



THE OFFICIAL GAZETTE

OF THE COLONY AND PROTECTORATE OF KENYA

Published under the Authority of His Excellency the Governor of the Colony and Protectorate of Kenya

Vol. LIII—No. 22

NAIROBI, April 24, 1951

Price 50 Cents

CONTENTS

Govt Notice Nos	PAGE
486-490—Bills for introduction into the Legislative Council—	
An Ordinance to Amend the National Parks Ordinance	470
An Ordinance to Amend the Sisal Industry Ordinance	471
An Ordinance to provide for the Collection and Realization of German Enemy Property and for the Distribution of the Proceeds thereof and for purposes connected with the matters aforesaid	472
An Ordinance to Amend the Special Districts (Administra- tion) Ordinance	477
An Ordinance to Amend the Increase of Rent (Restriction) Ordinance, 1949	478

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

T V N FORTESCUE,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE NATIONAL PARKS
ORDINANCE**

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 National Parks (Amendment) Ordinance, 1951, and shall be read and construed as one with the National Parks Ordinance, hereinafter referred to as the principal Ordinance

Cap 215

Amendment of the long title to the principal Ordinance

2. The long title to the principal Ordinance is amended 5 by inserting the word "Royal" before the words "National Parks" where they occur therein

Amendment of section 1 of the principal Ordinance

3. Section 1 of the principal Ordinance is amended by substituting for the words "National Parks Ordinance", the words "Royal National Parks of Kenya Ordinance" 10

Amendment of section 2 of the principal Ordinance

4. Section 2 of the principal Ordinance is amended by substituting for the definition of "national park" the following definition—

"Royal National Park" means any area of land declared to be a Royal National Park under section 3 of 15 this Ordinance

Amendment of section 5 of the principal Ordinance

5. Paragraph (a) of sub-section (1) of section 5 of the principal Ordinance is amended by substituting for the words "The Kenya National Parks Trustees", the words "The Trustees of the Royal National Parks of Kenya" 20

Insertion of new section 5A in the principal Ordinance

6. There shall be inserted next after section 5 of the principal Ordinance the following new section—

Honorary President and Vice-Presidents

5A (1) The Governor may, on the recommendation of the Trustees, invite a person of eminence to be Honorary President of the Board of Trustees established 25 under section 5 of this Ordinance and may also invite such other persons of eminence as he may from time to time think proper to be Honorary Vice-Presidents of the aforesaid Board of Trustees

(2) Neither the Honorary President nor any 30 Honorary Vice-President shall have any of the powers, duties or functions conferred by this Ordinance upon the Trustees, a trustee or an honorary trustee

Amendment of the principal Ordinance

7. The principal Ordinance is amended by substituting for the words "national park" and "national parks" wherever 35 such words occur in the Ordinance the words "Royal National Park" and "Royal National Parks" respectively

MEMORANDUM OF OBJECTS AND REASONS

His Majesty the King has recently been graciously pleased to grant to the Trustees of the national parks the privilege of adding the prefix "Royal" to the title of the parks. Clauses 2, 3, 4, 5 and 7 of the Bill will make the amendments to the Ordinance necessary to give effect to this

The Trustees are desirous of the Ordinance being amended to enable the Governor on their recommendation to invite some person of eminence to be Honorary President of the Trustees and to invite other persons to be Honorary Vice-Presidents

Clause 6 of the Bill will insert the necessary section to provide for these appointments

As it is not intended that the Honorary President and Vice-President shall exercise any of the powers, duties or functions of the Trustees, sub-clause (2) of Clause 6 expressly so provides

No additional expenditure of public moneys will be incurred if the provisions of this Bill become law

Nairobi,
9th March, 1951

K K O'CONNOR,
Attorney General

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

T V N FORTESCUE,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE SISAL INDUSTRY
ORDINANCE**

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

1. This Ordinance may be cited as the Sisal Industry (Amendment) Ordinance, 1951, and shall be read and construed as one with the Sisal Industry Ordinance, hereinafter referred to as the principal Ordinance

Short title

Cap 196

2. There shall be substituted for paragraph (i) of the proviso to paragraph (6) of section 7 of the principal Ordinance the following—

Amendment of section 7 of the principal Ordinance

(i) at the request of the Association made after the passing of a resolution in that behalf by a majority of the members of the Association present and voting either personally or by proxy at a meeting of the Association, which said majority shall represent not less than two thirds of the average tonnage of sisal produced by the members present and voting as aforesaid during the three years ending on the thirty-first December immediately preceding,

