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THE
OFFICIAL GAZETTE
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COLONY AND PROTECTORATE
OF
KENYA
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Colony and Protectorate of Kenya.

AN ORDINANCE.

No. 6 OF 1930.

Assented to in His Majesty's name this thirteenth day of May, 1930.

EDWARD GRIGG,
Governor.

[13TH MAY, 1930.] Date of assent.

An Ordinance to make provision for the Prevention of Adulteration of Food and Drugs.

BY NOTICE.

Date of commencement.

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

1. This Ordinance may be cited as " The Food and Drugs (Adulteration) Ordinance, 1930 ", and shall come into operation upon such date as the Governor may by notice in the Gazette appoint. Short title and commencement.

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

" Food " includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food and also includes flavouring matters and condiments.

" Drug " includes medicine for internal or external use.

" Local authority " means a local authority as defined by the Public Health (Amendment) Ordinance, 1928.

No. 22 of 1928.

" Public analyst " means a person appointed by the Governor or by a local authority with the approval of the Governor to act in the capacity of analyst for the purposes of this Ordinance.

" Medical officer of health " means a medical officer of health as defined by the Public Health Ordinance, and includes an assistant medical officer of health. Cap. 124.

" Sanitary inspector " includes any person for the time being lawfully acting in the capacity of a sanitary inspector.

PART I.

GENERAL PROVISIONS.

3. (1) No person shall mix, colour, stain or powder or order or permit any other person to mix, colour, stain or powder— Restrictions on mixing food and drugs with other ingredients.

(a) any article of food with any ingredient or material so as to render the article injurious to health;

(b) any drug with any ingredient or material so as to affect injuriously the quality or potency of the drug;

with the intent that the article of food or drug may be sold in that state.

(2) No person shall sell any article of food or drug so mixed, coloured, stained or powdered as aforesaid.

(3) If any person contravenes any of the provisions of this section he shall be guilty of an offence :

Provided that a person shall not be convicted under this section in respect of the sale of any article of food or of any drug if he shows to the satisfaction of the court before whom he is charged that he did not know, and could not with reasonable diligence have ascertained that the article of food or drug sold by him was so mixed, coloured, stained or powdered as aforesaid.

Cap. 124.

(4) Where any regulations made under this Ordinance or under the Public Health Ordinance prohibit or restrict the addition of any preservative or other ingredient or material to any article of food, the addition of any such ingredient or material, if made in contravention of the regulations, shall for the purposes of this Ordinance be deemed to render the article injurious to health.

Prohibition
against sale
of articles of
food or drugs
not of the
nature,
substance,
or quality
demanded.

4. (1) No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, or not of the substance, or not of the quality, of the article demanded by the purchaser.

(2) If any person contravenes the provisions of this section he shall be guilty of an offence :

Provided that an offence under this section shall not be deemed to have been committed—

(a) where any ingredient or material not injurious to health has been added to the article of food or drug because it is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the article of food or drug, or to conceal the inferior quality thereof ;

(b) where the food or drug is the subject of a patent in force, and is supplied in the state required by the specification of the patent or is a proprietary medicine ;

(c) where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

(3) In any prosecution under this section it shall be no defence to allege that the purchaser, having bought only for analysis, is not prejudiced.

Cap. 124.

(4) Where any regulations made under this Ordinance or under the Public Health Ordinance prescribe the composition of any article of food intended for sale, or prohibit or restrict the addition of any preservative or other ingredient or material to any such article, the purchaser of such article shall, unless the contrary is proved, be deemed for the purposes of this section to have demanded an article complying with the provisions of the regulations as regards the presence or amount of any constituent, ingredient or material specified in the regulations.

Provisions as
to sale of
compounds.

5. If any person sells any compound article of food, or any compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, he shall be guilty of an offence.

6. (1) No person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any ingredient or material not injurious to health, and not intended fraudulently to increase its bulk, weight or measure, or to conceal its inferior quality, if at the time of delivering the article of food or drug he supplies to the person receiving it a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that it is mixed.

Protection from liability where article properly labelled.

(2) For the purposes of this section, a label shall not be deemed to be distinctly and legibly written or printed if the notice of mixture given by the label is obscured by other matter on the label.

7. If any person abstracts from any article of food any part of it so as to affect injuriously its nature, substance or quality with the intent that it may be sold in its altered state without notice, or if any person sells any article so altered without making disclosure of the alteration, he shall be guilty of an offence.

Offences in relation to the abstraction from articles of food of parts thereof.

PART II.

ADMINISTRATION.

8. (1) It shall be the duty of every local authority to put into force from time to time, as occasion may arise, and as may be, under their special circumstances, reasonably practicable, the powers with which they are invested so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to procure samples for analysis.

Duty of local authority to enforce Ordinance.

