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OF THE  
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# Colony and Protectorate of Kenya.

GOVERNMENT NOTICE No. 356.

His Excellency the Governor has approved of the following Bill being introduced into Legislative Council.

R. W. LAMBERT,  
*Clerk to Legislative Council.*

## **A Bill to make provision for the Employment and Conservation of Waters and to Regulate Water-Supply, Irrigation, and Drainage.**

### PART I.—PRELIMINARY.

1. This Ordinance may be cited as “the Water Short title.  
Ordinance, 1928.”

2. In this Ordinance, unless inconsistent with the con- Definitions and  
text or subject matter, the following expressions shall have Interpretations  
5 the meanings hereby assigned to them, that is to say :— of terms.

“Applicant ” means any person, body of persons, or com-  
pany who, or which, has applied for a water right under this  
Ordinance.

10 “Authorisation ” means an authorisation to construct  
works under this Ordinance.

“Authorised ” means authorised under the provisions of  
this Ordinance or of any notice or regulation thereunder.

15 “Bank ” as applied to a watercourse, or body of water,  
means the lateral and relatively steep border or margin of  
the bed included between the level of the lowest waters and  
that which the waters reach to in their greatest ordinary rise  
or floodings.

20 “Bed ” with regard to any watercourse or body of  
water is the land which the water covers in its greatest  
ordinary rise or flood, and includes the banks thereof.

25 “Body of water ” means water contained in or flowing  
in a spring, stream, lake or swamp, or in or beneath a water-  
course, still or moving, temporary or permanent, and includes  
the water diverted or abstracted therefrom or stored therein  
by means of works under licence.

“Colony ” means the Colony and Protectorate of Kenya.

30 “Company ” means any incorporated or limited com-  
pany, the object and powers of which extend to or include  
the construction or operation of works for the exercise of a  
water right.

“Department ” means the Public Works Department.

“Develop ” means make available for beneficial use.

35 “Director ” means the officer for the time being ap-  
pointed to the post of Director of Public Works, and any  
officer appointed by the Governor to act for him during his  
absence.

“Easement ” means the right to occupy so much of the  
lands of another as may be necessary for, or incidental to,  
the construction and/or maintenance of authorised works  
and/or the exercise of a water right.

“ Flood water ” means any water flowing in a stream in excess of the normal flow.

“ Holder ” or “ landholder ” in relation to land means the Crown, or the person registered at the Land Office as the holder or owner of the land or in whom the land is vested by law and shall include :— 5

(a) Any person lawfully holding or occupying land in accordance with the provisions of any law empowering the Government to allot land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions. 10

(b) Any person who by any established right, custom or estate whatsoever is, or is entitled to be, the holder or possessor of land.

“ Irrigation ” means the practice of causing water to flow upon or spread over or under the surface of land for the purpose of the improvement of the land. 15

“ Licence ” means the document conveying a water right.

“ Licensed surveyor ” means a surveyor licensed under rules made under section 151 (1) (i) of the Crown Lands Ordinance, Chapter 140, or any Ordinance or Rules in modification thereof or substitution therefor. 20

“ Licensee ” means a person to whom a licence has been issued under this Ordinance and whose licence has not been cancelled. 25

“ Normal flow ” means the ordinary flow of a stream as certified by the Water Board to be the normal flow.

“ Operator ” means any person authorised to construct works under this Ordinance by authorisation or to divert, abstract, or use water by licence, and includes an applicant. 30

“ Permit ” means any permit issued under Section 145 of the Crown Lands Ordinance, and shall include a water permit or written permission to divert, abstract, obstruct, or use water or to construct works, which has been signed by the Director or by any of his predecessors in office or on his or any of their behalf and shall also include any express permission to dam any spring, river or stream, or to divert any water from any spring, river, stream or lake which may be contained in any sale, lease or licence made or granted under the Crown Lands Ordinance, 1902, or under the Crown Lands Ordinance. 35 40

“ Person ” means any person or body of persons or body corporate or politic or party, and the heirs, executors, administrators, or other legal representatives of such person, to whom the context can apply according to law. 45

“ Power licensee ” means a person to whom a licence to divert, store or employ water for the development of power has been issued under this Ordinance, and whose licence has not been cancelled. 50

“ Power reach ” means a portion of a stream which includes waterfalls and rapids or waterfalls or rapids and is limited by the places on the course of the stream at which water would be likely to be diverted from and returned to the stream if or when the total power available from the portion of the stream is economically utilised. 55

“ Prescribed ” means prescribed under the provisions of this Ordinance, or of any regulation or notice thereunder.

“ Qualified engineer ” means a person registered under this Ordinance as a qualified engineer.

“ Riparian ”, as applied to land, means abutting on or traversed by a body of water.

5 “ Spring ” means water emerging from beneath the surface of the ground.

“ Stream ” means the water contained in a watercourse, and includes a river.

10 “ Subterranean water ” means any water which naturally exists beneath the natural surface of the ground and is only procurable by wells, bores or excavations.

“ Watercourse ” means a natural channel or depression in which water flows, either perennially or intermittently.

15 “ Water right ” means the right to divert, abstract, obstruct, store or use water or to drain lands as granted and held by licence under this Ordinance, and includes the right to construct and maintain works authorised under this Ordinance for the purposes of the licence.

20 “ Works ” mean any structure, apparatus, contrivance, device or thing, for carrying, conducting, providing, or utilising water, excepting hand utensils or such other contrivances as may be specified in the Gazette by order of the Water Board.

25 3. This Ordinance shall apply throughout the Colony and shall come into operation on such day as the Governor shall by proclamation in the Gazette appoint. Application and commencement.

## PART II.—WATER RIGHTS.

30 4. (1) The water of every body of water is hereby declared to be the property of His Majesty, and its control is hereby declared to be vested in the Governor in Council on behalf of His Majesty subject to the provisions of this Ordinance. Water the property of the Crown and vested in the Governor in Council.

35 (2) Subterranean water is the property of His Majesty and its control is hereby declared to be vested in the Governor in Council on behalf of His Majesty subject to any Rules made under this Ordinance.

(3) This section shall not apply to any part of the Protectorate of Kenya which is now or may hereafter be held on lease from His Majesty the Sultan of Zanzibar.

40 5. The right to the use of every body of water is hereby declared to be vested in the Governor in Council, and no person shall divert, abstract, obstruct or use water from a body of water, otherwise than under the provisions of this Ordinance. Right to use water vested in the Governor in Council.

45 6. No tenure, or transfer of land shall convey to or vest in any holder or grantee any property or right or interest or privilege exclusive or otherwise with respect to any body of water, and no right to the diversion, abstraction, obstruction or use of any body of water shall exist or be acquired or be deemed to have been acquired by any person by length of use or otherwise than as it may be acquired or conferred under this Ordinance. Right to use water may be acquired only under this Ordinance.

50

Bodies of water on alienated land not to be interfered with except under this Ordinance.

7. If at the time of the lease or conveyance of any land heretofore or hereafter made by the Crown there existed or exists any watercourse, swamp or body of water, or works, used or disused, although no reservation, mention, or exception thereof is contained in the Crown grant of the land, no person shall obstruct or destroy such watercourse, swamp, body of water or works or interfere therewith except as provided in this Ordinance.

Purposes for which a water right may be acquired.

8. The purposes for which a water right may be acquired are the following :—

(a) Domestic purpose, which shall mean and include the provision and employment of water for household and sanitary purposes, the watering and dipping of stock, and the essential requirements of farming operations, where not of an industrial nature.

(b) Public purpose, which shall mean and include the provision and employment of water for municipalities, townships, villages, and communities and for all reasonable demands for steam raising on railways or for other purposes connected with public undertakings, not involving the use of water for the generation of power.

(c) Minor irrigation purpose, which shall mean and include the provision and employment of water for irrigation of lands used for orchards, gardens, nurseries, or land for other requirements in connection with farming operations not exceeding five acres in area near the source of supply.

(d) Industrial purpose, which shall mean and include washing and treating of coffee, vegetable fibre, or other agricultural or mineral products or the essential requirements of other industries and mining.

(e) Power purpose, which shall mean and include the provision and employment of water for the development of power.

(f) General irrigation purpose.

(g) Other purpose.

Riparian amenities safeguarded.

9. Applications for water rights shall receive priority in accordance with the circumstances of each case, but no water right shall be granted, which in the opinion of the Water Board would be likely to interfere with the essential domestic requirements of riparian farms according to this Ordinance without the authority of the Governor in Council.

When licence not required.

10. A licence shall not be required for the abstraction or use of water from any body of water for domestic purposes where such abstraction or use is made without the employment of works.

Provided that in the case of small bodies of water or during drought the Water Board may in its absolute discretion by written order require a riparian holder to allow to pass to lower riparian holders such proportion of the flow of a stream as appears to it to be equitable and may prohibit any practice which in the opinion of the Water Board causes an undue reduction of the flow of a stream, and any person who fails to obey an order of the Water Board given under this section shall be guilty of an offence against this Ordinance.

- 11.** In all cases of proposed diversion, abstraction, obstruction, storage, or use of water from a body of water, other than those referred to in the last preceding section, application must be made in the manner prescribed by this Ordinance for a licence for the diversion, abstraction, obstruction or storage of water. The execution, construction, erection or employment of works, the diversion, abstraction, obstruction or storage of water from or in a body of water, except as hereinbefore provided, without, or prior to, the receipt of an authorisation, licence or sanction under this Ordinance, shall be an offence under this Ordinance.
- When licence is required.

- 12.** Projects for the use of water, or for the drainage of land are of five classes, namely :—
- Classification of projects.

- State Projects.
- 15           Private Projects.
- Community Projects.
- Public Projects.
- Urban Supply Projects.

- 13.** (1) Whenever the Governor on the advice of the Water Board established under this Ordinance may have decided upon a project to use, or may consider it desirable in the public interest to reserve the right to use the water, or portion of the water of any body of water, or upon a project for draining lands, such State project or reservation shall take precedence over all other projects for the use of such water, or drainage of such lands.
- State projects take precedence over all others.

- (2) Licences may be issued, on such terms as the Water Board may in each case specify, for water rights for use of water in an area, treated or to be treated, in whole or in part, as a State project, or for use in connection with a body of water affected by a State project, until such time as such water is required for the State project or when and for as long as water is available in excess of the requirements of the State project.

- (3) The Governor in Council may from time to time, on the advice of the Water Board, publish in the Gazette a statement of the lands required for the development of any State project and Crown Lands required for such State project may by notice in the Gazette be reserved from sale or other disposal.

- (4) When any of the lands required for the State project have been sold, leased, allotted, or otherwise disposed of by the Crown, prior to publication of the notice as hereinbefore prescribed in the Gazette, the procedure to acquire the lands so disposed of shall be in accordance with the law in force for the time being relating to the acquisition of land for public purposes.

- (5) The reservations in this section provided for, may be exercised by the Governor in Council notwithstanding that the construction of the projected works may not be done by Government or paid for out of Government funds.

- 14.** Private projects are such as concern the use of water or the drainage of swamps within the limits of the land of the operator whether the works are constructed entirely on the land of the operator, or partly on the land of other persons.
- Private projects.

Private project  
conducted by  
an association  
of operators.

15. (1) Two or more operators who have a common interest in the employment of water or in the drainage of swamps may unite in an association for the exercise of a water right under a licence for a private project. Any application for a water right in such a case shall be accompanied by a statement of the terms and objects of the association, and the rules, under which such an association proposes to exercise the water right, must be specified in writing and submitted to and approved by the Water Board, as also must any modification of such rules at any later date.

(2) The proportion of participation shall be presumed to be equal between members unless the contrary is laid down in rules made by the association adopted as provided in the preceding sub-section.

(3) The grant of a water right to an association of operators under the provisions of this section shall be subject to such terms governing action to be taken during operation, upon withdrawal of members, or upon dissolution, as the Water Board may prescribe, or as may be prescribed in rules made under this Ordinance.

Community  
projects.

16. Community projects shall be such as are conducted on lines specified in rules made under this Ordinance by a community of landholders operating under a water right for one or more of a series of authorised purposes connected with the use of water or with drainage or reclamation, entirely or for the greater part within their own holdings, not being public supply or urban supply projects.

Public supply  
projects.

17. Public supply projects shall mean projects which include the supply of water or of electrical energy derived from the energy of moving water, to persons other than the operator in consideration of payment therefor, or the drainage or reclamation of lands in consideration of payment therefor.

Urban supply  
projects.

18. Urban supply projects shall mean projects undertaken, operated or maintained by a municipal authority, corporation, or other body, for the supply of water to municipalities or townships, and shall include projects howsoever originated, and constructed, which are taken over and operated by a municipality, corporation, or other water works authority, for the supply of water to a municipality or township.

Water Board  
to determine  
class of project.

19. It shall be lawful for the Water Board to determine to which class any proposed project shall be deemed to belong.

20. (1) For the purpose of carrying out the provisions of this Ordinance, a Water Board shall be appointed by the Governor in Council.

(2) The Director shall be Chairman of the Water Board and the members thereof shall be such persons as the Governor may appoint by notice in the Gazette. The Hydraulic Engineer shall be a member and the Lands, Legal, and Native Affairs Departments shall be represented on the Water Board. There shall be not less than four representatives of the public.

(3) The Water Board shall meet at such times and places as the Chairman shall direct, but shall ordinarily meet in Nairobi.

(4) The powers, duties and obligations of the Water Board may, at any time, be exercised by a quorum thereof consisting of not less than half the number of members.

5 (5) At any meeting of the Water Board the Chairman shall preside and in his absence the Board shall elect a Chairman.

(6) The Chairman presiding at a meeting shall, in the event of an equal division of votes, have a second or casting vote.

10 (7) The executive work and requirements of the Water Board shall be carried out by such engineers, surveyors, inspectors and clerks or other staff of the Department as may be specially appointed for the purpose of the administration of this Ordinance, and by such other persons as the Director  
15 may approve.

(8) Surveys for the purpose of collecting hydrographic information, on which to base the settlement of water rights by the Water Board, shall be undertaken by officers appointed for the purpose by the Water Board.

20 (9) It shall be the duty of the Water Board to cause to be made such hydrographic surveys and investigations as will ensure that adequate knowledge is secured of the varying flow of streams, the alteration of the level of the water of lakes, the capacity of power reaches, and the probable future  
25 demands for water to enable the Water Board to apportion water rights equitably, and to make such reservations as may be required in the future for public purposes and applications for water rights, as well as to ensure that the requirements of riparian holders to water for domestic purposes are not  
30 interfered with.

(10) Any of the powers, duties or obligations vested by this Ordinance in the Water Board, except the power to grant, alter or cancel water rights, easements, licences or sanctions, may by resolution of the Water Board, be deputed  
35 by the Water Board to the Director.

**21.** (1) The Governor in Council may, on the advice of the Water Board, appoint District Water Boards to assist in the administration of this Ordinance in any areas of the Colony.

Appointment  
of District  
Water Boards.

40 (2) The constitution, membership, chairmanship, meetings and duties of a District Water Board shall be as provided by Rules made under this Ordinance or in default of Rules by Order of the Governor in Council.

(3) A District Water Board shall be advisory to the  
45 Water Board on matters pertaining to applications for water rights or the alteration thereof in any part of its area.

(4) The powers of a District Water Board shall be such powers as may be granted by Rules made under this Ordinance.

50 (5) The Governor in Council may, on the advice of the Water Board, appoint any local authority or body of persons with their concurrence, to exercise within any area such of the duties and powers of a District Water Board as he may decide.



Rights of  
holders of  
pre-existing  
permits.

**22.** (1) A holder of a permit, not being a permit terminating on the 31st day of December of the year of issue or renewal, who has made use of and is at the time of the enactment of this Ordinance, making beneficial use of water in conformity with the terms of the said permit, if application be made by him to the Water Board for a water right under this Ordinance within six months after the date of the coming into operation of this Ordinance and after receipt by the Water Board of any particulars it may require regarding the diversion, abstraction, obstruction or use of the water, or other matters pertaining thereto, shall be entitled to receive a licence under this Ordinance. 5 10

Provided that the licence shall authorise the diversion, abstraction, storage or use of a discharge or the construction of works or the diversion, abstraction, storage or use of a proportion of the flow of a stream or all or any of them, which shall be determined by the Water Board after consideration of the discharge or proportion of the stream which at the time of the coming into operation of this Ordinance is being diverted, abstracted and beneficially used, and of the works constructed, and of the probable future utilisation of the body of water by other users, and shall be issued under such terms and conditions as may be decided by the Water Board. Provided further that any person aggrieved by a decision of the Water Board under this section may appeal to the Governor in Council within one month of the giving of such decision by the Water Board, and the decision of the Governor in Council shall be final. 15 20 25

Provided also that if in the opinion of the Water Board a licence should not be issued until after hydrographic survey or other investigation has been made or if for any other reason the Water Board deems it desirable to delay the issue of a licence, the Water Board may issue a sanction under section 91 of this Ordinance in lieu of the said permit. 30

(2) When a permit or a renewal thereof terminating on the 31st day of December has been issued and is being made use of in conformity with the terms thereof, a sanction may be issued by the Water Board under section 91 of this Ordinance in lieu of the said permit. 35

Termination of  
permits.

**23.** (1) When a period of twenty-four months after the coming into operation of this Ordinance shall have elapsed, or such further period as may be determined by the Governor in Council by notice in the Gazette, all diversions or abstractions of water from a body of water or obstruction of a body of water effected under any authority, or law whatsoever other than the authority of this Ordinance, except in so far as they be or become lawful under the terms of this Ordinance, shall cease to be lawful. 40 45

(2) Every person who has been, prior to the enactment of this Ordinance, diverting, or abstracting, or obstructing water, or allowing water to be diverted, abstracted, or obstructed within the boundaries of land held by him under any terms of tenure, shall either discontinue to divert, abstract, or obstruct water, and if required by the Water Board cause to be removed any works constructed, maintained or used by him which obstruct or impede the flow of any body of water, or shall within six months from the date of the enactment of this Ordinance apply for a water right under this Ordinance, and shall supply such particulars as may be required by Rules or as the Water Board may specify regarding the works, diversion and use of the water. 50 55 60

24. (1) Any person contemplating an application for a water right under this Ordinance, may, upon submitting in the manner prescribed by Rules made under this Ordinance, a general description of his proposals and a list of lands which might be affected by the construction and operation of the work in connection therewith together with the names and addresses of the holders of the same, and upon payment of the prescribed fee, obtain from the Water Board authority to do the necessary preliminary investigation in connection with the location of such work, which authority may prescribe a time limit within which such investigation is to be completed, and after he has obtained such authority he may with such assistants as are necessary enter into and upon any public or private lands to take levels, make surveys, and do other necessary work in connection with such location, doing no damage.