MEMORANDUM OF OBJECTS AND REASONS

Paragraph (6) of section 7 of the Sisal Industry Ordinance (Cap 196) (hereinafter referred to as the principal Ordinance) empowers the Sisal Board to take part in or promote any scheme for regulating or prohibiting the manufacture, import export, production, treatment planting, cultivation, storage movement, transport, distribution, sale, purchase, use or consumption of sisal or sisal fibre and for fixing the prices to be paid for sisal or sisal fibre

Proviso (i) to paragraph (6) however prohibits the Board taking part in or promoting a scheme for any such purpose unless at the request of the Kenya Sisal Growers' Association made after the passing of a resolution in that behalf by members of the Association who represent not less than two-thirds of the average tonnage of sisal fibre produced during the three years immediately preceding. The provisions of this proviso may result in a resolution to do any of the things referred to in paragraph (6) aforesaid which is carried at a meeting being ineffective as by reason of the absence from the meeting of one or two large sisal growers the vote in favour (even if unanimous) did not represent two-thirds of the average tonnage produced in the preceding three years

This Bill will, therefore, amend proviso (i) to paragraph (6) of section 7 of the principal Ordinance to provide that a resolution of the Association requesting the Board to take part in or promote a scheme for any of the purposes mentioned in paragraph (6) will be sufficient if passed by a majority of the members present and voting at a meeting which majority shall represent not less than two-thirds of the average tonnage produced by the members present and voting during the three years immediately preceding

It is not expected that any additional expenditure of public moneys will be incurred if the provisions of this Bill become law

Nairobi,
19th April, 1951

J BASIL HOBSON,
Acting Attorney General

The Governor in Council has approved of the following Bill
being introduced into the Legislative Council

T V N FORTESCUE,
Acting Clerk to the Legislative Council

SECTION

- 1—Short title
- 2—Interpretation
- 3—Collection realization and distribution of German enemy property
- 4—Transfer of proceeds of surplus assets

SECTION

- 5—Offences
- 6—Arrangements for the resolution of conflicting claims to German enemy property

**A BILL ENTITLED
AN ORDINANCE TO PROVIDE FOR THE COLLEC-
TION AND REALIZATION OF GERMAN ENEMY
PROPERTY AND FOR THE DISTRIBUTION OF
THE PROCEEDS THEREOF AND FOR PURPOSES
CONNECTED WITH THE MATTERS AFORESAID**

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

Short title

1. This Ordinance may be cited as the Distribution of German Enemy Property Ordinance, 1951

Interpretation

2. (1) In this Ordinance unless the context otherwise requires—

“administrator” means the Administrator of German 5
Enemy Property appointed pursuant to section 3 of this Ordinance,

“German enemy debt” means—

(a) any sum due at the commencement of this Ordinance
in respect of an obligation incurred before the third 10
day of September, 1939, which on that day was an obligation of—

(i) the German State,

(ii) any individual who on that day was a German 15
national resident in Germany,

(iii) any body of persons (whether corporate or un-
incorporate) which on that day was a body
incorporated or constituted in or under the
laws of Germany,

to— 20

(iv) the Government of Kenya,

(v) any British subject or British protected person
resident or carrying on business on that day in
the Colony,

(vi) any body of persons (whether corporate or un- 25
incorporate) which on that day was a body
incorporated or registered in or under the laws
of the Colony,

so however that where any person or body of
persons specified in sub-paragraphs (v) or (vi) of this 30
paragraph carried on business on the said day both
in and outside the Colony any sum attributable to
the business carried on outside the Colony shall be
excluded,

(b) any sum not included in paragraph (a) of this sub- 35
section being—

5 (i) a sum due at the commencement of this Ordinance in respect of any bond of the German External Loan, 1924, or the German Government International 5½ per cent Loan, 1930, being a bond enfaced in accordance with the Supplementary Agreement for the execution of Article 2 of the Anglo-German Transfer Agreement of the first day of July, 1938,

10 (ii) a sum due on the seventeenth day of May, 1945, in respect of any bond of the Austrian Government International Loan, 1930, or the Austrian Government Credit Anstalt Bonds, 1936, being a bond enfaced as aforesaid,

15 (iii) a sum due on the seventeenth day of May, 1945, in respect of any bond of the Austrian Government International Guaranteed Loan, 1933-53, or the Austrian Government Guaranteed Conversion Loan, 1934-59, which was in the beneficial ownership of a British holder (within the meaning of Article 4 of the said Anglo-German Transfer Agreement) on the first day of July, 20 1938, or

