

The following Bills, which will in due course be presented to the House of Representatives for enactment, are published for general information.

A BILL

FOR

AN ORDINANCE TO AUTHORISE THE IMPOSITION OF DUTIES OF CUSTOMS WHERE GOODS HAVE BEEN DUMPED OR SUBSIDISED, AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH.

Title.

[By notice, see section 1]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria as follows

Enactment.

1. This Ordinance may be cited as the Customs Duties (Dumped and Subsidised Goods) Ordinance, 1958, and shall come into operation on a day to be appointed by the Minister by notification in the Gazette after the signification by Her Majesty of Her pleasure hereon.

Short
title and
commence-
ment.

2. (1) In this Ordinance—

"country" includes any territory,

"importer" has the meaning assigned to it by section 2 of the Customs Ordinance,

Cap. 48.

"Minister" means the member of the Council of Ministers charged with responsibility for matters relating to industrial development, and references to producing goods include references to growing or manufacturing goods and to the application of any process in the course of producing goods.

(2) In this Ordinance references to the country from which goods are exported to Nigeria are references to the country from which they were consigned to Nigeria and goods which in the course of consignment from any country to Nigeria pass through or are transhipped in any third country shall not on that account be regarded for the purposes of this Ordinance as having been exported from that third country.

Cases where
duties may
be imposed

3. (1) Where it appears to the Governor-General in Council—

(a) that goods of any description are being or have been imported into Nigeria in circumstances in which they are under the provisions of this Ordinance to be regarded as having been dumped, or

(b) that a Government or other authority outside Nigeria has been giving a subsidy affecting goods of any description which are being or have been imported into Nigeria,

and that, having regard to all the circumstances, it would be in the national interest, he may exercise the power conferred on him by this Ordinance to impose and vary duties of customs in such manner as he thinks necessary to meet the dumping or the giving of the subsidy: Provided that, where the Governor-General in Council is not satisfied that the effect of the dumping or of the giving of the subsidy is such as to cause or threaten material injury to an established industry in Nigeria or is such as to retard materially the establishment of an industry in Nigeria he shall not exercise that power if it appears to him that to do so would conflict with the obligations of the Government of the Federation under the provisions for the time being in force of the General Agreement on Tariffs and Trade concluded at Geneva in the year 1947.

(2) For the purposes of this Ordinance imported goods shall be regarded as having been dumped—

(a) if the export price from the country in which the goods originated is less than the fair market price of the goods in that country, or

(b) in a case where the country from which the goods were exported to Nigeria is different from the country in which they originated,—

(i) if the export price from the country in which the goods originated is less than the fair market price of those goods in that country, or

(ii) if the export price from the country from which the goods were so exported is less than the fair market price of those goods in that country.

(3) References in this Ordinance to giving a subsidy are references to giving directly or indirectly, a bounty or subsidy on the production or export of goods (whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves, to materials of the goods or to something else), and include—

(a) the giving of any special subsidy on the transport of a particular product, and

(b) the giving of favourable treatment to producers or exporters in the course of administering any governmental control over the exchange of currencies where such treatment has the effect of assisting a reduction of the prices of goods offered for export,

but do not include the application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

4. (1) The power which the Governor-General in Council may exercise under this Ordinance is a power by order to impose on goods of a description specified in the order a duty of customs chargeable on the import of the goods into Nigeria at a rate specified in the order.

(2) The matters by reference to which the description of goods in an order is framed shall include either the country in which the goods originated or the country from which the goods were exported to Nigeria.

(3) Subject to the provisions of the last foregoing subsection an order under this section may include such provisions with respect to the description of the goods chargeable with duty and with respect to the cases in which duty is chargeable as may appear to the Governor-General in Council to be required for the purposes of this Ordinance, and, in particular:—

(a) provisions limiting the description of the goods by reference to the particular persons or organisations by whom the goods were produced or who were concerned with the production of the goods in some specified manner,

(b) provisions defining the rate of duty by reference to value or weight or other measure of quantity,

(c) provisions directing that duty be charged for any period or periods, whether continuous or not, or without any limit of period, or at different rates for different periods or parts or periods, and

(d) in connection with the commencement, variation or termination of a duty, provisions authorising repayments in respect of duty where it is shown that the prescribed conditions are fulfilled.

(4) Any duty chargeable under this Ordinance on any goods shall be chargeable in addition to any other duty of customs for the time being chargeable thereon and the charge of duty under this Ordinance shall not affect liability to customs duty chargeable under any other Ordinance or the amount of any such duty.