Authority to enter upon lands for purposes of survey, etc.

(2) The Water Board shall issue no such authority until it has posted an intimation to each holder that application to enter his lands has been made by a stated person.

- (3) The grant of such authority in no way authorises the doing of damage upon any lands entered upon, and if any damage is done, compensation shall, failing agreement between the parties as to the amount of such compensation, be determined by arbitration under the Arbitration Ordinance.

25. Every applicant under this Ordinance shall file with the Water Board the following documents in duplicate accompanied by the prescribed fee :—

Application for a water right.

- (a) An application on a form provided, in which the applicant shall set forth his name, residence, and occupation, the number and locality of his farm and lands where water is required to be used, the description of the body of water from which the water required is to be diverted, abstracted, stored or used, and the point of diversion, abstraction, storage, or use, the purpose for which water is required, and an estimate of the normal and minimum flow of the stream from which diversion or abstraction or storage is applied for, a statement whether a proportion of the normal flow or flood water or both is required, a description of the character and size of the works to be constructed, or installed, together with all other relevant particulars which may be asked for in the form of application or subsequently required for a full understanding of the proposals of the applicant.

- (b) A request for the right to construct any work referred to in the application across any road, or road reserve, or surveyed or declared public highway, if any, which may be affected by such works.

- (c) A general map drawn with Indian ink or by means of other indelible process on tracing linen or other substantial material to a scale of not less than one in sixty-two thousand five hundred, signed by the applicant, showing the body of water, the position of the intake, forebay, flume, dam, power house, reservoir, pipes, canals, spillways or other works and lands, if any, to be irrigated, the names of the holders, and the numbers and boundaries of the farms affected by the proposed works.

(d) Such plans as may be required in Rules made under this Ordinance or by the Water Board.

Application for  
water right  
involving  
drainage or  
reclamation.

**26.** For the requirements specified as applying to applications for water rights involving the diversions or use of water there shall be substituted in connection with applications for water rights involving reclamation, drainage or other proposals, such particulars or proposals as the Water Board may specify. 5

Memorial and  
plans to be  
open for  
inspection.

**27.** The application, map, and plans (if any) filed as above prescribed, or a true copy thereof, shall be open for examination 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. 10

Approval of  
application.

**28.** Upon receipt by the Water Board of the application together with all particulars, map, and plans (if any) which it may have required the applicant to furnish, to enable a full understanding of the applicant's proposals, either as originally submitted or as varied, to be arrived at, and if in its opinion the proposed water right would be likely to be in the public interest, or not adverse to it, it shall register the application, and shall endorse its conditional approval on both copies of the application, map, and plans (if any) connected therewith, and shall return one copy of each to the applicant. 15 20

Procedure if  
the application  
for water right  
is approved.

**29.** (1) If the application, map, and plans (if any) have been conditionally approved as provided in the last preceding section, the Water Board shall prepare a draft notice setting forth :— 25

(a) A statement that the application has been filed with the Water Board, and the date of registration of the application, and that objections may be filed with the Water Board within sixty days from the date of the first publication of the notice. 30

(b) The name and address of the applicant.

(c) The place at which the water is proposed to be diverted, abstracted or impounded.

(d) The place at which water is proposed to be used.

(e) The purpose for which water is proposed to be used. 35

(f) General particulars of the proposed works.

(g) Any information considered necessary by the Water Board to enable the applicant's proposals to be understood. 40

(2) The draft notice shall be transmitted to the applicant and the applicant shall, if he desires to acquire a water right, within fifty days from the date of receipt of the notice, cause it to be published in some newspaper, which may be named by the Water Board, published in the Colony, and having circulation in the locality in which the proposed works would be situated, not less than on two occasions within one fortnight, and in two successive issues of the Gazette. 45 50

(3) If it appear to the Water Board to be in the public interest so to do, it may require the applicant to publish the notice in the same newspaper and in a second newspaper having circulation in the locality of the proposed works, on four occasions or less, within thirty days or may require such notice to be published in a modified or altered form.

(4) An objection to the application, if any, shall be filed with the Water Board in duplicate within sixty days from the date of the first publication of the notice or of the modified or altered notice, if modification or alteration has been required, and shall set forth the address of the objector, the specific grounds for objection, and a copy of the objection shall be forthwith served by the objector on the applicant.

(5) The Water Board shall consider the objection, and if in its opinion the alleged grounds of objection are not *prima facie* sufficient to warrant an enquiry, it shall so decide, and shall notify the objector in writing of such decision, but if it considers the alleged grounds sufficient to warrant public enquiry, it shall fix a day for holding the enquiry.

(6) The Water Board may, for the purpose of such hearing summon and examine witnesses upon oath or affirmation, may adjourn such hearing to obtain further evidence, or until the applicant has submitted plans, or altered plans or other documents, may dismiss the objection, or may direct the applicant to amend his application, or may dismiss the application.

30. If after receipt by the Water Board of such application, map, and plans (if any) as may be prescribed in Rules made under this Ordinance, together with such full particulars of the applicant's proposals as it may have required, and if, in its opinion, the proposed water right would not be in the public interest, or would unduly interfere either with the undertakings of other operators, or of riparian holders, the Board shall endorse its disapproval upon one copy of the memorial and any other necessary documents relating thereto, and shall state its reasons for disapproval, and shall return one copy of each document to the applicant.

Procedure if application for water right is not approved.

31. Any applicant or objector who has filed his objection as hereinbefore provided, who is aggrieved by a decision of the Water Board given under the two last preceding sections, may within thirty days after the date of the decision appeal to the Governor in Council, and notice of such appeal shall within that period be served on the Water Board and, if made by an objector, upon the applicant. The decision of the Governor in Council shall be final.

Appeal from the decision of the Water Board.

32. (1) The application, map, and plans (if any) shall be filed at the office of the Director and if the application has been finally approved by the Water Board, the Water Board shall authorise the construction of the works by authorisation, and may fix in the authorisation a time-limit, within which the construction of the works is to be begun, and another within which it is to be completed.

Authorisation.

(2) The authorisation for the construction of works shall be a document, on a form prescribed by the Water Board, or in Rules made under this Ordinance, and there shall be endorsed thereon the number which the licence shall bear if or when issued to the operator on completion of the works in accordance with the authorisation and modifications thereof, if any, and to the satisfaction of the Water Board.

(3) No material deviation from the map or plans filed shall be made without written permission, and any question arising as to whether any deviation is material shall be decided by the Water Board.

Inspection of  
works during  
construction.

**33.** (1) Any works authorised under this Ordinance may, if the Water Board so determines, be constructed subject to inspection during construction by officers of the Department, and the cost of such inspection, or of such portion thereof as the Director declares to be necessary in the interest of the safety of life and property shall be borne by the operator. 5

(2) No such inspection shall be held to imply Government guarantee of works constructed or to support or justify any claim whatsoever against Government in connection with the works. 10

Works to be  
made secure.

**34.** Upon any inspection under the provisions of the last preceding section, the Water Board may order the operator to make any addition or alteration which it considers necessary for the security of any works whether completed or in course of construction, and if such order is not complied with to the satisfaction of the Water Board within such period as may be specified by the Water Board, the authorisation may be cancelled or modified by the Water Board. 15

Water right  
limited by  
capacity of  
works.

**35.** When any work for carrying, storing or using water is not of sufficient capacity to carry, store or use the quantity or discharge to which right has been acquired by the operator, his right shall be limited to the quantity or discharge which such work is capable of carrying, storing or using, and in case of dispute as to such quantity or discharge, the Water Board may order an inspection of the work, and the report and finding of the inspecting officer as to the capacity thereof, shall for the purpose of this section be final and binding, and the licence may be issued by the Water Board for the quantity or discharge of water which the work is capable of carrying, storing or using in a beneficial manner. 20 25 30

Completion  
certificate and  
inspection.

**36.** (1) Upon the expiration of the time mentioned in the authorisation for the construction of works, or at any time before such date if the construction is sooner completed, the operator shall submit a completion certificate upon a prescribed form, whereupon an inspection may be made by an officer appointed for the purpose by the Water Board to ascertain that the works have been completed in accordance with the authorisation, that the easements, if any, for the works have been obtained, that agreements, if any, have been entered into for the supply of water for utilisation on lands which are not the property of the applicant, or for drainage of lands, and that the works as constructed are of the required capacity. 35 40

Provided that if the work is not completed within the said time-limit a progress report shall be substituted for the completion report hereinbefore prescribed, and the operator may apply for an extension of the time-limit of the authorisation, which extension may be refused or may be sanctioned upon such terms as the Water Board may prescribe. 45 50 55

Licence.

**37.** (1) Upon completion of the works to the satisfaction of the Water Board and in accordance with the terms of the authorisation or amended authorisation the Water Board shall issue a licence to the operator to divert, abstract, use or store the discharge or quantity of water, to which he is entitled and in accordance with the terms of the licence, and of the authorisation, or any approved modification thereof, 55

and such licence shall bear the number accorded to the authorisation, with priority from the date on which the application containing full details of the applicant's proposals together with such particulars, maps or plans as may have  
5 been required, was received by the Water Board.

(2) A licence may be issued for a fixed period or otherwise as the Water Board may decide.

38. If at any time it is made to appear to the Water Board, after giving due consideration to future requirements  
10 of riparian holders, that the water in any body of water is not all required for the use of holders of land riparian to the body of water and if in its opinion a proportion of the water can be more beneficially utilised on lands not riparian to the body of water, it shall be lawful for the Water Board to  
15 authorise by licence the diversion of water on to non-riparian land within the catchment area or across the natural watershed of the river into any other catchment area.

Water for non-riparian lands.

39. The right of a licensee to divert, abstract, use or store water, shall be limited to the quantity or proportion of  
20 the discharge of the stream, whether it be normal flow or flood discharge, granted by licence, and in accordance with the terms of the licence, or in accordance with other right lawfully exercised under the provisions of this Ordinance.

Limitation of water right.

Provided that every licence shall be subject to cancellation, or alteration by the Water Board by reason of waste of  
25 water, or non-use, misuse or partial use only of the water right granted, or non-compliance with the conditions of the licence, and if so cancelled the water right shall thereupon determine.

30 Provided further that where a licence is cancelled the licensee may appeal to the Governor in Council if such appeal is made within one month from the date of such cancellation and the decision of the Governor in Council shall be final.

Provided also that no licence for a public supply purpose  
35 or urban supply purpose shall be cancelled either in whole or part except by the Governor in Council, but in so far as an urban supply licence is temporarily not required in whole or in part for the purpose for which it was issued, an interim licence in respect of the same supply may be issued to any  
40 person upon application for a water right under this Ordinance.

40. (1) The Water Board may prescribe, in a licence, that the operator shall construct fix and maintain, in a sound and efficient manner, weirs, flumes, sluice gates, valves or other controlling or measuring devices, ensuring that only the  
45 quantity of water, or proportion of the flow of the stream, which the operator is authorised to abstract, divert, use or store, shall be abstracted, diverted, used or stored by the operator in exercise of the water right, or it may, subsequent to the issue of the licence at any time require the licensee to construct, fix and maintain such weir, flume, sluice gate,  
50 valve or other controlling or measuring device.

Water Board may prescribe measuring and controlling devices.

(2) The Water Board may prescribe the design, materials, and method of construction of such controlling or measuring device.

55 (3) Every licensee storing water in a reservoir shall, at the discretion of the Water Board, and according to plans approved by it, construct, fix and maintain flumes, weirs, sluice gates, or other controlling or measuring devices at points on the stream to be determined, and (if required so to

do) on each and every stream, or body of water, discharging into or from such reservoir, for the purpose of determining the amount of water flowing into or stored in such reservoir or the flow below the reservoir, or both.

(4) If any licensee neglects or refuses to commence the construction or fixation of the said flumes, weirs, sluice gates, valves or other controlling or measuring devices, within three months after notice to do so by the Water Board, or to prosecute the said construction diligently, or to maintain the same satisfactorily, the Water Board may :—

(a) Construct, fix and maintain or cause to be constructed, fixed and maintained, the said flumes, weirs, sluice gates, valves or other controlling or measuring devices.

(b) Open or cause to be opened the sluice gate, valve or outlet of a reservoir, or failing such outlet, demolish or cause to be demolished any works, in order to provide an outlet, close or cause to be closed, any canal, or pipe, or other work for diverting or abstracting water, to permit such quantity of water to flow down the stream for the use of other persons, as he may deem proper, until the said licensee shall construct, fix, or maintain the said flumes, weirs, sluice gates, valves or other controlling or measuring devices.

(5) All costs and charges in connection with the said operations shall be paid by the licensee, and if not so paid shall in addition to any other penalties provided under this Ordinance be recoverable as a debt due to the Crown and if the licensee further refuses or fails to comply with the said requirements, the Water Board may cancel his licence subject to right of appeal to the Governor in Council, if made within thirty days from the date of such cancellation, and the decision of the Governor in Council shall be final.

**Highway  
crossings.**

41. (1) Any operator constructing any works under the provisions of this Ordinance shall during such construction keep open for safe and convenient travel all public roads and rights of way therefor publicly used as such, when they are crossed by, or interfered with by, such works, and shall, before water is admitted to such works, construct to the satisfaction of the Director, or at the Director's option refund to the Director the cost of construction by the Department or other roadway authority, of a substantial bridge with proper and sufficient approaches thereto over such works, and such railings, fences, guard posts, culverts, facewalls and other structures and appurtenances as the Director may declare to be necessary in the public interest and all such bridges, approaches, and appurtenances shall thereafter be always maintained by the operator, while the water right is valid, or alternatively at the Director's option at the expense of the operator.

(2) The Department or other roadway authority may at any time on the order of the Director renew or alter such bridge or structures or works in connection therewith, and the operator shall pay, if so required by the Director, for such proportion of the renewal, alteration and maintenance thereof or any of them, as is in the opinion of the Director rendered necessary or desirable in the public interest on account of the existence of the works of the operator.

Provided that an operator may appeal against an order of the Director or other roadway authority within 30 days of such order to the Governor in Council whose decision shall be final.

- 5     **42.** Questions as to full, efficient and beneficial utilisation, as to adverse effect of existing or later works, or as to limitation of supply, shall be decided by the Water Board, whose written decision shall be final, and binding. Efficient utilisation and procedure in drought determined by Water Board.

- 10     **43.** (1) Whensoever it may be shown to the satisfaction of the Water Board that owing to natural changes, increased demands on a body of water, or other causes, the diversion, abstraction, storage or use of the water authorised to be diverted, abstracted, stored or used by a licensee causes inequity, and causes a shortage of water for domestic or other  
15 purposes which in the opinion of the Water Board should have priority, it may revise and alter the discharge or quantity of water which any licensee is authorised to divert, abstract, store or use, as appears to it equitable. The quantity so altered shall thereafter be the discharge or quantity which  
20 the licensee is authorised according to this Ordinance to divert, abstract, store or use. Alteration of quantity of water authorised to be diverted by licensees.

- (2) The Water Board may decide what compensation (if any) shall be paid, subject to appeal to the Governor in Council, if made within thirty days of the decision of the  
25 Water Board, and the decision of the Governor in Council shall be final.

- 44.** (1) When issuing a licence, the Water Board shall specify, as far as practicable, the particular portion of any land, or the particular undertaking, to which the water right is to be appurtenant. Such water right shall thereupon, save  
30 as herein provided, be appurtenant to such portion of land or such undertaking, and the water right shall pass with any demise, devise, alienation, transfer or other disposition of the same, whether by operation of law or otherwise. Water right to be appurtenant to the land for which issued.

- 35     (2) When the land or undertaking to which the water right is appurtenant passes to another landholder or owner the said licence shall be surrendered to the Water Board for endorsement thereon of the name of the new landholder or owner.

- 40     (3) If the land affected by the works, and to which the water right is appurtenant, has been or is about to be divided in ownership, the licence shall be surrendered to the Water Board, and such new licence as may be issued by the Water Board shall be dependent upon the acquisition of such ease-  
45 ments, if any, as may be required, and may be issued with such modifications of the original licence as in the opinion of the Water Board may be rendered necessary or desirable by the circumstances.

- 45.** Any licensee may, by notice in writing to the Water Board, abandon the whole or any part capable of separation  
50 of the water right acquired, and upon such abandonment the Water Board may direct such licensee forthwith to remove all or any works erected in connection with such water right, and in the event of the refusal or failure of such licensee to remove such works the Water Board may remove all or any of  
55 such works, and may recover the cost of such removal from such licensee : Licensee may abandon.



Provided that where any land or undertaking to which a water right is appurtenant is mortgaged or charged, no abandonment of such water right shall be effective without the consent in writing of the mortgagee or chargee.

Readjustment  
of licence.

46. Every licence and water right shall be subject to subsequent readjustment by the Water Board after hydro-metric survey of the body of water has been made, and after reasonable notice has been given to all parties affected. Such readjustment shall not affect the priority of the licence. 5

Change of  
point of  
diversion.

47. An operator may obtain permission from the Water Board to change the point of diversion or abstraction of the water used by him, or the position of the works, on giving such notice and complying with such terms as the Water Board may require or impose, and subject to the acquisition of such easements as may be required. 10 15

Apportionment.

48. Whenever the holder of the land to which a water right is appurtenant desires to have the water apportioned between two or more parts of the land in respect whereof the water right was originally obtained, he may apply to the Water Board for an apportionment, and the Water Board, on its being proved to its satisfaction that the water rights of others will not be prejudiced or imperilled, may, after notice to all the persons interested or believed to be interested, amend the licence originally granted, or may issue two or more licences to conform to the apportionment authorised. Such new licences, issued in accordance with this section, shall not authorise in the aggregate, the diversion or storage of more water than the discharge or quantity authorised to be diverted, abstracted, stored or used by the original licence. 20 25

Mingling  
waters.

49. Any licensee holding two or more licences may mingle the waters authorised by such licences, and may construct works to carry and use such mingled water : 30

Provided that the plans of such works shall be subject to the approval of the Water Board in all respects as new works are approved under this Ordinance, and that except as to the mingling of such waters, and the construction and maintenance of such works, the water right of the said licensee under the said licence shall in no wise be enlarged or altered. 35

Licence as  
evidence.

