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GOVERNMENT NOTICE NO. 426

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

W. PADLEY,

Acting Clerk to the Legislative Council.

A BILL TO MAKE FURTHER AND BETTER PROVISION FOR THE REGULATION OF IMMIGRATION INTO THE COLONY

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 as the Immigration (Control) Ordinance, 1947, and shall come into operation on such date as the Governor may appoint in that behalf by notice to be published in the Gazette.

Short title,
application and
commencement.

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

Interpretation.

“destitute person” means a person who is, or in the opinion of the Principal Immigration Officer is likely to become, incapable of supporting himself and his dependants;

10 “immigration officer” means any officer appointed under the provisions of section 3 of this Ordinance;

“permanent resident” means—

(a) a person born in the Colony;

(b) a person who permanently resides in the Colony;

15 (c) a person who is in possession of a valid, or is entitled to be issued with a, certificate of permanent residence issued under the provisions of any Regulations made under this Ordinance.

20 3. The Governor may, by notice published in the Gazette, appoint a Principal Immigration Officer and such other immigration officers as he may consider necessary for the proper carrying out of the provisions of this Ordinance.

Appointment of
immigration
officers.

25 4. For the purpose of exercising his powers and functions and carrying out his duties under this Ordinance, every immigration officer may—

Powers of
immigration
officers.

(a) without a search warrant enter upon and search any ship, train, aircraft or vehicle in the Colony;

30 (b) interrogate any person who desires to enter or leave the Colony or any person whom he has reasonable ground for believing to be a prohibited immigrant;

(c) require any person who desires to enter the Colony to make and sign any prescribed form of declaration and to submit to be examined by a Government medical officer;

- (d) require the master of a ship or captain of an aircraft, the guard of a train or the person in charge of a vehicle arriving from any place outside the Colony to furnish a list in duplicate signed by himself of the names of all persons in his ship, aircraft, train or vehicle and such other information as may be prescribed;
- (e) if there is reasonable cause to suspect that any person has contravened any of the provisions of this Ordinance, and if in order to prevent justice from being defeated it is necessary to arrest such person immediately, arrest any such person without a warrant, and such person shall be brought before a magistrate as soon as may be after such arrest.

Prohibited
immigrants.

5. (1) The following persons, other than permanent residents, are prohibited immigrants and it shall be unlawful for them to enter the Colony—

- (a) a destitute person;
 - (b) a person suffering from mental disorder or a mental defective;
 - (c) any person—
 - (i) who refuses to submit to an examination by a Government medical officer after having been required to do so under the provisions of paragraph (c) of section 4 of this Ordinance;
 - (ii) certified by a Government medical officer to be suffering from a contagious or infectious disease which makes his presence in the Colony dangerous to the community;
 - (d) any person who, not having received a free pardon, has been convicted in any country other than the Colony of murder or any offence for which a sentence of imprisonment has been passed for any term, and who by reason of the circumstances connected therewith is deemed by the Governor to be an undesirable immigrant; but this provision shall not apply to offences of a political character not involving moral turpitude;
 - (e) any prostitute or any person who is living on or receiving, or who prior to entering the Colony lived on or received, the proceeds of prostitution;
 - (f) any person who, in consequence of information received from any source deemed by the Principal Immigration Officer to be reliable or from any Government, whether British or foreign, through official or diplomatic channels, is deemed by the Principal Immigration Officer to be an undesirable immigrant;
- Provided that every decision of the Principal Immigration Officer under this paragraph shall be subject to the confirmation or otherwise of the Governor in Council, whose decision shall be final;
- (g) any person against whom an order of deportation from the Colony is in force;
 - (h) any person whose entry into the Colony is, or at the time of his entry was, unlawful under this or any other Ordinance or law for the time being in force;
 - (i) the children, if under eighteen years of age, and dependants of a prohibited immigrant;
 - (j) any person who has not in his possession a valid passport issued to him by or on behalf of the Government of the state of which he is a subject or a

passport or document of identity issued to him by an authority recognized by His Majesty's Government in the United Kingdom, such passport or document being complete and having endorsed thereon all particulars, endorsements and visas required from time to time by the Government or authority issuing such passport or document and by His Majesty's Government.

(2) The burden of proof that any person is not a prohibited immigrant shall lie upon that person.

(3) Any person who enters the Colony after the coming into operation of this Ordinance who, at any time before the expiration of four years of such entry, is found by the Principal Immigration Officer to be a prohibited immigrant shall be deemed to have been one at the time of such entry.

(4) An appeal shall lie from a finding of the Principal Immigration Officer under the provisions of sub-section (3) of this section to a magistrate of the First Class and, from the decision of such magistrate, to the Supreme Court whose decision thereon shall be final.

6. (1) No person to whom this section applies shall enter the Colony unless he is—

Prohibition
of entry without
entry permit or
pass.

(i) in possession of, or his name is endorsed upon, a valid permit to enter the Colony, issued under the provisions of sub-section (1) of section 7 of this Ordinance; or

(ii) in possession of a valid pass to re-enter the Colony or a valid pass to enter and remain temporarily within the Colony, issued under the provisions of any Regulations made under this Ordinance.

(2) This section shall apply to every person other than—

(a) a serving member of His Majesty's Forces, his wife and children;

(b) an accredited representative in the Colony of the Government of any country within the British Empire and the members of such person's staff and household;

(c) a person duly accredited as a Diplomatic or Consular representative to the Colony and the members of such person's staff and household.

