(d) by deleting the word “Reserve” which occurs in the
second line of sub-section (2) thereof and by sub-
stituting therefor the word “Area”.

1939

Mining

No. VII

3. Section 7 of the Principal Ordinance is hereby amended by deleting paragraph (i) thereof and by substituting therefor the following paragraph:—

Amendment of section 7 of the Principal Ordinance.

“(i) Land within a Native Area except with the written consent of the Provincial Commissioner concerned on such conditions as may be stipulated by the Native Lands Trust Board.”

4. Section 17 of the Principal Ordinance is hereby amended by deleting therefrom sub-section (8) thereof and by substituting therefor the following sub-section:—

Amendment of section 17 (8) of the Principal Ordinance.

“(8) Prior to the issue of any exclusive prospecting licence granted after the thirtieth day of June, 1939, and in respect of each renewal of any such exclusive prospecting licence, the holder thereof shall pay, in addition to all other fees due, a fee of one hundred shillings for every square mile or part thereof of the area included in the original or renewed licence:

Provided that the Governor, in his discretion, may reduce such fee:

Provided further that in respect of each renewal of any exclusive prospecting licence granted on or before the thirtieth day of June, 1939, over an area to which the Mining in Proclaimed Areas Ordinance, 1933, has been applied, the holder of such licence shall pay, in addition to all other fees due, a fee as prescribed in the said Ordinance.”

No. 22 of 1933.

5. Section 86 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 86 of the Principal Ordinance.

“86. (1) In this section—

Compensation in case of accidents.

‘award’ means the amount of compensation assessed by a magistrate under sub-section (2) or endorsed by a magistrate under sub-section (8), or assessed on review by a magistrate under sub-section (9) of this section;

Interpretation.

‘earnings’ includes wages paid to the workman by the employer and the value of any food, fuel, or quarters supplied to the workman by the employer if as a result of the accident the workman is deprived of such food, fuel or quarters; and any overtime payments or other special remuneration for work done, whether by way of

bonus or otherwise: but shall not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, or any ex gratia payment whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of a workman toward any pension or provident fund, or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

'employer' includes a lessee, holder of a location, licence or right, and includes a tributer or agent of a lessee, holder of a location, licence or right;

'partial incapacity' means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the incapacity, and where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in every employment which he was capable of undertaking at that time: Provided that every injury specified in the Schedule to this Ordinance, except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to one hundred per centum or more shall be deemed to result in permanent partial incapacity;

'serious and wilful misconduct' includes drunkenness, wilful contravention of any law or regulation made for the purpose of ensuring the safety of or preventing accidents to persons, or any other act of omission which a magistrate, having regard to all the circumstances of an accident causing injury, may declare to be serious and wilful misconduct;

'temporary incapacity' means the temporary inability of a workman to perform the work at which he was employed at the time of the accident;

'total incapacity' means such incapacity whether of a temporary or permanent nature, as incapacitates a workman for any employment which he was capable of undertaking at the time of the accident resulting in such incapacity: Provided that permanent total incapacity shall be deemed to result from an injury or from any

combination of injuries specified in the Schedule to this Ordinance where the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries, amounts to one hundred per centum or more;

'workman' includes, subject to the provisions of sub-section (11) of this section, any person employed by a lessee, holder of a location, licence or right, and includes any person employed by a tributer or agent of a lessee, holder of a location, licence or right.

(2) If in any employment in connexion with mining or prospecting operations personal injury by accident arising out of and in the course of such employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation assessed by a magistrate in accordance with the provisions of this section:

Compensation on death of or injury to workman.

Provided that no compensation shall be payable under this section if it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman.

(3) (a) When death results from the injury—

Compensation in fatal cases.

- (i) if the workman leaves any dependants, the amount of compensation shall not exceed a sum equal to thirty-six months' earnings of the workman at the time of the injury or seven hundred and fifty pounds whichever is less;
- (ii) if the workman leaves no dependants, the reasonable expenses of the burial of the deceased workman and the reasonable expenses of medical attendance on the deceased workman, not exceeding in all the sum of one hundred pounds.

For the purposes of this sub-paragraph the term 'reasonable expenses of medical attendance' includes hospital fees.

(b) In cases under sub-paragraph (i) of paragraph (a) of this sub-section the compensation shall be paid—

- (i) if the workman was a non-native, to his legal representative for and on behalf of the dependants of the workman;

(ii) if the workman was a native, to the District Commissioner of the district in which the accident occurred for and on behalf of the dependants of the workman.

(c) In fixing the amount of compensation under sub-paragraph (i) of paragraph (a) of this sub-section the magistrate shall have regard to any amount the workman may have received by way of periodical payments.

(4) When permanent total incapacity results from the injury the amount of compensation shall be a sum equal to thirty-six months' earnings of the workman at the time of his injury or seven hundred and fifty pounds whichever is less.

Compensation in the case of permanent total incapacity.

(5) (a) Where permanent partial incapacity results from the injury the amount of compensation shall be—

Compensation in the case of permanent partial incapacity.

(i) in the case of an injury specified in the Schedule to this Ordinance, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in the Schedule to this Ordinance, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury.

(b) Where more injuries than one are caused by the same accident, the amount of compensation payable shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

(6) Where temporary incapacity results from the injury the compensation shall be the payment periodically, at such times or at such intervals as payment of earnings was habitually made to the injured workman immediately prior to the accident, of amounts not exceeding fifty per centum of the earnings which the workman was receiving from the employer at the time of the accident. Such periodical payments shall be made as from the date of the incapacity until the workman is sufficiently recovered therefrom to resume the work

Compensation in the case of temporary incapacity.

which he was employed to perform at the time of the accident or work similar thereto, but in no case shall such periodical payments be made for a period exceeding twelve months after the date of the incapacity:

Provided that the employer may deduct from such periodical payments such amount as is equivalent to any payment, allowance or benefit which the workman may receive from the employer during the incapacity, but in every case such deduction shall not reduce the periodical payments below an amount which will provide the workman and the members of his family dependant on him with ordinary necessary living expenses.

(7) In any case under sub-section (4), (5) or (6) of this section the compensation shall be paid to the injured workman.

To whom compensation is payable.

(8) Notwithstanding the provisions of sub-section (2) of this section the employer and a non-native workman in any case under sub-section (4), (5) or (6) of this section, and the employer and a native workman, in any case under sub-section (6) of this section, may after the injury in respect of which the claim to compensation has arisen agree in writing as to the compensation to be paid by the employer. Such agreement shall be in duplicate, one copy to be kept by the employer and one copy to be kept by the workman and such agreement shall, as soon as possible, be taken to the nearest magistrate by the workman.

Agreement as to compensation.

Provided that—

- (a) the compensation agreed upon shall not be less than the amount payable under the provisions of this section; and
- (b) the agreement shall not be binding against the workman unless it is endorsed by a certificate of a magistrate to the effect that he has read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve of the agreement.

(9) (a) Any periodical payment payable under this section, either under agreement between the parties or assessed by the magistrate, may be reviewed by the magistrate on the application either of the employer or of the workman:

Review.

Provided that where the application for review is based on a change in the condition of the workman any such application shall be supported by a certificate of a medical practitioner if the services of a medical practitioner are available.

(b) Any periodical payment may, on review under this section, and subject to the provisions of this section, be continued, increased, diminished, converted to a lump sum, or ended. If the accident is found to have resulted in permanent incapacity, the periodical payment shall be converted to the lump sum to which the workman is entitled under the provisions of sub-section (4) or sub-section (5) of this section, as the case may be, less any amount which he has already received by way of periodical payments.

(c) Where application is made by an employer under this section for any periodical payment to be ended or diminished, and the application is supported by the certificate of a medical practitioner, the employer may pay to the magistrate the periodical payment, or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the magistrate made on a review under this section.

(d) In making a review under this section the magistrate shall have regard only to the capacity for work of the workman as affected by the accident.

(10) (a) Subject to the provisions of this sub-section an appeal shall lie to the Supreme Court from any decision of a magistrate made under this section. Appeals.

(b) Unless some question of law is involved in the appeal, no appeal shall lie, except with the leave of the Supreme Court, if the amount in dispute in the appeal is less than twenty-five pounds.

(c) No appeal shall lie in any case in which the parties have agreed to abide by the decision of the magistrate, or in which the award of the magistrate gives effect to an agreement come to by the parties.

(d) No appeal shall lie after the expiration of thirty days from the date of the award of the magistrate:

Provided that the Supreme Court may, if it thinks fit, extend the time for appealing under this sub-section notwithstanding that the time for appealing has elapsed.

(e) The provisions of the Civil Procedure Ordinance, No. 3 of 1924, 1924, and the rules made thereunder prescribing the procedure to be followed for appeals in the case of decrees made by the magistrates shall, as far as may be, apply in the case of appeals from awards made by magistrates under this section.

(11) The provisions of this section shall not apply in respect of a personal injury to or the death of a workman who at the time of the accident was—

Workman excluded from compensation.

- (a) paid a wage or salary in respect of his work by the hour at a rate exceeding five shillings per hour;
- (b) paid a wage or salary in respect of his work by the day at a rate exceeding thirty-five shillings per day;
- (c) paid a wage or salary in respect of his work by the week at a rate exceeding two hundred shillings per week;
- (d) paid a wage or salary in respect of his work by the month at a rate exceeding eight hundred and thirty-three shillings and cents thirty-three per month;
- (e) paid a wage or salary in respect of his work by the year at a rate exceeding ten thousand shillings:

Provided that the daily, weekly, monthly or yearly pay of such person shall be calculated exclusive of pay for overtime.

(12) Any award of compensation shall upon application made by the person to whom it is payable be enforced by a Civil Court in the same manner as a judgment of such Court.”

Enforcement of payment.

6. The Principal Ordinance is hereby amended by the addition thereto of the following Schedule:—

Addition of Schedule to the Principal Ordinance.

“SCHEDULE

<i>Injury</i>	<i>Percentage of Incapacity</i>
Loss of two limbs	} 100
Loss of both hands or of all fingers and thumbs ..	
Loss of both feet	
Total loss of sight	
Total paralysis	
Injuries resulting in being permanently bedridden ..	
Any other injury causing permanent total disablement ..	

<i>Injury</i>	<i>Percentage of Incapacity</i>
Loss of arm at shoulder	60
Loss of arm between elbow and shoulder	50
Loss of arm at elbow	47½
Loss of arm between wrist and elbow	45
Loss of hand at wrist	42½
Loss of four fingers and thumb of one hand	42½
Loss of four fingers	35
Loss of thumb, both phalanges	35
" " one phalanx	10
Loss of index finger, three phalanges	10
" " two phalanges	8
" " one phalanx	4
Loss of middle finger, three phalanges	6
" " two phalanges	4
" " one phalanx	2
Loss of ring finger, three phalanges	5
" " two phalanges	4
" " one phalanx	2
Loss of little finger, three phalanges	4
" " two phalanges	3
" " one phalanx	2
Loss of metacarpals, first or second (additional), third, fourth or fifth (additional)	2
Loss of leg, at or above knee	70
" " below knee	40
Loss of foot	40
Loss of toes, all of one foot	15
" " great, both phalanges	5
" " one phalanx	2
" " other than great, if more than one toe lost, each	1
Loss of sight of one eye	30
Total loss of hearing	50

Total permanent loss of the use of a member shall be treated as loss of such member.

In the case of a right-handed workman, an injury to the left arm or hand, and in the case of a left-handed workman, to the right arm or hand, shall be rated at 90 per cent of the above percentages."

ORDINANCE No. VIII of 1939

Assented to in His Majesty's name this twenty-eighth day
of June, 1939.

R. BROOKE-POPHAM,
Governor.

[28TH JUNE, 1939.] Date of assent.

An Ordinance to Amend the Local Government (District Councils) Ordinance, 1928

By Notice

Date of com-
mencement.

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 Local Government (District Councils) (Amendment) Ordinance, 1939, and shall be read as one with the Local Government (District Councils) Ordinance, 1928, hereinafter referred to as the Principal Ordinance, and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

Short title
and com-
mencement.

No. 21 of 1928.

2. Section 2 of the Principal Ordinance is hereby amended by deleting the definition of "Standing Committee" which occurs therein and by substituting therefor the following definition:—

Amendment of
section 2 of
the Principal
Ordinance.

"Standing Committee" means the Standing Committee for Rural Areas established under the provisions of section 119 of this Ordinance".

3. Sub-section (1) of section 119 of the Principal Ordinance is hereby repealed and the following sub-sections are substituted therefor:—

Repeal and
replacement of
section 119 (1)
of the Principal
Ordinance.

"119. (1) There shall be established a Standing Committee, to be known as 'the Standing Committee for Rural Areas' (in this Ordinance referred to as 'the Standing Committee') to perform the duties imposed upon it by this Ordinance or by any other enactment relating to local government for the time being in force in the Colony.

Standing
Committee
for Rural Areas.

(2) The Standing Committee shall consist of:—

(a) the Commissioner for Local Government, as
Chairman;

- (b) the Attorney General, or the Solicitor General;
- (c) the Director of Medical Services;
- (d) the Director of Public Works; and
- (e) such other person or persons as the Governor may from time to time appoint:

Provided that in the case of absence or inability to attend any of the officers included under paragraphs (c) and (d) of this sub-section may be represented by a deputy:

Provided further that members of the Standing Committee appointed under paragraph (e) of this sub-section shall hold office during the Governor's pleasure.

(3) (i) In the absence of the chairman from any meeting of the Standing Committee a chairman for such meeting shall be chosen by the members present.

(ii) At all meetings of the Standing Committee four members shall form a quorum.

(iii) The chairman of the meeting shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote. A decision of a majority of the members present and voting at a meeting of the Standing Committee shall be deemed to be the decision of the Standing Committee."

Repealed {
Ord. VI/40

ORDINANCE No. IX of 1939

Assented to in His Majesty's name this twenty-ninth day of June, 1939.

R. BROOKE-POPHAM,
Governor.

[29TH JUNE, 1939.] Date of assent

An Ordinance to Amend and Consolidate the Law relating to the Prevention of the Disclosure of Official Documents and Information

29th June, 1939

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 Official Secrets Ordinance, 1939. Short title.

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

any reference to a place belonging to His Majesty includes a place held in trust for His Majesty or belonging to any department of the Government of the United Kingdom, of this Colony, or of any British colony, protectorate, or possession, or of any territory in respect of which a mandate has been accepted by His Majesty or is being exercised by the Government of any part of His Majesty's Dominions, whether the place is or is not actually vested in His Majesty;

“document” includes part of a document;

expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself, or the substance, effect, or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note, or document include the transfer or transmission of the sketch, plan, model, article, note, or document;

“model” includes design, pattern, and specimen;

“munitions of war” includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine, intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

“office under His Majesty” includes any office or employment in or under any department of the Government of the United Kingdom, of the Colony, or of any British possession, colony, or protectorate, or any territory in respect of which a mandate has been accepted by His Majesty or is being exercised by the Government of any part of His Majesty’s Dominions;

“offence under this Ordinance” includes any act, omission, or other thing which is punishable under this Ordinance;

“sketch” includes any photograph or other mode of representing any place or thing;

“Superintendent of Police” includes any Assistant Superintendent of Police, or any police officer of a like or superior rank.

Definition of
prohibited place.

3. For the purposes of this Ordinance, the expression “prohibited place” means:—

(a) any work of defence, arsenal, naval, military or air force establishment or station, factory, dockyard, mine, minefield, camp, ship, or aircraft belonging to or occupied by or on behalf of His Majesty, or any telegraph, telephone, wireless, or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of His Majesty and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war; and

(b) any place not belonging to His Majesty where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, gotten, or stored under contract with, or with any person on behalf of His Majesty, or otherwise on behalf of His Majesty; and

- (c) any place belonging to or used for the purposes of His Majesty which is for the time being declared by notice or by order of the Governor to be a prohibited place for the purpose of this Ordinance on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and
- (d) any railway, road, way, or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired or stored otherwise than on behalf of His Majesty, which is for the time being declared by notice by or by order of the Governor to be a prohibited place for the purposes of this Ordinance, on the ground that information with respect thereto or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

4. (1) If any person for any purpose prejudicial to the safety or interests of the Colony— Penalties for spying.

- (a) approaches, inspects, passes over, or is in the neighbourhood of, or enters any prohibited place; or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or
- (c) obtains, collects, records, publishes or communicates to any other person any secret official code word or pass word, or any sketch, plan, model, article, or note, or other document, or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy,

he shall be guilty of a major offence under this Ordinance.

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the Colony, and notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the Colony, and if

any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or anything in such a place, or any secret official code word or pass word is made, obtained, collected, recorded, published, or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published, or communicated for a purpose prejudicial to the safety or interests of the Colony unless the contrary is proved.

(3) In any proceedings against a person for an offence under this section the fact that he has been in communication with, or attempted to communicate with a foreign agent, whether within or without the Colony, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the Colony, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(4) For the purpose of the preceding sub-section, but without prejudice to the generality of that sub-section—

(a) a person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if—

(i) he has, either within or without the Colony, visited the address of a foreign agent or consorted or associated with a foreign agent; or

(ii) either within or without the Colony, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person;

(b) the expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without the Colony, prejudicial to the safety or interests of the Colony, or who has or is reasonably suspected of having, either within or without the Colony, committed or attempted to commit such an act in the interests of a foreign power;

(c) any address, whether within or without the Colony, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications or at which he carries on any business, shall be deemed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

5. (1) If any person having in his possession or control any secret official code word or pass word, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Ordinance, or which has been entrusted in confidence to him by any person holding office under His Majesty, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such office or contract—

Wrongful communication, etc., of information.

(a) communicates the code word, pass word, sketch, plan, model, article, note, document, or information to any person, other than a person to whom he is authorized to communicate it or a person to whom it is in the interests of the Colony his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the Colony; or

(c) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code word or pass word, or information,

that person shall be guilty of a minor offence against this Ordinance.

(2) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the Colony, that person shall be guilty of a minor offence against this Ordinance.

(3) If any person receives any secret official code word or pass word, or any sketch, plan, model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Ordinance, he shall be guilty of a minor offence against this Ordinance, unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document or information was contrary to his desire.

Unauthorized use of uniforms; falsification of reports, forgery, personation, and false documents.

6. (1) If any person for the purpose of gaining admission or of assisting any other person to gain admission, to a prohibited place, or for any other purpose prejudicial to the safety or interests of the Colony—

- (a) uses or wears, without lawful authority, any naval, military, air force, police, or other official uniform or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or
- (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or
- (c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or
- (d) personates, or falsely represents himself to be a person holding or in the employment of a person holding office under His Majesty, or to be or not to be a person to whom an official document or secret

official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement; or

- (e) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by or for the use of any Government Department, or any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal, or stamp so nearly resembling any such die, seal, or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession or under his control, any such counterfeited die, seal, or stamp,

he shall be guilty of a minor offence against this Ordinance.

(2) If any person—

- (a) retains for any purpose prejudicial to the safety or interests of the Colony any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government Department or any person authorized by such department with regard to the return or disposal thereof; or
- (b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or
- (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal, or stamp as aforesaid,

he shall be guilty of a minor offence against this Ordinance.

(3) In the case of any prosecution under this section involving the proof of a purpose prejudicial to the safety or interests of the Colony, sub-section (2) of section 4 of this Ordinance shall apply in like manner as it applies to prosecutions under that section.

Interfering with officers of the police or members of His Majesty's forces.

7. No person in the vicinity of any prohibited place shall obstruct, knowingly mislead, or otherwise interfere with or impede, any Superintendent of Police or any police officer, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of a minor offence against this Ordinance.

Power to require the production of telegrams.

8. (1) Where it appears to the Governor that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of the Colony, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the Colony by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence against this Ordinance, and shall for each offence be liable on conviction to imprisonment for a period not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

32 & 33 Vict. c. 73, 4 Edw. 7, c. 24.

(3) In this section the expression "telegram" shall have the same meaning as in the (Imperial) Telegraph Act, 1869, and the expression "wireless telegraphy" shall have the same meaning as in the (Imperial) Wireless Telegraphy Act, 1904.

Registration and regulation of persons carrying on the business of receiving postal packets.

9. (1) Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended, shall as soon as may be send to the Commissioner of

Police for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the Commissioner of Police shall keep a register of the names and addresses of such persons, and shall, if required by any person who sends such a notice, furnish him on payment of a fee of two shillings with a certificate of registration, and every person so registered shall from time to time furnish to the Commissioner of Police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.

(2) Every person who carries on such a business as aforesaid shall cause to be entered in a book kept for the purpose the following particulars—

- (a) the name and address of every person for whom any postal packet is received, or who has requested that postal packets received may be delivered or forwarded to him;
- (b) any instructions that may have been received as to the delivery or forwarding of postal packets;
- (c) in the case of every postal packet received, the place from which the postal packet comes, and the date of posting (as shown by the post-mark) and the date of receipt, and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet;
- (d) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered;
- (e) in the case of every postal packet forwarded, the name and address to which and the date on which it is forwarded,

and shall not deliver a letter to any person until that person has signed a receipt for the same in such book as aforesaid, nor, if that person is not the person to whom the postal packet is addressed, unless there are left with him instructions signed by the last-mentioned person as to the delivery thereof, and shall not forward any postal packet to another address unless there are left with him written instructions to that effect signed by the addressee.

(3) The books so kept and all postal packets received by a person carrying on any such business, and any instruction as

to the delivery or forwarding of postal packets received by any such person, shall be kept at all reasonable times open to inspection by any police officer.

(4) If any person contravenes or fails to comply with any of the provisions of this section, or furnishes any false information or makes any false entry, he shall be guilty of an offence under this Ordinance, and shall for each offence, be liable on conviction to imprisonment for a period not exceeding one month, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(5) Nothing in this section shall apply to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in such newspaper or periodical.

(6) Nothing in this section shall be construed as rendering anything legal which would be in contravention of the exclusive privilege of the Postmaster General under the Post Office Ordinance, 1934.

No. 18 of 1934.

Duty to give information as to commission of offences.

10. It shall be the duty of every person to give on demand to the Commissioner of Police, or to a Superintendent of Police appointed by the Commissioner of Police for the purpose, or to any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence against this Ordinance, and if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information and if any person fails to give any such information or to attend as aforesaid, he shall be guilty of a minor offence against this Ordinance.

Penalty for harbouring spies.

11. If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Ordinance, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully omits or refuses to disclose to a Superintendent of Police any information which it is in his power to give in relation to any such person, he shall be guilty of a minor offence against this Ordinance.

12. Any person who attempts to commit any offence against this Ordinance or solicits or incites or endeavours to persuade another person to commit an offence or aids or abets or does any act preparatory to the commission of an offence against this Ordinance shall be guilty of an offence against this Ordinance in the same way as any person committing the offence in question is guilty of an offence against this Ordinance, and on conviction shall be liable to the same punishment and to be proceeded against in the same manner as if he had committed the offence.

Attempts,
incitements, etc.

13. For the purposes of the Criminal Procedure Code, every offence under this Ordinance shall be deemed to be a cognizable and non-bailable offence.

Offences to be
cognizable.
No. 11 of 1930.

14. (1) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Ordinance has been or is about to be committed, he may grant a search warrant authorizing any police officer named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature or anything which is evidence of an offence under this Ordinance having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable ground for suspecting that an offence under this Ordinance has been or is about to be committed.

Search warrants.

(2) Where it appears to a Superintendent of Police that the case is one of great emergency and that in the interest of the Colony immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a magistrate under this section.

(3) The powers conferred by this section shall be in addition to and without prejudice to the powers of issuing search warrants contained in the Criminal Procedure Code.

No. 11 of 1930.

15. (1) Any person who is guilty of a major offence under this Ordinance shall be liable on conviction to imprisonment for a period not exceeding fourteen years.

Provisions as to
punishment and
trial.

(2) Any person who is guilty of a minor offence under this Ordinance shall be liable on conviction to imprisonment for a period not exceeding two years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

(3) Any person charged with a major offence under this Ordinance may, if the circumstances warrant such a finding, be convicted of a minor offence under this Ordinance.

Directors and officers of company.

16. Where the person guilty of an offence under this Ordinance is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Restriction on prosecution.

17. A prosecution for an offence under this Ordinance shall not be instituted except by or with the consent of the Attorney General:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

Power to exclude public from trial.

18. In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person, for an offence under this Ordinance or the proceedings on appeal, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the Colony, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of the sentence shall in any case take place in public.

Repeal.
Cap. 64.

19. The Official Secrets Ordinance (Chapter 64 of the Revised Edition) is hereby repealed.

ORDINANCE No. X of 1939

Assented to in His Majesty's name this twenty-ninth day
of June, 1939.

R. BROOKE-POPHAM,
Governor.

[29TH JUNE, 1939.] Date of assent.

**An Ordinance to Amend the Local Government
(Rating) Ordinance, 1928**

29th June, 1939

Date of com-
mencement.

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 Local Govern- Short title.
ment (Rating) (Amendment) Ordinance, 1939, and shall be
read as one with the Local Government (Rating) Ordinance, No. 20 of 1928.
1928, hereinafter referred to as the Principal Ordinance.

2. Section 5 of the Principal Ordinance is hereby Amendment of
amended by inserting immediately after the word "first" which section 5 of
occurs in the first line of the proviso thereto the words "or the Principal
any subsequent" Ordinance.

ORDINANCE No. XI of 1939

Assented to in His Majesty's name this twenty-ninth day of June, 1939.

R. BROOKE-POPHAM,
Governor.

[29TH JUNE, 1939.] Date of assent.

**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, 1939, and 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.

Short title and commencement
No. 4 of 1937.

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

Amendment of section 2 of the Principal Ordinance.

(a) by inserting immediately after the word "Governor" in the definition of "officer" contained therein the words "or by the Governor of Uganda";

(b) by adding immediately after the word "Ordinance" in the definition of "Regiment" contained therein the words "and includes the units established under the provisions of the Uganda Ordinance";

(c) by adding immediately after the word "Ordinance" in the definition of "Reserve" contained therein the words "and includes the Reserve established under the provisions of the Uganda Ordinance";

(d) by inserting immediately after the definition of "Special Reserve" the following new definition:—

“Uganda Ordinance” means the Ordinance enacted in the Protectorate of Uganda entitled the Kenya Regiment (Territorial Force) (Uganda Units) Ordinance, 1939, and any Ordinance amending or replacing the same; and

(e) by inserting immediately after the word "Ordinance" in the definition of "unit" contained therein the

words "or established by the Governor of Uganda under the provisions of the Uganda Ordinance".

3. The Principal Ordinance is hereby amended by inserting therein, immediately after section 23 thereof, the following new section:—

Amendment of the Principal Ordinance.

"23A. When any person is an officer or member of the Regiment by virtue of the provisions of the Uganda Ordinance and such person leaves Uganda and takes up his residence in the Colony, he shall, if his place of residence is within a military district, become an officer or member, as the case may be, of a unit declared under this Ordinance and thereupon shall be deemed to have been duly appointed an officer or enrolled a member of such unit under this Ordinance and his previous service in the Regiment in Uganda shall for all purposes be deemed continuous with his service in the Regiment in the Colony."

Transfer of officers and members from Uganda.

4. The Principal Ordinance is hereby amended by inserting therein, immediately after section 36 thereof, the following new section:—

Amendment of the Principal Ordinance.

"36A. Any officer or member of any unit of the Regiment or the Reserve established under the Uganda Ordinance shall, while on active service for the purpose of engaging in operations against an enemy outside the Protectorate of Uganda, or while undergoing peace training in the Colony, be deemed to be an officer appointed or a member enrolled under this Ordinance and all or any of the provisions of this Ordinance shall apply to such officer or member accordingly."

Application of this Ordinance to officers and members of the units and the Reserve established in Uganda.

ORDINANCE No. XII of 1939

Assented to in His Majesty's name this twenty-ninth day
of June, 1939.

R. BROOKE-POPHAM,
Governor.

[29TH JUNE, 1939.] Date of assent.

An Ordinance to Amend the Police Ordinance, 1930

29th June, 1939

Date of com-
mencement.

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 Police (Amend-
ment) Ordinance, 1939, and shall be read as one with the
Police Ordinance, 1930, hereinafter referred to as the Princi-
pal Ordinance. Short title.
No. 64 of 1930.
2. Paragraph (3) of section 13 of the Principal Ordin-
ance is hereby deleted and the following paragraph is
substituted therefor:—
“(3) The pay and allowances of the Police Force and of
special police officers appointed under section 70 of
this Ordinance;” Amendment of
section 13 (3) of
the Principal
Ordinance.
3. Sub-section (11) of section 29 of the Police (Amend-
ment) Ordinance, 1934, is hereby amended by substituting
a colon for the full stop which occurs at the end thereof and
by adding immediately after such colon the following
proviso:—
“Provided that any person who contravenes any of
the provisions of this sub-section shall be liable, on con-
viction before a magistrate, to a fine not exceeding
twenty pounds, or to imprisonment for a period not
exceeding three months, or to both such fine and im-
prisonment.” Amendment of
section 29 (11)
of the Police
(Amendment)
Ordinance,
1934.
No. 44 of 1934
4. Sub-section (3) of section 56 of the Principal Ordin-
ance is hereby amended by deleting the words “nor shall any
such officer be eligible in any case for a gratuity of a sum
exceeding thirty pounds” which occur in the third and the
fourth lines thereof. Amendment of
section 56 (3)
of the Principal
Ordinance.

5. Section 70 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 70 of the Principal Ordinance.

“70. (1) The Commissioner may at any time, if it appears to him to be expedient in the interests of public order and safety so to do, appoint fit and proper persons to act as special police officers in such manner, for such period and within such limits as he may consider necessary:

Power to appoint special police officers.

Provided that whenever special police officers shall have been appointed under this section the Commissioner shall forthwith transmit to the Governor notice of such appointment and of the circumstances which rendered such appointment expedient.

(2) All persons who are exempt from liability to serve as jurors shall be exempt from service as special police officers.

(3) Every special police officer shall, on appointment, make the following declaration by oath 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 as a Special Police Officer 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 relating to the Police Force now in force or which may from time to time be in force.

.....
*Signature or mark of Special
Police Officer.*

Declared at..... this..... day
of..... 19.....

Before me.....
Signature of Magistrate or Officer.

The declaration shall be made before a magistrate or superior police officer and shall be signed or marked by the special police officer.

(4) Every special police officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities as police officers.

(5) If any person who is appointed a special police officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable on conviction before a magistrate, to a fine not exceeding five pounds for every such neglect, refusal or disobedience."

Ord. III / 42.

ORDINANCE No. XIII of 1939

Assented to in His Majesty's name this twenty-ninth day of June, 1939.

R. BROOKE-POPHAM,
Governor.

[29TH JUNE, 1939.] Date of assent.

An Ordinance to Amend the Coffee Industry Ordinance, 1934

29th June, 1939

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 Coffee Industry (Amendment) Ordinance, 1939, and shall be read as one with the Coffee Industry Ordinance, 1934, hereinafter referred to as the Principal Ordinance. Short title.
No. 54 of 1934.

2. Section 2 of the Principal Ordinance is hereby amended by deleting therefrom the definition of "coffee planter" and by substituting therefor the following definition:— Amendment of section 2 of the Principal Ordinance.

or his partner if any, or a
"coffee planter" means the owner, managing director *of any coffee plantation* or partner of any coffee plantation in respect of which a licence has been issued under the provisions of section 9 of this Ordinance and includes the individual representative of any such owner duly authorized in writing in the behalf by *such* the said owner; *he holds*

3. Sub-section (1) of section 3 of the Principal Ordinance is hereby amended by deleting therefrom the words and comma "who own, occupy or manage" which occur in lines two and three of paragraph (d) and in paragraph (e) thereof and by substituting therefor in each case the word "of". Amendment of section 3 (1) of the Principal Ordinance.

ORDINANCE No. XIV of 1939

Assented to in His Majesty's name this eighteenth day of July, 1939.

R. BROOKE-POPHAM,
Governor.

[18TH JULY, 1939.] Date of assent.

An Ordinance to Amend the Electric Power Ordinance

By Proclamation

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 Electric Power (Amendment) Ordinance, 1939, and shall be read as one with the Electric Power Ordinance (Chapter 165 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Short title.

Cap. 165.

(2) This Ordinance shall come into operation on such date or dates as the Governor may by proclamation appoint, and the Governor may appoint different dates for the different purposes and different provisions of this Ordinance.

Commencement.

2. Section 2 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 2 of the Principal Ordinance.

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

Interpretation.

“apparatus” means electrical apparatus and includes all machines, apparatus and fittings in which conductors are used or of which they form part;

“area of supply” means the area within which the licensee is for the time being authorized to supply electrical energy under the licence;

“authorized distributor” means a public or local authority, company, person or body of persons licensed by a distributing licence to distribute or supply electrical energy for any purpose;

"British Board of Trade" means the Ministry of Transport and any other authority for the time being exercising the functions of that body;

"bulk supply" means the supply of electrical energy in bulk by a bulk supply licensee to any authorized distributor;

"bulk supply area" means the area within which the bulk supply licensee is for the time being authorized to give a bulk supply under a bulk supply licence;

"bulk supply licence" means a licence granted to a public or local authority, company, person or body of persons, under this Ordinance referred to as a bulk supply licensee, to generate and supply electrical energy to authorized distributors within the area defined therein;

"circuit" means an electrical circuit forming a system or branch of a system;

"company" means a company registered in the United Kingdom or registered in the Colony under the Companies Ordinance, 1933;

No. 28 of 1933.

"conductor" means an electrical conductor connected or arranged to be electrically connected to a system;

"consumer" means any public or local authority, company, person or body of persons supplied or entitled to be supplied with electrical energy by a licensee;

"daily penalty" means a penalty for each day on which any offence is continued after conviction therefor;

"danger" means danger to the health, life, person or property of any one from shock, from fire, or otherwise arising from the generation, transformation, conversion, transmission, distribution, supply or use of electrical energy;

"deposited map" means the map of the area of supply deposited with the Governor by the licensee together with the licence and signed by the Governor;

"distributing area" means the area of supply specified in a distributing licence;

"distributing licence" means a licence granted to a public or local authority, company, person or body of persons, under this Ordinance referred to as an authorized distributor, to distribute or supply electrical energy for the purposes and within the area defined therein; such

licence shall also entitle the authorized distributor to receive a bulk supply from a bulk supply licensee;

“distributing main” means that portion of any electric supply line which is used or intended to be used for the purpose of giving origin to service lines for the purpose of supplying consumers with electrical energy;

“earthed” means connected to the general mass of earth in such a manner as to ensure at all times an immediate and safe discharge to earth of electrical energy;

“electrical energy” means energy involving the use of electricity, electric current or any like agency, which may be produced either by mechanical or chemical means;

“electric line” means an electric supply line and includes a telegraph line;

“electric supply line” means any wire, conductor or other means used or intended to be used for the purpose of conveying, transmitting, distributing, serving or using electrical energy, together with any casing, coating, covering, tube, pipe, insulator or support enclosing, surrounding or supporting the same or any part thereof, or any apparatus ancillary thereto, for the purpose of conveying, transmitting, distributing, serving or using electrical energy, but does not include any telegraph or telegraph line;

“Engineering Standards Committee of Great Britain” means the British Engineering Standards Association and any other authority for the time being exercising the functions of that body;

“factory” means any premises or site in which, or within the close or curtilage of which, any person works for hire or is employed whether for wages or not in connexion with or incidental to the purposes of any trade or process, and in which electrical energy is used, and includes workshop;

“general supply” means the general supply of electrical energy to ordinary consumers or for public lamps;

“generating station” means any station for generating electricity, including any buildings and plant used for the purpose, and the site thereof, and a site intended to

be used for a generating station, but does not include any station for transforming, converting or distributing electrical energy;

“licence” means any document or instrument in writing granted under this Ordinance authorizing a public or local authority, company, person or body of persons to undertake the generation, supply or distribution of electrical energy in the manner described in such document or instrument as aforesaid;

“licensee” means the public or local authority, company, person or body of persons to whom a licence is granted;

“local authority” means any municipal council or board constituted under the provisions of the Local Government (Municipalities) Ordinance, 1928, or any Ordinance amending or replacing or replaced by the same; No. 19 of 1928.

“local generating licence” means a licence authorizing an authorized distributor, under this Ordinance for the purposes of that licence referred to as a local generating licensee, to generate electrical energy for the purposes of the distributing licence of such authorized distributor;

“meter” means any and every kind of machine, device or instrument used for the measurement of the supply of electrical energy, and includes such auxiliary appliances as resistors, shunts, reactances, current transformers, voltage transformers and time switches, external and necessary to the meter;

“mine” has the same meaning as that assigned to it in the Mining Ordinance, 1933, and includes quarry; No. 61 of 1933.

“ordinary consumer” means any consumer other than a consumer under special agreement;

“overhead system” means an electrical system in which the electric supply lines, conductors or other apparatus used or which may be used for conveying, transmitting, transforming, distributing or supplying electrical energy are placed above ground and in the open air, and includes any portions of a system so placed above ground and in the open air, excepting within premises in the sole occupation or control of the licensee, and excepting so much of any service line as is necessarily

so placed for the purpose of supply, and includes an aerial line as defined in the Electric Supply Line Ordinance; Cap. 166.

“plan” means a plan drawn to a horizontal scale of at least one one-thousandth of full size and where possible a section drawn to the same horizontal scale as the plan and to a vertical scale of at least one one-hundredth of full size, or to such other scales as the Governor may direct for both plan and section, together with such detail plans and sections as may be required;

“power” means electrical power or the rate per unit of time at which electrical energy is supplied;

“pressure” means the effective difference of electrical potential between any two conductors, or between a conductor and the earth, and is said to be—

(i) “low” when it does not exceed 250 volts under normal conditions, subject, however, to the percentage variation allowed by any rules made under this Ordinance;

(ii) “medium” when it exceeds 250 volts but does not exceed 650 volts under normal conditions, subject, however, to the percentage variation allowed by any rules made under this Ordinance;

(iii) “high” when it normally exceeds 650 volts but does not exceed 3,000 volts;

(iv) “extra high” when it normally exceeds 3,000 volts;

“public authority” means the Government of the Colony or any department or branch of the Government of the Colony;

“public lamp” means any electric lamp used for the lighting of any street which is under the control of a public or local authority;

“railway” means any railway maintained as a public service for the transport of passengers or goods;

“service line” means any portion of any electric supply line through which electrical energy is or is intended to be supplied by a licensee—

(i) to a consumer either from a distributing main or immediately from the premises of the licensee; or

(ii) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main,

up to the point where such electric supply line reaches the supply terminals;

“special agreement” means any agreement for supply of electrical energy made between a licensee and a consumer, which, by reason of any peculiarity in supply or demand, contains some special term or condition as to the nature or power factor of the load, time of supply, price, quantity to be consumed, period, or otherwise, which term or condition is not reasonably applicable and acceptable to every consumer of any general class of supply;

“street” includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway;

“sub-station” means any premises or enclosure or part thereof, being large enough to admit the entrance of a person after the apparatus therein is in position, containing apparatus for transforming or converting electrical energy to or from a pressure above medium pressure (other than transforming or converting solely for the operation of switchgear or instruments) with or without any other apparatus for switching, controlling or otherwise regulating the electrical energy, and includes the apparatus therein;

“supply terminals” means the ends of the electric supply lines upon any consumer’s premises at which the supply of electrical energy is delivered from the service lines of the licensee, and shall be situated—

(i) in any case where the supply of electrical energy is measured by a meter, at the point at which the conductor from the service line enters the meter, or, in respect of a conductor from the service line which does not pass through the meter, the point on such conductor nearest to the meter;

(ii) in any other case, at the point at which the conductor from the service line enters the consumer’s main switch, or if there is more than one main switch, that main switch on the consumer’s premises which is nearest to the source of supply;

“switch station” means any premises or enclosure or part thereof, being large enough to admit the entrance of

a person after the apparatus therein is in position, containing apparatus for switching, controlling or otherwise regulating electrical energy at a pressure above medium pressure, but not for transforming or converting electrical energy (other than transforming or converting solely for the operation of switchgear or instruments), and includes the apparatus therein;

“system” means an electrical system in which all the conductors and apparatus are electrically connected to a common source of electrical energy;

“telegraph” means any system or means of conveying telegraph, telephone or other signs, signals, sounds or communications by the agency of electricity, magnetism, electro magnetism or by any agency of a like nature, with or without the aid of wires, including the systems commonly known as wireless or radio telegraphy and wireless or radio telephony or etheric signalling, and any improvements or developments of those systems, and also includes any apparatus used in conveying any such signs, signals, sounds or communications;

“telegraph line” means the conductors and their supporting or containing structures which are or may be used in connexion with or for the purpose of any public or private telegraph;

“tramway” means any tramway maintained as a public service for the transport of passengers or goods;

“undertaking” means any business of generation, supply or distribution of electrical energy undertaken pursuant to a licence, and includes all the assets and liabilities from time to time constituting or belonging or appertaining to such business;

“use of electrical energy” means the conversion of electrical energy into chemical energy, mechanical energy, heat or light, or the use or application of electrical energy to or for any of the purposes for which it may be or become or be found to be adapted;

“works” means electric supply lines, machinery, lands, buildings, structures, earth works and water works, and includes any apparatus or things of whatsoever description, required for the generation, transmission, transformation, distribution, supply or use of electrical energy.”

3. Section 3 of the Principal Ordinance is hereby amended—

Amendment of section 3 of the Principal Ordinance.

(a) by deleting the brackets and figure "(1)" from sub-section (1) thereof; and

(b) by repealing sub-sections (2) and (3) thereof.

4. Sub-section (1) of section 4 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and replacement of section 4 (1) of the Principal Ordinance.

"(1) (a) No public or local authority, company, person or body of persons not being a bulk supply licensee or local generating licensee under this Ordinance shall generate, or, not being a bulk supply licensee or an authorized distributor, shall, subject to the provisions of the Electric Supply Line Ordinance, transmit a supply of electrical energy or construct, maintain or operate works for such generation or transmission of electrical energy;

Licensees only may supply electrical energy on sale or construct or maintain supply lines or other works.
Cap. 166.

(b) Notwithstanding the provisions of paragraph (a) of this sub-section—

Supply to particular consumers under authorization of the Governor in Council.

(i) The Governor in Council may authorize any public or local authority, company, person or body of persons in any place not within the area of supply of any authorized distributor and whose primary business or occupation is not the supply of electrical energy to supply such energy for sale or any other consideration to one or more particular public or local authorities, companies, persons or bodies of persons not within any such area of supply;

(ii) The Governor may authorize any public or local authority, company, person or body of persons, whether within any such area of supply or not, to generate or, subject to the provisions of the Electric Supply Line Ordinance, to transmit a supply of electrical energy for its or his own use, and to erect, maintain and operate the works necessary therefor; but no such authorization shall be given to any public or local authority within any such area of supply for any purpose other than stand-by plant or special technical apparatus required for the maintenance of essential communications or military services, without the consent in writing of the authorized distributor first had and obtained.

Authorization of Governor for private generating plants.
Cap. 166.

If in the opinion of the Governor in Council any such consent is unreasonably withheld, the Governor, notwithstanding the provisions of this sub-paragraph, may proceed as if such consent had been given:

Provided that where the rated capacity of the generating plant does not exceed 25 kilowatts and the pressure in any part of the system connected thereto does not exceed 150 volts in the case of direct current or 50 volts in the case of alternating current, and provided further that no part of such system is without the close or curtilage of the premises in which the electrical energy is generated, no licence or authorization shall be necessary."

5. Section 7 of the Principal Ordinance is hereby amended—

(a) by substituting the word "limits" for the word "limit" which occurs in the second line thereof; and

(b) by deleting the words "or prior licence" wherever such words occur therein.

Amendment of section 7 of the Principal Ordinance.

6. Section 8 of the Principal Ordinance is hereby amended by deleting the marginal note thereto and by substituting therefor the following marginal note:—

"Licensee may obtain other licences".

Amendment of section 8 of the Principal Ordinance.

7. Sub-section (1) of section 9 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

"(1) A licensee shall not transfer or otherwise divest himself of any of the powers, rights or obligations conferred or imposed upon him by this Ordinance or by his licence otherwise than under and in accordance with a provision contained in the licence authorizing such divestiture, or the authority of the Governor in Council."

Repeal and replacement of section 9 (1) of the Principal Ordinance. When licence may be transferred.

8. Sub-section (3) of section 10 of the Principal Ordinance is hereby amended by substituting a colon for the full stop which occurs at the end thereof, and by adding thereto, immediately after such colon, the following proviso:—

"Provided that the Governor in Council may, in his absolute discretion, where the circumstances are such as in his opinion render such a course necessary, exercise

Amendment of section 10 (3) of the Principal Ordinance.

the powers conferred upon him by this section notwithstanding that more than six months after the receipt of the application have expired.”

9. Section 11 of the Principal Ordinance is hereby amended—

Amendment of section 11 of the Principal Ordinance

(a) by deleting the words “Governor’s authority” which occur in the last line of sub-section (1) thereof and by substituting therefor the words “authority of the Governor in Council”;

(b) by deleting the word “the” where it first occurs in the fourth line of the first proviso to sub-section (2) thereof and by substituting therefor the word “and”; and

(c) by deleting the word and comma “mains,” wherever such word and comma occur therein.

10. Section 13 of the Principal Ordinance is hereby amended by deleting the word and comma “mains,” which occur in the last line thereof.

Amendment of section 13 of the Principal Ordinance.

11. Section 15 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 15 of the Principal Ordinance.

“15. The bulk supply licensee shall be wholly responsible for the proper maintenance, repair and safe condition of all electric supply lines, apparatus and equipment up to the point at which the bulk supply is made, effected, delivered or made available to any authorized distributor as approved by the Governor, irrespective of the manner in which any capital sums for, or charges in respect of the same may be provided.”

Bulk supply licensee responsible for supply lines.

12. Sub-section (1) of section 18 of the Principal Ordinance is hereby amended by deleting the words “public or private purposes within any local” which occur in the fourth line thereof and by substituting therefor the words “any purpose within any”.

Amendment of section 18 (1) of the Principal Ordinance.

13. Section 19 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 19 of the Principal Ordinance.

“19. Where any authorized distributor is authorized by a distributing licence to supply electrical energy within an area of supply which is situated either wholly

Purchase of works of authorized distributor by local authority.

or partly within the jurisdiction for other purposes of any local authority, and such local authority desires to undertake the supply of electrical energy in such area of supply or any part thereof, the following provisions shall apply:—

- (a) Within six months after the expiration of a period of forty-two years from the date of such distributing licence, or such shorter period as is specified in that behalf in such distributing licence, or within six months after the expiration of every subsequent period of seven years, or such shorter period as is specified in that behalf in such distributing licence, such local authority may make an application to the Governor in Council for the revocation of such distributing licence as to the whole or part of the area of supply, and for the simultaneous issue to such local authority of a distributing licence for the whole of the area to which such revocation would extend. In addition to any notices required to be given by this Ordinance, such local authority shall serve copies of any such application upon such authorized distributor, together with such further particulars as the Governor in Council may direct:

When local authority may apply for licence.