50. The production of a licence or authorisation, or a copy thereof purporting to be certified by the Chairman of the Water Board shall, without further proof, be evidence in all courts of the matters and things therein mentioned. 40

Works to be  
kept in repair.

51. Every operator shall maintain and retain his works in a good, proper and workmanlike manner to the satisfaction of the Water Board, so that the same shall, at all times, be of sufficient strength and capacity for the fulfilment of the purpose for which they were constructed, and so that no damage shall occur to any road, property or work in the vicinity; and any person aggrieved by the failure or neglect of such operator so to do, shall be entitled within a reasonable time after such failure or neglect has been discovered to serve the operator with notice thereof, and if the operator declines or fails to remedy any defect, inefficiency or neglect, it shall be competent to such person to institute an action to recover damage in respect of any loss sustained by him in consequence thereof. 45 50 55

52. (1) In the case of all water rights involving the irrigation of lands, provision shall be made by the operator for the efficient drainage of such lands and the delivery of the residue of used or unused water to a watercourse or a body of water by drainage canals or other works.

Drainage of irrigated lands.

(2) Whenever in the opinion of the Water Board no provision or insufficient provision has been made by the operator for the delivery of used or unused water to a watercourse or body of water, or for the drainage of irrigated lands or swamps created by any diversion or abstraction of water, the Water Board may order and require the operator to construct and maintain such works as will in the opinion of the Water Board cause such water to be so delivered.

(3) If any operator fail within a reasonable time to obey an order of the Water Board given under this section, his licence may be cancelled by the Water Board, and the water right shall thereupon become null and void, and he shall be guilty of an offence against this Ordinance: Provided that the operator may appeal against the cancellation of his licence by the Water Board to the Governor in Council within one month from the date of the order, and the decision of the Governor in Council shall be final.

53. No water stored or penned back by any operator shall be released without reasonable notice being given to all persons whose property is liable to injury from the releasing of such water, and the operator shall not by reason of anything in this Ordinance contained be relieved from liability for any loss, damage or injury sustained by anyone arising from the release of such water or from or incidental to the exercise by the operator of any water right.

Water not to be released without notice.

54. Every operator shall be liable for and shall make good, in such manner as the Director or any officer delegated by him may determine, all damage to any public works which may be occasioned by reason of the works of the operator breaking, or being defective in construction, or out of repair, or of insufficient capacity, and in the event of such works not being made good after notice so to do has been served on the operator by the Director, the Director may make good the works and recover the cost thereof in any competent court.

Damage to public works to be made good.

55. Any officer of the Department or other person thereto empowered by the Governor engaged in the construction of any road or public works may, upon due notice to the operator, cross, divert or otherwise interfere with the work of such operator, and for such reasonable period as may be necessary, provided that he or they shall do as little damage as possible, and shall restore the work to a condition in which it will as speedily as possible fulfil its required purpose.

Authority to Department to interfere with works.

56. Every operator, upon the written order of the Water Board, or any person authorised by the Water Board for that purpose, shall produce for inspection any licence, authorisation, map, plan, specification, drawing or other document relating to the works or to the water right of such operator or to the flow of water in the said works or in the body of water affected by the works.

Operator must produce documents on order of Director.

57. Any operator whose licence or authorisation has been issued imperfectly or without compliance with all or any of the terms of this Ordinance governing the issue thereof or

Corrections of errors in licence or authorisation.

which contains some inaccuracy which can be corrected without affecting the water rights of other parties, or which is incomplete or indefinite in its terms and conditions may apply to the Water Board for the amendment and re-issue thereof.

Operator may  
acquire  
easement.

58. An operator who has received an authorisation under this Ordinance to construct works, where the works authorised or a portion of them would, when constructed, be situated upon lands not held by the operator, may acquire an easement on, over, or through the land on which the works would be situated, and shall not exercise the authorisation unless or until the easement is acquired. 5 10

Encumbrances.

59. All encumbrances attaching to the land shall be borne by the person who before the grant of the easement was legally liable for or held the encumbrances.

Easement  
includes right  
of access.

60. An easement shall include the right of access to any piece of land in so far as may be necessary for the purpose of constructing, inspecting, maintaining and repairing the works of the operator and for any purpose necessary for the effective enjoyment of the easement. 15

Easement  
includes right  
to take  
materials.

61. An easement shall include a right to take such materials existing naturally on the land as may be approved in writing by the Water Board from the land on, over or through which the easement has been granted, for the purpose of constructing, maintaining or repairing any work thereon. 20

Holder may use  
land for farm  
purposes.

62. When works have been executed by an operator on another holder's land, the land occupied solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of compensation and except in the case of an easement for drainage or reclamation, remain available to the holder of the property in respect of which the easement is held for his own purposes, and he may remove such excavated material, provided that no damage shall be done to the works of the operator or the works obstructed or interfered with by such removal. In case of disagreement the decision of the Governor in Council shall be final. 25 30 35

Operator must  
avoid flooding  
lands and  
maintain canal  
satisfactorily.

63. An operator who has acquired an easement which includes the construction of a canal shall be responsible for taking and maintaining adequate measures for preventing the introduction into the canal of a greater quantity of water than that which the canal is capable of carrying, and he must not cause damage to the land in respect of which the easement is held by permitting the accumulation of weeds, silt, or other obstruction or nuisance which might cause flooding, or any other damage of whatsoever description. The cost of any damage caused in this manner by the operator may be recovered from the operator by the holder of the land in any competent court. 40 45

Damage caused  
by works of  
operator.

64. In the event of damage by scour or otherwise being caused to the land in respect of which the easement is held by the works of an operator, the holder of the land in respect of which the easement is held may demand and the Water Board may by order require the operator to construct at his sole expense, or partly at the expense of such holder, such additional works as will in the opinion of the Water Board make the works to cease causing damage. If the operator fail to comply with an order of the Water Board given under this section, the Water Board may cancel his licence, which shall thereupon be null and void : 50 55

Provided that such additional works shall not be unreasonably demanded and if an operator is aggrieved by an order of the Water Board given under this section he may appeal to the Governor in Council whose decision shall be final.

**65.** An operator who has acquired an easement for the construction of works on another landholder's land which :—

Operator shall construct works to enable landholder to enjoy his existing works if interfered with.

- (a) Prevent the landholder passing freely over or on to his land as heretofore; or
- (b) Interfere with his existing works, or structures, or devices, upon his land;

shall at his own expense, construct and maintain in repair, to the satisfaction of the Water Board, and under conditions which it may prescribe, which conditions shall be binding on the operator :—

- (i) Such bridges and other structures or devices as will make communication safe and convenient as may be decided by the Water Board; or
- (ii) Such works, structures or devices as are necessary to enable the holder effectually to enjoy the use of the works, structures, or devices interfered with as may be decided by the Water Board.

**66.** An operator claiming an easement under this Ordinance shall serve a notice in writing on the holder of the land on, over or through which he desires to acquire the easement, and shall in the notice state or provide the following particulars, and whatever other further particulars may be required by rules to be made under this Ordinance, that is to say, he shall provide :—

Operator desiring easement shall serve notice on landholder.

- (a) A description of the proposed works and a statement of their use.
- (b) A statement of the quantity or discharge of water, if any, to be diverted or dealt with.
- (c) A map showing clearly the nature and locality of the works or the area of swamp or lands to be reclaimed if the easement is for reclamation of a swamp or lands.
- (d) A statement of the area of the land, if any, occupied by the works, flooded as a result of the works, required for purposes of inspection and maintenance of the works, required for the excavation or collection of material for the works, required for the deposit of spoil or material derived from the works, or required for a road or roads to obtain access to the works.
- (e) A statement of the compensation which is offered, and the period of time during which he wishes to enjoy the easement.

**67.** If the landholder agrees to the claim for an easement either as originally proposed or as modified by agreement, the operator shall embody the particulars and other matters pertaining thereto in a deed and after execution by the parties concerned, shall send two certified copies of the deed to the Water Board.

If the landholder agrees particulars to be embodied in deed.

If the landholder does not agree to the claim application for easement may be made.

**68.** If the landholder does not within two months after the service of the notice agree to the claim for an easement or to any other matter necessary for the easement, the operator may apply to the Water Board for an easement in the manner prescribed by rules to be made under this Ordinance and shall serve notice of the application upon the landholder. 5

Claim for easement may be dismissed or granted.

**69.** The Water Board may either dismiss the claim for an easement, or with the approval of the Governor in Council award the easement with or without modification and subject to such conditions as it deems just, but if the amount of compensation to be paid is the subject of disagreement between the operator and landholder, and if the claim is awarded by the Water Board and the amount of compensation recommended by it is not agreed to by the parties, the decision on the question of the amount of compensation to be paid by the operator shall be referred to arbitration under the Arbitration Ordinance, Chapter 18. 10 15

Easement shall lapse if works not completed within a definite period.

**70.** An easement acquired under this Ordinance shall lapse if the works authorised be not completed and the water be not utilised within one year from the date of the award or within such further period as the Water Board may fix, or if at any time the water right is not substantially made use of in accordance with the terms of the licence for a continuous period of two years. 20

Operator shall keep his works in a state of repair.

**71.** (1) If any work, constructed on the land of a person other than the operator, be out of repair or require cleansing, the operator shall if required in writing by the landholder to repair or cleanse the work, carry out the requirements within a reasonable time, and if he fail to do so, the landholder may cause all things necessary for carrying out the said repairs or cleansing to be done, and may recover the cost from the operator in any competent court. 25 30

(2) Such repairs or cleansing shall not be unreasonably demanded, and in the event of a dispute between the parties the Water Board shall decide what shall be considered reasonable repairs or cleansing. 35

(3) An operator who allows or suffers any such works to be out of repair or to be in such state as to require cleansing, shall be liable for all damage which may arise therefrom.

Landholder may demand and obtain use of the works of an operator.

**72.** (1) The holder on, over or through whose lands an easement has been applied for or been granted may, by application to the Water Board either before or after the construction of the works, apply for a water right to make use of the works or the proposed works for the diversion, abstraction, storage or use of whatever water he may become entitled to divert, abstract, store or use under this Ordinance : 40 45

Provided that before a licence or authorisation is issued by the Water Board such proportionate cost of the works shall be paid by the holder to the operator who constructed or is constructing the works as may be agreed on between the parties, or failing agreement as may be decided by the Water Board, and such agreement or decision shall be final and binding on all parties. 50

(2) The operator who constructed the works may require the holder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of the works made use of until he has in writing surrendered such right of user. In the event of disagreement the decision of the Water Board shall be final. 55

- (3) The landholder shall prove to the satisfaction of the Water Board that the works of the operator can be satisfactorily used for the purposes of the landholder and without material detriment to the operator.
- 5 (4) If the works require modification to enable the landholder to enjoy their use the landholder, unless the matter is otherwise agreed, shall pay to the operator :—
- (a) The entire cost of modifying them in the manner approved by the Water Board.
- 10 (b) The cost of constructing and maintaining such devices for apportioning the quantities of water as the Water Board may prescribe or approve.
- (5) The Water Board may at a later date modify the scale of payment, upon application by either party, when it is proved to its satisfaction that altered conditions have rendered a revision of the rates of payment just and equitable. Such alteration of rates of payment shall have effect from a date to be specified in a notice to be posted to both parties by the Water Board but shall not have retrospective effect.
- 20 **73.** (1) Whensoever the land on, over or through which an easement is required is situated within the boundaries of a declared Native Reserve, the amount of compensation, if any, which shall be paid by the operator shall be determined by the Native Lands Trust Board and the Water Board jointly, or failing agreement, by the Governor in Council, whose decision shall be final. Easement on lands in Native Reserves.
- 25 (2) The compensation, if any, shall be paid to the Native Lands Trust Board or such administrative officer as it shall appoint, who shall pay it over to the person who in his opinion is entitled to receive the compensation.
- 30 (3) An easement on, over or through lands in a Native Reserve, and the operator and native affected by the easement, shall be subject in all respects to the provisions of this Ordinance, save that where notices or other documents are required to be served on, to, or by a native in a Native Reserve, the notices or other documents shall have the same force and effect if served on, to, or by the Native Lands Trust Board, or such officer as it may appoint.
- 35 (4) An easement acquired under this Ordinance on, over or through lands within a Native Reserve shall not be deemed to be a disposal or alienation of the land within the meaning of section 54 of the Crown Lands Ordinance (as amended by the Crown Lands (Amendment) Ordinance, 1926), Chapter 140, or of any other section of that Ordinance.
- 40 **74.** (1) An easement acquired under this Ordinance shall determine if and when, at any time, the licence or authorisation, for the exercise of which the easement has been acquired, is cancelled as provided for in this Ordinance, and on the date of such cancellation. Determination of easement.
- 45 (2) In the event of the cancellation of any licence or authorisation, any works constructed by the operator on the lands of another person shall, where the operator is the sole user, if not removed by the operator within one year from the date of the cancellation, become the property of such other person, unless there is some agreement to the contrary affecting the ownership of such works.
- 50
- 55

Governor may  
order drainage  
of swamp.

75. (1) In the event of there existing wholly or partly upon any alienated land any swamp or any natural or unauthorised obstruction to the natural flow of water which has the effect of leading to an unreasonable diminution of the flow by evaporation or absorption or otherwise below what might be expected if conditions were altered, the Governor in Council, upon application by the Water Board with evidence adduced showing that unreasonable diminution of flow is occurring on or within the area described, or that the swamp or other feature is a nuisance, may order that such swamp or other feature be drained or that such obstruction be removed.

(2) The Governor in Council may order such work and method of execution of work as the public interest may appear to justify or require, and may make such order as to the allocation and collection of the cost of the necessary works and as to their subsequent maintenance as may appear to be equitable having regard to the benefits which might accrue to other parties from the execution of such works and the increased provision of water expected therefrom. Such order shall specify the extent, if any, to which such works shall be State-aided.

A minority of  
holders of land  
in or abutting  
on a swamp  
may be  
required to  
contribute to  
cost of  
drainage.

76. When swamps encroach upon the holdings of various holders and some of them desire to effect their reclamation in common, the Governor in Council may compel a dissenting minority to pay all expenses collectively with the operating majority, understanding as the majority those who represent the major part of the area of land considered to be reclaimable by the Water Board.

Compensation  
to be decided  
by arbitration

77. Whensoever parties cannot agree as to the compensation to be paid by one to the other, under the provisions of this part, the amount of compensation shall be determined by arbitration under the Arbitration Ordinance, Chapter 18.

Forfeiture of  
rights if works  
are not  
completed  
within the  
time allowed.

78. Upon the expiration of the time allowed in an authorisation or any extension of such time for the completion of works under this Ordinance the rights therein granted to the operator shall cease and determine and any works at the date of such determination constructed, erected, fixed or acquired may be taken over and operated or disposed of according to the order of the Governor in Council.

Expropriation  
of works.

79. (1) Subject to the payment of compensation therefor, the Governor in Council may, if at any time he shall deem it advisable in the public interest to do so, take over and operate or otherwise dispose of the works of any operator authorised under this Ordinance, and in such event every licence granted in connection with such works shall forthwith determine.

(2) In the event of disagreement regarding the compensation to be paid for expropriated works it shall be determined by arbitration under the Arbitration Ordinance, Chapter 18.

Cancellation of  
water right for  
waste or  
non-user.

80. (1) When any licensee is alleged to have abandoned or ceased to use, or to have wasted any water to which his licence entitled him, such charge may be inquired into by the Water Board or by any officer or any person appointed by the Water Board for that purpose; and the Water Board, if it deems just and proper, may by order declare a cancellation of the licence, and the water right shall thereupon cease and determine.

(2) If waste and not entire cessation of use is found to prevail, the Water Board may issue a new licence entitling the licensee to such reduced quantity of water as appears to it justifiable.

- 5      **81.** (1) It shall be lawful for the Governor in Council on behalf of the Crown to enter upon, use, order the use of, maintain, vary, destroy or remove abandoned works wherever situated without payment of any compensation whatsoever. **Abandoned works.**

10      (2) Works may be regarded as abandoned when it is proved to the satisfaction of the Water Board that they have remained substantially unused for any of the purposes of this Ordinance by any licensee lawfully entitled to make use of them under this Ordinance for a period of one year.

15      (3) No action by the Water Board shall be taken, as in this section provided, except after the publication of a notice in the Gazette to the effect that the said works have been proved to the satisfaction of the Water Board to be abandoned and that failing lawful employment thereof within the period of one month from the date of the issue of the Gazette in which  
20      the notice appears the right to use, vary, or dispose of the works in question will be assumed by the Crown.

### PART III.—GENERAL PROVISIONS.

- 25      **82.** (1) Any person who does or commits any of the following acts shall be guilty of an offence under this Ordinance :— **Offences and Penalties.**

- 30      (a) Wilfully or maliciously obstructs, molests or hinders an inspecting officer, engineer or surveyor of the Department, a qualified engineer, a Government surveyor or a licensed surveyor in the exercise of his duties under this Ordinance.
- 35      (b) Without authority under this Ordinance knowingly or wilfully defaces, alters or removes or causes to be defaced, altered or removed, any survey mark, water gauge, weir, or measuring device, or other work, structure, or appliance for the purpose of water control or investigation.
- 40      (c) Without authority under this Ordinance throws or conveys or causes or permits to be thrown or conveyed, any rubbish, dirt, trade refuse or other offensive or unwholesome matter or thing into any body of water or water contained in any work.
- 45      (d) Wilfully or maliciously hinders, interrupts, or causes or procures to be interrupted or hindered, any operator under this Ordinance, or his managers, contractors, servants, workmen or any of them in the lawful exercise of any of the powers and authorities of this Ordinance conferred.
- 50      (e) Wilfully or maliciously lets off or discharges water from the works of any operator so that the said operator loses the use of the said water.
- (f) Lays or causes to be laid, erected or constructed any work to communicate with the work of any operator, with the intention of drawing water from the said work without authority under this Ordinance.
- (g) Unlawfully interferes with the works of any operator.



Such person, for any such act as aforesaid, shall be liable on summary conviction to a penalty not exceeding two thousand shillings and in default of payment to imprisonment for a period not exceeding three months.