(3) Where any serving member of His Majesty's Forces, accredited representative in the Colony of the Government of any country within the British Empire, Consul or Vice-Consul who has entered the Colony, under the provisions of sub-section (2) of this section, ceases to be employed as such, he, together with his wife and children or members of his staff and household, as the case may be, shall, for the purposes of sub-section (1) of this section, be deemed to be persons seeking to enter the Colony with effect from the date when he ceased to be so employed.

7. (1) Any person, other than a prohibited immigrant, who satisfies the prescribed authority that he belongs to any of the following classes shall, upon application being made in that behalf in the manner prescribed, be entitled to a permit to enter the Colony:—

Qualifications
for permit to
enter the
Colony.

Class A.—(i) A permanent resident;

(ii) a person who is in possession of a valid certificate of permanent residence issued to him under the authority of the Government of the Tanganyika Territory, the Uganda Protectorate or the Zanzibar Protectorate;

(iii) a person in the service of the Government of the Colony or the Kenya and Uganda Railways and Harbours Administration.

Class B.—A person intending to engage in the business of agriculture or animal husbandry in the Colony who is in possession of a certificate issued by the prescribed authority that—

- (i) he has acquired, or received permission to acquire, an interest in land of an area commensurate with and suitable for the type of business he proposes to undertake in the Colony;
- (ii) he has in his own right and at his full and free disposition a capital sum of £800 or such lesser sum as such prescribed authority may determine; and
- (iii) his engaging in such business will not be to the prejudice of the inhabitants generally of the Colony.

Class C.—A person intending to engage in prospecting for minerals or mining in the Colony who is in possession of a certificate issued by the Commissioner of Lands, Mines and Surveys that—

- (i) he is qualified so to do;
- (ii) he has in his own right and at his full and free disposition a capital sum of £800 or such lesser sum as such Commissioner may determine; and
- (iii) his engaging in such prospecting or mining will not be to the prejudice of the inhabitants generally of the Colony.

Class D.—A person intending to carry on a trade or business on his own account in the Colony who is in possession of a certificate issued by the prescribed authority that—

- (i) if a licence is required to enable him to engage in the trade or business which he intends to carry on, he is in possession of such licence or will be able to obtain one;
- (ii) he has in his own right and at his full and free disposition a capital sum of £800 or such lesser sum as such prescribed authority may determine; and
- (iii) his engaging in such trade or business will not be to the prejudice of the inhabitants generally of the Colony.

Class E.—A person intending to engage in manufacture on his own account in the Colony who is in possession of a certificate issued by the prescribed authority that—

- (i) if a licence is required to enable him to engage in the manufacture which he intends to carry on, he is in possession of such licence or will be able to obtain one;
- (ii) he has in his own right and at his full and free disposition a capital sum of £2,500 or such lesser sum as such prescribed authority may determine; and
- (iii) his engaging in such manufacture will not be to the prejudice of the inhabitants generally of the Colony.

Class F.—A member of a prescribed profession who intends to practise such profession in the Colony who is in possession of a certificate issued by the prescribed authority that—

(i) he is in possession of such qualifications as may be prescribed;

(ii) he is in possession of sufficient capital or assured income to enable him to give effect to his intention; and

(iii) his practising such profession will not be to the prejudice of the inhabitants generally of the Colony.

Class G.—A person who has been offered and has accepted employment, other than temporary employment, in the Colony who is in possession of a certificate issued by the prescribed authority that the taking up of such employment by him will not be to the prejudice of the inhabitants generally of the Colony.

Class H.—A person who is in possession of a certificate issued by the prescribed authority that he has in his own right and at his full and free disposition an assured income of such amount as may be prescribed.

(2) The prescribed authority may, at any time before the expiration of five years of the granting of an entry permit to any person under Classes B, C, D, E, F and G, of sub-section (1) of this section, if such person, without reasonable cause, fails to engage in or to continue to engage in the same occupation or in a similar occupation to that in respect of which he obtained such entry permit, order him to leave the Colony, whereupon his presence in the Colony shall be deemed to be unlawful:

Provided that no such order shall take effect until the time prescribed for appealing against such order has expired or, in the event of an appeal being made, until the determination of such appeal.

(3) Any applicant who is aggrieved by a decision refusing him an entry permit under Class A of sub-section (1) of this section and any person who is ordered to leave the Colony under the provisions of sub-section (2) of this section may, in the manner and within the time prescribed, appeal against such decision or order to the Supreme Court.

(4) Any applicant for an entry permit under Class B, C, D, E, F, G or H, of sub-section (1) of this section, who is refused the certificate required under any such class may, in the manner and within the time prescribed, appeal against such decision to such Tribunal as may be prescribed.

8. Subject to such conditions as may be prescribed, it shall be lawful for the prescribed authority, on application being made in that behalf in the prescribed form by the holder of an entry permit granted under the provisions of sub-section (1) of section 7 of this Ordinance, to endorse upon such entry permit the name or names of the wife, and children under the age of sixteen years, of such holder.

Names of wife and children may be endorsed upon entry permit.

9. (1) The Governor may make an order for the deportation of any prohibited immigrant or of any person whose presence within the Colony is, under the provisions of this Ordinance or any Regulations made thereunder, unlawful.