(iv) a sum due at the commencement of this Ordinance in respect of any bond of the Konversion-kasse 4 per cent Sterling Bonds,

25 'German enemy property' means property which, on such day as may be appointed by any Order made under section 3 of this Ordinance, is, or at any time thereafter becomes, subject to control under section 9 of the Trading No 21 of 1939
30 with the Enemy Ordinance, 1939, being property, or the proceeds or income of property which on or at any time after the third day of September, 1939, belonged to or was held or managed on behalf of—

(a) the German State,

35 (b) any individual who, on the said third day of September 1939 or at any time thereafter, was a German national resident in Germany or in any territory under the sovereignty of a State which on or at any time after the said day was at war with His Majesty,

40 (c) any individual who was a German national on or at any time after the said day and—

(i) was included among the persons specified in any Order under sub-section (2) of section 4 of the Trading with the Enemy Ordinance, 1939, or No 21 of 1939

45 (ii) was a person whose property became subject to control under section 9 of the said Ordinance at a time when he was not an enemy within the meaning of the said Ordinance,

50 (d) any body of persons (whether corporate or unincorporate) which on or at any time after the said day was a body incorporated or constituted in, or under the laws of, Germany, and

55 (e) any body of persons (whether corporate or unincorporate) which on or at any time after the said day was controlled by any such individual or body as is mentioned in paragraph (b), paragraph (c) or paragraph (d) hereof,

60 "German national" does not include any person who acquired German nationality by reason of the inclusion in the German State after the first day of March, 1938, of any territory not comprised therein on that day,

"Germany" means territory comprised in the German State on the first day of March, 1938,

any estate or interest in real or personal property, and includes any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, and any other right or interest whether in possession or not

(2) For the purposes of this Ordinance, a person who at any time was resident in Germany shall be deemed to have been a German national at that time unless it is proved to the satisfaction of the administrator, within such time and in such manner as may be prescribed by Order made under section 3 of this Ordinance, that he was not a German national at that time

(3) For the purposes of this Ordinance, property which, or the right to transfer which, is vested in the Custodian of Enemy Property appointed under section 9 of the Trading with the Enemy Ordinance, 1939, shall be deemed to be subject to control under the said section 9

No 21 of 1939

Collection,
realization and
distribution of
German enemy
property

3. (1) The Governor may by Order make provision for the collection and realization of German enemy property and for the distribution of the proceeds thereof, to such extent as may be prescribed by the Order, to persons who establish claims in respect of German enemy debts

(2) Without prejudice to the generality of sub-section (1) of this section, the Governor may, by any such Order, make provision as to the following matters—

(a) the appointment of an administrator for the purposes of the Order and the conferring and imposing on that administrator of such powers and duties as may be prescribed by the Order,

(b) the transfer to, and vesting of German enemy property in, the administrator, and the discharge of any person specified in the Order from liability in respect of things done or omitted to be done in relation to property transferred from him to the administrator,

(c) the manner and time in which claims in respect of German enemy debts are to be made, and the furnishing and verification of information in connexion with any such claims, including the production of books and documents,

(d) the determination, as respects any such claim of the question whether the claim is established for the purposes of the Order and of the amount of the claim,

(e) the distribution from time to time of the proceeds of the realization of German enemy property to persons whose claims in respect of German enemy debts have been established for the purposes of the Order,

(f) the charging of fees to persons making claims in respect of German enemy debts, and the recovery of those fees by deduction from the amounts to be distributed as aforesaid or otherwise,

(g) the disposal of sums in the administrator's hands which, by reason of a failure to discover the whereabouts of persons to whom the sums ought to be distributed or for any other reason, it is not practicable to distribute

(3) The administrator shall be a corporation sole under the name of the Administrator of German Enemy Property

provisions of this section, any Order made under this section may—

- 5 (a) exclude from the application of the Order such classes of claims as may be prescribed by the Order,
- (b) differentiate between different classes of claims, as respects the priority in which payments are to be made and the extent of the payments,
- 10 (c) make provision for enabling the proceeds of German enemy property which belonged to, or was held or managed on behalf of, a particular person or body of persons to be distributed to persons establishing claims in respect of debts due from that person or body

15 (5) The administrator may by Order prescribe forms for the purposes of any Order made under the provisions of this section and in particular for the making of claims and the furnishing of information

