



THE
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Colony and Protectorate of Kenya.

GOVERNMENT NOTICE No 621

HIS Excellency the Governor has approved of the following Bill being introduced at the next session of the Legislative Council

G R SANDFORD,
for Colonial Secretary

A Bill relating to Trustees

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 Trustee Short title Ordinance, 1929 ”

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

5 “ Authorized investments ” mean investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law,

“ Contingent right ” as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent,

“ Convey ” and “ conveyance ” as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance,

“ Sale ” includes an exchange,

“ Court ” means the Supreme Court of Kenya or a judge thereof,

25 “ Instrument ” includes Ordinance

“ Land ” includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings and other corporeal hereditaments, also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, but not an undivided share in land, and in this definition “ mines ” and “ minerals ” include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof, and

35 “ hereditaments ” means immovable property which under an intestacy would devolve on an heir,

“ Mortgage ” and “ mortgagee ” include a charge or chargee by way of legal mortgage or under the Registration of Titles Ordinance and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee,

“ Pay ” and “ payment ” as applied in relation to stocks and securities and in connection with the expression “ into court ” include the deposit or transfer of the same in or into court ,

“ Personal representative ” means the executor, original 5
or by representation, or administrator for the time being of a deceased person ,

“ Possession ” includes receipt of rents and profits or the right to receive the same, if any, “ income ” includes rents and profits, and “ possessed ” applies to receipt of income of 10
and to any vested estate less than a life interest in possession or in expectancy in any land ,

“ Property ” includes immovable and movable property, and any estate, share and interest in any property, immovable or movable, and any debt, and any thing in action, and any 15
other right or interest, whether in possession or not ,

“ Rights ” includes estates and interests ,

“ Securities ” includes stocks, funds and shares, and “ securities payable to bearer ” includes securities transferable by delivery or by delivery and endorsement , 20

“ Stock ” includes fully paid-up shares, and so far as relates to vesting orders made by the court under this Ordinance, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, 25
and any share or interest therein ,

“ Transfer ” in relation to stock or securities includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee , 30

“ Trust ” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception, the expressions “ trust ” and “ trustee ” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties 35
incident to the office of a personal representative, and “ trustee ” where the context admits, includes a personal representative, and “ new trustee ” includes an additional trustee ,

“ Trust corporation ” means the Public Trustee or a corporation appointed by the court in any particular case to 40
be a trustee .

“ Trust for sale ” in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale, “ trustees for sale ” 45
means the persons (including a personal representative) holding land on trust for sale ,

Application of Ordinance

3. (1) This Ordinance, except where otherwise expressly provided, applies to trusts including, so far as this Ordinance applies thereto, executorships and administratorships consti- 50
tuted or created either before or after the commencement of this Ordinance

(2) The powers conferred by this Ordinance on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument

(3) This Ordinance does not affect the legality or validity of anything done before the commencement of this Ordinance, except as otherwise hereinafter expressly provided

PART I

INVESTMENTS

10 **4** A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say — Authorised investments

15 (a) In any securities in which trustees in England are for the time being authorised by the law of England to invest trust funds,

20 (b) In any securities the interest on which is for the time being guaranteed by the Imperial Parliament or by the Government of the Colony, or in any public debentures issued under the authority of and guaranteed by any Ordinance,

25 (c) On the purchase of immovable property in the Colony held for an estate in fee simple or for a term of years of which not less than forty years is unexpired and which is not subject to a rent exceeding four per centum of the unimproved value thereof or to any condition of re-entry except for non-payment of rent, or on first mortgage thereon,

and may also from time to time vary any such investment

30 **5** Every power conferred by the last preceding section shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust or by law with respect to the investment of the trust funds Discretion of trustees

35 **6** A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law Power to retain investment which has ceased to be authorised

40 **7** (1) A trustee having power to invest in freehold securities may invest and shall be deemed always to have had power to invest on mortgage of property held for an unexpired term of not less than forty years, and not subject to a reservation of rent greater than four per centum of the unimproved value thereof, or to any right of redemption or to any condition for re-entry, except for non-payment of rent Enlargement of powers of investment

45 (2) A trustee having power to invest freehold securities may accept the security in the form of a legal charge under the Registration of Titles Ordinance

Cap 142

50 (3) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may invest in the debenture stock of railway company or such other company as aforesaid

Investment in
bearer
securities

8 (1) A trustee may, unless expressly prohibited by the instrument creating the trust retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments

Provided that securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company 5

A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this sub-section, be deemed to be such an express prohibition as aforesaid 10

(2) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property 15

Loans and
investments by
trustees not
chargeable as
breaches of
trust

9 (1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court— 20

(a) that in making the loan trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and 30

(b) that the amount of the loan does not exceed two third parts of the value of the property as stated in the report, and

(c) that the loan was made under the advice of the surveyor or valuer expressed in the report 35

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title 40

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted 45

(4) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement of this Ordinance 50

Liability for
loss by reason
of improper
investment

10 (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed

an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest

(2) This section applies to investments made before as well as after the commencement of this Ordinance

11 (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made provided interest be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property

Powers
supplementary
to powers of
investment

(2) On a sale of land for an estate in fee simple or for a term having at least forty years to run by trustees, the trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a mortgage or legal charge of the land sold, with or without the security of any other property, such mortgage or legal charge if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire to the full value thereof

The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such mortgage or legal charge or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage or legal charge

(3) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement—

- (a) for the reconstruction of the company,
- (b) for the sale of all or any part of the property and undertaking of the company to another company,
- (c) for the amalgamation of the company with another company,
- (d) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities

(4) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may, as to all or any of such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration

that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith

Provided that the consideration for any such assignment shall be held as capital money of the trust 5

(5) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust 10

(6) Where the loan referred to in sub-section (1), or the sale referred to in sub-section (2), of this section is made under the order of the court, the powers conferred by those sub-sections respectively shall apply only if and as far as the court may by order direct 15

Power to
deposit money
at bank and
to pay calls

12 (1) Trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income 20

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust

PART II

GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES 25

General Powers

Power of
trustees for
sale to sell by
auction, etc

13 (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss 30

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof

Power to sell
subject to
depreciatory
conditions

14 (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate 40

(2) No sale made by a trustee shall after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made 45

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid 50

(4) This section applies to sales made before or after the commencement of this Ordinance

15 (1) The receipt in writing of a trustee for any money, securities, or other movable property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or
5 delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof

Power of
trustees to
give receipts

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt
10 for the proceeds of sale or other capital money arising under a disposition on trust for sale of land

(3) This section applies notwithstanding anything to the contrary in the instrument if any creating the trust

16 A personal representative, or two or more trustees
15 acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust or by law, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they
20 think fit—

Power to
compound
liabilities

(a) accept any property, movable or immovable, before the time at which it is made transferable or payable, or

(b) sever and apportion any blended trust funds or property, or

25 (c) pay or allow any debt or claim on any evidence that he or they think sufficient, or

(d) accept any composition or any security, movable or immovable, for any debt or for any property, movable or immovable, claimed, or

30 (e) allow any time of payment of any debt, or

(f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust,

35 and for any of those purposes may enter into give, execute, and do such agreements instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith

40 **17** (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in,
45 or mortgage of all or any part of the trust property for the time being in possession

Power to raise
money by sale,
mortgage, etc

(2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable
50 purposes

18 No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof

Protection to
purchasers and
mortgagees
dealing with
trustees

**Devolution of
powers or
trusts**

19 (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust

(3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation

(4) In this section "personal representative" does not include an executor who has renounced or has not proved

**Power to
insure**

20 (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, for the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so

**Application of
insurance
money where
policy kept
up under any
trust, power or
obligation**

21 (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf, or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, be capital money for the purposes of the trust

(2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust, or if there are no trustees capable of giving a discharge therefor, into court

(3) Any such money—

(a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust,

(b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust

(5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any law or otherwise

(6) This section applies to policies effected either before or after the commencement of this Ordinance, but only to money received after such commencement

22 Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property

Deposit of documents for safe custody

23 (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

Reversionary interests, valuations, and audit

(a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit,

(b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments,

(c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable,

(d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release,

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—

(a) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged, or

(b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested,

unless and until required in writing so to do by some person, or the guardian of some person beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken

Provided that nothing in this sub-section shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any law, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust 52

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require, and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income 15 20

**Power to
employ
agents**

24 (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether an advocate, banker, stockbroker or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith 25 30

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating or otherwise administering any property, real or personal, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside the Colony or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby 35 40

(3) Without prejudice to such general power of appointing agents as aforesaid— 45

(a) a trustee may appoint an advocate to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the advocate to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration, 50 55

(b) a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment and the production

of any such deed by the advocate shall have the same validity and effect as if the person appointing the advocate had not been a trustee,

- 5 (c) a trustee may appoint a banker or advocate to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or advocate to have the custody of, and to produce, the policy of insurance with a receipt signed by the trustee, and a
10 trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment

Provided that nothing in this sub-section shall exempt a trustee from any liability which he would have incurred if this
15 Ordinance and any enactment replaced by this Ordinance had not been passed, in case he permits any such money, valuable consideration or property to remain in the hands or under the control of the banker or advocate for a period longer than is reasonably necessary to enable the banker or advocate, as
20 the case may be, to pay or transfer the same to the trustee

This sub-section applies whether the money or valuable consideration or property was or is received before or after the commencement of this Ordinance

- 25 **25** Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute
30 or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such
35 other share, either in his or their own right or in a fiduciary capacity

Power to
concur with
others

- 40 **26** (1) A trustee intending to remain out of the Colony for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from the Colony of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons

Power to
delegate
trusts during
absence
abroad

- 45 Provided that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this sub-section

- 50 (2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor

- 55 (3) The power of attorney shall not come into operation unless and until the donor is out of the Colony, and shall be revoked by his return

- (4) The power of attorney shall be attested by at least one witness and shall be registered under the Crown Lands Ordinance or the Registration of Titles Ordinance within ten

Cap 140
Cap 142

days after the execution thereof with a statutory declaration by the donor that he intends to remain out of the Colony for a period exceeding one month from the date of such declaration, or from a date therein mentioned

(5) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee 5

(6) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed 10 15

(7) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by law or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section 20 25

(8) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust 30

Indemnities

Protection
against
liability in
respect of
rents and
covenants

27 (1) Where a personal representative or trustee liable as such for— 35

(a) any rent, covenant, or agreement reserved by or contained in any lease, or

(b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent-charge, or 40

(c) any indemnity given in respect of any rent, covenant, or agreement referred to in either of the foregoing paragraphs,

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof, and thereafter— 45 50

(1) he may distribute the residuary movable and immovable estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the 55

fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant,

(1) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust

(3) In this section, "lease" includes an under-lease and an agreement for a lease or under-lease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease, "grant" applies to a grant whether the rent is created by limitation grant, reservation, or otherwise and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant, "lessee" and "grantee" include persons respectively deriving the title under them

28 (1) With a view to the conveyance to or distribution among the persons entitled to any movable or immovable property, the trustees of a settlement or of a disposition on trust for sale or personal representatives may give notice by advertisement in the Gazette, and in a daily or weekly newspaper circulating in the Colony, and such other like notices, including notices elsewhere than in the Colony, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates

Protection by
means of
advertisements

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice, and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution, but nothing in this section—

(a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person other than a purchaser, who may have received it, or

- (b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain

(3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust 5

Protection in regard to notice

29 A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, 10 matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate

Exoneration of trustees in respect of certain powers of attorney

30 A trustee acting or paying money in good faith 15 under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the 20 power, if this fact was not known to the trustee at the time of his so acting or paying

Provided that—

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to 25 whom the payment is made,
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee

Implied indemnity of trustees

31 (1) A trustee shall be chargeable only for money and 30 securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust money 35 or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about 40 the execution of the trusts or powers

Maintenance, Advancement and Protective Trusts

Power to apply income for maintenance and to accumulate surplus income during a minority

32 (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges 45 affecting that property—