Power to deport prohibited immigrants.

(2) An order made under this section shall be carried into effect in such manner as the Governor may direct.

(3) A person against whom an order under this section is made may, if the Governor so directs, while awaiting deportation and whilst being conveyed to the place of departure, be kept in custody, and whilst so kept shall be deemed to be in legal custody.

Place of
deportation.

10. A person against whom an order of deportation has been made under this Ordinance shall be deported to the place whence he came, or, with the approval of the Governor—

- (a) if he is a British subject, to a place in some part of His Majesty's dominions or country under His Majesty's protection to which he belongs, or to any place to which he consents to be deported, provided that the Government of such last mentioned place consents to receive him; or
- (b) if he is not a British subject to some place in the country to which he belongs, or to any place to which he consents to be deported, provided that the Government of such last mentioned place consents to receive him.

Offences and
penalties.

11. (1) Any person who acts in contravention of or fails to comply with any of the provisions of this Ordinance or of any Regulations made thereunder or any lawful order or requirement given by an immigration officer, or aids or abets in any such contravention or harbours any person who he knows, or has reasonable ground to believe, has acted in contravention thereof, shall be guilty of an offence against this Ordinance. In particular, any person shall be guilty of an offence who—

- (a) refuses to answer any reasonable question put to him by any immigration officer;
- (b) whether within or without the Colony, knowingly makes any false declaration, return or statement for the purpose of obtaining or of assisting another person to obtain any certificate, permit or endorsement under this Ordinance;
- (c) alters any certificate or permit or copy of a certificate or permit or any entry made in pursuance of this Ordinance;
- (d) obstructs or impedes any immigration officer in the exercise of his duty;
- (e) knowingly uses or has in his possession any forged or irregular passport, certificate or other document, or any passport or document on which any *visa* or endorsement has been forged, or any passport, certificate or document which has been altered or issued without lawful authority.

(2) Any person convicted of an offence under this Ordinance or, unless otherwise expressly provided therein, under any Regulations made thereunder shall be liable to a fine not exceeding £500 or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

(3) Where any person is convicted of an offence under paragraph (b) of sub-section (1) of this section the court may, in addition to any penalty imposed for such offence, cancel any permit, certificate or endorsement which was issued or made in consequence of such false declaration, return or statement as is mentioned in that paragraph.

(4) Any person who, having been deported or ordered to leave the Colony, returns to the Colony shall be liable to a fine not exceeding £500 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(5) Where any prohibited immigrant enters the Colony from any ship, aircraft or vehicle, whether or not with the knowledge of the owner or person in charge thereof, such owner and person in charge shall be guilty of an offence and shall be liable upon conviction therefor by a magistrate of the First Class to a fine not exceeding £150 and the ship, aircraft

or vehicle may, by order of the court, be detained until provision has been made by the owner or person in charge, as the case may be, to the satisfaction of an immigration officer for the conveyance out of the Colony of such prohibited immigrant.
5 grant.

(6) Where any fine is imposed under the provisions of this Ordinance upon any owner or person in charge of any ship, aircraft or vehicle such ship, aircraft or vehicle may, by order of the court, be detained until such fine has been paid
10 and it shall be lawful for the court when imposing any such fine to order execution against such ship, aircraft or vehicle in satisfaction of such fine.

12. The Governor in Council may make Regulations for all or any of the following purposes— Regulations.

- 15 (a) prescribing anything which is to be, or may be, prescribed under the provisions of this Ordinance;
- (b) prescribing the forms to be used for the purposes of this Ordinance;
- (c) prescribing—
- 20 (i) the period for which entry permits shall be valid;
- (ii) the terms and conditions subject to which any person may be granted a pass to re-enter the Colony and the person who may issue such passes;
- 25 (iii) the terms and conditions subject to which any person may be granted a pass entitling him to enter and remain temporarily within the Colony, the period for which any such pass may be granted, the classes of such passes and the
- 30 person who may issue such passes;
- (d) providing for the payment and recovery of any expenses incurred by the Government in connexion with the detention, maintenance, medical treatment and deportation of prohibited immigrants;
- 35 (e) prescribing the place where, the person to whom and the manner in which, application to enter the Colony shall be made;
- (f) prescribing the place or places where entry into the Colony may be made;
- 40 (g) prescribing the procedure to be followed by persons entering the Colony;
- (h) providing for the exemption or exclusion of any person or class of persons from all or any of the provisions of this Ordinance and prescribing any conditions
- 45 subject to which such exemption or exclusion shall take effect;
- (i) prescribing the procedure to be followed by authorities in the exercise of their functions under this Ordinance;
- 50 (j) governing the procedure to be followed and the fees and costs to be paid on an appeal to the prescribed Tribunal;
- (k) prescribing the terms and conditions subject to which any person may be granted a certificate of permanent
- 55 residence in the Colony, the authority authorized to grant such certificates and the period for which such certificates shall be valid;
- (l) prescribing the deposit (if any) to be made by any person granted an entry permit under Class B, C, D, E, F, G or H of sub-section (1) of section 7 of
- 60 this Ordinance;

(m) prescribing the fees (if any) to be charged upon the issue of any certificate, permit or pass;

(n) generally for the better carrying into effect of the purposes and provisions of this Ordinance.