(6) Notwithstanding anything in this section the
20 Governor may direct the administrator to transfer to or for the benefit of any person any German enemy property, or the proceeds of any German enemy property, to which that person would have been entitled but for the operation of the Trading
with the Enemy Ordinance, 1939, or any Order made there-
25 under and the administrator shall comply with any such direction

(7) Where any German enemy property, on or at any time after the third day of September, 1939, belonged to or was held or managed on behalf of, a German company, and
30 it appears to the Governor that the company was on the said day controlled, directly or indirectly, by a Kenya company the Governor may treat that property for the purposes of the last preceding sub-section, to such extent as the Governor thinks fit having regard to the extent of the interest of the
35 Kenya company in the German company, as property to which the Kenya company would have been entitled but for the operation of the Trading with the Enemy Ordinance, 1939, or any Order made thereunder

In this sub-section the expression "German company"
40 means a body incorporated in, or under the laws of, Germany, and the expression "Kenya company" means a body incorporated or registered in or under the laws of the Colony

4. If after all German enemy property has been col-
45 lected and realized and after the net proceeds thereof have been distributed in accordance with the provisions of this Ordinance, there shall be any surplus of such proceeds, the Governor may by Order direct the same to be transferred to or held to the Order of His Majesty's Government in the
50 United Kingdom

Transfer of
proceeds of
surplus assets

5. (1) If any person who—

Offences

- 55 (a) is prohibited by or under an Order made under section 3 of this Ordinance from dealing with any German enemy property otherwise than with the consent of the administrator, or
- (b) is required by or under such an Order to transfer German enemy property to the administrator or otherwise to deal with that property in accordance with the directions of the administrator,
- 60 contravenes or fails to comply with the prohibition or requirement, he shall be guilty of an offence under this section

(a) without reasonable excuse, fails to comply with any requirement made by or under any such Order to furnish information or to produce books or documents, or 5

(b) in giving information for any purpose of any such Order knowingly or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence under this section

(3) Any person who is guilty of an offence against this 10 section shall be liable—

(a) on conviction before the Supreme Court to imprisonment for a term not exceeding five years or to a fine or to both such imprisonment and a fine, or

(b) on conviction before a subordinate court of the first 15 or second class to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand shillings or to both such imprisonment and fine

(4) Where any offence under this section has been com- 20 mitted by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that 25 the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances 30

In this sub-section the expression “director” in relation to any body corporate established by, or under any enactment for the purpose of carrying on any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of 35 that body corporate

Arrangements
for the
resolution of
conflicting
claims to
German enemy
property

6. Where arrangements have been made by or on behalf of the Government of Kenya with the Government of any country outside Kenya or any person acting on their behalf for the resolution of conflicting claims to German enemy 40 property and the corresponding property under the control of the Government of that country—

(a) the Governor may, for the purpose of giving effect to those arrangements, by Order direct the administrator to transfer to such person as may be specified 45 in the Order such German enemy property or proceeds thereof as may be so specified, and the administrator shall comply with any such Order, and

(b) any property transferred in pursuance of those arrangements to any person acting on behalf of the 50 Government of Kenya shall be transferred to the administrator and shall be dealt with in like manner as German enemy property

MEMORANDUM OF OBJECTS AND REASONS

By virtue of the Paris Agreement on Reparations of 1946, it was agreed that German enemy property controlled under the Trading with the Enemy Ordinance, 1939, should be treated as part of the United Kingdom share of reparations from Germany

This Bill, which is based on the Distribution of German Enemy Property Act, 1949, of the United Kingdom, will make local provision for the disposal of such property in Kenya

The Bill, by clause 3, will enable an Order to be made providing for the collection, realization and distribution of German enemy

German enemy debts—Such ~~may also provide for the manner~~
in which and time within which German enemy debts must be proved
in order to rank for payment or part payment out of the proceeds of
German enemy property

Special provision is made for any surplus proceeds of German
enemy property to be transferred to or held to the Order of the
Government of the United Kingdom (*clause 4*)

The remaining clauses of the Bill provide for matters incidental
to the main purpose of the legislation

It is not expected that any additional expenditure of public
moneys will be incurred if the provisions of this Bill become law

Nairobi,
13th April, 1951

J BASIL HOBSON,
Acting Attorney General.