(2) If the Governor after communication with the local authority is of the opinion that the authority have failed to execute or enforce any of the provisions of this Ordinance in relation to any article of food and that their failure affects the general interests of the consumer, the Governor may by order empower an officer to execute and enforce these provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

(3) The expenses incurred under any such order shall be recoverable by the Governor from the local authority and the amount so recovered shall be treated as expenses incurred by the authority under this Ordinance.

9. (1) Any medical officer of health, sanitary inspector, inspector of weights and measures or police officer, acting under the direction and at the cost of the local authority appointing him or charged with the execution of this Ordinance may purchase any sample of any food or drug and any such officer or inspector acting as aforesaid is in this Ordinance referred to as a "sampling officer".

Powers of sampling.

(2) A sampling officer may take at the place of delivery any sample of any food in course of delivery to the purchaser or consignee in pursuance of any contract for the sale thereof to the purchaser or consignee:

Provided that no sample of food other than milk shall be taken under this sub-section except upon the request or with the consent of the purchaser or consignee.

(3) If any sampling officer applies to purchase any article of food or any drug exposed for sale or on sale by retail on any premises (including any street or open space of public resort), and tenders the price for the quantity which he requires for the purpose of analysis not being more than is reasonably requisite, and the person exposing the article or drug for sale or having it for sale on the premises, refuses to sell to the officer such quantity thereof as aforesaid, or if the seller or consignor or any person entrusted by him for the time being with the charge of any article of food of which a sampling officer is empowered to take a sample in course of delivery refuses to allow the officer to take the quantity which he requires for the purpose of analysis, the person so refusing shall be guilty of an offence and liable to a fine not exceeding ten pounds :

Provided that where any article of food or drug is exposed for sale in an unopened tin or package duly labelled, no person shall be required to sell it except in the unopened tin or package in which it is contained.

Right to have
samples
analysed.

10. (1) Where a sampling officer procures a sample of food or of a drug, he shall, if he suspects the sample or the article from which the sample is taken to have been sold contrary to any provision of this Ordinance, or that the provisions of this Ordinance have otherwise been infringed with respect to that article, submit it to be analysed by the public analyst.

(2) The public analyst shall as soon as practicable analyse any sample sent to him in pursuance of this Ordinance and shall give the sampling officer a certificate specifying the result of the analysis in the form set forth in the first schedule to this Ordinance, or a form to the like effect.

Division of
and dealings
with samples.

11. (1) Where a sampling officer procures a sample of any article with the intention of submitting it to analysis he shall, after the purchase has been completed, forthwith notify to the seller or his agent who sold the sample his intention to have it analysed by the public analyst and shall then and there divide the sample into three parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall—

- (a) if required to do so deliver one part to the seller or his agent;
- (b) retain one part for future comparison;
- (c) if he thinks fit to have an analysis made submit one part to the analyst.

(2) In the case of a sample taken of milk in course of delivery the person taking the sample shall, if the name and address of the consignor appear on the can, bottle or other receptacle containing the milk sampled, forward to him by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up.

Power of
Director of
Medical and
Sanitary
Services or
Director of
Agriculture to
have articles
analysed.

12. The Director of Medical and Sanitary Services may, in relation to any matter appearing to him to affect the general interests of the consumer, and the Director of Agriculture may, in relation to any matter appearing to him to affect the general interests of agriculture in the Colony, or any other person who may be authorised by the Governor so to do may, direct an officer to procure for analysis samples

of any article of food or any drug and thereupon the officer shall have all the powers of a sampling officer under this Ordinance and this Ordinance shall apply as if the officer were a sampling officer.

13. (1) The provisions of this Ordinance relating to the taking of samples, and proceedings in connection therewith, shall, in relation to milk, have effect subject to the provisions of the second schedule to this Ordinance.

Special provisions as to sampling of milk.

(2) So much of any contract as requires a purveyor of milk, on a sample of his milk being taken under this Ordinance, to send to the person from whom he procured the milk any part of such sample, or to give that person notice that a sample has been so taken, shall be void.

(3) For the purpose of this section and the said schedule the expression "purveyor of milk" includes a seller of milk whether wholesale or by retail.

14. Any person who wilfully obstructs or impedes any inspector or other officer in the course of his duties or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent the due execution by the inspector or officer of his duty under this Ordinance shall be guilty of an offence.

Obstruction of officers in discharge of duties.

PART III.

LEGAL PROCEEDINGS.

15. (1) Where a public analyst having analysed any article has given his certificate of the result from which it appears that an offence under this Ordinance has been committed, the sampling officer may take proceedings under this Ordinance before any magistrate having jurisdiction in the place where the article of food or drug sold was actually delivered to the purchaser or the sample taken.

Prosecution and penalties for offences.

(2) A person found guilty of an offence for which no special penalty is imposed by this Ordinance shall be liable on conviction—

- (a) in the case of a first offence to a fine not exceeding twenty pounds; and
- (b) in the case of a second offence, to a fine not exceeding fifty pounds, and
- (c) in the case of a subsequent offence, to a fine not exceeding one hundred pounds; or if in the opinion of the court, the offence was committed by the personal act, default, or culpable negligence of the person accused, and the court is of opinion that a fine will not meet the circumstances of the case, to imprisonment of either description for a term not exceeding three months.