Supreme Court
may make
Rules.

13. The Supreme Court may make Rules governing the venue, procedure, and the fees and costs to be paid on appeal to a court under the provisions of this Ordinance.

Repeal.
Cap. 62.

14. The Immigration Restriction Ordinance is hereby repealed:

Provided that any person whose presence in the Colony is unlawful under the provisions of the Ordinance hereby repealed shall be deemed to be unlawfully in the Colony for the purposes of this Ordinance.

MEMORANDUM OF OBJECTS AND REASONS

1. The original Bill for the Immigration (Control) Ordinance was published in the Gazette on the 26th April, 1946. After its publication, a considerable number of amendments were suggested by various public bodies and individuals in East Africa, and by the delegation which came to East Africa to make representations in connexion with the legislation, on behalf of the Government of India.

2. The original Bill was reviewed in the light of the above-mentioned suggestions, many of which have been accepted, and it was decided to republish the amended version for public information and comment, before its introduction into the Legislative Council.

3. The following are the main amendments which have been made to the original Bill:—

(i) The definitions "the Authority", "the Board" and "Government Official", contained in the original clause 2 (1) have been deleted. The Bill now provides that any authorities appointed for the purposes of clause 7 (1) shall be such as may be prescribed by the Governor in Council under the powers which it is sought to confer by clause 12 (a).

In view of the considerable number of comments which have been made, and the difference of opinion which has been found to exist, in the various territories, as to how the various authorities should be constituted, it is considered desirable that the constitution and appointment of all authorities required for the administration of the measure, should be left to the Governor in Council to prescribe. This will enable the Governor in Council to formulate their policies regarding the matter in the light of the views expressed by the Legislative Councils on the second reading of the Bill.

Considerable objections have been raised to Government officials being exempted from the necessity of obtaining an entry permit. Under the new provisions, persons in the service of the Government of the Colony or of the Kenya and Uganda Railways and Harbours Administration are treated on the same footing as permanent residents of the Colony.

The new clause 2 contains a definition of "permanent resident" which is defined as meaning:—

(a) a person born in the Colony;

(b) a person who permanently resides in the Colony;

(c) a person who is in possession of a valid, or is entitled to be issued with a, certificate of permanent residence, issued under the provisions of any Regulations made under clause 12.

Under this Bill a permanent resident of the Colony will automatically be entitled to an entry permit under clause 7 (1), or to a re-entry pass under the Regulations.

To facilitate the obtaining of entry permits by permanent residents of the Colony, the draft Regulations provide for the endorsement in a person's passport of a certificate of permanent residence, and it is proposed that such certificate shall be endorsed—

(a) automatically, upon application, in the case of persons born in the Colony;

(b) upon application, in the case of persons who are permanently and lawfully resident in the Colony at the date of the coming into operation of the measure who satisfy the authority that they are permanently and lawfully resident in the Colony at

the time that they make their application for the endorsement;

- (c) upon application, in the case of persons who, within a period of eight years immediately preceding the date of their application, have been lawfully resident in the Colony for a period in the aggregate of five years.

It is also proposed that such endorsements shall be valid—

- (a) in the case of a person born in the Colony, for the life of the holder;
- (b) in the case of other permanent residents, for a period of seven years from the date the endorsement is made.

No charge will be made for the endorsements, and those with a limited period of validity will be automatically renewable in the case of persons who are still permanently resident at the time of the application for renewal.

The holder of a passport containing a certificate of permanent residence issued to him under the authority of the Governments of Tanganyika, Uganda or Zanzibar, will automatically be entitled to a permit to enter Kenya, and such an endorsement issued under the authority of the Government of Kenya will automatically entitle the holder to a permit to enter Tanganyika, Uganda and Zanzibar.

Permanent residents and persons who have secured first entry into the Colony under the provisions of clause 7 (1) of the measure, who wish to leave the Colony, and who do not wish to obtain the endorsement referred to above, will automatically be entitled, under the Regulations, to a re-entry pass valid for two years.

(ii) The original sub-clause (2) of clause 2 attracted adverse comment, and, as the question as to whether or not a person has entered the Colony, is one of fact, no good reason could be seen for the retention of the sub-clause and it has, therefore, been omitted from this Bill.

(iii) Paragraphs (a), (c) and (f) of clause 4 of the original Bill attracted a considerable volume of adverse comment for the reason that they conferred, what were considered as being, too wide powers on Immigration Officers. The new clause 4 does not include a power to enter upon and search any premises unless a search warrant has first been obtained, and an Immigration Officer will only be able to arrest a person, without a warrant, if he has reasonable cause to suspect that the person concerned has contravened any of the provisions of the Ordinance, and if, in order to prevent justice from being defeated, it is necessary to arrest such person immediately. In such cases the arrested person is required to be brought before a Magistrate as soon as may be after he is arrested.

(iv) Many objections were raised to the original clause 5 (1) for the reason that it was possible, under certain circumstances, for a permanent resident, other than a person born in the Colony, to be regarded as a prohibited immigrant. Under the new clause a permanent resident, as defined in clause 2, is excluded from the definition of "prohibited immigrant" and cannot, therefore, be adversely affected.

New paragraphs have been substituted for the original paragraphs (b), (c), (d), (f) and (g). The new paragraph (d) is the same as the present paragraph (d) of section 5 of the Immigration Restriction Ordinance (Cap. 62 of the Revised Edition), and the new paragraph (f) follows paragraph (f) of the same section of that Ordinance.