Provided that, in the event of renewal of any such distributing licence under the provisions of section 18 of this Ordinance, the said period of forty-two years, or any shorter period specified as aforesaid in such distributing licence, may by the terms and conditions of such renewal be specifically altered to run from the date of such renewal or otherwise specifically shortened or extended within the limit of forty-two years from that date; but in default of and subject to any such specific alteration as aforesaid, the said period of forty-two years, or any shorter period specified as aforesaid in such distributing licence, shall continue to be calculated from the original date of commencement of such distributing licence, and every subsequent period of seven years as aforesaid, or any shorter period specified as aforesaid in such

distributing licence, shall be calculated accordingly, in like manner in all respects as if such distributing licence had originally been granted for a period to include the period of such renewal, and so that the original period of duration of such distributing licence (whether greater or less than forty-two years) shall be altogether disregarded in the application of the provisions of this paragraph.

- (b) Where such area of supply is situated wholly within the jurisdiction for other purposes of such local authority, any application as aforesaid by such local authority shall be granted on such terms and conditions as the Governor in Council may think fit.

Where area of supply is wholly within local authority's jurisdiction application shall be granted.

- (c) Where such area of supply is situated partly within and partly without the jurisdiction for other purposes of such local authority, any application as aforesaid by such local authority may be granted on such terms and conditions as the Governor in Council may think fit, or may be refused:

Where area of supply is not wholly within local authority's jurisdiction application may be granted.

Provided that, where the granting of such application would entail the division of such area of supply, and such authorized distributor has objected to such division, but notwithstanding such or any other objection which may have been lodged, the Governor in Council is disposed to consider such application further:

- (i) the Governor in Council shall cause written notice of his disposition to consider such application further and of any terms or conditions of grant then under consideration, to be given to such authorized distributor and, save with the consent of such authorized distributor, shall not grant such application before the expiration of a period of twelve months from the date of such written notice;
- (ii) such authorized distributor shall be entitled, within such period of twelve months unless he has consented to the

prior granting of the application, to require by written notice to such local authority and to the Governor in Council that such application be amended to effect such alternative division of such area of supply, if any, with such alternative or additional terms and conditions, if any, as such authorized distributor may in such notice specify;

(iii) within ninety days, or such longer period as the Governor in Council may approve, after receipt of any such notice as aforesaid from such authorized distributor, such local authority may, by written notice to the Governor in Council and to such authorized distributor, amend such application in accordance with such notice of such authorized distributor or to include the whole of such area of supply; but in default of any such amendment within such period, such application shall be refused;

(iv) the Governor in Council shall remain free, notwithstanding any such notice as aforesaid of his disposition to consider such application further, at any time thereafter in his absolute discretion to refuse such application or any amendment thereof; and

(v) the provisions of section 125 of this Ordinance shall not apply to any requisition or notice made or given by the authorized distributor or by the local authority under this paragraph.

(d) Notwithstanding any provisions of this section, no application entailing the division, transfer or alteration of any area of supply or part thereof shall be granted with or without amendment or modification unless it is shown to the satisfaction of the Governor in Council that such grant will not unduly prejudice the consumers in any portion of the area proposed to be divided, transferred or altered.

Consumers not
to be prejudiced.

- (e) In the event of any such application as aforesaid by such local authority being granted, with or without amendment or modification, such grant shall be made to take effect at such later date as the Governor in Council shall then direct; but such local authority shall, as from the date of such grant and up to the date of the same taking effect, advance to such authorized distributor, by way of loan carrying interest at the rate of four per centum per annum or such other rate as the Governor in Council may prescribe under section 55 of the Companies Ordinance, 1933, all such moneys as he may from time to time reasonably require for capital expenditure to ensure the continued development of his undertaking in relation to such area of supply during that period and such advances shall be repaid on or before the date upon which the final payment of any purchase money which becomes due under the provisions of this section is received from the local authority:

Effect of grant of application to be deferred.

No. 28 of 1933.

Provided that, if and so often as any difference arises between such local authority and such authorized distributor as to whether any moneys are or are not reasonably required by the authorized distributor for capital expenditure as aforesaid, or as to the particular purpose or purposes for which such moneys are required, or as to the amount of any moneys so required, such difference shall be determined by arbitration.

- (f) Where the application as aforesaid by such local authority is granted by the Governor in Council under the provisions of this section, with or without amendment or modification, such local authority shall buy from the authorized distributor and such authorized distributor shall sell to the local authority all works suitable for and used or in possession for use by such authorized distributor under his distributing licence for the distribution of electrical energy within the area defined in the distributing licence granted to such local authority, and such sale

Sale and purchase of works where application is granted.

shall be completed accordingly on the date upon which the grant of such application is to take effect :

Provided that, where the granting of such application entails the division of the original area of supply or where such authorized distributor holds any other distributing licence or licences, such authorized distributor shall be entitled, by written notice in that behalf to such local authority at any time not later than ninety days from the publication of the notice advertising the granting of such application, to exclude from such sale and purchase any specified part or parts of the said works, whether suitable or unsuitable for the distribution of electrical energy within the area defined in the distributing licence then granted to such local authority, which he might reasonably require for the purposes of his distributing licence in respect of the remaining portion of such area of supply or such other distributing licence or licences :

Provided further that any question which may arise in relation to such sale and purchase, or with regard to the exclusion of any specified works therefrom, shall in default of agreement be determined in accordance with the provisions of section 134 of this Ordinance.

(g) Subject to the provisions of paragraph (d) of this section, in any case where the supply of electrical energy for the purposes of the said distributing licence of such authorized distributor is obtained under a local generating licence held by such authorized distributor, then on the granting of any such application as aforesaid of such local authority the provisions of subparagraph (i), (ii) or (iii) of this paragraph, as the case may be, shall apply to such local generating licence and the works thereunder, wherever situated :—

Provisions as to purchase of works under local generating licence of authorized distributor.

(i) if the supply of electrical energy for the purposes of the distributing licence then granted to such local authority, and also

Where bulk supply is available.

for the purposes of the said distributing licence of such authorized distributor (if and so far as remaining unrevoked), could, in the opinion of the Governor in Council, be provided more economically, and without prejudicing the consumers in any area concerned, by any then existing bulk supply licensee under any of the provisions of this Ordinance, then, notwithstanding the provisions of paragraph (b) (i) of sub-section (4) of section 34 of this Ordinance as to the periods at which the bulk supply licensee may apply for the revocation of the local generating licence and purchase the works of the local generating licensee, such local generating licence shall be revoked and such bulk supply licensee shall, on the date upon which the grant of such application as aforesaid is to take effect, purchase the works under such local generating licence, and shall thereafter give a supply of electrical energy to such local authority and to such authorized distributor for such respective purposes as aforesaid, subject to the provisions of sub-section (4) of section 34 of this Ordinance, and to any other authorized distributor, subject to the provisions in that behalf contained in this Ordinance or the bulk supply licence;

- (ii) where a supply of electrical energy could not, in the opinion of the Governor in Council, be provided by a bulk supply licensee as aforesaid, and where the granting of such application as aforesaid does not entail the division of the original area of supply, or where such authorized distributor agrees to sell such works, such local authority shall, on the date upon which the grant of

Where bulk supply is not available and original area of supply is not divided.

such application is to take effect, purchase the works under such local generating licence in like manner in all respects as if such local authority was a bulk supply licensee and purchasing for the purposes of a bulk supply licence, and the revocation of such local generating licence, and the price to be paid by such local authority in respect of the purchase of the said works and in respect of compensation (if any) for depreciation shall accordingly be effected and determined in the manner prescribed in that behalf by paragraphs (b) and (c) of sub-section (4) of section 34 of this Ordinance, and there shall be granted to such local authority such new local generating licence as may be deemed requisite or proper in the circumstances;

- (iii) where a supply of electrical energy could not, in the opinion of the Governor in Council, be provided by a bulk supply licensee as aforesaid, and where the granting of such application as aforesaid entails the division of the original area of supply, and such authorized distributor does not agree to sell such works, such authorized distributor shall, from and after the date upon which the grant of such application takes effect and so long as he continues to hold such local generating licence, give a supply of electrical energy to such local authority, for the purposes of the distributing licence then granted to it, from such of his works under such local generating licence and his then subsisting distributing licence as may be useful to that end, on such terms and conditions and for such price or prices as may be agreed upon between such authorized distributor and such local

Where bulk supply is not available and original area of supply is divided.

authority or, failing such agreement, as may be determined by an arbitrator in the manner prescribed in paragraphs (c) (vi) and (c) (vii) of sub-section (4) of section 34 of this Ordinance:

Provided that in every case where the supply of electrical energy for the purposes of the said distributing licence of such authorized distributor is obtained under a local generating licence which is held by such authorized distributor also in relation to or for the purposes of any other distributing licence or licences, then, for all purposes of this paragraph, the said distributing licence shall be regarded as including such other distributing licence or licences, and the original area of supply shall be regarded as including the area or areas of supply of such other distributing licence or licences, and any separation of such respective areas of supply shall be regarded as a division of the original area of supply."

14. Section 21 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

"21. (1) The authorized distributor shall, within a period of two years or such other period as may be stated in the distributing licence after the commencement of the distributing licence, or as may be authorized by the Governor in Council as provided for by section 125 of this Ordinance, subject to any agreement to the contrary at his own expense, lay down or erect suitable and sufficient distributing mains for the purpose of general supply throughout every street or part of a street specified in that behalf in the distributing licence, and shall thereafter maintain those distributing mains.

(2) In addition to the distributing mains hereinbefore specified, the authorized distributor shall, at any time after the expiration of eighteen months after the commencement of the distributing licence, subject to any agreement to the contrary at his own expense, lay down or erect suitable and sufficient distributing mains for the purposes of general supply throughout every other street

Repeal and replacement of section 21 of the Principal Ordinance.

Distributing mains to be laid down in streets specified in licence.

Provisions as to distributing mains required but not specified in the licence.

or part of a street within the area of supply upon being required to do so in manner provided by the distributing licence, or by this Ordinance.

(3) All such distributing mains as mentioned in sub-section (2) of this section (unless already laid down or erected) shall be laid down or erected by the authorized distributor within six months after any requisition in that behalf served upon him in accordance with the provisions of the distributing licence or this Ordinance has become binding upon him or within such further time as may in any case be approved by the Governor in Council.

Time within which distributing mains are to be laid.

(4) Where any requisition is made in respect of any street which the authorized distributor is not specially authorized to break up, or in or along which he is not authorized to erect and construct works of an overhead system, he shall (unless all authorities and persons owning or controlling such street, or responsible for the repair thereof, consent to such breaking up or to the erection of such overhead system, as the case may be,) forthwith apply to the Governor in Council for his written consent authorizing and empowering the authorized distributor (subject to the provisions of the Electric Supply Line Ordinance) to break up that street, or to erect and construct therein works of an overhead system, as the case may be, and the requisition shall not be binding upon the authorized distributor if the Governor in Council refuses his consent in that behalf."

Consent for breaking up of streets.

Cap. 166.

15. Section 22 of the Principal Ordinance is hereby amended—

Amendment of section 22 of the Principal Ordinance.

- (a) by deleting the words "two or more of those owners or occupiers require" which occur in the thirteenth and fourteenth lines thereof and by substituting therefor the words "such owner or occupier requires"; and
- (b) by deleting the word "their" which occurs in the fifteenth line thereof and by substituting therefor the word "his".

16. Section 23 of the Principal Ordinance is hereby amended—

Amendment of section 23 of the Principal Ordinance.

- (a) by inserting immediately after the word "licence" which occurs in the fourth line of sub-section (1) thereof the words "or this Ordinance"; and

(b) by inserting immediately after the word "licence" which occurs in the fourth line of sub-section (2) thereof the words "or this Ordinance".

17. Section 24 of the Principal Ordinance is hereby amended—

Amendment of section 24 of the Principal Ordinance.

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

"(1) Any requisition requiring the authorized distributor to erect or lay down a distributing main for the purposes of general supply throughout any street or part of a street may be made by any owner or occupier of premises along that street or part of a street, or by a group of such owners or occupiers, either jointly or severally, or, where a public or local authority is not the authorized distributor and has the control and management of the public lamps in that street or part of a street, by the public or local authority.";

Manner in which requisition is to be made.

(b) by inserting immediately after the word "the" which occurs in the first line of sub-section (2) thereof the words "person or"; and

(c) by inserting immediately after the word "requisition" which occurs in the first line of sub-section (3) thereof the words and commas ", embodying therein a suitable note drawing attention to the provisions of this section and of sections 25 and 26 of this Ordinance,".

18. Section 25 of the Principal Ordinance is hereby amended—

Amendment of section 25 of the Principal Ordinance.

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

"(1) Where any such requisition is made by any such owner or occupier or group of owners or occupiers as aforesaid, the authorized distributor (if he thinks fit) may, within fourteen days or such other period as the Governor in Council may approve after the service of the requisition upon him, serve a notice on all the persons by whom the requisition is signed, stating that he declines to be bound by the requisition unless those persons or some of them will bind themselves to take, or will guarantee that there shall be

Provision on requisition by owners or occupiers.

taken, a supply of electrical energy, for such period not being less than two nor more than seven years (as in such requisition may be specified by such owner or occupier or agreed and specified by such owners or occupiers, as the case may be) of such amount in the aggregate as will, at the rates of charge for the time being charged by the authorized distributor as appropriate to the nature and circumstances of the supply to such person or persons respectively, produce annually such sum as is specified by the authorized distributor in such notice:

Provided that in such notice the authorized distributor shall not, without the authority of the Governor in Council, specify any annual sum exceeding the following percentages upon the expense of providing and erecting or laying down the required distributing mains, viz:—

- (i) In respect of a guarantee for two years, sixty per centum;
- (ii) In respect of a guarantee for three years, forty-five per centum;
- (iii) In respect of a guarantee for four years, thirty-five per centum;
- (iv) In respect of a guarantee for five years, thirty per centum;
- (v) In respect of a guarantee for six years, twenty-five per centum;
- (vi) In respect of a guarantee for seven years, twenty per centum:

Provided further that in calculating such annual sum as aforesaid any other item of outlay involved in complying with such requisition and the requisition under section 27 of this Ordinance may also be taken into account if and so far as the Governor may approve according to the circumstances of each case.”;

- (b) by deleting the words “a period of three years at the least” which occur in the eleventh and twelfth lines of sub-section (2) thereof and by substituting therefor the words “the period specified in the requisition”;
- (c) by deleting the word “or” which occurs in the fifteenth line of sub-section (2) thereof and by substituting therefor the word “nor”;

- (d) by deleting the words "three years" which occur in the twelfth line of sub-section (3) thereof and by substituting therefor the words "that specified as aforesaid"; and
- (e) by repealing sub-section (5) thereof and by substituting therefor the three following sub-sections numbered (5), (6) and (7) respectively:—

"(5) Notwithstanding any payments made in accordance with any such agreement or guarantee as aforesaid, the distributing mains shall be the sole property of the authorized distributor, and may be used by him for any purpose authorized by his licence, so long as such use does not prejudicially affect the supply of electrical energy to any consumers who have entered into such agreement or guarantee.

(6) Where, during the period of any such agreement or guarantee as aforesaid, the authorized distributor uses any distributing main the subject thereof for the supply of electrical energy to any consumer or consumers other than those who have already entered into such agreement or guarantee, he shall first require every such additional consumer, and every such additional consumer shall be bound as from the date of commencement of such user, to become a further party to such agreement or guarantee for the remainder of such period, jointly and severally with the consumer or consumers who has or have already entered into such agreement or guarantee and with liability to contribute accordingly.

(7) If any difference arises between the authorized distributor, the person or persons signing any such requisition as aforesaid, and additional consumers as aforesaid, or any of them respectively, as to any such notice, agreement or guarantee or as to the effect or application of the last preceding sub-section, that difference shall, subject to the provisions of this section and to the decision of the Governor in Council upon such appeal as aforesaid, be determined by arbitration."

1939

Electric Power

No. XIV

19. Section 26 of the Principal Ordinance is hereby amended—

Amendment of section 26 of the Principal Ordinance.

- (a) by deleting the word "three" which occurs in the eighth line thereof and by substituting therefor the word "seven"; and
- (b) by substituting a comma for the full stop which occurs at the end thereof and by adding thereto, immediately after such comma, the words—

"sufficient at the least to provide illumination in such street or part of a street not inferior to the standard specified as Class H in Specification Number 307 of the Engineering Standards Committee of Great Britain."

20. Section 27 of the Principal Ordinance is hereby amended—

Amendment of section 27 of the Principal Ordinance.

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

"(1) The authorized distributor shall, upon being required to do so by the owner or occupier of any premises situate within 200 yards from any distributing main of the authorized distributor in which he is for the time being required to maintain or is maintaining a supply of electrical energy for the purpose of supply under the distributing licence, or within 200 yards from the nearer boundary of any street or road reserve (whichever may be the wider) along which such distributing main is laid down or erected, give and continue to give a supply of electrical energy for those premises in accordance with the provisions of the distributing licence and this Ordinance, and he shall at his own expense furnish and lay or erect such electric supply lines, or effect such modifications in any existing electric supply lines, as may be necessary or proper for the purpose of supplying the maximum power with which such owner or occupier then requires to be supplied:

Authorized distributors to furnish sufficient supply of electrical energy to owners and occupiers within the area of supply.

Provided that the cost or, in any case where a scale of charges for such purpose has been submitted by the authorized distributor and approved by the Governor, an amount calculated according to such scale to represent the cost, of so much of any electric supply lines for the supply of electrical energy to

any owner or occupier as may be laid or erected upon the property of that owner or in the possession of that occupier, and of so much of any such electric supply lines as it may be necessary to lay or erect for a greater distance than 60 feet from any distributing main of the authorized distributor (excluding any distance to be traversed for that purpose across any such street or road reserve as aforesaid), although not on that property, for the purpose of such supply shall, if the authorized distributor so requires, be refunded by that owner or occupier:

Provided further that notwithstanding any payments made in accordance with the foregoing provisions, all such electric supply lines shall be the property of the authorized distributor, who shall be responsible for their proper maintenance, repair and safe condition in accordance with this Ordinance and any rules made thereunder, up to the supply terminals. Such electric supply lines may be used by the authorized distributor for the purpose of supply to other consumers, provided that such use does not prejudicially affect the supply of electrical energy to the owner or occupier who first required such electric supply lines to be laid down or erected as aforesaid; but in any such event, such owner or occupier shall be entitled to claim from and be paid by each consumer subsequently connected to such electric supply lines such sum as may be determined by the authorized distributor as a fair and just proportion of the amount originally paid by such owner or occupier in respect thereof, and every consumer so connected from time to time shall likewise be entitled to claim from and be paid by every other consumer so connected after him such sum as may be determined by the authorized distributor as a fair and just proportion of any amount theretofore paid by him by way of contribution to any consumer so connected before him.”;

(b) by repealing paragraph (b) of sub-section (2) thereof and by substituting therefor the following paragraph:—

“(b) If required by the authorized distributor, enter into a written contract with him to continue to

receive and pay for a supply of electrical energy, by way of return on the outlay incurred by the authorized distributor in providing or modifying any electric supply lines or otherwise for the purpose of the supply as requisitioned under this section and not recoverable from such owner or occupier under sub-section (1) of this section, for such period and of such annual value (by way of percentage on such outlay) as the authorized distributor would be entitled to require under the provisions of sub-section (1) of section 25 of this Ordinance if such electric supply lines were distributing mains, and, if required by the authorized distributor, shall give to him security for the payment to him of all moneys which may become due to him by the owner or occupier in respect of any electric supply lines to be furnished or modified by the authorized distributor or any other outlay as aforesaid, and in respect of the supply of electrical energy by the authorized distributor.”;

- (c) by repealing paragraph (c) of sub-section (2) thereof;
- (d) by renumbering paragraph (d) of sub-section (2) thereof as sub-section (3) and by deleting the words “in accordance with the provisions of the Arbitration Ordinance” and the marginal note which occur at the end of such sub-section;
- (e) by renumbering sub-section (3) thereof as sub-section (4);
- (f) by renumbering sub-section (4) thereof as sub-section (5) and by substituting a comma for the full stop which occurs at the end of such sub-section and by adding thereto, immediately after such comma, the words “and shall not give a supply of electrical energy to any premises in any case where the supply to such premises is prohibited by the rules made under this Ordinance.”;
- (g) by repealing sub-section (5) thereof and by substituting therefor the following sub-section numbered (6):—

“(6) If any difference arises under this section as to the amount to be defrayed by any owner, occupier or consumer, or as to any improper use of electrical energy, or as to any alleged defect in any

electric supply lines, fittings or apparatus, that difference shall be determined, upon the application of any person or party interested, by an Electrical Inspector.”; and

(h) by adding thereto, immediately after the new sub-section numbered (6) thereof, the following new sub-section numbered (7):—

“(7) Forms of requisition, embodying therein a suitable note drawing attention to the provisions of this section, shall be kept by the authorized distributor at his office and a copy shall, on application, be supplied free of charge to any owner or occupier of premises within the area of supply, and any requisition so supplied shall be deemed valid in point of form.”

21. Sub-section (1) of section 28 of the Principal Ordinance is hereby amended by deleting the word “consumption” which occurs in the fourth line thereof and by substituting therefor the words “power demand”. Amendment of section 28 (1) of the Principal Ordinance.

22. Section 31 of the Principal Ordinance is hereby amended by deleting the words “distributing or other mains” which occur in the ninth line thereof and by substituting therefor the words “distributing mains or other electric supply lines”. Amendment of section 31 of the Principal Ordinance.

23. Sub-section (3) of section 33 of the Principal Ordinance is hereby amended by substituting a colon for the full stop which occurs at the end thereof, and by adding thereto, immediately after such colon, the following proviso:— Amendment of section 33 (3) of the Principal Ordinance.

“Provided that the Governor in Council may, in his absolute discretion, where the circumstances are such as in his opinion render such a course necessary, exercise the powers conferred upon him by this section notwithstanding that more than six months after the receipt of the application have expired, and this proviso shall be deemed to have come into operation on the 31st day of July, 1938.”

24. Section 34 of the Principal Ordinance is hereby amended— Amendment of section 34 of the Principal Ordinance.

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

“(1) Where any application is made for a local generating licence, and the distributing area for which Local generating licence.

local generation is proposed is not wholly within any bulk supply area, but is in such proximity or so situated that in the opinion of the Governor in Council the supply of electrical energy for such distributing area may appropriately be provided by a bulk supply licensee, the Governor in Council may order that for all purposes of this section such distributing area shall be deemed to be wholly within the bulk supply area of such bulk supply licensee.”;

As to application for local generating licence for area within or adjacent to bulk supply area.

- (b) by deleting the words “in any area or place” which occur in the second line of sub-section (2) thereof and by substituting therefor the words “and the distributing area for which local generation is proposed is wholly”;
- (c) by deleting the words “for any local area” which occur in the third line of sub-section (4) thereof;
- (d) by deleting the words “situated outside the area defined in any bulk supply licence” which occur in the third and fourth lines of sub-paragraph (i) of paragraph (a) of sub-section (4) thereof and by substituting therefor the words “not wholly within a bulk supply area”;
- (e) by deleting the words “situated within the area defined in a bulk supply licence” which occur in the third line of sub-paragraph (i) of paragraph (b) of sub-section (4) thereof and by substituting therefor the words “wholly within a bulk supply area”;
- (f) by repealing sub-paragraph (vi) of paragraph (c) of sub-section (4) thereof and by substituting therefor the following sub-paragraph:—

“(vi) The price or prices to be paid by the authorized distributor being the local generating licensee to the bulk supply licensee for the supply of electrical energy to be given to him by the bulk supply licensee for the purposes of his distributing licence in lieu of the supply generated by him under his local generating licence, unless agreed upon between the authorized distributor and the bulk supply licensee, shall not exceed such maximum price or prices as may be determined by arbitration, subject nevertheless to revision of such maximum price or prices at any

time after the expiration of three years from the date of determination as aforesaid, and thereafter at intervals of not less than three years, in the manner provided by section 69 of this Ordinance.”; and

(g) by repealing sub-paragraph (vii) of paragraph (c) of sub-section (4) thereof and by substituting therefor the following sub-paragraph:—

“(vii) In considering the maximum price or prices to be paid as aforesaid, the arbitrator shall have regard to the circumstances and nature of the supply and of the demand, and to the price or prices charged or shown or which should or might have been charged or shown in the accounts under the local generating licence, as well as all such other factors and conditions as may to him appear relevant.”

25. Section 35 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 35 of the Principal Ordinance.

“35. Subject to the provisions of sections 19 and 23 of this Ordinance, the Governor in Council may reduce or extend or in any way alter any area or areas of supply the subject of any licence or licences upon such terms and conditions as he may think fit, when, on the application in due form as prescribed by this Ordinance of any interested party, who may be any licensee under such licence or any of such licences, or any public or local authority, company, person or body of persons applying for a licence to generate or supply electrical energy over and within any area adjacent to the area or areas of supply aforesaid, it is shown to the satisfaction of the Governor in Council that the granting of the application will be equitable to the licensee and consumers in every area of supply concerned or affected, provided only that no licensee or consumer in any area of supply shall be unduly prejudiced thereby.”

Governor in Council may alter areas where equitable to all parties.

26. Sub-section (4) of section 39 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and replacement of section 39 (4) of the Principal Ordinance.

“(4) An authority given by the Governor in Council under sub-section (3) of this section shall, unless it

specifically states otherwise, confer all and any such powers and rights and impose all and any such duties on the licensee, and on any such other public or local authority, company, person or body of persons as may be in any manner interested or concerned, as would have been conferred or imposed by this Ordinance if the premises and the route along which the electric supply lines are to be laid for the purpose of giving supply were, for all purposes of this Ordinance, within the licensee's area of supply, anything in the licence notwithstanding:

Provided that, in any case where the licensee is not a local authority but his area of supply is situated wholly within the jurisdiction for other purposes of any local authority, all works constructed, erected, laid or installed by him under such authority as aforesaid shall, so long as such authority remains in force, be deemed, for all purposes of section 19 of this Ordinance, to form part of his undertaking within such jurisdiction, and the premises and route aforesaid shall, for the like period and purposes, be deemed to be situated within such jurisdiction."

27. Section 41 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

"41. Where any public or local authority, company, person or body of persons holds a licence or licences under this Ordinance, the accounts of each undertaking under each such licence shall, unless specifically exempted by the Governor in Council as provided by section 42 of this Ordinance, be subject to the provisions of this Ordinance, and be kept separate and distinct and in the manner and form prescribed by this Ordinance:

Provided that the Governor may direct that the operations of a licensee holding more than one licence in respect of separate or contiguous areas of supply may be regarded as a single undertaking for the purposes of this section and of section 45 of this Ordinance:

Provided further that a licensee holding two or more licences, the operations under which are not to be treated as a single undertaking pursuant to the last preceding proviso, or conducting any business or operations independent of his licence or licences, shall be entitled

Repeal and replacement of section 41 of the Principal Ordinance.

Provision as to separate accounts for each undertaking

nevertheless to keep in the prescribed form additional or alternative sets of accounts, to be termed 'the Head Office Accounts', in respect of all such items as, in the opinion of the auditor appointed under section 43 of this Ordinance, cannot properly or reasonably be attributed or allocated to, and included in, the accounts of the undertaking of any one of such licences exclusively."

28. Section 42 of the Principal Ordinance is hereby amended—

Amendment of section 42 of the Principal Ordinance.

(a) by inserting immediately after the word "licensee" which occurs in the first line thereof the commas and words ", excepting only such persons as have merely an authorization under the provisions of sub-paragraph (ii) of paragraph (b) of sub-section (1) of section 4 of this Ordinance and such other licensees as the Governor in Council may specifically exempt from the provisions of this section,";

(b) by deleting the words and commas ", if the Governor in Council so directs," which occur in the ninth and tenth lines thereof;

(c) by deleting the words "two shillings" which occur in the twelfth and thirteenth lines thereof and by substituting therefor the words "one shilling"; and

(d) by deleting the words "in Council" which occur in the second and fourth lines of the proviso thereto.

29. Section 43 of the Principal Ordinance is hereby amended—

Amendment of section 43 of the Principal Ordinance.

(a) by inserting immediately after sub-section (1) thereof the following sub-section numbered (2):—

"(2) The auditor shall at any time investigate and report to the Governor in Council upon any such particular matters or things relating to or arising out of the accounts of the licensee published pursuant to the provisions of this Ordinance as the Governor in Council may from time to time require."; and

(b) by renumbering the present sub-sections (2), (3) and (4) thereof as sub-sections (3), (4) and (5) respectively.

30. Paragraph (g) of sub-section (1) of section 44 of the Principal Ordinance is hereby repealed.

Repeal of section 44 (1) (g) of the Principal Ordinance.

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31. Section 45 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 45 of the Principal Ordinance.

“45. (1) Where the licensee is not a public or local authority the following provisions as to interest and dividends on moneys received on capital account, and as to provision for depreciation, and as to the application of profits derived from the undertaking, and the reduction of prices of supply, shall have effect:—

Application of money received by a licensee not being a public or local authority.

(a) During the initial period of construction and during other periods of construction of extensions of generating or transmission works, interest on the amount of the capital subscribed, borrowed or applied for the purposes of such construction, as may be authorized by the licence or in respect of each separate payment approved by the Governor in Council, may be paid out of such capital:

Interest and dividends which may be paid out of capital during construction.

Provided that—

(i) no such payment shall be made in respect of any period after the close of the financial year of the licensee during which such construction as aforesaid is completed:

(ii) in respect of any preference or ordinary shares constituting such capital or part thereof, the rate of such payment shall not exceed the rate of four per centum per annum or such other rate as the Governor in Council may prescribe under section 55 of the Companies Ordinance, 1933, nor shall such payment be made for any period or periods exceeding four years in all; and where such payment has once been made for such period or aggregate periods of four years (or for any lesser period following upon which the licensee has derived a profit from the same capital) no interest shall be again paid thereon out of the same capital, except under special circumstances and after inquiry by, and with the authority of, the Governor in Council; and

No. 28 of 1933.

(iii) nothing in this sub-section shall be taken to authorize any payment of interest out of capital in contravention of any other law for the time being in force.

(b) When and after the supply of electrical energy from or through any part of a licensee's works or undertaking is begun, there shall appear in the accounts of the undertaking each year an allowance for depreciation of such works or such part thereof, which shall be of such amount and allocated in such manner as the licensee may in his discretion think proper.

Allowance for depreciation.

(c) The amounts of the depreciation so determined by the licensee from year to year shall be a charge against the gross revenue of the undertaking and shall be shown to the credit of a depreciation account, and only such net balance as may be afterwards remaining may be paid to the credit of the net revenue account as profit to be available for further distribution:

Formation of depreciation account.

Provided that the Governor may from time to time authorize the licensee to deduct from the amount standing to the credit of the depreciation account all or part of the capital value of any portion of the works of the licensee which shall have become obsolete or unfit for further service or which shall have been sold or otherwise disposed of and to diminish the value of the works by a corresponding amount.

(d) If for any financial year of the licensee the total revenue in respect of the undertaking from all sources as shown on the licensee's Revenue Account prepared pursuant to Form No. IV of the Schedule to this Ordinance exceeds the sum of the following costs, charges, and allowances for that financial year, namely:—

Application of profits and reduction in prices of supply.

(i) working and establishment expenses and expenditure on the maintenance of the undertaking properly chargeable to revenue as shown on the licensee's Revenue Account prepared pursuant to Form No. IV of the Schedule to this Ordinance, but exclusive

of any expenditure covered by the allowances referred to in succeeding sub-paragraphs of this paragraph;

- (ii) an allowance for depreciation which may be irrespective of the allowance actually made in the licensee's accounts under paragraph (b) of this sub-section, at such respective rates or of such respective amounts on such respective items in accordance with standard engineering theory, and with due allowance for the local conditions, as the Governor in Council may from time to time by order prescribe or approve;
- (iii) allowances for obsolescence, if any, made and appearing in the licensee's accounts in respect of any specified item or items, if and so far as the Governor in Council may for the purposes of this paragraph allow the same;
- (iv) an allowance for contingency, special or other reserves, interest and/or dividends equivalent to twelve and one-half per centum of the capital expended on the undertaking,

five-sixths of the balance of such revenue shall be allocated and paid to a separate Income Suspense Account for that financial year and shall be applied during the last two of the next three following financial years by the licensee in reduction of and/or rebates on prices of supply, in such manner as the Governor in Council, having regard to the licensee's proposals, may approve.

For the purposes of this paragraph, the expression 'capital expended on the undertaking' means in respect of each financial year the total expenditure as shown on the licensee's Capital Account of the undertaking prepared pursuant to Form No. III of the Schedule to this Ordinance for the same financial year:

Provided always that no sum or item appearing in the aforesaid Capital Account shall be included for the purposes of this paragraph

unless it is shown to the satisfaction of the Governor in Council that it is required solely for carrying out the business of the undertaking.

- (e) If the licensee makes default in complying with the provisions of paragraph (d) of this sub-section the Governor in Council may, after such inquiry as he thinks fit, alter the prices to be paid by consumers to the licensee for the supply of electrical energy, and the prices so altered or substituted shall have effect on or after such day as may be mentioned in the order of the Governor in Council as if they had been stated in the licence, notwithstanding anything to the contrary herein contained as to the time or period for the revision or alteration of price.
- (f) Subject to the provisions of paragraph (d) of this sub-section, the licensee may, in his discretion, make such allowances or create such reserves and otherwise settle or adjust the accounts of the undertaking as he thinks fit.

Action upon default by licensee.

Licensee's discretion in relation to accounts not fettered.

- (2) If the licensee makes default in complying with any of the provisions of this section he shall be liable to a penalty not exceeding fifteen pounds for each single default, and to a daily penalty not exceeding seven pounds ten shillings for each continuing default, or, having regard to the circumstances, the Governor in Council may deal with the licence as he thinks fit.

Penalty.

- (3) The provisions of section 125 of this Ordinance shall not apply to any application for any permission, authority, consent or approval of the Governor in Council which may be required under this section."

The provisions of section 125 not to apply to applications under this section.

32. Section 49 of the Principal Ordinance is hereby repealed.

Repeal of section 49 of the Principal Ordinance.

33. Section 63 of the Principal Ordinance is hereby amended—

Amendment of section 63 of the Principal Ordinance.

- (a) by deleting the marginal note thereto and by substituting therefor the following marginal note "For protection of telegraphs and telegraph lines.";
- (b) by deleting the words "wire or line used for the purpose of telegraphic, telephonic, or electric signalling communication" which occur in the fifth, sixth and

seventh lines of sub-section (1) thereof and by substituting therefor the words "telegraph or telegraph line";

- (c) by deleting the words "wire or line" wherever such words occur in sub-sections (1) and (3) thereof and by substituting therefor, in each case, the words "telegraph or telegraph line";
- (d) by substituting a colon for the full stop which occurs at the end of sub-section (1) thereof and by adding thereto, immediately after such colon, the following proviso:—

"Provided that nothing in this sub-section shall apply to any telegraph which is operated or should be operated under a receiving licence or an experimental licence pursuant to the Wireless Telegraphy Rules, 1926, or to any telegraph lines belonging thereto or incidental merely to the use thereof, excepting only if and so far as the owner thereof shall have proved to the satisfaction of the Postmaster General that any cause or anticipated cause of the same being injuriously affected is of such a nature as the licensee might, in the opinion of the Postmaster General, reasonably be required to remove, prevent or avoid.";

- (e) by deleting the words "the work of telegraphic or telephonic or electric signalling communication through any wire or line" which occur in the fourth, fifth and sixth lines of sub-section (2) thereof and by substituting therefor the words "any telegraph or telegraph line", and by deleting the words "wire or line" wherever elsewhere appearing in the same sub-section and by substituting therefor, in each case, the words "telegraph or telegraph line"; and
- (f) by substituting a colon for the full stop which occurs at the end of the proviso to sub-section (2) thereof and by adding thereto, immediately after such colon, the following further proviso:—

"Provided further that nothing in this sub-section shall apply to any telegraph which is operated or should be operated under a receiving licence or an experimental licence pursuant to the Wireless Telegraphy Rules, 1926, or to any telegraph lines belonging thereto or incidental merely to the use thereof."

34. Section 68 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 68 of the Principal Ordinance

“68. (1) The licensee shall charge for electrical energy supplied by him to any ordinary consumer either—

Methods of charge.

(a) by the actual amount of electrical energy supplied, or

(b) by the maximum power, kilovolt-ampere or ampere demand for such continuous period as may for the time being be prescribed or authorized by any rules made under this Ordinance, or

(c) by a combination of the methods prescribed by paragraphs (a) and (b) of this sub-section, or

(d) by such other general method or combination of general methods as may for the time being be authorized by the licence or by the Governor in Council.

(2) Notwithstanding anything in this Ordinance or any licence to the contrary, the Governor in Council may authorize, under paragraph (d) of sub-section (1) of this section (but without prejudice to the generality of his powers under that paragraph)—

(a) in addition or alternative to a charge for the actual amount of electrical energy supplied and/or the maximum demand as aforesaid, a periodical fixed or service charge, with or without inclusion therein of a rent, charge or remuneration in respect of any meter, electric supply lines, fittings, apparatus or appliances provided by the licensee in or upon the premises of the ordinary consumer, whether let to him on hire or hire-purchase terms or otherwise, and/or

(b) a minimum charge, to be made irrespective of the actual amount of electrical energy supplied to the ordinary consumer or of his maximum demand as aforesaid, with provision that such minimum charge may be payable notwithstanding that no electrical energy has been used by the ordinary consumer during the period for which such minimum charge is made.

(3) In authorizing any method of charge under the provisions of this section, the Governor in Council may, after consultation with the licensee, limit the application of such method to a particular class or particular classes of ordinary consumers or to a particular portion of the area of supply, as may be specified in such authorization; and may also, or alternatively, direct that any ordinary consumer who objects to such method of charge shall remain free to require the licensee to charge him by one of the methods authorized by paragraphs (a), (b) and (c) of subsection (1) of this section, the choice between such methods resting with the licensee."

35. The Principal Ordinance is hereby amended by inserting therein, immediately after section 68 thereof, the following new section:—

Amendment of the Principal Ordinance.

"68A. (1) The prices to be charged by the licensee for electrical energy supplied by him to ordinary consumers shall not exceed those stated in that behalf in the licence, or, in the case of a method of charge authorized by the Governor in Council under section 68 of this Ordinance, such maximum prices or charges as the Governor in Council may determine when authorizing such method.

Maximum prices.

(2) In determining any maximum price or charge in relation to any method of charge, the Governor in Council may, after consultation with the licensee, determine separate maximum prices or maximum charges for any particular class or particular classes of ordinary consumers or for any particular portion of the area of supply to whom or to which such method of charge applies."

36. Section 69 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 69 of the Principal Ordinance.

"69. (1) If either —

(a) the licensee, or

(b) such number of ordinary consumers as the Governor in Council may consider sufficient having regard to the circumstances, or

(c) in a case where a public or local authority is not the licensee, either of those authorities,

Revision of maximum prices or methods of charge.

at any time after the expiration of three years after the commencement of a licence, makes representation to the Governor in Council that the maximum prices or methods of charge stated in the licence or authorized under section 68A or section 68 of this Ordinance ought to be altered, the Governor in Council, after such inquiry as he may deem fit, may make an order varying such maximum prices or methods of charge, or substituting other maximum prices or methods of charge in lieu thereof, and the maximum prices or methods of charge so varied or substituted shall have effect on and after such day as may be mentioned in the order, as if they had been stated in the licence or authorized under section 68A or section 68 of this Ordinance :

Provided that the maximum prices or methods of charge for the time being in force may be altered in like manner at any time after the expiration of any or every period of three years after they were last altered.

(2) Any revision of maximum prices made in accordance with the provisions of sub-section (1) of this section may extend to the fixing of separate maxima, or the authorization of separate methods of charge, in respect of different classes of supply or in respect of different portions of the area of supply."

37. The Principal Ordinance is hereby amended by inserting therein, immediately before section 70 thereof, the following new section:—

"69A. Every licensee shall, within three months after the date of commencement of his licence or the coming into operation of this section, whichever may be the later, publish in such manner as may be approved by the Governor, in respect of each of his undertakings, a scale of all prices for the time being charged by him for the various classes of supply to ordinary consumers, together with a description in general terms of the circumstances or conditions which qualify consumers for any special prices for the time being available. All additions to or alterations in any such scale of prices, or any such circumstances or conditions as aforesaid, shall be published in like manner prior to being brought into force or acted upon by the licensee."

Amendment of the Principal Ordinance.

Publication of scale of prices.

38. Section 70 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 70 of the Principal Ordinance.

“70. Subject as regards ordinary consumers to the provisions of sections 68, 68A and 69 of this Ordinance, the licensee may make any agreement with a consumer as to the price to be charged for electrical energy, and the mode in which these charges are to be ascertained, and may charge accordingly.”

Other charges by agreement.

39. Section 71 of the Principal Ordinance is hereby amended—

Amendment of section 71 of the Principal Ordinance.

(a) by deleting the word “power” which occurs in the third line of sub-section (1) thereof and by substituting therefor the words “electrical energy”; and

(b) by substituting a colon for the full stop which occurs at the end of sub-section (2) thereof and by adding thereto, immediately after such colon, the following proviso:—

“Provided that the Governor in Council having regard to any particular or general circumstances of supply or demand, may, for such period or periods and upon such terms or conditions as he may think fit, authorize the exclusive application of a particular price or method of charge to any limited number or type of consumers, or to the consumers in any specified district or neighbourhood; or to any other limited extent; and in respect of any exclusive price or method of charge so authorized the provisions of this sub-section shall not apply.”

40. Section 72 of the Principal Ordinance is hereby amended—

Amendment of section 72 of the Principal Ordinance.

(a) by deleting the brackets and figure “(1)” which occur in the first line of sub-section (1) thereof; and

(b) by repealing sub-section (2) thereof.

41. Section 73 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 73 of the Principal Ordinance.

“73. (1) If any public or local authority, company, person or body of persons neglects to pay any charge for electrical energy or any other sum due from him or them to the licensee in respect of the supply of electrical

Supply may be cut off on failure to pay charges.

energy, the licensee may, after giving not less than forty-eight hours' notice in writing to such authority, company, person or body of persons, and without prejudice to his right to recover such charge or sum, cut off such supply, and for that purpose may cut or disconnect any electric supply line or other works through which electrical energy may be supplied, and may, until such charge or other sum, together with any expenses incurred by the licensee in cutting off such supply of electrical energy as aforesaid and any lawful charges for or incidental to reconnexion, are fully paid, but no longer, discontinue the supply of electrical energy to such authority, company, person or body of persons:

Provided that where any company, person or body of persons has given to the licensee a deposit as security for payment for a supply of electrical energy, the licensee may at any time while any such charge or other sum as aforesaid after notice as aforesaid remains unpaid apply such deposit in or towards payment thereof, but shall not be entitled to discontinue such supply unless and until either—

- (a) such deposit has been entirely exhausted without payment in full of such charge or other sum, or
- (b) such company, person or body of persons has failed to renew such deposit up to the original amount thereof before the expiration of seven days after receiving written notice from the licensee requiring such renewal,

in either of which alternative events the licensee may discontinue such supply until both such charge or other sum as aforesaid, together with any expenses incurred as aforesaid in cutting off such supply and any lawful charges for or incidental to reconnexion, are fully paid, and such deposit as aforesaid is renewed up to the original amount thereof.

(2) Where any difference or dispute in respect of any such charge or other sum as aforesaid has been referred to an Electrical Inspector or to arbitration under this Ordinance or has otherwise fallen *sub judice* before notice of disconnexion as aforesaid has been given by the licensee, the licensee shall not exercise any of the powers conferred by this section in respect of the same charge or other sum until final determination of such difference or dispute:

Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector, arbitrator or other judicial authority concerned, in addition and without prejudice to any other deposit with the licensee which he is entitled to require, of the amount of the charge or other sum in dispute, and the consumer has failed to comply with such request within forty-eight hours of the same having been made."

42. Sub-section (1) of section 77 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and replacement of section 77 (1) of the Principal Ordinance.

"(1) The licensee shall send to the Governor notice of any accident by electric shock, and also of any other accident of such kind as to have caused, or to have been likely to have caused loss of life or personal injury, and of any explosion or fire, which has arisen from and in the course of the generation, transformation, conversion, transmission, distribution or supply of electrical energy by the licensee, or the use of electrical energy supplied by the licensee, or which has arisen in or about any generating station, sub-station, switch station, factory, works or electric supply lines of the licensee, and also notice of any loss of life or personal injury occasioned by any such accident, explosion or fire. The notice shall be sent by the earliest practicable post after the accident, explosion or fire occurs, or, as the case may be, after the loss of life or personal injury becomes known to the licensee.

Notice of accidents and inquiries by Governor.

If the licensee fails to comply with the provisions of this sub-section he shall be liable for each default to a penalty not exceeding thirty pounds."

43. Sub-sections (1) and (2) of section 87 of the Principal Ordinance are hereby repealed and the following sub-sections are substituted therefor:—

Amendment of section 87 of the Principal Ordinance.

"(1) Save as otherwise provided by this Ordinance or by the licence, all reasonable expenses of an Electrical Inspector shall, unless agreed, be ascertained by a magistrate holding a subordinate court of the first class and shall be paid as directed by that court, and may be recovered summarily as a civil debt.

Expenses of Electrical Inspector.

(2) Provided that where the report of an Electrical Inspector or the decision of the Governor in Council shows that the licensee or any consumer was guilty of any default or negligence the fees prescribed and expenses on being ascertained as above-mentioned shall be paid by the party guilty of default or negligence as the court, having regard to the report or decision, directs, and may be recovered summarily as a civil debt."

44. Sub-section (1) of section 88 of the Principal Ordinance is hereby amended by deleting the words "The amount of electrical energy supplied by the licensee to any consumer, or the electrical quantity contained in the supply (according to the method by which the licensee elects to charge)" which occur in the first, second, third and fourth lines thereof and by substituting therefor the words "The amount to be charged for electrical energy supplied by the licensee to any consumer (according to the method decided upon under the provisions of section 68 of this Ordinance)".

Amendment of section 88 (1) of the Principal Ordinance.

45. The Principal Ordinance is hereby amended by inserting therein, immediately after section 100 thereof, the following new section:—

Amendment of the Principal Ordinance.

"100A. All or any of the provisions of sections 90 to 100, both inclusive, of this Ordinance may be disregarded or modified in respect of any particular consumer in such manner and to such extent as may be agreed between such consumer and the licensee."

Modifications by agreement.

46. Section 105 of the Principal Ordinance is hereby amended—

Amendment of section 105 of the Principal Ordinance.

(a) by deleting the word "electrical" which occurs in the fourth line of paragraph (a) of sub-section (1) thereof and by substituting therefor the word "electric"; and

(b) by deleting all the words of sub-section (1) which occur immediately after paragraph (g) of that sub-section and by substituting therefor the following words:—

"shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding twenty-five pounds and in the case of a continuing offence to a daily penalty not exceeding two pounds, and, in

any case where the person so offending is the consumer, the licensee may also, until the matter complained of has been remedied, but no longer, discontinue the supply of electrical energy to the premises of such consumer, notwithstanding any contract which may have been previously entered into."