(3) In any prosecution under this Ordinance the summons shall state the particulars of the offence or offences alleged and also the name of the prosecutor and shall not be made returnable in less than fourteen days from the date on which it is served.

(4) In any prosecution under this Ordinance for selling any article of food or drug contrary to the provisions of this Ordinance, it shall be lawful for the prosecutor to proceed against the person who actually sold the article or against the person on whose behalf the article was sold or against both such persons.

(5) Where an employer is charged with an offence under this Ordinance he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Ordinance and that the said other person had committed the offence in question without his knowledge, consent or connivance, the said other person shall be summarily convicted of the offence and the employer shall be exempt from any penalty.

Service and
evidence of
certificates of
analysis.

16. (1) Where a certificate of analysis has been obtained on behalf of a prosecutor, a copy thereof shall be served with the summons.

(2) Where a certificate of analysis is intended to be produced by a defendant, a copy thereof shall be sent to the prosecutor at least three clear days before the day appointed for hearing the case.

(3) In any proceedings for an offence under the foregoing provisions of this Ordinance, the production by one of the parties of a certificate of a public analyst in the form prescribed by this Ordinance shall be sufficient evidence of the facts stated therein unless the other party requires that the analyst shall be called as a witness.

(4) In any proceedings under this Ordinance the part of the sample retained by the sampling officer who procured it shall be produced at the hearing.

Conditions
under which
warranty may
be pleaded as
defence.

17. (1) Subject to the provisions of this section, a defendant shall be discharged from the prosecution if he proves to the satisfaction of the court in respect of the sale of an article, that he had purchased the article in question as the same in nature, substance and quality as that demanded of him by the person to whom he sold the article, and with a written warranty to that effect, and that he had no reason to believe at the time he sold it that it was otherwise, and that he sold the article in the same state as when he purchased it.

(2) A warranty or invoice shall only be a defence to proceedings under this Ordinance if—

(a) the defendant has within seven days of the service of the summons sent to the prosecutor a copy of the warranty or invoice with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it and has also sent a like notice of his intention to that person; and

(b) in the case of a warranty or invoice given by a person resident outside the Colony the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.

(3) The person by whom the warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(4) Where the defendant is the servant of the person who purchased the article under a warranty or invoice, he shall be entitled to rely on the provisions of this section in the same way as his employer would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

18. (1) Every person who wilfully applies to an article of food, or drug, in any proceedings under this Ordinance, a certificate or warranty given in relation to any other article of food or drug, or who wilfully gives a label with any article of food or drug sold by him which falsely describes the article sold, shall be guilty of an offence. False warranties and certificates.

(2) Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing, shall be guilty of an offence, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statement or description contained therein was true.

(3) Where the defendant in a prosecution under this Ordinance has been discharged under the provisions of this Ordinance relating to warranties, any proceedings under this section for giving the warranty relied on by the defendant in the prosecution may be taken as well before a court having jurisdiction in the place where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given.

19. Any fine recovered under this Ordinance— Application of fines.

(a) in the case of a prosecution by a sampling officer of the local authority, shall be paid to the authority appointing or authorising the officer and shall be applied towards the expenses of the authority under this Ordinance;

(b) in the case of any other prosecution, shall be paid and applied in accordance with the law regulating the application of fine for offences punishable summarily.

20. The Governor may make regulations:— Power of the Governor to make regulations.

(a) for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, cheese or other food, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed, skimmed, separated, or dried milk), cream, butter, cheese or other food, shall for the purposes of this Ordinance raise a presumption, until the contrary is proved, that the milk, cream, butter, cheese or other food is not genuine or is

injurious to health, and a public analyst shall have regard to such regulations in certifying the result of an analysis under this Ordinance;

- (b) For regulating the appointment of public analysts and for prescribing the fees payable in respect of analysis performed by such analysts.

Saving of
Public Health
Ordinance.

21. The provisions of this Ordinance shall be in addition to and not in derogation of the powers conferred by the Public Health Ordinance.

FIRST SCHEDULE.

FORM OF CERTIFICATE OF PUBLIC ANALYST.

To,*

I, the undersigned, public analyst for the.....
.....do hereby certify that I
received on the.....day of.....19.....
from†.....
a sample offor analysis,
(which then weighed ‡.....) and have analysed it
and declare the result of my analysis to be as follows :—

I am of opinion that it is a sample of genuine

or

I am of opinion that the said sample contained the parts
as under, or the percentages of foreign ingredients as
under :—

.....
.....

Observations§

.....

As witness my hand this.....day of.....19....

A.B.,

at

* Here insert the name of the sampling officer submitting the article for analysis.

† Here insert the name of the person delivering the sample.

‡ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

§ Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are, or are not, injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

SECOND SCHEDULE.

SPECIAL PROVISIONS AS TO MILK.