Sub-clause (3) of the original clause 5 attracted adverse comment for the reason that it might possibly have been construed as applying to persons already in the Colony at the time the new legislation came into operation. The clause has now been amended to make it clear that its provisions only attach to persons who enter the Colony after the coming into operation of the measure.

The original sub-clause (4) of clause 5 conferred a right of appeal from a finding of the Principal Immigration Officer under the provisions of sub-clause (3) of the clause, to a Magistrate of the First Class, and it further provided that such Magistrate's decision on the appeal should be final. The sub-clause has been amended to enable an appeal to be taken to the Supreme Court from the decision of the First Class Magistrate, but it further provides that the decision of the Supreme Court shall be final.

(v) Sub-clause (2) of the original clause 6 has been amended by excluding Government officials from its provisions, and by including an accredited representative in the Colony of the Government of any country within the British Empire, and the members of such person's staff and household. The staff of a Diplomatic or Consular representa-

tive has also been included. It is considered that an accredited representative of any Government of any country within the British Empire should be given the same privileges as representatives of foreign countries.

(vi) The new clause 7 (1) dispenses with the "residential certificate" provided for in the original sub-clause, and substitutes therefor an entry permit which, it is considered, is a more appropriate procedure.

A considerable number of representations were received to the effect that the financial provisions in Classes B to E of the original clause 7 (1) were too rigid, and that they were also objectionable for the reason that they might well result in the exclusion of desirable immigrants. It is considered that the amendments incorporated in this Bill meet such objections. In this connexion attention is drawn to—

- (a) the reduction which has now been made in the capital requirements under Classes C, D and E, and to the new power which it is sought to confer upon the prescribed authority to reduce the capital requirements to such lesser sum as it may, from time to time, determine; the latter provision has been inserted in the interests of flexibility, and is not intended for the purpose of enabling the monetary criteria to be varied to cover individual cases; and
- (b) the new provision included in Classes B to G, which requires a person seeking an entry under any of those Classes to obtain a certificate from the prescribed authority that the engaging by him in the occupation mentioned in the Class under which he seeks entry will not be to the prejudice of the inhabitants generally of the Colony.

The original clause (2) of clause 7 has been deleted. Such deletion is consequential to the amendments which have been made to Class A in the original sub-clause (1) and the omission of the original sub-clause (3) is consequential to other amendments which have been made.

The original sub-clause (4) of clause 7 (now sub-clause (2)) has been amended to provide that an entry permit, granted under Classes B, C, D, E, F, and G under sub-clause (1) may be cancelled if the holder, at any time before the expiration of five years from the granting of the permit, without reasonable cause, fails to engage in, or to continue to engage in, the same or a similar occupation to that in respect of which he obtains his entry permit. The original provision was objected to on the ground that it tied the holder of an entry permit granted under Class G of sub-clause (1) to the same employer for a considerable period, and that such a restriction might work considerable hardship on an employee. The sub-clause, as amended, increases the period from four to five years but removes the restriction objected to.

The new sub-clause (3) of clause 7 enables any person who is aggrieved by a decision refusing him an entry permit under Class A of sub-clause (1), and any person who is ordered to leave the Colony under the provisions of sub-clause (2), to appeal against such decision or order, to the Supreme Court, and sub-clause (4) enables any applicant for an entry permit under Class B, C, D, E, F, G, or H of sub-clause (1), who is refused a certificate required under any such class, to appeal against such decision to such Tribunal as may be prescribed. The original sub-clause (5) provided for the determination of such appeals by a Magistrate of the First Class and that his decision should be final.

It is considered that the most suitable constitution for the Tribunal to be appointed under the new sub-clause (4) would be an Appeals Board, with equitable racial representation, presided over by a Judge of the Supreme Court.

The criticisms levelled against the original sub-clauses (6), (7) and (8) of clause 7 were numerous, and in view of the fact that many of such criticisms were considered to be well founded, it was decided to omit them from the measure.

(vii) It was objected that the original provisions of paragraph (a) of sub-clause (1) of clause 11 conferred unnecessarily wide powers on Immigration Officers. That paragraph has been amended with the object of removing its objectionable features.

Sub-clauses (5) and (6) of clause 11 have been amended by including vehicles as well as ships and aircraft.

4. It is intended to introduce this Bill into the Legislative Council in the autumn of this year, and on the second reading to move that it be referred to a Select Committee of the Council.

Nairobi,
18th March, 1947.

S. W. P. FOSTER SUTTON,
Attorney General.

Draft Regulations which it is proposed should be made under the provisions of Clause 12 of the Bill for the Immigration (Control) Ordinance, 1947, if the Bill is enacted into law.

THE IMMIGRATION (CONTROL) REGULATIONS, 1947

IN EXERCISE of the powers conferred upon him by of the Immigration (Control) Ordinance, 1947, His Excellency the Governor in Council has been pleased to make the following Regulations:—

1. These Regulations may be cited as the Immigration (Control) Regulations, 1947.

2. In these Regulations, unless the context otherwise requires—

“prescribed authority” means the authority appointed for the purposes of Class G of sub-section (1) of section 7 of the Ordinance;

“immigration officer” means any immigration officer appointed under the provisions of section 3 of the Ordinance and includes the Principal Immigration Officer appointed under such section;

“other East African territory” means all or any of the following territories, that is to say, the Tanganyika Territory, the Uganda Protectorate and the Zanzibar Protectorate;

“the Ordinance” means the Immigration (Control) Ordinance, 1947.