47. Sub-sections (2), (3) and (4) of section 109 of the Principal Ordinance are hereby repealed.

Repeal of sub-sections (2), (3) and (4) of section 109 of the Principal Ordinance.

48. Section 112 of the Principal Ordinance is hereby amended—

Amendment of section 112 of the Principal Ordinance.

(a) by inserting immediately after the word "any" which occurs in the second line of sub-section (1) thereof the words "public or local";

(b) by deleting paragraph (i) of sub-section (1) thereof and by substituting therefor the following paragraph:—

"(i) In the case of any other company or body of persons, the principal office of such company or body of persons in the area of supply, or, if there is no such office in the area of supply, the office of such company or body of persons nearest thereto."; and

(c) by deleting all the words of sub-section (1) which occur immediately after paragraph (j) of that sub-section and by substituting therefor the following words:—

"Every notice, order or document relating to any matter arising under this Ordinance or the licence, so served or furnished, shall be deemed to be full and lawful service on the licensee, or such other company, person or body of persons, as the case may be."

49. Paragraph (c) of section 119 of the Principal Ordinance is hereby deleted and the following paragraph is substituted therefor:—

Repeal and replacement of section 119 (c) of the Principal Ordinance.

"(c) Where the Governor in Council has granted such application, the applicant may by notice in writing require the licensee to sell, and thereupon the licensee shall sell to him all works suitable for and

used or in possession for use by such licensee for the purposes of the undertaking under such licence and any question which may arise in relation to such sale and purchase shall, in default of agreement, be determined in accordance with the provisions of section 134 of this Ordinance."

50. Section 122 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 122 of the Principal Ordinance.

"122. Where any security, other than the security required to be given by the licensee under the provisions of section 40 of this Ordinance, is required under this Ordinance to be given to or by the licensee, that security may, subject only to the rights of either party under any pre-existing contract between them or any express provision of this Ordinance, be of such nature by way of deposit or otherwise, and of such amount as may be agreed upon between the parties, or as in default of agreement may be determined, on the application of either party, by a court of competent jurisdiction, or, on agreed reference by all parties, by the Governor, and the court or the Governor, as the case may be, may also order by which of the parties the costs of the proceedings before it or him shall be paid, and the decision of the court or the Governor, as the case may be, shall be final and binding on all parties."

Nature and amount of security.

51. Section 125 of the Principal Ordinance is hereby amended—

Amendment of section 125 of the Principal Ordinance.

(a) by inserting therein, immediately after the word "days" which occurs in the penultimate line of sub-section (1) thereof, the words:—

"or, in the case of any application for revocation of a licence, not more than ninety days and not less than sixty days,";

(b) by inserting, in sub-section (4) thereof, immediately after the word "renewal" which occurs in the words inserted by the Electric Power (Amendment) Ordinance, 1934, the words "or revocation"; and

No. 37 of 1934.

(c) by deleting the proviso to sub-section (6) thereof.

52. Sub-section (1) of section 134 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

“134. (1) Subject to any provisions in this Ordinance to the contrary or in a licence to the contrary, where under any of the provisions of this Ordinance or a licence it is provided that any of the works of any licensee shall or may be purchased for the purposes of any licence under this Ordinance, all questions relating to the suitability of any such works or to the price to be paid therefor, if not agreed upon between the parties, shall be determined by arbitration, but the price of any such works shall in any case be their original cost to such licensee, as shown by his accounts as audited and published in accordance with the provisions of this Ordinance, deducting only the sum of such allowances for depreciation as have or would have from time to time been allowed to such licensee in respect of the same works under the provisions of section 45 (1) (d) (ii) of this Ordinance, and such allowances for obsolescence of the same works as from time to time have been actually made to such licensee under the provisions of section 45 (1) (d) (iii) of this Ordinance, and any amounts deemed by the arbitrator to have been provided for depreciation and/or obsolescence of such works by such licensee on or before the 31st day of December, 1938, and with an addition, where a part only of the undertaking of such licensee is purchased, of such amount as may be deemed reasonable to compensate such licensee for any loss occasioned by severance, but without any addition in respect of compulsory purchase or of goodwill, or of profits which may or might have been made from the works of the undertaking, or for any similar consideration:

Provided that, in respect of any works purchased, constructed or acquired by the licensee with moneys advanced by a local authority under the provisions of paragraph (e) of section 19 of this Ordinance, no deduction shall for the purposes of this section be made from the original cost thereof except in so far as in the opinion of the arbitrator the licensee has had service therefrom:

Provided further that, notwithstanding the provisions of this sub-section, it shall be competent for the arbitrator to vary the price to be paid for any works purchased,

Repeal and replacement of section 134 (1) of the Principal Ordinance.

Price of works may be determined by arbitration.

constructed or acquired on or before the 31st day of December, 1938, the suitability of which for the purposes of paragraph (f) of section 19 of this Ordinance has been disputed and in his opinion is reasonably in doubt:

Provided further that any Crown land comprised in the works to be purchased and which has been or is leased or granted for the purposes of the licence shall be transferred to the new licensee without payment therefor, save in respect of any premium or purchase money paid by the former licensee, and that any land comprised in the works to be purchased which was compulsorily acquired under any Ordinance or the authority of the Governor in Council for the purposes of the licence shall be valued at the price paid for it on its compulsory acquisition as aforesaid."

53. Section 135 of the Principal Ordinance is hereby amended by repealing sub-section (2) thereof and by re-numbering sub-section (3) as sub-section (2). Amendment of section 135 of the Principal Ordinance.

54. Section 141 of the Principal Ordinance is hereby amended— Amendment of section 141 of the Principal Ordinance.

(a) by substituting a comma for the full stop at the end of the marginal note thereto and by adding immediately after such comma the words, commas and full stop "rivers, creeks, etc.";

(b) by inserting therein immediately after the figures 141 in the first line thereof the brackets and figure (1); and

(c) by adding the following new sub-section numbered (2)—

"(2) Notwithstanding anything contained in this Ordinance to the contrary, all works for the diversion, abstraction, obstruction or use of water from any body of water in the Colony shall be subject to the provisions of the Water Ordinance, 1929, or any Ordinance amending or replacing the same: Provisions of the Water Ordinance, 1929, to apply to water works except as regards purchase of such works. No. 35 of 1929.

Provided that wherever under this Ordinance any such works are to be purchased for the purposes of any licence, the provisions of the Water Ordinance, 1929, or of any Ordinance amending or replacing the same shall not apply to such purchase, No. 35 of 1929.

but the provisions of this Ordinance shall apply in lieu thereof, and such purchase shall take effect in accordance with the provisions of this Ordinance.”

55. Section 142 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 142 of the Principal Ordinance.

“142. (1) The Governor in Council may make rules to regulate the generation, transmission, distribution, supply and use of electrical energy or that may be necessary or expedient for carrying out the objects and purposes of this Ordinance and without prejudice to the generality of the foregoing for all or any of the following purposes:—

Power of Governor in Council to make rules.

- (a) providing for the securing of a regular, constant and sufficient supply of electrical energy by a licensee to consumers and for testing at various parts of the system the regularity and sufficiency of such supply;
- (b) providing for the protection of persons and property from injury, shock or fire or otherwise by reason of contact with, or the proximity of, or by reason of the defective or dangerous condition of, any installation, appliance, apparatus or works used in the generation, transmission, supply or use of electrical energy;
- (c) providing the means to be adopted, whether by prohibition or otherwise, for preventing or abating any nuisance likely to arise or arising from the working of any installation, appliance, apparatus or works;
- (d) prescribing generally the duties and powers of the Licensing Board or Licensing Officer established or deputed under section 147A of this Ordinance for any purpose whatsoever;
- (e) prescribing the fees to be paid in respect of any matter or thing prescribed by this Ordinance or such rules;
- (f) empowering the Governor to exempt any installation, appliance, apparatus or works from any or all of the provisions of such rules;

(g) prescribing all matters which are authorized by this Ordinance to be prescribed.

(2) All such rules may impose conditions, require acts or things to be performed or done to the satisfaction of the Governor, empower the Governor to issue orders either verbally or in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

(3) In making any rule under this Ordinance, the Governor in Council may provide that every breach thereof shall be punishable with a fine not exceeding fifty pounds or a term of imprisonment not exceeding three months or both such fine and imprisonment."

56. The Principal Ordinance is hereby amended by inserting therein, immediately after section 147 thereof, the following new section:—

Amendment of the Principal Ordinance.

"147A. The Governor in Council may depute a special officer or in his discretion establish a special board (to be known as "the Licensing Officer" or "the Licensing Board", as the case may be) for the purpose of examining, certifying, licensing, registering and controlling electrical contractors, wiremen, electricians and operators; and the Licensing Officer or the Licensing Board, as the case may be, shall have such powers, duties, authorities and discretions as may from time to time be prescribed."

Appointment of Licensing Officer or Board.

57. Section 151 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 151 of the Principal Ordinance.

"151. It shall be the duty of every licensee to furnish to the Governor in Council at such times and in such form and manner as he may direct such statistics as he may require."

Licensee to furnish statistics.

1939

Electric Power

No. XIV

58. The Schedule to the Principal Ordinance is hereby amended by repealing the Forms of Account, numbered I to IX, both inclusive, to be kept by a licensee not being a public or local authority and by substituting therefor the forms in the First Schedule to this Ordinance.

Amendment of the Schedule to the Principal Ordinance.

59. The sections of the Principal Ordinance set out in the first column of the Second Schedule to this Ordinance shall have effect subject to the amendments respectively specified in the second column of that Schedule, being amendments to the Principal Ordinance of minor detail or consequential on the foregoing provisions of this Ordinance.

Minor amendments.

60. (1) The Attorney General may consolidate into one edition the Principal Ordinance and all Ordinances (including this Ordinance) amending the same and in preparing such consolidated edition shall have powers to renumber and rearrange the order and/or sequence of any section or sections and make any amendments necessary and consequential to such renumbering and rearrangement, but so that such powers shall not be taken to imply any power to make any alteration or amendment in the matter or substance of any section of the Principal Ordinance or any Ordinance (including this Ordinance) amending the same.

Consolidation and reprinting.

(2) Where such consolidated edition has been prepared it shall be lawful for the Government Printer, with the authority of the Governor in Council, to print copies of the said edition and such copies shall be deemed to be and shall be without any question whatsoever in all Courts of Justice and for all purposes authentic copies of the Principal Ordinance and all Ordinances (including this Ordinance) amending the same.

FIRST SCHEDULE
Forms of Accounts to be kept by a Licensee not being a Public or local Authority as provided by Section 42.

ELECTRIC POWER ORDINANCE

The Licence
..... Company
Year ended 19.....
STATEMENT OF SHARE CAPITAL APPROPRIATED FOR THE PURPOSES OF THE UNDERTAKING AUTHORIZED BY THE ABOVE-MENTIONED LICENCE
On the 19.....

No. I

Description of Capital	Authorized by	Number of Shares Issued	Nominal Amount of Share	Called-up per Share	Total Paid up	Issued not Paid up	Remaining Unissued	Total Amount Authorized

No. II STATEMENT OF LOAN CAPITAL APPROPRIATED FOR THE PURPOSES OF THE UNDERTAKING AUTHORIZED BY THE ABOVE-MENTIONED LICENCE
On the 19.....

Description of Loan	Amounts Borrowed		Remaining Borrowing Powers	Total Amount of Borrowing Powers
	At... per cent	At... per cent		

Total Share Capital Paid up, see No. I .. £
Total Loan Capital Borrowed, see No. II .. £
Total Capital Received £

CAPITAL ACCOUNT

No. III

For the year ended, 19..

Dr.

Cr.

Balance of Expenditure at	Additions during year	Deductions during year	Balance of Expenditure at	Receipts to	Received during year	Total Receipts to	
							£ s. cts.
<p>A.—GENERATION</p> <p>(i) Land, including law charges incidental to acquisition</p> <p>(ii) Buildings and other permanent works</p> <p>(iii) Hydraulic works</p> <p>(iv) Plant, machinery and machine foundations</p> <p>(v) Switchgear, cabling and miscellaneous items</p> <p>(vi) Other items (to be specified)</p> <p>B.—MAIN TRANSMISSION SYSTEM</p> <p>(i) Land, including law charges incidental to acquisition</p> <p>(ii) Buildings and other permanent works</p> <p>(iii) Main transmission lines</p> <p>(iv) Transforming apparatus</p> <p>(v) Switchgear, cabling and miscellaneous items</p> <p>(vi) Other items (to be specified)</p> <p>C.—DISTRIBUTION SYSTEM</p> <p>(i) Land, including law charges incidental to acquisition</p> <p>(ii) Buildings and other permanent works</p> <p>(iii) Distributing mains</p> <p>(iv) Transforming apparatus</p> <p>(v) Switchgear, cabling and miscellaneous items</p> <p>(vi) Service lines</p> <p>(vii) Meters and accessories and fees for certifying under the Ordinance, and cut-outs</p> <p>(viii) Other items (to be specified)</p>				<p>Ordinary shares of Sh.....</p> <p>Preference shares of Sh.....</p> <p>Debenture stock</p> <p>Mortgages and bonds</p> <p>Amounts received in anticipation of calls</p> <p>Sale of patents or patent rights, etc.</p> <p>Other receipts (to be specified)</p>			<p>Carried forward .. £</p>

1939

No. IV REVENUE ACCOUNT

Cr.

For the year ended....., 19...

Dr.

	£ s. cts.	£ s. cts.	£ s. cts.
A.—GENERATION			
1. Water, coal or other fuel, including dues, carriage, unloading, storing and all expenses of placing the same on the works, and disposal of waste products			
2. Oil, waste, water and engine room stores			
3. Proportion of salaries, wages and gratuities as certified by the Managing Director, Chairman or Engineer			
4. Repairs, maintenance and renewals :— (a) Land (b) Buildings and other permanent works (c) Hydraulic works (d) Plant, machinery and machine foundations (e) Switchgear, cabling and miscellaneous items			
5. Other items (to be specified)			
6. Energy purchased in bulk :— (a) From bulk supply licensee (b) From local generating licensee			
B.—MAIN TRANSMISSION SYSTEM			
1. Proportion of salaries, wages and gratuities as certified by the Managing Director, Chairman or Engineer			
2. Repairs, maintenance and renewals :— (a) Land (b) Buildings or other permanent works (c) Main transmission lines (d) Transforming apparatus Switchgear, cabling and miscellaneous items			
3. Other items (to be specified)			
		Carried forward .. £	
			Carried forward .. £
1. Sale of electrical energy :— (a) By meter at.....per kelvin (average) (b) By public lighting at.....per kelvin (average) (c) By other sales			
2. Rental of meters and accessories			
3. Hire of apparatus on consumers' premises, less expenses			
4. Sale of apparatus, less expenses			
5. Installation and repair work, less expenses			
6. Maintenance of public lamps			
7. Royalties, licences, etc.			
8. Rents receivable			
9. Other items (to be specified)			

1939

REVENUE ACCOUNT—(Continued)

No. IV—(Continued)

Cr.

For the year ended....., 19..

Dr.

	£ s. cts.	£ s. cts.	£ s. cts.	£ s. cts.
<i>Brought forward</i> .. £			<i>Brought forward</i> .. £	
C.—DISTRIBUTION SYSTEM				
1. Proportion of salaries, wages and gratuities as certified by the Managing Director, Chairman or Engineer				
2. Repairs, maintenance and renewals :—				
(a) Land				
(b) Buildings and other permanent works				
(c) Distributing mains				
(d) Transforming apparatus				
(e) Switchgear, cabling and miscellaneous items				
(f) Service lines				
(g) Meters, accessories and cut-outs				
(h) Fees for re-certifying meters and accessories under the Ordinance				
(i) Other items (to be specified)				
3. Other items (to be specified)				
D.—PUBLIC LAMPS				
1. Proportion of salaries, wages and gratuities as certified by the Managing Director, Chairman or Engineer				
2. Renewals of lamps, etc.				
<i>Carried forward</i> .. £			<i>Carried forward</i> .. £	

1939

REVENUE ACCOUNT—(Continued)
For the year ended....., 19...

No. IV—(Continued)

Cr.

Dr.	£ s. cts.	£ s. cts.	£ s. cts.	£ s. cts.
<i>Brought forward</i> ...£				<i>Brought forward</i> ...£
E.—GENERAL AND MANAGEMENT EXPENSES				
1. Royalties, etc., payable for use of patents or patent processes (to be specified) ..				
2. Rents payable (to be specified) ..				
3. Rates and taxes (to be specified) ..				
4. Directors' remuneration ..				
5. Proportion of salaries, wages and gratuities as certified by the Managing Director, Chairman or Engineer ..				
6. Stationery, printing and advertising ..				
7. General establishment charges ..				
8. Auditors of company ..				
9. Auditors appointed under provisions of licence ..				
10. Law expenses ..				
11. Insurances, superannuation, etc. ..				
12. Upkeep of motor vehicles, transport, etc. ..				
13. Medical expenses ..				
14. Postage and telegrams ..				
15. Bad debts written off ..				
16. Interest on consumers' deposits ..				
17. Other items (to be specified) ..				
F.—DEPRECIATION				
1. Depreciation written off:—				
(a) Meters and cut-outs ..				
(b) Apparatus on hire ..				
(c) Tools, implements and testing apparatus ..				
(d) Furniture and fittings ..				
(e) Motor vehicles ..				
(f) Other items (to be specified) ..				
2. Transfer to Depreciation Reserve Account (No. VII) ..				
TOTAL EXPENDITURE ..				
BALANCE CARRIED TO NET REVENUE ACCOUNT (No. V) ..				

No. VI

GENERAL RESERVE ACCOUNT

For the year ended....., 19.....

Dr.	£ s. cts.	£ s. cts.	Cr.
<p>1. Amount applied as under:—</p> <p>2. Balance as per General Balance Sheet (No. VIII)</p>	<p>£ s. cts.</p>	<p>1. Balance from last account</p> <p>2. Amount transferred from Net Revenue Account (No. V)</p> <p>3. Interest on amount invested <i>(Description of investments to be specified)</i></p>	<p>£ s. cts.</p>
	£		£

No. VII

DEPRECIATION RESERVE ACCOUNT

For the year ended..... 19.....

Cr.

Dr.	£ s. cts.	£ s. cts.	Cr.
1. Amount applied as under :—			
(a) Written off capital expenditure			
(b) Expended on renewals, but not including betterment			
2. Balance as per General Balance Sheet (No. VIII)			
	£		£
		1. Balance from last account	
		2. Amount transferred from Revenue Account (No. IV) ..	
		3. Interest on amount invested	
		<i>(Description of investments to be specified)</i>	
			£

TOTAL PROVISION MADE FOR DEPRECIATION

Total to	£ s. cts.	£ s. cts.	£ s. cts.	Total to
.....
.....	£ s. cts.	£ s. cts.	£ s. cts.	£ s. cts.
1. Amount written off as per Revenue Account (No. IV) and deducted from Capital Expenditure				
2. Amount applied from Depreciation Reserve Account (No. VII) :—				
(a) Written off Capital Expenditure				
(b) Expended on renewals, but not including betterment				
3. Balance of Depreciation Reserve Account (No. VII)				
				£

SECOND SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

Amendment

The Electric
Power Ordinance
(Chapter 165 of
the Revised
Edition):—

<i>First Column</i>	<i>Second Column</i>
Section 36	<p>(a) By inserting immediately after the word “area” which occurs in the third line thereof the words “of supply”; and</p> <p>(b) by inserting immediately after the word “area” wherever such word occurs in the proviso thereto the words “of supply”.</p>
Section 38	<p>(a) By inserting immediately after the word “any” which occurs in the second line of sub-section (1) thereof the words “public or local”; and</p> <p>(b) by inserting immediately after the word “other” which occurs in the third line of sub-section (2) thereof the words “public or local”.</p>
Section 44	<p>(a) By inserting immediately after the word “a” which occurs in the first line thereof the words “public or”;</p> <p>(b) by deleting the word “them” wherever such word occurs therein and by substituting therefor the word “him”;</p> <p>(c) by deleting the word “their” which occurs in the fifth line of paragraph (a) of sub-section (1) thereof and by substituting therefor the word “his”; and</p> <p>(d) by deleting the words “they think” which occur in the second line of paragraph (e) of sub-section (1) thereof and by substituting therefor the words “he thinks”.</p>
Section 47 (1)	<p>(a) By inserting immediately after the word “area” which occurs in the third line thereof the words “of supply”; and</p> <p>(b) by inserting immediately after the word “station” which occurs in the fourth line thereof a comma and by inserting immediately after such comma the words “sub-station or switch station”.</p>
Section 48 (1)	By deleting the words “This section shall not apply to any station for transforming, converting, or distributing electrical energy.” which occur in the fourth, fifth and sixth lines thereof.

<i>First Column</i>	<i>Second Column</i>
Section 50 (1)	<p>(a) By deleting the words "or prior licence" which occur in the fourth and fifth lines thereof;</p> <p>(b) by deleting the words "or prior licence" which occur in the nineteenth line thereof;</p> <p>(c) by inserting immediately after the word "area" which occurs in the twenty-third line thereof the words "of supply"; and</p> <p>(d) by deleting the word "rule" which occurs in the first line of the proviso thereto and by substituting therefor the words "rules made under this Ordinance".</p>
Section 51 (1)	By deleting the word "mains" which occurs in the fourth line thereof and by substituting therefor the words "electric supply lines".
Section 56	<p>(a) By inserting immediately after the word "area" which occurs in the first line of sub-section (2) thereof the words "of supply"; and</p> <p>(b) by deleting the words "telegraph, telephone or signalling" which occur in the third and fourth lines of sub-section (4) thereof and by substituting therefor the words "telegraph or telegraph".</p>
Section 57	<p>(a) By inserting immediately after the word "area" which occurs in the first line of sub-section (2) thereof the words "of supply"; and</p> <p>(b) by deleting the words "telegraph, telephone or signalling" which occur in the third line of sub-section (3) thereof and by substituting therefor the words "telegraph or telegraph".</p>
Section 58 (a)	By inserting immediately after the word "the" which occurs in the seventh line thereof the words "public or local".
Section 59 (1)	<p>(a) By inserting immediately after the word "any" which occurs in the third line thereof the words "public or local";</p> <p>(b) by inserting immediately after the words "or the" which occur in the fifth line thereof the words "public or local"; and</p> <p>(c) by inserting immediately after the word "that" which occurs in the fifteenth line thereof the words "public or local".</p>

<i>First Column</i>	<i>Second Column</i>
Section 62 (1)	By deleting the word "electrical" which occurs in the third line thereof and by substituting therefor the word "electric".
Section 64	<p>(a) By deleting the word "work" wherever such word occurs therein and by substituting therefor the word "works"; and</p> <p>(b) by deleting the words "electric lines and works of the Postmaster General, and of other electric lines and works lawfully placed in any position and used for telegraphic, telephonic or signalling communication" which occur in the fifteenth to eighteenth lines, both inclusive, of sub-section (1) thereof and by substituting therefor the words "telegraphs and telegraph lines whether of the Postmaster General or otherwise lawfully placed in any position".</p>
Section 78	<p>(a) By deleting the words "or main" wherever such words occur therein;</p> <p>(b) by deleting the words "or mains" wherever such words occur therein; and</p> <p>(c) by deleting the marginal note thereto and by substituting therefor the following marginal note: "Testing of electric supply lines."</p>
Section 79	By deleting the words "consumer's terminals" which occur in the fourth line thereof and by substituting therefor the words "supply terminals".
Section 81	<p>(a) By deleting the word "prescribed" which occurs in the fourth line thereof and by substituting therefor the word "directed"; and</p> <p>(b) by deleting the word "prescribe" which occurs in the sixth line thereof and by substituting therefor the word "direct".</p>
Section 89	By deleting the words "the rules" which occur in the sixth line thereof and by substituting therefor the words "any rules made under this Ordinance".
Section 92	(a) By deleting the word "units" which occurs in the sixth line of sub-section (1) thereof and by substituting therefor the word "kelvins"; and

<i>First Column</i>	<i>Second Column</i>
Section 95 (2)	<p>(b) by adding immediately after the word "ninety-eight" which occurs at the end of sub-section (2) thereof the words "of this Ordinance".</p> <p>By deleting the word "electric" which occurs in the eighth line thereof and by substituting therefor the word "electrical".</p>
Section 97	<p>(a) By deleting the word "rent" which occurs in the sixth line thereof and by substituting therefor the words "any remuneration or hire"; and</p> <p>(b) by inserting immediately before the word "for" which occurs in the eighth line thereof the words and comma "subject to the provisions of section 93 of this Ordinance,".</p>
Section 100 (1)	<p>(a) By deleting the word "power" which occurs in the eighth line thereof and by substituting therefor the word "demand"; and</p> <p>(b) by deleting the words "mains of the licensee and the consumer's terminals" which occur in the last two lines thereof and by substituting therefor the words "source of supply and the consumer's existing supply terminals".</p>
Section 101	<p>(a) By deleting the words "the rules" which occur in the last line of sub-section (2) thereof and by substituting therefor the words "any rules made under this Ordinance"; and</p> <p>(b) by deleting the words "the rules" which occur in the second line of sub-section (3) thereof and by substituting therefor the words "any rules made under this Ordinance".</p>
Section 102	<p>(a) By deleting the word "quantity" which occurs in the fifth line thereof and by substituting therefor the words "maximum demand or amount"; and</p> <p>(b) by deleting the word "work" wherever such word occurs therein and by substituting therefor the word "works".</p>
Section 106 (1)	<p>(a) By deleting the words "lights or" which occur in the second line thereof; and</p> <p>(b) by deleting the word "lights" which occurs at the end of the first marginal note thereto and by substituting therefor the word "lamps".</p>

<i>First Column</i>	<i>Second Column</i>
Section 119	<p>(a) By deleting the words "authority or authorities" which occur in the second line of paragraph (d) thereof and by substituting therefor the words "public or local authority or public or local authorities";</p> <p>(b) by deleting the word "authorities" and the comma following immediately thereafter which occur in the sixth line of paragraph (e) thereof; and</p> <p>(c) by deleting the word "authorities" and the comma following immediately thereafter which occur in the fifth line of paragraph (f) thereof.</p>
Section 121	<p>(a) By deleting the words "the rules" which occur in the second line of paragraph (a) of sub-section (1) thereof and by substituting therefor the words "any rules made thereunder";</p> <p>(b) by deleting the word "the" which occurs in the fifth line of paragraph (a) of sub-section (1) thereof and by substituting therefor the word "such";</p> <p>(c) by deleting the word "supplying" which occurs in the last line of paragraph (a) of sub-section (1) thereof and by substituting therefor the word "supply";</p> <p>(d) by deleting the words "the rules" which occur in the third and fourth lines of paragraph (b) of sub-section (1) thereof and by substituting therefor the words "any rules made thereunder";</p> <p>(e) by deleting the word "work" which occurs in the first line of paragraph (c) of sub-section (1) thereof and by substituting therefor the word "works";</p> <p>(f) by deleting the words "telegraph, telephone, or signaling" which occur in the third and fourth lines of paragraph (c) thereof and by substituting therefor the words "telegraph or telegraph"; and</p> <p>(g) by deleting the word "work" wherever such word occurs in sub-section (2) thereof and by substituting therefor the word "works".</p>
Section 124 (2)	<p>By deleting the word "incident" which occurs in the first line thereof and by substituting therefor the word "incidental".</p>

<i>First Column</i>	<i>Second Column</i>
Section 126	<p>(a) By inserting immediately after the comma following the words "generating station" which occurs in the last line of paragraph (h) of sub-section (2) thereof the words and comma "sub-station or switch station,"; and</p> <p>(b) by inserting immediately after the word "any" which occurs in the second line of sub-section (4) thereof the words "public or local".</p>
Section 127	<p>(a) By deleting sub-paragraphs (v), (vi), (vii) and (viii) of paragraph (d) of sub-section (2) thereof and by substituting therefor the following sub-paragraphs numbered (v), (vi) and (vii) respectively:—</p> <p>“(v) Lighting for public lamps; (vi) Power other than for industrial or domestic purposes; (vii) Lighting other than for industrial or domestic purposes or for public lamps”;</p> <p>(b) by deleting the semi-colon at the end of sub-paragraph (iv) of paragraph (e) of sub-section (2) thereof, by substituting therefor a full stop, and by deleting all succeeding words in that paragraph;</p> <p>(c) by inserting immediately after the comma following the words "generating station" which occurs in the last line of paragraph (f) of sub-section (2) thereof the words and comma "sub-station or switch station,"; and</p> <p>(d) by deleting the word "audit" which occurs in sub-paragraph (iv) of paragraph (h) of sub-section (2) thereof and by substituting therefor the words "the auditing of".</p>
Section 130	<p>(a) By inserting immediately after the comma following the words "generating station" which occurs in the sixth line of sub-section (1) thereof the words and comma "sub-station or switch station,";</p> <p>(b) by inserting immediately after the word "any" which occurs in the third line of sub-section (4) thereof the words "public or local";</p>

<i>First Column</i>	<i>Second Column</i>
Section 131	<p>(c) by deleting sub-section (6) thereof and by substituting therefor the following sub-section:—</p> <p>“(6) The Governor in Council, after the expiration of sixty days from the date of the application, shall consider the application together with all representations or objections which have been made respecting the same, and after such further inquiry (if any) as he thinks necessary may refuse or may grant the application on such terms or conditions as he may think fit.”;</p> <p>(d) by inserting immediately after the comma following the words “generating station” which occurs in the third line of sub-section (7) thereof the words and comma “sub-station or switch station,”; and</p> <p>(e) by inserting immediately after the words “generating station” which occur in the second line of sub-section (8) thereof a comma followed by the words “sub-station or switch station”.</p> <p>(a) By deleting paragraph (g) of sub-section (2) thereof and by substituting therefor the following paragraph:—</p> <p>“(g) A list of places where there exist generating stations equipped with similar machinery for the purposes of general supply.”;</p> <p>(b) by inserting immediately after the word “any” which occurs in the first line of sub-section (3) thereof the words “public or local”;</p> <p>(c) by deleting sub-section (5) thereof and by substituting therefor the following sub-section:—</p> <p>“(5) The applicant must in each case when making the application deposit with such application plans showing—</p> <p>(a) the site and having a three hundred yards radius marked thereon, together with all buildings and structures within such radius; and</p> <p>(b) elevations of the proposed generating station; and</p> <p>(c) a general plan of the proposed works.”; and</p>

First Column	Second Column
	<p>(d) by deleting the words "the time limited for the making of representations on or objections to the application or with respect to the proposed works" which occur in the first, second and third lines of sub-section (6) thereof and by substituting therefor the words "sixty days from the date of the application", and by deleting the word "such" which occurs in the fourth line thereof.</p>
<p>Section 132 (2)</p>	<p>By deleting the words "by rules" which occur in the first line thereof.</p>
<p>Section 133</p>	<p>By deleting the section and by substituting therefor the following section:—</p> <p>Grant or revocation of a licence to be advertised.</p> <p>"133. Where the Governor in Council—</p> <p>(a) grants any licence or authorizes the compulsory acquisition of any land or the construction of any generating station or grants any application as in section 125 of this Ordinance contemplated, the applicant;</p> <p>or, where the Governor in Council—</p> <p>(b) revokes any licence, authority, consent, or approval, either in whole or in part, the Governor in Council,</p> <p>shall give notice by public advertisement of the grant of the application, or of the revocation, within one month of the grant of the application or of the revocation, as the case may be."</p>
<p>Section 138 (1) (b)</p>	<p>By deleting the words "or prior licensee's", "or prior licence", "or prior licensee" and "or prior licence as the case may be" wherever such words respectively occur therein.</p>
<p>Section 144 (3)</p>	<p>By deleting the comma immediately after the word "rules" which occurs in the fourth line thereof and by substituting therefor a full stop, and by deleting all words succeeding such full stop.</p>
<p>Section 147 (5)</p>	<p>By deleting the words "by rules" which occur in the first line thereof.</p>

ORDINANCE No. XV of 1939

Assented to in His Majesty's name this eighteenth day of July, 1939.

R. BROOKE-POPHAM,
Governor.

[18TH JULY, 1939.] Date of assent.

An Ordinance to Provide for the Establishment of a Company to be known as the Kenya Indian and Arab (Territorial) Company

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:—

PART I—PRELIMINARY

1. This Ordinance may be cited as the Kenya Indian and Arab (Territorial) Company Ordinance, 1939, and shall come into operation upon such date as the Governor may, by notice in the Gazette, appoint, and shall apply to the District of Mombasa.

Short title, commencement and application.

2. In this Ordinance, unless the context otherwise requires, the following expressions shall have the following meanings:—

Interpretation.

“active service”—every officer and member of the Company when called out for the purpose of repelling external aggression or for aiding the civil authority in the protection of life and property or for the prevention or the suppression of internal disorder in the Colony shall be deemed to be on active service;

“Act” or “Ordinance” includes all regulations made thereunder;

“British protected person” means any person born within any territory under the protection of His Majesty who was not, at the time of his birth, a British subject, and who did not at the time of his birth possess, and has not subsequently acquired, under the law of some other State the nationality of that State;

“commanding officer” means the officer in command of the Company or any unit or detachment thereof;

No. XV**Kenya Indian and Arab (Territorial) Company 1939**

“member” means any warrant officer, non-commissioned officer or man enrolled in or belonging to the Company;

“officer” means any person appointed by the Governor to hold commissioned rank in the Company;

“peace training” means such training, other than training on active service, as may be prescribed;

“permanent staff” means all officers, warrant officers, non-commissioned officers, armourers, clerks and storekeepers or any other persons appointed under section 26 of this Ordinance;

“Company” means the Company established under the provisions of section 3 of this Ordinance;

“regulations” means regulations made under the provisions of this Ordinance;

“unit” means any portion of the Company declared by the Governor to be a unit for the purposes of this Ordinance.

PART II—CONSTITUTION OF COMPANY

Establishment
of Kenya Indian
and Arab
(Territorial)
Company.

3. (1) The Governor may, by notice in the Gazette, establish a Company for the Colony which shall be known as the Kenya Indian and Arab (Territorial) Company, and may accept on behalf of His Majesty the services of any qualified persons to become officers or members of the Company.

(2) As and from the date of such notice the Company shall be deemed to be lawfully established.

(3) The Company shall be under the supreme command of the Governor, and under the command of the Commander, Northern Brigade, King's African Rifles and Local Forces, Kenya and Uganda, who shall be responsible to the Governor for the organization, discipline and efficiency of the Company.

(4) The officers of the Company shall be commissioned by the Governor.

(5) The Governor may, by notice in the Gazette, declare any portion of the Company to be a unit for the purposes of this Ordinance.

(6) As from the date of such notice a unit shall be deemed to be lawfully constituted.

4. (1) Every officer shall be a British subject of European, Indian or Arab race or origin or a British protected person of Indian or Arab race or origin and shall upon being commissioned take the prescribed oath. Membership.

(2) The Governor may prescribe such tests as he may think fit which candidates for appointments to commissions and for promotion shall pass.

(3) Every member shall be a British subject or British protected person of Indian or Arab race or origin between the ages of eighteen and thirty-five years, and shall upon enrolment take the prescribed oath and complete the prescribed form :

Provided that the age limit may be extended by regulations for such warrant officers, non-commissioned officers and men as the Governor may decide.

5. Every officer and every member shall be liable to be called out for active service and to undergo such peace training as may be prescribed from time to time. Liability of officers and members.

6. Every member enrolled under the provisions of this Ordinance shall engage to serve for a period of not less than four years. Period of service.

(2) The commanding officer, upon the application of any member, may—

- (a) extend such period for a further period of four years;
- (b) extend such further period for a further period of two years.

PART III—ADMINISTRATION

7. (1) Whenever in the opinion of the Governor it shall be necessary to repel external aggression, or to aid the civil authority in the protection of life and property and to prevent and suppress internal disorder in the Colony, the Governor may, by proclamation, call out the whole or any part of the Company for active service : Calling out of the Company for active service.

Provided that the Governor may, by such proclamation in lieu of calling out the Company or any part thereof for active service, order the Company or such part or parts thereof as he may deem necessary to hold itself in readiness for immediate calling out.

(2) In the case of sudden and imminent danger in the Coast Province, when it is not possible to obtain the authority

No. XV*Kenya Indian and Arab (Territorial) Company 1939*

of the Governor without undue delay, the Provincial Commissioner in charge of such province may, for the defence of the province or any part thereof or for the protection of life and property therein, by proclamation in the name of the Governor call out the whole or any part of the Company, but in such case such Provincial Commissioner shall forthwith report to the Governor such calling out and any subsequent step taken by him.

Not entitled to discharge when on active service.

8. No officer or member while called out or employed on active service shall be entitled to obtain discharge therefrom during the continuance of such service.

Power to disband or discharge.

9. The Governor may at any time discontinue the service of any unit of the Company or cause the same to be disbanded, or release from service any officer, or discharge any of the members, of such unit.

Officers in executive command.

10. The executive military command and inspection of the Company or units thereof shall be vested in such officers as may be appointed by the Governor.

Cancellation of commission.

11. The Governor may cancel the commission of any officer at any time:

Provided that such commission shall not be cancelled unless the holder thereof has been notified in writing of any complaint or charge made, of the action proposed to be taken against him, and has been called upon to show cause in relation thereto. No such notification shall be necessary in the case of an officer absent from duty without leave for a period of three months or more.

Retirement of officers.

12. (1) The Governor may place officers on the retired list, and officers on that list who have served for ten years in the Company 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 with the Company.

(2) The ages of compulsory retirement of officers of the Company shall be as prescribed.

Resignation of commission.

13. An officer, except when on active service, or in anticipation of being called out on such service, may, by

writing under his hand, tender the resignation of his commission, but shall not, unless otherwise ordered by the Governor, be relieved of the duties of his appointment until the acceptance of his resignation is notified in the Gazette.

14. (1) Such rifles, ammunition, equipment and uniform as may be prescribed shall be provided by the Government for officers and members of the Company and will be issued in accordance with the regulations. Uniform, arms, and accoutrements.

(2) Every officer and member of the Company in possession of a Government rifle, ammunition, equipment and uniform as hereinbefore provided shall be responsible for the same and for keeping the same in a good and efficient condition, and shall be liable for any loss of or damage to such rifle, ammunition, equipment or uniform, due to his act, neglect or default.

(3) When called out for active service, or when undergoing peace training, officers and members shall bring with them their equipment and any ammunition which may have been issued to them.

15. Officers and members shall be paid at a prescribed daily rate for the days on which they are called out for active service under the provisions of this Ordinance, and they may also be granted such monetary or other allowances as are laid down in regulations. Pay and allowances.

16. (1) The service of each officer and member shall be calculated from the date of his appointment or enrolment, as the case may be. Every officer and member shall during each prescribed training year undergo such course of annual peace training, instruction, and other such exercises as may be prescribed. Duration of peace training.

(2) The time occupied in proceeding to or returning from a camp or place of assembly or instruction shall not be taken into account as part of any period of peace training, instruction, or service prescribed under this Ordinance.

(3) Any member who in any year without reasonable cause or excuse or without such leave or permission as may be prescribed evades or fails to perform the full course of training allotted to him for that year, shall be guilty of an offence against this Ordinance.

PART IV—DISCIPLINE

Officers and members of Company being called out for active service to be under Army Act.

17. The provisions of the Army Act, 44 and 45 Vict., Ch. 58, and all Acts amending or substituted for the same (hereinafter together referred to as the Army Act) shall as to the provisions therein contained respecting discipline apply to officers and to the permanent staff (if not otherwise subject thereto) at all times and to members of the Company when they are on active service, when they are called out for active service, during peace training, when they are engaged in any military exercise of drill or musketry, when they are carrying out any escort duty or guard of honour and when they are in uniform at any time or place, subject to the following modifications:—

- (a) the words “the Company” shall be read therein for the words “regular forces”, the words “officer or member of the Company” for the words “officer or soldier”, and the word “Governor” for the words “His Majesty” and “Secretary of State”, and
- (b) no sentence of a court martial upon the trial of an officer or a member of the Company shall be carried into execution unless confirmed by the Governor or such officer as he may appoint on his behalf.

Officers and members not punishable under this Ordinance as well as under the Army Act.

18. Notwithstanding the provisions contained in section 17 of this Ordinance, no officer or member of the Company shall be liable to be punished for any offence under the provisions of this Ordinance as well as under the provisions of the Army Act.

Reservation of right to prosecute otherwise than under Ordinance.

19. Nothing in this Ordinance contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Ordinance, in all cases in which he would by law, without this Ordinance, be liable to such prosecution, but no person convicted or acquitted of any offence under the provisions of this Ordinance or under the Army Act, shall be liable to be again tried for the same offence.

Aiding or inducing officers or members to dereliction of duty.

20. Any person who—

(1) agrees with, or induces, or attempts to induce any officer or member to neglect or to act in conflict with his military duty; or

(2) is a party to, or aids or abets, or incites to the commission of, any act whereby any lawful order given

to any officer or member, or any law or regulation with which it is the duty of any officer or member to comply, may be evaded or infringed; or

(3) supplies, or is a party to supplying, any officer or member with intoxicating liquor when that officer or member is on military duty and prohibited under regulations or instructions from receiving or taking intoxicating liquor,

shall be guilty of an offence against this Ordinance.

21. Any officer or member who, with the intent to obtain conveyance at special rates or to evade payment of any toll, fraudulently personates or represents himself to be an officer or member of the Company travelling on service of that force, shall be guilty of an offence against this Ordinance. Personation.

22. Any officer or member who, without proper authority, and permission, gives, sells, pledges, lends or otherwise disposes of any moneys, animals, ammunition, accoutrements, clothing, supplies or any other article entrusted to or held by him for the service of the Company shall be guilty of an offence against this Ordinance, and, in addition to any penalty for such an offence which may be imposed under this Ordinance, may be ordered by the court to make good the loss or deficiency caused by such gift, sale, pledge, loan or other disposition. Every such gift, sale, pledge, loan or disposition shall be null and void, except as against a bona fide purchaser for value without notice. Wrongful disposal of property.

23. Any person who commits an offence against this Ordinance or who wilfully contravenes or fails to comply with any of the provisions of this Ordinance, or the regulations shall, where no other penalty is specially provided, be liable on conviction by a subordinate court of the first class to a fine not exceeding ten pounds or to a term of imprisonment for a period not exceeding one month, or to both such fine and such imprisonment. Penalty for contravening the Ordinance in any way.

24. Every civil action against, and every criminal prosecution of, any person in respect of anything done in pursuance or in contravention of this Ordinance shall be commenced within six months after the cause of the proceedings has arisen, and notice in writing of any civil action and the cause thereof shall be given to the defendant one month at least before the commencement thereof. Limitation of action.

No. XV*Kenya Indian and Arab (Territorial) Company 1939*

Disclosure of information.

25. (1) Any officer or member or any person employed in the public service, who discloses any information or any other secret or confidential information relating to the defence of the Colony, which comes within his cognizance shall, unless acting under the due authority and in the execution of his duty (the burden of proof whereof shall be upon him) be guilty of an offence against this Ordinance.

(2) The provisions of this section shall be in addition to and not in derogation of the provisions of the Official Secrets Ordinance, 1939.

No. 9 of 1939.

PART V—MISCELLANEOUS

Power to constitute permanent staff.

26. The Governor may from time to time constitute for the Company a permanent staff, consisting of such officers, warrant officers, non-commissioned officers and men as he may deem necessary.

Governor may award gratuity or pension in certain events.

27. (1) If any officer or member is temporarily or permanently disabled by reason of any wound or injury received or sickness contracted by him during peace training or when on active service, the Governor may award such officer or member such compensation, gratuity or yearly pension as to him may seem fit.

(2) The Governor may grant to the widow or family of any such officer or member who may be killed in action or on active service a pension or allowance of such amount as to him may seem fit.

(3) No gratuity or compensation granted under this section shall exceed two hundred and fifty pounds and no pension granted under this section shall exceed one hundred pounds per annum except with the sanction of the Legislative Council.

(4) No pension or gratuity payable under this Ordinance shall be assignable or transferable, nor shall the same be attached or levied upon for or in receipt of any debt due from, or any claim against, the recipient of such pension or gratuity, or his wife.

Regulations.

28. The Governor may from time to time make regulations for all or any of the matters or things following connected with the Company:—

(1) the numerical establishment of units of the Company, and the various grades, ranks and appointments therein;

*Kenya Indian and Arab (Territorial) Company Regulations, 1939
p. 415/40. 4th. 493.*

(2) the appointment, promotion, transfer, leave, resignation and release from service of officers;

(3) the enrolment, posting, transfer, leave, promotion, discharge and dismissal of warrant officers, non-commissioned officers and men, and the disbandment of any units;

(4) the appointment and posting of the permanent staff and the control, discipline, pay, allowances, leave, transfer, release from service, and dismissal thereof;

(5) the discipline of the Company;

(6) the convening of courts of inquiry, and the attendance of witnesses;

(7) the exemption of officers and members from carrying out the full course of peace training for any one training year;

(8) the issue and care of arms, accoutrements, ammunition, supplies, animals and transport, clothing and equipment for the Company;

(9) the conveyance by air, road, rail, or water of officers and members and their transport and equipment when travelling on duty;

(10) the general government, control and management of the Company;

(11) drill, peace training instruction, camps and medical treatment thereat;

(12) the requisitioning of goods, provisions, supplies and accommodation for officers and members of the Company when called out under section 7 of this Ordinance; and

(13) all matters which are by this Ordinance required or permitted to be, or which are necessary or convenient to be prescribed, or for assuring the discipline and good government of the Company, or for carrying out and giving effect to this Ordinance.

29. The Governor may delegate to any person all or any of the powers conferred upon him by this Ordinance.

G.O. 492/40
p. 456

ORDINANCE No. XVI of 1939

Assented to in His Majesty's name this eighteenth day
of July, 1939.

R. BROOKE-POPHAM,
Governor.

[18TH JULY, 1939.] Date of assent.

An Ordinance to Amend the Employment of Servants Ordinance, 1937

By Notice

Date of com-
mencement.

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 Employment of Servants (Amendment) Ordinance, 1939, and shall be read as one with the Employment of Servants Ordinance, 1937, hereinafter referred to as the Principal Ordinance, and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

Short title
and date of
commencement.
No. 2 of 1938.

2. Section 2 of the Principal Ordinance is hereby amended by deleting the definition of "juvenile" therefrom and by substituting therefor the following definition:—

Amendment of
section 2 of
the Principal
Ordinance.

" 'juvenile' means a person who has not reached the
apparent age of sixteen years;".

3. Section 19 of the Principal Ordinance is hereby amended by deleting the word "ten" which appears in the fourth line thereof and by substituting therefor the word "twelve".

Amendment of
section 19 of
the Principal
Ordinance.

4. Sections 27, 28, 29 and 30 of the Principal Ordinance are hereby repealed and the following sections substituted therefor:—

Repeal and
replacement of
sections 27,
28, 29 and 30
of the Principal
Ordinance.