1. Where a sample of milk is procured from a purveyor of milk, he shall, on being required to do so by the person by whom or on whose behalf the sample was taken state the name and address of the seller or consignor from whom he received the milk.

2. The local authority in whose district the sample was taken, may take or cause to be taken one or more samples of milk in course of transit or delivery from such seller or consignor.

Within sixty hours after the sample of milk was procured from the purveyor he may serve on the local authority a notice stating the name and address of the seller from whom he received the milk and the time and place of delivery to the purveyor by the seller or consignor of milk from a corresponding milking, and requesting them to take immediate steps to procure, as soon as practicable, a sample of milk in the course of transit or delivery from the seller or consignor to the purveyor, unless a sample has been so taken since the sample was procured from the purveyor, or within twenty-four hours prior to the sample being procured from the purveyor :

Provided that the purveyor shall not have any such right to require that such a sample shall be taken in cases where the milk from which the sample procured from the purveyor was taken was a mixture of milk obtained by the purveyor from more than one seller or consignor.

If a purveyor has served on the local authority such a notice as aforesaid, and the local authority have not procured a sample of milk from the seller or consignor in accordance with the foregoing provisions, no proceedings under this Ordinance shall be taken against the purveyor in respect of the sample of milk procured from him.

3. Any sample of milk so taken in the course of transit or delivery shall be submitted for analysis. Such analysis shall be performed by the analyst to whom the sample procured from the purveyor is or was submitted, unless the services of such analyst are not available.

4. If proceedings are taken against the purveyor of milk, a copy of the certificate of the result of the analysis of every sample so taken in the course of transit or delivery shall be furnished to the purveyor and every such certificate shall, subject to the provisions of section 16 of this Ordinance, be sufficient evidence of the fact stated therein, and shall be admissible as evidence on any question whether the milk sold by the purveyor was sold in the same state as he purchased it.

5. The local authority of the district in which the first-mentioned sample was taken may, instead of, or in addition to, taking proceedings against the purveyor of milk, take proceedings against the seller or consignor.

6. If a sample of milk of cows in any dairy is taken in course of transit or delivery from that dairy, the owner of the cows may, within sixty hours after the sample of milk was procured, serve on the local authority a notice requesting them to take immediate steps to procure as soon as practicable a sample of milk from a corresponding milking of the cows, and the foregoing provisions shall apply accordingly :

Provided that the person taking the sample shall be empowered to take any such steps at the dairy as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully milked.

AN ORDINANCE.

No. 7 OF 1930.

Assented to in His Majesty's name this thirteenth day of May, 1930.

EDWARD GRIGG,
Governor.

Date of assent.

[13TH MAY, 1930.]

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

Date of
commencement.

13th May, 1930.

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

Short title.

1. This Ordinance may be cited as " the Local Government (District Councils) (Amendment) Ordinance, 1930," and shall be read as one with the Local Government (District Councils) Ordinance, 1928, hereinafter referred to as " the Principal Ordinance."

No. 21 of 1928.

Repeal and
replacement of
section 6 (1) (c)
of the
Principal
Ordinance.

2. Sub-section (1) (c) of section 6 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

" (c) The District Commissioner of the district, or a district officer deputed by him :

Provided that such district officer shall be entitled to attend, in an advisory capacity and without a vote, meetings at which the District Commissioner is present; and provided further that the Provincial Commissioner of the Province shall be entitled to attend and speak at any meeting of the Council."

Amendment of
section 26 of
the Principal
Ordinance.

3. Section 26 of the Principal Ordinance is hereby amended by substituting the word " fourteen " for the word " twenty-one " in the third line of the section.

4. Section 60 of the Principal Ordinance is hereby amended by adding at the end of the first paragraph of the section the following :—

Amendment of section 60 of the Principal Ordinance.

“ and the same shall be vested in the Council in trust to keep the same for the use and benefit of the inhabitants.”

5. Section 61 of the Principal Ordinance is hereby amended by substituting the words “ part of a Native Reserve or of a Forest Reserve which is not within such district ” between the word “ crosses ” and the words “ the Council ” in line three.

Amendment of section 61 of the Principal Ordinance.

6. In any area of the Colony, other than a municipality or a township, for which no District Council has been constituted and to which the Governor by order has declared that the provisions of this section shall apply, the Provincial Commissioner or the District Commissioner may from time to time issue orders for either of the following purposes :—

Powers of Provincial Commissioner or District Commissioner where no District Council.

(1) For preserving public decency.

(2) For controlling and regulating native dances on farms or elsewhere within the area.

Such orders shall come into force on the date of their publication in the Gazette.

7. The provisions of sections 70 and 71 of the Principal Ordinance shall apply to orders so issued as if they were by-laws made by a council under the Principal Ordinance.

Orders to have effect of by-laws.

AN ORDINANCE.

No. 8 of 1930.

Assented to in His Majesty's name this thirteenth day of May, 1930.

EDWARD GRIGG,
Governor.