(5) Section 22 of the Customs Ordinance (which charges duty on imported composite goods by reference to any dutiable goods used in their manufacture), shall not apply to a duty under this Ordinance.

5. (1) Where it appears to the Governor-General in Council that relief under this section should be available as respects a duty imposed by an order under this Ordinance (being an order made to afford protection against dumping) he may, if he thinks fit, in that or a subsequent order under this Ordinance apply the provisions of this section in relation to the duty.

(2) Where this section applies in relation to any duty, the importer of any goods chargeable with the duty as being goods originating in or, as the case may be, exported from a specified country may apply to the Minister for relief from the duty on those goods.

Orders
imposing
duties.

Cap. 48.

Relief in
respect of
anti-
dumping
duties.

(3) If on an application so made the Minister is satisfied that the export price of the goods from that country with the amount of the duty added to it exceeds the fair market price of the goods in that country, the Minister shall notify the Comptroller of Customs and Excise of the amount of the excess, and the Comptroller shall remit or repay the duty up to that amount.

(4) An application under this section as respects any goods shall not be made more than six months after the duty has been paid on the goods, and in connection with any such application the applicant shall furnish such information and evidence as the Minister may require from him for ascertaining the said export price or fair market price.

(5) The foregoing provisions of this section shall have effect in relation to a duty imposed by an Order under this Ordinance (being an Order made to afford protection against the giving of a subsidy) as if references to the fair market price in a country were references to the export price from that country increased by such amount (if any) as may be necessary to offset the effect of the giving of the subsidy.

(6) If a person for the purposes of an application under this section—

(a) makes any statement which is false in a material particular, or

(b) produces any account, estimate, return or other document which is false in a material particular,

the amount of any duty remitted or repaid under this section on the application shall be recoverable as a debt due to the Crown and if the statement was made or the document was produced knowingly or recklessly that person shall be liable to a fine of one hundred pounds or imprisonment for three months or to both such fine and imprisonment.

Draw-
back, etc.,
of duties.

6. (1) The Governor-General in Council may by order provide for the allowance of drawback in respect of all or any duties under this Ordinance on the export of goods in such circumstances and subject to such conditions as he may specify.

(2) The drawback may be in respect of duty paid on the goods or in respect of duty paid on materials used in the manufacture of the goods and the rate of the drawback may be determined in such manner and by reference to such matters as the Governor-General in Council may specify.

Power to
require
information
from
importers.

7. (1) The Comptroller of Customs and Excise may, require the importer of any goods to state such facts concerning the goods and their history as he may think necessary to determine whether the goods are goods originating in a country specified in an order under this Ordinance or are goods exported from any country, and to furnish them in such form as he may require with proof of any statements so made; and if such proof is not furnished to his satisfaction or the required facts are not stated, the goods shall be deemed for the purposes of this Ordinance to have originated in, or, as the case may be, to have been exported from, such country as he may determine: Provided that the Comptroller shall require proof of the country in which goods originated in relation to any duty under this Ordinance in the case only of goods exported from such countries as the Minister may direct in relation to that duty.

(2) Where an order under this Ordinance limits the description of goods in respect of which duty is chargeable under this Ordinance or the cases in which duty is so chargeable so that the question whether any and if so what duty is chargeable on the goods depends on other matters besides the country

in which the goods originated or from which they were exported, the Comptroller may also require the importer to state such facts as he may think necessary to determine that question so far as regards those other matters and to furnish them in such form as he may require with proof of any statements so made, and if such proof is not furnished to his satisfaction or the required facts are not stated, those facts shall be deemed for the purposes of duty under this Ordinance to be such as he may determine.

8. (1) In relation to goods imported into Nigeria the export price from the country in which the goods originated or from which they were exported shall be determined as provided for in this section.

Ascertainment of export price.

(2) If the goods are imported under a contract of sale which is a sale in the open market between buyer and seller independent of each other, and the Minister is satisfied as to that fact, as to the price on that sale and as to such other facts as are material for this purpose, the export price shall be the price on that sale subject to a deduction for the cost of insurance and freight from the port or place of export in the said country to the port or place of import, and for any other costs, charges or expenses incurred in respect of the goods after they left the port or place of export, except so far as any such costs, charges or expenses have to be met separately by the purchaser.

(3) If subsection (2) of this section does not apply, the Minister shall determine the export price by reference to such sale of the goods (or of any goods in which the first-mentioned goods were incorporated) as he may select with such adjustments as may appear to him to be proper.