"27. Notwithstanding anything contained in this Ordinance to the contrary, no person shall employ or cause to be employed any juvenile except under a verbal contract of service—

Contracts
applicable to
juveniles.

(a) for the performance of a daily task, or

(b) for the performance of thirty days' work within a period of forty-two days as provided by section 4 of this Ordinance.

28. Notwithstanding anything contained in this Ordinance to the contrary, no juvenile shall be recruited by a professional recruiter.

Juveniles not to be recruited by professional recruiters.

29. Notwithstanding anything contained in this Ordinance to the contrary, no juvenile shall be subject to any of the penal provisions contained in this Ordinance.

Juveniles not to be subject to any penal provisions of this Ordinance.

30. No person shall employ a juvenile or cause a juvenile to be employed as a porter, fuel cutter, trolley or rickshaw boy or in any other class of labour for which in the opinion of a Government medical officer he is physically unsuitable:

Prohibition against employment of juveniles.

Provided that no person shall be prosecuted for employing or causing to be employed in such other class of labour a juvenile physically unsuitable for that class of labour unless such person continues to employ such juvenile after he has been notified in writing by a Government medical officer that such juvenile is physically unsuitable for that class of labour.

30A. (1) No person shall employ or cause to be employed, no labour agent shall engage, and no private recruiter shall recruit, any juvenile unless such juvenile has first obtained an identity certificate in the form prescribed (from a district officer).

Employment of juveniles.

(2) Such certificate shall be (in triplicate signed by the district officer and shall contain the following particulars:—

- (a) a statement that the permission of the parent or guardian of such juvenile has been obtained;
- (b) the name and finger prints of such juvenile and particulars of the tribe to which he belongs; and
- (c) the serial number of such certificate.

(3) A district officer may withhold such certificate for any reason deemed by him to be sufficient:

Provided that—

- (a) when there is a parent or guardian of a juvenile living and when such parent or guardian is unwilling to grant permission to such juvenile to seek employment the district officer shall withhold the certificate;

(b) no juvenile who appears to be below the age of twelve years shall be allowed to enter into a contract of service.

(4) Subject to the provisions of the Employment of Women, Young Persons and Children Ordinance, 1933, and subject to the provisions of paragraph (a) of subsection (3) of this section, nothing in this section shall apply to any juvenile who is employed by the day only and who returns each night to the place of residence of his parent or guardian. No. 14 of 1933.

(5) (a) The permission of the parent or guardian required under the provisions of this section shall be recorded in writing before a district officer or before the headman of the area in which the parent or guardian of the juvenile resides.

(b) When such permission is recorded before a headman it shall be in duplicate and such headman shall send forthwith both the original and duplicate to the district officer, who, after endorsing them both with the serial number of the juvenile's identity certificate, shall file the original in his office and transmit the duplicate to the juvenile's parent or guardian.

30B. (1) A district officer may endorse an identity certificate to the effect that the juvenile named therein may only be employed in a particular area described, and/or for a limited period specified, in the certificate, and where such an endorsement is made any labour agent engaging, and private recruiter recruiting, such juvenile for employment and any person employing or causing to be employed such juvenile contrary to the provisions of such endorsement shall be guilty of an offence against this Ordinance.

Endorsement
and issue of
identity
certificate.

(2) (a) The original of every identity certificate shall be handed by the district officer to the juvenile named therein (and one copy shall be filed in the district office and one copy shall be forwarded by the district officer to the Chief Registrar of Natives.

(b) At the time of handing an identity certificate to a juvenile the district officer shall issue to such juvenile an identity disc, in a form convenient to be carried on his person, marked—

(i) with the serial number of the juvenile's identity certificate; and

(ii) in such a way as to indicate the district in which such disc was issued.

(3) A juvenile who has obtained an identity certificate may, subject to the provisions of this Ordinance, enter into a contract of service.

(4) Any person who, without lawful excuse, deprives or attempts to deprive a juvenile of the possession of his identity certificate or identity disc or destroys, alters or in any way improperly tampers with any identity certificate or identity disc shall be guilty of an offence against this Ordinance.

(5) (a) Any juvenile who has lost his identity certificate and/or identity disc or whose certificate and/or disc has become mutilated or destroyed through any cause may obtain a duplicate of such certificate and/or disc from the nearest district officer upon payment of the prescribed fee:

Provided that should any juvenile prove to the satisfaction of such district officer that his certificate and/or disc was lost, mutilated or destroyed through no fault or neglect of his own the duplicate certificate and/or disc shall be issued without payment.

(b) If the loss, mutilation or destruction of a certificate and/or disc was wilfully caused by an employer of the juvenile or by any other person such employer or other person, as the case may be, shall be liable to pay the prescribed fee for the duplicate certificate and/or disc.

30C. Every employer of juveniles shall furnish to the Chief Registrar of Natives on or before the seventh day of each month a return, in the form prescribed, of all juveniles engaged and/or discharged by him during the previous month.

Returns of juveniles engaged or discharged.

30D. The provisions of sections 30A, 30B and 30C shall apply only to juveniles who are natives.

Exceptions.

30E. (1) A district officer of the district in which any juvenile is employed or seeking employment, or a labour officer, may terminate or cancel any contract of service, which has been entered into by a juvenile, on the grounds that the employer is an undesirable character, or that

Powers of district officer and labour officer.

1939

Employment of Servants

No. XVI

the nature of employment is dangerous, or immoral, or injurious to the health of such juvenile or for any other reasonable cause.

(2) Any person aggrieved by the action or by the order of a district officer or a labour officer under the provisions of this section may, within thirty days after the date of such action or such order as the case may be, appeal to the Provincial Commissioner whose decision shall be final."

5. Sub-section (4) of section 73 of the Principal Ordinance is hereby amended by adding immediately after the word "servant" which occurs in the ninth line thereof the words "and the court has paid to Principal Labour Officer such sum as the employer should have paid under the provisions of sections 44 and 46 of this Ordinance".

Amendment of section 73 (4) of the Principal Ordinance.

6. The certificate under section 28 of the Principal Ordinance set out in the Schedule to the Principal Ordinance is hereby repealed.

Repeal of Certificate in the Schedule to the Principal Ordinance.

7. (1) Any district officer or labour officer shall, on application being made to him by any juvenile in employment on the date this Ordinance comes into operation, issue to such juvenile a written temporary identity certificate, signed by such district officer or labour officer, which shall contain the following particulars:—

Temporary identity certificates.

(a) the name and finger prints of such juvenile and particulars of the tribe to which he belongs; and

(b) the serial number of such certificate.

(2) The original of every such certificate shall be handed by the district officer or labour officer, as the case may be, to the juvenile named therein and one copy shall be retained by such district officer or labour officer and one copy shall be forwarded by such district officer or labour officer to the Chief Registrar of Natives.

(3) Every temporary identity certificate issued under the provisions of this section shall be valid for six months, but no longer, from the date this Ordinance comes into operation.

(4) The provisions of this section shall apply only to juveniles who are natives.

ORDINANCE No. XVII of 1939

Assented to in His Majesty's name this eighteenth day of July, 1939.

R. BROOKE-POPHAM,
Governor.

[18TH JULY, 1939.] Date of assent.

**An Ordinance to Amend the Employment of Women,
Young Persons and Children Ordinance, 1933**

18th July, 1939

Date of com-
mencement.

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 Employment of Women, Young Persons and Children (Amendment) Ordinance, 1939, and shall be read as one with the Employment of Women, Young Persons and Children Ordinance, 1933, hereinafter referred to as the Principal Ordinance.

Short title.

No 14 of 1933.

2. Sub-section (1) of section 4 of the Principal Ordinance is hereby amended by deleting from the first line thereof the words "under the age of twelve".

Amendment of
section 4 (1) of
the Principal
Ordinance.

ORDINANCE No. XVIII of 1939

Assented to in His Majesty's name this eighteenth day
of July, 1939.

R. BROOKE-POPHAM,
Governor

[18TH JULY, 1939.] Date of assent.

**An Ordinance to Amend the Resident Labourers
Ordinance, 1937**

By Notice

Date of com-
mencement.

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 Resident Labourers (Amendment) Ordinance, 1939, and shall be read as one with the Resident Labourers Ordinance, 1937, hereinafter referred to as the Principal Ordinance and shall come into operation as from the date of the coming into operation of the Principal Ordinance.

Short title and
commencement.

No. 30 of 1937.

2. Section 3 of the Principal Ordinance is hereby amended by inserting therein, immediately after the definition of "mission", the following new definition:—

Amendment of
section 3 of
the Principal
Ordinance.

" 'native area' means the native lands, native leasehold areas, native reserves and temporary native reserves as defined in section 3 of the Native Lands Trust Ordinance, 1938;"

No. 28 of 1938

3. Section 5 of the Principal Ordinance is hereby amended—

Amendment of
section 5 of the
Principal
Ordinance.

(a) by deleting paragraph (e) of sub-section (2) thereof;

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

“(k) for the termination of the contract by either the occupier or any or all male members of the native's or Somali's family, who is or are a party to the contract, by giving to the other party not less than three months' notice: Provided that the term of residence on a farm shall in no case be less than one year, except with the approval of a magistrate;”;

(c) by substituting a semi-colon for the full stop which occurs at the end of paragraph (m) of sub-section (2) thereof, and by inserting after such semi-colon the following new paragraph—

“(n) in the event of the death of a resident labourer for the removal by the family of crops cultivated by such family, or for payment by the occupier of compensation in lieu thereof, and for payment to the resident labourer’s family of the wages due to such resident labourer at the time of his death.”;

(d) by substituting the following sub-section for sub-section (4) thereof—

“(4) The original of every contract made under this section shall be filed in the office of the district commissioner of the district in which the parties reside and one copy of the contract shall be handed to the occupier, one copy to the head of the contracting resident labourer’s family and a copy to each male member of such resident labourer’s family who is a party to the contract.”;

(e) by substituting the following sub-section for sub-section (7) thereof—

“(7) A magistrate may, in order to prevent a breach of the peace, order a native or a Somali to remove himself, together with his family and stock, if any, from any farm or Railway land, and if such native or Somali fails or neglects to remove himself, together with his family and stock, if any, within the time specified in such order the magistrate or such other person as he may authorize in that behalf, shall cause such native or Somali, together with his family and stock, if any, to be removed and sent to a native area or to such other place as the magistrate may determine.”;

and

(f) by substituting the following sub-section for sub-section (10) thereof—

“(10) On a change of occupancy of a farm the following provisions shall apply—

(a) the contract shall be deemed to have been assigned to the new occupier and to be a contract between the new occupier and the resident labourer in respect of himself, if he consents, and those male members of his family, who are a party to the contract and who have consented to the assignment, when a magistrate or attesting officer has, in respect of such resident labourer and the consenting male members of his family, endorsed the contract in the same manner as is provided for the attestation of a new contract under this Ordinance, and it shall be the duty of such magistrate or attesting officer, as the case may be, to explain to the new occupier and to such resident labourer and the consenting male members of his family at the time of endorsing the contract the provisions of paragraph (k) of sub-section (2) of this section;

(b) the contract shall be deemed to have been terminated in respect of the resident labourer, if he does not consent, and of those male members of his family, who are a party to the contract and who have not consented to such assignment.”

4. Section 6 of the Principal Ordinance is hereby amended by substituting the word “area” for the word “reserve” which occurs in the second line thereof.

Amendment of section 6 of the Principal Ordinance.

5. Section 7 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 7 of the Principal Ordinance.

“7. No occupier shall allow any native or Somali to reside or remain on a farm or Railway land in contravention of the provisions of this Ordinance.”

When natives or Somalis may not reside or remain on farms.

1939

Resident Labourers

No. XVIII

6. Sub-section (1) of section 8 of the Principal Ordinance is hereby amended by deleting the word "who" which appears in the third line thereof.

Amendment of section 8 of the Principal Ordinance.

7. Section 18 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 18 of the Principal Ordinance.

"18. (1) Where a magistrate is satisfied that a farm is not under such occupation as to ensure the observance of the provisions of this Ordinance, he may order any native or Somali residing thereon to remove himself, together with his family and stock, if any, within twenty-eight days after the date of such order; and if such native or Somali fails or neglects to remove himself, together with his family and stock, if any, within the time specified in this section, then the magistrate, or such other person as he may authorize in that behalf, shall cause such native or Somali, together with his family and stock, if any, to be removed and sent to a native area or to such other place as the magistrate may determine: Provided that, when the magistrate is satisfied that such native or Somali is employed by the occupier of such farm on another farm in the same occupation or ownership under a contract of service or under a resident labourer's contract, he shall allow such native or Somali, together with his family and stock, if any, to remain on such farm.

Removal of natives or Somalis from undeveloped farms.

(2) Where under the provisions of sub-section (1) of this section a magistrate orders a native or Somali to remove himself from any farm he shall at the same time serve notice in writing of such order upon the occupier of such farm, or, if the occupier has no address in the Colony or if such address is unknown the magistrate shall serve such notice by publishing a copy thereof in the Gazette."

8. The Principal Ordinance is hereby amended by inserting therein, between sections 18 and 19 thereof, the following new sections:—

Addition of sections 18A and 18B to the Principal Ordinance.

"18A. Where a native or Somali resides or remains on a farm or Railway land in contravention of the provisions of this Ordinance, the occupier of such farm or Railway land, as the case may be, shall report the fact to a magistrate, and the magistrate shall order such native

Procedure in removal of natives or Somalis by occupiers.

or Somali to remove himself together with his family and stock, if any, within fourteen days after the date of such order; and if such native or Somali fails or neglects to remove himself, together with his family and stock, if any, within such time the magistrate or such other person as he may authorize in that behalf, shall cause such native or Somali, together with his family and stock, if any, to be removed and send him to a native area or to such other place as the magistrate may determine.

18B. Before a magistrate exercises the powers conferred upon him by sections 5 (7), 18 or 18A of this Ordinance to order a native or Somali to remove himself, together with his family and stock, if any, from any farm or Railway land he shall give the occupier and the native or Somali an opportunity of showing cause why such order should not be made; and where any such order is made the magistrate shall on request furnish in writing to the occupier and/or the native or Somali concerned his reasons for making such order."

Natives or Somalis not to be removed unless parties concerned given opportunity of being heard.

9. Sub-section (2) of section 24 of the Principal Ordinance is hereby amended by inserting the words and figures "of section 21" between the word "provisions" and the word "of" which occur in the second line of paragraph (b) thereof.

Amendment of section 24 (2) of the Principal Ordinance.

10. Paragraph (9) of section 25 of the Principal Ordinance is hereby repealed and the following paragraph is substituted therefor:—

Repeal and replacement of section 25 (9) of the Principal Ordinance.

"(9) if he, after the termination of his contract and subject to any permit given or granted under the provisions of sub-section (1) of section 4 and to paragraph (k) of sub-section (2) of section 5 and to sub-section (9) of section 16 of this Ordinance, fails within a reasonable time to leave the farm or Railway land and to remove his family and stock therefrom,".

11. Section 34 of the Principal Ordinance is hereby amended by substituting the word "area" for the word "district" which occurs in the second line thereof.

Amendment of section 34 of the Principal Ordinance.

AD: 10/40
IX/44
Repealed 142
60/44

ORDINANCE No. XIX of 1939

Assented to in His Majesty's name this eighteenth day of July, 1939.

R. BROOKE-POPHAM,
Governor.

[18TH JULY, 1939.] Date of assent.

An Ordinance to Amend and Consolidate the Law relating to Sisal Fibre and to Provide for the Registration of Sisal Plantations and Plantation Marks, the Grading and Packing of Sisal Fibre and Other Matters relating to the Sisal Industry

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 Sisal Industry Ordinance, 1939, and shall come into operation upon such date as the Governor may, by notice in the Gazette, appoint.

Short title and commencement.

PART I—INTERPRETATION

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

Interpretation.

“Board” means the Kenya Sisal Board established under section 8 of this Ordinance;

“Director” means the Director of Agriculture;

“fund” means the fund established under section 7 of this Ordinance;

“sisal fibre” means the ^{raw} fibrous product derived from the plant *Agave rigida* var. *sisalana* and allied species, and includes any rope or cord manufactured in the Colony therefrom.

PART II—EXPORT TAX

3. There shall be paid to the Comptroller of Customs a levy on ^(a) all sisal fibre produced in and exported from the Colony: ^(b) *Such article*

Levy on sisal fibre produced and exported.

~~Provided that any rope or cord manufactured from sisal fibre in the Colony and exported from the Colony shall be exempt from such levy for such period or periods as the Governor, with the advice of the Board, may by notice in the Gazette declare, which are manufactured from sisal fibre in, exported from, the Colony.~~

AD: 10/40
IX/44

4. The Comptroller of Customs on the advice of the Director may exempt any consignments of sisal fibre exported for exhibition or experiment from payment of the levy imposed by this Ordinance.

Power of exemption by Comptroller of Customs.

5. Subject to the provisions of sections 3 and 4 of this Ordinance any person who exports or attempts to export from the Colony any sisal fibre without paying such levy thereon shall be guilty of an offence, and shall be liable, on conviction before a magistrate of the first or second class, to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding six months.

Penalty.

6. (1) The rate of levy fixed by the Governor under the provisions of the Sisal Industry Ordinance, 1934, shall remain in force until a new rate is imposed in manner hereinafter provided.

Governor may alter rate of levy. No. 11 of 1934.

(2) ~~Not later than the 30th day of September in any year~~ ^{at any time} The Governor, with the advice of the Board, may, by order alter the rate of such levy, and such altered rate shall come into force ~~on the 1st day of January next following the date of such order.~~ ^{2 months after}

AD. III / 40

(3) The rate of such levy shall in no event exceed the sum of ten cents on each hundredweight or part of a hundredweight of sisal fibre produced in and exported from the Colony.

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AD. IX / 40

PART III—ESTABLISHMENT OF FUND

7. (1) There shall be established a fund which shall consist of:—

Establishment of fund.

- (a) all moneys collected from the levy on sisal fibre at the rate for the time being in force under this Ordinance;
- (b) a grant-in-aid from the Government of the Colony of a sum equal in amount to the sum collected from the said levy on sisal fibre:

Provided that in respect of any year any sum which would otherwise be payable by the Government of the Colony in excess of one thousand pounds shall be such sum as may be determined by the Governor in Council;

- (c) such other contributions or donations as may from time to time be made to the fund.

(2) Such fund shall be lodged with the Accountant General, and shall be placed by him to a separate suspense account in the name of the Director, who shall, with the consent of the Board, apply such moneys to the accomplishment of the objects and purposes of the fund.

Ord. III/40

(3) The Director shall keep account of the receipts and disbursements in connexion with the fund and shall render to the Board statements showing such revenues and expenditure as required by it.

(4) Within a reasonable time after the expiration of each year the Board shall cause to be prepared a statement of the receipts and disbursements during the previous year, and such statement shall be subject to such audit and published in such manner as the Governor may direct.

PART IV—SISAL BOARD

8. (1) There shall be constituted a Board to be known as the Kenya Sisal Board, which shall consist of—

Constitution
of the Board.

- (a) the Director, who shall be chairman;
- (b) five members of whom one shall be a person associated with the sisal industry to be nominated by the Governor, and four shall be nominated by the Kenya Sisal Growers' Association:

Provided that on the coming into operation of this Ordinance the five members specified in paragraph (b) of this sub-section shall be the four members of the Sisal Industry Committee nominated in accordance with the provisions of the Sisal Industry Ordinance, 1934, and one member to be nominated by the Kenya Sisal Growers' Association and all such members shall hold office for one year from the date of nomination of the four members to the Sisal Industry Committee.

No. 11 of 1934.

(2) The members of the Board, other than the Chairman, shall hold office for one year, and each such member shall be eligible for renomination to the Board at the expiration of each year.

(3) If any member of the Board shall resign or die the authority which nominated such member may nominate another person to take the place of such member, and such person shall hold office until the expiry of the term of office of the member in whose place he is nominated and shall thereafter be eligible for renomination to the Board.

(4) If any member of the Board is absent from the Colony during his term of office the authority which nominated such member may appoint a fit and proper person to serve on the Board during the absence of such member.

(5) In the absence of the Director from any meeting of the Board a chairman for such meeting shall be chosen by the members present.

(6) The Director or, in his absence, the chairman, shall have a casting vote.

(7) At its first meeting the Board shall fix the number required for a quorum and make rules for the conduct of its business.

(8) The Director shall at any time summon a meeting of the Board upon receipt of a requisition signed by two members of the Board calling upon him to do so.

9. The Board shall be a body corporate having perpetual succession and a common seal, and shall be capable in law of suing and being sued, and of purchasing, holding and alienating land and other property movable or immovable.

The Board to be a body corporate.

PART V—APPLICATION OF FUND

10. The fund shall be devoted to all or any of the following purposes:—

Purpose to which fund may be devoted.

- (a) experiment, investigation and research in connexion with the sisal industry;
- (b) the study of the economics of the production of sisal;
- (c) experiments in connexion with the improvement of machinery or plant for the production of sisal fibre;
- (d) the employment of such staff as the Board may think fit for the purpose of carrying out its functions;
- (e) such contributions towards the maintenance of the Kenya Sisal Growers' Association as the Board may from time to time determine;
- (f) the payment of travelling and out-of-pocket expenses to the members of the Board at rates to be approved by the Governor;
- (g) any other service which in the opinion of the Board is calculated to promote the welfare of the sisal industry or the more economic production of sisal fibre.

PART VI—REGISTRATION OF PLANTATIONS AND PLANTATION MARKS, AND EXPORT OF SISAL FIBRE

11. Every person who grows and/or produces sisal fibre for sale shall within one month after the commencement of this Ordinance, or within one month after he begins to grow and/or produce such fibre, register his plantation and his plantation mark with the Registration Officer.

Registration of plantations and plantation marks.

12. (1) No sisal fibre other than sisal fibre grown and/or produced on a plantation registered under section 11 of this Ordinance and marked with the plantation mark of the producer shall be exported from the Colony :

Export of sisal fibre.

Provided that nothing in this section shall be deemed to apply to any sisal fibre in transit through the Colony when such sisal fibre is accompanied by the requisite customs documents issued in the country of origin or of export of such fibre and duly entered through a customs port of entry.

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

PART VII—RULES AND INSPECTION

13. The Governor in Council may, on the advice of the Board, make rules for any of the following purposes:—

Power to make rules as to the registration of plantations, etc.

- (a) prescribing the persons by whom and the circumstances in which the registration of a mark can be refused and limiting the number of marks to be used in respect of each registered plantation and prescribing the fees payable on application or registration of plantations or marks;
 - (b) prohibiting the use of any mark in respect of a registered sisal plantation other than that registered in respect thereof;
 - (c) requiring the submission by prescribed persons of periodical returns of—
 - (i) areas under sisal specifying the stage of maturity and the particulars of planting;
 - (ii) particulars of all employees on plantations, classified as follows—
 - (a) employed under contracts in writing;
 - (b) employed under contracts not in writing;
- and

- (c) working for contractors,
or in such other manner as may be prescribed;
- (iii) stocks of sisal fibre on plantations and in transit,
in customs or other premises classified as
follows:—
 - (a) sold; or
 - (b) unsold;
- (iv) forward contracts not covered by stocks;
- (v) actual production of sisal fibre;
- (d) providing for the compilation, tabulation and publica-
tion of general statistics derived from the periodical
returns submitted by prescribed persons under Rules
made by virtue of this section;
- (e) prescribing the conditions to be fulfilled in respect of
grading, baling, packing and marking sisal fibre for
export;
- (f) providing for the inspection of sisal fibre for export
and for anything to be prescribed under this Part;
- (g) prescribing the forms to be used for the submission of
returns;
- (h) generally for the carrying into effect of the purposes
of this Part.

(vi) Ord. III/40
 14. The Governor may, at the request of the Board, by
 notice in the Gazette, appoint any person recommended by
 the Board, to be the Registration Officer for the purpose of
 this Part, and such officer shall keep a register of sisal planta-
 tions and marks in such manner and form as may be pre-
 scribed.

Appointment of
 Registration
 Officer.

15. (1) It shall be lawful for the Registration Officer to
 visit any sisal plantation registered under this Ordinance for
 the purpose of checking the returns rendered under this Ordin-
 ance and the owner, occupier or manager of such plantation
 shall not obstruct such officer in the execution of his duties.

Inspection of
 plantations.

(2) Any person who commits a breach of the provisions
 of sub-section (1) of this section shall be guilty of an offence
 and liable on conviction to a fine of fifty pounds or to
 imprisonment for three months or to both such fine and
 imprisonment.

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Sisal Industry

No. XIX

16. (1) Save as is provided in sub-section (2) of this section, every person having any official duty or being employed in the administration of this Part shall regard and deal with all documents and returns and copies thereof and all information which he receives in such capacity as secret and confidential. Official secrecy.

(2) Every person having possession of or control over any such documents or returns or copies thereof or being possessed of such information who at any time communicates or attempts to communicate such information or anything contained in such documents returns or copies to any person:—

(a) other than the person to whom he is required in the course of his duty to communicate it, or to any person approved by the Governor, or

(b) otherwise than for the purposes of this Ordinance, shall be guilty of an offence and liable on conviction to a fine of twenty-five pounds or to imprisonment for two months. A.D. III / 40

PART VIII—GENERAL

17. Any person who is guilty of a breach of any of the provisions of this Ordinance or of any rules made thereunder for which no other penalty is specifically provided shall, on conviction before a magistrate of the first or second class, be liable to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment. General penalty.

18. The Sisal Industry Ordinance, 1934, is hereby repealed. Repeal.
No. 11 of 1934.

Gu. 133/39 P. 661

Gu. AD: xxv/39

ORDINANCE No. XX of 1939

Assented to in His Majesty's name this 4th day of September, 1939.

R. BROOKE-POPHAM,
Governor.

[4TH SEPTEMBER, 1939.] Date of Assent.

An Ordinance to Provide for Compulsory Military and other Service

3rd September, 1939

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 Compulsory Service Ordinance, 1939, and shall be deemed to have come into operation on the 3rd day of September, 1939.

Short title, commencement and duration.

(2) This Ordinance shall continue in force until such date as the Governor, by Proclamation, declares to be the date on which the war that was the occasion of the enactment of this Ordinance comes to an end, and shall then expire except as respects things previously done or omitted to be done.

to be employed for the defence of.

2. The Governor may establish such military units in the Colony as he may think fit and such units shall consist of such officers, warrant officers, non-commissioned officers and men as the Governor may determine.

Establishment of military units.

3. (1) The officers of any military unit established under the provisions of section 2 of this Ordinance shall be commissioned by the Governor.

Commissions.

(2) The Governor may cancel the commission of any officer at any time.

4. (1) Every male British subject or British protected person who has attained the age of eighteen years and has not attained the age of ~~forty~~⁴⁵ years and who is ordinarily resident in the Colony shall, unless exempted under the provisions of this Ordinance, be liable —

Compulsory service.

(a) to be enrolled for military service both within and without the Colony; and

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(b) if not enrolled for such military service, to do any work or render any personal service which the Governor may think necessary to order in aid of, or in connexion with the defence of, the Colony.

(b) such other members as the Governor may direct.

(2) In respect of any area for which a Man Power Committee has not been appointed under the provisions of sub-section (1) of this section the Man Power Committee for such area shall be deemed to be the District Commissioner having jurisdiction in such area.

9. (1) A Man Power Committee shall, when required to do so by the Governor, select and provide for military service such number of persons as are liable to be enrolled under the provisions of this Ordinance as the Governor may specify in the requisition made by him.

Duties of
Man Power
Committees.

(2) In selecting such persons in accordance with the provisions of sub-section (1) of this section a Man Power Committee shall have due regard to the necessities of civil life and to the circumstances of each case.

(3) Any person so selected shall be served with a notice, signed by the District Commissioner, in such form as may be prescribed, and shall proceed to such destination and on such date as is specified in the notice and shall be enrolled in such unit as the Governor may determine. Any person who fails to comply with the requirements of a notice so served upon him shall be guilty of an offence and shall be liable to arrest without warrant by any police officer duly authorized in that behalf by the Governor, and shall on conviction be liable to imprisonment for a term not exceeding five years.

(2) 22/1/37

(4) Each Man Power Committee shall keep the Governor informed of the economic conditions prevailing in its area and the names of such persons as in its opinion may be released for military or personal service, having due regard to the necessities of civil life and the circumstances of each case.

10. (1) Notwithstanding anything to the contrary in this Ordinance contained, the classes of persons set out in the Schedule to this Ordinance shall be exempted from all the obligations imposed by this Ordinance or by any Regulations made thereunder.

Exemptions.

(2) Any person who is certified under the hand of a medical officer, specially appointed by the Governor, to be medically unfit for service under this Ordinance by reason of bodily or mental infirmity or unfitness may be exempted by the Governor from all or any of the obligations imposed by this Ordinance or by any Regulations made thereunder.

so appointed to do all such acts as are customary and necessary to the conduct and management of the business as if such person had been duly appointed under a Power of Attorney to carry on such business, to enter into contracts in connexion with such business, to engage and recruit staff and, with the approval of the appropriate Man Power Committee of the area in which the business is situate, or of such other person or body of persons as the Governor may appoint, to raise moneys by way of loan on the movable assets of the business, where the business is not that of farming, and, where the business is that of farming, only on the produce grown, produced, or to be grown or produced, on the farm; and all persons and courts shall pay regard to such authorization to the same extent as if the powers therein conferred had been contained in a properly executed Power of Attorney duly registered and stamped in accordance with the provisions of any law relating thereto for the time being in force in the Colony.

(3) The Governor may also direct that any remuneration to be paid to the person so managing or supervising such business and all expenses properly incurred by such person shall be paid by the owner of such business. Any such direction may specify the rate of remuneration and/or expenses and may provide for such incidental and supplementary matters as the Governor may think fit.

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(4) Where any such direction has been given, the amount of the remuneration and/or expenses specified therein shall be recoverable as a civil debt at the suit of the person managing or supervising the business.

(5) If any dispute shall arise between the person appointed to manage or supervise the business and the owner of such business with regard to anything done, alleged to have been done, omitted to be done or alleged to have been omitted to be done, by such person appointed to manage or supervise the business, such dispute shall be referred to a Board to be appointed by the Governor, by notice in the Gazette; and the decision of such Board upon any matter referred to it for adjudication under the provisions of this sub-section shall be final and conclusive and not subject to appeal to any court.

(2): 29/2

15. (1) The Governor may appoint ^{a suitable person & conditions as he may deem fit.} any person to be an Inspector for the purpose of inspecting any business being supervised or managed under the provisions of section 14 of this Ordinance.

Appointment of Inspectors and their powers.

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Compulsory Service

No. XX

specifically provided, shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding twelve months, or to both such fine and such imprisonment:

Provided that no person shall be liable to be punished for any offence under the provisions of this Ordinance as well as under the provisions of the Army Act.

18. Ord: XXVI | 39

SCHEDULE

Ministers of religion who have undergone a ceremony of ordination in a recognized church.

Judges of the Supreme Court.

Members of Executive and Legislative Councils.

Officers, warrant officers, non-commissioned officers and men of—

(a) the Royal Navy, Regular Army and Royal Air Force;

(b) the Regular Reserves of the Royal Navy, Army and Royal Air Force;

(c) the Territorial Army and Territorial Army Reserve;

(d) any naval, military and air force unit established in the Colony prior to the coming into operation of this Ordinance.

All members of the Kenya Police Force.

All members of the Kenya Prisons Service.

Administrative Officers and Resident Magistrates.

Any person etc. Ord: XXVI | 39

G.N. 869/40 - p. 838 - 659/40 - p. 569.
 " 858/40 - p. 669 - xxiii/46.

ORDINANCE No. XXI of 1939

Assented to in His Majesty's name this 4th day of September, 1939.

R. BROOKE-POPHAM,
Governor.

[4TH SEPTEMBER, 1939.] Date of Assent.

An Ordinance to Impose Penalties for Trading with the Enemy, to make Provision as respects the Property of Enemies and Enemy Subjects, and for Purposes connected with the matters aforesaid

3rd September, 1939

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 Trading with the Enemy Ordinance, 1939. Short title and commencement.

(2) This Ordinance shall be deemed to have come into operation on the third day of September, 1939:

Provided that a person shall not, by virtue of this subsection, be liable to any penalty in respect of anything done by him before the date of the enactment of this Ordinance which, if it had been done in England, would not have been unlawful in common law.

INTERPRETATION

2. (1) In this Ordinance the following expressions have the meanings hereby respectively assigned to them— Interpretation.

“enemy subject” means—

- (a) an individual who, not being either a British subject or a British protected person, possesses the nationality of a State at war with His Majesty, or
- (b) a body of persons constituted or incorporated in, or under the laws of, any such State; and

“enemy territory” means any area which is under the sovereignty of, or in the occupation of, a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a Power allied with His Majesty, *also any areas which the Governor, with the prior approval of the Secretary of State, may by order direct to be treated for the purpose of this Ordinance as enemy territory*

as: xxiii/46

(2) A certificate of the Governor that any area is or was under the sovereignty of, or in the occupation of any Power, or as to the time at which any area became or ceased to be under such sovereignty or in such occupation shall, for the purposes of any proceedings under or arising out of this Ordinance, be conclusive evidence of the facts stated in the certificate.

(3) In considering for the purposes of any of the provisions of this Ordinance whether any person has been an enemy or an enemy subject, no account shall be taken of any state of affairs existing before the commencement of this Ordinance.

(4) For the purposes of this Ordinance, a person shall be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called; and, for the purposes of the provisions of this Ordinance relating to offences by bodies corporate, a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of that body act:

Provided that a person shall not, by reason only that the directors of a body corporate act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

TRADING WITH THE ENEMY AND MATTERS RELATING THERETO

3. (1) Any person who trades with ^{or attempts to trade with} the enemy within the meaning of this Ordinance shall be guilty of an offence of trading with the enemy, and shall be liable—

- (a) on conviction on information, to imprisonment for a term not exceeding seven years or to a ~~fine~~ or to both such imprisonment and a fine, or
- (b) on conviction by a subordinate court of the first or second class, to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine,

and the court may in any case order that any goods or money in respect of which the offence has been committed shall be forfeited.

G. N. S. S. 140
Penalties for trading with the enemy.

(2) For the purposes of this Ordinance a person shall be deemed to have traded with the enemy—

(a) if he has had any commercial, financial or other intercourse or dealings with, or for the benefit of, an enemy, and, in particular, but without prejudice to the generality of the foregoing provision, if he has—

(i) supplied any goods to or for the benefit of an enemy, or obtained any goods from an enemy, or traded in, or carried, any goods consigned to or from an enemy or destined for or coming from enemy territory, or

(ii) paid or transmitted any money, negotiable instrument or security for money to or for the benefit of an enemy or to a place in enemy territory, or

(iii) performed any obligation to, or discharged any obligation of, an enemy, whether the obligation was undertaken before or after the commencement of this Ordinance; or

(b) if he has done anything which, under the following provisions of this Ordinance, is to be treated as trading with the enemy: *etc*

ad. xxii/46

Provided that a person shall not be deemed to have traded with the enemy by reason only that he has—

(i) done anything under an authority given generally or specially by, or by any person authorized in that behalf by, the Governor, or

(ii) received payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the person receiving payment had been performed before the commencement of the war by reason of which the person from whom the payment was received became an enemy.

ad. xxii/46

G.O. 858/46

this ordinance to an attempt to trade with the enemy. any reference in this ordinance to an attempt to trade with the enemy shall be construed accordingly.

(3) Any reference in this section to an enemy shall be construed as including a reference to a person acting on behalf of an enemy.

(3) A. G.O. 858/46 - p. 669

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(4) A prosecution for an offence of trading with the enemy shall not be instituted except by, or with the consent of, the Attorney General:

Provided that this sub-section shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of a prosecution for the offence has not been obtained.

Definition of enemy.

4. (1) Subject to the provisions of this section, the expression "enemy" for the purposes of this Ordinance means—

- (a) any State, or Sovereign of a State, at war with His Majesty,
- (b) any individual resident in enemy territory,
- (c) any body of persons (whether corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this section, is an enemy, ~~or~~

G.L. 838/40
Ord. XXI - p. 669
/45

- (d) any body of persons constituted or incorporated in, or under the laws of a State at war with His Majesty;
- (e) ^{individual} but does not include any person by reason only that he is an enemy subject.

(2) The Governor, with the prior approval of the Secretary of State, may by order direct that any person specified in the order shall, for the purposes of this Ordinance, be deemed to be, while so specified, an enemy: *Provided etc*

G.L. 969/40 p. 838
Ord. XXI - p. 45

Inspection and supervision of businesses.

5. (1) The Governor, if he thinks it expedient for securing compliance with section 3 of this Ordinance so to do, may by written order authorize a specified person (hereafter in this section referred to as "an inspector") to inspect any books or documents belonging to, or under the control of, a person named in the order, and to require that person and any other person to give such information in his possession with respect to any business carried on by the named person as the inspector may demand, and for the purposes aforesaid to enter on any premises used for the purposes of that business.

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(2) If, on a report made by an inspector as respects any business, it appears to the Governor that it is expedient, for securing compliance with section 3 of this Ordinance, that the business should be subject to supervision, the Governor

may appoint a person (hereafter in this section referred to as "a supervisor") to supervise the business, with such powers as the Governor may determine.

(3) If any person, without reasonable cause, fails to produce for inspection, or furnish, to an inspector or a supervisor any document or information which he is duly requested by the inspector or supervisor so to produce or furnish, that person shall be liable, on conviction before a subordinate court of the first or second class, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(4) If any person, with intent to evade the provisions of this section, destroys, mutilates or defaces any book or other document which an inspector or a supervisor is or may be authorized under this section to inspect, that person shall be liable—

(a) on conviction on information, to imprisonment for a term not exceeding five years or to a fine or to both such imprisonment and a fine, or

(b) on conviction before a subordinate court of the first or second class to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

S.A. G.U. 858/40-p. 670 Ad. xxiii/46

6. (1) No assignment of a chose in action made by or on behalf of an enemy shall, except with the sanction of the Governor, be effective so as to confer on any person any rights or remedies in respect of the chose in action; and neither a transfer of a negotiable instrument by or on behalf of an enemy, nor any subsequent transfer thereof, shall, except with the sanction of the Governor, be effective so as to confer any rights or remedies against any party to the instrument.

Transfer of negotiable instruments and choses in action by enemies.

(2) The preceding sub-section shall apply in relation to any transfer of any coupon or other security transferable by delivery, not being a negotiable instrument, as it applies in relation to any assignment of a chose in action.

(3) If any person by payment or otherwise purports to discharge any liability from which he is relieved by this section, knowing the facts by virtue of which he is so relieved, he shall be deemed to have thereby traded with the enemy:

Provided that in any proceedings for an offence of trading with the enemy which are taken by virtue of this sub-section it shall be a defence for the defendant to prove that at the time when he purported to discharge the liability in question he had reasonable grounds for believing that the liability was enforceable against him by order of a competent court, not being either a court having jurisdiction in the Colony or a court of a State at war with His Majesty, and would be enforced against him by such an order.

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jurisdiction in
Enemy territory

(4) Where a claim in respect of a negotiable instrument or chose in action is made against any person who has reasonable cause to believe that, if he satisfied the claim, he would be thereby committing an offence of trading with the enemy, that person may pay into the Supreme Court any sum which, but for the provisions of sub-section (1) of this section, would be due in respect of the claim, and thereupon that sum shall, subject to rules of court, be dealt with according to any order of the court, and the payment shall for all purposes be a good discharge to that person.

(5) Nothing in this section shall apply to securities to which the next following section applies.

Transfer and
allotment of
securities.

7. (1) If—

- (a) any securities to which this section applies are transferred by or on behalf of an enemy, or
- (b) any such securities, being securities issued by a company within the meaning of the Companies Ordinance, 1933, are allotted or transferred to, or for the benefit of, an enemy subject without the consent of the Governor,

No. 28 of 1933.

then, except with the sanction of the Governor, the transferee or allottee shall not, by virtue of the transfer or allotment, have any rights or remedies in respect of the securities; and no body corporate by whom the securities were issued or are managed shall take any cognizance of, or otherwise act upon, any such transfer except under the authority of the Governor.

(2) No share warrants, stock certificates or bonds, being warrants, certificates or bonds payable to bearer, shall be issued in respect of any securities to which this section applies, being securities registered or inscribed in the name of an enemy or of a person acting on behalf of, or for the benefit of, an enemy.

(3) Any person who contravenes the provisions of this section shall be liable, on conviction before a subordinate court of the first or second class, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(4) This section applies to the following securities, that is to say, annuities, stock, shares, bonds, debentures or debenture stock registered or inscribed in any register, branch register or other book kept in the Colony.

8. (1) Purchasing enemy currency shall be treated as trading with the enemy. Purchase of enemy currency

(2) In this section the expression "enemy currency" means any such notes or coins as circulate as currency in any area under the sovereignty of a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a Power allied with His Majesty, or any such other notes or coins as are for the time being declared by an order of the Governor to be enemy currency.

PROPERTY OF ENEMIES AND ENEMY SUBJECTS

9. (1) With a view to preventing the payment of money to enemies and of preserving enemy property in contemplation of arrangements to be made at the conclusion of peace, the Governor may appoint custodians of enemy property and may by order— Collection of enemy debts and custody of enemy property.

- (a) require the payment to the prescribed custodian of money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy, or which would, but for the provisions of section 6 or section 7 of this Ordinance, be payable to any other person;
- (b) vest in the prescribed custodian such enemy property as may be prescribed, or provide for, and regulate, the vesting in that custodian of such enemy property as may be prescribed;
- (c) vest in the prescribed custodian the right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the order to be, vested in the custodian;

- (d) confer and impose on the custodians and on any other person such rights, powers, duties and liabilities as may be prescribed as respects—
- (i) property which has been, or is required to be, vested in a custodian by or under the order,
 - (ii) property of which the right of transfer has been, or is required to be, so vested,
 - (iii) any other enemy property which has not been, and is not required to be, so vested, or
 - (iv) money which has been, or is by the order required to be, paid to a custodian;
- (e) require the payment of the prescribed fees to the custodians in respect of such matters as may be prescribed and regulate the collection of and accounting for such fees;
- (f) require any person to furnish to the custodian such returns, accounts and other information and to produce such documents, as the custodian considers necessary for the discharge of his functions under the order;

and any such order may contain such incidental and supplementary provisions as appear to the Governor to be necessary or expedient for the purposes of the order.

(2) Where any requirement or direction with respect to any money or property is addressed to any person by a custodian and accompanied by a certificate of the custodian that the money or property is money or property to which an order under this section applies, the certificate shall be evidence of the facts stated therein, and if that person complies with the requirement or direction, he shall not be liable to any action or other legal proceeding by reason only of such compliance.

(3) Where, in pursuance of an order made under this section—

- (a) any money is paid to a custodian,
- (b) any property, or the right to transfer any property, is vested in a custodian, or
- (c) a direction is given to any person by a custodian in relation to any property which appears to the custodian to be property to which the order applies,

neither the payment, vesting or direction nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time—

- (i) some person who was or might have been interested in the money or property, and who was an enemy or an enemy subject, had died or had ceased to be an enemy or an enemy subject, or
- (ii) some person who was so interested, and who was believed by the custodian to be an enemy or an enemy subject, was not an enemy or an enemy subject.

(4) Any order under this section shall have effect notwithstanding anything in any Ordinance passed before this Ordinance *and shall not be subject to the provisions of Section 9 of the Interpretation General Clause Ordinance.*

(5) If any person pays any debt, or deals with any property, to which any order under this section applies, otherwise than in accordance with the provisions of the order, he shall be liable on conviction before a subordinate court of the first or second class to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine; and the payment or dealing shall be void.

(6) If any person, without reasonable cause, fails to produce or furnish, in accordance with the requirements of an order under this section, any document or information which he is required under the order to produce or furnish, he shall be liable on conviction before a subordinate court of the first or second class to a fine not exceeding ten pounds for every day on which the default continues.

(7) All fees received by any custodian by virtue of an order under this section shall be paid into the general revenues of the Colony.

(8) In this section—

- (a) the expression “enemy property” means any property for the time being belonging to or held or managed on behalf of an enemy or an enemy subject;
- (b) the expression “property” means real or personal property, and includes any estate or interest in real or personal property, any negotiable instrument, debt or other chose in action, and any other right or interest, whether in possession or not; and

no. XXII/46.

Ph. 690/39.

(c) the expression "prescribed" means prescribed by an order made under this section.

GENERAL AND SUPPLEMENTARY PROVISIONS

False statements
and obstruction.

10. (1) If any person, for the purpose of obtaining any authority or sanction under this Ordinance, or in giving any information for the purposes of this Ordinance or of any order made thereunder, knowingly or recklessly makes a statement which is false in a material particular, he shall be liable on conviction before a subordinate court of the first or second class to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(2) Every person who wilfully obstructs any person in the exercise of any powers conferred on him by or under this Ordinance shall be liable on conviction before a subordinate court of the first or second class to a fine not exceeding fifty pounds.

Offences by
corporations.

11. Where any offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

Exercise of
powers by the
Governor.

12. Anything required or authorized under this Ordinance to be done by, to or before the Governor may be done by, to or before the Governor or any person authorized in that behalf by the Governor.

Evidence of
authority or
sanction of the
Governor.

13. Any document stating that any authority or sanction is given under any of the provisions of this Ordinance by the Governor and purporting to be signed on behalf of the Governor or by a person who is empowered by this Ordinance to do anything which may be done thereunder by the Governor, shall be evidence of the facts stated in the document.

Saving of rights
of Crown.

14. This Ordinance shall be without prejudice to the exercise of any right or prerogative of the Crown.

ORDINANCE No. XXII of 1939

Assented to in His Majesty's name this fourteenth day of
November, 1939.

W. HARRAGIN,
Acting Governor.

[14TH NOVEMBER, 1939.] Date of Assent.

**An Ordinance to Amend the Beer Ordinance
(Cap. 100 of the Revised Edition)**

14th November, 1939

Date of com-
mencement.

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 Beer (Amend- Short title.
ment) Ordinance, 1939, and shall be read as one with the
Beer Ordinance, hereinafter referred to as the Principal Cap. 100.
Ordinance.

2. Section 4 of the Principal Ordinance is hereby Amendment of
amended by substituting the word "sixty" for the word "forty" section 4 of
where it occurs in the seventh line thereof. the Principal
Ordinance.

ORDINANCE No. XXIII of 1939

Assented to in His Majesty's name this fourteenth day of
November, 1939.

W. HARRAGIN,
Acting Governor.

[14TH NOVEMBER, 1939.] Date of assent.

**An Ordinance to Amend the Excise Duties
Ordinance, 1935**

14th November, 1939

Date of com-
mencement.

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 Short title.
(Amendment) Ordinance, 1939, and shall be read as one with
the Excise Duties Ordinance, 1935, hereinafter referred to as No. 40 of 1935.
the Principal Ordinance.

2. The Schedule to the Principal Ordinance is hereby Amendment of
amended by deleting therefrom the last two items thereof, and the Schedule to
substituting therefor the following:— the Principal
Ordinance.