- (i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, edu- 50 cation or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there

is—

(a) any other fund applicable to the same purpose, or

(b) any person bound by law to provide for his maintenance or education, and

- 5 (ii) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees may thenceforth at their sole discretion pay the whole or such part, if any, as they may think fit of the income of that property and of any accretion thereto under sub-section (2) of this section to
10 him, until he either attains a vested interest therein or dies, or until failure of his interest

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have
15 regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes, and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as
20 practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied

(2) During the infancy of any such person, if his interest
25 so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows —

30 (i) If any such person—

(a) attains the age of twenty-one years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest, or

35 (b) on attaining the age of twenty-one years or on marriage under that age becomes absolutely entitled to the property from which such income arose,

40 the trustees shall hold the accumulations in trust for such person absolutely and so that the receipt of such person after marriage, and though still an infant shall be a good discharge, and

45 (ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes,

50 but the trustees may, at any time during the infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income
55 of the property but it applies to a future or contingent legacy by the parent of or a person standing *in loco parentis*

to, the legatee, if and for such period as under the general law the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five pounds per 5
centum per annum

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuity for the same period for which the annuity is payable, save that in any 10
case accumulations made during the infancy of the annuity shall be held in trust for the annuitant or his personal representatives absolutely

(5) This section does not apply where the instrument, if any, under which the interest arises came into operation before 15
the commencement of this Ordinance

**Power of
advancement**

33 (1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of 20
the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or 25
reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs 30

Provided that—

- (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property, and 35
- (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share, and
- (c) no such payment or application shall be made so as 40
to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application 45

(2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in and conversion and such money or securities or the proceeds of such sale, calling in and conversion are not by law or in equity considered as land 50

(3) This section does not apply to trusts constituted or created before the commencement of this Ordinance

**Protective
trusts**

34 (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called "the 55
principal beneficiary") for the period of his life or for any

less period, then, during that period (in this section called "the trust period") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely —

- 5 (1) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express
10 power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period,
15 whichever first happens, this trust of the said income shall fail or determine

- (ii) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon
20 trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons (that is to say)—

- (a) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote
25 issue, if any, or

- (b) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead,
30 be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be,

- as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think
35 fit

(2) This section does not apply to trusts coming into operation before the commencement of this Ordinance, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust

- 40 (3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust be liable to be set aside

PART III

APPOINTMENT AND DISCHARGE OF TRUSTEES

- 45 **35.** (1) Where, at the commencement of this Ordinance, Limitation of the number of trustees there are more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four,
50 and thereafter the number shall not be increased beyond four

(2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Ordinance—

- (a) the number of trustees thereof shall not in any case
55 exceed four, and where more than four persons are named as such trustees, the four first named (who

are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy,

(b) the number of the trustees shall not be increased 5
beyond four

(3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply—

(a) in the case of land vested in trustees for charitable, 10
ecclesiastical, or public purposes, or

(b) where the net proceeds of the sale of the land are held for like purposes

Power of
appointing
new or
additional
trustees

36 (1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or 15
remains out of the Colony for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this 20
Ordinance on the number of trustees—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or

(b) if there is no such person, or no such person able and 25
willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representative of the last surviving or continuing trustee,

may, by writing, appoint one or more other persons (whether 30
or not being the person exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the Colony, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid

(2) Where a trustee has been removed under a power 35
contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, 40
but subject to the restrictions imposed by this Ordinance on the number of trustees

(3) Where a corporation being a trustee is or has been dissolved either before or after the commencement of this Ordinance, then, for the purposes of this section and of any 45
enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation

(4) The power of appointment given by sub-section (1) of 50
this section or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved 55
the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the court or otherwise, then and in any such case—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or

(b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the instrument, if any, creating the trust or any law provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law or by assurance or otherwise vested in him shall have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section

(9) Where a lunatic or defective, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee under this section, unless leave has been given by a judge to make the appointment

37 (1) On the appointment of a trustee for the whole or any part of trust property—

(a) the number of trustees may, subject to the restrictions imposed by this Ordinance on the number of trustees, be increased, and

(b) a separate set of trustees not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed then, save as hereinafter provided, one separate trustee may be so appointed, and

Supplemental provisions as to appointment of trustees

(c) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done

(2) Nothing in this Ordinance shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed would not be able to give valid receipts for all capital money arising under the trust

Evidence as to
a vacancy
in a trust

38 (1) A statement, contained in any instrument coming into operation after the commencement of this Ordinance by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the Colony for more than twelve months or refuses or is unfit to act or is incapable of acting or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid

Retirement of
trustee
without a new
appointment

39 (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Ordinance without any new trustee being appointed in his place

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done

Vesting of
trust property
in new or
continuing
trustees

40 (1) Where by a deed a new trustee is appointed to perform any trust, then—

(a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall

operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust, the estate, interest or right to which the declaration relates, and

- 5 (b) if the deed is made after commencement of this Ordinance and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had
10 contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—

- 15 (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees
20 alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates, and

- (b) if the deed is made after the commencement of this Ordinance and does not contain such a declaration,
25 the deed shall subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have
30 been made

- (3) An express vesting declaration, whether made before or after the commencement of this Ordinance, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory
35 requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in sub-sections (1) and (2) of this section, as the
40 case may require such estates interests and rights as are capable of being and ought to be vested in those persons

(4) This section does not extend—

- (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed
45 on trust for securing debentures or debenture stock,
(b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing
50 expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any enactment or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture,
55 (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Ordinance or Act of Parliament

In this sub-section ' lease ' includes an under-lease and an agreement for a lease or under-lease

(5) For purposes of registration of the deed in any registry the person or persons making the declaration, expressly or impliedly, shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Ordinance

PART IV

POWERS OF THE COURT

Appointment of New Trustees

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Power of court
to appoint new
trustees

41 (1) The court may, whenever it is expedient to appoint a new trustee or new trustees and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee

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In particular and without prejudice to the generality of the foregoing provision, the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a lunatic or a defective, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved

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(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated

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(3) Nothing in this section gives power to appoint an executor or administrator

Power to
authorise
remuneration

42 Where the court appoints a person or corporation, other than the Public Trustee, to be a trustee either solely or jointly with another person, the court may authorise such person or corporation to charge such remuneration for his or its services as trustee as the court may think fit

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Powers of new
trustee
appointed by
the court

43 Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assuance, or otherwise, vested in him, have the same powers, authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust

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Vesting Orders

Vesting orders
of land

44 In any of the following cases, namely —

(i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power,

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(ii) Where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—

(a) is under disability, or

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(b) is out of the jurisdiction of the court, or

(c) cannot be found, or, being a corporation, has been dissolved,

- (iii) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land,
- 5 (iv) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead,
- 10 (v) Where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land,
- 15 (vi) Where a trustee jointly or solely entitled to or possessed of any interest in land or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement,
- 20 (vii) Where land or any interest therein is vested in a trustee, whether by way of mortgage or otherwise, and it appears to the court to be expedient,

the court may make an order (in this Ordinance called a
 25 "vesting order") vesting the land interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct

Provided that—

- 30 (a) where the order is consequential on the appointment of a trustee, the land or interest therein shall be vested for such estate as the court may direct in the persons who on the appointment, are the trustees, and
- 35 (b) where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, the land, interest or
- 40 right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint

45 Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land

Orders as to
contingent
rights of
unborn
persons

46 Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability

Vesting order
in place of
conveyance by
infant
or trustee

Vesting order
consequential
on order for
sale or
mortgage
of land

47 Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Ordinance, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other person

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Vesting order
consequential
on judgment
for specific
performance,
etc

48 Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare—

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(a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Ordinance, or

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(b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Ordinance,

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and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees

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Effect of
vesting order

49 A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

(a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the court directs, or

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(b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the court directs,

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and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order

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Power to
appoint
person to
convey

50 In all cases where a vesting order can be made under any of the foregoing provisions the court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order made under the appropriate provision

50

51 (1) In any of the following cases, namely —

Vesting
orders as to
stock and
things in
action

- (i) Where the court appoints or has appointed a trustee,
or where a trustee has been appointed out of court
under any statutory or express power,
- 5 (ii) Where a trustee entitled, whether by way of mortgage
or otherwise alone or jointly with another person to
stock or to a thing in action—
 - (a) is under disability, or
 - (b) is out of the jurisdiction of the court, or
 - 10 (c) cannot be found, or, being a corporation, has been
dissolved, or
 - (d) neglects or refuses to transfer stock or receive the
dividends or income thereof, or to sue for or
recover a thing in action, according to the
15 direction of the person absolutely entitled there-
to, for twenty-eight days next after a request
in writing has been made to him by the person
so entitled, or
 - (e) neglects or refuses to transfer stock or receive the
20 dividends or income thereof, or to sue for or
recover a thing in action for twenty-eight days
next after an order of the court for that purpose
has been served on him,
 - (iii) Where it is uncertain whether a trustee entitled
25 alone or jointly with another person to stock or to a
thing in action is alive or dead,
 - (iv) Where stock is standing in the name of a deceased
person whose personal representative is under
disability,
 - 30 (v) Where stock or a thing in action is vested in a trustee
whether by way of mortgage or otherwise and it
appears to the court to be expedient,

the court may make an order vesting the right to transfer or
call for a transfer of stock, or to receive the dividends or
35 income thereof, or to sue for or recover the thing in action,
in any such person as the court may appoint

Provided that—

- (a) Where the order is consequential on the appointment
of a trustee, the right shall be vested in the persons
40 who, on the appointment, are the trustees, and
- (b) Where the person whose right is dealt with by the
order was entitled jointly with another person, the
right shall be vested in that last-mentioned person
either alone or jointly with any other person whom
45 the court may appoint

(2) In all cases where a vesting order can be made under
this section, the court may, if it is more convenient, appoint
some proper person to make or join in making the transfer

50 Provided that the person appointed to make or join in
making a transfer of stock shall be some proper officer of the
bank, or the company or society whose stock is to be
transferred

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Ordinance, may transfer the stock to himself or any other person, according to the order, and all corporations, associations and companies shall obey every order under this section according to its tenor 5

(4) After notice in writing of an order under this section it shall not be lawful for any corporation, association or company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order 10

(5) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Ordinance is to be exercised

(6) The provisions of this Ordinance as to vesting orders shall apply to shares in ships registered under the Acts of Parliament or under any Ordinance or Order in Council relating to merchant shipping as if they were stock 15

Vesting orders
of charity
property

52 The powers conferred by this Ordinance as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction 20 25

Vesting orders
in relation to
infant's
beneficial
interests

53 Where an infant is beneficially entitled to any property, the court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order—

(a) appointing a person to convey such property, or 30

(b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit 35

Orders made
upon certain
allegations to
be conclusive
evidence

54 Where a vesting order is made as to any land under this Ordinance founded on an allegation of any of the following matters, namely—

(a) the personal incapacity of a trustee or mortgagee, or

(b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, or 40

(c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor, or 45

(d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage, is living or dead, or 50

(e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested,

5 the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order, but this section does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order

10 if improperly obtained

Jurisdiction to make other Orders

55 (1) Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase,

15 investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees

20 either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit, and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid

25 or borne as between capital and income

Power of court to authorise dealings with trust property

(2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order

(3) An application to the court under this section may

30 be made by the trustees, or by any of them, or by any person beneficially interested under the trust

56 (1) An order under this Ordinance for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on

35 the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof

Persons entitled to apply for orders

(2) An order under this Ordinance concerning any interest

40 in land, stock, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage

57 Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and

50 give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his advocate at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to give judgment in absence of a trustee

Power to
charge costs
on trust
estate

58 The court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just 5

Power to
relieve trustee
from personal
liability

59 If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same 10 15

Power to
make
beneficiary
indemnity for
breach of
trust

60 (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him 20 25

(2) This section applies to breaches of trust committed as well before as after the commencement of this Ordinance

Payment into Court

Payment into
court by
trustees

61 (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court, and the same shall, subject to rules of court, be dealt with according to the orders of the court 30

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court 35

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others 40

(4) Where any such money or securities are deposited with any banker broker, or other depository, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court 45

(5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered 50

62 This Ordinance, and every order purporting to be made under this Ordinance, shall be a complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it

Indemnity for
acts done in
pursuance to
Ordinance

General Provisions

63 The Chief Justice may make Rules of Court regulating the practice and procedure in respect of any proceedings in the Supreme Court under this Ordinance

Rules of
Court

64 The provisions of this Ordinance bind the Crown

Ordinance
binding on
Crown

OBJECTS AND REASONS

The law relating to Trusts and Trustees at present in force in Kenya is the Trustee Act 1893, of United Kingdom, by virtue of its being a statute of general application. This Act was, however, repealed in 1925 and a new Act was passed consolidating the then existing law and introducing a number of new provisions.