GOVERNMENT NOTICE NO 489

The Governor in Council has approved of the following Bill
being introduced into the Legislative Council

T V N FORTESCUE,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE SPECIAL
DISTRICTS (ADMINISTRATION) ORDINANCE**

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

1. This Ordinance may be cited as the Special Districts Short title
(Administration) (Amendment) Ordinance, 1951, and shall be
read and construed as one with the Special Districts (Admini- Cap 45
stration) Ordinance, hereinafter referred to as the principal
5 Ordinance

2 Section 4 of the principal Ordinance is amended by Amendment of
substituting for the definition of “tribesman” the following— section 4 of
“tribesman” means any male person who is a Somali the principal
or who by birth or adoption belongs to any tribe resident Ordinance
10 or being within a district or an area to which this Ordin-
ance has been applied

3. Section 27 of the principal Ordinance is amended by Amendment of
substituting for the word and figures “8, 16 and 17” the word section 27 of
and figures “7 15 and 16” the principal
Ordinance

MEMORANDUM OF OBJECTS AND REASONS

At the time that the Special Districts (Administration) (Amend-
ment) Ordinance, 1948, was enacted a consequential amendment to
section 27 of the principal Ordinance was overlooked, namely that
sections 8 16 and 17 referred to therein had, in consequence of the
repeal of section 6 and the renumbering of later sections of the prin-
cipal Ordinance become sections 7, 15 and 16 This Bill makes the
necessary amendment

The opportunity has also been taken to redraft the definition of
“tribesman” in order to remove the words “and includes” from a
definition which purports to be an exclusive definition

No additional expenditure of public moneys will be incurred if
the provisions of this Bill become law

Nairobi,
17th March, 1951

K K O'CONNOR,
Attorney General

T V N FORTESCUE,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE INCREASE OF
RENT (RESTRICTION) ORDINANCE, 1949**

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

Short title

No 22 of 1949

Amendment of
section 2 of the
principal
Ordinance

1. This Ordinance may be cited as the Increase of Rent
(Restriction) (Amendment No 2) Ordinance, 1951, and shall
be read and construed as one with the Increase of Rent
(Restriction) Ordinance, 1949, hereinafter referred to as the
principal Ordinance

5

2. Section 2 of the principal Ordinance is amended in
the following respects—

(a) by substituting for the definition of “business
premises” in sub-section (1) the following—

“business premises” means a building or part of 10
a building let or to be let for the public service or
for business, trade or professional purposes, and
includes the land occupied therewith and comprised
in the letting,

(b) by substituting for the definition of “dwelling-house” 15
in sub-section (1) the following—

“dwelling-house” means any house or part of
a house or room let or to be let as a dwelling or
place of residence, and includes the site of the house
and the garden and other lands or buildings com- 20
prised in and incidental to the letting, but not let
as a separate entity or source of profit,

(c) by substituting a semi-colon for the full stop which
occurs after the words “the market value of the land
at the prescribed date” in sub-paragraph (ii) of 25
paragraph (A) of the definition of “standard rent”
in sub-section (1) and by deleting therefrom the
paragraph—

‘For the purpose of calculating rent under this
sub-paragraph it shall be assumed that the landlord 30
will pay—

(a) the ground rent, if any,

(b) the premium for insuring against fire risk,

(c) the original and additional rates and the improve-
ment rate as defined in the Local Government 35
(Rating) Ordinance, 1928, if any,

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

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

(d) by substituting a full stop for the semi-colon after the 40
words “if any” at the end of the definition of
“standard rent” in sub-section (1) and by adding the
following paragraph—

For the purposes of this definition it shall be
assumed that the landlord will pay— 45

(a) the ground rent, if any,

(b) the premium for insuring against fire risk,

(c) the original and additional rates and the improve-
ment rate as defined in the Local Government
(Rating) Ordinance, if any, and

No 20 of 1928

(d) the cost repairs for which he is liable,
(e) by substituting for the definition of "tenement house" in sub-section (1) the following—

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

(f) by substituting for paragraph (ii) of sub-section (2) the following—

10 (ii) in any case in which the Board is satisfied that it is not reasonably practicable to obtain sufficient evidence to enable the Board to ascertain—

(a) the rent at which the premises were let, or
15 (b) the market cost of the construction of the premises, or

(c) the market value of the land on which the premises are built,

20 at the material date, the Board may determine the standard rent at such an amount as the Board thinks proper having regard to the standard rent of similar premises in the neighbourhood

3. Sub-section (1) of section 5 of the principal Ordinance is amended in the following respects—

Amendment of
section 5 of the
principal
Ordinance

25 (a) by substituting for paragraph (f) the following—

(f) to make either or both of the following orders, that is to say—

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

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

(b) by inserting at the end of paragraph (1) the following words—

35 "and may for any such purpose generally authorize the Chairman or Deputy Chairman to issue summonses to compel the attendance of persons before the Board",