	<i>Sh. cts.</i>
“Cigarettes, cigars and cigarillos, per lb. ...	2 50
Other manufactured tobacco, per lb. ...	2 50.”

ORDINANCE No. XXIV of 1939

Assented to in His Majesty's name this fourteenth day of
November, 1939.

W. HARRAGIN,
Acting Governor.

[14TH NOVEMBER, 1939.] Date of assent.

An Ordinance to Amend the Customs Tariff Ordinance, 1930

14th November, 1939

Date of com-
mencement.

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, 1939, and shall be read as one with the Customs Tariff Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.
No. 1 of 1930.

2. The Schedule to the Principal Ordinance is hereby amended by deleting therefrom items 25, 27 (b) and (c), 29 (a), (b) (i), (b) (ii), (c) (i) and (c) (ii), 30, 31, 33 and 34, and by substituting therefor the following:—

Amendment of
Schedule to
the Principal
Ordinance.

Item	Article	Duty
25	Ale, beer, cider, perry and stout, all kinds, of a strength exceeding 3 per cent of proof spirit	<i>Sh. cts.</i> per Imperial gallon 4 00
27	Spirits—	
	(b) Liqueurs, cordials and mixed potable spirits, exceeding 3 per cent of proof spirit . .	per Imperial gallon 60 00
	(c) Other potable spirits exceeding 3 per cent of proof spirit, e.g., brandy, whisky, rum, gin, geneva and rectified spirits, n.e.e. . . (Note.—No allowance will be made for under-proof in excess of 12½ per cent.)	per proof gallon 58 00

Item	Article	Duty
		<i>Sh. cts.</i>
29	Wines—	
	(a) Vermouth	per Imperial gallon 9 00
	(b) Other still wines, n.e.e.—	
	(i) Imported in bottle	per Imperial gallon 9 00 (or 50 per cent <i>ad valorem</i> which- ever is the greater)
	(ii) Imported in casks or other containers of 5 gallons or over	per Imperial gallon 6 00 (or 50 per cent <i>ad valorem</i> which- ever is the greater)
	(c) Sparkling wines—	
	(i) Champagne	per Imperial gallon 25 00 (or 50 per cent <i>ad valorem</i> which- ever is the greater)
	(ii) Other	per Imperial gallon 17 50 (or 50 per cent <i>ad valorem</i> which- ever is the greater)
30	Cigars, cheroots and cigarillos	per pound .. 8 00 (or 100 per cent <i>ad valorem</i> which- ever is the greater)
31	Cigarettes	per pound .. 6 00 (or 100 per cent <i>ad valorem</i> which- ever is the greater)
33	Tobacco, manufactured, n.e.e.	per pound .. 6 00 (or 100 per cent <i>ad valorem</i> which- ever is the greater)
34	Tobacco, unmanufactured	per pound .. 2 00

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I/ab

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ORDINANCE No. XXV of 1939

Assented to in His Majesty's name this first day of December, 1939.

W. HARRAGIN,
Acting Governor.

[1ST DECEMBER, 1939] Date of assent.

An Ordinance to provide for the Establishment in the Colony of Military Units and for other purposes connected therewith.

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 Military Units Ordinance, 1939, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint. Short title, and date of commencement.

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

“East African Territories” means the Colony and Protectorate of Kenya, the Tanganyika Territory, the Uganda Protectorate, the Nyasaland Protectorate, the Zanzibar Protectorate, and the Somaliland Protectorate;

^{“follows” means} “unit” means a unit established under the provisions of section 3 of this Ordinance. Ord: XXXIX/43

3. (1) The Governor may with the approval of the Secretary of State by notice in the Gazette establish under this Ordinance such units of combatant arms and departmental services as he may think fit and shall assign to each such unit a distinctive title. Any unit so established shall, for all purposes, be deemed to be part of His Majesty's Forces. Establishment of units.

(2) Every such unit shall consist of such officers, warrant officers, non-commissioned officers and men as the Governor may decide.

(3) Any unit under sub-section (1) of this section may be established with effect from any date prior to the enactment of this Ordinance and such unit shall be deemed to have been lawfully established as from such date.

Ord: 29/43

3B

Functions of units.

4. (1) Every unit shall be charged with the defence of the East African Territories, with the maintenance of order, and with such other duties as may be from time to time defined by the Governor of any East African Territory within which such unit or any portion thereof may from time to time be stationed.

For the purposes of this sub-section the term "Governor" shall include the British Resident, Zanzibar.

any East African Territory

Ord: 29/44

(2) The Governor may at any time and for any purpose, as the Secretary of State may direct, order that any unit or any portion thereof which may be stationed in the Colony shall be employed out of or beyond the Colony.

Uniform.

5. The uniform, with distinctive marks or badges, of each unit shall be determined by the Governor.

Membership of units.

6. The Governor may accept on behalf of His Majesty the services of any male person who has attained the age of eighteen years as a member of a unit and on acceptance such person shall, in the case of any member other than an officer, take the prescribed oath and complete the prescribed attestation form before a magistrate, or justice of the peace, of any East African Territory or any officer of His Majesty's Forces.

Commissions.

7. The Governor may appoint such officers as may be required in any unit and where any officer so appointed is not a commissioned officer of His Majesty's regular forces the Governor shall issue to him a commission.

Service.

8. Any member of a unit shall, for the duration of the present war and twelve months after the termination thereof or for such shorter period as the Governor may at any time determine, be liable for military service in the performance of the functions of such unit as specified in section 4 of this Ordinance.

1939

Military Units

No. XXV

9. A member of a unit may be transferred from one unit to another or to any other military force lawfully established or serving in any East African Territory. Transfer.

10. It shall be lawful for the Governor by order to disband or discontinue the services of a unit or any part thereof, whenever it shall seem to him expedient so to do. Units may be disbanded.

11. In relation to the government and discipline of— Application of Imperial Acts.

(a) military units the Army Act, 44 and 45 Vict. Ch. 58, and all Acts amending or replacing the same, and any article of war or rules made in pursuance of such Acts and for the time being in force;

(b) air force units the Air Force (Constitution) Act, 7 and 8 Geo. 5, Ch. 51, and all Acts amending or replacing the same, the Rules of Procedure made thereunder and the Air Council Instructions for the time being in force,

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Order: 27/23

shall, subject to the provisions of this Ordinance and any regulations made thereunder, and with all necessary modifications, apply to all members of such units.

12. The Governor may from time to time constitute for any unit or group of units a headquarters, instructional or administrative staff consisting of such officers, non-commissioned officers and men as he may deem necessary. Headquarters and other staff.

13. The Governor may delegate to any person all or any of the powers conferred upon him by this Ordinance. Power to delegate.

14. The Governor may from time to time make regulations providing for all or any purposes whether general or to meet particular cases that may be convenient for the administration of this Ordinance or that may be necessary or expedient for carrying out the objects or purposes of this Ordinance and where there may be in this Ordinance no provision or no sufficient provision in respect of any matter or thing necessary or expedient for giving full effect to this Ordinance, providing for or supplying such omission or insufficiency and without prejudice to the foregoing powers, providing for the following matters:— Regulations.

(a) all matters which by this Ordinance are required or permitted to be prescribed;

- (b) the rates of pay, allowances and issues of rations for members of a unit;
 - (c) the terms of service for members of a unit;
 - (d) the payment of, and the amount of, any award, gratuity, or pension, in respect of the death, disablement or sickness of any member of a unit;
 - (e) the appointment and promotion of officers of units;
 - (f) the suspension, reduction in rank and discharge of members of units;
 - (g) generally for carrying out the provisions and purposes of this Ordinance.
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ORDINANCE No. XXVI of 1939

Assented to in His Majesty's name this second day of
December, 1939.

W. HARRAGIN,
Acting Governor.

[2ND DECEMBER, 1939.] Date of assent.

An Ordinance to Amend the Compulsory Service Ordinance, 1939

2nd December, 1939

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 Compulsory Service (Amendment) Ordinance, 1939, and shall be read as one with the Compulsory Service Ordinance, 1939, hereinafter referred to as the Principal Ordinance.

Short title.

No. 20 of 1939.

2. Section 2 of the Principal Ordinance is hereby amended by substituting the words "to be employed for the defence of the Colony either in or beyond the Colony" for the words "in the Colony" which occur in the first and second lines thereof.

Amendment of
section 2 of
the Principal
Ordinance.

3. Section 4 of the Principal Ordinance is hereby amended—

Amendment of
section 4 of
the Principal
Ordinance.

(a) by substituting the word "forty-five" for the word "fifty" which occurs in the third line of sub-section (1) thereof;

(b) by deleting therefrom paragraph (a) of sub-section (1) thereof and substituting therefor the following:—

“(a) to be enrolled for military service for the defence of the Colony either in or beyond the Colony; and”;

and

(c) by substituting the word "forty-five" for the word "fifty" which occurs in the second line of sub-section (2) thereof.

4. Sub-sections (3) and (4) of section 9 of the Principal Ordinance are hereby repealed and the following sub-sections are substituted therefor:—

Repeal and replacement of section 9 (3) and (4) of the Principal Ordinance.

“(3) (a) Any person so selected shall be served with a notice, signed by the District Commissioner, in such form as may be prescribed, and shall proceed to such destination and on such date as is specified in the notice and shall be enrolled in such unit as the Governor may determine:

Provided that no person shall be liable to be enrolled unless he is actually within the Colony at the date upon which such notice is issued.

(b) Any person who fails to comply with the requirements of a notice so served upon him shall be guilty of an offence and shall be liable to arrest without warrant by any police officer duly authorized in that behalf by the Governor, and shall on conviction be liable to imprisonment for a term not exceeding five years.

(4) Each Man Power Committee shall keep the Governor informed of the names of such persons resident in its area as, in the opinion of such Man Power Committee, may be released for military or personal service, having due regard to the economic conditions prevailing in its area, the necessities of civil life and the circumstances of each case.”

5. Section 10 of the Principal Ordinance is hereby amended by adding thereto the following new sub-section as sub-section (4) thereof:—

Amendment of section 10 of the Principal Ordinance.

“(4) (a) If any person who is liable to be enrolled for military service under the provisions of this Ordinance claims that he conscientiously objects—

- (i) to performing military service; or
- (ii) to performing combatant duties; or

(b) if any person who is liable to be enrolled for military service, or who is liable to do any work or render any personal service, under the provisions of this Ordinance, claims that exceptional hardship would ensue if he were enrolled for such military service or required to do any such work or render any such personal service,

he may apply in writing to the Governor for exemption and the Governor may in any such case, after making such inquiries as he may deem necessary, exercise the powers conferred upon him by sub-section (3) of this section."

6. Sub-section (1) of section 15 of the Principal Ordinance is hereby amended by inserting therein, immediately after the word "appoint" which occurs in the first line thereof, the words "on such terms and conditions as he may deem fit".

Amendment of section 15 (1) of the Principal Ordinance.

7. The Principal Ordinance is hereby amended by inserting therein, immediately after section 17 thereof, the following new section:—

Amendment of Principal Ordinance.

"18. Nothing contained in this Ordinance shall be deemed to prevent any person liable to be enrolled for military service under the provisions of this Ordinance from volunteering to serve in any military unit established under the provisions of section 2 of this Ordinance or any other law for the time being in force in the Colony."

Voluntary service.

8. The Schedule to the Principal Ordinance is hereby amended by adding thereto, at the end thereof, the following paragraph:—

Amendment of the Schedule to the Principal Ordinance.

"Any person who is, under the provisions of any Act in force in a Dominion, a national or citizen of that Dominion within the meaning of that Act, or who is a person born or domiciled in a Dominion, if in either case he has been ordinarily resident in the Colony for less than two years.

For the purposes of this Schedule 'Dominion' means a Dominion within the meaning of the Statute of Westminster, 1931."

ORDINANCE No. XXVII of 1939

Assented to in His Majesty's name this second day of
December, 1939.

W. HARRAGIN,
Acting Governor.

[2ND DECEMBER, 1939.] Date of assent.

**An Ordinance to Amend the Kenya Defence Force
Ordinance, 1937**

2nd December, 1939

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 Defence Force (Amendment) Ordinance, 1939, and shall be read as one with the Kenya Defence Force Ordinance, 1937, hereinafter referred to as the Principal Ordinance.

Short title.
No. 5 of 1937.

2. Section 3 of the Principal Ordinance is hereby amended by deleting therefrom the words "within the limits of the Colony" which occur in the sixth line thereof and by substituting therefor the following words: "for the defence of the Colony either in or beyond the Colony".

Amendment of
section 3 of
the Principal
Ordinance.

3. Sub-section (2) of section 12 of the Principal Ordinance is hereby repealed and the following sub-sections are substituted therefor:—

Repeal and
replacement
of section 12 (2)
of the Principal
Ordinance.

“(2) The Governor in Council may by order appoint a Tribunal consisting of a Chairman and such number of members as he may deem fit for the purpose of hearing and determining applications for exemptions from all or any of the obligations imposed by this Ordinance or by the Regulations.

(3) Such Tribunal may exempt any person, either temporarily or permanently, from all or any of the obligations imposed by this Ordinance or by the Regulations, and any decision of the Tribunal shall be final and conclusive and not subject to appeal to any court.

(4) The provisions of sub-sections (2) and (3) of this section shall be deemed to have come into operation on the 5th day of September, 1939.”

4. The Principal Ordinance is hereby amended by inserting therein immediately after section 22 thereof the following new Part:—

Amendment of the Principal Ordinance.

“PART IVA

PERSONAL SERVICE AND MAN POWER COMMITTEES

“22A. (1) Notwithstanding the provisions of section 3 of this Ordinance every member of the Defence Force who is not at any time called out and mobilized under the provisions of section 21 of this Ordinance shall be liable to do any work or render any personal service which the Governor may think necessary to order in aid of, or in connexion with the defence of, the Colony.

Compulsory personal service.

(2) The work or service referred to in sub-section (1) of this section may be of a specific, or general, character and may be for a temporary period or for the period during which this Part of this Ordinance remains in force.

22B. The Governor may, by notice in the Gazette, appoint for such areas as are specified in the notice Man Power Committees which shall consist of—

Appointment of Man Power Committees.

- (a) a Chairman, who shall be a Provincial Commissioner, a District Commissioner, or such other person as the Governor may direct; and
- (b) such other members as the Governor may direct.

22C. Each Man Power Committee shall keep the Governor informed of the names of such members of the Defence Force resident in its area as, in the opinion of such Man Power Committee, may be released for military or personal service, having due regard to the economic conditions in its area, the necessities of civil life and the circumstances of each case.

Duties of Man Power Committees.

22D. Except in the special cases provided for by section 22E of this Ordinance, the rates of pay for any member of the Defence Force required to do work or render personal service under the provisions of section 22A of this Ordinance shall be the ordinary rates of pay current for such class of work or service in the area in which such work or service is performed.

Rates of pay for compulsory personal service.

22E. When any member of the Defence Force is required under the provisions of section 22A of this Ordinance to do any work for, or to render any personal

Person liable for payment of remuneration.

service to, any other person, the person for whom the work is to be done or to whom the person is to render the personal service shall pay to the member of the Defence Force doing such work or rendering such service such rate of pay as the Governor may direct for such work or for such service, as the case may be.

22F. (1) Where any person subject to the provisions of this Ordinance has been called out and mobilized under section 21 of this Ordinance or has become a member of a unit established under the Military Units Ordinance, 1939, or where any person has been called out under the provisions of the Kenya Regiment (Territorial Force) Ordinance, 1937, and in the opinion of the Governor it is necessary that the business of such person should be carried on under supervision, the Governor may, with the consent of the owner of such business, make all such arrangements as, in his opinion, are necessary for the carrying on of such business.

Supervision of
businesses
where owner is
on military
service.

No. 25 of 1939.

No. 4 of 1937.

(2) Where, in order to carry on such business, the Governor has, under the provisions of this Ordinance, ordered any person to manage or supervise any such business, the Governor may, without prejudice to the generality of the powers conferred by sub-section (1) of this section, with the consent of the owner of the business, authorize the person so appointed to do all such acts as are customary and necessary to the conduct and management of the business as if such person had been duly appointed under a power of attorney to carry on such business, to enter into contracts in connexion with such business, to engage and recruit staff, and, with the approval of the appropriate Man Power Committee of the area in which the business is situate, or of such other person or body of persons as the Governor may appoint, to raise moneys by way of loan on the movable assets of the business, where the business is not that of farming, and, where the business is that of farming, only on the produce grown, produced or to be grown or produced, on the farm; and all persons and courts shall pay regard to such authorization to the same extent as if the powers therein conferred had been contained in a properly executed power of attorney duly registered and stamped in accordance with the provisions of any law relating thereto for the time being in force in the Colony.

(3) The Governor may also direct that any remuneration to be paid to the person so managing or supervising such business and all expenses properly incurred by such person shall be paid by the owner of such business. Any such direction may specify the rate of remuneration and/or expenses and may provide for such incidental and supplementary matters as the Governor may think fit.

(4) Where any such direction has been given, the amount of the remuneration and/or expenses specified therein shall be recoverable as a civil debt at the suit of the person managing or supervising the business.

(5) If any dispute shall arise between the person appointed to manage or supervise the business and the owner of such business with regard to anything done, alleged to have been done, omitted to be done or alleged to have been omitted to be done, by such person appointed to manage or supervise the business, such dispute shall be referred to a Board to be appointed by the Governor, by notice in the Gazette; and the decision of such Board upon any matter referred to it for adjudication under the provisions of this sub-section shall be final and conclusive and not subject to appeal to any court.

22G. (1) The Governor may appoint, on such terms and conditions as he may deem fit, any person to be an Inspector for the purpose of inspecting any business being supervised or managed under the provisions of section 22F of this Ordinance.

Appointment
of Inspectors
and their powers.

(2) Any Inspector appointed under the provisions of sub-section (1) of this section may enter at any reasonable time the premises of any business which is being supervised or managed under the provisions of section 22F of this Ordinance for the purpose of inspecting and taking copies of the accounts of such business, and may give any such directions as he may deem necessary for the proper supervision or management of the business.

(3) Any person who wilfully obstructs or hinders any Inspector exercising his powers under the provisions of this Ordinance and any person supervising or managing a business under the provisions of section 22F of this Ordinance who wilfully fails to comply with any directions given by an Inspector under the provisions of sub-section (2) of this section shall be guilty of an offence, and shall

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

22H. This Part of this Ordinance shall continue in force until such date as the Governor, by Proclamation, declares to be the date on which the war that was the occasion of the enactment of this Part of this Ordinance comes to an end, and shall then expire except as respects things previously done or omitted to be done.”

Duration of this part.

5. Section 28 of the Principal Ordinance is hereby amended—

Amendment of section 28 of the Principal Ordinance.

(a) by inserting, immediately after the full stop which occurs in line one thereof, the brackets and figure “(1)”; and

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

“(2) The operation of paragraph (a) of sub-section (1) of this section shall be suspended during the continuance of the present war and shall be deemed to have been suspended with effect from the 3rd day of September, 1939.”

6. Sub-section (1) of section 31 of the Principal Ordinance is hereby amended—

Amendment of section 31 (1) of the Principal Ordinance.

(a) by inserting immediately after the word “when” which occurs in the second line of paragraph (h) thereof the words “undergoing peace training or when”;

(b) by deleting the word “and” which occurs at the end of paragraph (r) thereof;

(c) by inserting therein, immediately after paragraph (r) thereof, the following new paragraphs—

“(s) the procedure to be adopted by Man Power Committees appointed under the provisions of this Ordinance;

(t) the payment of, and the amount of any award, gratuity or pension in respect of the death, disablement or sickness of any member of the Defence Force ordered to do any work or render any personal service under the provisions of this Ordinance; and”;

and

(d) by re-lettering the present paragraph (s) as paragraph (u).

1939

Kenya Defence Force

No. XXVII

7. Paragraph (1) of the First Schedule to the Principal Ordinance is hereby amended by adding thereto, at the end thereof, the following:—

Amendment of
the Schedule to
the Principal
Ordinance.

“Any person who is, under the provisions of any Act in force in a Dominion, a national or citizen of that Dominion within the meaning of that Act, or who is a person born or domiciled in a Dominion, if in either case he has been ordinarily resident in the Colony for less than two years.

For the purposes of this Schedule ‘Dominion’ means a Dominion within the meaning of the Statute of Westminster, 1931.”

ORDINANCE No. XXVIII of 1939

Assented to in His Majesty's name this ninth day of December, 1939.

W. HARRAGIN,
Acting Governor.

[9TH DECEMBER, 1939.] Date of assent.

An Ordinance to Provide for the Supply of a Further Sum of Money for the Service of the Year ended 31st December, 1938

9th December, 1939

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 1938 Supplementary Appropriation Ordinance, 1939. Short title.
2. The public revenue for the period 1st January to 31st December, 1938, of the Colony and Protectorate of Kenya is hereby charged towards the service of the period 1st January to 31st December, 1938, with a further sum of three hundred and sixty-seven thousand eight hundred and seventy pounds, in addition to the sums provided by the 1938 Appropriation Ordinance, 1937. Public revenue charged.
3. The money granted by this Ordinance shall be applied to the purposes and services expressed in the Schedule hereto. No. 41 of 1937.
4. The money granted by this Ordinance shall be applied to the purposes and services expressed in the Schedule hereto. Application of money granted.
5. The Accountant General of the Colony and Protectorate of Kenya is hereby given authority for having paid out of the revenue of the Colony and Protectorate of Kenya, for the several services specified in the Schedule hereto, the said sum of three hundred and sixty-seven thousand eight hundred and seventy pounds which have come in course of payment during the period 1st January to 31st December, 1938. Accountant General's authority for payment.

SCHEDULE

<i>No. of Head</i>	<i>Amount</i>
	<i>£</i>
IIA Administration Extraordinary ...	... 28,191
IIIA Agricultural Extraordinary ...	... 164,362
V Civil Aviation ...	... 1,617
VA Civil Aviation Extraordinary ...	... 615
IXA Education Extraordinary ...	... 1,529

ORDINANCE No. XXIX of 1939

Assented to in His Majesty's name this second day of
December, 1939.

W. HARRAGIN,
Acting Governor.

[2ND DECEMBER, 1939.] Date of assent.

An Ordinance to Amend the Tea Ordinance, 1934

2nd December, 1939

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 Tea (Amend- Short title.
ment) Ordinance, 1939, and shall be read as one with the
Tea Ordinance, 1934, hereinafter referred to as the Principal No. 46 of 1934
Ordinance.

2. Sub-section (3) of section 3 of the Principal Ordin- Amendment of
ance is hereby amended by substituting the words "five section 3 (3) of
hundred" for the words "three hundred" which occur in the the Principal
last line thereof. Ordinance.

3. Section 5 of the Principal Ordinance is hereby re- Repeal and
pealed and the following section is substituted therefor:— replacement of
section 5 of
the Principal
Ordinance.

"5. The exportation of tea seed and other planting Restriction on
materials such as cuttings from the Colony to countries exportation of
other than the Territory of Tanganyika and the Pro- tea seed.
tectorate of Uganda is prohibited."

ORDINANCE No. XXX of 1939

Assented to in His Majesty's name this second day of December, 1939.

W. HARRAGIN,
Acting Governor.

[2ND DECEMBER, 1939.] Date of assent.

An Ordinance to Amend the Trading in Unwrought Precious Metals Ordinance, 1933

2nd December, 1939

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 Trading in Unwrought Precious Metals (Amendment) Ordinance, 1939, and shall be read as one with the Trading in Unwrought Precious Metals Ordinance, 1933, hereinafter referred to as the Principal Ordinance.

Short title.

No. 2 of 1933.

2. The Principal Ordinance is hereby amended by inserting therein, immediately after section 12 thereof, the following new section:—

Amendment of the Principal Ordinance.

“12A. Any police officer may arrest without warrant any person who he has reasonable grounds to believe has committed an offence under this Ordinance, and shall take such person before a magistrate as soon as possible.”

Police may arrest without warrant for offences under the Ordinance

ORDINANCE No. XXXI of 1939

Assented to in His Majesty's name this second day of December, 1939.

W. HARRAGIN,
Acting Governor.

[2ND DECEMBER, 1939.] Date of assent.

**An Ordinance to Amend the European Civil Service
Provident Fund Ordinance, 1934**

2nd December, 1939

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 Civil Service Provident Fund (Amendment) Ordinance, 1939, and shall be read as one with the European Civil Service Provident Fund Ordinance, 1934, hereinafter referred to as the Principal Ordinance.

Short title.

No. 27 of 1934.

2. Section 10 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and
replacement of
section 10 of
the Principal
Ordinance.
Exemptions.

“10. The Governor may—

- (a) by notice in the Gazette exclude any person or class of persons from the operation of this Ordinance;
- (b) exempt any person or class of persons from all or any of the provisions of this Ordinance;
- (c) by notice in the Gazette exclude such service as he may deem fit from the provisions of this Ordinance.”

ORDINANCE No. XXXII of 1939

Assented to in His Majesty's name this second day of December, 1939.

W. HARRAGIN,
Acting Governor.

[2ND DECEMBER, 1939.] Date of assent.

An Ordinance to Provide for the Collection of Fees on the Grant of a Certificate of Naturalization and on doing other Acts under the British Nationality and Status of Aliens Act, 1914

2nd December, 1939

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 British Nationality and Status of Aliens Fees Ordinance, 1939. Short title.

2. (1) The Governor in Council may make regulations with respect to the imposition and application of fees in respect of any registration authorized to be made by the British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. V, Chapter 17) or any regulations thereunder, and in respect of the making of any declaration or the grant of any certificate authorized to be made or granted by the said Act, and in respect of the administration or registration of any oath: Power to Governor in Council to impose fees in respect of registration, etc. effected under 4 and 5 Geo. V Ch. 17.

Provided that, in the case of a woman who was a British subject previously to her marriage to an alien, the fee for the grant of a certificate shall not exceed five shillings.

(2) Unless and until revoked or altered by any regulation under the preceding sub-section, the fees set out in the Schedule to this Ordinance shall be paid with respect to the matters to which they are in such Schedule set opposite.

3. Any fees paid, collected, or tendered and accepted before the coming into operation of this Ordinance in purported exercise of any such power as is mentioned in section 2 of this Ordinance, and which would have been lawfully paid, collected, tendered and accepted if this Ordinance had come into operation on the first day of April, 1921, shall be deemed to have been lawfully paid, collected, tendered and accepted. Validation of fees paid, collected, tendered and accepted prior to the coming into operation of this Ordinance.

ORDINANCE No. XXXIII of 1939

Assented to in His Majesty's name this twenty-second day of December, 1939.

W. HARRAGIN,
Acting Governor.

[22ND DECEMBER, 1939.] Date of assent.

An Ordinance to Consolidate and Amend the Law relating to Matrimonial Causes

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 Matrimonial Causes Ordinance, 1939, and shall come into operation upon such date as the Governor may, by notice in the Gazette, appoint.

Short title and commencement.

PART I

INTRODUCTORY

2. In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:—

Interpretation of terms.

“His Majesty's Proctor” means the King's Proctor appointed under the Kenya (Non-Domiciled Parties) Divorce Rules, 1928;

“marriage” means the voluntary union of one man and one woman for life to the exclusion of all others;

“children” means in the case of natives, Arabs, Abyssinians (Amhara, Tigre and Shoa), Somalis, Baluchis born in Africa, Malagasies or Comoro Islanders, males who have not attained the age of sixteen years and females who have not attained the age of thirteen years, and in the case of all other persons, unmarried children who have not attained the age of majority.

3. Subject to the provisions of the Native Christian Marriage and Divorce Ordinance, 1931, jurisdiction under this Ordinance shall only be exercised by the Supreme Court (hereinafter called “the Court”) and such jurisdiction shall, subject to the provisions of this Ordinance, be exercised in accordance with the law applied in matrimonial proceedings in the High Court of Justice in England.

Jurisdiction of Courts.
No. 51 of 1931.

Limitation of Ordinance.

4. Nothing in this Ordinance contained shall authorize—

(a) the making of any decree of dissolution of marriage or of nullity of marriage unless the petitioner is domiciled in the Colony at the time when the petition is presented;

(b) the grant of any other relief under this Ordinance, unless one of the parties to the suit has, at the time when the petition is presented, his or her usual residence in the Colony or unless the marriage was solemnized in the Colony:

Jurisdiction in case of husband's change of domicile.

Provided that where a wife has been deserted by her husband, or where her husband has been deported from the Colony under any law for the time being in force relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in the Colony, the Court shall have jurisdiction for the purpose of any proceedings under this Ordinance, notwithstanding that the husband has changed his domicile since the desertion or deportation.

PART II

DIVORCE AND NULLITY OF MARRIAGE

Divorce

Restriction on petitions for divorce during first three years after marriage.

5. (1) No petition for divorce shall be presented to the Court unless at the date of the presentation of the petition three years have passed since the date of marriage:

Provided that a judge of the Court may, upon application being made to him in accordance with rules made under this Ordinance, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition, that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces a decree *nisi*, do so subject to the condition that no application to make the decree absolute shall be made until after the expiration of three years from the date of the marriage, or may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the said three years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

(2) In determining any application under this section for leave to present a petition before the expiration of three years from the date of the marriage, the judge shall have regard to the interests of any children of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said three years.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of three years from the date of the marriage.

6. (1) A person shall not be prevented from presenting a petition for divorce, or the Court from pronouncing a decree of divorce, by reason only that the petitioner has at any time been granted a judicial separation under this Ordinance or under any Ordinance repealed by this Ordinance, or an order under the Subordinate Courts (Separation and Maintenance) Ordinance, 1928, upon the same or substantially the same facts as those proved in support of the petition for divorce.

Divorce proceedings after grant of judicial separation or other relief.

No. 34 of 1928..

(2) On any such petition for divorce, the Court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion, or other ground on which it was granted, but the Court shall not pronounce a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of any such petition for divorce, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or an order under the said Ordinance having the effect of such a decree shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce.

7. A petition for divorce may be presented to the Court either by the husband or the wife on the ground that the respondent—

Grounds of petition for divorce.

- (a) has since the celebration of the marriage committed adultery; or
- (b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or
- (c) has since the celebration of the marriage treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition,

and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.

For the purposes of this section a person of unsound mind shall be deemed to be under care and treatment while he is detained, whether in the Colony or elsewhere, in an institution duly recognized by the Government of the Colony as an institution for the care and treatment of insane persons, lunatics, or mental defectives, or is detained as a criminal lunatic under any law for the time being in force in the Colony. A certificate under the hand of the Governor that any place is a duly recognized institution for the purpose of this section shall be receivable in all courts as conclusive evidence of that fact.

Provision as to making adulterer co-respondent.

8. (1) On the petition for divorce presented by the husband or in the answer of a husband praying for divorce the petitioner or respondent, as the case may be, shall make the alleged adulterer a co-respondent unless he is excused by the Court on special grounds from so doing.

(2) On a petition for divorce presented by the wife the Court may, if it thinks fit, direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

Duty of Court on presentation of a petition for divorce.

9. (1) On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties and also to inquire into any countercharge which is made against the petitioner.

(2) If the Court is satisfied on the evidence that—

(i) the case for the petitioner has been proved; and

(ii) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at, or condoned the adultery, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty; and

(iii) the petition is not presented or prosecuted in collusion with the respondent or either of the respondents, the Court shall pronounce a decree of divorce, but if the Court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the petition :

Provided that the Court shall not be bound to pronounce a decree of divorce and may dismiss the petition if it finds that the petitioner has during the marriage been guilty of adultery or if, in the opinion of the Court, the petitioner has been guilty—

- (a) of unreasonable delay in presenting or prosecuting the petition; or
- (b) of cruelty towards the other party to the marriage; or
- (c) where the ground of the petition is adultery or cruelty, of having without reasonable excuse deserted, or having without reasonable excuse wilfully separated himself or herself from, the other party before the adultery or cruelty complained of; or
- (d) where the ground of the petition is adultery or unsoundness of mind or desertion, of such wilful neglect or misconduct as has conduced to the adultery or unsoundness of mind or desertion.

(3) For the purposes of this section adultery shall not be deemed to have been condoned unless conjugal cohabitation has been continued or subsequently resumed. Condonation.

10. In any case in which, on the petition of a husband for divorce, the alleged adulterer is made a co-respondent or in which, on the petition of a wife for divorce, the person with whom the husband is alleged to have committed adultery is made a respondent, the Court may, after the close of the evidence on the part of the petitioner, direct the co-respondent or the respondent, as the case may be, to be dismissed from the proceedings if the Court is of opinion that there is not sufficient evidence against him or her. Dismissal of respondent or co-respondent from proceedings.

11. If in any proceedings for divorce the respondent opposes the relief sought, in the case of proceedings instituted by the husband, on the ground of his adultery, cruelty or desertion, or, in the case of proceedings instituted by the wife, on the ground of her adultery, cruelty or desertion, the Court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief. Grant of relief to respondent on petition for divorce.

Nullity

Petition for
nullity of
marriage.

12. A husband or wife may present a petition to the Court praying that his or her marriage may be declared null and void.

Grounds for
decree of nullity.

13. (1) The following are the grounds on which a decree of nullity of marriage may be made:—

- (a) that either party was permanently impotent, or incapable of consummating the marriage, at the time of the marriage; or
- (b) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity; or
- (c) that either party was at the time of marriage of unsound mind or subject to recurrent fits of insanity or epilepsy; or
- (d) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such previous husband or wife was then in force; or
- (e) that the consent of either party to the marriage was obtained by force or fraud in any case in which the marriage might be annulled on this ground by the law of England; or
- (f) that the marriage had not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or
- (g) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
- (h) that the respondent was at the time of the marriage pregnant by some person other than the petitioner:

Provided that, in the cases specified in paragraphs (c), (g) and (h) of this sub-section, the Court shall not grant a decree unless it is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted within a year from the date of the marriage; and
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds of decree.

(2) Any child born of a marriage avoided pursuant to paragraphs (c) or (g) of the last foregoing sub-section shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided.

(3) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

14. (1) Every decree for a divorce or for nullity of marriage shall, in the first instance, be a decree *nisi* not to be made absolute until after the expiration of six months after the pronouncing thereof, unless the Court by general or special order from time to time fixes a shorter time.

Decree nisi for divorce or nullity of marriage.

(2) After the pronouncing of the decree *nisi* and before the decree is made absolute, any person may, in the prescribed manner, show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion or by reason of material facts not having been brought before the Court, and in any such case the Court may make the decree absolute, reverse the decree *nisi*, require further inquiry or otherwise deal with the case as the Court thinks fit.

(3) Where a decree *nisi* has been obtained, whether before or after the commencement of this Ordinance, and no application for the decree to be made absolute has been made by the party who obtained the decree, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom the decree *nisi* has been granted shall be at liberty to apply to the Court and the Court shall, on such application, have power to make the decree absolute, reverse the decree *nisi*, require further inquiry or otherwise deal with the case as the Court thinks fit.

15. ~~As~~ As soon as any decree for divorce is made absolute, either of the parties to the marriage may, if there is no right of appeal against the decree absolute, marry again as if the prior marriage had been dissolved by death or, if there is such a right of appeal, may so marry again, if no appeal is presented against the decree, as soon as the time for appealing has expired or, if an appeal is so presented, as soon as the appeal has been dismissed.

Re-marriage of divorced person

(2) No clergyman of the Church of England shall be compelled to solemnize the marriage of any person whose

former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any proceedings, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

(3) If any minister of any church or chapel of the Church of England refuses to perform the marriage service between any person who but for his refusal would be entitled to have the service performed in that church or chapel, he shall permit any other minister of the Church of England entitled to officiate within the diocese in which the church or chapel is situate to perform the marriage service in that church or chapel.

PART III

JUDICIAL SEPARATION

Decree of
judicial
separation.

16. (1) A petition for judicial separation may be presented to the Court either by the husband or the wife on any grounds on which a petition for divorce might have been presented, or on the ground of failure to comply with a decree for restitution of conjugal rights and the provisions of this Ordinance relating to the duty of the Court on the presentation of a petition for divorce, and the circumstances in which such a petition shall or may be granted or dismissed, shall apply in like manner to a petition for judicial separation.

(2) Where the Court in accordance with the said provisions grants a decree of judicial separation, it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(3) The Court may, on the application by petition of the husband or wife against whom a decree of judicial separation has been made, and on being satisfied that the allegations contained in the petition are true, reverse the decree at any time after the making thereof on the ground that it was obtained in the absence of the person making the application, or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

(4) The reversal of a decree for judicial separation shall not affect the rights or remedies which any other person would have had if the decree had not been reversed in respect of any debts, contracts or acts of the wife incurred, entered into or done between the date of the decree and of the reversal thereof.

17. (1) In every case of judicial separation—

Wife's property
in case of
judicial
separation.

- (a) the wife shall, as from the date of the decree and so long as the separation continues, be considered as a feme-sole with respect to any property which she may acquire or which may devolve upon her, and any such property may be disposed of by her in all respects as a feme-sole and if she dies intestate shall devolve as if her husband had been dead; and
- (b) the wife shall, during the separation, be considered as a feme-sole for the purpose of contract and wrongs and injuries, and of suing and being sued, and the husband shall not be liable in respect of her contracts or for any wrongful act or omission by her or for any costs she incurs as plaintiff or defendant:

Provided that—

(i) where on any judicial separation alimony has been ordered to be paid and has not been paid by the husband, he shall be liable for necessaries supplied for the use of the wife;

(ii) if the wife returns to cohabitation with her husband, any property to which she is entitled at the date of her return shall, subject to any agreement in writing made between herself and her husband while separate, be her separate property;

(iii) nothing in this section shall prevent the wife from joining at any time during the separation in the exercise of any joint power given to herself and her husband.

(2) In any case where the decree for judicial separation is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion at the date of the decree, and any property to which she becomes entitled as executrix, administratrix or trustee after the date of the decree, shall be deemed to be property to which this section applies, and for the purpose aforesaid the death of the testator or intestate shall be deemed to be the date when the wife became entitled as executrix or administratrix.

18. (1) Where a wife obtains a decree for judicial separation, the decree shall, so far as may be necessary for the protection of any person dealing with the wife, be valid and effectual until discharged, and the discharge or variation of the decree shall not affect any rights or remedies which any

Protection of
third parties.

person would have had, if the decree had not been discharged or varied, in respect of any debts, contracts or acts of the wife incurred, entered into or done during the period between the date of the decree and the discharge or variation thereof.

(2) Any person who, in reliance on any such decree as aforesaid, makes any payment to or permits any transfer or act to be made or done by the wife, shall, notwithstanding the subsequent discharge or variation of the decree, or the fact that the separation has ceased or has been discontinued, be protected and indemnified in the same way in all respects as if at the time of payment, transfer or other act the decree were valid and still subsisting without variation in full force and effect, or the separation had not ceased or been discontinued, as the case may be, unless at that time that person had notice of the discharge or variation of the decree or that the separation had ceased or been discontinued.

PART IV

RESTITUTION OF CONJUGAL RIGHTS

Decree for
restitution of
conjugal rights

19. A petition for restitution of conjugal rights may be presented to the Court either by the husband or the wife, and the Court, on being satisfied that the allegations contained in the petition are true, and that there is no legal ground why a decree for restitution of conjugal rights should not be granted, may make the decree accordingly.

Periodical pay-
ments in lieu of
attachment.

20. (1) A decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the Court, at the time of making the decree or at any time afterwards, may, in the event of the decree not being complied with within any time in that behalf limited by the Court, order the respondent to make to the petitioner such periodical payments as may be just, and the order may be enforced in the same manner as an order for alimony made under the provisions of this Ordinance.

(2) The Court may, if it thinks fit, order that the husband shall, to the satisfaction of the Court, secure to the wife the periodical payments, and for that purpose may direct that it shall be referred to one of the advocates of the Court to settle and approve a proper deed or instrument to be executed by all necessary parties.

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a) - XXXIII/41

PART V

PRESUMPTION OF DEATH

21. (1) Any married person, who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead, may present a petition to the Court to have it presumed that the other party is dead and to have the marriage dissolved, and the Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

Proceedings for decree of presumption of death and dissolution of marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

(3) Sections 14, 15, 32 and 33 of this Ordinance shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

PART VI

ANCILLARY RELIEF

22. (1) A husband may, on a petition for divorce or for judicial separation or for damages only, claim damages from any person on the ground of adultery with the wife of the petitioner.

Damages.

(2) The Court may direct in what manner the damages recovered on any such petition are to be paid or applied, and may direct the whole or any part of the damages to be settled for the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife.

23. A co-respondent may be ordered to pay the whole or any part of the costs of the proceedings if adultery with the wife of the petitioner has been established against him:

Costs against a co-respondent.

Provided that he shall not be ordered to pay the costs of the petitioner—

- (a) if at the time of the adultery he had no reason to believe the respondent to be a married woman;
- (b) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute.

Alimony
pendente lite.

24. (1) In any suit under this Ordinance the wife may apply to the Court for alimony pending the suit, and the Court may thereupon make such order as it may deem just, provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue in the case of a decree *nisi* of dissolution of marriage or of nullity of marriage until the decree is made absolute.

Alimony and
maintenance.

(2) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the Court may deem to be reasonable, ~~and the Court may for that purpose order that it shall be referred to one of the advocates of the Court to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.~~

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ad: XXXIV/61

(3) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under sub-section (2) of this section, direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the Court may think reasonable:

Provided that—

- (a) if the husband, after any such order has been made, becomes from any cause unable to make the payments, the Court may discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fit; and
- (b) where the Court has made any such order as is mentioned in this sub-section and the Court is satisfied that the means of the husband have increased, the Court may, if it thinks fit, increase the amount payable under the order.

(4) Where any decree for restitution of conjugal rights or judicial separation is made on the application of the wife, the Court may make such order for alimony as the Court thinks just.

(5) In all cases where the Court makes an order for alimony, the Court may direct the alimony to be paid either to the wife or to a trustee approved by the Court on her behalf, and may impose such terms or restrictions as the Court thinks expedient, and may from time to time appoint a new trustee if for any reason it appears to the Court expedient so to do.

25. (1) If it appears to the Court in any case in which the Court pronounces a decree for divorce or for judicial separation by reason of the adultery, desertion or cruelty of the wife that the wife is entitled to any property either in possession or reversion, the Court may, if it thinks fit, order such settlement as it thinks reasonable to be made of the property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage or either or any of them.

Power of Court to order settlement of wife's property.

An instrument made under any order of the Court made under this section shall be valid and effectual, notwithstanding the existence of coverture at the time of the execution thereof.

(2) Where the application for restitution of conjugal rights is by the husband, and it appears to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it thinks fit, order a settlement to be made to the satisfaction of the Court of the property or any part thereof for the benefit of the petitioner and of the children of the marriage or either or any of them or may order such part of the profits of trade or earnings, as the Court thinks reasonable, to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

26. The Court may after pronouncing a decree for divorce or for nullity of marriage enquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or any part of the property settled either for the benefit of the children of the marriage, or of the parties to the marriage, as the Court thinks fit, and the Court may exercise the powers conferred by this section notwithstanding that there are no children of the marriage.

Power of Court to make orders as to application of settled property.

Protection
orders.

27. (1) Any wife, in whose property the husband has acquired an interest by virtue of the marriage, may, if deserted by him, apply by petition to the Court for an order to protect any property which she may have obtained or may obtain after the desertion, against him and his creditors and any person claiming under him.

(2) The Court may, if satisfied that the desertion was without reasonable excuse, and that the wife is maintaining herself, make such order.

(3) The order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Position of
wife.

(4) While any such order is in force, the wife shall be, and be deemed to have been from the date of the desertion, in the like position in all respects with regard to property and contracts and suing and being sued, as she would be if she had obtained a decree of judicial separation under this Ordinance.

Discharge and
variation of.

(5) The husband, or any creditor or person claiming under him, may apply to the Court for the discharge or variation of the order, and the Court may, if the desertion has ceased, or if for any other cause it thinks fit so to do, discharge or vary the order accordingly.

(6) If the husband or any creditor or person claiming under him, seizes or continues to hold any property of the wife after notice of any such order, the wife may, by action, recover such property, and also a sum equal to double its value.

Custody and
maintenance of
children.

28. (1) In any proceedings for divorce or nullity of marriage or judicial separation, the Court may from time to time, either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance and education of the children, the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the Court.

(2) On an application made in that behalf the Court may, at any time before final decree, in any proceedings for restitution of conjugal rights, or, if the respondent fails to comply therewith, after final decree, make from time to time all such orders and provisions with respect to the custody, maintenance and education of the children of the petitioner

and respondent as might have been made by interim orders if proceedings for judicial separation had been pending between the same parties.

(3) The Court may, if it thinks fit, on any decree of divorce or nullity of marriage, order the husband, or (in the case of a petition for divorce by a wife on the ground of her husband's insanity) order the wife, to secure for the benefit of the children such gross sum of money or annual sum of money as the Court may deem reasonable; ~~and the Court may for that purpose order that it shall be referred to one of the advocates of the Court to settle and approve a proper deed or instrument to be executed by all necessary parties.~~

vide
Ord: XXXIV/41

Provided that etc
29. (1) When a petition for divorce or nullity of marriage has been presented, proceedings under section 24, section 25, section 26 or sub-section (3) of section 28 of this Ordinance may, subject to and in accordance with the rules made under the provisions of this Ordinance, be commenced at any time after the presentation of the petition:

Amendments as to maintenance, settlement of property, etc.

Provided that no order under any of the said sections or under the said sub-section (other than an interim order for the payment of alimony under section 24 of this Ordinance) shall be made unless and until a decree *nisi* has been pronounced, and no such order, save in so far as it relates to the preparation, execution, or approval of a deed or instrument and no settlement made in pursuance of any such order, shall take effect unless and until the decree is made absolute.

(2) Section 24 of this Ordinance shall apply in any case where a petition for divorce or judicial separation is presented by the wife on the ground of her husband's insanity as if for the references to the husband there were substituted references to the wife, and for references to the wife there were substituted references to the husband, and in any such case and in any case where a petition for divorce, nullity, or judicial separation, is presented by the husband on the ground of his wife's insanity or mental deficiency, the Court may order the payments of alimony or maintenance under the said section to be made to such persons having charge of the respondent as the Court may direct.

30. The Court may from time to time vary or modify any order for the periodical payment of money made under the provisions of this Ordinance either by altering the times of

Power to vary order.

payment or by increasing or diminishing the amount, or may temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part, as the Court thinks just.

PART VII

MISCELLANEOUS

Power to allow intervention on terms.

31. In every case in which any person is charged with adultery with any party to a suit or in which the Court may consider, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the Court may, if it thinks fit, allow that person to intervene upon such terms, if any, as the Court thinks just.

Duties of King's Proctor.