Inter-territorial Passes

3. The holder of a valid inter-territorial pass issued by the Authority, in any other East African territory, authorized to issue inter-territorial passes, shall be exempt from the provisions of section 6 of the Ordinance.

4. (1) The Principal Immigration Officer may issue to any person who satisfies him that he is a resident of the Colony and that his official or business duties are such as to necessitate regular visits from the Colony to any other East African territory, an Inter-territorial Pass, in the Form A in the Schedule to these Regulations, which shall entitle the holder thereof to leave the Colony for the purpose of entering any other East African territory and to re-enter the Colony from any other East African territory at any time during the validity of such pass.

(2) The Principal Immigration Officer may, in his discretion, at any time cancel any pass issued by him under the provisions of sub-regulation (1) of this Regulation.

In-transit Passes

5. An immigration officer may grant to any person who satisfies him that he desires to enter the Colony for the purpose of passing through the Colony to a destination outside the Colony and that he is in possession of such valid documents, and is otherwise qualified under the law in force in the country of his destination, as will permit him to enter that country, an In-transit Pass, in the Form B in the Schedule to these Regulations, which shall entitle the holder thereof to remain in the Colony for such period, not exceeding one month, as may be stated in such pass.

Visitors' Passes

6. (1) An immigration officer may grant to any person who satisfies him that he desires to enter the Colony for the purpose of holiday or travel or of temporarily carrying on any business, trade or profession a Visitor's Pass, in the Form C in the Schedule to these Regulations, which shall entitle the holder thereof to remain in the Colony for such period, not exceeding six months, as may be stated in such pass.

(2) It shall be a condition of every pass issued under the provisions of sub-Regulation (1) of this Regulation that the holder shall not accept employment within the Colony without the permission, in writing, of the prescribed authority.

(3) An immigration officer may from time to time extend any pass granted under the provisions of sub-regulation (1) of this Regulation upon application being made, in that behalf, by the holder thereof:

Provided that the total period of such extensions shall not exceed twelve months.

Passes for members of the family of a resident and dependants to enter the Colony

7. (1) If the Principal Immigration Officer is satisfied that a person is a dependant of a resident of the Colony and that by reason of kinship such resident is bound to maintain such dependant and that the resident's position is such that he is able to provide maintenance for such dependant and continue to provide such maintenance, he may grant a pass, in the Form D in the Schedule to these Regulations, upon an application being made by such resident, in the Form E in the Schedule to these Regulations, for such dependant to enter the Colony within such time as may be stated in such pass:

Provided that the Principal Immigration Officer shall grant such a pass in respect of the wife, husband or child under the age of sixteen years, of a resident of the Colony upon an application being made by such resident, in the Form F in the Schedule to these Regulations.

(2) A pass granted under the provisions of sub-regulation (1) of this Regulation shall entitle the person in respect of whom the pass is issued to remain in the Colony for such time only as the resident, upon whose application such pass has been granted, remains a resident of the Colony and so long only as such person remains a dependant of such resident.

(3) The Principal Immigration Officer may cancel any pass granted in respect of any person, under the provisions of sub-regulation (1) of this Regulation, other than a pass granted in respect of the wife, husband or child of a resident of the Colony, if such person is, within five years of the granting of such pass, convicted of an offence for which a sentence of imprisonment (other than in default of payment of a fine) has been passed or of any offence involving dishonesty or fraud.

Passes to enter Colony to take up temporary employment

8. (1) If the Principal Immigration Officer is advised by the prescribed authority that no suitably qualified residents of the Colony are available for employment of any particular class but that such suitably qualified residents are likely to become available and to be seeking such employment in the near future, he may grant any person who he is satisfied is qualified to undertake such employment, a pass, in the Form G in the Schedule to these Regulations, upon application being made, in that behalf, in the Form H in the Schedule to these Regulations, for such person to enter the Colony and remain therein, for the purpose of taking up such employment, for any period not exceeding four years.

(2) The Principal Immigration Officer may cancel a pass granted, under the provisions of sub-regulation (1) of this Regulation, if the person to whom such pass is granted fails to take up and continue in such employment.

(3) Every person to whom a pass is issued under sub-regulation (1) of this Regulation shall report himself personally or by registered letter to the nearest immigration officer to his place of residence at such times as may be specified in such pass:

Provided that whenever the holder of any such pass changes his place of residence he shall immediately report such change to the Principal Immigration Officer.

Pupils' Passes

9. (1) The Principal Immigration Officer may grant to any person who satisfies him that he has been accepted as a pupil by any training establishment in the Colony approved by the Governor by notice published in the Gazette, a pass in the Form I in the Schedule to these Regulations, which shall entitle the holder thereof to enter and remain in the Colony for such period, not exceeding four years, as may be stated in such pass.

(2) The Principal Immigration Officer may cancel any pass granted under the provisions of sub-Regulation (1) of this Regulation if the person to whom such pass is granted fails to enter and undergo training in the training establishment for which he has been accepted, or having entered such training establishment fails to remain or to be retained as a pupil therein.