(2) Any person who, without authority under this Ordinance, obstructs, interferes with, diverts or abstracts water from any watercourse or any body of water, natural or artificial, or who negligently allows such obstruction, interference, diversion or abstraction, shall be guilty of an offence under this Ordinance, and shall be liable on summary conviction to a penalty not exceeding one hundred shillings a day or part of a day for every day during which such offence is continued, or in default of payment to imprisonment for a period not exceeding three months, and in addition to any other penalty to the destruction of any works executed and the confiscation of any plant or machinery used, and the cost of the destruction of such works may be recoverable by the Director from such person in any competent Court.

(3) Any person who, being entitled to construct, erect or maintain works or to divert, abstract or obstruct water under this Ordinance—

(a) constructs, erects, or maintains works without authority or in a manner contrary to authority conveyed under this Ordinance;

(b) diverts or abstracts water in excess of the quantity which he is authorised to divert or abstract;

(c) fails to erect, construct, or maintain a measuring device, if so required under this Ordinance;

(d) fails to obey an order of the Water Board or other authority, lawfully given under this Ordinance;

shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding sixty shillings a day or part of a day for every day during which such offence is continued or in default of payment to imprisonment for a period not exceeding three months.

Liabilities of offender.

83. (1) The conviction of any person under the last preceding section shall not relieve him from any liability to answer in damages to any other sufferer by the wrongful acts aforesaid or any of them.

(2) Every operator who wilfully violates any of the provisions of this Ordinance, or any of the rules made thereunder, or of the terms or conditions of his licence or authorisation shall, in addition to all other penalties, be liable to have his licence or authorisation cancelled.

Penalty for offences against this Ordinance.

84. Every person who shall be guilty of an offence against this Ordinance or against any rule made under this Ordinance shall for every such offence be liable to the penalty expressly imposed by this Ordinance or by any rules made thereunder, but if no penalty is expressly imposed he shall be liable to a penalty of not more than one thousand shillings or in default of payment to imprisonment for a period not exceeding three months.

Penalties may be recovered by authorised person.

85. (1) Save where it is otherwise provided, all penalties imposed by this Ordinance, or by any rules in force under it, may be recovered by any person thereto authorised by the Governor.

(2) The said penalties may be recovered from the person actually committing the offence or from the person in whose employment he is, and on whose behalf he is acting.

5 **86.** (1) Every penalty imposed upon any person by this Ordinance or by any rule made under the powers conferred by this Ordinance shall be without prejudice to the right of the Water Board to recover from such person—

Recovery of penalty does not prejudice right to take other proceedings.

(a) any sum for any damage sustained by it through his act or default;

10 (b) the cost and expenses incurred by it in remedying any such damage.

(2) The payment of any such penalty shall not bar or affect the right of the Water Board or any person authorised by it to bring any action or to take any proceeding against such person.

15 **87.** Nothing contained in this Ordinance shall be held to affect the absolute right of the Crown to the control of waters, whereby the Governor in Council may at his discretion take any action which he considers to be in the public interest in the control or disposal of water.

Right of Crown to modify water privileges in the public interest.

**88.** No action at law shall lie against or be maintainable against the Crown, the Government, the Water Board, or any officer of Government for any act done on account of an authorisation, licence or sanction, or for any damage caused thereby, or for any other reason.

Government not liable at law.

**89.** The Water Board is hereby empowered for all the purposes of this Ordinance to declare whether particular bodies of water are streams, swamps, lakes or springs, and to declare, define, or delineate the boundaries thereof, and all matters pertaining thereto, and to declare whether any water is subterranean and matters pertaining thereto, and to alter such declaration, and such declaration or amended or altered declaration, shall be subject to appeal to the Governor in Council whose decision shall be final.

Power of Water Board to declare matters pertaining to bodies of water.

35 **90.** (1) Where in the provisions of this Ordinance, or of any rules made thereunder, it is required that any acts shall be done or requirements be provided by a qualified engineer the provisions as to such engineer shall be those embodied in rules made under this Ordinance.

Qualified engineer.

40 (2) The onus of proof that projects, plans, documents, and applications required under this Ordinance to be supplied, prepared, or provided by a qualified engineer have been so supplied, prepared or provided shall be with the party presenting or using them.

45 **91.** (1) Notwithstanding anything contained in this Ordinance, it shall be lawful for the Water Board to authorise by sanction for any fixed period of time the diversion, abstraction, obstruction, or use of water and the works required therefor according to such terms and conditions as the Water Board may embody in the sanction or as may be prescribed by rules made under this Ordinance.

Sanctions.

(2) In the event of any works being or remaining in a body of water in disaccord with a sanction, an altered sanction or after the termination of a sanction, and after due notice has been given to the person concerned, the Water Board may demolish any such works and recover the cost of such demolition from the person concerned in any competent court. 5

(3) A sanction shall not grant a water right, shall not be appurtenant to any piece of land, and shall not be transferable.

(4) A sanction may be renewed at the discretion of the Water Board for such period as it may think fit. 10

(5) A sanction or a copy thereof certified by the Chairman of the Water Board shall be evidence in any court of the matters comprehended in the sanction.

(6) Any question arising out of this section shall be subject to a right of appeal to the Governor in Council, whose decision shall be final. 15

Joint State  
and other  
works.

**92.** (1) The Governor in Council may direct that State works may be executed in augmentation, modification, or improvement and subject to provisions herein contained, in supercession of, any other works, for or comprising the employment of waters, and he may at any time order that any works contemplated or under execution or completed, shall be State-aided to such an extent as may be authorised by the Legislative Council. 20 25

Dispute as to  
quantity of  
water.

(2) In any case of dispute as to the discharge which is diverted or used, the Water Board may order an inspection of the works of the operator by an officer named by it for that purpose, and for the purposes of this section the report and finding of such officer as to the quantity diverted or used shall be final and conclusive unless otherwise proved to the satisfaction of the Water Board. 30

Information to  
be afforded to  
inspecting  
engineer.

**93.** (1) Every operator, and his managers, servants and workmen shall afford to any inspecting officer such information as is within their knowledge and power in all matters relating to any inquiry held by him under the provisions of this Ordinance, and shall submit to such inspecting officer all plans, specifications, drawings and documents relating to the construction, maintenance, repair or state of repair of the works or any portion thereof. 35 40

Proof of his  
authority.

(2) The production of instructions in writing signed by the Chairman of the Water Board or his deputy shall be sufficient evidence of the authority of such inspecting officer.

Right of entry  
of the Crown.

**94.** (1) The Water Board, or any person deputed by it may in the exercise of the right of the Crown to the control of bodies of water enter upon any land and inspect the same and take such measures as are thought fit for the conservation and regulation of such water and for its preservation from pollution and for the protection of the bed over which it flows, and for removing any obstruction from and for clearing and deepening such bed, or may interfere summarily to prevent the excessive or illegal diversion, waste or pollution of such water or interference with such bed; and it shall not be necessary for the Water Board or any person deputed by it to obtain an injunction or other order of a court to entitle it or him to make such entry or to take such measures. 45 50 55

(2) Compensation shall be paid to the holder of any such land for any actual injury by the measures, other than measures for the avoidance of waste or removal of unauthorised works or stopping unauthorised diversion, abstraction or obstruction of water, taken under the powers conferred by this section, and failing agreement the amount of such compensation shall be determined by arbitration under the Arbitration Ordinance Chapter 18.

95. The Water Board shall be entitled to institute and maintain any proceeding in any court against any person accused of any offence against this Ordinance, and may in its own name take any civil proceeding against any person or body of persons.

Water Board  
may institute  
proceedings.

96. The Water Board may require any statement called for under this Ordinance, or under any regulations thereunder, to be verified by oath, affidavit, affirmation or declaration.

Statement  
under oath.

97. (1) A notice required to be served in pursuance of this Ordinance, or of rules under it, shall be served—

Notices,  
how given.

(a) by delivery of the same personally to the person required to be served, or, if such person is absent or cannot be found, to his agent; or

(b) by leaving the same at the usual or last known place of abode of such person; or

(c) by post addressed to the usual or last known place of abode of such person; or

(d) in the case of a notice required to be served on a local authority, or corporate body or company, by delivering the same to their clerk, or secretary, or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office.

(2) Provided that if the holder of any land is not known and after diligent inquiry cannot be found, the notice may be served by leaving it, addressed to the holder, with some occupier of the land, or, if there is not an occupier, then by causing it to be put in a conspicuous position on the property.

(3) Provided also that a notice required to be given to a holder may be addressed by the description of the "holder" of the land or premises described (in the address) in respect of which the notice is given, without further name or description.

98. All documents purporting to be orders made by the Governor in Council, or the Governor, or by the Water Board, or by the Director, or by the officer deputed by the Water Board or Director, as the case may be, shall be received in evidence and shall be deemed to be those orders without further proof of handwriting or otherwise unless the contrary is shown.

Proof of  
orders.

99. The Governor in Council may, from time to time, make rules 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

Rules.

Ordinance, providing for or supplying such omission or insufficiency, and without prejudice to the foregoing powers, providing for all or any of the matters following :—

- (1) Privileges or rights of riparian holders.
- (2) Examinations fees, registration and other matters 5  
pertaining to qualified engineers.
- (3) Units of water.
- (4) Charges for diversion, abstraction, storage and use of  
water and fees for services in connection with water  
rights and sanctions. 10
- (5) Drainage of lands.
- (6) Associations of operators.
- (7) Community, Public Supply and Urban Supply pro-  
jects.
- (8) Controlling and measuring devices. 15
- (9) Procedure during drought.
- (10) Sanctions.
- (11) Water rights in Native Reserves.
- (12) Temporary works and diversions of water.
- (13) Documents to be submitted by applicants under this 20  
Ordinance.
- (14) Forms to be used under this Ordinance.
- (15) Inspection of works.
- (16) Relations between operators and municipal and other  
local authorities. 25
- (17) Easements.
- (18) Drainage and reclamation of swamps.
- (19) Water power rights.
- (20) Registration and regulation of bore holes and wells.
- (21) Abandoned works. 30
- (22) Appointment, powers and duties of water bailiffs.
- (23) Investigation of water resources and establishment of  
water gauges and marks.
- (24) Constitution, powers, obligations, duties and member-  
ship of the Water Board and of District Water 35  
Boards and all matters pertaining thereto.
- (25) Generally for the better carrying out of the objects  
of this Ordinance.

Such rules may provide for the imposition of a penalty for the infraction thereof not exceeding one thousand shillings 40 and in default of payment thereof a term of imprisonment of either description not exceeding three months.

Production of  
Gazette to be  
evidence of  
validity of  
regulations.

**100.** The production of a copy of the Gazette containing any order, rule, or notice purporting to have been made under this Ordinance shall be evidence, until the contrary is proved, 45 of the due making of such rule or notice, and that all preliminary steps have been duly taken necessary to give full force and effect to the same.

Repeal.

**101.** Section 145 of the Crown Lands Ordinance. Chapter 140, is hereby repealed without prejudice to anything 50 lawfully done thereunder.

## GOVERNMENT NOTICE No. 357.

The following Bill is published for criticism and introduction into Legislative Council.

The question of competition between Roads and Railways is still under consideration and may involve certain additions to the Bill.

R. W. LAMBERT,  
*Clerk to Legislative Council.*

**A Bill to Provide for the Control of Traffic on Roads and for the Licensing and Taxation of Vehicles.**

BE IT 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 for all purposes as “ the Short title.  
Traffic Ordinance, 1928,” and shall commence and come in operation upon such date as the Governor may by proclamation in the Gazette appoint.

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

“ Carriage ” means wagon, cart, ricksha, bicycle, tricycle, and every description of wheeled vehicle except a motor vehicle, trailer, and such appliances as baby carriages, wheelbarrows or other appliance exempted by the Governor by notice in the Gazette and vehicles used on specially prepared ways such as railways and tramways.

“ Gross weight ” means the tare weight of the vehicle when laden, together with the weight of driver, attendants, passengers, freight, fuel, water and equipment.

“ Motor vehicle ” includes a motor cycle and every description of vehicle propelled by means of mechanism contained within itself other than a vehicle used on specially prepared ways such as railways and tramways.

“ Motor cycle ” means a motor vehicle designed to travel on not more than three wheels and having a tare weight not exceeding three hundred pounds.

“ Motor omnibus ” means any public service vehicle licensed to carry more than six passengers.

“ Public service vehicle ” means a motor vehicle carrying passengers for hire or reward.

“ Road ” means the carriageway or portion of any road to which the public has right of access for vehicular traffic being that portion commonly in use for vehicular traffic and includes the portion of any bridge used for that purpose.

“ Road authority ” means the Director of Public Works or his duly authorised representative, except where the roads or any of them within any area or district have been vested in a local authority under any Ordinance in which case the local authority or its duly authorised representative is the road authority for the purposes of this Ordinance for the roads vested in it.

“ Trailer ” means a vehicle attached to and drawn by a motor vehicle whether its weight is partly supported by the motor vehicle or otherwise but does not include a sidecar attached to a motor cycle.

“Tare weight” means the weight of a vehicle when unladen computed as provided for by section 9 of this Ordinance.

“Tractor” means a motor vehicle designed for towing one or more trailers.

“Taxicab” means a public service vehicle licensed to carry not more than six passengers whether it is fitted with a taximeter or not.

“Traffic” includes pedestrians.

“Vehicle” includes motor vehicle and carriage.

## PART I.

### LICENCES.

Penalty for use of a vehicle without a licence.

3. The owner and driver of any vehicle which is used upon any road without a licence in that behalf issued under this Ordinance, shall be severally liable on conviction to a fine not exceeding fifty pounds or in default of payment to imprisonment of either description for a term not exceeding three months :

Proviso.

Provided that any vehicle duly licensed for any particular year or half-year or quarter of a year in the Uganda Protectorate or in Tanganyika Territory, and imported from either of those countries, shall not be required to be licensed under this Ordinance during the year or half-year or quarter of a year as the case may be in which it was so imported.

Licensing officers.

4. Licences under this Ordinance shall be issued by such officer or officers (hereinafter referred to as the “licensing officer”) as may be appointed for that purpose by the Governor from time to time.

Certain vehicles only to be licensed with consent of road authority.

5. No licence shall, except with the consent in writing of the road authority and subject to such conditions, if any, as the road authority may impose, be granted for any vehicle the tare weight whereof exceeds seven tons or which has metal tyres fitted with spuds, angle irons, spikes or any similar device.

Power to refuse licence in certain cases.

6. (1) A licensing officer may refuse to issue a licence for the use of any vehicle so constructed as, in his opinion, to be likely to be dangerous to persons or animals lawfully using the road, or injurious to the roads, or which does not comply with the provisions of this Ordinance or of any rules made thereunder.

Appeal to Governor.

(2) A person to whom a licence has been refused may appeal to the Governor, who may either direct a licence to be granted to him, or may refuse the licence, or may withhold the same until such alteration of the vehicle shall have been made as the Governor thinks proper.

Power of inspection.

(3) A licensing officer may at any time inspect a vehicle licensed under this Ordinance and, if such vehicle is not maintained in a fit and proper condition, may cancel the licence relating thereto.

Examination of vehicle.

(4) A licensing officer may at any time order and require the owner of a vehicle to bring the vehicle to him for examination.

7. (1) Every licence issued under this Ordinance shall be in the form prescribed by rules made under section 49 of this Ordinance and shall contain the particulars by such form required; and the licence or such identification marks in lieu thereof as may be prescribed shall be fixed and exhibited on the vehicle in such manner as may be prescribed by rules made under section 49 of this Ordinance.

Form of  
licence.

(2) Every licence shall be prepared in triplicate, one copy shall be kept by the licensee, one copy shall be kept by the licensing officer, and one copy shall be sent by the licensing officer to the Commissioner of Police.

Licence to be  
in triplicate.

(3) Every person who shall transfer the ownership of any vehicle within the Colony shall immediately notify such transfer in writing to the licensing officer who issued the licence and such officer shall record the same and notify the Commissioner of Police of such transfer.

Transfer of  
ownership of  
vehicle.

(4) If any licensed vehicle shall not be used for a period of 12 months, or if it be broken up or destroyed or sent permanently out of the Colony, the licensee shall forthwith notify the licensing officer by whom the licence in respect of such vehicle was issued.

Procedure  
when vehicle  
obsolete, etc.

(5) In the event of any licensee losing his licence he shall apply to the licensing officer for the issue of a duplicate licence, and a fee of two shillings shall be charged by the licensing officer for the issue of such duplicate licence.

Procedure  
when licence  
lost.

8. A licence may be issued for one year or half a year or quarter of a year. Every half-yearly licence shall continue in force from the date of the granting thereof until the following thirtieth day of June or thirty-first day of December, whichever shall first ensue, and every quarterly licence shall continue in force from the date of the granting thereof until the following thirty-first day of March, thirtieth day of June, thirtieth day of September or thirty-first day of December, whichever shall first ensue, and every yearly licence shall continue in force from the date of the granting thereof until the following thirty-first day of December :

Duration of  
licence.

Provided that the fee payable in respect of every half-yearly licence shall be fifty-five per cent. of the fee payable in respect of every yearly licence and the fee payable in respect of every quarterly licence shall be thirty per cent. of the fee payable in respect of every yearly licence.

Proviso.

9. (1) The fees set out in the Schedule to this Ordinance shall be payable in respect of licences for vehicles.

Fees.

(2) A list of the tare weights of different makes, types, models or classes of vehicles shall be made by the Governor and published in the Gazette and may be added to or altered from time to time by him and those weights shall for all the purposes of this Ordinance and Rules thereunder be deemed to be the tare weights of vehicles of those makes, types, models or classes.

Tare weights.

(3) In the event of any vehicle being presented for registration which is not deemed by the licensing officer to be included in such list, the licensing officer may require the owner to adduce such evidence to prove the tare weight of the vehicle as he may require.

Vehicle not  
included in  
list of tare  
weights.



Exemption of vehicles used solely on farms for agricultural purposes.

10. If it is shown to the satisfaction of the licensing officer that any particular vehicle will be used solely for agricultural purposes and will not be used on a road except for the purpose of its movement to or from a farm and not for the conveyance of persons, farm produce, goods, or merchandise along a road, he may issue a permit in the form prescribed by rules made under section 49 of this Ordinance without fee authorising the owner to drive or cause to be driven the vehicle as stated thereon. Any person using the vehicle on a road for a purpose other than that expressed in the permit shall be guilty of an offence against this Ordinance.

Identification marks.