32. In the case of any petition for divorce or for nullity of marriage—

(1) The Court may, if it thinks fit, direct all necessary papers in the matter to be sent to His Majesty's Proctor, who shall under the directions of the Attorney General instruct counsel to argue before the Court any question in relation to the matter which the Court deems to be necessary or expedient to have fully argued, and His Majesty's Proctor shall be entitled to charge the costs of the proceedings as part of the expenses of his office;

(2) Any person may at any time during the progress of the proceedings or before the decree *nisi* is made absolute give information to His Majesty's Proctor of any matter material to the due decision of the case, and His Majesty's Proctor may thereupon take such steps as the Attorney General considers necessary or expedient;

(3) If in consequence of any such information or otherwise His Majesty's Proctor suspects that any parties to the petition are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, under the direction of the Attorney General, after obtaining the leave of the Court, intervene and retain an advocate and subpoena witnesses to prove the alleged collusion.

Provisions as to costs where King's Proctor intervenes or shows cause.

33. (1) Where His Majesty's Proctor intervenes or shows cause against a decree *nisi* in any proceedings for divorce or nullity of marriage, the Court may make such order as to the payment by other parties to the proceedings of the costs

incurred by him in so doing or as to the payment by him of any costs incurred by any of the said parties by reason of his so doing, as may seem just.

(2) Any costs or other expenses incurred by His Majesty's Proctor in so intervening or showing cause which are not fully satisfied by any order made under this section for the payment of his costs, shall be defrayed from the general revenues of the Colony.

34. The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall for the purposes of this Ordinance be competent ^{Evidence.} ~~and compellable~~ to give evidence in the proceedings, but no witness in any such proceedings, whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery. *Ord: XXXIV/41*

35. All decrees and orders made by the Court in proceedings under this Ordinance shall be enforced, and may be appealed from, as if they were decrees or orders made by the Court in the exercise of its civil jurisdiction: ^{Appeals.}

Provided that in suits for dissolution or nullity of marriage no respondent or co-respondent not appearing and defending the suit on the occasion of the decree *nisi* being made shall appeal against the decree being made absolute unless the Court gives leave to appeal at the time of the decree being made absolute:

And provided that no appeal from an order absolute for dissolution or nullity of marriage shall lie in favour of any party who, having had time and opportunity to appeal from the decree *nisi*, shall not have appealed therefrom:

~~And provided that no appeal in any proceedings under this Ordinance shall lie from the Court of Appeal for Eastern Africa to His Majesty in Council except where an appeal would lie in England from a similar decision of the Court of Appeal to the House of Lords.~~ ^{with the leave of the Court of Appeal for Eastern Africa} *Ord: XXXIV/41*

36. (1) The Rules Committee established under the provisions of the Civil Procedure Ordinance, 1924, may make Rules of Court prescribing anything required to be prescribed under this Ordinance and with respect to all matters of practice and procedure under this Ordinance: ^{Rule making power. No. 3 of 1924.}

Provided that until such Rules have been made, the practice and procedure shall be in accordance with Rules set out in the Schedule to this Ordinance.

(2) The power conferred upon the Rules Committee by this section to make Rules shall include the power to rescind, revoke, amend or vary such Rules and the Rules set out in the Schedule to this Ordinance.

Repeat.
Cap. 170.

37. The Divorce Ordinance is hereby repealed: Provided that any proceedings instituted under that Ordinance before the date of commencement of this Ordinance shall be subject in all respects to the provisions of that Ordinance as if this Ordinance had not been enacted.

SCHEDULE

Title.

1. (1) These Rules may be cited as the Matrimonial Causes Rules.

(2) In these Rules the following expressions have the meanings hereinafter respectively assigned to them:—

“Appendix” means the Appendix to these Rules;

“the Ordinance” means the Matrimonial Causes Ordinance, 1939;

“the Divorce Registry” means the Registry of the Supreme Court at Nairobi and includes any District Registry;

“the Registrar” means the Registrar of the Supreme Court and includes any District Registrar;

“a District Registry” means a District Registry of the Supreme Court;

“a District Registrar” means a District Registrar of the Supreme Court;

“undefended cause” means a matrimonial cause in which no answer has been filed or in which all the answers filed have been struck out, but does not include a cause in which (a) the Court is asked to exercise its discretion under section 9 (2) of the Ordinance, or (b) relief is sought under section 7 (d) of the Ordinance;

“defended cause” means a matrimonial cause not being an undefended cause;

“filed” means filed in the Divorce Registry;

“person named” includes a person described as “passing under the name of A.B.”;

“certified copy” means a copy examined in the Divorce Registry against the original, marked as certified by the examining officer and sealed with a seal of the Divorce Registry.

2. (1) An application for leave to present a petition for divorce before three years have passed since the date of the marriage shall be by originating summons in accordance with Form 1 in the Appendix. Applications for leave to present a petition.

(2) There shall be filed in support of the summons an affidavit by the applicant stating the grounds on which the application is made, particulars of the hardship or depravity alleged, whether there are living any children of the marriage and, if so, the names and dates of birth or ages of such children, where and with whom they are residing, whether any, and if so what, attempts at reconciliation have been made and any circumstances which may assist the Court to determine the question whether there is reasonable probability of a reconciliation between the parties and exhibiting a copy of the intended petition.

(3) The intended respondent, after entering an appearance to the summons, may within fourteen days after the expiration of the time limited for appearance file an affidavit in answer to the application.

(4) Within fourteen days after the date of delivery to him of such affidavit the applicant may file an affidavit in reply but no further affidavits may be filed without leave.

(5) When the evidence is completed the Registrar shall fix an appointment for the preliminary consideration of the application and notice thereof in accordance with Form 2 in the Appendix shall, unless otherwise directed, be given by the applicant to the intended respondent and at the appointment so fixed the Registrar shall, in the presence of such of the parties as attend the appointment or their advocates, investigate the question whether there is any reasonable probability of reconciliation between the parties and report thereon in writing to the Judge who shall hear the application in chambers at a time to be appointed for the purpose.

(6) Every report by the Registrar shall be filed and the parties shall be entitled to be supplied with a copy upon payment of the prescribed fee.

3. (1) Every matrimonial cause shall be commenced by filing a petition addressed to the Court. Commencement of proceedings.

- (2) Every application in a matrimonial cause for ancillary relief, that is to say every application for—
- (a) alimony pending suit (except where a claim for such relief is made in the original petition),
 - (b) maintenance of any children of the marriage (in these Rules referred to as “maintenance of the children”),
 - (c) periodical payments by a husband to a wife in whose favour a decree for restitution of conjugal rights has been made, or for periodical payments by a wife against whom such a decree has been made of part of any profits of trade or earnings of which she is in receipt to her husband for his own benefit or to her husband or any other person for the benefit of the children of the marriage or either or any of them (in these Rules referred to as “periodical payments”) or for securing periodical payments to a wife,
 - (d) the allotment of alimony to a wife in whose favour a decree of restitution of conjugal rights has been made or in whose favour or against whom a decree for judicial separation has been made or to a husband where the wife has presented a petition for judicial separation on the ground of his insanity (in these Rules referred to as “permanent alimony”),
 - (e) the payment by a husband on a decree for divorce or nullity of marriage of monthly or weekly sums for the maintenance and support of his wife, or by a wife where she has presented a petition for divorce on the ground of her husband’s insanity, of monthly or weekly sums for his maintenance and support (in these Rules referred to as “maintenance”),
 - (f) the discharge, modification or temporary suspension of an order for periodical payments, securing periodical payments to a wife, alimony pending suit, permanent alimony, maintenance or maintenance of the children (in these Rules referred to as “a modification order”),
 - (g) the securing by a husband on a decree for divorce or nullity of a gross or annual sum of money to his wife or for the benefit of the children of the marriage, or by a wife, where she has presented a petition for divorce on the ground of her husband’s insanity, of a gross or annual sum of money to her husband or

for the benefit of the children of the marriage (in these Rules referred to as "a secured provision"),

- (h) the application of the whole or any part of the property comprised in any ante-nuptial or post-nuptial settlement made on the spouses either for the benefit of the children of the marriage or of the spouses (in these Rules referred to as "variation of marriage settlements"),
- (i) the settlement, in the case of a decree for divorce or judicial separation by reason of the adultery, desertion or cruelty of the wife, or for restitution of conjugal rights made against the wife of the property to which she is entitled either in possession or in reversion or any part thereof for the benefit of her husband and of the children of the marriage or either or any of them (in these Rules referred to as "settlement of a wife's property"),

shall be by notice in accordance with Form 3 in the Appendix issued out of the Divorce Registry.

(3) Unless these Rules otherwise provide, every other application shall be made and any leave or direction shall be obtained by summons to the Registrar or, if these Rules so require, by summons to the Judge.

4. (1) The petition in a matrimonial cause shall state:— Form of
petition.
- (a) the place and date of the marriage and the name and status of the wife before the marriage;
 - (b) the principal permanent addresses where the parties have cohabited within the Colony or, if it be the case, that there has been no address of cohabitation within the Colony;
 - (c) whether there are living any children of the marriage and, if so, the names and dates of birth or ages of such children and, if it be the case, that the paternity of any child of the wife is disputed;
 - (d) the occupation of the husband and the residence and domicile of the parties to the marriage at the date of the institution of the cause;
 - (e) if at the date of the institution of a cause by a wife the husband has deserted the wife, or has been deported from the Colony, and there is reason to

believe that he has changed his domicile since the date of the desertion or deportation, the domicile of the husband immediately before the desertion or deportation, the date when and the circumstances in which the alleged desertion began or the date of the deportation order;

- (f) whether there have been in the Court or a Subordinate Court any, and if so what, previous proceedings with reference to the marriage by or on behalf of either of the parties to the marriage, the date and effect of any decree or order made in such proceedings, and whether there has been any resumption of cohabitation since the making thereof;
- (g) the matrimonial offences alleged or other grounds upon which relief is sought, set out specifically in separate paragraphs;
- (h) in the case of a petition for presumption of death and dissolution of the marriage, the last place of cohabitation of the parties, the circumstances in which the parties ceased to cohabit, and the date when and the place where the respondent was last seen or heard of; and
- (i) in the case of a petition for restitution of conjugal rights, the date when and the circumstances in which the respondent refused or ceased to render conjugal rights to the petitioner, the desire of the petitioner for a restitution of conjugal rights and the willingness on the part of the petitioner to render them to the respondent.

(2) A wife petitioner may include in her petition a claim for alimony pending suit in which case the petition shall contain a statement in general terms of her husband's income and property in so far as they are within her knowledge or belief.

(3) The petition shall conclude with a prayer setting out particulars of the relief claimed including:—

- (a) the amount of any claim for damages;
- (b) any claim for custody of the children of the marriage;
- (c) any claim for alimony pending suit;
- (d) any claim for costs; and

(e) in appropriate cases a prayer that the Court will exercise its discretion to grant a decree *nisi* notwithstanding the adultery of the petitioner during the marriage.

(4) Every petition shall, unless otherwise directed, be signed by the petitioner or, in the case of an infant or person of unsound mind, by his next friend.

5. Unless otherwise directed, where a petition for divorce or a petition for judicial separation in which damages are claimed alleges adultery every alleged adulterer, if male, and living at the date of the filing of the petition, shall be made a co-respondent in the cause, and where a petition contains a claim for costs against a woman named she shall be made a respondent in the cause. Co-respondent.

6. (1) There shall be filed with every petition an affidavit by the petitioner verifying the facts of which the deponent has personal cognizance and deposing as to belief in the truth of the other facts alleged in the petition and, except in the case of a petition for restitution of conjugal rights, stating whether the petition is presented or prosecuted in collusion with the respondent or any of the co-respondents. Affidavit in support of petition.

(2) The affidavit shall also state—

(a) in the case of every petition for divorce or judicial separation where the ground of the petition is adultery, whether the petitioner has in any manner been accessory to or connived at or condoned the adultery, and, where the ground of the petition is cruelty, whether the petitioner has in any manner condoned the cruelty; and

(b) in the case of a petition for nullity under section 13 of the Ordinance, whether the petitioner was at the time of the marriage ignorant of the facts alleged and whether marital intercourse with the consent of the petitioner has taken place since the discovery by the petitioner of the existence of the grounds for a decree; and

(c) in the case of a petition for presumption of death and dissolution of marriage, the steps which have been taken to trace the respondent.

(3) Where a petition for divorce or a petition for judicial separation in which damages are claimed alleges adultery

against a male person who has died before the petition is filed, the affidavit shall prove the death of such person by reference to a death certificate exhibited thereto or by reference to such other evidence as is available.

Notice to appear.

7. (1) A petition and every copy thereof for service upon a respondent or co-respondent shall be endorsed in conspicuous characters with a notice to appear in accordance with Form 4 in the Appendix and, if the petition includes a prayer for alimony pending suit, the petition and the copy to be served on the respondent husband shall also be endorsed with a notice to appear and file evidence in accordance with Form 5 in the Appendix.

(2) A notice of an application for any ancillary relief and every copy thereof for service shall, if the respondent to the application has not already entered an appearance to the petition in the matrimonial cause in which the application is made, contain the notice to appear set out in Form 6 in the Appendix.

(3) A notice of an application for alimony pending suit, permanent alimony, maintenance, maintenance of children, a secured provision, periodical payments or securing periodical payments to a wife and every copy thereof for service shall contain a notice to file evidence in accordance with Form 7 in the Appendix.

Service of
petition,
originating
summons and
notice of
application for
ancillary relief.

8. (1) Unless otherwise directed (a) a certified copy of every petition shall be personally served upon every respondent and co-respondent named therein, (b) a certified copy of every originating summons shall be personally served upon the respondent thereto and (c) a certified copy of every notice of an application for ancillary relief shall be personally served upon the respondent thereto, unless the respondent has entered a general appearance to the petition in the cause in which the application is made in which case the notice may be served by leaving it at the address for service furnished by the respondent. Personal service shall in no case be effected by the petitioner or the intended petitioner.

(2) An application for leave to substitute for personal service some other mode of service or to substitute for service notice of the proceedings by advertisement or otherwise shall be made *ex parte* by lodging with the Registrar an affidavit setting out the grounds on which the application is made.

(3) Where leave is given to substitute for service notice of the proceedings by advertisement, the form of the advertisement shall be settled by the Registrar and copies of the newspapers containing the advertisement shall be filed with a certified copy of the petition, originating summons or notice to which the advertisement relates.

9. (1) A petition, originating summons, notice or other document in a matrimonial cause or matter may be served out of the jurisdiction without leave and, subject as aforesaid, the procedure laid down in Order V, Rules 23 and 29, of the Civil Procedure Rules, 1927, and the provisions of Rule 31 of that Order shall apply to the service of any such petition, originating summons, notice or other document out of the jurisdiction, provided that the official certificate required by paragraph (3) of Rule 29 of that Order shall in the case of a document of which personal service is required by these Rules show the server's means of knowledge as to the identity of the person served.

Service out of jurisdiction.

(2) Where a petition, originating summons or notice of an application for ancillary relief is to be served out of the jurisdiction the time limited for appearance to be endorsed on the petition or contained in the originating summons or notice shall be fixed having regard to the place or country where or within which the petition, originating summons or notice is to be served in accordance with the practice adopted under Rule 26 of the said Order V.

10. (1) A petition shall not proceed to hearing unless the respondent and every co-respondent thereto and every person named therein has entered an appearance or unless it has been shown by an affidavit in accordance with Form 8 in the Appendix which shall be filed, that the respondent, co-respondents and persons named have been duly served with the petition and by certificate issued out of and filed in the Divorce Registry that they have not appeared.

Proof of service.

(2) After service of a petition has been effected, a certificate of service in accordance with Form 9 in the Appendix shall, unless otherwise directed, be filed except in those cases where an affidavit of service is required by the preceding paragraph of this Rule.

Service of other documents.

11. (1) Service of any document on a party who has not entered an appearance shall be personal service, unless otherwise directed, and, where any order or decree is personally served, the original or a certified copy thereof shall be produced to the person served at the time of service.

(2) Any notice or other document by these Rules required to be served but of which personal service is not required, may be served by leaving the same at the address for service furnished by or on behalf of the party on whom the document is to be served.

(3) A copy of every affidavit filed in support of or in answer to an application under Rule 2 or of an application for ancillary relief or in pursuance of an order for particulars, interrogatories or discovery shall be delivered to the opposite party, if he has entered an appearance, at the address for service furnished by him within eight days after the affidavit has been filed and, if he has not entered an appearance and the time for appearance has not expired, a copy of such affidavit shall be personally served upon the opposite party with the originating summons or notice in support of which the affidavit is filed.

Entry of appearance.

12. (1) All appearances shall be entered by delivering to the Registrar a memorandum in writing in accordance with Form 10 in the Appendix dated on the day of its delivery and containing the name of the advocate of the person entering an appearance or stating that that person appears in person and containing an address for service. The person entering the appearance shall at the same time deliver to the Registrar a duplicate of the memorandum which the officer shall issue as a certified copy and return to the person entering the appearance and the duplicate memorandum so issued shall be a certificate that the appearance was entered as stated therein.

(2) Notice of such appearance in accordance with Form 11 in the Appendix shall be given to the opposite party.

(3) Upon receipt of the memorandum of appearance the Registrar shall forthwith enter the appearance in the book provided for the purpose.

Form of appearance.

13. (1) An appearance to a petition or originating summons may be under protest, and an appearance to a petition may be either general or limited to any claim made in the petition for alimony pending suit or to any claim made after the filing of the petition for ancillary relief. The appearance

may be entered at any time before a step has been taken in default and thereafter by leave except that in the case of an application for ancillary relief the respondent may enter an appearance to the petition without leave in accordance with the notice to appear contained in the application and limited to the particular claim for ancillary relief, notwithstanding that a step in default may have been taken against him in the proceedings on the petition.

(2) Any appearance under protest shall state concisely the grounds of protest and the party so appearing under protest shall before the expiration of the time allowed for filing an answer apply for directions as to the determination of any question arising by reason of such appearance under protest and, in default of making such application, shall be deemed to have entered an unconditional appearance. Any such directions may provide for the trial of a preliminary issue with or without a stay of proceedings or for determination of the matters in question at the hearing of the cause and for any interlocutory matters incidental thereto.

14. (1) No supplemental petition shall be filed and no petition shall be amended without leave.

Supplemental
and amended
petitions.

(2) An application for leave shall, unless otherwise directed, be served on every opposite party who has entered an appearance and shall be supported by an affidavit verifying the new facts alleged and deposing, in so far as those new facts are concerned, to the existence or otherwise of collusion, connivance and condonation in the manner required by Rule 6 in the case of the original petition, provided that where no appearance has been entered the application for leave may be made *ex parte* upon production to the Registrar of a certificate of non-appearance and the aforesaid affidavit.

(3) An order made under this Rule shall:—

- (a) in cases where an appearance has been entered in the original proceedings fix the time within which the answer must be filed or amended;
- (b) if made after the Registrar has given his certificate under Rule 29 provide for a stay of the hearing until that certificate has been renewed.

(4) Unless otherwise directed, a copy of the order made under this Rule together with a certified copy of the supplemental petition or of the amended petition shall be personally

served upon the respondent, co-respondent or person named therein and, in the case of a respondent co-respondent or person not named in the original petition, the supplemental petition or amended petition shall be endorsed with a notice to appear in accordance with Form 4 or, as the case may be, with a notice in accordance with Form 12 in the Appendix and the provisions of Rules 8 to 10 shall apply to supplemental and amended petitions as they apply to original petitions.

Interveners.

15. (1) Unless otherwise directed, where a husband is charged with adultery with a named person who is not made a respondent under Rule 5, and where, in a husband's petition for judicial separation, the wife is charged with adultery and no damages are claimed a certified copy of the petition or answer containing such charge shall be personally served on the person with whom adultery is alleged to have been committed, endorsed in lieu of a notice to appear with a notice in accordance with Form 12 in the Appendix that such person is entitled within the time limited thereby to apply for leave to intervene in the cause.

(2) Application for leave to intervene in any cause shall be supported by affidavit, which shall be filed, and leave may be given with such directions as to appearance and procedure as the Registrar shall think fit.

(3) Unless otherwise directed, a party intervening shall join in the proceedings at the stage which those proceedings have reached at the time leave to intervene is given and the name of that party shall appear in the title to the cause from the day on which he enters an appearance.

Answer.

16. A respondent co-respondent or person named who has entered an appearance to a petition may within fourteen days after the expiration of the time allowed for the entry of such appearance file an answer to the petition.

Evidence in support of and service of answer.

17. (1) There shall be filed with every answer, which contains matter other than a simple denial of the fact stated in the petition, an affidavit by the person filing the answer verifying such other matter so far as he has personal cognizance thereof and deposing to his belief in the truth of the rest of such other matter and, where that person is husband or wife of the petitioner, deposing in so far as such other matter is concerned to the existence or otherwise of collusion, connivance and condonation in the manner required by Rule 6 in the case of a petition.

(2) Where the answer of a husband alleges adultery and prays for relief the alleged adulterer shall be added to the title of the cause as "A.B. cited" and shall be served personally with a certified copy of the answer endorsed with a notice to appear as if it were a petition.

(3) Where the answer of a husband alleges adultery but does not pray for relief, a certified copy of the answer shall be served personally on the alleged adulterer endorsed with a notice in accordance with Form 12 in the Appendix that he is entitled within the time thereby limited to apply for leave to intervene in the cause.

18. (1) No reply shall be filed without leave except where relief is claimed in the answer in which case a reply may be filed within fourteen days from the delivery of the answer. Reply.

(2) No subsequent pleading shall be filed except by leave.

19. Any originating summons, notice of an application for ancillary relief, summons, pleading or other document may be amended by leave, subject to any directions as to re-service and as to consequential amendment of pleadings already filed. Amendment of originating summons, etc.

20. No pleading shall be filed out of time without leave after a step in default has been taken. Pleadings out of time.

21. (1) Any party may by letter require any other party to furnish particulars of any allegation or other matter pleaded and, if such other party fails to furnish such particulars within a reasonable time, the party requiring the particulars may apply for an order that particulars be given. Particulars.

(2) All particulars, whether given in pursuance of an order or otherwise, shall be filed together with an affidavit in support within eight days of being furnished to the party requiring them.

22. A copy of every answer (other than an answer of which personal service is required), reply, and subsequent pleading shall within eight days after it is filed be delivered to the opposite parties or their advocates. Delivery of subsequent pleadings.

23. (1) A party to a matrimonial cause may by leave deliver interrogatories in writing for the examination of an opposite party. Discovery.

(2) A copy of the interrogatories proposed to be delivered shall be lodged in the Divorce Registry when the summons is issued and a further copy shall be served with the summons.

(3) Interrogatories shall, unless otherwise ordered, be answered by affidavit to be filed within ten days.

(4) A party to a matrimonial cause may apply for an order for discovery of documents by an opposite party and such opposite party may be ordered to make such general or limited discovery on oath as the Registrar shall think fit.

Medical
inspection.

24. (1) In proceedings for nullity on the ground of the impotence or incapacity of the respondent the petitioner shall, after an answer has been filed or if no answer has been filed or appearance entered to the cause after the expiration of the time allowed for filing an answer or entering an appearance, as the case may be, apply for the appointment of medical practitioners to examine the parties and the Registrar shall upon such application appoint two medical practitioners to examine the parties and to report to the Court the result of the examination and shall order the parties to attend the medical practitioners so appointed for the purposes of the examination.

(2) The order endorsed with notice of the time and place of the examination shall be served personally upon the respondent unless he has appeared in which case the order may be served on his advocate.

(3) The examination shall be held at the consulting room of one of the medical practitioners or at some other convenient place selected by them.

(4) At such medical examination the petitioner's advocate shall produce to the medical practitioners a minute of identification and thereupon the medical practitioners shall call upon the advocates for the parties to identify the parties to be examined by them, and, after identification, the parties and their advocates shall sign their names and the paper bearing such signatures shall be signed by the medical practitioners and annexed to the report.

(5) On a petition for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage either party may apply for the appointment of medical practitioners to examine the parties. Upon such application the Registrar

shall appoint two medical practitioners and either of the parties shall be at liberty to submit himself for examination to the medical practitioners so appointed.

(6) The provisions of paragraphs (3) and (4) of this Rule shall apply to any such examination and the medical practitioners shall report to the Court the result of any examination made by them.

(7) Every report made in pursuance of this Rule shall be filed and either party shall be entitled to be supplied with a copy upon payment of the prescribed fee.

25. (1) Subject to the provisions of the Ordinance and this Rule, the witnesses at the trial or hearing of any matrimonial cause shall be examined *viva voce* and in open Court: Evidence.

Provided that a judge may on application made to him—

(a) subject to the provisions of paragraph (2) of this Rule order that any particular facts to be specified in the order may be proved by affidavit;

(b) order that the affidavit of any witness may be read at the trial or hearing on such conditions as the judge may think reasonable;

(c) order that evidence of any particular facts to be specified in the order shall be given at the trial or hearing by statement on oath of information and belief or by production of documents or entries in books or by copies of documents or entries or otherwise as the judge may direct; and

(d) order that not more than a specified number of expert witnesses may be called.

(2) Where it appears to the judge that any party reasonably desires the production of a witness for cross-examination and that such witness can be produced an order shall not be made authorizing the evidence of such witness to be given by affidavit but the expenses of such witness at the trial shall be specially reserved.

(3) Any party may apply for the appointment of an examiner or for a commission or for letters of request to examine a party or witness in any cause and for leave to give the depositions taken on the examination in evidence at the trial or hearing, and the provisions of Order XXV of the Civil Procedure Rules, 1927, shall apply to the examination.

(4) Nothing in any order made under this Rule shall affect the power of the judge at the trial or hearing to refuse to admit evidence tendered in accordance with any such order if in the interests of justice he should think fit to do so.

Staying proceedings for restitution.

26. At any time after the commencement of proceedings for restitution of conjugal rights the respondent may apply for an order to stay the proceedings by reason that he is willing to resume or to return to cohabitation with the petitioner.

Trial of issues.

27. A judge may direct and a petitioner and any party to a cause who has entered an appearance may apply to a judge for directions for the separate trial of any issue of fact, or any question as to the jurisdiction of the Court.

Discretion statement.

28. (1) Every party to a matrimonial cause praying that the Court shall exercise its discretion to grant a decree *nisi* notwithstanding that party's adultery shall lodge in the Divorce Registry a statement (in these Rules called "a discretion statement") signed by him or his advocate stating that the Court will be asked to exercise its discretion on his behalf notwithstanding his adultery and setting forth particulars of the acts of adultery committed and of the facts which it is material for the Court to know for the purpose of the exercise of its discretion.

(2) Where the application for the Registrar's certificate under Rule 29 is made by the party praying for the discretion of the Court the discretion statement shall be lodged with the application for the Registrar's certificate or, where the application for that certificate is made by any other party to the cause, the discretion statement shall be lodged within ten days after the receipt of notice that the cause has been set down for hearing.

(3) A discretion statement shall be open to the inspection of the King's Proctor but, except by the direction of the judge, shall not be open to inspection by any other person.

(4) Where a discretion statement contains an allegation of adultery or other matrimonial offence on the part of the other spouse which is not referable to any specific allegation in the pleadings notice of such allegation shall be given forthwith to the said spouse provided that if the Court at the hearing is satisfied that failure to give such notice is justified it may be dispensed with.

(5) Neither the fact that a discretion statement has been lodged nor the fact that the said notice has been given nor the contents of the discretion statement or notice shall be given as evidence against the party lodging or giving the same in any matrimonial cause or matter except when that party has put in evidence in open Court the discretion statement or the said notice or the contents thereof.

29. (1) The petitioner or any party who is defending a matrimonial cause shall, before setting down the cause for hearing, refer the pleadings and proceedings in the cause to the Registrar for his certificate that the pleadings and proceedings are in order and for directions as to the place of hearing, and, if the cause is one in which the discretion of the Court is prayed under section 9 (2) of the Ordinance, a statement informing the Registrar of that fact shall be lodged with the pleadings.

Registrar's
certificate and
directions for
trial.

(2) In undefended causes there shall be filed with the application an affidavit by the advocate or the person having conduct of the proceedings stating the locality in which the witnesses whom it is proposed to call at the hearing reside and any other facts relevant to the choice of place of hearing and the Registrar shall after considering the matter issue directions as to the place of hearing with his certificate.

(3) The Registrar may, upon the application of any party, vary any direction given as to the place of hearing of any cause.

30. (1) The petitioner, after the Registrar's certificate has been obtained, shall set the cause down for hearing in the Divorce Registry and, within eight days of having done so, shall file and give to each party in the cause who has entered an appearance notice of his having done so and, if the petitioner fails so to set the cause down within fourteen days after the granting of the Registrar's certificate, any party defending the cause may set the cause down for hearing and within eight days of having done so shall file and give to the petitioner and all other parties in the cause who have entered an appearance notice of his having done so.

Setting down for
hearing.

(2) If an undefended cause is not set down within a month after the granting of the Registrar's certificate the cause shall not be set down unless the Registrar's certificate has been renewed.

(3) No cause shall be entered for hearing at a District Registry less than fourteen days before the session fixed for that Registry except by order of the judge to be obtained *ex parte* by motion and with the consent of the judge going the circuit on which that District Registry is.

(4) Save with the consent of all parties or by leave of the judge, no cause shall be placed in the list for hearing until after the expiration of ten days from the date of setting down.

Right of respondent or co-respondent to be heard on question of costs, custody, access and damages.

31. (1) After entering an appearance, a respondent or co-respondent may, without filing an answer, be heard in respect of any question as to costs and a respondent spouse may, without filing an answer, be heard as to any question of custody of or access to any children of the marriage.

(2) A co-respondent shall not be heard on any question as to damages until he has filed an answer in the cause.

Form of decree.

32. (1) The Registrar shall draw and sign every decree of the Court.

(2) Where in any case there has been a finding of adultery against one of the parties to the cause, but the judge has refused to exercise his discretion under section 9 (2) of the Ordinance that finding and the refusal shall be set out in the decree and where in such a case the judge exercises his discretion the decree shall state that it is made in the exercise of the discretion conferred on the Court by the said section.

(3) A sealed or other copy of any decree of the Court may be issued to any person requiring it on payment of the prescribed fee.

Interventions by King's Proctor.

33. (1) (a) When the King's Proctor desires to show cause against making absolute a decree *nisi* he shall enter an appearance in the cause in which such decree has been pronounced and shall within fourteen days thereafter file his plea setting forth the grounds upon which he desires to show cause and within eight days of filing his plea shall deliver a copy thereof to the person in whose favour such decree has been pronounced or to his advocate.

(b) Where such plea alleges a petitioner's adultery with any named person the King's Proctor shall, unless otherwise directed, personally serve each such person with a copy of his plea omitting such part thereof as contains any allegation in which the person so served is not named. Such copy shall be endorsed with a notice in accordance with Form 12 in

the Appendix so far as the same is applicable. When such service has been effected the King's Proctor shall, unless otherwise directed, file an affidavit of service of a copy of the plea in accordance with Rule 10.

(c) Except as hereinafter provided, these Rules shall apply to all subsequent pleadings and proceedings in respect of such plea as if the plea were an original petition.

(2) If no answer to the plea of the King's Proctor is filed within the time limited or if an answer is filed and has been struck out or not proceeded with, the King's Proctor may apply forthwith by motion to rescind the decree *nisi* and dismiss the petition.

(3) If the charges contained in the plea of the King's Proctor are not denied in the answer thereto, the party in whose favour the decree *nisi* has been pronounced shall apply for the Registrar's certificate that the pleadings are in order and, within fourteen days after obtaining it, set down the intervention for hearing and, within eight days after setting down the intervention, shall file and give to the King's Proctor notice of his having done so. If default is made in setting down and giving notice to the King's Proctor as aforesaid, the King's Proctor may apply forthwith by motion to rescind the decree and dismiss the petition.

(4) If the charges contained in the plea of the King's Proctor are denied in the answer thereto, the King's Proctor shall apply for the Registrar's certificate and, within fourteen days after obtaining it, set down the intervention for hearing and, within eight days after setting down the intervention, shall file and give to the other parties to the intervention notice of his having done so.

34. (1) When any person other than the King's Proctor desires to show cause against making absolute a decree *nisi* he shall enter an appearance in the cause in which the decree *nisi* has been pronounced and shall within four days thereafter file an affidavit setting forth the facts upon which he relies and within eight days of filing such affidavit deliver copies thereof to the party or the advocate of the party in whose favour the decree has been pronounced.

Intervention by
person other
than King's
Proctor.

(2) The party in the cause in whose favour the decree *nisi* has been pronounced may within fourteen days after delivery of the affidavits as aforesaid file an affidavit in answer and within eight days after filing deliver copies thereof to

the person showing cause or to his advocate and if any such affidavits are so filed and delivered the person showing cause may within a further fourteen days file and deliver copies of affidavits in reply.

(3) No affidavits shall be filed in rejoinder to the affidavits in reply without leave.

Interventions
to be heard in
Nairobi.

35. The hearing of any intervention under either of the last two preceding Rules shall take place in Nairobi unless the Chief Justice shall otherwise direct.

Decree absolute.

36. (1) An application by a spouse to make absolute a decree *nisi* pronounced in his favour shall be made to the Court by filing a notice in writing setting forth that application is made for such decree absolute and a time shall be appointed for such decree to be pronounced in open Court, provided that if the application is made after the expiration of one year from the date of the decree *nisi* there shall be filed with the notice an affidavit by the applicant accounting for the delay and the application shall not proceed without the leave of a judge.

(2) An application by a spouse to make absolute a decree *nisi* pronounced against him shall be by motion and a time shall be appointed for such motion to be heard in open Court. Not less than four days' notice of the application and of the time appointed for the hearing thereof shall be given to the petitioner.

(3) No application under this Rule shall be entered in the cause list unless an affidavit has been filed that search has been made in the proper books of the Divorce Registry up to within six days of the time appointed and that at such time no person had intervened or obtained leave to intervene in the cause and that no appearance has been entered or any affidavits filed by or on behalf of any person wishing to show cause against the decree *nisi* being made absolute and, in case leave to intervene had been obtained or appearance entered or affidavits filed by or on behalf of such person, affidavits showing what proceedings, if any, have been taken thereon.

Reversal of
decree of
judicial
separation.

37. (1) A petition to the Court for the reversal of a decree of judicial separation shall set out particulars of the decree the reversal of which is being prayed and the grounds on which the petitioner relies.

(2) No such petition shall be filed unless an appearance has been entered in the cause in which the decree has been pronounced by the party praying for a reversal of the decree. If no such appearance has been entered before the pronouncement of the decree leave to enter an appearance shall be obtained.

(3) A certified copy of the petition shall be personally served upon the party in the cause in whose favour the decree has been made who may within fourteen days after service file an answer thereto. A copy of the answer shall be delivered to the other party in the cause or to his advocate within eight days after the answer is filed.

(4) All subsequent pleadings and proceedings arising out of such petition and answer shall be filed and carried on in the same manner as is by these Rules directed in respect of the original petition and answer thereto so far as such directions are applicable.

38. A wife petitioner who has not included in her petition a prayer for alimony pending suit may make an application for alimony pending suit at any time after filing the petition and a respondent wife or a respondent husband against whom a petition for divorce or judicial separation is presented on the ground of his insanity may make an application for alimony pending suit at any time after entering appearance to a petition.

Alimony pending suit.

39. A petitioner at any time after service of a petition in which custody of any children of the marriage is claimed and the respondent to any such petition, after entering an appearance to the petition, or any person who has obtained leave to intervene in the suit for the purpose of applying for custody, or who has the custody or control of such children under an order of the Court after entering an appearance to the petition for this purpose may make an application for maintenance of the children.

Maintenance of children.

40. (1) An application for maintenance, a secured provision, variation of marriage settlements, or settlement of a wife's property, in the case of proceedings for divorce, may be made by the petitioner at any time after the time for entering an appearance to the petition has expired and by a respondent spouse at any time after entering an appearance to the petition but no application shall be made later than one month after final decree except by leave of a judge.

Maintenance, secured provision, variation of marriage settlements, settlement of wife's property.

(2) An application for settlement of a wife's property, in the case of proceedings for judicial separation or for restitution of conjugal rights, may be made at any time after the pronouncement of the decree.

(3) Upon an application for variation of marriage settlements, settlement of a wife's property or a secured provision the Registrar shall, unless he is satisfied that the proposed variation does not adversely affect the rights or interests of any children of the marriage or that the settlement or secured provision makes adequate provision for any children of the marriage, direct that the children be separately represented on the application by an advocate and may assign a guardian *ad litem* by whom any infant children may appear upon the application. An affidavit of fitness of the proposed guardian, in accordance with Form 14 in the Appendix, shall be filed.

Permanent alimony.

41. An application for the allotment of permanent alimony may be made at any time after the pronouncement of a decree for restitution of conjugal rights or for judicial separation, as the case may be.

Periodical payments.

42. An application for periodical payments or securing periodical payments to a wife may be made at any time after non-compliance with a decree for restitution of conjugal rights but where the application is one for the benefit of children of the marriage and is made by a person who has obtained leave to intervene in the suit for the purpose of applying for custody or has the custody or control of such children under an order of the Court such person shall first enter an appearance to the petition.

Variation of orders for alimony, etc.

43. A petitioner, or a respondent if he has entered an appearance to the petition, may at any time apply for a modification order.

Evidence on applications for alimony, etc.

44. (1) Where a husband is served with a petition in which alimony pending suit is claimed he shall within fourteen days after entering an appearance file an affidavit setting out full particulars of his property and income.

(2) Where a husband is served with a notice of an application for alimony pending suit, permanent alimony, maintenance, maintenance of the children, a secured provision, periodical payments or securing periodical payments to a wife he shall within fourteen days after service of the notice

upon him or if he has not at the time of such service entered an appearance within fourteen days after entering an appearance file an affidavit setting out full particulars of his property and income, unless in the case of any such application other than an application for alimony pending suit the wife at the time of service of the application therefor gives notice to him or to his advocate of her intention to proceed with the application upon the evidence already filed on her application for alimony pending suit.

(3) Where a wife is served with a notice of an application for alimony pending suit, permanent alimony, maintenance, a secured provision or periodical payments, the provisions of the preceding paragraph of this Rule shall apply to the filing of an affidavit by the wife setting out full particulars of her property and income as they apply to the filing of an affidavit by the husband as to his property and income.

45. (1) An application for variation of marriage settlements, or settlement of a wife's property, shall state the nature of the variation or settlement proposed and shall, unless otherwise directed, be supported by an affidavit of the petitioner stating the facts relied on and, in the case of an application for variation of marriage settlements, such affidavit shall set forth full particulars of the marriage any children of the marriage all settlements whether ante-nuptial or post-nuptial and of the funds brought into the settlements by the husband and wife and, in the case of an application for settlement of the wife's property, full particulars of the property to which she is entitled either in possession or reversion.

Evidence in support of application for variation of settlement, etc.

(2) The application shall, in addition to being served on the respondent, be served on the trustees of any settlements and upon such other persons as the Registrar may direct and any party so served may within fourteen days after such service and after entering an appearance file an affidavit in answer.

46. If in an affidavit filed in pursuance of Rules 44 or 45 the husband alleges that the wife has property or income she may, within fourteen days after delivery of the husband's affidavit to her or her advocate, file an affidavit in reply to that allegation but no further evidence shall be filed by any party without leave.

Further evidence on applications for alimony, etc.

Evidence on application for variation of orders for alimony, etc.

47. (1) An application for a modification order shall be supported by an affidavit of the applicant giving full particulars of his property and income and the grounds on which the application is made.

(2) The respondent to the application may, within fourteen days after delivery of the affidavit to him or to his advocate, and, unless he is the petitioner in the cause after entering an appearance, file an affidavit in reply but no further evidence shall be filed by any party without leave.

Preliminary investigation by Registrar.

48. On an application for ancillary relief the Registrar shall fix an appointment for the hearing of the application and notice thereof shall be given by the applicant to every other party to the application who has entered an appearance, and at the appointment so fixed the Registrar shall in the presence of the parties or their advocates investigate the allegations made in support of and in answer to the application and may order the attendance of the spouses and any other person for the purpose of being examined or cross-examined, or may take the oral evidence of witnesses, and at any stage of the proceedings may order the discovery and production of any document or call for further affidavits.

Applications heard by Registrar.

49. In the case of a claim for alimony pending suit contained in a petition or of an application for ancillary relief other than an application for settlement of the wife's property or variation of marriage settlements where there are children of the marriage, the Registrar shall, after conducting his investigation under the last foregoing Rule, make such order as he thinks fit or refer the application or any question arising therefrom to the judge for his decision and pending the final determination of such an application he may make an interim order upon such terms as he may think just.

Applications heard by Judge.

50. (1) In the case of an application for settlement of the wife's property or variation of marriage settlements where there are children of the marriage the Registrar shall, after conducting his investigation, report in writing to the judge the result of his investigations, adjourn the application to the judge, and file his report.

(2) Any party shall be entitled to be supplied with a copy of the Registrar's report upon payment of the prescribed fee.

(3) The judge upon hearing the application may confirm or vary the report or make such other order as he thinks fit.

51. (1) When custody of any children of the marriage is claimed in any petition, the petitioner or the respondent spouse or guardian or any person who has obtained leave to intervene in the suit for the purpose of applying for custody or who has the custody or control of such children under an order of the Court, after entering an appearance to the petition for this purpose, may apply at any time either before or after final decree to a judge for an order relating to the custody, or education of such children or for directions that proper proceedings be taken for placing such children under the protection of the Court.

Custody of and access to children.

(2) A petitioner may at any time after filing a petition in a matrimonial cause and a respondent may at any time after entering an appearance apply for access to any children of the marriage but an application for access by the spouse against whom a decree, whether *nisi*, final or absolute, has been pronounced, shall be made to the judge unless the other party consents to give access to the children and the only question for determination on the application is the extent to which access shall be given.

52. On any application under these Rules relating to any children of the marriage the applicant shall file a statement as to whether any and, if any, what proceedings relating to any of those children are in progress in the Court.

Information as to other proceedings relating to children.

53. The name of the cause or matter and of the person taking out a summons shall be endorsed thereon and a copy of the summons shall be served on the party to whom the summons is addressed or on his advocate one clear day at least before the summons is returnable.

Proceedings in chambers.

54. On the day and at the hour named in the summons the party taking out the same shall attend with the original summons at the place appointed for hearing. If any party to the summons does not appear after the lapse of a reasonable time after the time appointed in the summons the judge or Registrar, as the case may be, may proceed in his absence upon being satisfied by affidavit or otherwise that any party not in attendance had due notice of the time appointed.

Hearing of summons.

55. A party may appeal from an order or decision of a Registrar to a Judge in Chambers by summons to be issued within five days of the order or decision complained of and returnable on the first day on which summonses are heard

Appeals from Registrar.

after that period has elapsed but such appeal shall not, unless otherwise ordered, act as a stay of the order or decision complained of.

Subpoenas. 56. Subpoenas in any cause or matter to which these Rules relate may issue out of the Divorce Registry at which the cause or matter is to be heard.

Attachment and committal. 57. An application for attachment or committal shall be made to a judge and any person attached or committed may apply to a judge for his discharge.

Enforcement of orders. 58. (1) In default of payment to any person of any sum of money at the time appointed for the payment thereof, an application may be made to a Judge in Chambers supported by affidavit (of service of the order and of non-payment) and the judge may make such order as to attachment of the person or of the property of the person so failing to pay as in the circumstances may seem expedient.

(2) A decree or order requiring a person to do an act thereby ordered shall state the time within which the act is to be done, and the copy to be served upon the person required to obey the same shall be endorsed with a notice in accordance with Form 13 in the Appendix.

(3) Where a party who has been ordered to lodge damages in Court fails to do so in accordance with the order the party in whose favour the order was made may apply to the judge at any time to vary the order by directing the payment of such damages to an individual to be specified in the application and the judge, if satisfied that in the circumstances it is just and equitable to do so, may vary the order for lodgment of damages accordingly upon an undertaking by that individual to lodge the same in Court or otherwise deal with the same as and when received as the judge may direct, provided that if the application is made after decree absolute the judge may, if satisfied as aforesaid, dispense with the undertaking.

(4) Where a party who has been ordered to pay costs into Court fails to do so in accordance with the order the party in whose favour the order was made may apply to a Registrar to vary the said order by directing payment to an individual to be specified in the application and the Registrar, if satisfied that in the circumstances it is just and equitable to do so,

may vary the order accordingly, provided that, if the application is made before decree absolute, the order shall only be made upon the individual undertaking to pay the costs into Court as and when received.

59. (1) Unless a judge shall otherwise direct, four clear days' notice of any motion, other than an *ex parte* motion, to be made to the Court shall be served on all parties who may be affected by the proposed order. Motions.

(2) A copy of the notice so served shall be filed in the Divorce Registry, and the affidavits to be used in support of the motion and original documents referred to therein or intended to be used at the hearing of the motion shall at the same time be lodged in the Divorce Registry. Copies of all such affidavits or documents shall be delivered upon request to the parties who are entitled to be heard upon the motion.

60. (1) An infant or a person of unsound mind may commence and prosecute any cause to which these Rules relate by his next friend and may defend or intervene in any such cause by his guardian appointed for that purpose. Infants and persons of unsound mind.

(2) When in any such cause any document is required to be personally served and the person on whom service is to be effected is an infant that document shall, unless otherwise directed, be served on the father or guardian of the infant or, if none, upon the person with whom the infant resides or under whose care he is and service so effected shall be deemed good service on the infant provided that the Registrar may order that service made or to be made on the infant shall be deemed good service.

(3) When in any such cause any document is required to be personally served and the person on whom service is to be effected is of unsound mind, that document shall, unless otherwise directed, be served upon the person with whom the person of unsound mind resides or under whose care he is and service so effected shall be deemed good service upon the person of unsound mind.

(4) Any document served in accordance with the last foregoing paragraph shall be endorsed with a notice that the contents or purport of the document shall be communicated to the person of unsound mind to whom it relates unless the person on whom the document was served is satisfied, after consultation with the medical attendant of the person of

unsound mind or the medical officer of the institution in which the person of unsound mind is, that the communication would be detrimental to the mental condition of the person of unsound mind and, in a case where any order has been made under the Indian Lunacy (District Courts) Act, 1858, as applied to the Colony, in respect of the person of unsound mind appointing a manager with a further notice that the contents and purport of the document shall be communicated to the manager so appointed.

(5) After service of any document has been effected upon a person of unsound mind in accordance with the two preceding paragraphs of this Rule, the party at whose instance the document was served shall, unless otherwise directed, file an affidavit made by the person with whom the person of unsound mind resides or under whose care he is, stating whether or not the contents or purport of the document were communicated to the person of unsound mind and, if not, giving the reasons why the contents or purport of the document were not so communicated.

(6) Before the name of any person shall be used in any proceedings as next friend such person shall sign a written authority to the advocate for that purpose. The authority shall be attested by an advocate who shall certify that the proposed next friend has no interest in the proceedings adverse to that of the infant or of the person of unsound mind.

(7) No order for the appointment of a guardian under this Rule shall be necessary but the advocate seeking to enter appearance shall make and file an affidavit of fitness in accordance with Form 14 in the Appendix.

(8) Where a petition, originating summons or answer has been served on a person who is an infant or a person of unsound mind and no appearance has been entered in the cause or no application for leave to intervene has been made by or on behalf of the infant or person of unsound mind, the party at whose instance the petition, originating summons or answer was served shall, before proceeding further with the cause, apply for an order that some proper person be assigned guardian of the infant or person of unsound mind by whom he may appear and defend or intervene in the proceedings.