9. (1) The fair market price of any goods in a country shall for the purposes of this Ordinance be determined as follows—

Ascertainment of fair market price.

(2) Subject to subsection (3) of this section the fair market price shall be taken to be the price at which goods of the description in question (that is to say, any identical or comparable goods) are being sold in the ordinary course of trade in the said country for consumption or use there, but subject to any necessary adjustments, whether for differences in conditions and terms of sale, for differences in taxation or otherwise, which may be required for the purpose of ensuring that the comparison between the fair market price and the export price is effectively a comparison between the prices on two similar sales.

(3) If it appears to the Minister that goods of that description are not being sold in the said country, or not in such circumstances that the fair market price can be determined in accordance with subsection (2) of this section, the fair market price shall be determined by him by reference to any price obtained for goods of that description when exported from the said country with adjustments made for the purpose mentioned in subsection (2) of this section, or, if he thinks fit, by reference to the cost or estimated cost of production of the goods the dumping of which is in question with such additions in respect of selling cost and profit as may appear to him to be proper.

(4) No account shall be taken under this section of any application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

10. (1) Goods shall be regarded for the purposes of this Ordinance as having originated in a country—

(a) if those goods were wholly produced in that country, or

Construction of references to country of origin, etc.

(b) if some stage in the production of the goods was carried out in that country and the cost of carrying out such stages, if any, in the production of the goods as were carried out after those goods last left that country (but before the import of the goods into Nigeria) was less than twenty-five per cent of the cost of production of the goods as so imported, or

(c) if some stage in the production of any components or materials incorporated in the goods was carried out in that country and the cost of carrying out such stages in production as were carried out after those components or materials last left that country to convert those components or materials into the goods as imported into Nigeria was less than twenty-five per cent of the cost of production of the goods as so imported.

(2) Where the export price of any goods from the country in which they originated is in question and some stage in the production of the goods, or of any components or materials incorporated in the goods, was carried out after they last left that country, the deductions to be made in the price by reference to which the export price is to be ascertained shall include a deduction for the cost of carrying out any such stage in the production of the goods and in the production of any components or materials incorporated in the goods; and the fair market price shall be the fair market price of those goods or, as the case may be of those components or materials, in the state in which they left that country.

(3) Any reference in this Ordinance to the country in which goods originated shall be taken, in a case where there are two or more countries which answer to that description, as a reference to any of those countries.

(4) The Governor-General in Council may by regulations prescribe—

(a) the costs, charges and expenses to be taken into account in ascertaining costs of production or the cost of any stage in production,

(b) the manner in which cost of production is to be ascertained in cases where different stages are carried out by different persons,

(c) the manner in which the cost of different stages of production is to be ascertained.

11. Any order made by the Governor-General in Council in accordance with section 4, 5 or 6 shall be laid before the House of Representatives at the first available opportunity thereafter and the House of Representatives may by resolution amend or revoke such order without prejudice to anything lawfully done under such order prior to any such amendment or revocation.

Objects and Reasons

The object of this Bill is to give the Governor-General in Council power to take action against dumped goods and subsidised goods imported into Nigeria in cases where it appears to be in the national interest so to do. The Bill closely follows the Customs Duties (Dumping and Subsidies) Act, 1957, recently enacted in the United Kingdom.

The Bill authorises the imposition of an additional customs duty on goods in respect of which the export price from the country of origin or country of export is less than their fair market price in that country, or on goods assisted by a subsidy from the country of origin or of export.

The Bill is suspended in its operation pending the signification of Her Majesty, as is the usual procedure in respect of legislation imposing differential duties.

Any order made by the Governor-General in Council will come into effect forthwith, or at a date specified in the Order, but may be amended or revoked by the House of Representatives.

This Bill is published in substitution for that published in the Supplement to Official Gazette No. 47 of 29th August, 1957 at page C159. There are two changes which do not affect the substance.

A BILL

FOR

AN ORDINANCE TO PROVIDE FOR THE TRANSFER OF STATUTORY POWERS AND DUTIES TO MINISTERS, AND TO MAKE MISCELLANEOUS PROVISION FOR THE MANNER OF EXERCISE AND SIGNIFICATION OF SUCH FUNCTIONS.

Title.

[

]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria as follows—

Enactment.

1. This Ordinance may be cited as the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Ordinance, 1958.

Short title.

Power to
make orders
for the
transfer of
statutory
functions to
Ministers.