Re-entry Passes

10. The Principal Immigration Officer shall grant—

- (a) to any person who is a permanent resident of the Colony and desires to leave the Colony; and
 - (b) to any person, not being a prohibited immigrant, who has, prior to the commencement of the Ordinance, resided in the Colony and is in possession of a valid document authorizing his re-entry into the Colony,
- a pass to re-enter the Colony in the Form J in the Schedule to these Regulations and such pass shall be valid for a period of two years and shall entitle the holder thereof to re-enter the Colony at any time during its validity.

Deposit or Bond

11. (1) Any person may, as a condition precedent to the granting of any pass under the provisions of Regulations 5, 6, 7 and 8 of these Regulations, be required by an immigration officer to deposit with him a sum not exceeding £75 in respect of each pass so granted and any such deposit may, if necessary, be used for the purpose of defraying any expenses incurred by the Government of the Colony in connexion with the maintenance or repatriation of the person in respect of whom the pass has been issued.

(2) A deposit made under the provisions of sub-regulation (1) of this Regulation shall, unless the person in respect of whom the pass has been issued is ordered to leave, or is deported from, the Colony and the money so deposited is used for the purpose of maintaining or repatriating such person, be refunded to the depositor when the Principal Immigration Officer is satisfied that—

- (a) the person in respect of whom the deposit was made is leaving the Colony permanently; or
- (b) the person in respect of whom the deposit was made has been granted a Residential Certificate under the provisions of section 7 of the Ordinance.

(3) An immigration officer may, in lieu of requiring a deposit under the provisions of sub-regulation (1) of this Regulation, require the person applying for any pass under the provisions of Regulations 5, 6, 7 and 8 of these Regulations, or some other person on his behalf, to give security, not exceeding £75, by Bond, in the Form K in the Schedule to these Regulations, with two sureties approved by the immigration officer. Such Bond shall remain in force until cancelled by the Principal Immigration Officer or until he is satisfied that—

- (a) the person in respect of whom the Bond was entered into is leaving the Colony permanently; or
- (b) the person in respect of whom the Bond was entered into has been granted a certificate of permanent residence under the provisions of Regulation 12 of these Regulations.

Certificates of Permanent Residence

12. (1) Each of the following persons, upon application being made in that behalf to the Principal Immigration Officer, shall be entitled to have endorsed upon his passport a certificate of permanent residence in the Form L or M in the Schedule to these Regulations, as the case may be—

- (a) a person born in the Colony;
- (b) a person permanently and lawfully resident in the Colony at the date of the coming into operation of the Ordinance, who satisfies the Principal Immigration Officer that he is permanently and lawfully resident in the Colony at the time he makes his application for the endorsement;
- (c) a person who, within a period of eight years immediately preceding the date of his application, has been lawfully resident in the Colony for a period in the aggregate of five years.

(2) An endorsement granted to a person under paragraph (a) of sub-Regulation (1) of this Regulation shall be valid for the lifetime of such person and an endorsement granted to a person under paragraph (b) or (c) shall be valid for a period of seven years from the date of the making thereof, and shall be renewable, upon application, if the Principal Immigration Officer is satisfied that the holder thereof is permanently and lawfully resident in the Colony at the date of the application for the renewal.

Effect of Expiry or Cancellation of Pass

13. It shall be unlawful for any person to remain in the Colony after the expiration or cancellation of any pass issued to him under the provisions of these Regulations.

By Command of His Excellency the Governor in Council.

Nairobi,

This day of 1947. Clerk to the Executive Council.

SCHEDULE

FORM A

No.

INTER-TERRITORIAL PASS

(Issued under Regulation 4 of the Immigration (Control) Regulations, 1947)

The holder is a resident of

The holder of this pass is entitled to leave the Colony for the purpose of entering Tanganyika Territory, the Uganda Protectorate and the Zanzibar Protectorate and to re-enter the Colony at any time, during its validity.

Name of holder (surname or family name in BLOCK CAPITALS first)

Full address in Kenya

Sex Occupation

Principal Immigration Officer, Kenya

Date of issue

Unmounted photograph of Holder

(Certified by Magistrate or Police Officer)

Signature or left thumb mark of Holder

FORM B

No.

IN TRANSIT PASS

(Issued under Regulation 5 of the Immigration (Control) Regulations, 1947)

The holder is permitted to enter the Colony in transit for

Valid until

Date

Immigration Officer, Kenya

Place

FORM C

No.

VISITOR'S PASS

(Issued under Regulation 6 (1) of the Immigration (Control) Regulations, 1947)

The holder is permitted to enter the Colony as a visitor.

Valid until

Date

Place

.....
*Immigration Officer, Kenya*The validity of this pass is extended to
Date
Immigration Officer, Kenya

FORM D

No.