11. (1) Marks indicating the number of the licence and the place where the same is issued shall be fixed on every licensed vehicle in such manner as may be prescribed by rules made under section 49 of this Ordinance, or in the absence of such rules in such manner as may be directed by the licensing officer.

Penalty for not fixing, etc., identification marks.

(2) If such marks or any of them be not fixed to a licensed vehicle in the manner prescribed or directed, or if, being so fixed, then any of them are in any way obscured or rendered or allowed to become not easily distinguishable, the owner and driver of the vehicle shall be severally guilty of an offence against this Ordinance.

No identification marks to be fixed other than those prescribed.

(3) No identification marks other than those prescribed whether by rule or otherwise shall be fixed to any licensed vehicle.

General identification mark.

(4) A licensing officer may issue on payment of the fee prescribed by rules made under section 49 of this Ordinance to any manufacturer of or dealer in motor vehicles a general identification mark which may be used for any motor vehicle on trial after completion or on trial by an intending purchaser and the person so using the motor vehicle shall not be liable to a penalty under section 3 of this Ordinance if the mark so assigned is fixed and the vehicle bearing it is used in compliance with rules made under section 49 of this Ordinance or in the absence of such rules in such manner as may be prescribed by the licensing officer :

Provided that any motor vehicle used under such general identification mark shall not carry more than two persons in addition to the driver.

## PART II.

### MOTOR VEHICLES.

Drivers to be certified as competent.

12. (1) A person shall not drive a motor vehicle on any road unless he shall hold a certificate of competency to drive such motor vehicle or one of similar type to be issued by such officer or person as the Governor may appoint for the purpose (hereinafter referred to as " the certifying officer ") or issued to him in the Uganda Protectorate or Tanganyika Territory under any law in force in those countries :

Provided that, for the purpose of being taught to drive, an uncertificated person may drive a motor vehicle upon any unfrequented road if accompanied by a person holding a certificate of competency to drive such motor vehicle and that in such case both the uncertificated person and the person holding a certificate shall be severally liable for any offence under this Ordinance committed during the driving by such uncertificated person.

(2) A certificate of competency shall be prepared in duplicate in the form prescribed by rules made under section 49 of this Ordinance. Form of certificate.

(3) A certificate of competency shall not be granted to a person under the age of sixteen years, except that in the case of a motor bicycle a certificate may be granted to a person who has reached the age of fourteen years, nor to any person of materially defective vision or hearing nor until the certifying officer shall have satisfied himself personally that the applicant has sufficient knowledge and experience in the driving of motor vehicles to enable him to keep his vehicle completely under control in heavy traffic, to bring it promptly to a standstill, and generally so to manage it that no danger or inconvenience to the public is to be apprehended from his use of it. Requirements before grant of certificate.

(4) There shall be paid for a certificate of competency such fee as may be prescribed by rules made under section 49 of this Ordinance. Fee.

(5) If the certifying officer be not an officer in the public service, it shall be lawful for the Governor to direct that there be paid to such certifying officer such fees for each certificate of competency granted by him as the Governor thinks proper. Certifying officer not in public service may be awarded certain fees.

(6) The person certified as competent shall in the presence of the certifying officer endorse the certificate, and duplicate with his usual signature, or, if he shall be illiterate, shall affix thereto his thumb mark, or finger prints, or such other mark of identity as the certifying officer shall require. Endorsement of certificate.

(7) The certifying officer shall forward the duplicate of every certificate of competency issued by him to the Commissioner of Police, by whom it shall be filed. Duplicate to be kept.

(8) Any licensing officer appointed under this Ordinance or any magistrate or any European police officer or any other police officer not below the rank of an assistant sub-inspector may require any person driving a motor vehicle to produce his certificate of competency for inspection when demanded. Inspection of certificate.

(9) Any person who shall drive a motor vehicle upon any road without holding at the time a valid certificate of competency as required by this Ordinance except as provided in sub-section (1) of this section shall be guilty of an offence against this Ordinance. Penalty for driving without certificate.

**13.** No person shall cause or permit a motor vehicle or trailer to be used on a road, or shall drive or have charge of a motor vehicle or trailer when so used, unless the following conditions are complied with :— Special requirements as to motor vehicles and trailers.

(a) Every motor vehicle when in use on a road shall have two independent brakes in good working order and of such efficiency that the application of either to the vehicle shall cause two of its wheels on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall bring the motor vehicle to a stop in a distance of twenty-five feet when running at a rate of fifteen miles per hour : Provided that in the case of a motor vehicle having less than four wheels this condition shall apply as if, instead of two wheels on the same axle, one wheel was referred to. Brakes on motor vehicles.

(b) Every four-wheeled trailer shall have at least one brake in good working order. Brakes on trailers.

Not more than  
two trailers  
to be towed.

(c) No tractor shall tow a train of more than two trailers at the same time unless with the consent in writing of a licensing officer.

Couplings to  
be in safe  
condition.

(d) Whenever a trailer is attached to a motor vehicle the couplings shall be efficient for the purpose and shall be maintained in safe condition.

Safety chains.

(e) Safety chains shall be coupled between all trailers.

Brakesman  
to be carried  
on trailer.

(f) A brakesman shall be carried on the rear trailer of each train of two or more trailers and shall be responsible for applying the brake of the trailer in case of emergency, without however relieving the driver of the tractor or the owner from any responsibility on their part.

Steering-gear.

(g) Every motor vehicle shall have its steering-gear in good working order.

Speed limits  
of motor  
vehicles.

**14.** The Governor in Council may prescribe by rules speed limits either generally or for any particular locality or for any particular road or portion of a road or at cross roads or dangerous corners or for any particular kind or class of motor vehicle and no person shall drive a motor vehicle at a greater speed than that which may be prescribed.

Driving a  
motor vehicle  
to common  
danger.

**15.** Any person who drives or causes to be driven a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case, including the amount and nature of the traffic on such road, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment of either description for a period not exceeding six months.

Careless  
driving  
of motor  
vehicle.

**16.** (1) If any person drives or causes to be driven a motor vehicle on any road carelessly, or negligently, or without reasonable regard to the safety, comfort or convenience of other persons using the road, he shall be guilty of an offence against this Ordinance.

When section  
applies.

(2) This section applies where the conduct complained of does not amount to an offence under the last preceding section, or where it does amount to such an offence but the court considers that the case should be dealt with under this section rather than under the last preceding section.

Effect of  
conviction.

(3) A conviction for an offence under this section shall not render the offender liable to be disqualified for holding or obtaining a driver's certificate of competency.

Drunkenness  
while driving  
a motor  
vehicle.

**17.** (1) Any person driving or being in charge of a motor vehicle whilst drunk, or whilst his efficiency as a driver is impaired by drink, shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment of either description for a period not exceeding six months, or to both such fine and imprisonment.

(2) Any person against whom a second or subsequent conviction of any of the offences referred to in sub-section (1) of this section shall be recorded shall be liable to imprisonment of either description for a period not exceeding six months.

Directions  
for manage-  
ment of  
motor vehicles  
on roads.

**18.** Every motor vehicle and trailer when in use on a road shall be used in conformity with the following conditions and not otherwise and if used in contravention of these conditions the driver and person in charge shall severally be guilty of an offence against this Ordinance.

- (1) Every motor vehicle shall carry an efficient horn and every driver of a motor vehicle shall, whenever it is prudent for the purpose of giving audible warning of his approach, clearly sound such horn. Horn to be carried.
- (2) A licensing officer may prohibit the use of any bell, horn or other appliance if in his opinion the use of such bell, horn or other appliance constitutes an annoyance to the public and no person shall use a bell, horn or other appliance the use of which has been prohibited by a licensing officer. Certain horns, etc., may be prohibited.
- (3) No motor vehicle shall run on any road without a silencer operating effectually. Silencer.
- (4) Every motor vehicle and trailer shall between 6.15 p.m. and 5.45 a.m. carry such lights as shall be clearly visible. Lights.
- (5) No person shall leave unattended on a road any motor vehicle with the engine running. Unattended motor vehicle.
- (6) No person driving a motor vehicle shall—
  - (a) when in the motor vehicle be in such a position that he cannot have control over the same or that he cannot obtain a full view of the road and traffic ahead of the motor vehicle; Position of driver.
  - (b) quit the motor vehicle without having taken due precautions against its moving along the road from its stationary position; Quitting motor vehicle.
  - (c) allow the motor vehicle to stand so as to cause any unnecessary obstruction or any unnecessary inconvenience to the public. Obstruction by motor vehicle.

### PART III.

#### PUBLIC SERVICE VEHICLES.

19. Application for the licensing as a taxicab or motor omnibus of a motor vehicle duly registered and licensed shall be made to a licensing officer in the form prescribed by rules made under section 49 of this Ordinance. Application for licence.
20. The licensing officer shall subject to the provisions of section 6 of this Ordinance and on payment of the prescribed fee issue a licence in the form prescribed by rules made under section 49 of this Ordinance. Form of licence.
21. On issuing any such licence the licensing officer shall also issue an identification plate which he shall provide showing the description of the motor vehicle licensed. Such plate shall be securely fixed to the back identification mark plate of the motor vehicle in such a position that it shall be clearly visible to a person behind such vehicle. Identification plate.
22. No motor omnibus or taxicab shall stand or ply for hire on any road if such motor omnibus or taxicab is in such condition as to be unsafe or unsuitable for the conveyance of passengers. Vehicle to be safe and suitable.
23. A licensing officer, or the licensing officers where there is more than one registration area concerned, may by public notice impose a table of fares for motor omnibuses and taxicabs. Every such vehicle shall carry in a conspicuous position inside such vehicle a copy of the appropriate table of fares for the area or areas in which it operates. No person shall be entitled to recover more than such fares. Fares.

Driver's  
badge.

**24.** The holder of a licence for a public service vehicle shall apply to a licensing officer for a motor omnibus or taxicab driver's badge.

Fee for badge.

**25.** A licensing officer may issue such badge on payment of such sum as may be prescribed by rules made under section 49 of this Ordinance.

Badge to  
be worn.

**26.** Such badge shall be worn in a conspicuous manner by the driver to whom it is issued whenever he is driving or is in charge of a public service vehicle on a road.

Stands and  
stopping  
places.

**27.** A licensing officer may by public notice appoint stands within the registration area for motor omnibuses or taxicabs and the places where motor omnibuses may stop to take up or set down passengers.

Limitation of  
number of  
passengers.

**28.** The maximum number of persons allowed to be carried at any one time on a taxicab or motor omnibus shall be determined by the licensing officer and shall be inscribed on the licence and legibly painted in a conspicuous position on the taxicab or motor omnibus in such manner as may be prescribed by rules made under section 49 of this Ordinance or, failing such rules, as may be decided by the licensing officer.

Offences.

**29.** No owner, driver or person in charge of a motor vehicle shall—

- (a) permit such vehicle to ply for hire unless it is licensed for that purpose under this Ordinance;
- (b) permit such vehicle to ply for hire unless it carries an identification plate as provided by this Ordinance;
- (c) permit such vehicle to ply for hire without exhibiting inside the vehicle the prescribed table of fares, if any, and without stating the number of passengers the vehicle is licensed to carry;
- (d) drive, or be in charge of on a road, any motor vehicle plying for hire without carrying on his person or in such vehicle the licence issued to him in the form set out in rules made under section 49 of this Ordinance;
- (e) drive, or be in charge of on a road, any motor vehicle plying for hire without wearing the prescribed driver's badge;
- (f) while in charge of an omnibus or taxicab permit to be carried more persons than the number which the vehicle is licensed to carry: Provided that two children each under the age of 12 years shall be counted as one passenger.

Insurance  
policies.

**30.** (1) On an application for the grant or renewal or the sanction of a transfer of a public service vehicle licence, the licensing officer shall before granting the application require the production of such evidence as may be prescribed that the applicant has effected a policy of insurance covering in such terms as may be prescribed all such claims as may be made against him as owner, or as driver or employer of the driver, of the vehicle in respect of damage to person or property and issued by an insurance company approved by the licensing officer.

(2) Any stipulation purporting to restrict the liability of the holder of any such licence in respect of any such claim as aforesaid shall be void. Restriction of liability.

(3) If any person, for the purpose of obtaining a policy of insurance required by this section, makes any false statement in consequence whereof the policy is liable to be avoided, or if the licensee commits any act which disentitles him to claim under the policy, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment of either description for a term not exceeding six months. False statement.

(4) If a policy of insurance required by this section at any time lapses or otherwise becomes invalid, any public service vehicle licence granted under this Ordinance in respect of any vehicle to which the policy relates shall thereupon become void. If insurance policy becomes invalid, licence also becomes invalid.

#### PART IV.

##### GENERAL.

**31.** Every driver or person in charge of a carriage on a road between the hours of 6.15 p.m. and 5.45 a.m. shall provide and maintain such carriage with a lamp or lamps in proper working order to be fixed or carried and lighted in such manner as may be prescribed by Rules made under section 49 of this Ordinance. Lights on carriages.

**32.** Any person who drives or propels or causes to be driven or propelled any animal or carriage on a road carelessly, negligently or recklessly, or at a speed or in a manner which is dangerous to the public or to property having regard to all the circumstances of the case, including the amount and nature of the traffic on such road, shall be guilty of an offence against this Ordinance. Driving carriage to common danger.

**33.** Any person who is drunk or whose efficiency as a driver is impaired by drink while driving a carriage shall be guilty of an offence against this Ordinance. Drunkenness while driving a carriage.

**34.** Every vehicle shall be used in conformity with the following directions and not otherwise:— Directions for use of vehicles.

(1) The owner of every cart, waggon, motor lorry or tractor shall paint or mark or cause to be painted or marked in legible letters not less than one inch in height on the right or off side thereof or upon some board or plate affixed to such side his name and place of residence, together with the name of the district in which he resides, and no owner of any cart, wagon, motor lorry or tractor shall use or allow the same to be used on any road without having his name, residence and district legibly painted thereon as aforesaid. Name plate, etc.

(2) No owner or person in charge of a carriage drawn by animals shall allow an animal which is of materially defective vision to be used for drawing such vehicle on a road. Blind animal.

(3) Every carriage shall, when in use on a road, be provided with a brake fit and sufficient for the purpose thereof. The wheels thereof shall not be locked so that they cannot rotate. Brakes.

**35.** (1) It shall be lawful for the road authority, or its authorised representative, for the purpose of carrying out any works which it may consider necessary or desirable in connection with the maintenance or improvement of any road, to close the whole or any part of such road at any time for any purpose it may think fit. Closing of roads.

Damage to  
road works.

(2) It shall not be lawful for the driver or person in charge of a vehicle to drive or haul the vehicle or cause it be driven or hauled over any bridge on or near which a conspicuous notice has been placed by the road authority to the effect that such bridge is insufficient to carry traffic in excess of a specified weight, unless the gross weight of such vehicle and any trailer attached thereto is less than the weight specified or unless he has obtained the written consent in writing of the road authority to his so doing; provided always that it shall be lawful for the purpose of keeping within the specified weight to detach any trailer from any vehicle and take over singly any vehicle or trailer which does not exceed the specified weight.

Injury to  
bridges.

(3) If any injury to a bridge be caused by any such contravention it shall be lawful for the road authority to make good such injury and to recover the cost thereof from the owner of the vehicle; and the certificate of the road authority of the amount of the cost of making good such injury shall be conclusive evidence of the amount payable by such owner.

No vehicle to  
be driven over  
closed road.

(4) It shall not be lawful for the driver or person in charge of any vehicle to drive or haul the vehicle or cause it to be driven or hauled over any portion of a road which is closed to traffic by the road authority and where a conspicuous notice is displayed to the effect that the road is closed, unless he has received the permission in writing of the road authority or of the representative thereof who is in charge of the portion of the road which is closed.

Driver to  
observe  
cautionary  
notices.

(5) The driver or person in charge of a vehicle shall comply with all cautionary notices displayed by the road authority for the purpose of regulating traffic.

Obedience  
to signals.

(6) The driver or person in charge of a vehicle shall, on the request of any member of the police force, or any person in charge of a horse, camel, mule, or donkey, or on any member of the police force putting up his hand as a signal for that purpose, immediately bring such vehicle to a standstill and keep it stationary as long as may be reasonably necessary.

Power to  
regulate traffic.

**36.** The Governor in Council may by Rules :—

- (a) Prohibit absolutely or on certain roads or portions thereof the use of any particular description of vehicle which in his opinion is likely to cause excessive wear and tear of the road, or to be dangerous or inconvenient to the public.
- (b) Generally restrict or regulate the use of vehicles in such manner as circumstances may appear to him to require.

Power of police  
to detain  
vehicle.

**37.** When any person is found using a vehicle in contravention of any of the provisions of this Ordinance or of any rule made thereunder, it shall be lawful for any member of the police force to take the vehicle or cause the same to be taken to any police station or other place of safety, there to be detained until such enquiries have been made by the police as they may think necessary in the circumstances of the case.

Road authority  
not liable.

**38.** (1) The road authority shall not be liable for any loss or damage which may be caused to any person or property through the condition of a road or the failure of a road to sustain the weight of a vehicle.

(2) Nothing in this Ordinance shall affect the right of the road authority or of any person to recover compensation from the owner or driver of any vehicle for any loss, damage, or injury which may be sustained by the road authority or such person by the use of a vehicle.

Right to recover compensation.

39. The driver of a vehicle, if an accident occur to any person, whether on foot, mounted or in another vehicle or to any horse, mule, donkey, ox or to another vehicle, shall, if the accident is in any way connected with the presence on the road of the vehicle driven by him, stop and if required give his name and address and also the name and address of the owner and, in the case of a registered vehicle, the identification mark or number of the vehicle and shall forthwith report such accident to the nearest police station.

In case of accident driver to stop and give name and address.

40. Every person who, without lawful authority or the written permission of the road authority :—

Obstruction and damage to roads.

(a) Encroaches on a road or on any land reserved therefor at the side or sides thereof by making or erecting any building, fence, ditch, or other obstacle, or planting any tree or shrub thereon ;

Encroachment on road.

(b) Leaves on a road any timber, stones or other material so as to obstruct or endanger persons using the road ;

Leaving obstruction.

(c) Digs up, removes or alters in any way the soil or surface of a road, or of any land reserved therefor at the side or sides thereof, or if done for the purpose of moving a vehicle without immediately thereafter making good the damage ;

Digging up roadway.