The Bill has been prepared on the lines of the latter Act with such variations as are necessary to local circumstances and conditions.

Various new powers in regard to mortgaging, raising money by sale or mortgage, employing agents, and delegating discretions are provided for trustees. Clause 26 enables a trustee, who intends to remain out of the Colony for a period exceeding one month, to delegate to any person the execution or exercise during his absence of all or any trusts, powers and discretions vested in him as such trustee. It is considered that such provision is necessary in a country such as this where trustees almost invariably have occasion to leave the Colony temporarily every few years.

Circumstances
in which
pension may
be granted

Section 7 of the Principal Ordinance proposed to be amended —

7 No pension, gratuity or other allowance shall be granted to any European officer except on his retirement from the public service in one of the following cases—

- (a) on or after attaining the age of fifty years, or, in the case of transfer to other public service, on or after attaining the age at which an European officer is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity,
- (b) in the case of an officer who was appointed to the service of one of the East African Dependencies before the commencement of this Ordinance, after completing twenty years' East African service Provided that no such service shall be counted if it is not in itself pensionable or allowed to be reckoned for pension,
- (c) on the abolition of his office,
- (d) on compulsory retirement for the purpose of facilitating improvement in the organisation of the department to which he belongs by which greater efficiency and economy can be effected
- (e) on medical evidence to the satisfaction of the Governor in Council or the Secretary of State that he is incapable by reason of some infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent,
- (f) in the case of removal on the ground of inefficiency as hereinafter provided

GOVERNMENT NOTICE NO 622

HIS EXCELLENCY THE GOVERNOR HAS APPROVED THE FOLLOWING
BILL BEING INTRODUCED AT THE NEXT SESSION OF THE LEGISLATIVE
COUNCIL

G R SANDFORD,
for Colonial Secretary

**A Bill to Amend the European Officers' Pensions
Ordinance, 1927**

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 European Short title
Officers' Pensions (Amendment) Ordinance, 1929,” and shall
be read as one with the European Officers' Pensions
Ordinance, 1927, hereinafter referred to as “ the Principal
5 Ordinance ”

2 Section 7 of the Principal Ordinance is hereby Amendment
amended as follows — of section 7 of
the Principal
Ordinance

(a) By the addition at the end of paragraph (a) of the
following —

10 “ or, in the case of an officer who becomes a
Governor within the meaning of the Acts of
Parliament shortly entitled the Pensions
(Governors of Dominions, etc) Act, 1911, and
the Pensions (Governors of Dominions, etc)
15 Act, 1913, or any Act of Parliament replacing
or amending the same upon retirement in any
circumstances rendering him eligible for a
pension under any of the said Acts

(b) By the addition of the following paragraph after
20 paragraph (f) —

“ (g) On retirement in circumstances rendering him
eligible for a pension under the Pensions
(Governors of Dominions, etc) Act, 1911, or
any Act amending or replacing the same ”

Section 9 of the Principal Ordinance proposed to be replaced —

Age of
compulsory
retirement

9 It shall be lawful for the Governor in Council with the approval of the Secretary of State to require an European officer to retire from the service of Kenya at any time after he attains the age of fifty years, or, in case of an officer who was appointed to the service of one of the East African Dependencies before the commencement of this Ordinance, after he completes twenty years' East African service

Section 11 of the Principal Ordinance proposed to be replaced —

Liability of
pensioners to
be called upon
to take further
employment

11 Every pension granted to an European officer shall be subject to the following condition —

Unless or until he has attained the age of fifty years or has completed twenty years' East African service, he may, if physically fit for service, be called upon by the Secretary of State to accept, in lieu of his pension, an office, whether in Kenya or in other public service, not less in value, due regard being had to circumstances of climate, than the office which he had at the date of the grant of his pension

If a pensioner so called upon declines to accept the office for which he may have been selected, the payment of his pension may be suspended until he has attained the age of fifty years

Section 13 of the Principal Ordinance proposed to be amended —

Gratuity
affected by
re-employment

13 If any European officer to whom a gratuity without pension has been granted under this Ordinance is re-appointed to any office in the service of Kenya, his previous service may, with the approval of the Secretary of State, be taken into account for the purposes of pension, if he refunds the gratuity on such re-appointment

3 Section 9 of the Principal Ordinance is hereby repealed and the following section is substituted therefor — Age of compulsory retirement

5 “ 9 It shall be lawful for the Governor in Council, with the approval of the Secretary of State, to require an European officer to retire from the service of Kenya—

10 (a) in the case of an officer who was appointed to the service of one of the East African Dependencies before the commencement of this Ordinance, at any time after he attains the age of fifty years or completes twenty years' East African service whichever is the earlier,

(b) in the case of any other officer, at any time after he attains the age of fifty years

15 4 Section 11 of the Principal Ordinance is hereby repealed and the following section is substituted therefor — Liability of pensioners to be called upon to take further employment

“ 11 Every pension granted to an European officer shall be subject to the following conditions —

20 (a) in the case of an officer who was appointed to the service of one of the East African Dependencies before the commencement of this Ordinance, unless or until he has attained the age of fifty years or has completed twenty years' East African service, whichever is the earlier,

25 (b) in the case of any other officer, unless or until he has attained the age of fifty years,

30 he may, if physically fit for service be called upon by the Secretary of State to accept, in lieu of his pension, an office, whether in Kenya or in other public service, not less in value, due regard being had to circumstances of climate, than the office which he had at the date of the grant of his pension

35 If a pensioner so called upon declines to accept the office for which he may have been selected, the payment of his pension may be suspended until he has attained the age of fifty years

5 Section 13 of the Principal Ordinance is hereby amended by the insertion of the words “ or in other public service ” after the word ‘ Kenya ’ in line 3 thereof Amendment of section 13 of the Principal Ordinance

OBJECTS AND REASONS

The object of the Bill is to make certain amendments in the European Officers Pensions Ordinance in accordance with the instructions of the Secretary of State and with a view to making the Ordinance more satisfactory

Clause 2—The Principal Ordinance provides that an officer who has been transferred from the Colony may be granted a pension in respect of his service in the Colony on his final retirement if he has attained the age at which pension is granted by his last employer. Under the Pensions (Governors of Dominions, etc.) Acts, which regulate the grant of pensions to Governors, the pensionable age is 60, but the Acts also provide that in certain circumstances a Governor who has not attained the age of 60, but for whom further employment as a Governor is not available, may be granted a reduced pension. Cases of this nature may occur in which, although pension for service as Governor may be granted from Imperial funds, the officers concerned might be held

not to be eligible for Colonial pension, inasmuch as they had not attained the age, *i.e.*, 60, at which the Governors are normally permitted to retire with pension. The object of this clause is accordingly to protect the position of an officer who has served in the Colony in an office in respect of which pension may be paid from the funds of the Colony, that is to say, in a pensionable office other than that of Governor, and who afterwards becomes a Governor and retires in circumstances entitling him to a pension from Imperial funds but before attaining the age of 60 years.

Clause 3—This clause is designed to make clearer the intention of section 9 of the Principal Ordinance. The point of the section is to preserve the right of officers appointed before the commencement of the Ordinance to retire after 20 years' East African service, and the right of Government to retire them after the same period.

Clause 4—According to the strict interpretation of the wording of the existing section 11 it would appear that an officer appointed before the commencement of the Ordinance is liable to recall at any time until he has completed 20 years' East African service, although he may be over the age of 50. The clause as it is now worded exempts from further service an officer who has attained the age of 50 years or has completed 20 years' East African service, whichever first happens.

Clause 5—The extension of the concession to cases of re-employment outside Kenya is in accordance with the present general practice.

GOVERNMENT NOTICE NO 623

His Excellency the Governor has approved the following Bill being introduced at the next session of the Legislative Council

G R SANDFORD,
for Colonial Secretary

A Bill to Provide for the Organisation, Discipline, Powers and Duties of the Police Force and for Matters Incidental Thereto

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 Police Ordinance, 1929,” and shall come into operation on such date as the Governor by notice in the Gazette may appoint

Short title

2 In this Ordinance, unless the context otherwise requires —

Interpretation

“Police officer” means any person who is a member of the Police Force,

“Commissioner” means the Commissioner of Police,

“Inspector” includes a Chief Inspector, an Inspector, a Sergeant Instructor, and an Assistant Inspector,

“Commissioned Officer” means any police officer of or above the rank of Assistant Superintendent,

“Non-Commissioned Officer” means any police officer of or above the rank of European Constable but below the rank of Assistant Superintendent,

“Subordinate officer” means any police officer below the rank of European Constable,

“Follower” means and includes any tracker, porter, syce, boatboy, sweeper or female searcher attached to or employed in connection with the Police Force,

“Property” includes any movable property, money or valuable security,

“Imprisonment” means imprisonment of either description

CONSTITUTION AND ADMINISTRATION

3 The Police Force (to be known as the “Kenya Police”) shall be formally enrolled and shall consist of such number of commissioned officers, non-commissioned officers and subordinate officers as may from time to time be ordered by the Governor

Constitution of Police Force

4 The Police Force shall, unless otherwise ordered by the Governor, consist of the following ranks —

Composition of Force.

Commissioned Officers

Commissioner
Deputy Commissioner
Assistant Commissioner
Superintendents
Assistant Superintendents

Non-Commissioned Officers

Chief Inspectors

Inspectors

Sergeant Instructors

Assistant Inspectors

European Constables

Subordinate Officers

Chief Sub-Inspectors

Sub-Inspectors, first grade

Sub-Inspectors, second grade 10

Assistant Sub-Inspectors, first grade

Assistant Sub-Inspectors, second grade

Sergeants, first grade

Sergeants, second grade

Sergeants, third grade 15

Corporals

Constables, first grade

Constables, second grade

Constables, third grade

Bandsmen 20

Buglers

**Special
Departmental
Police**

5 The Governor may from time to time cause to be enrolled for special departmental duties such number of men as he shall think fit to be Railway, Harbour Water or other police, and may by regulations provide for the constitution and administration thereof Subject to such regulations such police shall be police officers within the meaning of this Ordinance and shall have all such powers and perform all such duties as the Commissioner, with the approval of the Governor, after consultation with the High Commissioner for Transport, may from time to time direct 25 30

**Functions of
Police Force**

6 The Police Force shall be employed in and throughout the Colony for preserving the peace, for the prevention and detection of crime, for the apprehension of offenders against the peace, and for the performance of such duties shall be entitled to carry arms 35

**Employment of
Police Force in
times of
emergency**

7 (1) The Governor may, in case of war or other emergency, employ the Police Force or any part thereof in the defence of the Colony

Provided that, for the purposes of interior economy, the Police Force shall remain under the command of the Commissioner or such commissioned or non-commissioned officer as may be present 40

(2) When called upon to serve with the Regular Forces, or when a state of active service has been declared as aforesaid, the Police Force or such part thereof as may be so employed shall be subject to military law 45

8 (1) The Commissioner shall, subject to the orders and directions of the Governor, have the command, superintendence and direction of the Police Force, and, subject to the provisions of this Ordinance and of such regulations as may
 5 from time to time be made by the Governor, may make such appointments, promotions and reductions in ranks and grades other than those of commissioned officers, as he may see fit

General powers
of
Commissioner

(2) The Commissioner may, subject to the orders and directions of the Governor, from time to time make orders for
 10 the general government of police officers in relation to their enlistment, transfer (including expenses in connection therewith), discharge, training, arms and accoutrements, clothing and equipment, places of residence, classification and particular services, as well as their distribution and inspection and such
 15 other orders as he may deem expedient for preventing neglect and for promoting efficiency and discipline on the part of police officers in the discharge of their duties