[13TH MAY, 1930.] Date of assent.

An Ordinance to Amend the Sugar Ordinance.

13th May, 1930.

Date of commencement.

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

1. This Ordinance may be cited as “ the Sugar (Amendment) Ordinance, 1930,” and shall be read as one with the Sugar Ordinance (Chapter 134 of the Revised Edition), hereinafter referred to as “ the Principal Ordinance.”

Short title.

Cap. 134.

2. No person shall in any prohibited area give, barter, sell, convey, deliver, or otherwise supply any sugar or sugar juice to any other person unless such other person is the holder of a permit under section 5 of the Principal Ordinance, and shall first produce such permit to the supplier.

Restriction on supplying sugar or sugar juice in prohibited area.

3. Where on any conviction for an offence against the Principal Ordinance a fine is imposed, the court may award any sum, not exceeding half the amount of the fine recovered, as a reward to any person, not being a person whose duty it is to detect or assist in the detection of such offences, who gave information leading to such conviction.

Rewards to informers.

AN ORDINANCE.

No. 9 OF 1930.

Assented to in His Majesty's name this thirteenth day of May, 1930.

EDWARD GRIGG,
Governor.

Date of assent.

[13TH MAY, 1930.]

An Ordinance to Provide for the Reservation of Lands for the Use and Benefit of the Native Tribes of the Colony and for the Management and Control of Lands so Reserved.

Date of commencement.

13th May, 1930.

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

Short title.

1. This Ordinance may be cited as " the Native Lands Trust Ordinance, 1930."

Reservation of land for natives.

2. (1) The areas of Crown land described in Government Notice No. 394, published in the Official Gazette of the Colony dated the thirteenth day of October, 1926, are hereby declared to be Native Reserves and are reserved and set aside for the use and benefit of the native tribes of the Colony for ever, and a copy of this Ordinance duly authenticated together with maps showing the boundaries of the Native Reserves concerned shall be delivered to each Local Native Council throughout the Colony.

(2) It shall be lawful for the Governor, with the approval of the Legislative Council, from time to time to reserve for the use and benefit of the native tribes of the Colony such further areas of Crown land as in his opinion may be required for their maintenance and support. Any area so reserved shall be deemed for the purposes of this Ordinance to be a Native Reserve.

(3) Notice of every reservation under sub-section (2) shall be published in the Gazette and shall specify—

- (a) the boundaries of the Native Reserve; and
- (b) the tribe or tribal unit for whose use and benefit such reservation has been made.

Establishment of Native Lands Trust Board.

3. (1) There shall be established a Native Lands Trust Board (hereinafter referred to as the " Central Board ") which shall consist of :—

- (a) The Governor as President;
- (b) The Colonial Secretary as Vice-President;
- (c) The Attorney General;

Provided that in the event of the creation of the appointment of High Commissioner in, for, or of East Africa, the said High Commissioner shall be President of the Central Board in the place of the Governor, the Chief

Secretary to the High Commissioner shall be Vice-President of the Central Board in the place of the Colonial Secretary, and the Colonial Secretary shall have a seat on the Board in the place of the Attorney General, who shall, in such case, be no longer a member of the Board.

- (d) The Chief Native Commissioner;
- (e) The Commissioner of Lands;
- (f) A senior Commissioner to be selected by the Governor;
- (g) Four unofficial members to be nominated by the Governor, or, if the Governor is not President, by the President after considering any suggestions of the Governor or of the Central Board itself.

(2) The Central Board may from time to time, if it should deem it desirable, for the purpose of the consideration of any particular matter co-opt the Chairman of the Local Board concerned as a member of the Central Board, and may for a like purpose after reference to any Local Native Council particularly concerned co-opt one or more Africans as members of the Central Board.

Provided that when, in the opinion of the Governor, there shall be an African or Africans who is or are sufficiently capable of representing and speaking for the native community generally, then and in such case the Governor shall, as soon as may be possible, appoint at least one such African to be a full member of the Central Board :

Provided further that in the event of the creation of the appointment of High Commissioner in, for, or of East Africa, the said High Commissioner shall, in the events mentioned above as soon as may be possible, on the recommendation of the Governor, appoint at least one such African to be a full member of the Central Board.

(3) The President or Vice-President and four other members shall form a quorum.

(4) Questions before the Central Board shall be decided by a majority of votes of those present and voting, and, in the case of equality of votes, the President or Vice-President, as the case may be, shall have a second or casting vote :

Provided that no lease or licence shall be granted under this Ordinance, and no land shall be excluded from a Native Reserve for public purposes under this Ordinance unless there shall be at least five votes in favour of the granting of such lease or licence, or in favour of the exclusion of such land from a Native Reserve for public purposes.

4. Subject to the provisions of this Ordinance, all lands in Native Reserves and all matters relating to such lands are hereby declared to be under the management and control of the Central Board, and all such lands shall be administered for the use and benefit of the native tribes for which they have, respectively, been reserved.