(c) by substituting for paragraph (m) the following—

40 (m) upon the determination of any application or other proceeding, in its discretion to order any party thereto to pay the whole or any part of the costs thereof and either itself to fix the amount of such costs or to direct taxation thereof by the taxing officer of the Supreme Court either on the Supreme Court scale or on the subordinate court scale,

45

(d) by substituting a semi-colon for the full stop at the end of paragraph (n) and by adding the following new paragraph—

50 (o) on the application, made within one month of the date of a notice to quit given consequent upon any demolition order, of any person who, immediately prior to the date of such order was a tenant of any premises affected by such order,
55 to make an order requiring the landlord of such premises to grant to such person a new tenancy of any premises or of any part thereof in any case where any such premises are erected by such landlord on the site of the premises affected by the demolition order within three

such terms and conditions as the Board may, due regard being had to the cost of the erection of such premises, consider fair and reasonable

Amendment of marginal note to section 8 of the principal Ordinance

4. There shall be substituted for the marginal note to section 8 of the principal Ordinance the following—

Landlord to apply to have standard rent of premises first let after the commencement of the Ordinance determined

10

Amendment of section 9 of the principal Ordinance

5. Section 9 of the principal Ordinance is amended by substituting for sub-section (5) the following—

(5) Where the Board investigates any complaint under this section the Board may make such order in the matter as the justice of the case may require Any person aggrieved by an order of the Board under this sub-section may appeal in the same manner and to the same court as is provided by section 7 of this Ordinance

15

Amendment of section 16 of the principal Ordinance

6. Section 16 of the principal Ordinance is amended in the following respects—

20

(a) by substituting for the second sub-paragraph of paragraph (i) of sub-section (1) the following—

A landlord who has obtained or is entitled to obtain an ejectment order on this ground may at his option either obtain a similar order against the occupier or may regard such occupier as his tenant

25

(b) by substituting for the words “of more than fifty per centum of the share capital” which occur in the third sub-paragraph of paragraph (i) of sub-section (1) the words “of more than fifty per centum of the total par value of the issued shares”,

30

(c) by substituting a semi-colon for the full stop after the word “house” at the end of the first sentence of the proviso to paragraph (j) of sub-section (1) and by deleting the following words —

35

If any landlord fails to give such option, or to give up possession to the tenant accepting such option, he shall be liable to a fine not exceeding two thousand shillings or to a term of imprisonment not exceeding six months or to both such fine and imprisonment,

40

(d) by renumbering sub-sections (7) and (8) as sub-sections (8) and (9) and by inserting the following new sub-section—

(7) Any landlord who, in contravention of the proviso to paragraph (j) of sub-section (1) of this section, fails to give a first option to the tenant required to give up possession of the dwelling-house or fails to give up possession of the dwelling-house to the tenant who has accepted such option shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment and in addition the court may—

55

(a) order the offender to pay to the tenant concerned compensation for any loss or damage suffered by him in consequence of having been required to give up possession,

(b) order any person to whom the dwelling-house has been let or who is actually occupying it to give up possession thereof within such period as the court may consider reasonable, and

60

(e) by deleting from sub-section (8) (as renumbered) the following words—

5 “on the ground that he requires any premises for his own occupation ”

7. Section 17 of the principal Ordinance is amended by substituting for the words “in any other area with leave of the court” the words “in any other area, with the leave of the
10 court,”

Amendment of section 17 of the principal Ordinance

8. Section 22 of the principal Ordinance is amended by substituting for sub-section (1) thereof the following—

Amendment of section 22 of the principal Ordinance

(1) Any landlord or his agent or clerk who fails—

15 (a) to issue a receipt for rent paid by or on behalf of any tenant, or

(b) on demand by a tenant to supply a rent book to such tenant, or

20 (c) to enter or cause to be entered in any rent book supplied to a tenant the standard rent or any payment on account of rent, or

(d) to sign or cause to be signed any such entry as is mentioned in paragraph (c) of this sub-section,

shall be guilty of an offence against this section and liable to a fine not exceeding four hundred shillings

25 9. Section 25 of the principal Ordinance is amended by substituting for sub-section (1) the following—

Amendment of section 25 of the principal Ordinance

(1) No landlord shall, except with the prior consent of the Board, do any act whereby—