(3) Any act or thing which may be done, ordered or performed by the Commissioner may, subject to the orders and
 20 directions of the Commissioner, be done, ordered or performed by the Deputy Commissioner or the Assistant Commissioner

9 (1) The administration of the Police Force throughout the Colony shall, subject to the orders and directions of the Governor, be vested in the Commissioner. Provided that
 25 in matters connected with the distribution of the Police Force and the prevention and detection of crime in any place, the Commissioner shall consult the administrative officer in charge thereof

Administration
of Police Force

(2) The administration of the Police Force in any
 30 place shall be vested in such police officer as may be posted in charge thereof. Such officer shall be subordinate to and shall carry out the orders of the Commissioner in all matters connected with the administration, discipline, interior economy and training of the Force under him. Provided that
 35 in matters connected with the preservation of the peace such officer shall be subject to the general control and shall carry out and obey the orders and directions of the administrative officer in charge of such place

(3) In any place where there shall be no commissioned officer or inspector in charge of the Police Force stationed
 40 therein, the administrative officer in charge thereof shall exercise local control over such police, but shall be subject to the orders and directions of the Commissioner in respect of the discipline and interior economy thereof. The training
 45 given to such police shall be in accordance with the standing orders laid down by the Commissioner

10 Every police officer in charge of a police station shall keep a general diary or occurrence book in such form as the
 Commissioner may from time to time direct, and shall record
 Police officers
to keep
prescribed
books and to
render returns

therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property which shall have been taken from their possession or otherwise, and the names of any witnesses who shall have been examined, and shall also keep such further books and records and shall render such returns to the Commissioner as the Commissioner may from time to time direct

Administrative
officers to keep
books and to
render returns
in certain cases

11 The administrative officer in charge of any place where there is a detachment of police but no commissioned officer or inspector in charge shall keep such books and shall render such returns to the Commissioner as the Commissioner may from time to time direct

Powers of
magistrates
not to be
affected

Cap 7

12 Save as expressly provided nothing in this Ordinance shall be deemed to affect any of the powers of a magistrate in relation to the Police Force as contained in the Criminal Procedure Ordinance and the Indian Penal Code or in any enactment amending or in substitution for such Ordinance or Code

Regulations

13 The Governor may make regulations, not inconsistent with this Ordinance, relating to all or any of the following matters, namely —

- (1) The numerical establishment of the Police Force, the conditions of service, and the various grades, ranks and appointments therein, 25
- (2) The duties to be performed by members of the Police Force, and for their guidance in the discharge of such duties,
- (3) The pay and allowances of the Police Force,
- (4) The description and issue of arms, ammunition, accoutrements, uniforms and necessaries to be supplied to police officers, 30
- (5) All matters which are required by this Ordinance to be provided for by regulations,
- (6) Generally, for the good order and government of the Police Force 35

APPOINTMENT, ENLISTMENT, SERVICE AND DISCHARGE

Application of
Ordinance to
existing
Police Force

14 All the provisions of this Ordinance and of all orders or regulations which may at any time be made in pursuance thereof shall extend to all persons who at the commencement of this Ordinance shall be serving in the Police Force under the provisions of any previous Ordinance relating to the Police Force as if such persons had been appointed under this Ordinance, and service under any such previous Ordinance shall, for the purposes of this Ordinance, be deemed to be service under this Ordinance 40 45

15 (1) Commissioned officers shall be appointed by the Governor with the approval of the Secretary of State and in such manner as the Secretary of State may direct. Provided that in the absence of such directions such officers shall be appointed in a similar manner to other officers in the service of the Colony.

Appointment of
police officers

(2) Non-commissioned and subordinate officers shall be appointed by the Commissioner subject to the provisions of this Ordinance and of such regulations as may be made there-
under

16 (1) Every European constable shall be enlisted to serve in the Police Force for a probationary period of not less than twenty months' continuous residential service (hereinafter referred to as "probationary period"), to be reckoned from the date of his arrival or enlistment in the Colony, and for such additional period as may from time to time be fixed by the Governor. Provided that the probationary period and such additional period shall not together exceed thirty-six months.

Enlistment of
constables

(2) Any European constable of good character who has satisfactorily completed his probationary period may be placed on the permanent and pensionable establishment in accordance with the regulations in force for the time being for European officers in the service of the Colony, and in such event the probationary period shall count towards pensionable service.

(3) Every Asiatic subordinate officer shall be enlisted to serve in the Police Force for a probationary period of not less than twelve months' continuous residential service (hereinafter referred to as "probationary period") to be reckoned from the date of his arrival or enlistment in the Colony, and for such additional period as may from time to time be fixed by the Governor. Provided that the probationary period and such additional period shall not together exceed thirty-six months.

(4) Every African subordinate officer shall be enlisted to serve in the Police Force for a period of five years, or for such less period as may from time to time be fixed by the Governor, such period to be reckoned from the date on which such subordinate officer shall have been approved for service and taken on the strength of the force.

17. Every police officer shall on joining the Police Force make the following declaration by oath in such manner as he may declare to be most binding on his conscience —

Declaration on
enlistment

I, A B, do solemnly and sincerely declare that I will be faithful and bear true allegiance to His Majesty King George the Fifth, his heirs and successors, and that I will faithfully serve His Majesty the King, his heirs and successors, during my service in the Police Force and will obey all orders of the Governor and of the officers placed over me, and will subject myself to all Ordinances, orders and regulations relating to the Police Force now in force or which may from time to time be in force.

Signature or mark of police officer

Declared at this

day of , 19

Before me

(Signature of Magistrate or Officer) 5

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

**Police officer
not to engage
in other
employment**

18 No police officer shall without the consent of the Governor engage in any employment or office whatever other than his duties under this Ordinance 10

**Leave
conditions**

19 (1) European police officers shall be eligible for leave in accordance with the regulations for the time being in force for European officers in the service of the Colony

(2) Asiatic police officers shall be eligible for leave in accordance with the regulations for the time being in force for the Asian staff, other than clerks, in the service of the Colony 15

(3) African subordinate officers not serving in the Northern Frontier Province or the Turkana Province may be granted local leave on full pay not exceeding fourteen days in any one year 20

(4) African subordinate officers serving in the Northern Frontier Province or Turkana Province may at the expiration of three years' continuous service in either or both of such Provinces be granted local leave on full pay not exceeding sixty days 25

(5) Where part of the service of an African subordinate officer has been in the Northern Frontier Province or the Turkana Province such officer may be granted local leave on full pay in proportion to the amounts which would be due under sub-sections (3) and (4) of this section 30

(6) Notwithstanding anything in this section contained, African subordinate officers domiciled in Somaliland or Nyasaland may subject to re-engagement be granted leave on full pay not exceeding one month for each completed year of service in respect of which no leave shall have been granted, and, except with the approval of the Governor, not exceeding in any case five months 35

(7) Any African subordinate officer who, being entitled to his discharge at the end of any period of service, re-engages for further service may, with the approval of the Commissioner, be granted leave on full pay not exceeding one month for each completed year of service in respect of which no leave shall have been granted, and not exceeding in any case three months 40 45

Re engagement

20 (1) Any subordinate officer of good character who has completed or is within three months of completing his period of enlistment may, with the approval of the Commissioner, re-engage to serve for a further period of one or more years as may be fixed by the Commissioner but not exceeding three years and may similarly re-engage for a third or any subsequent period until he shall have completed a whole period of twelve years reckoning from the date of his enlistment 55

(2) Upon completing such period of twelve years he may, if he so desires, and with the approval of the Commissioner, re-engage to serve for any period or periods as may be fixed by the Commissioner until he shall have completed a total period
5 of twenty-one years, reckoning from the date of his enlistment

(3) Upon completing such period of twenty-one years he may, if he so desires, and with the approval of the Commissioner and of the Governor, continue in the Police Force in the same manner and in all respects as if his term of service
10 were still unexpired, except that it shall be lawful for him to claim his discharge at the expiration of three months after he has given notice to the officer in charge of the Police Force at the place at which he is stationed of his wish to be discharged

(4) If any African subordinate officer offers to re-engage for service within three months after having received his discharge he shall, if the Commissioner approves of his re-engagement be entitled to the rank or grade which he held at the date of his discharge, and the service of an African
20 subordinate officer who has so re-engaged shall be deemed to be continuous for the purposes of gratuity

Re engagement
after discharge

If, however, any such subordinate officer is permitted to re-engage for service after the expiration of three months from the date of his discharge then it shall be discretionary
25 with the Commissioner, subject to the approval of the Governor, to allow the previous service, or part of such service, of such officer to count for the purposes of gratuity, and the question of the reinstatement of such officer in the rank or grade which he held at the date of his discharge shall rest
30 with the Commissioner

(5) If any subordinate officer who has served as a non-commissioned officer or constable in the similarly constituted police service of the Uganda Protectorate or the Nyasaland Protectorate or the Tanganyika Territory is enlisted in the
35 Police Force within six months after having received his discharge from the appropriate authority he shall be entitled to count his period of service in such Protectorate or Territory as if it had been service in the Police Force

21 Subject to the approval of the Governor on the
40 recommendation of the Commissioner, every African subordinate officer shall, after nine years' continuous good service, be exempt from payment of poll tax in respect of himself for his life or alternatively, he shall be exempt from the payment of hut tax in respect of one hut for his
45 life

Exemption
from hut or
poll tax after
nine years'
service

22 No non-commissioned or subordinate officer shall be at liberty to resign from the Police Force unless expressly permitted to do so by the Commissioner or by some other
officer authorised to grant such permission

Police officer
not to resign
without
permission

23 Any police officer whose period of service expires during a state of war, insurrection or hostilities may be detained and his service prolonged for such further period, not exceeding twelve months, as the Governor may direct

Prolongation of
service in case
of war, etc

Discharge of
European
constables and
subordinate
officers

24 (1) Any European constable may be discharged by the Commissioner at any time —

(a) Without pension or gratuity —

(i) If the Commissioner shall consider that he is unlikely to become or has ceased to be an efficient constable, 5

(ii) If he has not completed twenty months' continuous residential service and is pronounced by a Government medical officer to be mentally or physically unfit for further service, 10

(iii) On purchase of his discharge, with the approval of the Commissioner at the following rates —

£75 during the first year of service,
£50 during the second year of service,
£35 during the third year of service 15

Provided that if at the date of the purchase of discharge such European constable has not completed twenty months' continuous residential service he shall refund the whole or such portion of the cost (if any), as the Commissioner may determine, incurred by the Government in bringing him to the Colony, 20

(iv) If he has been sentenced to be dismissed from the Police Force for misconduct

(b) With pension or gratuity according to length of service — 25

(i) If he has completed twenty months' continuous residential service and is pronounced by a Government medical officer to be mentally or physically unfit, not through his own misconduct, for further service, 30

(ii) On reduction of establishment

(2) Any subordinate officer may be discharged by the Commissioner at any time —

(i) If the Commissioner shall consider that he is unlikely to become or has ceased to be an efficient police officer 35

(ii) If he is pronounced by a Government medical officer to be mentally or physically unfit for further service, 40

(iii) On purchase of his discharge, with the approval of the Commissioner, at the following rates —

In the case of an
Asiatic African
£6/0/0 £4/0/0 during the first year of service 45
£4/10/0 £3/0/0 during the second year of service
vice
£3/0/0 £2/0/0 during the third or any subsequent year of service 50

Provided that if at the date of the purchase of discharge such subordinate officer has not completed the period of service for which he was first enlisted he shall refund the whole or such portion of the cost (if any), as the Commissioner may determine, incurred by the Government in bringing him to the Colony, 55

(iv) If he has been sentenced to be dismissed from the Police Force for misconduct, 60

(v) On reduction of establishment

25 In reckoning the service of any European constable or subordinate officer for purposes of discharge there shall in all cases be excluded therefrom all periods during which such constable or officer has been absent from duty for any of the following reasons —

Rules for reckoning service for purposes of discharge of European constables and subordinate officers

(a) Imprisonment for any cause save that of detention awaiting any trial which results in the acquittal or discharge of the prisoner,