(d) Fills up, alters or obstructs any ditch or drain, whether on a road or contiguous thereto, made by or under the control of the road authority, to carry water off the road or to keep it from flowing on to the road ;

Filling up drain.

(e) Allows any water, tailings, or sludge or any filthy or noisome matter to flow from any building or land in his occupation on to a road or into any ditch or drain made by the road authority ;

Allowing water, etc., to flow on to the road.

(f) Causes or allows any timber, sledge, plough or other heavy material, vehicle or implement, not wholly raised above the ground on wheels, to be dragged on a road ;

Damage to roads by dragging.

(g) Conducts or takes part in any race or competition between motor vehicles on a road ;

shall be guilty of an offence against this Ordinance : Provided that in the case of paragraph (g) of this section the written permission of the police officer in charge of the district concerned shall also be obtained.

41. No person shall do any of the following things on a road :—

Nuisance on roads.

(a) Wilfully or negligently ride or drive any animal or vehicle on a footpath constructed for foot-passengers only, or in a road drain ;

(b) Play any game to the annoyance of persons using the road ;

(c) Pitch any tent, booth or stall ;



- (d) Make any fire without the authority of the road authority;
- (e) Wilfully obstruct in any manner the free passage of persons or vehicles passing along the road;
- (f) Drive or conduct any vehicle drawn by animals without having reins to guide the animals, unless a person leads the animals in such a manner as to have full control over them;
- (g) When driving a vehicle, sleep while the vehicle is in motion;
- (h) Impede the traffic or endanger the safety of persons using the road by a load unduly projecting from the side of a vehicle;
- (i) Permit any cattle to be at large without being under such efficient control as to prevent their damaging the road or obstructing traffic;
- (j) Outspan animals from a wagon or cart.

Regulation  
of traffic.

**42.** Every vehicle used on a road shall be used in conformity with the following conditions and not otherwise, and any person contravening or failing to comply with any of these conditions shall be guilty of an offence against this Ordinance :—

Meeting and  
passing traffic.

- (a) Every vehicle shall in passing traffic coming in the opposite direction be driven on the left or near side of the road, but when overtaking traffic proceeding in the same direction shall pass such traffic on the right or off side thereof. When one vehicle is being overtaken by another, the front vehicle shall give way to allow the overtaking vehicle to pass. In all cases a vehicle shall be driven so as to give as much space as possible for the passing of other traffic.

Stationary  
vehicle to  
allow clear  
roadway.

- (b) Except in case of emergency, the onus of proof of which shall lie on the driver, every vehicle, when not in motion, shall be drawn up close to the side of the road, so as to allow the maximum of clear roadway for passing traffic.

Duty in case  
of breakdown.

- (c) The driver of any vehicle shall in the case of breakdown remove from the road the vehicle or any portion of it obstructing the passage of other traffic as soon as possible after the breakdown. If it is not possible to remove such vehicle or portion of it from the road immediately after the breakdown, it shall be placed at the side of the road, and if it remains on the road at night a light shall be displayed on it between the hours of 6.15 p.m. and 5.45 a.m.

Leaving a  
vehicle  
unattended.

- (d) No driver of a vehicle shall leave such vehicle unattended without taking due precautions against its movements from natural causes during such driver's absence.

When  
bearing of  
wheel  
defective.

- (e) No driver or person in charge of a vehicle with tyres made of metal shall drive, propel or cause to be driven or propelled such vehicle on a road while the bearing of any wheel is defective so that the tyre of the wheel does not bear evenly on a level surface when the vehicle is moving thereon.

Passing on  
bridge.

- (f) On any bridge no vehicle shall be driven so as to pass or attempt to pass another vehicle travelling in the same direction.

- (g) Whenever a white line is demarcated or any island is established upon any road by a road authority as a guide to which side of a road traffic should proceed, the driver of a vehicle shall keep to his left hand side of such line or island and shall not cross over it. White lines.

**43.** Whoever fraudulently imitates, alters or uses or fraudulently lends or allows to be used by any other person any mark for identifying a vehicle or any licence, permit or certificate issued under this Ordinance shall be liable on conviction to a fine not exceeding fifty pounds or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

**44.** Any person who shall be guilty of an offence against this Ordinance or who shall fail to comply with or act in contravention of any of the provisions of this Ordinance for the breach of which no penalty is expressly provided or of any rules made thereunder shall be liable on conviction to a penalty not exceeding thirty pounds or in default of payment to imprisonment of either description for a period not exceeding three months. Penalties.

**45.** (1) When any driver of a motor vehicle is convicted under sections 15 or 17 of this Ordinance or is convicted of a second or subsequent offence against any other provision of this Ordinance, in addition to any other penalty— Suspension of certificate of competency and disqualification.

(a) If the person convicted holds a certificate of competency, the court may suspend the certificate for such time as the court thinks fit, or cancel the same and declare the person convicted disqualified from obtaining another certificate either permanently or for a stated period and shall cause particulars of the conviction and of any order of the court made under this section to be endorsed upon the certificate and shall also cause a copy of those particulars to be sent to the Commissioner of Police, who shall endorse them on the duplicate certificate in his custody.

(b) If the person convicted holds a certificate of competency issued in the Uganda Protectorate or Tanganyika Territory under any law in force in those countries, the court may suspend the validity of the certificate in the Colony for such time as the court thinks fit or cancel the validity of the same in the Colony and declare the person convicted disqualified from obtaining a certificate of competency in the Colony either permanently or for a stated period and shall cause particulars of the conviction and of any order of the court made under this section to be endorsed upon the certificate and shall also cause a copy of those particulars to be sent to the Commissioner of Police.

(c) If the person convicted does not hold a certificate of competency, the court may declare him disqualified from obtaining a certificate for such time as the court thinks fit.

(2) Any person so convicted, if he holds a certificate of competency, shall produce such certificate, within such reasonable time as the court may direct, for the purpose of endorsement and if he fails to do so shall be guilty of an offence against this Ordinance. Endorsement of certificate of competency.

Certificate of competency to have no effect during suspension.

(3) A certificate of competency suspended by the court shall during the term of suspension be of no effect and a person whose certificate is suspended, or who is declared by the court to be disqualified from obtaining a certificate, shall, during the period of such suspension or disqualification, be disqualified from obtaining a certificate.

Right of appeal.

(4) Any person who is by virtue of an order of the court under this section disqualified from obtaining a certificate of competency may, within fourteen days of the making of such order, appeal as of right against the order to the Supreme Court; and the court by whom the order was made may, if it thinks fit, suspend the operation of the order pending the appeal.

Penalty.

(5) If any person who, under the provisions of this Ordinance is disqualified from obtaining such certificate, applies for or obtains a certificate of competency while he is so disqualified, or if any person whose certificate has been endorsed applies for and obtains another certificate without giving particulars of the endorsement, such person shall on conviction be liable to a fine not exceeding one hundred pounds, or to imprisonment of either description for a period not exceeding six months, or to both such fine and imprisonment.

Offences to be cognisable to the police.

46. All offences under this Ordinance shall be cognisable to the police.

Jurisdiction of courts.

47. Offences against this Ordinance or against any rules made thereunder shall be triable by subordinate courts of the first or second class.

Power to inspect vehicles.

48. (1) It shall be lawful for a licensing officer or any officer appointed by him in writing for the purpose or any police officer not below the rank of assistant sub-inspector to inspect any vehicle with a view to ascertaining whether the provisions of this Ordinance or of any rules made thereunder are being complied with and, in the event of any non-compliance with any of the said provisions, the licensing officer may by an order in writing prohibit the further use of such vehicle until the said provisions have been complied with to his satisfaction. Any person using or permitting to be used a vehicle in contravention of any such order shall be guilty of an offence.

Power to stop vehicles.

(2) It shall be lawful for a licensing officer or any officer appointed by him in writing or a police officer to stop any vehicle with a view to ascertaining whether such vehicle is being used in contravention of this Ordinance or any rules made thereunder and, in the event of any vehicle being used on a road in such manner, a police officer may take the vehicle, or cause it to be taken to any police station or place of safety, there to be detained until the vehicle and driver can be identified.

Power to make Rules.

49. The Governor in Council may make rules :—

- (a) Prescribing the number and duties of attendants to be in charge of any specified class, kind or description of vehicle;
- (b) Prescribing the size, shape, colour, character, and marking and all other matters connected with the identification marks to be fixed under this Ordinance, including the mode in which they are to be fixed

and to be rendered easily distinguishable by day or night, and also including provision for the keeping by manufacturers and dealers to whom a general identification mark has been issued of a register and for the making of entries therein and for restrictions on the use of such general identification mark and the purposes for which it may be used ;

- (c) As to the registration of vehicles and the particulars to be entered in the register ;
- (d) As to the notification of any change in the ownership of vehicles and as to the re-registration thereupon ;
- (e) As to the examination of applicants for certificates of competency and as to the licences and permits which may be granted and the fees to be paid therefor and the manner of paying such fees ;
- (f) As to the appointment of licensing officers ;
- (g) As to the insurance of public service vehicles ;
- (h) Prohibiting or restricting the driving of vehicles or any kind of vehicle on any specified road or part of a road ;
- (i) Imposing tolls or charges on vehicles or any description, class or kind of vehicle using any specified road or part of a road ;
- (j) Prescribing the fees to be charged for certificates of competency and for motor omnibus and taxicab drivers' badges ;
- (k) With respect to the construction of vehicles or any description of vehicle and the conditions under which they may be used ;
- (l) With respect to the speed at which vehicles or any description, class or kind of vehicle may be driven either generally or on any specified road or within any defined area or place ;
- (m) Exempting from the provisions of this Ordinance—
  - (i) any specified kind, class or description of vehicle ;
  - (ii) the drivers of any specified kind, class or description of vehicle ;
- (n) As to public service vehicles and the fee to be paid by their owners ;
- (o) Prescribing the number, nature and position of lamps to be fixed on vehicles or on any kind, class or description thereof ;
- (p) Prescribing the gross weights allowed and the methods for ensuring that those weights are not exceeded ;
- (q) Regulating the traffic on roads and prescribing rules of the road ;
- (r) Prohibiting any practice which may lead to the obstruction or damage of roads ;
- (s) For preventing nuisances on roads ;
- (t) Allowing, subject to such conditions as he may deem necessary, the licences, identification marks, and certificates of competency issued under any laws in force in neighbouring territories to be accepted as the

equivalent of and used instead of the licences, marks and certificates prescribed by this Ordinance;

- (u) Providing for the use of taximeters on taxicabs either generally or in any specified area;
- (v) Declaring a portion of a road to be used only for certain classes of traffic;
- (w) Prescribing the maximum dimensions of vehicles of any kind or of any parts of them or of the loading of them;
- (x) Prescribing the forms to be used for giving effect to the provisions of this Ordinance;
- (y) Regulating or restricting the use of heavy motor vehicles on roads;
- (z) Generally restricting or regulating the use of vehicles in such manner as circumstances may appear to him to require and for the further, better or more convenient carrying out of any of the provisions of this Ordinance.

Repeal.

50. The Motor Traffic Ordinance (Chapter 68 of the Revised Edition of the Laws of Kenya) is hereby repealed :

Proviso.

Provided that nothing in this repeal shall affect any rules, orders, notices or licences already issued under the said Motor Traffic Ordinance until they are superseded by rules made under this Ordinance.

## THE TRAFFIC ORDINANCE.

### SCHEDULE.

#### LICENCE FEES FOR VEHICLES (SECTION 9).

##### I.—Motor Vehicles.

##### (1) Licence Fees per annum :—

	£	s.	c.
(a) For a motor cycle ... ..	1	10	00
(b) For a motor cycle (with a sidecar)	2	0	00
(c) For a motor vehicle with pneumatic tyres not exceeding 1,500 lbs. in tare weight ... ..	4	0	00
(d) For every additional 250 lbs. up to 15,680 lbs. ... ..	0	10	00
(2) (a) For motor vehicles with full or half track irres- pective of the material of which they may be made the above rates shall apply;			
(b) For motor vehicles with solid or cushion rubber tyres the above rates to be increased by twenty- five per cent. ;			
(c) For motor vehicles with metal tyres double the above rates;			
(d) For trailers for motor vehicles, half the above rates provided for in para. 1 and in para. 2 (b) or (c), as the case may be ;			
(e) For licences for half a year, fifty-five per cent. of the annual rates ;			
(f) For quarterly licences, thirty per cent. of the annual rates.			

(3) In addition to the rate specified in (1) (b) above, a licence of shillings ten per passenger which the vehicle is licensed to carry shall be paid by public service vehicles.

II.—*Vehicles other than Motor Vehicles.*

For every vehicle not being a rickshaw, bicycle or other vehicle exempted by the Governor :—

Licence Fees per annum for every 100 lbs. of tare weight to the nearest 100 lbs. :—

	Sh. Cts.
(a) If the tyres are of rubber or other soft or elastic material ... ..	2 00
(b) If the tyres are of metal and four inches or over in width ... ..	3 00
(c) If the tyres are of metal and under four inches in width ... ..	3 00
Increasing by Cents 50 annually after the fourth year.	



## GOVERNMENT NOTICE NO. 358.

His Excellency the Governor has approved of the following Bill being introduced into Legislative Council.

R. W. LAMBERT,

*Clerk to Legislative Council.*

**A Bill to Provide for the Regulation, Control and Management of the Harbours in the Colony and Protectorate of Kenya, and for Matters Incidental thereto.**

PRELIMINARY.

1. This Ordinance may be cited as "the Harbours Regulation Ordinance, 1928," and shall come into force on such date as the Governor shall by proclamation in the Gazette appoint. Short title and commencement.

5     2. The provisions of this Ordinance shall apply to the harbours, places or areas of sea or land mentioned in the Schedule to this Ordinance, and with the concurrence of the Governor in Council to such places or areas of sea or land as are declared by order of the High Commissioner, under the provisions of the Order in Council, to be included in the Services. Application.

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

“ Board ” means the Harbour Advisory Board established by the Order in Council;

15     “ Bridge ” means any structure of wood, stone, brick, iron or other material erected over any water to make a passage way from one bank to the other;

“ Ferry ” includes a bridge of boats, pontoons or rafts, a swing bridge, a flying bridge and a temporary bridge, and the approaches to, and landing places of, a ferry;

20     “ Foreshore ” means the sea shore between high water mark and low water mark;

“ Goods ” means goods, luggage, or other movable property of any description, and includes animals and birds, whether alive or dead;

25     “ General Manager ” means the General Manager for the time being of the Services;

“ Harbours ” means and includes all the ports and harbours on the coast of the Colony to which the provisions of this Ordinance apply or may hereafter be made applicable, and includes the relative areas thereto, together with the wharves, jetties, slips, docks and breakwaters, and the machinery, plant, tools, and other property appertaining thereto;

35     “ High Commissioner ” means the High Commissioner for Transport established by the Order in Council;

“ High Water Mark ” means the highest point reached by ordinary spring tides at any season of the year;

40     “ Imprisonment ” means imprisonment of either description;

“ Low Water Mark ” means the lowest point reached by ordinary spring tides at any season of the year;

“ Master,” in relation to a ship, means any person (other than a pilot) having charge of that ship;



“ Mombasa ” includes the ports of Kilindini and Mombasa Old Port ;

“ Mombasa Old Port ” means the old port of Mombasa ;

“ Order in Council ” means the Kenya and Uganda (Transport) Orders in Council, 1925 and 1927 ; 5

“ Perishable Goods ” means goods liable to rapid deterioration, and includes fish, fruit, vegetables, potatoes, plants, bread, meat, game, butter, eggs, milk, cheese, dogs, small animals, birds, poultry, and any other thing which may hereafter be declared by the High Commissioner by proclamation 10 in the Gazette, to be perishable goods ;

“ Pilot ” means a person for the time being authorised by the General Manager, in accordance with rules made under this Ordinance, to pilot vessels ;

“ Police Officer ” includes any member of the Police Force ; 15

“ Port Captain ” means the officer appointed by the High Commissioner to take charge, under the General Manager, of the marine branch of a harbour, or the officer acting as such for the time being ; 20

Cap. 107.

“ Port Manager ” means the officer appointed by the High Commissioner to take charge, control and management under the General Manager, of the marine and shore departments of the Services, including the Port and Marine Department established under the Port Ordinance ; 25

“ Port Officer ” means the officer appointed to take charge of a particular port under the General Manager ;

“ Servant ” means any person employed by the High Commissioner in the Services ;

“ Services ” means the Services as defined in the Order in Council ; 30

“ Ship ” includes any vessel, ship, tug, lighter or boat of any kind whatsoever, whether propelled by steam or otherwise, or towed ;

“ Terminals ” includes ships dues and charges in respect of wharves, depots, warehouses, cranes and other similar matters and of any services rendered thereat ;

“ Warehouse ” means any building, place or truck provided by the High Commissioner for the purpose of storing or depositing goods. 40

## PART I.

### POWERS OF THE HIGH COMMISSIONER.

4. In addition to the powers conferred on him by the Order in Council, the High Commissioner shall have power as follows :— 45

Powers of the High Commissioner.