Paupers.

61. Any person may be admitted to take or defend or be a party to any matrimonial proceedings under these Rules

in forma pauperis subject to his or her satisfying the Court that he or she is not in possession of sufficient means to enable him or her to pay the fees hereinafter prescribed for such proceedings: Provided that such person shall satisfy the Court or a judge that he or she has reasonable grounds for taking or defending or being a party to such proceedings. The procedure on application for leave to take or defend or be a party to any matrimonial proceedings *in forma pauperis* and the steps subsequent thereto shall be governed by Order XXX of the Civil Procedure Rules, 1927, and subsequent amendments thereto, *mutatis mutandis*.

62. Every decree and order in a cause or matter to which these Rules relate proceeding in a District Registry shall be entered in the District Registry in a book provided for the purpose and a certified copy of every decree so entered shall be transmitted by the District Registrar to the Registrar, and shall be filed by him.

Entry of
decree or order.

63. All bills of costs shall be referred to a Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Justice may appoint for the taxation of bills. Such bills shall be filed and notice of the time appointed for taxation shall be given to the party filing the bill at the address furnished by him, and he shall give the other parties to be heard on the taxation at least three clear days' notice of the appointment and shall at the same time or previously deliver to them a copy of the bill to be taxed.

Taxation.

64. When any party to be heard on the taxation does not attend at the time appointed, the Registrar or taxing officer may nevertheless proceed to tax the bill after the expiration of a quarter of an hour upon being satisfied by affidavit or otherwise that any party not in attendance had due notice of the time appointed.

Taxation in
absence of party.

65. The bill of costs of an advocate shall be taxed on his request as against his client after sufficient notice given to the person or persons liable for the payment thereof, or on the request of such person after sufficient notice given to the advocate.

Taxation as
between advocate
and client.

66. In matrimonial causes and matters to which these Rules relate costs allowed to advocates and the taxation of such costs shall, subject to the provisions of these Rules, be

Application of
Part XIII of the
Rules of
Supreme
Court.

in accordance with the provisions of Part XIII of the Rules of the Supreme Court, so far as the same are applicable thereto.

Taxing fees.

67. The fees payable on the taxation of any bill of costs shall be paid by the party on whose application the bill is taxed and shall be allowed as part of such bill.

Certificate of taxation.

68. (1) Upon the Registrar's certificate as to costs being signed, an order of the Court for payment of the amount within seven days, or such other time as the Registrar shall direct, may issue.

(2) An order for payment of costs contained in a decree *nisi*, if drawn up before the decree *nisi* is made absolute, shall direct payment into Court, and such costs shall not be paid out of Court to the party entitled to receive them under the decree *nisi* until that decree has been made absolute; but a wife, who is unsuccessful in a cause and who at the hearing of the cause has obtained an order of the judge for costs, may nevertheless proceed at once to obtain payment of such costs after allowance thereof on taxation.

Security for wife's costs.

69. (1) A wife who is petitioner or who has entered an appearance to a petition may at the hearing of an application for a commission or for letters of request or for the appointment of a special examiner to examine a party or witness who is outside the jurisdiction of the Court ask for security for her costs of and incidental to such examination or may apply for such security at any time after such an examination is granted and the Registrar, after ascertaining what is a sufficient sum of money to cover the costs of the wife of and incidental to the examination, may, unless the husband shall prove that the wife has sufficient separate estate or show other good cause, order the husband to pay into Court or to secure the costs of and incidental to the examination within such time as he may fix.

(2) A wife who is petitioner or who has filed an answer may, after the Registrar's certificate that the pleadings are in order has been given or at an earlier stage of a cause with leave, file her bill of costs for taxation as against her husband and ask for security for her costs of and incidental to the hearing of the cause, provided that a wife who is a poor person may not file her bill of costs for taxation without leave.

(3) The Registrar or taxing officer to whom such bill of costs is referred for taxation shall ascertain what is a sufficient sum of money to cover the costs of the wife of and incidental to the hearing of the cause and may, unless the husband shall prove that the wife has sufficient separate estate or show other good cause, order the husband to pay to the wife or into Court her costs up to the setting down of the cause and to pay into Court or secure the costs of and incidental to the hearing within such time as he may fix, and may direct a stay of the proceedings until the order is complied with.

(4) The bond taken to secure the costs of a wife of and incidental to such an examination or to the hearing of a cause shall be given to the Registrar and shall be filed and shall not be delivered out or sued upon without leave.

70. Persons entitled to payment of money out of Court on applying for the same shall lodge in the Divorce Registry duplicate forms in writing setting forth the date on which the money applied for was paid into Court, the amount applied for, and the name and address of the person to receive the same.

71. The following fees shall be chargeable:—	Fees.
	<i>Sh. cts.</i>
(1) On a petition for divorce or declaration of nullity of marriage, judicial separation, restitution of conjugal rights—	
(a) in non-native cases	150 00
(b) in cases of natives, Arabs, Abyssinians (Amhara, Tigre and Shoa), Somalis, Baluchis born in Africa, Malagasies and Comoro Islanders	30 00
(2) Where a protection order is applied for, a fee calculated according to the ordinary scale for civil suits upon the estimated value of the property to be protected.	
(3) On filing a notice of motion or chamber application, a filing fee of	10 00
On order thereon	5 00
On service—such fees as are levied from time time according to the scales fixed by the Supreme Court.	
(4) In all other cases the fees chargeable in matters relating to civil suits.	

Payment of
money out of
Court.

1939

Matrimonial Causes

No. XXXIII

FORM 3

Notice of an Application for Ancillary Relief

In the Supreme Court of Kenya at

IN THE MATTER OF A PETITION BY _____ for [here set out
particulars of the matrimonial cause in which the application is
made].

To _____ of _____

TAKE NOTICE that the petitioner (respondent) intends to apply to
the Court for an order that [here set out the ancillary relief claimed].

(1)

THIS NOTICE is issued by (2) _____ of _____
Dated the _____ day of _____ 19 .

(1) Insert here in
appropriate cases
the contents of
form 6 and/or 7.
(2) State name
and address of
applicant or
advocate.

FORM 4

Notice to Appear to be endorsed on a Petition

In the Supreme Court of Kenya at

To _____ of _____

TAKE NOTICE that you are required, within eight days⁽¹⁾ after
service hereof upon you, inclusive of the day of such service, to enter
an appearance either in person or by your advocate at the Divorce
Registry at _____, should you think fit so to do, and
thereafter to make answer to this petition⁽²⁾ and that, in default of
your so doing, the Court will proceed to hear the petition⁽²⁾ and
pronounce judgment, your absence notwithstanding.

(1) Or as the case may be.

(2) Or answer.

[If the petition includes a claim for alimony pending suit here
insert the contents of Form 5.]

The petition⁽³⁾ is filed and this notice is issued by⁽⁴⁾

DATED at _____ the _____ day of _____ 19 _____

Registrar.

(3) Or answer.
(4) Stating name
and address of
petitioner or
advocate.

Note.—Any person entering an appearance must at the same time
furnish an address for service.

FORM 5

*Additional Notices to be included in a Notice to Appear (Form 4)
where the Petition contains a claim for alimony pending suit*

AND FURTHER TAKE NOTICE that should you not desire to be
heard on this petition in regard to any relief claimed other than the
claim for alimony pending suit you are at liberty within eight days⁽¹⁾
after service hereof upon you, inclusive of the day of such service,
to enter an appearance in manner aforesaid to the said petition limited
to that claim and that in default of your so doing, the Court will
proceed to hear and determine such claim and may order payment
of alimony pending suit, your absence notwithstanding.

(1) Or as the case may be.

AND FURTHER TAKE NOTICE that in the event of your entering
an appearance to the said petition either generally or limited to the
claim for alimony pending suit you are required within fourteen days
thereafter to file in the Divorce Registry an affidavit in pursuance of
Rule 44 of the Matrimonial Causes Rules, giving full particulars of
your property and income.

FORM 6

Notice to Appear to be contained in a Notice of an Application for Ancillary Relief where no Appearance has been entered to the Petition

AND FURTHER TAKE NOTICE that should you the said

(1) Or as the case may be.

desire to be heard on the said application you are at liberty within eight days⁽¹⁾ after service hereof upon you inclusive of the day of such service to enter an appearance to the said petition limited to the subject matter of the said application either in person or by your advocate at the Divorce Registry at _____, and that in default of your so doing the Court may proceed to hear the said application and make such order thereon as it may think fit your absence notwithstanding.

Note.—If you enter an appearance you must at the same time furnish an address for service.

FORM 7

Notice to File Evidence to be contained in a Notice of an Application for alimony pending suit, permanent alimony, maintenance, maintenance of children, a secured provision, periodical payments or securing periodical payments to a wife.

(1) If contents of form 6 are omitted.

(2) If contents of form 6 are included.

(3) Omit if contents of form 6 are included.

AND FURTHER TAKE NOTICE that unless at the time of the service hereof upon you the applicant or her advocate gives notice to you dispensing with this requirement you are required within fourteen days after [(1) such service] [(2) entering an appearance] to file in the Divorce Registry [(3) of the Supreme Court of Kenya] an affidavit in pursuance of Rule 44 of the Matrimonial Causes Rules, giving full particulars of your property and income.

FORM 8

Affidavit of Service

In the Supreme Court of Kenya at

Between

Petitioner

and

Respondent

and

Co-respondent.

I, _____ of _____ make oath and say:—

1. That a certified copy of the _____ bearing date the _____ day of _____ 19 _____ filed in this Court [issued out of the Divorce Registry] was duly served by me on the said _____ at _____ on the _____ day of _____ 19 _____ by delivering to the said _____ personally a certified copy thereof

[Petition, originating summons or notice.]

(Means of knowledge of identity of the person served must be inserted here.)

SWORN etc.

1939

Matrimonial Causes

No. XXXIII

FORM 9

Certificate of Service

A certified copy of the petition⁽¹⁾ dated the
was duly served by the undersigned G.H. on
of [] at
on the day 19

day of 19
[]⁽²⁾

(1) Or as the
case may be.
(2) Here insert
the name of the
person served.

(Signed) G.H.

FORM 10

Memorandum of Appearance

In the Supreme Court of Kenya at

Between

and

Petitioner

and

Respondent

Co-respondent⁽¹⁾

Enter an appearance [in person]⁽²⁾ for
the respondent⁽³⁾ in this cause [generally] [limited to
the claim made in the petition for alimony pending suit] [limited to
the claim for
made by notice dated the day of 19].

(1) In appro-
priate cases.
(2) If such is
the case.
(3) Or as the
case may be.

Signed
of
whose address for service is
agent for

of

FORM 11

Notice of Appearance

In the Supreme Court of Kenya at

Between

and

Petitioner

and

Respondent

Co-respondent⁽¹⁾

To the petitioner⁽²⁾ or [his or her advocate]

TAKE NOTICE that appearance has been entered in this cause for
the respondent⁽³⁾ [name of person appearing]⁽⁴⁾

Dated the day of 19

(Signed)

of
whose address for service is
agent for

of

(1) Or as the
case may be.
(2) Or as the
case may be.
(3) Or as the
case may be.
(4) State whether
the appearance is
general or
limited to any
particular relief.

FORM 12

Notice to a Person entitled to Intervene

In the Supreme Court of Kenya at

To _____ of _____

(1) Or as the case may be.

TAKE NOTICE that you are entitled within eight days⁽¹⁾ after service hereof upon you, inclusive of the day of such service to apply upon summons for leave to enter an appearance either in person or by your advocate at the Divorce Registry at _____, and to intervene in this cause, should you think fit so to do, and thereafter to make answer to the charges in this petition,⁽²⁾ and that, in default of your so doing, the Court will proceed to hear the said charges proved and pronounce judgment, your absence notwithstanding.

(2) Or answer.

(3) Or answer.
(4) Stating name and address of petitioner or advocate.

The Petition⁽³⁾ is filed and this Notice is issued by⁽⁴⁾ _____ of _____

Dated at _____ the _____ day of _____ 19 _____ Registrar

Note.—Any person entering an appearance must at the same time furnish an address for service.

FORM 13

Notice to be endorsed on a Decree or Order

TAKE NOTICE that if you the within-named A.B. neglect to obey this decree [or order] within the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same.

Advocate for the _____

FORM 14

Affidavit of fitness of guardian ad litem

In the Supreme Court of Kenya at _____

Between _____ *Petitioner*
and _____ *Respondent*
and _____ *Co-respondent*

I _____ of _____ the advocate for [a member of the firm of XY & Co. advocates for] the above named [respondent] [co-respondent] C.D. a make oath and say as follows:—

(1) [I am informed and verily believe that] A.B. of _____ is a fit and proper person to act as guardian *ad litem* of the above named [respondent] [co-respondent] and the consent of the said A.B. to act as such guardian is hereto annexed.

(2) The said A.B. has no interest in the matters in question in this cause adverse to that of the said _____

Sworn etc.

ORDINANCE No. XXXIV of 1939

Assented to in His Majesty's name this twenty-second day of December, 1939.

W. HARRAGIN,
Acting Governor.

[22ND DECEMBER, 1939.] Date of assent.

An Ordinance to Amend the Penal Code

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:—

<p>1. This Ordinance may be cited as the Penal Code (Amendment) Ordinance, 1939, and shall be read as one with the Penal Code, 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.</p>	<p>Short title and commencement. No. 10 of 1930.</p>
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<p>2. Section 18 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—</p>	<p>Repeal and replacement of section 18 of the Principal Ordinance.</p>
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<p>“18. Subject to any express provisions in this Code or any other law in operation in the Colony, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English common law.”</p>	<p>Defence of person or property.</p>
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<p>3. The Principal Ordinance is hereby amended by inserting therein, immediately after section 18 thereof, the following new section:—</p>	<p>Amendment of the Principal Ordinance.</p>
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<p>“18A. Where any person is charged with a criminal offence arising out of the lawful arrest, or attempted arrest, by him of a person who forcibly resists such arrest or attempts to evade being arrested, the court shall, in considering whether the means used were necessary, or the degree of force used was reasonable, for the apprehension of such person, have regard to the gravity of the offence which had been or was being committed by such person and the circumstances in which such offence had been or was being committed by such person.”</p>	<p>Use of force in effecting arrest.</p>
--	--

1939

Penal Code

No. XXXIV

4. Section 24 of the Principal Ordinance is hereby amended by adding thereto, immediately after paragraph (8) thereof, the following new paragraph:—
 Amendment of section 24 of the Principal Ordinance.
- “(9) Any other punishment provided by this Code or by any other Ordinance.”
5. Sub-section (1) of section 27 of the Principal Ordinance is hereby amended by deleting therefrom the last sentence thereof.
 Amendment of section 27 (1) of the Principal Ordinance.
6. Sub-section (2) of section 28 of the Principal Ordinance is hereby amended by deleting therefrom the last two lines thereof and by substituting therefor the following:—
 Amendment of section 28 (2) of the Principal Ordinance.
- “Exceeding Sh. 400 6 months.”
7. Section 32 of the Principal Ordinance is hereby amended by deleting therefrom the word “not” which occurs in the twelfth line thereof.
 Amendment of section 32 of the Principal Ordinance.
8. The Principal Ordinance is hereby amended by inserting therein, immediately after section 33A thereof, the following new section:—
 Amendment of the Principal Ordinance.
- “33B. (1) Where, in any trial before a subordinate court, the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge.
 Discharge of offender without punishment.
- (2) An order made under this section shall, for the purpose of re-vesting or restoring stolen property, and of enabling the court to make any order under the provisions of sections 171 and 172 of the Criminal Procedure Code, have the like effect as a conviction.”
 No. 11 of 1930.
9. Sub-section (1) of section 52 of the Principal Ordinance is hereby amended—
 Amendment of section 52 (1) of the Principal Ordinance.
- (a) by deleting therefrom the words “But it is not a seditious intention” which occur immediately before paragraph (a) thereof and substituting therefor the words “But an act, speech or publication is not seditious by reason only that it intends”;

- (b) by deleting therefrom the colon which occurs at the end of paragraph (d) thereof and substituting therefor a full stop; and
- (c) by repealing the proviso thereto.

10. Section 53 of the Principal Ordinance is hereby amended by adding thereto, immediately after sub-section (2) thereof, the following new sub-section:—

Amendment of section 53 of the Principal Ordinance.

“(3) It shall be a defence to a charge under the preceding sub-section that the person charged did not know that the publication was seditious when it came into his possession and that he did, as soon as the nature of the publication became known to him, deliver the publication to the nearest administrative officer or to the officer in charge of the nearest police station.”

11. Section 60 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

Repeal and replacement of section 60 of the Principal Ordinance.

“60. (1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of a misdemeanour.

Publication of false news likely to cause fear and alarm to the public.

(2) It shall be a defence to a charge under sub-section (1) of this section if the accused proves that, prior to publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true.”

12. Section 151 of the Principal Ordinance is hereby repealed.

Repeal of section 151 of the Principal Ordinance.

13. The Principal Ordinance is hereby amended by inserting therein, immediately after section 168 thereof, the following new section:—

Amendment of the Principal Ordinance.

“168A. (1) The Governor may, by notice in the Gazette, upon the application of any persons who perform, or who are members of any organization which performs, any service which, in his opinion, is in the public interest, declare that any uniform, badge, button or other distinctive mark used by such persons and described in the notice shall be for the exclusive use of such persons.

Wearing of uniforms declared to be for the exclusive use of persons performing services in the public interest.

(2) Any person who, without the authority of the persons upon whose application a notice under this section has been published in the Gazette, uses or wears any uniform, badge, button or other distinctive mark described in the notice, or any uniform, badge, button or other distinctive mark so closely resembling the same as to lead to the belief that it is a uniform, badge, button or other distinctive mark so described, is guilty of a misdemeanour, and is liable to imprisonment for one month or to a fine of ten pounds:

Provided that nothing in this section shall prevent any person from using or wearing any such uniform, badge, button or other distinctive mark in the course of a stage play performed in any public place in which stage plays may lawfully be publicly performed, or in the course of a music-hall or circus performance, or in the course of the making or production of a cinematograph film, if the uniform, badge, button or other distinctive mark is not used or worn in such a manner or in such circumstances as to bring it into contempt.

(3) Any person who, without the authority of the persons upon whose application a notice under this section has been published in the Gazette, imports or sells or has in his possession for sale any uniform, badge, button or other distinctive mark described in the notice is guilty of a misdemeanour, and is liable to imprisonment for six months or to a fine of one hundred pounds.

(4) When any person shall have been convicted of any offence under this section, the uniform, badge, button or other distinctive mark in respect of which the offence has been committed shall be forfeited unless the Governor shall otherwise order."

14. Section 192A of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

Repeal and replacement of section 192A of the Principal Ordinance.

"192A. Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding

Infanticide.

that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, she shall be guilty of felony, to wit, infanticide, and may for such offence be dealt with and punished as if she had been guilty of manslaughter of the child."

15. Section 255 of the Principal Ordinance is hereby amended—

Amendment of section 255 of the Principal Ordinance.

(a) by inserting therein, immediately before the word "the" which occurs in the third line thereof, the words "or the young thereof"; and

(b) by deleting the word "cattle" which occurs in the marginal note thereto and by substituting therefor the word "stock".

16. Section 293 of the Principal Ordinance is hereby repealed and the following section substituted therefor:—

Repeal and replacement of section 293 of the Principal Ordinance.

"293. Any person who for gain or reward undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, is guilty of a misdemeanour."

Pretending to tell fortunes.

17. Sub-section (1) of section 296A of the Principal Ordinance is hereby amended by substituting the words and figures "section 296 or section 296B of this Code" for the words "the last preceding section" which occur in the second line thereof.

Amendment of section 296A (1) of the Principal Ordinance.

18. The Principal Ordinance is hereby amended by inserting therein, immediately after section 296A thereof, the following new section:—

Amendment of the Principal Ordinance.

"296B. (1) The Governor may by notice in the Gazette give directions as to the marks which may be applied in or on any stores under the control of any branch or department of, and being the property of, the Government of the Colony or the Kenya and Uganda Railways and Harbours.

Power of Governor to notify applied marks for public stores.

(2) Any person who is charged with conveying or having in his possession, or keeping in any building or place, whether open or enclosed, any stores so marked, which may be reasonably suspected of having been stolen or unlawfully obtained, and who shall not give an

Unlawful possession of Government and Kenya and Uganda Railways and Harbours stores.

account to the satisfaction of the court how he came by the same, is guilty of a misdemeanour.

(3) For the purposes of this section the term "stores" includes all goods and chattels and any single store or article or part thereof, and the word "marks" includes mark or any part of a mark." Interpretation.

19. Section 307 of the Principal Ordinance is hereby amended by deleting therefrom the comma and words ", with or without corporal punishment" which occur at the end thereof. Amendment of section 307 of the Principal Ordinance.

20. Section 308 of the Principal Ordinance is hereby amended by deleting therefrom the comma and words ", with or without corporal punishment" which occur at the end thereof. Amendment of section 308 of the Principal Ordinance.

21. The heading to Chapter XXXVI of the Principal Ordinance is hereby amended by deleting therefrom the full stop which occurs immediately after the word "COIN" and by adding thereto immediately after such word, the words and full stop "AND BANK AND CURRENCY NOTES." Amendment to heading of Chapter XXXVI of the Principal Ordinance.

22. The Principal Ordinance is hereby amended by inserting therein, immediately after section 339 thereof, the following new sections:— Amendment of the Principal Ordinance.

"339A. Any person who melts down, breaks up, defaces by stamping thereon any name, word or mark, or uses otherwise than as currency any silver coin current for the time being in the Colony is guilty of a misdemeanour and is liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for six months, or to both such fine and imprisonment. Melting down of currency.

339B. Any officer of the Government or the manager of any bank who receives, during the performance of his duties, any coin which he has reasonable ground for believing to be counterfeit coin shall impound such coin and transmit it to the Accountant General who may cut, deface or destroy it with or without compensation, as he thinks fit, if in his opinion it is counterfeit. For the purposes of this section the decision of the Accountant General that the coin is counterfeit and that compensation shall be granted or withheld shall be final, and no person shall be entitled to claim and no proceedings or action shall be brought against the Accountant General, the Government, the officer of Government concerned, Impounding and destruction of counterfeit coins.

the manager of the bank concerned or his bank in respect of any loss or damage suffered by reason of such impounding and cutting, defacing or destruction.”

23. The Principal Ordinance is hereby amended by inserting therein, immediately after section 344 thereof, the following new section:—

Amendment of the Principal Ordinance.

“344A. Any person who without lawful authority or excuse, the proof whereof lies upon him, sells or offers or exposes for sale any article which bears a design in imitation of any currency or bank note or coin in current use in the Colony or elsewhere is guilty of a misdemeanour and is liable to imprisonment for six months.”

Selling articles bearing designs in imitation of currency.

24. Section 345 of the Principal Ordinance is hereby amended by inserting therein, immediately after the word “metal” which occurs in the fifth line thereof, the words “or any article bearing a design in imitation of any currency, bank note or coin”.

Amendment of section 345 of the Principal Ordinance.

25. (1) The Attorney General may consolidate into one edition the Principal Ordinance and all Ordinances (including this Ordinance) amending the same and in preparing such consolidated edition shall have powers to renumber and rearrange the order and/or sequence of any section or sections and make any amendments necessary and consequential to such renumbering and re-arrangement, but so that such powers shall not be taken to imply any power to make any alteration or amendment in the matter or substance of any section of the Principal Ordinance or any Ordinance (including this Ordinance) amending the same.

Consolidation and reprinting.

(2) When such consolidated edition has been prepared it shall be lawful for the Government Printer, with the authority of the Governor in Council, to print copies of the said edition and such copies shall be deemed to be and shall be without any question whatsoever in all Courts of Justice and for all purposes authentic copies of the Principal Ordinance and all Ordinances (including this Ordinance) amending the same.

26. The Currency Ordinance (Chapter 43 of the Revised Edition) is hereby repealed.

Repeal, Cap. 43

Ord: 1/11
 Xx/11

ORDINANCE No. XXXV of 1939

Assented to in His Majesty's name this twenty-second day
of December, 1939.

W. HARRAGIN,
Acting Governor.

[22ND DECEMBER, 1939.] Date of assent.

An Ordinance to Amend the Criminal Procedure Code

By Notice

Date of com-
mencement.

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 Criminal Procedure Code (Amendment) Ordinance, 1939, and shall be read as one with the Criminal Procedure Code, hereinafter referred to as the Principal Ordinance, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint.

Short title
and com-
mencement.
No. 11 of 1930.

2. Section 2 of the Principal Ordinance is hereby amended by inserting therein, immediately after the definition of "cognizable offence" contained therein, the following new definition:—

Amendment of
section 2 of
the Principal
Ordinance.

" 'complaint' means an allegation that some person known or unknown has committed or is guilty of an offence;".

3. Sections 7, 8, 9, 10, 11 and 12 of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and
replacement of
sections 7, 8, 9,
10, 11 and 12 of
the Principal
Ordinance.

"7. Subject to the provisions of Part VII of this Code, a subordinate court of the first class may, in the cases in which such sentences are authorized by law, pass the following sentences, namely:—

Sentences which
a subordinate
court of the
first class
may pass.

- (a) Imprisonment for a term not exceeding ~~two~~ ^{three} years;
 (b) Fine not exceeding one hundred and fifty pounds;
 (c) Corporal punishment not exceeding twenty-four strokes:

Ord: 1/11

Provided that no sentence exceeding twelve months' imprisonment (whether such sentence shall be a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of a fine, or costs, or compensation, or a combination of such sentences), or sentence exceeding twelve strokes shall be carried into effect, and no order for payment of a sum of money exceeding fifty pounds (whether by way of fine, or costs, or compensation, or any combination thereof), shall be executed, until the record of the case or a certified copy thereof has been transmitted to, and the sentence has been confirmed by, the Supreme Court.

8. Subject to the provisions of Part VII of the Code, a subordinate court of the second class may, in the cases in which such sentences are authorized by law, pass the following sentences, namely:—

Sentences which a subordinate court of the second class may pass.

- (a) Imprisonment for a term not exceeding twelve months;
- (b) Fine not exceeding seventy-five pounds;
- (c) Corporal punishment not exceeding twelve strokes:

Provided that no sentence exceeding six months' imprisonment (whether such sentence shall be a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of a fine, or costs, or compensation, or a combination of such sentences), or sentence exceeding eight strokes shall be carried into effect, and no order for payment of a sum of money exceeding thirty-seven pounds and ten shillings (whether by way of fine, or costs, or compensation, or any combination thereof), shall be executed, until the record of the case or a certified copy thereof has been transmitted to, and the sentence has been confirmed by, the Supreme Court.

9. Subject to the provisions of Part VII of the Code, a subordinate court of the third class may, in cases in which such sentences are authorized by law, pass the following sentences, namely:—

Sentences which a subordinate court of the third class may pass.

- (a) Imprisonment for a term not exceeding three months;
- (b) Fine not exceeding twenty-five pounds;
- (c) Corporal punishment on juveniles only, not exceeding eight strokes:

Provided that no sentence exceeding one month's imprisonment (whether such sentence shall be a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of a fine, or costs, or compensation, or a combination of such sentences), shall be carried into effect and no order for payment of a sum of money exceeding five pounds (whether by way of fine, or costs, or compensation, or any combination thereof), shall be executed, until the sentence has been confirmed by a subordinate court of the first class within whose jurisdiction the court imposing the sentence is situate.

10. (1) Liwalis' and Cadis' courts shall have the same powers in all matters with respect to Arabs, Somalis, Baluchis, Comoro Islanders, Malagasies and natives only as a subordinate court of the second class.

Powers of Muslim subordinate courts.

(2) Mudirs' courts shall have the same powers in all matters with respect to Arabs, Somalis, Baluchis, Comoro Islanders, Malagasies and natives only as a subordinate court of the third class.

11. (1) Any court may pass any lawful sentence combining any of the sentences which it is authorized by law to pass:

Combination of sentences.

Provided that where a sentence of corporal punishment is imposed by a subordinate court of the first or second class in addition to a sentence of imprisonment or detention, such sentence shall be subject to the confirmation of the Supreme Court and no such sentence of corporal punishment shall be carried into effect until confirmed by the Supreme Court.

(2) In determining the extent of the court's jurisdiction under sections 7, 8 and 9 of this Code to pass a sentence of imprisonment the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided in the said sections in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

12. (1) Whenever a subordinate court shall pass a sentence which requires confirmation, the court imposing such sentence may in its discretion release the person sentenced on bail pending confirmation or such order as the confirming court may make.

Release on bail pending confirmation, or other order.

(2) If the person sentenced is so released on bail as aforesaid, the term of imprisonment shall run from the date upon which such person begins to serve his sentence after confirmation or other order of the confirming court:

Provided, however, that the person sentenced may, pending confirmation or other order, elect to serve his sentence from the date upon which he is sentenced by the subordinate court, in which case the term of imprisonment shall run from such date.

(3) The confirming court may exercise the same powers in confirmation as are conferred upon it in revision by Part XI of this Code."

4. Section 20 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 20 of the Principal Ordinance.
Arrest.

"20. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest:

Provided that nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender."

5. Sections 87 and 88 of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of sections 87 and 88 of the Principal Ordinance.
Complaint and charge

"87. (1) Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without warrant.

(2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a magistrate having jurisdiction.

(3) A complaint may be made orally or in writing, but, if made orally, shall be reduced to writing by the

magistrate, and, in either case, shall be signed by the complainant and the magistrate.

(4) The magistrate, upon receiving any such complaint, shall draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged.

(5) When an accused person who has been arrested without a warrant is brought before a magistrate, a formal charge, containing a statement of the offence with which the accused is charged, shall be signed and presented by the police officer preferring the charge.

(6) Nothing contained in this section shall be construed as affecting the powers of justices of the peace conferred on them by the Justices of the Peace Ordinance. Cap. 21.

88. (1) Upon receiving a complaint and having signed the charge in accordance with the provisions of section 87 of this Code, the magistrate may in his discretion issue either a summons or a warrant to compel the attendance of the accused person before a subordinate court having jurisdiction to inquire into or try the offence alleged to have been committed: Issue of summons or warrant.

Provided that a warrant shall not be issued in the first instance unless the complaint has been made upon oath either by the complainant or by a witness or witnesses.

(2) The validity of any proceedings taken in pursuance of a complaint or charge shall not be affected either by any defect in the complaint or charge or by the fact that a summons or warrant was issued without complaint or charge.

(3) Any summons or warrant may be issued on a Sunday."

6. Section 99 of the Principal Ordinance is hereby amended by deleting therefrom the words "or charge" which occur in the last line thereof. Amendment of section 99 of the Principal Ordinance.

7. Section 116 of the Principal Ordinance is hereby amended by inserting therein, immediately after the word "committed" which occurs in the third line thereof, the words "or anything which is necessary to the conduct of an investigation into any offence". Amendment of section 116 of the Principal Ordinance.

8. The heading "JOINDER OF CHARGES", which immediately precedes section 132 of the Principal Ordinance, is hereby deleted and the heading "CHARGES AND INFORMATIONS" is substituted therefor.

Substitution of new heading to precede section 132 of the Principal Ordinance.

9. Sections 132 and 132A of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of sections 132 and 132A of the Principal Ordinance.

"132. Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

Offence to be specified in charge or information with necessary particulars.

132A. (1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

Joinder of counts in a charge or information.

(2) Where more than one offence is charged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count.

(3) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information, or that for any other reason it is desirable to direct that the person be tried separately for any one or more offences charged in a charge or information, the court may order a separate trial of any count or counts of such charge or information.

132B. The following persons may be joined in one charge or information and may be tried together, namely—

Joinder of two or more accused in one charge or information.

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

- (c) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code or of any other Ordinance or law) committed by them jointly within a period of twelve months; No. 10 of 1930.
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of any offence under Chapters XXVI to XXX, inclusive, of the Penal Code, and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment or of attempting to commit either of such last-named offences; No. 10 of 1930.
- (f) persons accused of any offence relating to counterfeit coin under Chapter XXXVI of the Penal Code, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence. No. 10 of 1930.

132c. The following provisions shall apply to all charges and informations and, notwithstanding any rule of law or practice, a charge or information shall, subject to the provisions of this Code, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Code:—

Rules for the framing of charges and informations.

- (a) (i) A count of a charge or information shall commence with a statement of the offence charged, called the statement of offence; Mode in which offences are to be charged.
- (ii) the statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence;
- (iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:

Provided that where any rule of law or any Ordinance limits the particulars of an offence which are required to be given in a charge or information, nothing in this paragraph shall require any more particulars to be given than those so required;

- (iv) the forms set out in the Second Schedule to this Code or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable; and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances of each case.
- (v) where a charge or information contains more than one count, the counts shall be numbered consecutively.
- (b) (i) Where an enactment constituting an offence states the offence to be the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence; Provisions as to statutory offences.
- (ii) it shall not be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from, or qualifications to, the operation of the enactment creating the offence.
- (c) (i) The description of property in a charge or information shall be in ordinary language, and such as to indicate with reasonable clearness the property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property Description of property.

or special value of property) to name the person to whom the property belongs or the value of the property;

- (ii) where the property is vested in more than one person, and the owners of the property are referred to in a charge or information, it shall be sufficient to describe the property as owned by one of those persons by name with the others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners", or "Club" or other such name, it shall be sufficient to use the collective name without naming any individual;
 - (iii) property belonging to or provided for the use of any public establishment, service or department may be described as the property of His Majesty the King;
 - (iv) coin and bank notes may be described as money; and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed or the particular nature of the bank or currency note, shall not be proved); and in cases of stealing and defrauding by false pretences, by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly.
- (d) The description or designation in a charge or information of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree, or

Description of persons.

occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as 'a person unknown'.

- (e) Where it is necessary to refer to any document or instrument in a charge or information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof. Description of document.
- (f) Subject to any other provisions of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or information in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to. General rule as to description.
- (g) It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person, where the enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence. Statement of intent.
- (h) Where a previous conviction of an offence is charged in a charge or information, it shall be charged at the end of the charge or information by means of a statement that the accused person has been previously convicted of that offence at a certain time and place without stating the particulars of the offence. Mode of charging previous convictions.
- (i) Figures and abbreviations may be used for expressing anything which is commonly expressed thereby. Use of figures and abbreviations.

(j) When a person is charged with any offence under section 257, 258, 259 or 260 of the Penal Code it shall be sufficient to specify the gross amount of property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular times or exact dates.”

Gross sum may be specified in certain cases of stealing.
No. 10 of 1930.

10. Section 134 of the Principal Ordinance is hereby repealed and the following sections substituted therefor:—

Repeal and replacement of section 134 of the Principal Ordinance.

“134. A person convicted or acquitted of any offence may afterwards be tried for any other offence with which he might have been charged on the former trial under sub-section (1) of section 132A of this Code.”

Person may be tried again for separate offence.

11. Section 169A of the Principal Ordinance is hereby repealed.

Repeal of section 169A of the Principal Ordinance.

12. The heading “MISCELLANEOUS PROVISIONS”, which immediately precedes section 173 of the Principal Ordinance, is hereby deleted and the heading “CONVICTIONS FOR OFFENCES OTHER THAN THOSE CHARGED” is substituted therefor.

Substitution of new heading to precede section 173 of the Principal Ordinance.

13. Sections 173 to 180, both inclusive, of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of sections 173 to 180 of the Principal Ordinance.

“173. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

When offence proved is included in offence charged.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

174. When a person is charged with an offence, he may be convicted of having attempted to commit that offence, although he was not charged with the attempt.

Persons charged with any offence may be convicted of attempt.

175. (1) When a woman is charged with the murder of her child, being a child under the age of twelve months, and the court is of opinion that she by any wilful act or omission caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section 192A of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

Woman charged with murder of child may be convicted of infanticide.

No. 10 of 1930.

(2) When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 141 or section 142 of the Penal Code (relating to the procuring of abortion), and the court is of opinion that he is not guilty of murder, manslaughter or infanticide or of an offence under section 141 or section 142 of the Penal Code, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

Person charged with murder or manslaughter of any child or with infanticide or with an offence under section 141 or 142 of Penal Code may be convicted of killing unborn child.

No. 10 of 1930.

(3) When a person is charged with killing an unborn child and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 141 and 142 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person charged with killing an unborn child may be convicted for an offence under section 141 or section 142 of the Penal Code.

No. 10 of 1930.

(4) When a person is charged with the murder or infanticide of any child or with killing an unborn child and the court is of opinion that he is not guilty of any of the said offences, and, if it appears in evidence that the child had recently been born and that such person did, by some secret disposition of the dead body of the child, endeavour to conceal the birth of that child, he may be convicted of the offence of endeavouring to conceal the birth of that child although he was not charged with it.

Person charged with murder or infanticide or killing an unborn child may be convicted of concealment of birth.

176. When a person is charged with manslaughter in connexion with the driving of a motor vehicle by him and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence under section 15 of the Traffic Ordinance, 1928, he may be convicted of that offence although he was not charged with it.

Persons charged with manslaughter in connexion with the driving of a motor vehicle may be convicted under section 15 of the Traffic Ordinance, 1928. No. 26 of 1928.

177. When a person is charged with rape and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 127, 128, 131 and 148 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person charged with rape may be convicted of an offence under sections 127, 128, 131 or 148 of the Penal Code. No. 10 of 1930.

178. When a person is charged with an offence under section 148 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 128 and 129 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person charged with incest may be convicted of unlawful carnal knowledge. No. 10 of 1930.

179. When a person is charged with the defilement of a girl under the age of sixteen years and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 127 and 131 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person charged with defilement of a girl under 16 years of age may be convicted of an offence under section 127 or 131 of the Penal Code. No. 10 of 1930.

180. When a person is charged with any offence mentioned in Chapter XXIX of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of any other offence mentioned in the said chapter, he may be convicted of that other offence although he was not charged with it.

Person charged with burglary, etc., may be convicted of kindred offence. No. 10 of 1930.

180A. When a person is charged with stealing anything and—

Person charged with stealing may be convicted of receiving, obtaining by false pretences or of possessing or conveying stolen property.

(a) it is proved that he received the thing knowing the same to have been stolen, he may be convicted of the offence of receiving although he was not charged with it;

(b) it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Code or of any other law for the

No. 10 of 1930

time being in force to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it;

(c) the facts proved amount to an offence under section 296 of the Penal Code, he may be convicted of the offence under that section although he was not charged with it.

No. 10 of 1930.

180B. When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it.

Person charged with obtaining by false pretences may be convicted of stealing.

180C. When a person is charged with the offence of stock theft under the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 10 of the Stock and Produce Theft (Levy of Fines) Ordinance, 1933, he may be convicted of that offence although he was not charged with it.

Person charged with stock theft under the Penal Code may be convicted under section 10 of the Stock and Produce Theft (Levy of Fines) Ordinance, 1933. No. 18 of 1933.

180D. The provisions of sections 173 to 180C of this Code, both inclusive, shall be construed as in addition to, and not in derogation of, the provisions of any other Ordinance and the other provisions of this Code, and the provisions of sections 174 to 180C of this Code, both inclusive, shall be construed as being without prejudice to the generality of the provisions of section 173 of this Code."

Construction of sections 173 to 180c, both inclusive.

14. The Principal Ordinance is hereby amended by inserting therein, immediately before section 181 thereof, the heading "MISCELLANEOUS PROVISIONS".

Amendment of the Principal Ordinance.

15. The Principal Ordinance is hereby amended by re-numbering section 196A thereof as section 196B and by inserting therein, immediately after section 196 thereof, the following new section:—

Amendment of the Principal Ordinance.

"196A. (1) In any trial before a subordinate court the deposition of a medical witness on a purely medical or surgical matter, taken and attested by any magistrate, may be given in evidence, if the court is satisfied that—

Evidence of medical witness

(a) it is not possible, without serious inconvenience, for such witness to attend at the trial, and

(b) such deposition was taken in the presence of the accused and that the accused or his advocate had full opportunity of cross-examining such witness.

(2) Notwithstanding the provisions of sub-section (1) of this section, the court may, if it thinks fit, summon such witness to give evidence orally.

(3) The provisions of this section shall be in addition to, and not in derogation of, the provisions of sections 149 to 153, both inclusive, of this Code."

16. Sub-section (1) of section 197 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and replacement of section 197 (1) of the Principal Ordinance.

"(1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall again explain the substance of the charge to the accused and shall inform him that he has a right to give evidence on oath from the witness box, and that, if he does so, he will be liable to cross-examination, or to make a statement not on oath from the dock, and shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any)."

17. Section 198 of the Principal Ordinance is hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of section 198 of the Principal Ordinance.

"198. If the accused person adduces evidence in his defence introducing new matter which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut the said matter.

Evidence in reply.

198A. (1) Subject to the provisions of sub-section (2) of this section the prosecutor shall be entitled to address the court at the commencement of his case, and the accused person or his advocate shall be entitled to address the court at the commencement and in conclusion of his case.

Opening and close of case for prosecution and defence.

(2) If the accused person, or any one of several accused persons, adduces any evidence, the prosecutor shall, subject to the provisions of section 156 of this Code, be entitled to reply."

18. Section 199 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 199 of the Principal Ordinance.

"199. (1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

Variance between charge and evidence and amendment of charge.

Provided that where a charge is altered as aforesaid, the court shall thereupon call upon the accused person to plead to the altered charge:

Provided further that where a charge is altered under this sub-section the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate and, in such last-mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination.

(2) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof.

(3) Where an alteration of a charge is made under sub-section (1) of this section or there is a variance between the charge and the evidence as described in sub-section (2) of this section, the court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary."

19. Section 200 of the Principal Ordinance is hereby amended by deleting therefrom the words "dismiss the case" which occur at the end thereof and by substituting therefor the words "acquit him".

Amendment of section 200 of the Principal Ordinance.

20. Section 202 of the Principal Ordinance is hereby amended by deleting therefrom the word "dismissal" which occurs in the first line thereof and in the marginal note there-to and by substituting therefor, in each case, the word "acquittal".

Amendment of section 202 of the Principal Ordinance.

21. Sub-section (1) of section 204 of the Principal Ordinance is hereby repealed and the following new section is substituted therefor:—

Repeal and replacement of section 204 (1) of the Principal Ordinance.

"204. (1) If before or during the course of a trial before a subordinate court a submission is made by the prosecutor, or if it appears to the magistrate that the case is one which ought to be tried by the Supreme Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused person for trial upon information before the Supreme Court, and in such case he shall follow the procedure hereinafter directed in relation to preliminary inquiries as to offences triable by the Supreme Court."

22. The Principal Ordinance is hereby amended by inserting therein, immediately after section 214 thereof, the following new section:—

Amendment of the Principal Ordinance.

"214A. A magistrate conducting a preliminary inquiry shall, at the commencement of such inquiry, read over and explain to the accused person the charge in respect of which the inquiry is being held, but the accused person shall not be required to make any statement in reply thereto."

Charge to be read over to accused.

23. Sub-section (4) of section 215 of the Principal Ordinance is hereby repealed and the following sub-sections are substituted therefor:—

Repeal and replacement of section 215 (4) of the Principal Ordinance.

"(4) As the statement of each witness taken down under this section is completed, it shall be read over to him in the presence of the accused and shall, if necessary, be corrected.

(5) If any witness denies the correctness of any part of the statement when the same is read over to him, the magistrate may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(6) If the statement is taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the statement shall be interpreted to him in a language which he understands.

(7) The deposition of each witness shall then be signed by him and by the magistrate holding the inquiry."

24. Sections 219 to 221, both inclusive, of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of sections 219 to 221 of the Principal Ordinance.

"219. (1) If, after examination of the witnesses called on behalf of the prosecution, the court considers that on the evidence as it stands there are sufficient grounds for committing the accused for trial, the magistrate shall frame a charge under his hand declaring with what offence or offences the accused is charged and shall read the charge to the accused person and explain the nature thereof to him in simple language, and address to him the following words, or words to the like effect:

Provisions as to taking statement or evidence of accused person.

'This is not your trial. You will be tried later in another court and before another judge, where all the witnesses you have heard here will be produced and you will be allowed to question them. You will then be able to make any statement you may wish or to give evidence on oath and call any witnesses on your own behalf. Unless you wish to reserve your defence, which you are at liberty to do, you may now either make a statement not on oath or give evidence on oath, and may call witnesses on your behalf. If you give evidence on oath you will be liable to cross-examination. Anything you may say whether on oath or not will be taken down and may be used in evidence at your trial.'

(2) Before the accused person makes any statement in answer to the charge, or gives evidence, as the case may be, the magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce

him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding any such promise or threat.

(3) Everything which the accused person says, either by way of statement or evidence, shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.

(4) When the whole is made conformable to what he declares is the truth, the record thereof shall be attested by the magistrate, who shall certify that such statement or evidence was taken in his presence and hearing and contains accurately the whole statement made, or evidence given, as the case may be, by the accused person. The accused person shall sign or attest by his mark such record. If he refuses, the court shall add a note of his refusal, and the record may be used as if he had signed or attested it.

220. (1) Immediately after complying with the requirements of section 219 of this Code relating to the statement or evidence of the accused person, and whether the accused person has or has not made a statement or given evidence, the court shall ask him whether he desires to call witnesses on his own behalf.

Evidence and
address in
defence.

(2) The court shall take the evidence of any witnesses called by the accused person in like manner as in the case of the witnesses for the prosecution, and every such witness, not being merely a witness to the character of the accused person, shall, if the court be of opinion that his evidence is in any way material to the case, be bound by recognizance to appear and give evidence at the trial of such accused person.

(3) If the accused person states that he has witnesses to call, but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses, and on their attendance shall take their depositions and

bind them by recognizance in the same manner as witnesses under sub-section (2) of this section.

(4) (a) In any preliminary inquiry under this Part the accused person or his advocate shall be at liberty to address the court—

- (i) after the examination of the witnesses called on behalf of the prosecution;
- (ii) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused person;
- (iii) if the accused person elects—
 - (A) to give evidence or to make a statement and witnesses for the defence are to be called, or
 - (B) not to give evidence or to make a statement, but to call witnesses,

immediately after the evidence of such witnesses.

(b) If the accused person or his advocate addresses the court in accordance with the provisions of sub-paragraph (i) or (iii) of paragraph (a) of this sub-section the prosecution shall have the right of reply.

(5) Where the accused person reserves his defence, or at the conclusion of any statement in answer to the charge or evidence in defence, as the case may be, the court shall ask him whether he intends to call witnesses at the trial, other than any whose evidence has been taken under the provisions of this section, and, if so, whether he desires to give their names and addresses so that they may be summoned. The court shall thereupon record the names and addresses of any such witnesses whom he may mention.

221. If, at the close of the case for the prosecution, or after hearing any evidence in defence, the court considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts: Discharge of accused person.

Provided always that nothing contained in this section shall prevent the court from either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, proceeding to investigate any

other charge upon which the accused person may have been summoned or otherwise brought before it, or which, in the course of the charge so dismissed as aforesaid, it may appear that the accused person has committed.”