(b) Desertion,

10 (c) Absence without leave exceeding forty-eight hours

26 Subject to the provisions of sections 20 and 23 any subordinate officer who has completed his period or periods of service in accordance with the provisions of this Ordinance shall be discharged by the officer in charge of the Police Force at the headquarters of the district in which such subordinate officer is stationed unless at the date of such completion of service he is undergoing punishment for, or stands charged with, the commission of any offence, in which case his service shall be prolonged and his discharge deferred until such punishment shall have terminated or until he has undergone his trial and any punishment which may be awarded in respect of the offence with which he has been charged, as the case may be

Discharge on completion of service

27 (1) When any non-commissioned or subordinate officer ceases to belong to the Police Force he shall forthwith deliver up to the person appointed by the Commissioner for that purpose or to the officer in charge of the Police Force at the place at which he was last stationed all arms, ammunition, accoutrements, uniform and other appointments which have been supplied to him and which are the property of the Government

Arms, accoutrements, etc., to be delivered up by non commissioned and subordinate officers on ceasing to belong to the Force

(2) Any non-commissioned or subordinate officer who, having ceased to belong to the Police Force, fails to deliver up any arms, ammunition, accoutrements, uniform or other appointments as required by this section shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment, and it shall be lawful for any court to issue a warrant to search for and seize all such arms, ammunition, accoutrements, uniform and other appointments which shall not have been so delivered up

POWERS, DUTIES AND PRIVILEGES OF POLICE OFFICERS

28 (1) Every police officer shall exercise such powers and perform such duties as are by law conferred or imposed upon a police officer, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superiors in the Police Force

Power and duties of police officers

(2) It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances, to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists, and it shall be lawful for any police officer, for any of the purposes mentioned in this sub-section, without a warrant to enter any drinking-shop, gaming-house or any place of resort of loose and disorderly characters

Power of
police officer to
lay
informations,
etc

29 It shall be lawful for any police officer to lay any information before a magistrate and to apply for a summons, warrant, search warrant or such other legal process as may by law issue against any person committing an offence

No fee to be
chargeable on
bail bonds,
etc, taken by
Police

30 Notwithstanding anything to the contrary contained in any Ordinance, rule or other enactment, no fee or duty shall be chargeable upon bail bonds in criminal cases, recognizances to prosecute or give evidence, or recognizances for personal appearance or otherwise issued or taken by a police officer

Power of
police officers
to inspect
licences

31 (1) It shall be lawful for any police officer to stop and detain any person whom he sees or suspects of doing any act or thing or being in possession of anything for which a licence is required under the provisions of any enactment for the time being in force, and to require such person to produce his licence

(2) Any person who fails to produce such licence when called upon by a police officer may be arrested without a warrant unless he gives his name and address and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him

Duty of
Police Force to
keep order on
public roads,
etc

32 (1) It shall be the duty of the Police Force to regulate and control traffic and to keep order on public roads, streets, thoroughfares and landing places and at other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and streets, or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare or landing place may be thronged or may be liable to be obstructed

(2) Every person who opposes or disobeys any lawful order given by any police officer under this section shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment

(3) Any person who opposes or disobeys any lawful order given by a police officer under this section may be arrested without a warrant unless he gives his name and address and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him

Power to
regulate
assemblies and
processions,
etc

33 (1) Any commissioned officer or any inspector in charge of the Police Force in any district, township or place or any administrative officer in any district, township or place where there is no commissioned officer or inspector in charge may—

- (a) regulate the extent to which music may be used on public roads or streets or at places of public resort on the occasions of festivals or ceremonies,
- (b) direct the conduct of all assemblies and processions on public roads or streets or at places of public resort, and may prescribe the route by which and the times at which any procession may pass

(2) Any person who is desirous of convening or collecting any assembly or of forming any procession on any public road or street or at any place of public resort shall first make application for a licence to a commissioned officer or to an inspector in charge of the Police Force in the district, township or place or to an administrative officer where there is no commissioned officer or inspector in charge in such district, township or place, and if such commissioned officer, inspector,

or administrative officer, as the case may be, is satisfied that the assembly or procession is not likely to cause a breach of the peace a licence shall issue specifying the name of the licensee and defining the conditions upon which the assembly or
5 procession is permitted to take place

(3) Any magistrate, or any commissioned officer, inspector or administrative officer as aforesaid, may stop any procession for which no licence has been issued or which violates any of the conditions of a licence issued under this section, and
10 may order it or any assembly which has been prohibited or which violates any such conditions as aforesaid to disperse

34 Any assembly or procession which—

(a) takes place without a licence issued under the last preceding section, or

15 (b) neglects to obey any order given under sub-section (3) of the last preceding section,

shall be deemed to be an unlawful assembly, and all persons taking part in such assembly or procession, and in the case of an assembly or procession for which no licence has been
20 issued all persons taking part in the convening, collecting or directing of the assembly or procession, shall be liable to imprisonment for a period not exceeding one year

Unlawful
assemblies

35 Any person who—

(a) opposes or disobeys any order issued under sub-section (1) of section 33, or

25 (b) violates any condition of a licence issued under section 33,

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

Penalty for
disobeying
orders or
violating
conditions of a
licence under
section 33

36 (1) It shall be the duty of every police officer to take charge of all unclaimed property and to furnish an inventory or description thereof to a magistrate

Disposal of
unclaimed
property

(2) The magistrate shall detain or give orders for the
35 detention of any such property and shall cause a notice to be posted in a conspicuous place at his court and at the police stations of his district specifying such property and calling upon any person who may have any claim thereto to appear and establish his claim within six months from the date of
40 such notice

Provided that if such property is subject to speedy and natural decay, or if the magistrate is of opinion that its immediate sale would be for the benefit of the owner, the magistrate may at any time direct it to be sold

45 (3) Such property, if no person shall within six months from the date of the notice aforesaid establish his claim thereto, may be sold by order of the magistrate

(4) The proceeds of the sale of such property shall, if no claim to it has been established within the period aforesaid
50 mentioned, be apportioned in the following manner —

(a) One-half shall be paid to the credit of the Police Rewards and Fines Fund,

(b) Such proportion of the remaining one-half as the magistrate may direct shall be paid to the finder of the property,
55

(c) The balance shall be paid to the Treasurer for the use of the Colony

Power to take
finger prints
of all persons
in lawful
custody

37 (1) It shall be lawful for any police officer to take and record for the purpose of identification the finger prints of all persons who may from time to time be in lawful custody. Provided that if the finger prints are taken by a police officer below the rank of assistant sub-inspector such 5 finger prints shall be taken in the presence of a magistrate or a justice of the peace or a police officer of or above the rank of assistant sub-inspector

(2) Any person in lawful custody who shall refuse to submit in a proper manner to the method of identification 10 aforesaid shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment

Non liability
for act done
under authority
of a warrant

38 If any action shall be commenced or prosecution 15 instituted against any police officer in respect of any act done in obedience to a warrant purporting to have been issued by a magistrate or justice of the peace, such police officer shall not be responsible for any irregularity in the issuing of the warrant or for any want of jurisdiction in the magistrate or 20 justice of the peace issuing the same, and upon producing the warrant containing the signature of the magistrate or justice of the peace, and upon proof that the act or acts complained of was or were done in obedience to such warrant, judgment shall be given in favour of such police officer 25

Provided that no proof of the signature of the magistrate or justice of the peace shall be required unless the court shall have reason to doubt the genuineness of the signature

Notice of
action or
prosecution

39 No action shall be commenced or prosecution 30 instituted against any police officer in respect of anything done or purporting to have been done by him under the provisions of this Ordinance or under the general police powers hereby given unless notice in writing of such action or prosecution and of the cause thereof shall have been given to the defendant, or to the officer in charge of the Police Force 35 in the district, township or place where the act was committed, at least one month before the commencement of the action or the institution of the prosecution

Provided that no action shall in any case lie where the police officer has been prosecuted criminally and convicted in 40 respect of the same act

Certain police
officers not
to be sued for
goods sold or
money
borrowed

40 No action shall be brought in any court against any European constable or any subordinate officer in respect of any money borrowed by him or any goods supplied to him or to any person on his behalf while such European 45 constable or subordinate officer is a member of the Police Force

DISCIPLINE

Offences
against
discipline

41 Any non-commissioned or subordinate officer or follower who—

(1) begins, excites, causes or joins in any mutiny or 50 sedition amongst the Police Force, or does not use his utmost endeavours to suppress such mutiny or sedition, or conspires with any other person to cause any mutiny or sedition, or being cognisant of any mutiny or sedition, or intended mutiny or sedition, 55 does not without delay give information thereof to his superior officer, or

-
- 5 (2) persuades or endeavours to persuade, procures or attempts to procure, or assists any police officer to desert, or being cognisant of any such desertion or intended desertion does not without delay give information thereof to his superior officer, or
- (3) uses traitorous or disloyal words regarding His Majesty, or
- (4) is disrespectful in word, act or demeanour to his superior officer, or
- 10 (5) wilfully disobeys any lawful command, or
- (6) is guilty of drunkenness, or
- (7) drinks intoxicating liquor when on duty, or
- (8) absents himself without leave, or
- 15 (9) is found sleeping at his post, or leaves his post before he is regularly relieved except in fresh pursuit of any offender whom it is his duty to apprehend, or
- (10) being under arrest or in confinement leaves or escapes from his arrest or confinement before he is set at liberty by proper authority, or
- 20 (11) neglects or refuses to assist in the apprehension of any police officer charged with any offence, or
- (12) allows to escape any prisoner who is committed to his charge or whom it is his duty to keep or guard, or
- (13) offers unwarrantable personal violence to any person
- 25 in his custody, or
- (14) is guilty of cowardice, or
- (15) discharges his rifle without orders or just cause, or
- (16) without reasonable cause fails to appear at any parade appointed by his superior officer, or
- 30 (17) pawns, sells, loses by neglect, makes away with, wilfully damages or fails to report any damage to any arm, ammunition, accoutrement, uniform or other appointment supplied to him or any Government property committed to his charge, or
- 35 (18) steals any money or goods the property of any police officer or steals or embezzles any Government money or goods, or receives any such money or goods knowing the same to have been stolen or embezzled from any police officer or from the Government, or
- 40 (19) commits any act of plunder or wanton destruction of property, or
- (20) accepts or solicits a bribe or gratuity, or
- (21) is slovenly, inattentive, uncivil or quarrelsome, or
- (22) fails to keep his rifle clean, or
- 45 (23) without due authority discloses or conveys any information concerning any investigation or other police or departmental matter, or
- (24) malingers, or feigns or produces any disease or infirmity, or
- 50 (25) is wilfully guilty of misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders, by which misconduct or disobedience he produces or aggravates any disease or infirmity or delays its cure, or

- (26) incurs debt in or out of the Police Force, or
 - (27) without proper authority exacts from any person, carriage, portage or provisions, or
 - (28) resists an escort whose duty it is to apprehend him or to have him in charge, or 5
 - (29) breaks out of police lines, camp or quarters, or
 - (30) makes any false statement upon joining the Police Force, or
 - (31) refuses or neglects to make or send a report or return which it is his duty to make or send, or 10
 - (32) makes a false accusation against any police officer knowing such accusation to be false, or
 - (33) in making a complaint against any police officer makes a false statement affecting the character of such officer knowing such statement to be false or knowingly and wilfully suppresses any material facts, or 15
 - (34) engages without authority in any employment or office other than his police duties, or
 - (35) becomes security for any person or engages in any loan transaction with any police officer without the permission in writing of the Commissioner, or 20
 - (36) if called upon by a commissioned officer to furnish a full and true statement of his financial position fails to do so, or 25
 - (37) is guilty of any act, conduct, disorder or neglect which is declared by regulations made under this Ordinance to be an offence against duty or discipline, or
 - (38) is guilty of any act, conduct, disorder or neglect to the prejudice of good order and discipline, though not herein specified, 30
- shall be deemed to have committed an offence against discipline, and shall suffer such punishment, according to the degree and nature of the offence, as may be awarded in accordance with section 43 of this Ordinance 35

A commissioned officer or an inspector may arrest or order the arrest of any police officer (not being an officer of his own or of a superior rank), or any follower who is accused of an offence under this section, and any police officer may, on receipt of any such order as aforesaid, apprehend such accused person without a warrant and shall forthwith bring him before a commissioned officer or an inspector 40

**Punishments
which may be
awarded**

42 (1) A commissioned officer or an inspector in charge of the Police Force in any place or an administrative officer in any place where there is no commissioned officer or inspector in charge may enquire into the truth of any charge under the last preceding section, and, if his decision is against the accused, he may impose on him any one or more of the following punishments — 45

(i) In the case of inspectors —
Reprimand,

(ii) In the case of European constables —

(a) Reprimand,

(b) Fine not exceeding one hundred and fifty shillings, 55

(iii) In the case of subordinate officers —

- (a) Reprimand,
- (b) Confinement for a period not exceeding fifteen days with or without punishment drill, extra guards, fatigues or other duty,
- (c) Fine not exceeding one hundred and fifty shillings,
- (d) Reduction in rank or grade

(iv) In the case of followers —

- (a) Reprimand,
- (b) Fine not exceeding one hundred shillings,
- (c) Stoppage of increment,
- (d) Dismissal

Every sentence passed under this sub-section involving the imposition of a fine or reduction in rank or grade shall, before being carried into execution, be reported to the Commissioner who may confirm or vary any such sentence. Provided that the Commissioner shall not increase any such sentence without giving the accused an opportunity of being heard.