Native Reserves to be under the control and management of the Central Board.

5. (1) There shall be established in every administrative district in which one or more Native Reserves may be situated an Advisory Board (hereinafter referred to as a "Local Board") which shall consist of :—

Establishment of Advisory Boards.

- (a) The Provincial Commissioner as Chairman;
- (b) The District Commissioner as Deputy Chairman;

(c) One European unofficial member, to be nominated by the Governor: Provided that for the purpose of the consideration of any matter relating to land in a particular Native Reserve the Chairman may from time to time after reference to the Local Native Council concerned co-opt as an additional member any European who in the opinion of the Board possesses special knowledge of such Native Reserve;

(d) One African member, to be nominated by the Governor, who shall, so far as practicable, be selected from the members of some Local Native Council established within the said administrative district after reference to such Council: Provided that for the purpose of the consideration of any particular matter the Chairman may from time to time after reference to the Local Native Council concerned co-opt one or more additional African or Africans as a member or members of the Board.

(2) The Chief Native Commissioner shall *ex officio* be a member of every Local Board.

(3) The Chairman or Deputy Chairman and three other members shall form a quorum.

Functions of
Local Boards.

6. It shall be the duty of the Central Board to consult the Local Board concerned in regard to the following matters relating to any Native Reserve included in the administrative district for which such Local Board has been established:—

- (a) Matters relating to the granting of leases or licences under section 8 of this Ordinance;
- (b) Matters relating to and arising out of the exercise of the powers of the Governor under sections 15, 16 and 18 of this Ordinance;
- (c) All matters relating to the management and development of land in a Native Reserve.

Disposal of
land in Native
Reserves.

7. Notwithstanding anything in any other Ordinance contained, no land in any Native Reserve shall be leased or otherwise disposed of except under and in accordance with the provisions of this Ordinance, and no lease or licence of or in respect of any such land shall be granted unless the Central Board is satisfied, after reference to the appropriate Local Board, that the following condition has been complied with, namely:—

- (a) That the proposal to grant such lease or licence has been brought to the notice of the Local Native Council and of the natives concerned and that such Local Native Council and such natives have had an opportunity of expressing their views upon the proposal;

and in the case of a lease, that the following further conditions have been complied with, namely:—

- (b) That there is reason to believe that the natives of the tribe for which such land has been reserved will derive benefit, apart from any revenue which may accrue therefrom, from the grant of such lease;
- (c) That the land to be leased is not being beneficially occupied by the natives of the tribe for which such land has been reserved, and is not likely, during the currency of the proposed lease, to be required for the use or support of such natives:

Provided that in no case shall any lease or licence be granted which is objected to by the Local Native Council or by any African member of the Local Board concerned without the prior approval of the Secretary of State.

8. (1) Subject to the provisions of the last preceding section, it shall be lawful for the Governor, with the advice and consent of the Central Board :—

Alienation or
other disposal
of land in
Native
Reserves.

(a) To lease any land in a Native Reserve. The rent payable in respect of any such lease shall be fixed by the Central Board, who shall also have power to revise such rent in accordance with the provisions of section 10 of this Ordinance at such periods or intervals as may be prescribed by Rules made under this Ordinance.

(b) To grant licences to and to enter into contracts with persons not being members of the tribe for which the land has been set aside relating to—

- (i) the grazing of cattle in a Native Reserve;
- (ii) the removal of timber or other forest produce from a Native Reserve;
- (iii) the taking of sand, lime, stone and other common minerals (excluding salt) from a Native Reserve :

for periods not exceeding twelve months at any one time :

Provided that in the case of a lease or licence relating to any lands reserved for the occupation of the Masai tribe by virtue of the agreements dated, respectively, the ninth day of August, 1904, and the twenty-sixth day of April, 1911, regard shall be had to the terms of the said agreements and any subsequent agreements.

(2) Subject as aforesaid, the Governor may also, with the advice and consent of the Central Board, grant leases for special purposes. Every such lease shall *ipso facto* terminate as soon as the special purpose or purposes for which it was granted has or have been accomplished, notwithstanding that the term of the lease has not expired; and in every such lease there shall be implied a covenant by the lessee not to use the land leased for any purpose other than the purpose or purposes specified in the lease.

(3) All rents, stand premia, grazing fees or other profits whatsoever accruing from land in a Native Reserve, or from timber or other forest produce or from sand, lime, stone or other materials removed or taken from a Native Reserve, shall be paid to the Local Native Fund, or, where there is no Local Native Fund, to the Natives' Trust Fund, or may be paid to any member or members of the tribe concerned who may be considered by the Central Board after reference to the Local Board concerned to be entitled thereto.

(4) The Governor shall at the end of each year forward to the Secretary of State a return of all leases and licences granted under this Ordinance during such year.

9. (1) Leases under section 8 of this Ordinance may be granted for any period not exceeding thirty-three years and shall be granted for such period and subject to such terms and conditions as may be prescribed by Rules made under this

Form of
leases.