30 (a) any tenant will or may, either directly or indirectly, be deprived or

(b) any other person will be enabled, either directly or indirectly, to deprive any tenant,

of any water, light, conservancy, sweeper or other service

35 10. There shall be substituted for section 26 of the principal Ordinance the following—

Repeal and replacement of section 26 of the principal Ordinance

26 Where, for the purpose of determining the standard rent, an estimate of the market cost of construction of any premises at the date of completing such construction or of the market value of the land at the prescribed date has been made by order of the Board, the
40 Board shall forthwith send written notification to the landlord and the tenant, or their representatives, that the details of such estimate are available for their information and that before the standard rent is
45 determined any such party or his representative may appear before the Board on a date to be specified in the notification and object to the estimate

Notification of estimate of market cost of construction or market value of land

11. Section 29 of the principal Ordinance is amended in the following respects —

Amendment of section 29 of the principal Ordinance

50 (a) by substituting for the words “a sum of one hundred shillings in respect of each day on which he continues to occupy the premises adversely to the tenant” where they occur in sub-section (2) the words “a sum equal to five times the standard rent
55 of the premises in respect of each day on which he continues to occupy the premises adversely to the tenant or such smaller sum in respect of each day as the Board may determine”;

60 (b) by inserting sub-section (5) as sub-section (3) and by renumbering sub-sections (3) and (4) as sub-sections (4) and (5),

“a sum of one hundred shillings in respect of each day on which he continues to occupy the premises adversely to the landlord” where they respectively occur in sub-section (5) (as renumbered) the words “sub-section (4)” and “a sum equal to five times the standard rent of the premises in respect of each day on which he continues to occupy the premises adversely to the landlord or such smaller sum in respect of each day as the Board may determine,” 10

Amendment of section 31 of the principal Ordinance Jurisdiction of court

12. There shall be substituted for section 31 of the principal Ordinance the following section—

31 (1) Where jurisdiction or power to deal with any matter is conferred by this Ordinance on the Board no proceedings shall be taken before the court 15

(2) The court shall have jurisdiction to deal with any offence under this Ordinance and, subject to the provisions of sub-section (1) of this section, with any claim or other proceeding arising out of this Ordinance notwithstanding that by reason of the amount of the penalty, 20 or the nature or amount of the claim or otherwise the case would not, but for this provision, be within the jurisdiction of the court

(3) If a person takes proceedings under this Ordinance in the Supreme Court which he could have taken in 25 the court or before the Board he shall, if successful, only be entitled to recover costs on the subordinate court scale

Amendment of section 32 of the principal Ordinance

13. Section 32 of the principal Ordinance is amended by substituting for the words “A duly authenticated copy” 30 which occur in sub-section (1) the words “A duly certified copy”

Insertion of new sections 33A 33B and 33C in the principal Ordinance Service of documents

14. There shall be inserted next after section 33 of the principal Ordinance the following new sections—

33A Where under this Ordinance any summons, 35 notice or other document is required to be served upon any person it shall be sufficiently served on such person if it is either served personally or if it cannot be so served if it is served in such other manner as the Chairman or Deputy Chairman of the Board may direct 40

Right of entry

33B The Board or any person authorized by it in writing in that behalf, may, for the purpose of carrying out its duties and functions under this Ordinance, at all reasonable times enter upon and inspect any dwelling-house or any business premises 45

Governor in Council may empower Chairman or Deputy Chairman to exercise powers of Board

33C Notwithstanding the provisions of section 4 and section 6 of this Ordinance the Governor in Council may by order empower the Chairman or Deputy Chairman (being qualified for appointment as Chairman) of the Board to exercise alone any of the powers or func- 50 tions of the Board which may be specified in such Order

MEMORANDUM OF OBJECTS AND REASONS

This Bill will amend the Increase of Rent (Restriction) Ordinance, 1949 (hereinafter referred to as the principal Ordinance) in certain respects which experience of the workings of the Ordinance has shown to be desirable

The most important amendments effected by the Bill are —

- (a) The replacement of the definitions of “business premises” and “dwelling-house” so as to avoid the use of the word “curtilage” which, it has been represented, occasioned some difficulty of interpretation (clause 2 (a) and (b))

make the paragraph thereof which provides that certain outgoings shall be assumed to be the landlord's burden govern the whole definition and not merely sub-paragraph (ii) of paragraph (A) thereof (*clause 2 (c)*)