25. Sub-section (1) of section 227 of the Principal Ordinance is hereby amended by deleting therefrom the words and comma “or of the accused person having pleaded guilty to the charge,” which occur in the ninth line thereof.

Amendment of section 227 (1) of the Principal Ordinance.

26. Sections 234 and 235 of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of sections 234 and 235 of the Principal Ordinance.

“234. If, after receipt of the authenticated copy of the depositions and statement as aforesaid and prior to the trial before the Supreme Court, the Attorney General shall be of the opinion that there is, in any case committed for trial, any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Attorney General may require the subordinate court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided.

Powers of Attorney General as to additional witnesses.

235. If, prior to the trial before the Supreme Court, the Attorney General is of opinion, upon the record of the committal proceedings received by him, that the case is one which may suitably be tried by a subordinate court, he may cause the depositions to be returned to the court which committed the accused, and thereupon the case shall be reopened, tried and determined in the same manner as if such person had not been committed for trial:

Return of depositions with a view to summary trial.

Provided that in every such case the accused shall be entitled to have recalled for cross-examination or further cross-examination all or any of the witnesses for the prosecution.”

27. Section 236 of the Principal Ordinance is hereby amended—

Amendment of section 236 of the Principal Ordinance.

(a) by inserting therein, immediately after the full stop which occurs in the first line thereof, the brackets and figure “(1)”; and

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

“(2) In any such information the Attorney General may charge the accused person with any offence which, in his opinion, is disclosed by the depositions either in addition to, or in substitution for, the offence upon which the accused person has been committed for trial.”

28. Section 240 of the Principal Ordinance is hereby amended— Amendment of section 240 of the Principal Ordinance.

(a) by inserting therein, immediately after the full stop which occurs in the first line thereof, the brackets and figure “(1)”;

(b) by inserting therein, immediately after the word “district” which occurs in the fifth line thereof, the words “or some other convenient place”; and

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

“(2) The Supreme Court may give such directions for the amendment of the information and the service of any notices which the court may deem necessary in consequence of any order made under sub-section (1) of this section.”

29. The Principal Ordinance is hereby amended by deleting therefrom the heading “RULES AS TO INFORMATIONS BY THE ATTORNEY GENERAL”, which immediately precedes section 241 thereof. Amendment of the Principal Ordinance.

30. Section 241 of the Principal Ordinance is hereby amended by deleting therefrom the words “presented by a Grand Jury in England” which occur at the end thereof and by substituting therefor the words “in England which has been signed by the proper officer of the court in accordance with the Administration of Justice (Miscellaneous Provisions) Act, 1933”. Amendment of section 241 of the Principal Ordinance. 23 & 24, Geo. 5 c. 36.

31. Sections 243 and 244 of the Principal Ordinance are hereby repealed. Repeal of sections 243 and 244 of the Principal Ordinance.

32. Section 289 of the Principal Ordinance is hereby amended— Amendment of section 289 of the Principal Ordinance.

(a) by deleting therefrom the words “on oath” which occur in the third line of sub-section (1) thereof; and

(b) by deleting therefrom the words “on oath” which occur in the third line of sub-section (2) thereof.

33. The Principal Ordinance is hereby amended by inserting therein, immediately after section 291 thereof, the following new section:—

Amendment of the Principal Ordinance.

“291A. If the accused person adduces evidence in his defence introducing new matter which the advocate for the prosecution could not by the exercise of reasonable diligence have foreseen, the court may allow the advocate for the prosecution to adduce evidence in reply to rebut the said matter.”

Evidence in reply.

34. Section 304 of the Principal Ordinance is hereby amended by adding thereto the following new sub-section:—

Amendment of section 304 of the Principal Ordinance.

“(4) Nothing in this section shall be read as prohibiting the assessors, or any of them, from retiring to consider their opinions if they so wish; or, during any such retirement or at any time during the trial, from consultation with one another.”

35. Section 317 of the Principal Ordinance is hereby amended by deleting therefrom the words “except in the case of admission to bail or suspension of sentence as provided in section 342 hereof” which occur at the end thereof and by substituting therefor the words “except where otherwise provided in this Code”.

Amendment of section 317 of the Principal Ordinance.

36. The Principal Ordinance is hereby amended by inserting therein, immediately after section 318 thereof, the following new section:—

Amendment of the Principal Ordinance.

“318A. (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under section 318 of this Code may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property. Such notice shall set out shortly the nature of the claim which such person (hereinafter in this section referred to as the objector) makes to the whole or part of the property attached, and shall certify the value of the property claimed by him. Such value shall be deposed to upon affidavit, which shall be filed with the notice.

Objections to attachment.

(2) Upon receipt of a valid notice given under sub-section (1) of this section, the court shall, by an order in writing addressed to the officer having the execution of the warrant, direct the stay of the execution proceedings.

(3) Upon the issue of an order under sub-section (2) of this section, the court shall, by notice in writing, direct the objector to appear before such court and establish his claim upon a date to be specified in the notice.

(4) A notice shall be served upon the person whose property was, by the warrant issued under section 318 of this Code, directed to be attached, and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of such property. Such notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he wishes to be heard upon the hearing of the objection.

(5) Upon the date fixed for the hearing of the objection, the court shall investigate the claim and, for such purpose, may hear any evidence which the objector may give or adduce and any evidence given or adduced by any person served with a notice in accordance with the provisions of sub-section (4) of this section.

(6) If, upon investigation of the claim, the court is satisfied that the property was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the person ordered to pay the money at such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(7) If, upon the date fixed for his appearance, the objector fails to appear, or if, upon investigation of the claim in accordance with the provisions of sub-section (5)

of this section, the court is of opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed, and shall make such order as to costs as it deems fit.

(8) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of sub-section (1) of this section of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant."

37. Section 319 of the Principal Ordinance is hereby amended—

Amendment of section 319 of the Principal Ordinance.

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

"(1) When a convicted person has been sentenced to fine only and to imprisonment in default of payment of a fine, and whether or not a warrant of distress has been issued under section 318 of this Code, the court may suspend the execution of the sentence of imprisonment and may release the convicted person upon his executing a bond, with or without sureties, as the court thinks fit, conditioned for his appearance before such court on a day not being more than thirty days from the time of executing the bond; and in the event of the fine not having been realized on or before that day the court may, subject to the other provisions of this section, direct the sentence of imprisonment to be carried into execution forthwith."

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

"(4) A warrant of commitment to prison in respect of the non-payment of any sum of money by a person to whom time has been allowed for payment under the provisions of sub-section (1) of this section, or who has been allowed to pay by instalments under the provisions of sub-section (3) of this section, shall not be issued unless the court shall first make inquiry as to his means in his presence.

(5) After making inquiry in accordance with the provisions of sub-section (4) of this section, the court may, if it thinks fit, instead of issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the instalments or the times at which the instalments were, by the previous order of the court, directed to be paid, as the case may be.

(6) For the purpose of enabling inquiry to be made under the provisions of sub-section (4) of this section, the court may issue a summons to the person ordered to pay the money to appear before it and, if he does not appear in obedience to the summons, may issue a warrant for his arrest or, without issuing a summons, issue in the first instance a warrant for his arrest."

38. Section 336 of the Principal Ordinance is hereby amended—

Amendment of section 336 of the Principal Ordinance.

(a) by inserting therein, immediately after the full stop which occurs in the first line thereof, the brackets and figure "(1)"; and

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

"(2) When the appellant is represented by an advocate, the petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred."

39. Section 338 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 338 of the Principal Ordinance.

"338. (1) When the Supreme Court has received the petition and copy under section 336 of this Code a judge shall peruse the same, and, if he considers that there is no sufficient ground for interfering, may, notwithstanding the provisions of section 344 of this Code, reject the appeal summarily:

Summary rejection of appeal.

Provided that no appeal shall be rejected summarily except in the case mentioned in sub-section (2) of this section unless the appellant or his advocate has had an opportunity of being heard in support of the same.

(2) Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to a judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(3) Whenever an appeal is summarily rejected notice of such rejection shall forthwith be given to the Attorney General and to the appellant or his advocate."

40. Sub-section (2) of section 342 of the Principal Ordinance is hereby amended—

Amendment of section 342 (2) of the Principal Ordinance.

(a) by deleting therefrom the word "convict" which occurs in the fourth line thereof and by substituting therefor the word "appellant"; and

(b) by substituting a full stop for the comma which occurs immediately after the word "sentenced" in the seventh line thereof and by deleting the words and full stop "and such term of imprisonment shall commence on the day on which the appeal is dismissed or some other sentence is substituted." which occur in the seventh, eighth and ninth lines thereof.

41. Section 353 of the Principal Ordinance is hereby amended by deleting therefrom the words "such case transmit the same to the Supreme Court, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to" which occur in the eleventh, twelfth and thirteenth lines thereof and by substituting therefor the words "the case transmit the same to the Supreme Court, and within thirty days after receiving the case serve a copy of the case, so stated and signed, on".

Amendment of section 353 of the Principal Ordinance.

42. The Principal Ordinance is hereby amended by inserting therein, immediately after section 371 thereof, the following new section :—

Amendment of the Principal Ordinance.

“371A. (1) The Attorney General may at any time direct a magistrate to hold an inquiry into the cause of death under section 371 of this Code and the magistrate to whom such direction is given shall thereupon proceed to hold an inquiry, and, at the termination of such inquiry, shall act in accordance with sub-section (4) or sub-section (5) of section 371 of this Code, whichever is appropriate.

Powers of Attorney General as to inquiries of deaths.

(2) When an inquiry has been terminated under section 371 of this Code and it appears to the Attorney General that further investigation is necessary, the Attorney General may direct the magistrate to re-open such inquiry and to make further investigation, and thereupon the magistrate shall have full power to re-open the inquiry and make further investigation and thereafter to proceed in the same manner as if the proceedings at such inquiry had not been terminated :

Provided that the provisions of this sub-section shall not apply to any inquiry at which a magistrate has recorded his opinion that the offence of murder or manslaughter has been committed by any person.

(3) When giving any direction under this section the Attorney General may also direct whether the body is to be disinterred and examined.”

43. (1) The Attorney General may consolidate into one edition the Principal Ordinance and all Ordinances (including this Ordinance) amending the same and in preparing such consolidated edition shall have powers to re-number and re-arrange the order and/or sequence of any section or sections and make any amendments necessary and consequential to such re-numbering and re-arrangement, but so that such powers shall not be taken to imply any power to make any alteration or amendment in the matter or substance of any section of the Principal Ordinance or any Ordinance (including this Ordinance) amending the same.

Consolidation and reprinting.

(2) When such consolidated edition has been prepared it shall be lawful for the Government Printer, with the authority of the Governor in Council, to print copies of the said edition and such copies shall be deemed to be and shall be without any question whatsoever in all Courts of Justice and for all purposes authentic copies of the Principal Ordinance and all Ordinances (including this Ordinance) amending the same.

44. The First Schedule to the Principal Ordinance is hereby amended—

Amendment of
the First
Schedule to
the Principal
Ordinance.

- (a) by deleting therefrom the words and asterisk “when the accused is a non-native*” which appear in the fifth column of the heading on every page thereof;
- (b) by deleting therefrom the asterisk and words “*For the court by which an offence is triable when the accused is a native, *vide* section 10.” which appear at the end of every page thereof;
- (c) by deleting the entries relating to sections 47 and 48 of the Penal Code;
- (d) by adding to the Fourth Column thereof the words “and for each subsequent offence the like imprisonment with or without corporal punishment” in the entry relating to section 136 of the Penal Code;
- (e) by deleting from the Fourth Column thereof the words “with or without corporal punishment” in the entry relating to sections 229, 307 and 308 of the Penal Code;
- (f) by deleting from the Second Column thereof the words “exercise witchcraft or” in the entry relating to section 293 of the Penal Code; and
- (g) by inserting therein in the appropriate numerical order and in the respective columns the numbers and words set out in the First, Second, Third, Fourth and Fifth Columns of the Schedule hereto:—

SCHEDULE

First Column	Second Column	Third Column	Fourth Column	Fifth Column
49 (1)	Importing, etc. prohibited publications.	May arrest without warrant.	Imprisonment for two years and/or fine of one hundred pounds and for each subsequent offence imprisonment for three years.	Subordinate court of the first or second class.
(2)	Possessing prohibited publications.	May arrest without warrant.	Imprisonment for one year and/or fine of fifty pounds and for each subsequent offence imprisonment for two years.	Subordinate court of the first or second class.
50 (1)	Failing to deliver prohibited publications to police.	May arrest without warrant.	Imprisonment for one year and/or fine of fifty pounds.	Subordinate court of the first or second class.
53 (1)	Sedition.	May arrest without warrant.	Imprisonment for two years and/or fine of one hundred pounds and for each subsequent offence imprisonment for three years.	Subordinate court of the first or second class.
(2)	Possessing seditious publications.	May arrest without warrant.	Imprisonment for one year and/or fine of fifty pounds and for each subsequent offence imprisonment for two years.	Subordinate court of the first or second class.
168A (2)	Wearing without authority uniform of public organizations.	May arrest without warrant.	Imprisonment for one month or fine of ten pounds.	Subordinate court of the first or second class.
(3)	Importing or selling without authority uniforms of public organizations.	May arrest without warrant.	Imprisonment for six months or fine of one hundred pounds.	Subordinate court of the first or second class.
192A (2)	Infanticide.	May arrest without warrant.	Imprisonment for life.	
296A (2)	Unlawful possession of Government and K.U.R. & H. stores.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
339A	Melting down currency.	May arrest without warrant.	Imprisonment for six months and/or fine of one hundred pounds.	Subordinate court of the first or second class.
344A	Selling articles bearing designs in imitation of currency.	May arrest without warrant.	Imprisonment for six months.	Subordinate court of the first or second class.

ORDINANCE No. XXXVI of 1939

Assented to in His Majesty's name this twenty-second day of December, 1939.

W. HARRAGIN,
Acting Governor.

[22ND DECEMBER, 1939.] Date of assent.

**An Ordinance to Amend the Adulteration of
Produce Ordinance**

22nd December, 1939

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 Adulteration of Produce (Amendment) Ordinance, 1939, and shall be read as one with the Adulteration of Produce Ordinance (Chapter 97 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Short title.

Cap. 97.

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

Amendment of section 2 of the Principal Ordinance.

(a) by inserting therein, immediately before the definition of "Produce", the following new definition—

“ ‘Inspector’ means an Inspector appointed under the provisions of section 2A of this Ordinance;”

and

(b) by deleting therefrom the definition of "Produce" and by substituting therefor the following definition—

“ ‘produce’ means the produce set out in the Schedule to this Ordinance;”

3. The Principal Ordinance is hereby amended by inserting therein, immediately after section 2 thereof, the following new section:—

Amendment of the Principal Ordinance.

“2A. The Governor may, by notice in the Gazette, appoint Inspectors for the purpose of the examination of produce under this Ordinance.”

Appointment of Inspectors.

4. Sections 5, 6 and 7 of the Principal Ordinance are hereby repealed and the following sections are substituted therefor:—

Repeal and replacement of sections 5, 6 and 7 of the Principal Ordinance.

“5. (1) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that any produce so adulterated as aforesaid is on any premises he may grant a search warrant authorizing any Inspector named in the warrant, at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises named in the warrant, and to search the premises and to take samples of any produce found on the premises which the Inspector suspects is adulterated:

Powers of inspection and seizure.

Provided that if it appears to him that any delay occasioned by obtaining such search warrant will defeat the objects of this section, any Inspector may exercise the powers by this sub-section conferred as if he were in possession of a search warrant, but he shall as soon as possible report what he has done to a magistrate.

Provided further that, when the power of search without a search warrant has been exercised as aforesaid, if the magistrate considers that the Inspector in making such search acted without reasonable cause he shall report to the Governor all the circumstances of the search together with his views thereon.

(2) If any person wilfully delays or obstructs any Inspector in the exercise of his powers under this section he shall be guilty of an offence against this Ordinance.

6. (1) An Inspector taking a sample of produce under the provisions of section 5 of this Ordinance shall divide the sample into two parts and shall cause each part to be marked, sealed and fastened up, and shall deliver or tender one part to the owner or person in possession of the produce and shall deliver or send by post to the Department of Agriculture the other part of the sample for the purposes of its being tested.

Procedure on taking samples.

(2) At the time of taking such sample the Inspector shall serve a notice on the owner or person in possession of the produce from which the sample is taken prohibiting the removal of such produce from the premises pending the testing of the sample taken, and any such owner

or person who fails to comply with the provisions of such notice shall be guilty of an offence against this Ordinance.

7. Upon the receipt of any sample taken under the provisions of section 5 of this Ordinance such sample shall be tested by a competent officer of Government and such officer shall issue a certificate of the result of such test, and a copy of every certificate so issued shall, as soon as it has been issued, be sent to the owner or person in possession of the produce.

Certificate of test.

7A. Every certificate issued under the provisions of section 7 of this Ordinance shall, in any prosecution brought under the provisions of this Ordinance, be sufficient evidence of the facts therein stated, unless the accused person requires that the officer who made the analysis be called as a witness."

Certificate to be evidence.

5. Section 10 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 10 of the Principal Ordinance.

"10. (1) Whenever any person is convicted of an offence under the provisions of this Ordinance the court shall, subject to the provisions of sub-section (2) of this section, send a report of the conviction to the Governor, and the Governor may, in his discretion, publish in the Gazette the name of the offender, his place of business and the offence of which he has been convicted:

Publication of convictions.

Provided that in the case of a second or subsequent conviction for an offence under the provisions of this Ordinance the Governor may, instead of, or in addition to, publishing the details as aforesaid in the Gazette, publish them in such a manner as will, in his opinion, secure the greatest publicity thereto.

(2) In any case in which an appeal is lodged against any such conviction, the court shall only make the report required by the provisions of sub-section (1) of this section if such appeal is dismissed.

(3) Where a court has reported to the Governor under the provisions of sub-section (1) of this section the court may, upon presentation of certificates of the costs of such publication signed by the Chief Secretary, issue warrants for the distress and sale of so much of the property of the offender as shall be sufficient for the repayment to the Government of the Colony of such costs, and of the costs of the distress and sale."

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6. The Principal Ordinance is hereby amended by adding thereto, immediately after section 13 thereof, the following new section and Schedule:—

“14. The Governor may, if he considers it expedient to do so, by notice in the Gazette, delete from, vary, or add to the Schedule to this Ordinance, any produce.

Amendment of
the Principal
Ordinance.

Power to alter
Schedule.

SCHEDULE

Wheat, maize, rice, oats, barley; whole, ground or milled, or the residues thereof.

Sesame oil.

Groundnut oil.

Cotton seed oil.

Coco-nut oil.

Bees-wax.

Lime.

Sugar.

Salt.

Coffee.

Tea.

Butter.

Ghee (clarified butter)

Bone meal.

Blood meal.

Meat meal.

Fish meal.”

ORDINANCE No. XXXVII of 1939

Assented to in His Majesty's name this twenty-second day of December, 1939.

W. HARRAGIN,
Acting Governor.

[22ND DECEMBER, 1939.] Date of assent.

**An Ordinance to Make Provision for the Imposition
by a Municipal Authority of a Rate for Certain
Purposes Connected with the Hospitals**

22nd December, 1939.

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 (Hospital Rate) Ordinance, 1939. Short title.

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

“Asian” means any person both of whose parents are or either of them is of Indian origin or descent and shall include a Goan and such other persons or class of persons of Asiatic origin or descent as the Governor may by notice in the Gazette declare, in respect of any municipality, to be Asians for the purposes of this Ordinance;

“European” means any person of pure European origin and descent;

“temporary visit” means a visit to a municipality not exceeding six months in duration;

“the Municipal Authority” means a Municipal Board or Municipal Council having jurisdiction over a municipality established under the provisions of the Local Government (Municipalities) Ordinance, 1928; No. 19 of 1928.

“the rate” means the rate imposed under this Ordinance.

3. This Ordinance shall apply to such municipalities as the Governor may by proclamation from time to time declare. Application.

Imposition of hospital rate.

4. The Municipal Authority may, by resolution passed by a majority of councillors or members present at a meeting specially convened for the purpose, at which the majority voting shall not be less than a majority of the whole Municipal Authority, impose for each and every financial year—

(a) on every European residing within the municipality a rate of such amount not exceeding thirty shillings; and/or

(b) on every Asian residing within the municipality a rate of such amount not exceeding twenty-four shillings,

as may be fixed by such resolution.

Date on which rate becomes payable.

5. (1) The rate imposed by the Municipal Authority shall become due and payable, within the financial year for which it is imposed, upon a day to be fixed by the Municipal Authority, of which day and of the amount of which rate the Municipal Authority shall give at least thirty days' notice by advertisement in the Gazette and in a newspaper circulating in the municipality.

(2) The Municipal Authority shall in the same notice give details of the amounts by which the rate of charges referred to in section 6 of this Ordinance is to be reduced in consequence of the imposition of the said rate.

Proceeds of rate to form part of revenues of a Municipal Authority.

6. (1) The proceeds of the rate shall be paid into and form part of the revenues of the Municipal Authority, and shall be devoted solely for the purposes of reducing the rate of charges made for the accommodation and treatment of, and any other service rendered to, European and Asian patients who are resident within a municipality to which this Ordinance has been applied, and who are treated in a hospital and/or nursing home situated within such municipality.

No. 19 of 1928.

(2) Notwithstanding anything to the contrary contained in the Local Government (Municipalities) Ordinance, 1928, if the proceeds of such rate in any municipality to which this Ordinance applies are insufficient to reduce such rate of charges as aforesaid the deficiency shall be made up from the general revenue of such municipality:

Provided that there shall not be paid from such revenues for any such purpose aforesaid any money in respect of any patient who is a person exempted from payment of the rate under the provisions of paragraph (c) of sub-section (1) of section 8 of this Ordinance:

Provided further that if, in the first instance, a rate is imposed on Europeans only under paragraph (a), or on Asians only under paragraph (b), of section 4 of this Ordinance, there shall be paid from the revenues of the Municipal Authority such amount as is necessary for the purposes aforesaid in respect of European patients only, or of Asian patients only, as the case may be, until such time as a rate has been imposed on both Europeans and Asians under section 4 of this Ordinance.

7. A Municipal Authority shall be and hereby is empowered to accept any money, property or assistance for the furtherance of any of the objects of this Ordinance.

Power to accept money, property or assistance.

8. (1) The following persons shall be exempted from the payment of the rate—

Exemptions.

- (a) any person under the age of twenty-one years;
- (b) any person on a temporary visit to the municipality;
- (c) any person and the wife of any person in the service of the Government of the Colony, or of the Kenya and Uganda Railways and Harbours Administration or of a Municipal Authority, whose terms of service, whether by contract or otherwise, provide for accommodation and treatment at a reduced rate in any hospital and/or nursing home referred to in section 6 of this Ordinance in respect of himself and/or any member of his family and/or his domestic staff.

(2) The burden of proof of exemption from the payment of the rate shall lie on the party claiming the exemption.

9. Notwithstanding the provisions of section 5 of this Ordinance, any European or Asian who is not residing in the municipality on the first day of January or who, although residing in the municipality on that day, leaves the municipality before the date on which the rate becomes due and payable under section 5 of this Ordinance, shall pay the rate within one month after his arrival in or return to the municipality, as the case may be.

Persons absent on due date to be liable on return.

Payment of rate. **10.** Whenever the Municipal Authority has given notice as aforesaid of the day upon which the rate shall become due and payable, and of the amount of the rate, any person liable for the rate shall pay the amount thereof at the offices of the Municipal Authority on the day so fixed as aforesaid.

Procedure for
recovery. **11.** If any person makes default in the payment of the rate due and payable by him, the amount of such rate may be recovered in the manner provided in sections 21 and 22 of
No. 20 of 1928. the Local Government (Rating) Ordinance, 1928 :

Provided that the Governor may, on the application of the Municipal Authority, grant to any person or body of persons power to reduce or remit the rate in respect of any person liable for the rate who satisfies such person or body of persons that payment thereof will impose undue hardship upon the person liable.

ORDINANCE No. XXXVIII of 1939

Assented to in His Majesty's name this twenty-second day
of December, 1939.

W. HARRAGIN,
Acting Governor.

[22ND DECEMBER, 1939.] Date of assent.

An Ordinance to Amend the Marketing of Native Produce Ordinance, 1935

22nd December, 1939

Date of com-
mencement.

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 Marketing of Native Produce (Amendment) Ordinance, 1939, and shall be read as one with the Marketing of Native Produce Ordinance, 1935, hereinafter referred to as the Principal Ordinance.

Short title.

No. 28 of 1935.

2. Section 2 of the Principal Ordinance is hereby amended by deleting therefrom the definition of "native produce" which occurs therein and by substituting therefor the following definition:—

Amendment of
section 2 of
the Principal
Ordinance.

" 'native produce' means any produce grown or produced by natives, any live stock reared by natives and the meat and all other products derived from such live stock;".

3. Section 3 of the Principal Ordinance is hereby amended by deleting therefrom the words "cultivation and" which occur in the second line thereof and by substituting therefor the words "production and".

Amendment of
section 3 of
the Principal
Ordinance.

4. Section 10 of the Principal Ordinance is hereby amended by deleting therefrom the words "any licence granted by him and" which occur in the second and third lines thereof.

Amendment of
section 10 of
the Principal
Ordinance.

5. Paragraph (c) of section 16 of the Principal Ordinance is hereby amended by adding immediately after the word "auction" which occurs in the second line thereof the words "and regulating the procedure at any such auction".

Amendment of
section 16 (c)
of the Principal
Ordinance.

Ord. V/45

ORDINANCE No. XXXIX of 1939

Assented to in His Majesty's name this twenty-second day of December, 1939.

W. HARRAGIN,
Acting Governor.

[22ND DECEMBER, 1939.] Date of assent.

**An Ordinance to Amend and Consolidate the Law
relating to the Protection of Fish**

22nd December, 1939

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 Fish Protection Ordinance, 1939. Short title

2. In this Ordinance, unless the context otherwise requires— Interpretation.
 - “Game Warden” includes an assistant game warden, an honorary game warden and an honorary trout warden;
 - “fish” includes all vertebrate fishes, crustacea, mollusca and echinodermata and the spat, brood, fry, spawn, ova and young of all vertebrate fishes, crustacea, mollusca and echinodermata;
 - “Fishery Inspector” means any officer appointed to perform the duties of conserving fish in the Colony.

3. (1) The Governor in Council may make rules, which shall apply to such areas as are specified in such rules, providing for the more effectual control, protection and improvement of fish, and the government and management of any declared area in which fishing may be carried on, and without prejudice to the generality of the foregoing for all or any part of the following purposes— Rules.
 - (a) imposing and prescribing conditions for the regulation of fishing;
 - (b) registering all boats, nets and stakes employed in fishing;

- (c) registering all transactions relating to the sale of and the dealing in nets;
- (d) determining the times and seasons at which the taking of any species of fish shall commence and cease;
- (e) the issuing of licences and certificates of registration to persons authorized to take any species of fish;
- (f) prescribing the fees to be paid for or in respect of any licence or registration issued or made;
- (g) providing for and regulating the description and form of nets to be used in fishing, the size of the meshes thereof, or the prohibiting of any special description of nets or meshes or any tackle, instrument or appliance whatsoever tending to impede the lawful taking of fish or being in any manner detrimental to the preservation or increase of fish;
- (h) prohibiting, restricting or regulating the bringing into the Colony of any live fish other than fish indigenous to the Colony;
- (i) prohibiting or regulating the sale of any fish.

(2) Any such rules may require acts or things to be performed or done to the satisfaction of an Administrative Officer, Fishery Inspector or other person appointed by an Administrative Officer and may empower any such Officer, Inspector or other person to issue orders requiring acts or things to be performed or done, prohibiting acts or things from being performed or done and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done.

Penalties.

4. The Governor in Council may by rule fix such penalties for the breach or non-observance of any rule or any order issued under or by virtue of such rule as he may think fit but no such penalty shall exceed a fine of fifty pounds for each offence, and in default of payment thereof imprisonment for a period not exceeding three months, and where no penalty is fixed the breach or non-observance of any rule or order shall be punishable to the extent aforesaid.

Prohibition of
use of explosive,
poisonous or
noxious
substance.

5. Any person who uses or permits to be used any explosive, poisonous or noxious substance for the purpose of killing, stunning or disabling fish or in any way rendering fish more easily caught shall be guilty of an offence and shall

be liable on conviction to a fine not exceeding fifty pounds and in default of payment thereof to imprisonment for a period not exceeding three months.

6. The Governor may, in the interests of science or for any other reason that to him may seem fit, in writing exempt any person or body of persons from the provisions of section 5 of this Ordinance or of any rule made under this Ordinance. Exemptions.

7. Any Administrative Officer, Game Warden, Police Officer not below the rank of assistant inspector, Fishery Inspector and any other person duly authorized in writing in that behalf by an Administrative Officer— Powers of entry, seizure and arrest.

(a) may at all reasonable times enter into and upon any land or premises, or stop and enter upon any boat for the purpose of preventing or detecting offences against this Ordinance or any rule made thereunder;

(b) may seize any—

(i) boat, explosive, poisonous or noxious substance, net, tackle, instrument or other appliance which he has reason to believe is being or has been used in contravention of this Ordinance or any rule made thereunder;

(ii) fish which he has reason to believe was captured in contravention of this Ordinance or any rule made thereunder.

(c) may without warrant arrest and search any person whom he may find committing, or whom he reasonably suspects of having committed, an offence against this Ordinance or any rule made thereunder :

Provided that the person arrested shall be taken with as little delay as possible before a magistrate to be dealt with according to law.

8. On the conviction of any person for an offence against this Ordinance or any rule made thereunder, the court before which the offender was convicted may order any articles in respect of which the offence was committed to be forfeited to His Majesty, and to be destroyed, sold, or otherwise disposed of. Disposal of articles after conviction.

Obstructing
officers.

9. Any person who shall wilfully obstruct, hinder, assault or resist an Administrative Officer, Game Warden, Police Officer, Fishery Inspector, or any person duly authorized by an Administrative Officer in the exercise of his powers under this Ordinance or any rule made thereunder shall be guilty of an offence and shall be liable to a fine not exceeding fifty pounds or to imprisonment for any term not exceeding three months, or to both such fine and imprisonment.

Repeal.
Cap. 163.

10. The Fish Protection Ordinance (Chapter 163 of the Revised Edition) is hereby repealed.

ORDINANCE No. XL of 1939

Assented to in His Majesty's name this twenty-seventh day of December, 1939.

W. HARRAGIN,
Acting Governor.

[27TH DECEMBER, 1939.] Date of assent.

An Ordinance to Provide for the Advancement and Control of the Flax Industry

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 Flax Ordinance, 1939, and shall come into operation 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.

“agency” means a person or body of persons from time to time appointed under the provisions of section 10 of this Ordinance;

“Board” means the Board established by section 3 of this Ordinance;

“Director” means the Director of Agriculture;

“export” means export from the Colony to a place outside the limits of the Colony;

“Fund” means the Flax Levy Fund established by section 13 of this Ordinance;

“levy” means the levy imposed under the provisions of section 12 of this Ordinance;

“flax” means all those varieties of the plant known botanically as *Linum usitatissimum*, which may be specified by the Director by notice in the Gazette and shall include the straw, stems, fibre and seed thereof;

“flax grower” means any person who grows flax for sale;

“sell” includes agree or contract to sell.

Establishment
and constitution
of the Board.

3. (1) There shall be established a Board, to be known as "The Flax Board", which shall consist of—

- (a) the Director or his nominee;
- (b) one member to be appointed by the Governor;
- (c) one person licensed under the provisions of this Ordinance for each of the areas specified by the Governor under sub-section (2) of this section and who shall be elected as hereinafter provided.

(2) For the purpose of electing to the Board any person referred to in paragraph (c) of sub-section (1) of this section the Board shall convene a meeting in the first half of each calendar year, at such place and time as the Board may deem fit, in each of the areas to be declared by the Governor by notice in the Gazette :

Provided that in the first instance the members of the Board referred to in paragraph (c) of sub-section (1) of this section shall be appointed by the Governor on the recommendation of the Director, and such appointments shall be deemed to have terminated when the members referred to in the said paragraph have been duly elected.

(3) The Board shall elect a chairman and a vice-chairman annually.

(4) (a) The member of the Board referred to in paragraph (b) of sub-section (1) of this section shall hold office for a period of two years and may be re-appointed by the Governor.

(b) Members of the Board referred to in paragraph (c) of sub-section (1) of this section shall retire annually and shall be eligible for re-election.

(5) A candidate for election shall lodge with the Secretary of the Board, at least fourteen days before the date fixed for the election, a nomination paper signed by not less than five flax growers licensed under the provisions of this Ordinance.

(6) In any case in which the Board is satisfied that any member of the Board is incapacitated by illness, absence or other sufficient cause from performing the duties of his office the Board may appoint some fit person to be a deputy to act for that member during such incapacity and any deputy shall, while he acts as such, have all the powers and authority of the member for whom he is so acting.

(7) Where a member elected under sub-section (2) of this section dies or resigns his seat on the Board, the Governor may, with the advice of the Board, nominate any flax grower licensed under the provisions of this Ordinance to act as a member of the Board until such time as a member is elected to fill the vacancy at the next meeting.

4. The Board shall be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued, and may purchase, hold and dispose of land and other property for the purposes of this Ordinance.

Board to be a body corporate.

5. (1) The Board shall meet not less than once in six months.

Meetings of the Board.

(2) At all meetings of the Board four members shall form a quorum.

(3) In the absence of the chairman and vice-chairman from any meeting of the Board a chairman for such meeting shall be chosen by the members present.

(4) The chairman of the meeting shall have a deliberative vote, and in the case of equality of votes shall also have a casting vote. A decision of a majority of the members present and voting at a meeting of the Board shall be deemed to be the decision of the Board.

(5) The chairman may in his discretion at any time convene a special meeting of the Board and shall, upon receipt of a requisition signed by three members of the Board calling upon him so to do, within one month after the date of such requisition, convene a special meeting of the Board.

(6) Subject to any rules which may be made under section 16 of this Ordinance, the Board may make standing orders regulating—

(a) the conduct of its business;

(b) the procedure for the election of members at meetings convened under sub-section (2) of section 3 of this Ordinance.

6. The Board shall prepare annually a report of its operations, copies of which shall be submitted to each of the meetings convened under the provisions of sub-section (2) of section 3 of this Ordinance and the report shall be published in such manner as the Governor may direct.

Annual report.

Liability of
members of
the Board.

7. No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith and without negligence in the course of the operations of the Board.

Licensing of
flax growers.

8. (1) (a) No person shall, on or after the commencement of this Ordinance, grow flax for sale unless and until he is in possession of a licence issued to him for such purpose by the Commissioner of Inland Revenue.

(b) All applications for licences shall be addressed to the Director.

(2) Upon receipt of an application for a licence other than an application for a licence mentioned in sub-section (3) of this section, the Director shall consult the Board, but may, in his discretion, and notwithstanding the advice of the Board to the contrary approve or refuse the application:

Provided that, where the Director intends to approve or refuse the issue of a licence notwithstanding the advice of the Board to the contrary, he shall before approving or refusing, as the case may be, the issue of a licence notify the Board accordingly in writing, and the Board may within ten days after the date of such notification appeal to the Governor in Council whose decision shall be final. A copy of any such appeal shall at the same time be sent to the Director and also to the Board.

(3) The Director shall not refuse to grant the issue of a licence under this section to any flax grower (or his successor in title) in respect of any acreage of land which is at the commencement of this Ordinance planted with flax, and shall in exercising his discretion under the provisions of sub-section (2) of this section be subject to the provisions of any rules made under this Ordinance.

(4) A fee of ten shillings shall be payable for such licence.

(5) Every licence issued under the provisions of this section shall specify the acreage of land which the licensee is authorized to plant with flax and no licensee shall plant more flax than the acreage so stated.

(6) Every licence issued under the provisions of this section shall expire on the thirty-first day of December next following the date on which it was issued.

(7) All licence fees paid by flax growers under the provisions of this section shall be paid to the credit of the Fund.

9. (1) No person shall operate a factory for the extraction of fibre from flax straw or stems unless and until he is in possession of a licence issued by the Board.

Licensing of flax factories.

(2) Every such licence shall be signed by the chairman of the Board and shall be subject to such terms and conditions as the Board may see fit to endorse thereon.

10. (1) The Board may on the recommendation of a majority of flax growers licensed under the provisions of this Ordinance, and with the approval of the Governor in Council, appoint an agency or agencies for the purposes of this Ordinance, and may in like manner revoke or vary any such appointment.

Appointment of agency.

(2) Any appointment made under sub-section (1) of this section, or the revocation or variation of such appointment, shall be published in the Gazette.

11. In the event of any one or more agencies having been appointed under the provisions of section 10 of this Ordinance, the following provisions shall apply—

Provisions to apply when agency appointed.

(a) No flax grower shall sell or export any flax except through an agency.

Flax to be sold or exported through agency.

(b) An agency shall accept all flax, offered to it by any flax grower, which has been prescribed by rules made under this Ordinance as suitable for sale or export.

Agency to accept all flax suitable for sale or export.

(c) Any person aggrieved by any decision of an agency may appeal to the Board, whose decision shall be final, but nothing in this paragraph contained shall be deemed to deprive any person of any right of action which he may have in any competent court of the Colony.

Appeal from agency to Board.

12. The Governor may, on the recommendation of the Board, from time to time by proclamation in the Gazette impose a levy on all flax exported from the Colony.

Levy.

13. (1) There shall be established a fund, to be known as "The Flax Levy Fund", which shall consist of moneys paid in respect of the levy and such other contributions and donations as may from time to time be made to the Fund.

Flax Levy Fund.

(2) The Fund shall be in the custody of the Accountant-General, who, as soon as possible after the last day of each month, shall pay the amount of such Fund into an account

opened in the name of the Board with a bank approved by the Governor, and the receipt of such bank for sums so paid shall be a full and effectual discharge to the Accountant-General.

(3) The Board shall apply such moneys to all or any of the following purposes:—

- (a) experiment, investigation and research in connexion with the flax industry;
- (b) the cost of advertising the merits of Kenya flax and increasing its sale by efforts to extend existing markets and exploiting new markets, and any matters incidental thereto;
- (c) the employment of such staff and the purchase of such equipment as the Board may deem necessary for the purpose of carrying out its functions under this Ordinance and of any rules made thereunder;
- (d) the payment of travelling and out-of-pocket expenses to individual members of the Board at rates to be approved by the Governor;
- (e) with the approval of the Governor in Council, for any other purpose which, in the opinion of the Board, is calculated to promote the welfare of the flax industry or the more economic production or preparation of flax.

Audit and
publication
of accounts.

14. The accounts of the Fund shall be audited in such manner as the Governor may direct, and shall, as soon as may be after the close of each year, and after audit as aforesaid, be published in such manner as the Governor may direct.

Penalty for
offences.

15. Any person who is guilty of a breach of any of the provisions of this Ordinance or of any rules made thereunder or of the terms and conditions of any licence issued thereunder shall, on conviction before a magistrate of the first or second class, be liable for a first offence to a fine not exceeding one hundred pounds or to imprisonment for six months, or to both such fine and such imprisonment and for a second or subsequent offence to a fine not exceeding five hundred pounds or to imprisonment for twelve months, or to both such fine and such imprisonment.

16. (1) The Governor in Council may, after consultation with the Board, make rules for the regulation and control of the flax industry and, without prejudice to the generality of the foregoing, for all or any of the following purposes:—

Power to make rules.

- (a) prescribing the conditions on which an agency may be appointed;
- (b) prescribing the duties and functions of an agency;
- (c) controlling the manufacture, sale or export of flax grown in the Colony and the payment therefor;
- (d) prohibiting or regulating the export of flax;
- (e) prohibiting or regulating the export of flax of varieties other than those which may be specified;
- (f) regulating the distribution of the proceeds to flax growers licensed under this Ordinance of sales of flax through an agency;
- (g) providing for the submission of returns to an agency relating to the cultivation of flax and the quantities of flax which shall be available for export;
- (h) controlling the preparation of flax for export and the acceptance of flax by factories for preparation;
- (i) prescribing the grades of flax for sale or export;
- (j) prescribing the conditions under which flax factories may be erected or operated, or otherwise controlled or regulated;
- (k) prescribing the scale of charges for factory operations and the means of collecting the same;
- (l) prescribing the procedure for obtaining the recommendation of the majority of licensed flax growers under section 10 of this Ordinance;
- (m) prescribing the procedure for the collection of the levy;
- (n) prohibiting or regulating the planting of flax;
- (o) prescribing the conditions under which flax growers shall be permitted to grow and prepare flax;
- (p) prescribing the form of licences to be issued under this Ordinance ;
- (q) prescribing the qualifications and disqualifications of voters and candidates for election under section 3 of this Ordinance;

- (r) prescribing the procedure for the nomination of candidates for election under section 3 of this Ordinance;
- (s) regulating the procedure in regard to the taking of a poll at contested elections under section 3 of this Ordinance;
- (t) dispensing with the attendance of voters at an election under section 3 of this Ordinance and providing for the transmission of votes by post or otherwise;
- (u) generally for the better carrying out of the provisions of this Ordinance.

(2) Any such rule may require acts or things to be performed or done to the satisfaction of the Board, may prohibit acts or things from being performed or done without the prior approval of the Board, may empower the Board to impose conditions and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

Any person aggrieved by a decision of the Board in the exercise of the powers conferred upon them by any rule made under this section may appeal to the Governor in Council, whose decision shall be final and shall be binding on the Board.

ORDINANCE No. XLI of 1939

Assented to in His Majesty's name this thirtieth day of
December, 1939.

W. HARRAGIN,
Acting Governor.

[30TH DECEMBER, 1939.] Date of assent.

**An Ordinance to Apply a Sum of Money for the
Service of the Year ending the 31st day of
December, 1940**

1st January, 1940

Date of com-
mencement.

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 1940 Appropria- Short title.
tion Ordinance, 1939.

2. The Public Revenues for the year 1940 and other Public Revenue
funds of the Colony and Protectorate of Kenya are hereby and other funds
charged towards the service of the year ending the thirty-first charged.
day of December, one thousand nine hundred and forty, with
the sum of three million six hundred and twenty-four
thousand three hundred and fifty-eight pounds.

3. The money granted by this Ordinance shall be Application of
applied for the purposes and services expressed in the Schedule money granted.
annexed hereto.

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

SCHEDULE

<i>No. of Head</i>		<i>Amount £</i>
1	His Excellency the Governor	14,949
2	Accountant General	16,975
3	Administration	225,834
3A	Administration Extraordinary	400
4	Agriculture	76,513
4A	Agriculture Extraordinary	600
5	Audit	17,918
6	Civil Aviation	21,043
7	Coast Agency	5,447
8	Conference of East African Governors	936
9	Customs	29,629
9A	Customs Extraordinary	34
10	Education	210,384
10A	Education Extraordinary	100
11	Forest	31,361
12	Game	8,729
13	Government Chemist	2,297
14	Inland Revenue	21,509
15	Judicial	31,653
16	Kenya Royal Naval Volunteer Reserve	4,285
17	Lands and Settlement	39,164
18	Legal	10,040
19	Local Government Contributions to Local Authorities	114,107
19A	Local Government Contributions to Local Authorities Extraordinary	2,500
20	Medical	233,421
20A	Medical Extraordinary	645
21	Military	136,822
22	Mining and Geological	10,257
22A	Mining and Geological Extraordinary	120
23	Miscellaneous Services	31,831
23A	Miscellaneous Services Extraordinary	5,000
24	Pensions and Gratuities	248,000
25	Police	150,979
25A	Police Extraordinary	5,922
26	Posts and Telegraphs	154,210
26A	Posts and Telegraphs Extraordinary	5,513
27	Printing and Stationery	38,704
28	Prisons	55,852
28A	Prisons Extraordinary	36

1939

1940 Appropriation

No. XLI

SCHEDULE—(Contd.)

<i>No. of Head</i>		<i>Amount £</i>
29	Public Debt	245,498
30	Public Works Department	86,226
31	Public Works Recurrent	117,323
32	Registrar General	5,822
33	Rent and Interest to His Highness the Sultan of Zanzibar	16,000
34	Secretariat and Legislative Council	30,307
35	Subventions	15,789
36	Trade and Information Office	800
37	Veterinary Services	68,065
37A	Veterinary Services Extraordinary	1,250
38	Public Works Extraordinary	6,250
39	Colonial Development Fund	42,869
40	Parliamentary Grant	1,379
41	War Expenditure, Civil	55,920
42	Conference of East African Governors	3,208
43	Customs	23,320
43A	Customs Extraordinary	26
46	Posts and Telegraphs	123,039
46A	Posts and Telegraphs Extraordinary	12
47	Public Debt	817,531
		£3,624,358

W:xxvi/40

ORDINANCE No. XLII of 1939

Assented to in His Majesty's name this thirtieth day of December, 1939.

W. HARRAGIN,
Acting Governor.

[30TH DECEMBER, 1939.] Date of assent.

An Ordinance to Provide for the Raising of Additional Revenue during the Present War

1st January, 1940

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 War Taxation Ordinance, 1939, and shall come into operation on the 1st day of January, 1940. Short title and commencement.

2. (1) When, under the provisions of the Income Tax Ordinance, 1937, the amount of tax upon the chargeable income of any person, including a company, has been assessed, there shall be added, in the case of any person other than a company, an additional tax representing forty per centum of the amount so assessed, and, in the case of a company, an additional tax representing fifty per centum of the amount so assessed; and such additional tax shall become due and payable, and shall be recoverable, and shall be subject in all respects to the provisions of the Income Tax Ordinance, 1937, as if it had been imposed under the provisions of that Ordinance. Surcharge on Income Tax. No. 12 of 1937.

(2) For the purposes of section 78 of the Income Tax Ordinance, 1937, any reference to the Non-Native Poll Tax Ordinance, 1936, contained therein, shall be read as if such reference included a reference to the change in the amount of non-native poll tax effected by section 3 of this Ordinance. No. 12 of 1937. No. 50 of 1936.

Repealed
By as:
xxvi/40

Surcharge on
Non-Native Poll
Tax.

No. 50 of 1936.

3. (1) Section 3 of the Non-Native Poll Tax Ordinance, 1936, shall be read as if items (a), (b) and (c) thereof were deleted therefrom and the following were substituted therefor—

- | | | |
|-----------------------------------|--------|----------|
| “(a) By every European non-native | ... | Sh. 60 |
| “(b) By every Asiatic non-native | ... .. | Sh. 45 |
| “(c) By every other non-native | ... .. | Sh. 30.” |

No. 50 of 1936.

(2) Sub-section (2) of section 4 of the Non-Native Poll Tax Ordinance, 1936, shall be read as if the figures “50”, which occur in the third line thereof, were deleted therefrom and the figures “33 $\frac{1}{3}$ ” were substituted therefor.

Duration of
Ordinance.

4. This Ordinance shall continue in force until the 31st day of December next following such date as the Governor may, by proclamation, declare to be the date on which the war that was the occasion of the enactment of this Ordinance came to an end.