(2) The Commissioner may, in respect of any conviction made by himself upon investigating any charge under section 41 or in respect of any conviction reported to him under sub-section (1) of this section, impose any one or more of the following punishments —

Special
powers of
Commissioner

- (i) In the case of any non-commissioned officer —
 - (a) Fine not exceeding two hundred shillings,
 - (b) Stoppage of increment,
 - (c) Reduction in rank or grade,
 - (d) Dismissal
- (ii) In the case of any subordinate officer —
 - (a) Forfeiture of all pay which may be due to him,
 - (b) Forfeiture of any medal or decoration or reward which he may have earned in the Police Force,
 - (c) Forfeiture of any advantage in regard to gratuity on discharge which he may have earned by past service,
 - (d) Dismissal

Provided that any non-commissioned or subordinate officer who has been awarded a punishment under paragraphs (i) (d), (ii) (b) or (ii) (d) of this sub-section and who is dissatisfied with the decision of the Commissioner may within three days after the decision has been communicated to him appeal to the Governor whose decision shall be final.

43 Any commissioned officer, non-commissioned or subordinate officer may be suspended from office at any time by the Commissioner pending an inquiry under Colonial Regulations or this Ordinance, as the case may be, but shall not, by reason of such suspension, cease to be a police officer.

Suspension
pending
enquiry

Provided that the powers, privileges and benefits vested in him as a police officer shall, during his suspension, be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authority as if he had not been suspended.

44 (1) Every police or administrative officer heretofore empowered to enquire concerning offences under section 42 shall in any matter touching such enquiries have the power of summoning and examining witnesses on oath or affirmation and calling for documents in any matter before him and of adjourning any hearing from time to time. In every such enquiry the proceedings and evidence shall be recorded in writing.

Power to
summon
witnesses

(2) Any person summoned as a witness under the preceding sub-section who fails to attend at the time and place mentioned in the summons, or having attended refuses to answer all questions that may be lawfully put to him, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment

**Corporal
punishment**

45 (1) Any African subordinate officer or follower who—

(a) is disrespectful in word, act or demeanour to his superior officer, or 10

(b) wilfully disobeys any lawful command, or

(c) malingers, or feigns or produces any disease or infirmity, or

(d) resists an escort whose duty it is to apprehend him or to have him in charge, or 15

(e) is guilty of any act, conduct, disorder or neglect to the prejudice of good order and discipline, or

(f) having been previously convicted of any offence under section 41, is convicted of any further offence under the said section, 20

may, in addition to or in lieu of any other punishment to which he may be liable, be sentenced to undergo corporal punishment not exceeding fifteen lashes, to be inflicted only as prescribed by this section

Provided that every sentence of corporal punishment shall be reported to the Commissioner 25

(2) A sentence of corporal punishment shall not be carried out except in the presence of a Government medical officer or, in case no medical officer is available, of a magistrate or commissioned officer, and such medical officer, magistrate, or commissioned officer, as the case may be, shall first satisfy himself and shall certify in writing as to the physical fitness of the offender to undergo the sentence. The medical officer, magistrate or commissioned officer, as the case may be, shall give such orders as he may deem necessary for preventing injury to the health of the offender and all such orders shall be immediately obeyed 35

(3) No sentence of corporal punishment shall be carried out except with an instrument approved by the Governor

**Power to
suspend
punishment**

46 (1) Subject to the provisions of this section any sentence imposed under section 42 may be suspended by order of the officer imposing the sentence or of the Commissioner for such period (in this section referred to as "the period of suspension"), not exceeding six months, as such officer or the Commissioner, as the case may be, may determine 45

(2) Where any sentence has been suspended under this section the officer who ordered such suspension or such other officer as may be directed by the Commissioner shall, at the expiration of the period of suspension, review the case, taking into consideration such reports upon the conduct of the accused during the period of suspension as shall be available. Such officer may thereupon order the sentence to be remitted or reduced, in which case he shall cause any entry relating to the offence which has been made in the records of the accused to be expunged or altered, as the case may be, or he may order the sentence to be forthwith carried into execution 50 55

Provided that if during the period of suspension, the accused is convicted of a further offence under section 42 the suspended sentence shall forthwith be carried into execution, and if sentences of confinement have been imposed in respect of both offences such sentences shall run consecutively

Provided further that if, during the period of suspension, the accused is convicted of a further offence as aforesaid the second sentence shall not be suspended

47 (1) In every case where it shall appear to the officer investigating any charge under sub-section (1) of section 42 that the offence which the accused has committed would, by reason of its gravity or by reason of previous offences or for any other reason, not be adequately punished with any of the punishments in that sub-section provided, such officer shall defer passing sentence and shall report the proceedings to the Commissioner. The Commissioner may return the report for such further enquiry as he may deem necessary, or he may re-hear the case, or he may order the accused to be taken before a magistrate to be dealt with under the next succeeding sub-section

Procedure in case of grave or repeated offences

(2) Where an accused person is taken before a magistrate under this section he shall be liable on conviction to a fine not exceeding three months pay or to imprisonment for a period not exceeding six months or to both such fine and imprisonment

Provided that no proceedings shall be taken against any police officer under this section in respect of any offence for which he has already been punished under any of the preceding sections

48 The Commissioner may reduce in rank or grade or may dismiss from the Police Force any non-commissioned or subordinate officer who has been sentenced to imprisonment by any court in respect of any offence, whether under this Ordinance or otherwise

Dismissal and reduction in rank of non commissioned and subordinate officers sentenced to imprisonment

Provided that the dismissal of a non-commissioned officer, other than a European constable, under this section shall be subject to the approval of the Governor

49 (1) All fines imposed by a police or administrative officer in respect of offences under this Ordinance or any regulations made thereunder shall be recovered by stoppage from the offender's pay due at the time of committing such offence and thereafter accruing due

Fines to be recovered by stoppage from pay

(2) The amount of stoppage in respect of any fine shall be in the discretion of the officer authorised to impose such fine, but shall in no case exceed one-half of the daily pay of the offender, and whenever more than one order of stoppage is in force against the same person so much only of his pay shall be stopped as shall leave him a residue of at least one-half of his daily pay

(3) Where more than one order of stoppage is made upon the same person, the orders later in date shall, if necessary, be postponed as to their enforcement until the earlier orders have been discharged

Loss or damage to arms, accoutrements, etc., to be made good by stoppage of pay

50 If any non-commissioned or subordinate officer pawns, sells, loses by neglect, makes away with or wilfully damages any arm, ammunition, accoutrement, uniform or other appointment supplied to him or any Government property committed to his charge he may, in addition to or 5 in lieu of any other punishment, be ordered to make good the amount of such loss or damage, and such amount may be recovered by stoppage from his pay

Pay not to accrue during absence without leave, imprisonment, or detention

51 No pay shall accrue to any non-commissioned or subordinate officer in respect of any period during which he is 10 absent from duty without leave, or is undergoing any sentence of imprisonment, or is under suspension awaiting any trial which results in his conviction, either for any offence against discipline or for any other offence of whatever nature

Provided that in any case the Commissioner may in his 15 discretion authorise the payment of such proportion of salary, not being more than one-half, as he shall think fit

Place of confinement of offenders under this Ordinance

52 All police officers who are arrested for any offence under this Ordinance, and all offenders sentenced to confinement by a police or administrative officer under this 20 Ordinance, shall be confined in any building set apart as a guardroom or cell

POLICE REWARDS AND FINES FUND

Establishment of Police Rewards and Fines Fund

53 (1) All fines imposed by a police or administrative officer upon a member of the Police Force under the provisions 25 of this Ordinance or any regulations made thereunder shall be paid to the Treasurer to be placed to the credit of a fund to be called the ' Police Rewards and Fines Fund '

(2) No payment shall be made from the Police Rewards and Fines Fund except upon the authority of the Commis- 30 sioner

(3) The Commissioner may sanction payments from the Police Rewards and Fines Fund for any of the following purposes —

(a) Assistance to the wives or families of deceased non 35 commissioned or subordinate officers, or to non-commissioned or subordinate officers discharged from the Police Force as medically unfit for further service, who may be in immediate want,

(b) Contributions towards prizes to be given at athletic 40 meetings, assaults-at-arms and similar events organized by or for the benefit of the Police Force,

(c) Purchase of ammunition for the encouragement of rifle shooting among the members of the Police Force, 45

(d) Payments to non-commissioned or subordinate officers as rewards for meritorious acts or service in the execution of duty, when such payments cannot otherwise be met from Colonial funds,

(e) Expenditure for the benefit and advancement of 50 authorised recreation and sport and other branches of police activity organised within the Police Force

(4) Annual estimates of revenue and expenditure on account of the Police Rewards and Fines Fund shall be framed by the Commissioner and shall be submitted to the Treasurer 55 in sufficient time to admit of their consideration before the commencement of the year to which they relate

54 All rewards forfeitures and penalties which by law are payable to informers shall, when the information is laid by a police officer, be paid into the Police Rewards and Fines Fund

Rewards to Police Rewards to be paid to police officers, and Fines Fund

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PENSIONS AND GRATUITIES

55 (1) European police officers shall be eligible for pensions or gratuities in accordance with the provisions of the European Officers' Pensions Ordinance 1927

Pensions and gratuities

(2) Asiatic police officers shall be eligible for pensions or gratuities in accordance with the regulations for the time being in force for other Asiatic officials

(3) African subordinate officers shall be eligible for pensions or gratuities in accordance with regulations made by the Governor under this Ordinance

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WILLS AND DISTRIBUTION OF PROPERTY

56 (1) Every constable on enlistment shall declare the name or names of the person or persons to whom, in the event of his death without having made a valid will, any monies or personal property should be paid or delivered, and the name or names of such person or persons shall be recorded at the headquarters of the Police Force. The records shall be verified periodically and it shall be the duty of every police officer to report any alteration in the records which he may desire to be made

Provisions for disposal of personal property of non-commissioned or subordinate officer dying intestate

(2) Any commissioned officer or any officer of any public department having in his charge or control any pay, gratuity, allowance or other monies or any personal property belonging to any non-commissioned or subordinate officer who has died intestate having complied with the requirements aforesaid may pay or deliver the same to the person or persons whose name or names has or have been recorded by such officer in the manner prescribed

57 (1) Any will made by a non-commissioned or subordinate officer shall be valid for disposing of any monies or personal property which shall be belonging to or due to him at his death if—

Form of will of non-commissioned and subordinate officers

(a) it is in writing and signed or acknowledged by him in the presence of, and in his presence attested by, one witness, being a commissioned officer or magistrate, or

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(b) it is executed with the formalities required by any enactment for the time being in force in the case of persons not being police officers

Any such will shall be deemed well made for the purpose of being admitted to probate, and the person taking out representation to the testator under such will shall exclusively be deemed the testator's representative with respect to the monies or personal property thereby bequeathed

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(2) Any commissioned officer or any officer of any public department having in his charge or control any pay, gratuity, allowance or other monies or any personal property belonging to such testator, not exceeding in the aggregate the value of seventy-five pounds, may pay or deliver the same to any person entitled thereto under the will or to the person entitled to procure probate of or administration under such will, although probate or administration may not have been taken out