Ordinance, provided, however, that in exceptional cases with the prior consent of the Secretary of State leases may be granted for a longer period which shall not in any event exceed ninety-nine years.

Conditions
implied in
leases.

(2) Every such lease and every licence under this Ordinance shall contain provisions to the following effect—

- (a) that the lessee or licensee binds himself to pay the rent or fee fixed by the Central Board, and any rent which may be fixed on revision;
- (b) that the lessee or licensee binds himself to pay such compensation as the Central Board may assess for any damage or disturbance whatsoever caused to native individuals or communities in the exercise of the rights granted to him.

Chief Native
Commissioner
to execute
leases.

(3) It shall be lawful for the Chief Native Commissioner, subject to any general or special directions from the Governor, to execute for and on behalf of the Governor any lease granted under this Ordinance.

Principles to
be observed in
fixing and
revising rent.

10. In determining the rent to be demanded for any land in a Native Reserve and upon any revision of rent, the Central Board shall take into consideration the rent obtained or obtainable in respect of any other land in the immediate neighbourhood, and shall fix the rent at the highest amount that can reasonably be expected to be obtained for the land, having regard to all the circumstances of the case :

Provided that upon any revision of rent, the Central Board shall not take into consideration any value due to capital expended upon the land by the same occupier during his term of occupancy or any increase in the value of the land due to the employment of such capital.

Lessees not to
alienate land
without
consent.

11. Except as may be otherwise provided by Rules under section 22 of this Ordinance, it shall not be lawful for any lessee under this Ordinance to alienate the land comprised in his lease or any part thereof by sale, mortgage, transfer of possession, sub-lease, bequest or otherwise howsoever without the consent of the Central Board first had and obtained. The granting or withholding of such consent shall be in the absolute and unfettered discretion of the Central Board and any sale, mortgage, transfer of possession, sub-lease, bequest, or other alienation effected without the consent of the Central Board shall be null and void.

Forfeiture of
lease for
non-payment
of rent or
breach of
covenant.

12. If the rent or any part thereof reserved in a lease under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if there shall be any breach of the lessee's covenants, whether express or implied, the Chief Native Commissioner or any person authorised by him in writing may serve a notice upon the lessee specifying the rent in arrear or the covenant of which a breach has been committed, and at any time after one month from the service of the notice may commence an action in the Supreme Court for the recovery of the premises; and, on proof of the facts, the Court shall, subject to relief upon such terms as may appear just, declare the land forfeited, and may order that possession of the land be given by the defendant to the plaintiff, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

13. (1) If the rent or any part thereof payable under a licence granted under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if the licensee shall fail to comply with, or shall commit any breach of, any of the conditions of his licence, the Chief Native Commissioner may cause an application to be made to a magistrate of the first-class within whose local jurisdiction the land the subject of the licence is situate, to declare the licence forfeited.

Forfeiture of
licences.

(2) Upon receipt of such application together with a statement specifying the rent in arrear or the condition which has not been complied with or of which a breach has been committed, the magistrate shall cause to be served upon the licensee a copy of such statement together with a notice of the date, not being less than fourteen days from the date of such notice, when the application will be heard.

(3) If upon the date fixed for the hearing of the application or to which such hearing has been adjourned it shall be proved to the satisfaction of the magistrate that rent is in arrear or that the licensee has failed to comply with or has committed a breach of any of the conditions of the licence, the magistrate shall, subject to relief upon such terms as may appear just, declare the licence forfeited.

14. No forfeiture under either of the two last preceding sections shall operate to extinguish any debt due in respect of any rent or other payment to be made by a lessee or licensee under a lease or licence forfeited.

Debt not
extinguished
by forfeiture.

15. (1) The Governor may at any time, with the advice and consent of the Central Board, by notice in the Gazette, exclude from a Native Reserve any land which may be required for any of the following purposes :—

Power of
Governor to
exclude from
Native
Reserve land
required for
public
purposes.

- (a) Public roads or bridges;
- (b) Public reservoirs, aqueducts, canals, water-courses or water pipe-lines;
- (c) Public quays, wharves or landing places;
- (d) Public railways or tramways;
- (e) Public aerodromes;
- (f) Development of electric power for public purposes from any lake, river or stream;
- (g) Development of the mineral resources of the Colony;
- (h) Government camps or stations;
- (i) Buildings or works in connection with any of the foregoing purposes;
- (j) The establishment of townships :

Provided, however, that no land shall be excluded from a Native Reserve under this section unless the Central Board is satisfied that the proposed exclusion has been brought to the notice of the Local Native Council and of the natives concerned and that representatives of the location or section concerned have been co-opted on the Local Board for the purpose of the discussion upon such proposed exclusion.

Provided further that in any case where the area of land proposed to be excluded from a Native Reserve under this section exceeds two hundred acres and the Local Native Council or the African member or members of the Local Board object

to the exclusion of such area, then and in such case such area shall not be excluded from such Native Reserve unless and until the approval of the Secretary of State to such exclusion has been obtained.