(a) In so far as is not inconsistent with the provisions of any law, to acquire, take, use, hire, purchase, work, sell, lease, deliver, transfer or otherwise lawfully dispose of property, whether movable or immovable, including water, ships, and other rights for harbour purposes and turn the same to account ; 50

(b) To construct, maintain and repair any harbour works or any roads, bridges, or any other works whatever, or to negotiate with any person for such construction and to complete agreements concerning the same : 55  
Provided that no harbour or similar work or bridge over a navigable waterway shall be constructed without the sanction of the Legislative Council, and that no such sanction shall be given without a prior report thereon or any alternative harbour or similar work by the General Manager ; 60

- (c) To enter into agreements with any person whether in the Colony or elsewhere in connection with matters affecting or incidental to the control, working and management of the harbours, including contracts for the supply of water or electric energy to ships or to persons, and to grant powers of attorney and like authorities;
- (d) To construct, procure, maintain, and repair ferries and other ships to carry passengers and goods, and to use the same for plying for hire;
- (e) To reclaim, excavate, enclose or raise any part of the lands in a harbour area;
- (f) To clean, deepen, or improve any portion of a harbour, and for any of these purposes to construct or procure and maintain and repair any dredgers or other appliances;
- (g) Subject to the provisions of the Electric Power Ordinance, to generate either for his own purposes or for purposes outside a harbour area electric and other energy; *Cap. 165.*
- (h) To carry on the business of a builder and repairer of ships and machinery and of a wharfinger;
- (i) To construct, provide, lay down and repair moorings and all means and appliances for berthing, loading and unloading vessels;
- (j) To construct, provide, maintain and repair, and moor vessels and hulks for the storage and working of coal and other goods;
- (k) To construct, procure, maintain and repair ships, and use the same as well within a harbour as on the high seas, and whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any ship, whether entering or leaving a harbour or bound elsewhere, and for the purpose of saving or protecting life or property, or recovering property lost, sunk or stranded;
- (l) To supply water to shipping in any harbour, and for that purpose to construct, procure, maintain and repair, and use ships or appliances;
- (m) To carry on the business of a lighterman and carrier by land and sea, and to construct, procure, maintain and repair ships and carts, wagons, and other means of conveyance necessary for such purpose;
- (n) To control, manage and superintend all harbours, docks, or other similar works within his jurisdiction, the persons working or otherwise engaged therein or thereon, the ships, goods and persons arriving at or departing from the same, and, if deemed necessary, to limit the right to land, warehouse, deliver, or ship any goods within any harbour;
- (o) To stevedore, land, ship, transfer or lighter goods, regulate and control lighterage within any harbour, and to warehouse, deliver and collect any such goods, and to land or ship persons, either himself or by his duly constituted agents;
- (p) To erect, maintain, and regulate lighthouses, beacons, port lights, and signal stations, and to provide the necessary staffs for the same;

- (q) To establish and maintain lifeboats, life-saving apparatus; and such other works, institutions, or appliances as he may deem to be necessary for the requirements of any harbour;
- (r) To fix, demand and alter from time to time the shipping, harbour and light dues, wharf charges, fees in respect of licences, permits or certificates, and fees for piloting, berthing and mooring or other services at any harbour; 5
- (s) To delegate to the General Manager any of the powers conferred upon him by this Ordinance; 10
- (t) Generally, to execute and do all such acts, deeds and things as may be necessary for the control, working and management of harbours included in the Services. 15

Authority of  
the High  
Commissioner  
to execute all  
necessary work.

5. Subject to the provisions of this Ordinance, and, in the case of immovable property, to the provisions of any enactment for the time being in force for the acquisition or resumption of land for public purposes, the High Commissioner may for the purpose of constructing, maintaining or working a harbour or other or similar works or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force :— 20

- (a) Make or construct in, upon, across or over any lands, or any streets, roads, railways, tramways, or any rivers, canals, streams or other waters, or any drain-pipes, water-pipes, gas-pipes, or telegraph or electric power lines, such temporary or permanent arches, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of railway, ways, passages, conduits, drains, piers, cuttings and fences as the High Commissioner may think proper; 25 30
- (b) Alter the course of any rivers, streams, or water courses for the purpose of constructing and maintaining bridges, passages, or other works, and divert or alter, as well temporarily as permanently, the course of any rivers, streams, or water courses, or any roads, streets, or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or by the side of any harbour or any other works connected therewith, as the High Commissioner may think proper; 35 40
- (c) Make, alter or repair drains or conduits into, through or under any lands for the purpose of conveying water from or to any harbour or other works; 45
- (d) Erect and construct such houses, warehouses, offices and other buildings, and such yards, machinery, apparatus, and other works and conveniences as the High Commissioner may think proper;
- (e) Maintain, alter, repair or discontinue any harbour buildings, works, and conveniences as aforesaid or any of them, and substitute others in their stead; 50
- (f) Take, carry away and use any earth, stone, timber, gravel or sand or any other materials or things out of any land contiguous to or adjoining any harbour and other works and which may be proper or necessary for making, maintaining, altering, repairing, or using any harbour or works; 55

(g) Sink wells and construct dams and all other works necessary for providing a water supply ;

(h) Do all other acts necessary for making, maintaining, altering or repairing and using any harbour ;

5 (2) The exercise of the powers conferred on the High Commissioner by sub-section (1) shall be subject in so far as they affect property and interest outside harbours to the provisions of any law for the time being in force.

10 6. The High Commissioner may, for the purpose of exercising the powers conferred upon him by this Ordinance, alter the position of any pipe for the supply of gas, water or oil, or the position of any electric wire, or of any drain not being a main drain. Alteration of pipes, wires and drains.

Provided that—

15 (a) when the High Commissioner desires to alter the position of any such pipe, wire, or drain, he shall give reasonable notice of his intention to do so, and of the time he will begin to do so, to the local authority or company having control over the pipe, wire or drain, or, when the pipe, wire or drain is  
20 not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is ;

25 (b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the High Commissioner shall execute the work to the reasonable satisfaction of the person so sent, and shall make arrangements for continuing during the execution of the work the supply of gas, water, oil or electricity, or the maintenance of the  
30 drainage, as the case may be.

7. It shall be lawful for the High Commissioner or any person authorised by him, in the case of any accident from whatever cause happening or being apprehended to any cutting  
35 or embankment or other works connected with any harbour or other or similar work, to enter upon any land adjoining such harbour or other or similar work for the purpose of repairing any damage caused by such accident or of guarding against any apprehended accident and to do such work as may be  
40 necessary for the purpose. Powers in case of accident.

8. (1) The High Commissioner shall do as little damage as possible in the exercise of the powers conferred by sections 5, 6 and 7, and compensation shall be paid for any damage caused by the exercise thereof. Payment of compensation.

45 (2) A suit shall not lie to recover such compensation but in case of dispute the amount thereof shall be determined and paid in accordance, so far as may be, with the provisions of sections 11 to 15 both inclusive, sections 18 to 34 both inclusive, and sections 53 and 54 of the Indian Land Acquisition  
50 Act, 1894, and the provisions of sections 51 and 52 of the Act shall apply to the award of compensation.

55 Provided always that, notwithstanding anything in this section hereinbefore contained, any person aggrieved by the exercise by the High Commissioner of the powers conferred upon him by sections 5, 6 and 7 may refer the matter in dispute to the decision of two arbitrators, one to be appointed by the High Commissioner and one to be appointed by the person aggrieved, and the provisions of the Arbitration *Cap. 18.* Ordinance shall apply to such reference.

## PART II.

## HARBOURS.

Compulsory  
pilotage  
harbours.

9. The Port of Mombasa, as defined in the Schedule to this Ordinance, is hereby declared to be a compulsory pilotage harbour (together with such other harbours as may from time to time be declared by the High Commissioner by proclamation in the Gazette to be compulsory pilotage harbours) save and except in respect of such ships as may be exempted by law or by regulation: Provided that the High Commissioner and any pilot who is in the service of the High Commissioner shall be exempt from liability for any loss or damage that may arise or be caused through the act, omission, or default of such pilot. 5

Ship's papers,  
etc., to be  
produced.

10. The master of every merchant ship arriving in a harbour shall, upon demand, produce and show the ship's register and ship's papers to the Port Captain or other authorised officer for his inspection, and shall deliver a list of his passengers with a description of their rank, sex and occupation, together with a list of any deaths or removals that may have occurred during the voyage, and shall report, in writing, if any person has stowed himself away or concealed himself on board of any such ship without the knowledge or consent of the master; and shall provide the High Commissioner with any other information with regard to the ship or the lading thereof as he may require; and any master not duly accounting for every individual aforesaid, or falsely accounting for any of them, or refusing to deliver the list when thereunto required as aforesaid, shall be liable on conviction to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding three months. 15 20 25 30

Clearance  
outward may  
be refused  
until  
regulations  
have been  
complied with  
and charges  
paid.

11. The Commissioner or other proper officer of Customs at any harbour may refuse to give the master of any ship in such harbour clearance outward until he has paid the dock or harbour dues, duties or charges of all kinds, which may be due from him or his ship and until he has received from the authorised officer a certificate setting forth that he has complied with the requirements of this Ordinance and with the regulations of the harbour, and every such ship shall be subject to a lien in favour of the High Commissioner in respect of the amount so due. 35 40

Responsibility  
of ship  
master for  
contraventions.

12. In the case of any contravention of this Ordinance or of any regulation on board any ship within a harbour, the master of the ship may be proceeded against in respect thereof and may be held liable for the contravention.

The High  
Commissioner,  
after notice,  
may retain  
goods until  
charges paid.

13. If at the time of landing and delivery at a harbour of goods to the High Commissioner for transit and/or delivery to the consignees, the shipowner notifies to the High Commissioner, in writing, that freight or other charges to the amount specified in the notice remain unpaid in respect of these goods, the High Commissioner may in his discretion retain and refuse delivery of the goods to the owner or any other person until— 45 50

(a) production of a receipt for the amount, notified as aforesaid, signed or purporting to be signed by or on behalf of the shipowner; or 55

(b) production of a release from payment of the amount notified as aforesaid, signed or purporting to be signed by or on behalf of the shipowner; or

(c) payment of the sum claimed, together with any charges and duty in respect of the said goods, shall have been made to the High Commissioner.

14. If the High Commissioner on production of a receipt or release or on payment, as aforesaid, deliver the goods to the party producing the receipt or release or making the payment, no liability whatsoever shall attach to the High Commissioner in respect of the goods either to the shipowner, the consignee, the owners, or any person whatsoever.

Action which may be taken by the High Commissioner in respect of the goods.

15. Whenever any goods are placed in the custody of the High Commissioner under the authority of section 13, the High Commissioner shall be entitled to rent in respect of the same, and shall also have power at the expense of the consignee of the goods to do all such reasonable acts as in the judgment of the High Commissioner are necessary for the proper custody and preservation of the goods and shall have a lien on the goods for the rent and expenses.

The High Commissioner entitled to charge for rent and necessary expenses.

16. Nothing in this part of the Ordinance shall be construed as obliging the High Commissioner to take charge of any goods which he would not have been liable to take charge of if this Ordinance had not been enacted, or as binding the High Commissioner to enquire into the validity of any claim for freight or other charges made by any shipowner.

Saving clause.

17. Wherever under sections 13, 14 and 15 of this Ordinance any act requires to be done, any notice to be given, or any receipt and release to be produced to the High Commissioner, such act, notice or receipt and release shall be deemed to have been validly done, given or produced if done by, given to, or produced to the Port Manager or other officer authorised by him at the harbour.

Notice, etc., to whom given.

18. (1) If any person fails to pay on demand made by or on behalf of the High Commissioner any terminal or other charge due from him to the High Commissioner in respect of any goods, the High Commissioner may detain the whole or any of the goods or, if they have been removed from any harbour, any other goods of such person then being in or thereafter coming into his possession.

Lien for terminal or other charge.

(2) When any goods have been detained under sub-section (1), the High Commissioner may sell by public auction, in case of perishable goods at once, and in the case of other goods on the expiration of at least ten days' notice of the intended auction, published in one or more of the local newspapers, sufficient of such goods estimated to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

(3) Out of the proceeds of the sale the High Commissioner may retain a sum equal to the charges and expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the goods, if any, as remain unsold, to the person who in the opinion of the High Commissioner is entitled to such surplus.

(4) If any person on whom a demand for any terminal or other charge due from him has been made fails to remove from the harbour within a reasonable time any goods which have been detained under sub-section (1) or any goods which have remained unsold after a sale under sub-section (2), the High Commissioner may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (3).

(5) Notwithstanding anything in the preceding subsections, the High Commissioner may recover by suit any such terminal or other charge aforesaid or any balance thereof.

Disposal of  
unclaimed  
goods.

**19.** (1) When any goods have come into the possession of the High Commissioner and are not claimed by the consignee or other person appearing to the High Commissioner to be entitled thereto, the High Commissioner shall, if such consignee or person is known, cause a notice to be served upon him requiring him to remove the goods. 5

(2) If such consignee or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the High Commissioner may, within such time as he may deem fit, sell the goods as nearly as may be under the provisions of the last preceding section, rendering the surplus, if any, of the proceeds of the sale to the person who in the opinion of the High Commissioner is entitled thereto: Provided that no imported goods shall be sold under this Ordinance which have not been entered in accordance with the provisions of the Customs Management Ordinance, 1926. 10 15 20

The High  
Commissioner  
may withhold  
delivery of  
goods.

**20.** When any goods or sale proceeds in the possession of the High Commissioner are claimed by two or more persons, or documentary proof of ownership to the satisfaction of the High Commissioner is not forthcoming, the High Commissioner may withhold delivery of the goods or sale proceeds until the person entitled in his opinion to receive them has given an indemnity, to the satisfaction of the High Commissioner, against the claims of any other person with respect to the goods or sale proceeds. 25

Claims for  
compensation  
to goods must  
be made within  
four months.

**21.** (1) No person shall be entitled to compensation for the loss of goods unless his claim for compensation, giving full and detailed information as to the goods and supported by such documentary evidence as may be reasonably required has been preferred in writing by him or on his behalf to the High Commissioner within four months from the date of delivery of the goods to the High Commissioner. 30 35

(2) No person shall be entitled to compensation for damage to or deterioration of goods unless his claim for compensation, giving full and detailed information as to the goods and supported by such documentary evidence as may be reasonably required has been preferred in writing by him or on his behalf to the High Commissioner within one month from the date of the delivery of the goods to the consignee. 40

Relief from  
liability in  
case of goods  
improperly  
described.

**22.** The High Commissioner shall not be responsible for loss, destruction or deterioration of any goods in respect of which a wrong or improper or insufficient description or address for delivery has been given, if the loss, destruction or deterioration is in any way brought about by giving such wrong or improper or insufficient description or address. 45

Limitation of  
the liability  
of the High  
Commissioner  
in respect of  
the act of  
God, etc.

**23.** (1) The High Commissioner shall in no case be liable for any loss or damage to any goods in his custody at a harbour, if the loss or damage be caused by the act of God or of the King's enemies, the perils or accidents of the sea, fire, flood, tempest, civil commotion, riots or strikes; or for— 50

(a) the loss of weight or measure or the deterioration of goods by heat, decay, rust, sweat or change of character of such goods as may be handled by the High Commissioner or deposited in warehouses, or 55

- on premises under his control, or as may be otherwise in his charge; or for any loss of contents of bags through shifting or for internal breakage, or for deficiency in contents of unbroken packages; or for
- (b) loss of or damage to castings, machinery or other goods not protected or insufficiently protected, or insecurely packed, or from leakage arising from defective drums, tins or packages, or for the loss of or damage to goods by vermin or insect pests; or for
- (c) loss of or damage to animals arising from inherent vice, or from any cause other than that arising from the negligence of his servants; or for
- (d) loss of or damage to goods caused from maintaining too high or too low a temperature in any warehouse or cool chamber or failure of machinery or plant not due to negligence on the part of the servants of the High Commissioner.
- (2) The High Commissioner shall not be liable for any demurrage which may accrue or be due on any ship howsoever caused.

## PART III.

GENERAL OFFENCES IN RESPECT OF HARBOURS AND SHIPS  
AND BY SERVANTS.Penalties for  
certain classes  
of offences.

24. Any person who does or causes or procures to be done any of the following acts, namely who :—
- (a) Trespasses upon any portion of a harbour closed to the public or on any ship the property of the High Commissioner or on any work under construction or under repair, or in a specially prohibited place;
- (b) Wilfully gives a false name and address to a servant or police officer;
- (c) Is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of others in or about any harbour or upon any ship;
- (d) Does or attempts to do anything which may cause injury to persons employed or being in or about any harbour or upon any ship;
- (e) Commits any nuisance or act of indecency or uses profane, obscene, indecent, or abusive language in or about any harbour or upon any ship;
- (f) Writes, draws, or affixes any profane, obscene, indecent or abusive word, matter, representation or character upon any part of any harbour or upon any ship;
- (g) Defaces the writing on any board or on any notice authorised to be maintained at any harbour or upon any ship;
- (h) Smokes in any goods shed, warehouse, or in proximity to any cargo or inflammable material or in any other places within any harbour or upon any ship where notice boards prohibiting smoking are erected;
- (i) Disobeys while upon harbour premises the reasonable directions of a servant or police officer;
- shall be liable to a fine not exceeding ten pounds or to imprisonment for a period not exceeding one month, or to both such fine and imprisonment.



Penalties for  
certain other  
classes of  
offences.

**25.** Any person who does or cause or procures to be done any of the following acts, namely, who :—

- (a) Pulls down or attempts to pull down or wilfully injures or attempts to injure any board or document set up or posted by order of the High Commissioner in any harbour or upon any ship ; 5
- (b) Gives or offers to a servant any money or anything of value for the purpose of evading payment of any sum due under this Ordinance ;
- (c) Fails to deliver at the earliest possible opportunity to a servant any property found in or about any harbour or upon any ship or removes from a harbour or ship any property so found ; 10
- (d) Wilfully obstructs or impedes a servant in the discharge of his duty ; 15
- (e) Discharges from a ship or within a harbour any fire-arm, or throws stones, metal, bricks, gravel, timber, glass, bottles, or other articles likely to obstruct or injure anyone engaged in working in or about a harbour or ship, or attempts to do any of the foregoing acts ; 20
- (f) Removes or attempts to remove from any harbour or ship the property of the High Commissioner or from any harbour premises any rolling stock, tarpaulins, tools, appliances, or property of any kind, or permits any such rolling stock, tarpaulins, tools, appliances or property to be unlawfully in his possession or on his premises ; 25

shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment. 30

Penalties  
for grave  
offences.

**26.** Any person who does or causes or procures to be done any of the following acts, namely, who :—

- (a) Wilfully damages, removes, or in any other way interferes with any lighthouse, buoy, mark or beacon, sets adrift, or otherwise causes damage to any ship, or causes any damage to harbour property or equipment ; 35
- (b) Without lawful authority wilfully cuts down, breaks, removes, destroys, or injures any fence, building, or bridge or any other property in or about any harbour ; 40
- (c) Without lawful authority removes any cranes or tackle, points, wires, sleepers, rails or machinery or floating equipment in or about a harbour, or moves any part of the rolling stock or floating equipment in or about any harbour ; 45
- (d) Wilfully or without lawful excuse obstructs or does anything which may obstruct the free use of any wharf, jetty, quay or foreshore, or the approaches thereto ; 50

shall be liable to imprisonment for a period not exceeding ten years.

Special  
provisions with  
respect to the  
commission of  
offences by  
children.

**27.** (1) If a minor under the age of sixteen years is, with respect to a harbour or ship, guilty of any of the acts mentioned or referred to in any of the three last preceding sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an 55

offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping not exceeding sixteen strokes with a light cane, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts.

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as a fine.