ENTRY PASS FOR DEPENDANT TO ENTER KENYA

*(Issued under Regulation 7 (1) of the Immigration (Control) Regulations, 1947)*Permission is hereby granted for
being the of
resident at to enter the Colony, on or before

Date of issue

.....
Principal Immigration Officer, Kenya

FORM E

APPLICATION FORM FOR DEPENDANT TO ENTER KENYA

*Under Regulation 7 (1) of the Immigration (Control) Regulations, 1947*I, of (state postal address)
..... being a resident of the Colony
hereby make application for a pass to enter the Colony for
at present residing atI hereby declare that the above-mentioned is/are
my (state kinship) and is/are
wholly dependent on me for maintenance. I further declare that I am bound
to maintain the above named for the following reasons
and that I am in a position to do so.I declare that I am (state occupation)
residing at (state street, plot, block, etc.) and employed
by and am in receipt of a monthly income ofThe above-named dependant(s) will be accommodated at (state exact locality
and description of quarters)I undertake, if required to do so, to deposit/enter into a bond for, a sum
not exceeding £75 per person in respect of the above-named.

Date Signed

FORM F

APPLICATION FOR A WIFE AND/OR CHILD OR CHILDREN OF A
RESIDENT TO ENTER KENYA*Under Regulation 7 (1) of the Immigration (Control) Regulations, 1947)*I, of (state full address)
..... being a resident of the Colony
hereby make application for a pass to enter the Colony for (state full names
of wife and/or children and their ages)
at present residing at

Date Signed

FORM G

No.

**PASS TO ENTER KENYA TO TAKE UP TEMPORARY
EMPLOYMENT**

(Issued under Regulation 8 (1) of the Immigration (Control) Regulations, 1947)

Name at present residing at
..... is permitted to enter the Colony
for a period not exceeding for the purpose of taking
up employment in the capacity of with
of

The holder of this pass is required to report himself personally or by
registered letter to the nearest immigration officer to his place of residence on
.....

Date
.....

Principal Immigration Officer, Kenya

Note.—This pass may be cancelled if the holder fails to take up and
continue in the above-mentioned employment.

FORM H

**APPLICATION FOR ENTRY PASS TO TAKE UP TEMPORARY
EMPLOYMENT IN KENYA**

Under Regulation 8 (1) of the Immigration (Control) Regulations, 1947

TO THE PRESCRIBED AUTHORITY.

I, of (state full address)
..... being engaged in (state profession or business)
..... hereby certify that I wish to engage (Mr., Mrs.,
Miss), aged, now residing
at (state full address) in the capacity of
..... for which of my knowledge he/she is
qualified and suitable.

I desire to engage the said for a period of
..... and a contract has been/will be entered into
under the following conditions (state particulars of salary, quarters, etc.)

I understand that I am liable to be required to deposit or enter into a bond
for a sum not exceeding £75 in respect of the said

Date Signed
[P.T.O.]

RECOMMENDATION BY THE PRESCRIBED AUTHORITY

To the Principal Immigration Officer:

FORM I

PUPIL'S PASS

(Issued under Regulation 9 (1) of the Immigration (Control) Regulations, 1947)

Name at present residing at
..... is permitted to enter the
Colony for a period not exceeding for the
purpose of entering the following approved training establishment

The holder of this pass is required to report himself personally or by
registered letter to the nearest immigration officer to his place of residence on
.....

Date
.....
.....
Principal Immigration Officer, Kenya.

Note.—This pass may be cancelled if the holder fails to enter the training
establishment in respect of which this pass has been granted, or having entered
such training establishment fails to remain or to be retained as a pupil therein.

FORM J

PASS TO RE-ENTER THE COLONY

(Issued under Regulation 10 of the Immigration (Control) Regulations, 1947)

Mr. is entitled to re-enter
the Colony at any time during the validity of this pass.

This pass is valid until

Date
.....
Signature of Principal Immigration Officer, Kenya

FORM K

BOND

Under Regulation 11 (3) of the Immigration (Control) Regulations, 1947

BE IT KNOWN unto all men by these presents that we (1)*

(2)†

(3)† are held and firmly bound unto His Majesty in the sum of of good and lawful money of the Colony and Protectorate of Kenya to be paid to His Majesty, His heirs and successors; to which payment well and truly to be made we bind ourselves and each and every one of us jointly and severally for and in the whole, our heirs, executors and administrators and every of them firmly by these presents.

Sealed with our seals.

Dated this day of, 19....

NOW the condition of this obligation is such that on expiration of the validity of Pass No. dated

....., the said (1)*

(2)† (3)†

shall be bounden, on demand of the Principal Immigration Officer, Kenya, to pay a sum not exceeding in connexion with the cost of maintenance and/or repatriation of the above-mentioned

..... together with his dependants hereunder named:

..... This obligation shall remain in full force and effect until cancelled, under the provisions of sub-regulation (3) of Regulation 11 of the Immigration (Control) Regulations, 1947, by the Principal Immigration Officer, Kenya.

Signed, sealed and delivered

in the presence of:

* Name of applicant for pass.

† Name of surety.

FORM L

No.....

CERTIFICATE OF PERMANENT RESIDENCE

(Issued under Regulation 12 of the Immigration (Control) Regulations, 1947)

This is to certify that the holder of this Passport was born in the Colony of Kenya and is a permanent resident thereof.

This certificate is valid during the lifetime of the person to whom it relates.

Date of issue

.....
Signature of Principal Immigration Officer, Kenya

FORM M

No.....

CERTIFICATE OF PERMANENT RESIDENCE

(Issued under Regulation 12 of the Immigration (Control) Regulations, 1947)

This is to certify that the holder of this Passport is a permanent resident of Kenya.

This certificate is valid for a period of seven years from the date of issue.

Date of issue

.....
Signature of Principal Immigration Officer, Kenya