(2) Where any land is excluded from a Native Reserve under this section the Governor shall, by notice in the Gazette, add to such Native Reserve from suitable, and, if possible, contiguous unalienated and unreserved Crown land an area equal in extent and, as far as possible, equal in value to the area excluded, and any area so added shall be deemed, for the purposes of this Ordinance, to be part of such Native Reserve, provided that where land is excluded merely for the track of a road or a railway or for the actual site of a building, no such addition of land shall be made.

(3) Any native dispossessed by the exclusion of any land from a Native Reserve shall be entitled—

- (i) to the use and occupation of the area which is added to the Native Reserve pursuant to sub-section (2) of this section, so far as the same may be practicable; and
- (ii) to compensation in money in respect of—
 - (a) any buildings or crops destroyed or damaged;
 - (b) the difference in value, if any, between the area which is excluded and the area which is added, and
 - (c) disturbance or other loss or expense caused by such exclusion.

Powers of Governor in regard to land in Native Reserves.

16. (1) It shall be lawful for the Governor—

- (a) at any time to enter upon any land in a Native Reserve and to take therefrom stone and other materials for the making or repairing of roads, railways, canals, water channels, or other public works whether of the like kind or not, upon payment of compensation for buildings and crops destroyed or damaged and for disturbance or other loss;
- (b) at any time to enter upon such land and to set up poles and carry electric lines across such land and to lay sewers, water pipes or electric lines therein, without paying compensation but making good all damage;
- (c) at any time to enter upon such land and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream on such land, and to construct dams, and to divert any river or stream, upon payment of compensation for buildings and crops destroyed or damaged and for disturbance or other loss;
- (d) by writing under his hand to authorise officers of the Government and Government contractors; their servants and agents, to exercise any of the powers conferred upon him by this section.

(2) Whenever compensation is payable under this section, such compensation shall not in any case exceed, in the case of buildings and crops destroyed or damaged, the fair value of the buildings or crops.

(3) The powers conferred by this section may be exercised before the compensation is paid, but not before compensation has been assessed.

17. Notwithstanding anything contained in either of the two last preceding sections, it shall not be lawful for the Governor, in the exercise of any of the powers thereby conferred to deprive the natives concerned or allow them to be deprived of the use of any water without the prior consent of the Central Board. Use of water.

18. Notwithstanding anything contained in the Forest Ordinance no land in a Native Reserve shall be declared to be a forest area or demarcated forest without the prior consent of the Central Board, and no Rules shall be made in respect of any such forest area or demarcated forest without the prior consent of the said Board. No forest area to be declared without the consent of Central Board.

19. (1) All actions, suits and proceedings by or on behalf of His Majesty or by or on behalf of the Governor respecting land in a Native Reserve, or respecting any lease or licence relating thereto, or the breach of any covenant contained in any such lease or licence, or any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents or relating to any damages or wrongs whatsoever in respect of such land, may be commenced, prosecuted and carried on in the name of the Chief Native Commissioner, and he may be plaintiff or defendant, as the case may require, in any such action, suit or proceeding. Actions to be brought in name of Chief Native Commissioner.

(2) In any such action, suit or proceeding the Chief Native Commissioner may be represented by any advocate or by any officer of the Native Affairs Department or by any administrative officer duly authorised by him in writing.

20. (1) It shall be lawful for the Governor or any person acting under his directions or in the execution of his duty as an officer of the Colony to enter upon any land leased or occupied under a licence under this Ordinance. Power of officers to enter upon lands in execution of duty.

(2) Any person who wilfully prevents or attempts to prevent any such person from entering upon land as aforesaid, or who obstructs or hinders such person in the execution of his duty, shall be liable, on conviction before a magistrate, 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.

21. Any person who unlawfully occupies land in a Native Reserve, in any manner whatsoever, shall be liable, on conviction before a magistrate, 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. Penalty for unauthorised occupation of land in Native Reserve.

22. It shall be lawful for the Governor, with the advice and consent of the Central Board, and subject to the disallowance thereof by His Majesty, to make Rules, which may be of general or special application, for the purpose of carrying this Ordinance into effect and prescribing the fees to be paid for any matter or thing done under this Ordinance. Power to make Rules.

23. Nothing in this Ordinance contained shall be deemed to affect the validity of any title to land within the area of a Native Reserve granted before the commencement Saving of existing rights.

of this Ordinance, and all such titles and the rights thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinance under which such titles were granted as if this Ordinance has not been enacted :

Provided, however, that all land comprised in any such title shall be deemed to be included in the Native Reserve in which it is geographically situated, and all rents accruing therefrom shall be paid in the manner provided for in section 8 (3) of this Ordinance.

Repeal.

Cap. 140

No. 22 of 1926.

24. Subject to the provisions of the last preceding section Part VI of the Crown Lands Ordinance, as amended by the Crown Lands (Amendment) Ordinance, 1926, is hereby repealed.