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Personal property, if not exceeding £75 may be handed over without probate or administration

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Probate or
administration
to be taken out
if property
exceeds £75 in
value

(3) If the value of the said monies and personal property exceeds the sum of seventy-five pounds, the officer having the same in his charge or control shall require probate or administration to be taken out and shall thereupon pay or deliver such monies and personal property to the legal representative of the deceased

Distribution of
property in case
of intestacy of
deceased
non
commissioned
or subordinate
officer

58 In case any non-commissioned or subordinate officer shall die without having complied with the requirements prescribed by section 56 or without having made any valid will under this Ordinance or any enactment for the time being in force relating to wills, any commissioned officer or any officer of any public department having in his charge or control any monies or personal property of the deceased may, with the concurrence of the Governor, pay or deliver such monies or personal property to any person who is proved to the satisfaction of the Governor to be the widow or the child or any near relative of the deceased according to the rules of kinship of the tribe to which the deceased belonged, and where there are more claimants than one then such monies or personal property shall be paid or delivered in such shares and proportions as the claimants would be entitled to receive under the rules of succession prevailing among such tribe, or as nearly as may be

Provision for
payment of
debts of
non
commissioned
or subordinate
officers

59. Notwithstanding anything hereinbefore contained, if in any case where probate of the will or administration to the estate of the deceased has not been taken out, any commissioned officer or any officer of any public department having in his charge or control any monies or other personal property belonging to the deceased shall, before disposing of such monies or personal property in the manner aforesaid, have notice of any debt due by the deceased, he shall apply such monies and personal property in his charge or control, or so much thereof as may be requisite, in or towards the payment of such debt, subject to the following conditions --

- (1) That the debt has accrued within three years before death,
- (2) That payment of the debt is claimed within one year after death, and
- (3) That the debt is proved to the satisfaction of the Governor

Property
distributed
under this
Ordinance
subject to
rights of
creditors

60 In all cases where the monies or other personal property of the deceased or any part thereof, shall have been paid or delivered to any person under the provisions of sections 59, 60 (2) or 61, any creditor of the deceased shall have the same rights and remedies against such person as if such person had received the same as the legal representative of the deceased

Monies and
property not
distributed to
be paid into
Police Rewards
and Fines
Fund

61 If any monies or other personal property of the deceased not exceeding the value of seventy-five pounds, shall remain undisposed of or unappropriated at the expiration of one year from the date of the death, the officer having the charge or control thereof shall apply and make over the same to the Police Rewards and Fines Fund

Provided that the application of such monies or personal property as aforesaid shall not be deemed to bar the claim of any person to the same or any part thereof which may be established at any time after such application

62 Medals and decorations shall not be included in the personal property of any deceased non-commissioned or subordinate officer but the same shall be delivered to the Commissioner and shall be disposed of in accordance with regulations made under this Ordinance

Medals, decorations, etc., not to be included in estate of deceased non-commissioned or subordinate officer

PROVISIONS FOR ADDITIONAL OR SPECIAL POLICE OFFICERS

63 The Commissioner may, subject to the direction of the Governor, on the application of any person and on being satisfied as to the necessity thereof, depute any additional number of police officers for special duty at any place in the Colony and for such period as he may consider necessary. Such police officers shall, subject to the provisions of this Ordinance, be exclusively under the orders of the officer in charge of the Police Force in such place and shall, unless the Governor otherwise directs, be employed at the expense of the person making the application

Employment of additional police officers at expense of private persons

Provided that any person on whose application additional police officers have been deputed for special duty at any place may, on giving one month's notice to the Commissioner, require that such additional police officers shall be withdrawn from such place, and at the expiration of one month from the date of such notice such person shall be relieved of any further expense in connection with the employment of such additional police officers

64 Where any railway, canal or other public work, or any manufactory or commercial concern, is being carried on or is in operation in any place in the Colony, and it shall appear to the Commissioner that the employment of an additional number of police officers in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory or concern, the Commissioner may subject to the directions of the Governor, depute any additional number of police officers for special duty at such place and for such period as he may consider necessary and make orders upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern for the payment of such additional police officers, and such person shall thereupon cause payment to be made accordingly

Employment of additional police officers in connection with certain works

65 (1) The Governor may, by proclamation published in the Gazette and in such other manner as the Governor may direct, declare that any area in the Colony has been found to be in a disturbed or dangerous state, or that, by reason of the conduct of the inhabitants of such area or any class or section of such inhabitants, it is expedient to increase the number of police officers stationed in such area

Employment of additional police officers in disturbed or dangerous districts

(2) Upon publication of a proclamation under sub-section (1) the Commissioner may, subject to the directions of the Governor, employ any number of police officers in addition to the usual complement to be stationed in the area specified in such proclamation, and, subject to the provisions of the next succeeding sub-section, the cost of such additional police officers shall be borne by the inhabitants of such area

(3) A magistrate, after such enquiry as he may consider necessary, shall, subject to the directions of the Governor, apportion the cost of such additional police officers among the inhabitants of such area, and such apportionment shall be made according to the magistrate's judgment of the respective means of such inhabitants

Provided that the magistrate may, subject to the directions of the Governor, exempt any persons or any class or

section of such inhabitants from liability to bear any portion of such cost

(4) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but such proclamation may at any time be withdrawn or may be continued from time to time for such further period or periods as the Governor may in each case direct

Award of compensation to sufferers from misconduct of inhabitants of proclaimed area

66 (1) If in any area in regard to which any proclamation under the last preceding section is in force, death or grievous hurt or loss of or damage to property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of such inhabitants, any person being an inhabitant of such area who claims to have suffered injury from such misconduct may, within one month after the date of the injury, make an application for compensation to the magistrate of the district within which such area is situated

(2) Upon any such claim being made the magistrate may, subject to the directions of the Governor, after such enquiry as he may consider necessary, and whether any additional police officers have or have not been stationed in such area under the last preceding section—

- (a) declare the person or persons to whom injury has been caused by or has ensued from such misconduct,
- (b) assess the amount of compensation to be paid to such person or persons and the manner in which it is to be distributed,
- (c) assess the proportions in which such compensation shall be paid by the inhabitants other than the applicant or applicants in such area

Provided that the magistrate shall not make any declaration or assessment under this sub-section unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury

Provided also that the magistrate may, subject to the directions of the Governor, exempt any persons or any class or section of such inhabitants from liability to pay any portion of such compensation

(3) Every declaration or assessment made or exemption granted under the last preceding sub-section shall be subject to revision by the Governor, but, save as aforesaid, shall be final

(4) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section

Definition of "inhabitants"

67 For the purposes of the two last preceding sections the term "inhabitants" includes all persons who themselves or by their agents or servants occupy or hold land or other immovable property within the area specified in the proclamation and all landholders who themselves or by their agents or servants collect rents direct from lessees or occupiers in such area, notwithstanding that they do not actually reside in such area

Recovery and disposal of monies paid under sections 66, 67, 68 and 69

68 (1) All monies payable under sections 63, 64, 65 and 66 shall be recoverable by a magistrate in the manner provided by law for the recovery of fines imposed in criminal proceedings or by suit in any competent court

(2) All monies recovered under sections 63, 64 and 65 shall be paid to the Treasurer for the use of the Colony

Provided that the Governor may, on the recommendation of the Commissioner, direct that one-third of any monies recovered under section 63 shall be paid into a fund which shall be called the Bariack Fund and shall be under the control of the Commissioner and shall be disposed of in accordance with regulations

(3) All monies recovered under section 66 shall be paid by the magistrate to the persons to whom and in the proportions in which the same are payable

10 **69** (1) Whenever it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place or may reasonably be apprehended, and that the Police Force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred or is apprehended, any magistrate or justice of the peace may, on the application of a commissioned officer or an administrative officer in charge of police, appoint residents of the neighbourhood to act as special constables, in such manner, for such period, and within such limits as he may consider necessary

Power to
appoint special
constables

Provided that whenever special constables shall have been appointed under this section the magistrate or justice of the peace making the appointment shall forthwith transmit to the Governor notice of such appointment and of the circumstances which rendered such appointment expedient

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

(3) All persons serving as special constables shall be entitled during their period of service to remuneration at the same rate as shall for the time being be paid to European constables

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

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

GENERAL OFFENCES

45 **70.** Nothing in this Ordinance shall be construed to exempt any police officer or other person from being proceeded against under any other Ordinance or law in respect of any offence made punishable by this Ordinance, or from being liable under any other Ordinance or law to any other or higher penalty or punishment than is provided for such offence by this Ordinance

Power to
prosecute under
other law not
to be affected
by this
Ordinance

Provided that no person shall be punished twice for the same offence

55 **71** Any person who by any means directly or indirectly procures or persuades, or attempts to procure or persuade, any non-commissioned or subordinate officer to desert, or who aids, abets or is accessory to the desertion of any non-commissioned or subordinate officer, or who, having reason to believe that any person is a deserter from the Police Force,

Inducing or
aiding police
officers to
desert

harbours such person or aids him in concealing himself or assists in his rescue, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment

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Apprehension
of deserters

72 Upon reasonable suspicion that any person is a deserter from the Police Force, any police officer may apprehend him without a warrant. Such person shall forthwith be brought before a magistrate of the district wherein he was found and upon conviction of being a deserter shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding two years or to both such fine and imprisonment

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Inciting to
mutiny or
sedition

73 Any person who aids, abets or is accessory to any mutiny, sedition, or disobedience to any lawful command of a superior officer by any non-commissioned or subordinate officer, or maliciously endeavours to seduce any non-commissioned officer from his allegiance or duty, shall be liable, on conviction before a magistrate, to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding two years or to both such fine and imprisonment

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Unlawfully
harbouring
police officers

74 Any retailer or keeper of any house, store or place for the sale of intoxicating liquor who, by himself or by any person in his employment, knowingly harbours or entertains any non-commissioned or subordinate officer, or permits any such officer to remain in his house, store or other place, during any portion of the time appointed for his being on duty or service, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment

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Provided that for the purposes of this section a non-commissioned or subordinate officer shall not be deemed to be on duty or service unless he shall be on actual duty or on active service

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Unlawful
possession of
articles
supplied to
police officers

75 Any person, not being a police officer who is found in possession of any article whatsoever which has been supplied to any police officer for the execution of his duty, or any medal or decoration granted to any police officer for service or good conduct, and who fails to account satisfactorily for the possession thereof, or who without due authority purchases or receives any such article, medal or decoration from any police officer, or who aids or abets any police officer to sell or dispose of any such article, medal or decoration, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment

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Offences in
public places
to the
obstruction,
annoyance, etc.,
of residents or
passengers

76 (1) Every person who, on any road, street thoroughfare or open space within the limits of any township or municipality or within the limits of any place to which this section may be extended by proclamation by the Governor, commits any of the following offences shall be liable on conviction before a magistrate, to a fine not exceeding five pounds or to imprisonment for a period not exceeding one month, that is to say, every person who —

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Slaughtering
animals

(a) Slaughters any animal, except such as may have met with an accident or which, for public safety or other reasonable cause, ought to be killed on the spot,

Cleaning
carcasses,

(b) Cleans any carcass,

- (c) Rides or drives any animal or vehicle recklessly or furiously, **Furious riding or driving**
- (d) Trains or breaks in any animal, **Training animals**
- 5 (e) Wantonly or cruelly beats, abuses or tortures any animal, **Cruelty to animals**
- (f) Keeps or leaves any animal or vehicle standing longer than is reasonably necessary for loading or unloading or for taking up or setting down passengers, **Obstruction**
- 10 (g) Exposes for sale any goods whatsoever so that the same project into or over any footway or beyond the line of the house, shop or building in which the same are exposed, **Exposing goods for sale**
- (h) Throws or lays down any dirt filth or rubbish, or causes or permits any offensive matter to run from any house, factory, dung-heap or the like, **Throwing dirt, etc., into public place**
- 15 (i) Is found drunk or riotous and is incapable of taking care of himself, **Being found drunk or riotous**
- (j) Wilfully and indecently exposes his person or any offensive deformity or disease, or commits any nuisance, **Indecent exposure**
- 20 (k) Bathes or washes in any watercourse or furrow, tank or reservoir, not being a place set apart for these purposes,
- (l) Neglects to fence in or duly to protect any well, tank or other dangerous place or structure, **Protection of dangerous places**
- 25 (m) Solicits persons for the purpose of prostitution **Soliciting**
- (2) It shall be lawful for any police officer to apprehend, without a warrant, and to take into custody any person who, within his view, commits any offence under the last preceding
- 30 sub-section
- Provided that no person shall be convicted of an offence against paragraphs (d), (f), (g), (i) or (l) of sub-section (1) unless the magistrate is satisfied that the offence was committed to the obstruction inconvenience annoyance or danger
- 35 of a resident or passenger