2. (1) Subject to the provisions of this section, the Governor-General may, in any law enacted by the Federal Legislature or having effect as if it had been so enacted, by Order make such modifications, whether by means of addition, substitution or deletion, as he may think fit for the purpose of—

(a) transferring to a Minister any of the powers and duties which are by such law directly or indirectly conferred or imposed on the Governor-General, the Governor-General in Council, or any public officer (other than the Secretary of State) or which are conferred upon any other Minister; and

(b) making provisions consequential or incidental to any such transfer.

(2) An Order made under this section may include directions (either general or in relation to any particular matter) for the carrying on and completion by the Minister to whom a power or duty is transferred of anything commenced by the authority from whom it is transferred.

(3) Nothing in this Ordinance shall be deemed to empower an Order to be made the effect of which would be to transfer to a Minister any power or duty—

(a) which relate to any matter for which, under the provisions of the Nigeria (Constitution) Order in Council, 1954, or any Order of Her Majesty amending or in substitution for the same, a Minister may not be charged with responsibility or the Governor-General or some person other than a Minister is charged with responsibility; or

(b) which is conferred by law upon a judge, magistrate, justice of the peace or other officer exercising functions which relate to the administration of justice.

(4) A law which has been modified in accordance with an Order made under this section shall be deemed for all purposes to have been amended in accordance with such modification, and the provisions of section 42 of the Interpretation Ordinance (which relates to the reprinting of Ordinances and Laws which have been amended) shall apply to any modification so effected as they do to additions, omissions, substitutions and amendments effected by an amending Ordinance or Law.

Power of
delegation.

3. (1) Where by any law enacted by the Federal Legislature or taking effect as if it had been so enacted a Minister is empowered to exercise any powers or perform any duties, he may, by a delegation notified in the Gazette depute any of the following officers by name or office to exercise those powers or perform those duties, subject to such conditions, exceptions and qualifications as the Minister may prescribe—

(a) the Permanent Secretary having supervision over a department of government with which the Minister has been charged with responsibility, or any officer who comes directly under the authority of such Permanent Secretary;

(b) any officer of any such department of government;

(c) any officer of the police with the consent of the Governor-General;

(d) any other public officer with the consent of the Minister charged with responsibility for the functions exercised by such officer, or

(e) any officer in the public service of a Region with the consent of the Governor of the Region.

(2) No power to sign warrants, or to make regulations, rules, bye-laws or orders shall be deputed under this section.

(3) Any delegation made under the provision of this section shall be revocable at will and no delegation shall prevent the exercise of any power by the Minister concerned.

4. When any power is given to a Minister to make any declaration or appointment or to give any licence, authorisation, exemption, notice, direction, approval, permission or consent, it shall be sufficient, unless it be otherwise expressed, for the same to be signified under the hand of the Permanent Secretary having supervision over a department of government with which that Minister has been charged with responsibility.

Signification
of acts of
Minister.

5. In respect of any power or duty vested in the Governor-General prior to the making of any Order under section 2, any delegation of such power which shall have been made by the Governor-General in accordance with the provisions of section 33 of the Interpretation Ordinance prior to the making of such Order shall remain in full force and effect until revoked or replaced by the Minister to whom the power or duty is transferred, but the continuance of such a delegation shall not prevent the exercise by such Minister of any such power or duty.

Saving of
existing
delegations.
Cap. 94.

Objects and Reasons

The object of this Bill is to enable the Governor-General to make orders transferring statutory functions to appropriate Ministers or to transfer such functions between Ministers, to enable Ministers to delegate, and to provide for signification of their acts where not issued over their own signatures.

ABUBAKAR T. BALEWA,
Prime Minister of the Federation

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A BILL

FOR

Title. AN ORDINANCE TO AMEND THE MINERAL OILS ORDINANCE (CHAPTER 135 OF THE REVISED EDITION OF THE LAWS, 1948),

Commence-
ment.

Enactment. BE IT ENACTED by the Legislature of the Federation of Nigeria as follows :—

Short title.

1. This Ordinance may be cited as the Mineral Oils (Amendment) Ordinance, 1958.

Amend-
ment of
section 6,
Cap. 135.

2. Section 6 of the Mineral Oils Ordinance is amended—

(a) by the repeal of paragraph (a) of subsection (1);

(b) by the addition after subsection (2) of the following new subsection—

“(3) The Governor-General may waive the restriction specified in paragraph (b) of subsection (1) in respect of any lease or licence if there is provision therein that the lessee or licensee may be required (unless he is able to show that he would incur substantial tax disabilities by so doing) to form a company incorporated in Nigeria at any time after five years from the date of the first commercial export of oil from Nigeria for the purpose of transferring to such locally incorporated company the rights exercised under such lease or licence.”.