(3) If a father or guardian fails to execute a bond under subsection (1) within the time fixed by the Court, he shall be liable to a fine not exceeding five pounds.

28. If any claim, return, or particulars required by this Ordinance are false in any particular to the knowledge of any person who signs it, or them, that person shall be liable on conviction to a fine not exceeding fifty pounds, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

Penalty for false claim, etc.

29. If any person wilfully or without lawful excuse refuses or neglects to obey any lawful direction of the Port Manager, Port Captain or Port Officer, he shall, for every such offence, be liable to a fine not exceeding ten pounds, or, in the case of a continuing offence, to a further fine not exceeding ten pounds for every day during which he shall without lawful excuse continue to disobey such instructions.

Penalty for refusing or neglecting to obey lawful direction of Port Manager, etc.

#### OFFENCES BY SERVANTS.

30. If a servant is in a state of intoxication while on duty, he shall be liable to a fine not exceeding five pounds, or, where the improper performance of the duty would be likely to endanger the safety of any person employed or being upon harbour premises or upon any ship, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding three years, or to both such fine and imprisonment.

Drunkenness.

31. If a servant, when on duty, endangers the safety of any person—

Endangering the safety of persons.

(a) by disobeying any regulation made, sanctioned, published and notified under this Ordinance; or

(b) by disobeying any rule or order which is not inconsistent with any such regulation, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or with which he was required to make himself acquainted, or

(c) by any rash or negligent act or omission, he shall be liable to a fine not exceeding fifty pounds, or to imprisonment for a period not exceeding three years, or to both such fine and imprisonment.

32. (1) If a servant before leaving the Services shall fail to give to the High Commissioner the notice specified in his agreement (if any), or provided by any regulation under this Ordinance or under the Order in Council, he shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the High Commissioner from any moneys due to him, and he shall in addition be liable to a fine not exceeding fifteen pounds.

Leaving Services without having given the requisite notice.

(2) Whenever a servant, being a member of the crew of any ship, is guilty of the offence of leaving the service without giving the notice specified in the preceding subsection, or of absence without leave, he may be arrested by any police officer without warrant, or the master of the ship may, with or without the assistance of the police, convey him on board the ship. 5

*Cap. 139.*

Penalty for demanding more than is due.

(3) Nothing in this or the preceding sections contained shall be deemed to exempt a servant, if a native or Arab, from punishment under the Employment of Natives Ordinance, or any Ordinance amending or substituted for the same. 10

**33.** Any servant who, with intent to defraud, asks or receives a greater sum or a lesser sum than is allowed by law and is provided by the regulations or tariff then in force for the facilities provided at a harbour by the High Commissioner, or for any other services performed by the High Commissioner, shall, in addition to such other action as may be decided by the High Commissioner in regard to the termination of his employment, be liable to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment. 15 20

#### PROCEDURE.

Arrest for offences against certain sections.

**34.** (1) If a person commits any offence mentioned in sections 24, 25, 26, 30 and 31, he may be arrested without warrant or other written authority by any servant or police officer, or by any other person whom such servant or police officer may call to his aid. 25

(2) A person so arrested shall, with the least possible delay, be taken before a magistrate having authority to try him or commit him for trial. 30

Arrest of persons likely to abscond or unknown.

**35.** (1) If a person commits any offence under this Ordinance, other than an offence mentioned in the last preceding section, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name and address given by him is incorrect, any servant or police officer or any other person whom such servant or police officer may call to his aid may, without warrant or other written authority, arrest him. 35

(2) The person arrested shall be released on his giving bail, or, if his true name and address are ascertained, on his executing a bond, without sureties, for his appearance before a magistrate when required. 40

(3) If the person cannot give bail and his true name and address are not ascertained, he shall, with the least possible delay, be taken before the nearest magistrate having jurisdiction. 45

Appointment of persons to maintain order in or about harbours.

**36.** The High Commissioner may appoint as many persons as may be deemed necessary for the duty of maintaining order in or about any harbour, and when any such person so appointed is carrying out that duty he shall be capable of exercising all such powers and shall perform all such functions as are by law conferred on or are to be performed by a police officer, and shall be liable in respect of acts done or omitted to be done to the same extent as he would have been liable in like circumstances if he were a member of the police force of the Colony, and shall have the benefits of all the indemnities to which a member of the police force would in like circumstances be entitled. 50 55

**37.** (1) Any person committing any offence against this Ordinance shall be triable for such offence in any place in which he may be, or which the Governor may notify in this behalf, as well as in any place in which he might be tried under any law for the time being in force.

(2) Every notification under subsection (1) shall be published in the Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such harbours as the Governor may direct.

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## PART IV.

## SUPPLEMENTAL PROVISIONS.

**38.** Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of the harbours in aid of the funds of local authorities, namely :—

Taxation of  
harbours  
by local  
authorities.

(1) The High Commissioner shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor in Council has by notification in the Gazette declared the High Commissioner to be liable to pay the tax.

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(2) The Governor in Council may at any time revoke or vary a notification under subsection (1) of this section.

(3) Nothing in this section is to be construed as debarring the High Commissioner from entering into a contract with any local authority for the supply of water or light, or for the scavenging of harbour premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

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(4) " Local Authority " in this section means a municipal corporation or committee, district board, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or other fund.

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**39.** None of the tugs, motor launches, boats, lighters, trucks, trollies, cranes, tools, plant, machinery, fittings, workshop materials, materials or effects used or provided by the High Commissioner for harbour purposes, shall be liable to be taken in execution of any decree or order of any Court, or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution, without the previous sanction of the High Commissioner.

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Restriction  
on execution  
against  
harbour  
property.

Harbour  
servants to  
be public  
servants.

**40.** (1) Every servant shall be deemed to be a public servant for the purpose of Chapter IX of the Indian Penal Code.

(2) A servant shall not—

- (a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under sections 18 or 19; or
- (b) in contravention of any direction of the High Commissioner in this behalf, engage in trade.

Disposal of  
Provident  
Fund  
contributions  
in event of  
dismissal  
from the  
Service.

**41.** If a servant be dismissed from the service for fraud, dishonesty or misconduct, or retire from the service in order to avoid dismissal, or be ordered to resign on account of misconduct, he shall be refunded the amount of his own contributions only to any provident, pension or superannuation fund controlled by the High Commissioner, to which he may have contributed: Provided that, in the case of a member dismissed for fraud or dishonesty, the High Commissioner may deduct from any sums payable to such member under this section the amount of any loss which the High Commissioner may have sustained by reason of such fraud or dishonesty.

Arrest of a  
harbour  
servant.

**42.** (1) When the immediate arrest of a servant, either with or without warrant, would be likely to endanger the safety of any person being in or about any harbour or upon any ship, or to cause serious inconvenience to the High Commissioner, the police officer whose duty it is to make such arrest shall at once apply to the Port Manager, Port Captain or Port Officer to relieve such servant, and shall arrange so to watch him that he does not escape, and on such servant being relieved such police officer shall arrest him and proceed according to law.

(2) The relief of a servant under the preceding subsection shall be effected with the least possible delay.

Procedure  
for summary  
delivery to  
the High  
Commissioner  
of property  
detained by  
harbour  
servant.

**43.** If a servant be discharged or suspended from his office, or dies, absconds, or absents himself, and he or his wife or widow or any of his family or representatives refuses or neglects, after notice in writing for that purpose to deliver up to the High Commissioner, or to a person appointed by the High Commissioner in this behalf, any dwelling-house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the High Commissioner and in the custody or possession of such servant at the occurrence of any such event as aforesaid, any magistrate may, on application made by or on behalf of the High Commissioner, order any police officer with proper assistance to enter upon the building and remove any such person found therein, and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the High Commissioner or to a person appointed by him in that behalf.

Mode of  
signifying  
communica-  
tions from  
the High  
Commissioner.

**44.** Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction to be given or signified on the part of the High Commissioner for any of the purposes of, or in relation to, this Ordinance or any of the powers or provisions therein contained, shall be sufficient and binding if in writing signed by the officer or servant deputed by the High Commissioner to communicate his

directions in respect of the matters to which the same may relate, and the High Commissioner shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in the manner aforesaid.

5      **45.** Any notice or other document required or authorised by this Ordinance to be served on the High Commissioner may be served on the General Manager or such other officer as may be appointed by the General Manager for the purpose—

Service of  
notice on  
the High  
Commissioner.

10      (a) by delivering the notice or other document to the General Manager or his agent; or

(b) by leaving it at his office; or

(c) by forwarding it by post in a prepaid registered letter addressed to the General Manager or his agent at his office.

15      **46.** Any notice or other document required or authorised by this Ordinance to be served on any person by the High Commissioner may be served—

Service of  
notice by  
the High  
Commissioner.

(a) by delivering to the person; or

20      (b) by leaving it at the usual or last known place of abode of the person; or

(c) by forwarding it by post in a prepaid registered letter addressed to the person at his usual or last known place of abode.

25      **47.** Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Presumption  
where notice  
is served by  
post.

30      **48.** (1) No action the cause of which shall have arisen after the commencement of this Ordinance shall be brought against the High Commissioner unless the same be commenced within twelve months after the cause of action arose.

Limitation  
of actions.

35      (2) No action shall be commenced against the High Commissioner until one month at least after written notice of intention to commence the action has been served upon the High Commissioner by the plaintiff or by his attorney or agent. In that notice the cause of action and details of the claim shall be clearly and explicitly stated.

40      (3) In any action against the High Commissioner, no execution or attachment or process in the nature thereof shall be issued against the High Commissioner or against any property of His Majesty, but the General Manager shall pay out of the Railway and Harbour Fund such sums of money as shall by the judgment of the Court be awarded to the plaintiff.

45      **49.** (1) The High Commissioner may authorise the General Manager to act for or represent him, or to appoint any other person to act for or represent him, in any proceeding before any civil, criminal or other court.

Representation  
of the High  
Commissioner  
in Court.

50      (2) The General Manager, or any other person appointed by him to conduct prosecutions shall be entitled to conduct such prosecutions without the permission of the magistrate.

## PART V.

## REGULATIONS AND REPEAL.

## Regulations.

50. The High Commissioner may, in addition to the powers conferred upon him by the Order in Council, make, vary or revoke regulations, not inconsistent with this Ordinance, with respect to any of the following matters, that is to say, with respect to :—

- (1) The proper control and management of any anchorage, tidal river, foreshore, dock, basin or harbour, and the entrance thereto, the removal of any obstruction therein, and the preservation from injury of any works, buoys, dredgers, ships or other property connected therewith; 10
- (2) The erection of buildings or other structures, or the planting of posts or poles that may interfere with the proper working of any harbour or the signals or beacons thereat; 15
- (3) The regulation of the stevedoring, landing, shipping, transshipping, delivery, collection and warehousing of goods at any harbour, the fixing of minimum hours of work in ships loading or discharging cargo, and the minimum tonnage to be loaded or discharged in a working day, and the declaration of the tonnage and valuation of goods imported or exported and the necessary declarations and statements in support thereof; 20 25
- (4) The proper control of all ships entering or within any harbour, or coming alongside any jetties, piers, quays, or wharves, or anchoring or mooring within the limits of any harbour, and, subject to the provisions of any law relating to merchant shipping, the taking of measures for the prevention of ships from leaving any harbour if overloaded or improperly loaded or insufficiently manned or without qualified officers or engineers or with a number of passengers in excess of the number that can be carried with reasonable safety, or if so improperly found or otherwise unseaworthy; 30 35
- (5) The fixing and determining of ships dues, wharfage charges, and light dues and other harbour dues and charges, and the payment and the exemptions from payment thereof; 40
- (6) The prevention of shipwrecks and casualties to ships, and the protection of ships and cargoes wrecked or in danger of being wrecked, and the removal, destruction or abandonment of wrecks and wreckages and anchors, dangerous or likely to become dangerous or a nuisance, or that obstruct or are likely to obstruct the fairway of any harbour, and the levy and recovery of a rent for the right of a hulk or wreck or any wreckage to lie in any harbour, and the saving of life in case of shipwreck; 45 50
- (7) The removal or sale of stranded ships and their cargoes and appurtenances; the payment of fines, expenses of sale and other charges incurred in connection therewith, and the disposal of the proceeds of sale; 55

- 5 (8) The promotion of efficiency and discipline in the pilot service, and the service upon ships or works connected with any harbour or lighthouse, lifeboat or life-saving apparatus, and provision for the examination, registration and licensing of pilots, and the charges to be made by pilots, their duties and obligations ;
- 10 (9) Subject to the provisions of any law relating to merchant shipping, the examination and certification of masters, mates and engineers of ships engaged in local trade, whalers, tugs, dredgers, fishing boats and light craft, and the charges and licences payable in respect thereof, and, subject as aforesaid, the registration, licensing, inspection and control of
- 15 ferries, tugs, launches, hulks, fishing or ferry boats or other craft, and the number of passengers to be carried on the same, and the charges to be paid for the registration, licensing and inspection of the same ;
- 20 (10) The granting of licences to ferrymen, boatmen, and porters, landing agents, stevedores, forwarding agents, shipping agents, baggage and parcels agents, and contractors for the supply of water or ballast, or other persons concerned in harbour work, and the
- 25 regulation of charges leviable by them, and their duties and the hours of their attendance at work ;
- (11) The regulation of the use of all landing places, slips, gridirons, docks, shears, cranes, lights, warps and coaling or other appliances, and the regulation of the
- 30 traffic within any harbour area ;
- (12) The licensing or other authorisation of admission on to the wharves, docks, jetties, or other works of any harbour at any special times of any hotel representatives, landing agents, or other persons soliciting patronage from passengers on ships arriving at or
- 35 departing from any such harbour ;
- (13) The prohibition of smoking in or on wharves, jetties, quays, buildings, or rolling stock ;
- (14) The prevention of obstructions and the preservation of good order on the foreshore, and on banks of
- 40 rivers, wharves, jetties, landing places, breakwaters, and other works within his jurisdiction, or the approaches to the same ;
- (15) The duties and conduct of carmen, draymen, carriers, and persons other than servants of the High Commissioner who ply for hire to or from any wharf, building, or other place which is under the control of the High Commissioner ;
- 45
- (16) The admission of the public to, or their exclusion from, any of the harbours, docks, wharves, jetties and landing places, and the charges (if any) to be made for admission, and the closing to the public, for such period as the High Commissioner may think fit, of any harbours, docks, wharves, jetties, sheds,
- 50 roads, or landing places under his jurisdiction ;
- 55 (17) The prevention of damage or injury to any harbour, dock, slip, wharf, jetty, landing place or other works and premises, ships or any property whatever ;



- (18) The prevention of the commission of any nuisance in or upon any harbour, foreshore, dock, wharf, jetty or landing place, and generally the promotion and ensuring of good sanitation, cleanliness and decency within any harbour; 5
- (19) The charges to be made for warehousing goods under his control and for their care or custody, and the terms and conditions upon which they shall be received, and provision for the disposal of unclaimed goods; 10
- (20) The definition for the purposes of this Ordinance of dangerous or offensive goods and the conditions under which and the times when those classes of goods shall be landed, shipped, or transhipped, and the prohibition of the landing, shipping or transhipping of those classes of goods, and provision for or sanctioning of the removal or destruction of the same; 15
- (21) The use of harbour land for coal stands, depositing or forwarding sites, pipe lines, power lines and the like, and whether the same shall be overhead, underground, or submarine; 20
- (22) Advertising and bookstalls at any harbour and the fixing of the hours and days during which any such bookstall may remain open for the use of the public;
- (23) Notwithstanding anything contained in the Liquor Ordinance, or in any Ordinance amending or repealing the same, the sale of liquors and refreshments within a harbour, and the imposition of licensing fees in respect of the sale of such liquors and refreshments; 30

and generally with respect to the use and working of harbours and for the good government thereof, and the maintenance of order thereon and therein.

The regulations may provide penalties for any contravention thereof or failure to comply therewith, and may also impose different penalties in case of a second or subsequent contravention or non-compliance, but no such penalty shall exceed a fine of fifty pounds or imprisonment for a period of six months, or both such fine and imprisonment. 35

As often as the contravention of or failure to comply with any such regulation causes damage to any property under the management or control of the High Commissioner, the person causing the damage shall, in addition to any penalty which may be imposed under the regulation, be liable to the High Commissioner for the amount of the damage done. 40 45

A copy of all regulations for the time being in force shall be published in the Gazette and kept at the principal office at each harbour and any person shall be allowed to inspect the same free of charge.

Repeal.  
Cap. 107.

The Port Captain or other authorised officer shall on demand cause to be delivered to the master of any ship arriving at any harbour a copy of this Ordinance and of such harbour and quarantine regulations as may be in force in the harbour. 50

51. (1) The Port Ordinance is hereby repealed.

Provided that all rules, regulations, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications published under 55

the said Ordinance or under any other Ordinance or Order in Council relating to harbours shall, so far as they are consistent with this Ordinance, be deemed to have been respectively made, given, approved, conferred, and published under this  
5 Ordinance.

(2) All reference in any enactment or document to the Ordinance hereby repealed shall, as far as may be, be construed as references to this Ordinance.

#### SCHEDULE.

1. The Port of Mombasa, including Kilindini Harbour, the Old Port, Port Reitz, Port Tudor, and the whole of the waters encircling Mombasa Island together with the foreshore, the wharves, docks, basins, jetties, piers, lighthouses, beacons and other harbour works and residences and all lands as may be declared by order of the Governor in Council to be part of the Port of Mombasa. The waters of the port are bounded on the seaward side by a line drawn from Ras Kunwongbe to a point on the shore of the mainland half a mile south of Ras Muake Singe.

2. The Port of Lamu, including Lamu Harbour and that part of Lamu Bay comprised within a radius of three miles from Shella flagstaff.

3. The Port of Malindi, including the Northern Anchorage Malindi Road and so much of the sea as is comprised within a radius of three miles from Malindi lighthouse.

4. The Port of Kilifi, including Kilifi and Takaungu creeks, and so much of the sea as is comprised within a radius of three miles from Ras Kitoka.

#### OBJECTS AND REASONS.

The Bill gives effect to that part of the Kenya and Uganda (Transport) Order in Council, 1925, by which the harbours of the Colony of Kenya were placed under the control of the High Commissioner for Transport.

Provision is made for the working and management of the ports and harbours on the Coast of the Colony.

The responsibilities and powers of the High Commissioner in this connection are clearly defined.