77 The Police Ordinance (Chapter 36 of the Revised Edition) as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, and the Identification of Prisoners Ordinance (Chapter 38 of the Revised Edition), are hereby repealed **Repeal**

OBJECTS AND REASONS

The object of this Bill is to consolidate and amend the law governing the Police Force in the light of experience gained since 1911, in which year the existing Police Ordinance was enacted

Apart from the amendments which are specifically dealt with hereunder and also numerous drafting amendments, the Bill is mainly a re-enactment of the existing law

Clause 4—The following new designations have been approved by Government and are provided for in the Bill —

Deputy Commissioner
Chief Inspectors
Sergeant Instructors
European Constables
Chief Sub-Inspectors

Although the designations "Sergeant Instructor" and "European Constable" have not hitherto been recognised in the official constitution of the Police Force the designations have been in use in the Force for a considerable time and the term "European Constable" is one frequently referred to in various local enactments

Clause 7 —The Governor is specifically empowered in case of war or other emergency to employ the Police Force in the defence of the Colony

Clause 8 —The Commissioner is empowered to make appointments, promotions and reductions in ranks and grades of officers below the rank of commissioned officer

The post of Inspector General of Police having been abolished, the powers and duties formerly exercised by that officer are, subject to the orders and directions of the Governor, assigned to the Commissioner

Clause 8 (2) —Power is given to the Commissioner to make, subject to the orders and directions of the Governor, orders for the general government of police officers in relation to their enlistment, transfer (including expenses in connection therewith), discharge, training, arms and accoutrements, clothing and equipment, places of residence, classification and particular services, as well as their distribution and inspection, and such other orders as he may deem expedient for preventing neglect and for promoting efficiency and discipline on the part of police officers in the discharge of their duties

Clause 9 —Under the existing law the administration of the police in provinces, districts and townships is vested in such police officer as may be posted in charge thereof. This officer is subordinate to and carries out the orders of the Commissioner in matters connected with discipline and interior economy of the Force under him but in matters connected with the distribution of the police, the criminal administration and the preservation of public peace, such officer is subject to the general control of and is to carry out and obey the directions and orders of the senior commissioner, district commissioner or other magistrate in charge of such province, district or township

Under the Bill the general administration of the Police Force is vested in the Commissioner, but it is provided that in matters connected with the distribution of the Force and the prevention and detection of crime in any place, the Commissioner shall consult the administrative officer in charge thereof. The police officer posted in charge of any place will be subordinate to and will carry out the orders of the Commissioner in all matters connected with the administration, discipline, interior economy and training of the Force under him, but in matters connected with the preservation of the peace such officer will be subject to the general control and will carry out and obey the orders and directions of the administrative officer in charge of such place

Clause 13 —The Governor is empowered to make regulations for the purposes specified in the clause and generally for the good order and government of the Police Force

Clause 16 (3) —Asiatic subordinate officers will be enlisted to serve for a probationary period of not less than twelve months' continuous residential service and for such additional period as may be fixed by the Governor, provided that the

probationary period and such additional period shall not together exceed thirty-six months

Clause 16 (4) —African subordinate officers are to be enlisted to serve in the Police Force for a period of five years or for such less period as may be fixed by the Governor. The period of engagement under the present law is three years

Clause 19 —African subordinate officers not serving in the Northern Frontier Province or the Turkana Province may be granted local leave on full pay not exceeding fourteen days in any one year and those officers serving in the Northern Frontier Province or the Turkana Province may, at the expiration of three years' continuous service, be granted local leave on full pay not exceeding 60 days. Where part of the service has been in the Northern Frontier Province or the Turkana Province such officer may be granted leave in proportion to the period served in those Provinces

African subordinate officers domiciled in Somaliland or Nyasaland may, subject to re-engagement, be granted leave on full pay not exceeding one month for each completed year of service, not exceeding in any case five months

provision

Provision is also made in sub-clause (7) for the grant to African subordinate officers of leave on full pay upon re-engagement for further service. This provision is designed to remove a long-standing grievance amongst the African members of the Force

Clause 21 —Every African subordinate officer who has put in nine years' continuous good service is declared to be exempt from payment of poll tax in respect of himself for his life or alternatively he shall be exempt from the payment of hut tax in respect of one hut for his life

Clause 36 —The proceeds of any unclaimed property sold shall be apportioned—

- (a) one half to the credit of the Police Rewards and Fines Fund,
- (b) such proportion of the remaining one-half as the magistrate may direct to the finder of the property, and
- (c) the balance to General Revenue

Clause 37 —This clause reproduces, with necessary modifications, sections 2 and 3 of Chapter 38 of the Revised Edition with the additional provision that if the finger prints are taken by a police officer below the rank of assistant sub-inspector such finger prints shall be taken in presence of a police officer of or above the rank of assistant sub-inspector

Clause 40 —No action may be brought in any court against any European constable or any subordinate officer in respect of any money borrowed by him or any goods taken by or supplied to him

Clause 42 —The provisions relating to punishments which may be awarded for offences against discipline are substantially altered with a view to securing greater efficiency in the Force

Clause 44 —Police officers empowered to enquire concerning offences against discipline are given the power to summon and examine witnesses on oath and to call for documents in any matter before them

Clause 46 —Any sentence passed for offences against discipline may be suspended by order of the officer imposing the sentence or of the Commissioner for such period, not exceeding six months, as the officer or the Commissioner may determine. At the expiration of the period of suspension the officer who ordered the suspension or such other officer as may be directed by the Commissioner is required to review the case, taking into consideration such reports upon the conduct of the accused during the period of suspension as shall be available, and such officer may thereupon order the sentence to be remitted or reduced or he may order the sentence to be forthwith carried into effect. If the accused during the period of suspension, is convicted of a further offence against discipline the suspended sentence shall be forthwith carried into execution and the second offence shall not be suspended

Clause 48 —The Commissioner may reduce in rank or dismiss any non-commissioned or subordinate officer who has been sentenced to imprisonment by any court

Clause 53 —Power to make payment from the Police Rewards and Fines Fund under the Bill is given to the Commissioner instead of the Governor as under the existing law

The additional purposes provided for which the Commissioner may sanction payments from the fund are “ payments to non-commissioned or subordinate officers as rewards for meritorious acts or service in the execution of duty, when such payments cannot otherwise be met from Colonial Funds ” and “ expenditure for the benefit and advancement of authorised recreation and sport and other branches of police activity organised within the force ”

Annual estimates of revenue and expenditure are required to be prepared by the Commissioner and submitted to the Treasurer before the commencement of the year to which they relate

Section 1 of the Principal Ordinance proposed to be amended —

Short title and
commence-
ment

1 (1) This Ordinance may be cited as “ the Registration of Titles Ordinance,” and shall come into operation in respect of any part thereof upon such date as the Governor may by notification in the Gazette appoint

Conflicting
laws

(2) Except so far as is expressly enacted to the contrary no Ordinance in so far as is inconsistent with this Ordinance shall apply or be deemed to apply to land whether freehold or leasehold which is under the operation of this Ordinance

(3) The Governor may by order published in the Gazette apply this Ordinance to any area in the Colony

GOVERNMENT NOTICE NO 624

His Excellency the Governor has approved of the following Bill being introduced at the next session of the Legislative Council

G R SANDFORD,
for Colonial Secretary

A Bill to Amend the Registration of Titles Ordinance

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 Registration of Titles (Amendment) Ordinance, 1929,' and shall be read as one with the Registration of Titles Ordinance (Chapter 142 of the Revised Edition), hereinafter referred to as ' the Principal Ordinance ' Short title
- 2 Section 1 of the Principal Ordinance is hereby amended by the insertion of the following sub-section after sub-section (2) thereof — Amendment of section 1 of the Principal Ordinance
 - (2A) Nothing in this Ordinance contained shall apply to land in respect of which a lease has issued from the Crown for a term of years and in respect of which the Crown has covenanted to grant a further lease upon compliance with building conditions, and such renewal or extension of lease may be made, issued and registered as though this Ordinance had never been enacted
- 3 This Ordinance shall not apply to grants issued under the Principal Ordinance before the date of this Ordinance Ordinance not to apply to grants
- 4 Notwithstanding anything contained in section 2 of this Ordinance a lessee may elect to have a further lease or grant under the Principal Ordinance and in that event such lease or grant shall be issued under the Principal Ordinance and shall be subject to the Principal Ordinance as though this Ordinance had never been enacted Option to lessee to have lease or grant under the Principal Ordinance

OBJECTS AND REASONS

There were many leases issued from the Crown some years ago for a term of 25 years, providing for an extension of term to 99 years upon compliance with building conditions. These leases are now beginning to expire, and it has become necessary to issue further leases in accordance with the covenant for the extended term. The only way in which this can be done is to issue a grant under the Registration of Titles Ordinance (Chapter 142 of the Revised Edition), and existing encumbrances such as mortgages, have to be re-imposed after issue of the grant because that Ordinance does not admit of the English form of mortgage.

If it were possible to endorse the original leases with the extension of the term, the existing encumbrances would be automatically carried forward over that term, and thus trouble and expense to the public would be obviated. The amending Ordinance is designed to grant this facility. Provision is also made for the continuation of the present system in any case where it is desired.

Section 49 (a) (iii) of the Principal Ordinance proposed to be amended —

49 Subject to the provisions of the licence and this Ordinance the licensee may supply electrical energy within the area of supply for the purposes as defined by this Ordinance and the licence provided as follows —

(a) The supply of electrical energy to be given under any licence shall —

(iii) Where any supply is being given by the standard system but not at the standard pressures the licensee shall discontinue and cease to supply at such pressure or pressures and shall then and thereafter except in the case of high or extra high pressure supplies as authorised in each case by the Governor, give the supply at the standard pressure or pressures as hereinbefore specified without causing or entailing expense to any consumer in respect of any current-consuming device or apparatus by reason of the change of the pressure or pressures of the supply, unless otherwise agreed upon between the consumer and the licensee

GOVERNMENT NOTICE No 625

His Excellency the Governor has approved of the following Bill being introduced at the next session of the Legislative Council

G R SANDFORD,
for Colonial Secretary

A Bill to Amend the Electric Power Ordinance

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 Electric Power Short title (Amendment) Ordinance, 1929,’ and shall be read as one with the Electric Power Ordinance (Chapter 165 of the Revised Edition), hereinafter referred to as ‘ the Principal Ordinance ’

5 **2** Sub-section (a) (iii) of section 49 of the Principal Ordinance is hereby amended by the addition thereto of the following proviso —

Amendment of
section 49
(a) (iii) of the
Principal
Ordinance

10 “ Provided that the licensee shall be deemed to have complied with the requirements of this clause if at his own expense he shall cause to be interposed between his standard distribution system operating at a standard pressure and the consumer’s electrical plant, an efficient electrical device which will enable the consumer to continue to use any current-consuming device or apparatus already in use by him ”

OBJECTS AND REASONS

Section 49 (a) (iii) of the Principal Ordinance in effect provides that although the licensee shall standardise his supply at the prescribed pressures he shall in cases where a 200-volt plant has hitherto been in use convert his standard supply pressure to a pressure of 200 volts to enable such plant to continue to operate under the standard system

The most economic method of complying with the provisions of this section is by interposing an electrical transformer between the standard supply terminals and the 200-volt plant. The only other way in which the licensees can comply with the provisions of the section is by replacing all the existing 200-volt plant by 415-volt plant at considerable expense

As however the present section 49 (a) (iii) is capable of interpretation either way the licensees have requested that the ambiguity be removed by making it clear that the interposition of a transformer constitutes compliance with the provisions of the section

The proposed amendment accomplishes what is desired