Objects and Reasons

The amendment removes a provision that mineral oil leases and licences shall be approved by the Secretary of State, and provides for waiver of the provision whereby a foreign company may not hold a lease or licence, substituting provision that a local company may be required to be formed after a certain time unless substantial tax disabilities would result.

A BILL FOR

AN ORDINANCE TO MAKE FURTHER PROVISION WHEREBY THE ESTABLISHMENT AND DEVELOPMENT IN NIGERIA OF COMMERCIAL ENTERPRISES MAY BE ENCOURAGED BY WAY OF RELIEF FROM INCOME TAX AND FOR PURPOSES CONNECTED THEREWITH.

Title.
Commence-
ment.
Enactment.

BE IT ENACTED by the Legislature of the Federation of Nigeria as follows—

PART I.—PRELIMINARY

1. This Ordinance may be cited as the Industrial Development (Income Tax Relief) Ordinance, 1958, and shall be construed as one with the Income Tax Ordinance (hereinafter referred to as the principal Ordinance).

Short title
and cons-
truction.
Cap. 92

2. In this Ordinance, unless the context otherwise requires—
"accounting period" means a period for which accounts have been made up in accordance with paragraph (iii) of section 12;

Interpreta-
tion.

Cap. 38.

"company" means a company (other than a private company) limited by shares and incorporated in Nigeria under the Companies Ordinance and resident in Nigeria;

"Minister" means the member of the Council of Ministers charged with responsibility for matters relating to industrial development;

"new trade or business" means the trade or business of a pioneer company deemed under the provisions of section 12 to have been set up and commenced on the day following the end of its tax relief period;

"old trade or business" means the trade or business of a pioneer company carried on by it in its tax relief period in accordance with the provisions of section 12, and which either ceases within or is deemed, under those provisions, to cease at the end of that period;

"permissible by-product" means any goods or services so described in any certificate given under section 4 being goods or services necessarily or ordinarily produced in the course of producing a pioneer product;

"pioneer certificate" means a certificate given under section 4, certifying, *inter alia*, a company to be a pioneer company, or any such certificate as amended under sections 5 or 8;

"pioneer company" means a company certified by any pioneer certificate to be a pioneer company;

"pioneer enterprise", in relation to a pioneer company, means the production and sale of its relevant pioneer product or products;

"pioneer industry" means a particular kind of trade or business declared by an order made under section 3 to be a pioneer industry;

"pioneer product" means any goods or service declared by any order made under section 3 to be a pioneer product;

"production day" means the day on which the trade or business of a pioneer company commences for the purposes of the principal Ordinance;

"qualifying capital expenditure" means capital expenditure of such a nature as to rank as qualifying expenditure for the purposes of the Fourth Schedule to the principal Ordinance;

"relevant pioneer product", in relation to any pioneer company, means the pioneer product or products and the permissible by-product or products specified in its pioneer certificate;

"tax relief period", in relation to a pioneer company, means the period ascertained in accordance with the provisions of subsection (1) of section 11 and any extension of that period made under that section.

PART II.—PIONEER CONDITIONS

3. (1) Where it is represented to the Minister that—

(a) any industry is not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects of further development of any industry; and

(b) it is expedient in the public interest to encourage the development or establishment of the industry in Nigeria by the making of an order declaring the industry to be a pioneer industry and any product or products of such industry to be a pioneer product or products,

the Minister shall cause to be published in the Gazette a notice—

Powers and
procedure
for declaring
an industry
and a
product a
pioneer
industry and
product.

(i) stating that a representation has been received and setting out the industry and the products which it is sought to have declared a pioneer industry and pioneer products, either as the same have been described in the representation made to the Minister or with such variations therefrom as the Minister may think expedient ; and

(ii) requiring any person who may object to the making of the suggested declaration to give notice in writing of his objection, and of the grounds on which he relies in support thereof, to the Minister not later than thirty days after the publication of the notice.