(c) The replacement of the definition of "tenement house" so as to make it clear that this is a building containing dwelling-houses in excess of a particular number, and not a dwelling-house occupied by a particular number of persons. The opportunity has also been taken to ensure uniformity by conferring on the Member instead of the Board the power to specify the number of dwelling-houses which will constitute a tenement house. The new definition will also emphasize that a prerequisite of a building being regarded as a tenement house is the provision for the dwelling-houses therein contained of some common service (*clause 2 (e)*)

(d) The amendment of paragraph (ii) of sub-section (2) of section 2 of the principal Ordinance so as to confer on the Board power not only to ascertain the rent at which premises were let at the material date, but where applicable the market cost of the construction of the premises or the market value of the land upon which the premises are built (*clause 2 (f)*)

(e) The amendment of section 5 of the principal Ordinance in order—

(i) To make it clear that the Board has the power under paragraph (f) of sub-section (1) to make an order for the recovery of possession of premises or an order for the recovery of arrears of rent, or both such orders, and the opportunity has been taken to enlarge the paragraph so as to confer on the Board power to make an order for the recovery of possession whether the premises are in the occupation of the tenant or any other person, and also to make an order for the recovery of mesne profits (*clause 3 (a)*)

(ii) To enlarge the powers conferred by paragraph (1) of sub-section (1) so as to enable the Chairman or Deputy Chairman to issue summonses for the attendance of persons before the Board (*clause 3 (b)*)

(iii) To amplify the provisions of paragraph (m) in relation to the awarding of costs by the Board (*clause 3 (c)*)

(iv) To add a new paragraph conferring on the Board power to require a landlord who has, within three years, rebuilt premises on the site of others demolished pursuant to a demolition order to offer to any tenant who applies within a month of receiving notice to quit given to him consequent upon the demolition order a new tenancy on such terms and conditions as the Board may, having due regard to the cost of the erection of the premises, consider reasonable (*clause 3 (e)*)

(f) The amendment of section 9 of the principal Ordinance so as to make it clear that after making any investigation contemplated by the section, the Board is empowered to make such order as the justice of the case may require, provision is also made for an appeal on questions of law or of mixed fact and law (*clause 5*)

(g) The amendment of section 16 so as to clarify the provisions of paragraph (i) of sub-section (1) in certain respects and to enlarge the power of the court as to the punishment imposable for a breach of the proviso to paragraph (j). The opportunity has also been taken to remove from the proviso the penal provisions relating to a breach thereof and to put them in a substantive sub-section amended in a manner considered necessary to give adequate protection to the tenant. Sub-section (7)—which will be renumbered as sub-section (8)—is also amended by deleting the words "on the ground that he requires any premises for his own occupation". It is considered that not only in a case where a landlord obtains possession of premises on the ground that he requires them for his own occupation, but also in any other case where by misrepresentation or concealment of any material fact, he obtains an order for ejectment, the Board should be able to order compensation to be paid to the tenant (*clause 6*)

(h) The amendment of section 22 so as to require every landlord to issue a proper receipt for rent (*clause 8*)

(i) The amendment of sub-section (1) of section 25 so as to widen the provisions of the sub-section. It has been represented that

the act complained of which had the effect of depriving the tenant of water or any other service (*clause 9*)

- (j) The amendment of sub-section (2) of section 29 so as to provide that a sub-tenant who holds over against his superior tenant shall be liable to pay to such tenant a sum equal to five times the standard rent for each day on which he holds over or such smaller sum as the Board may in any case determine. A similar amendment has been made to sub-section (4) (which has been renumbered sub-section (5)) which relates to the tenant holding over against his landlord (*clause 11*)
- (k) The addition of new sections 33A, 33B and 33C which will make provision respectively for the service of documents, the right of entry into premises and the power of the Governor in Council to authorize by Order the Chairman or a qualified Deputy Chairman to exercise the powers vested in the Board. The provisions of the new section 33B are not new but are merely transferred from section 9 of the principle Ordinance (where they are to be found as sub-section (5)) to a more appropriate position

It is considered that most of the matters, other than the assessment of standard rent, heard by the Board could more appropriately, and possibly more expeditiously, be heard by the Chairman or Deputy Chairman sitting alone. Furthermore, the lay members of the Board are for the most part busy men and often attend, at considerable personal inconvenience, a large number of meetings of the Board each month, only a small percentage of which are meetings at which standard rents are assessed. It is for these reasons that it is considered that the provisions of the new section 33C are desirable (*clause 14*)

It is not expected that any additional expenditure of public moneys will be incurred if the provisions of this Bill become law

Nairobi,
16th April, 1951

J BASIL HOBSON,
Acting Attorney General