(2) As soon as may be after the period of thirty days referred to in paragraph (ii) of subsection (1) has expired, the Minister shall submit the representations made to him, together with any objections of which he has received notice, to the Governor-General in Council, who may, if he considers it in the public interest to do so having regard, *inter alia*, to the probable effect on existing businesses engaged in the same industry in Nigeria and on other industries in Nigeria, make an order declaring the industry to be a pioneer industry and its products to be pioneer products: Provided that before so submitting a representation to which notice of objection has been given the Minister may, if he considers it necessary, call for further particulars of the grounds of any such objection.

(3) An order made under subsection (2)—

(a) may describe the industry and its products in the way in which they were described in the notice published in the Gazette in accordance with subsection (1) or may vary that description in such manner as the Governor-General in Council may think fit ;

(b) may contain such conditions and restrictions as the Governor-General in Council may think fit to impose ; and

(c) may be expressed to take effect from an earlier date than that on which it is published in the Gazette, not being earlier than the date on which the representation in consequence of which the order was made was received by the Minister.

(4) An order made under subsection (2) may be amended from time to time by adding to the product or products, declared in such order to be pioneer products, any further product or products or otherwise as may appear necessary: Provided that before making an amending order, and in making any such order under this subsection, the principles and procedure laid down in subsections (1), (2) and (3) shall be applied, *mutatis mutandis*, and any reference in this Ordinance to an order shall, wherever necessary, include a reference to that order as amended.

(5) Any representation made in accordance with subsection (1) by a member of the public (including a company or a body of persons) shall be accompanied by a deposit of fifty pounds, which shall be returned to the person making the deposit unless the Minister is of opinion that the representation is frivolous, in which event such deposit shall be forfeited to the general revenue of the Federation.

Procedure
and power
for applying
for and
giving a
pioneer
certificate.

4. (1) Any company, or body of persons proposing to register a company, being desirous of establishing or participating in any pioneer industry or industries for the purpose of producing any pioneer product or products may make an application in writing to the Minister for a pioneer certificate to be given, certifying the company to be a pioneer company in relation to such industry or industries and product or products.

(2) In any such application the applicant shall—

(a) give particulars of the assets on which qualifying capital expenditure will be incurred, including their source and estimated cost

(i) on or before production day; and

(ii) during a period of two years following production day;

(b) specify the place in which the assets on which qualifying capital expenditure will be incurred will be situated;

(c) estimate the date of production day of the company or proposed company, such estimate being expressed, if the applicant so wishes, as at the expiration of a stated period after the date of issue of the certificate;

(d) specify the proposed products and by-products (not being pioneer products) which will be produced and provide an estimate of the quantities and value of each during a period of one year from production day;

(e) give particulars of the loan and share capital or the proposed loan and share capital of the company or proposed company including the amount and date of each issue or proposed issue, and the sources from which the capital is to be or has been raised; and

(f) give the names and addresses of the persons promoting the company or, if it is already incorporated, of the directors thereof together with the number of shares held or proposed to be held by each such director or promoter whether directly or through any nominee.

(3) Every application for a pioneer certificate other than one made as provided in subsection (4) shall be accompanied by a deposit of fifty pounds, which shall be returned to the applicant unless the Minister is of opinion that the application is frivolous, in which event such deposit shall be forfeited to the general revenue of the Federation.

(4) Where a company, or body of persons proposing to register a company, makes a representation in accordance with subsection (1) of section 3, it may at the same time apply in the manner provided in subsection (1) of this section for a pioneer certificate certifying the company to be a pioneer company in relation to any industry and any product or products which may be declared a pioneer industry and a pioneer product or products by an order made in consequence of that representation, and, if an order is so made, a pioneer certificate granted in consequence of such an application may be expressed to be effective from a date not earlier than the date on which the representation was received by the Minister, or the date on which the company was registered, whichever is the later.

(5) At any time after a notice has been published in the Gazette in accordance with subsection (1) of section 3 any company, or body of persons proposing to register a company, may notify the Minister that it proposes to apply for a pioneer certificate certifying the company to be a pioneer company in relation to any industry and any product or products which may be declared a pioneer industry and a pioneer product or products by an order made in consequence of the representation referred to in the notice,

and if an order is so made and such company or body of persons makes an application in due form to the Minister for such a pioneer certificate not more than three months after the publication of such order, a pioneer certificate granted in consequence of such an application may be expressed to be effective from a date not earlier than the date on which the notification referred to in this subsection was received by the Minister, or the date on which the company was registered, whichever is the later.

(6) For the purposes of subsections (4) and (5)—

(a) an order shall be deemed to have been made in consequence of a representation if the pioneer industry and the pioneer product or products named in the order are substantially the same as those with respect to which the representation was made to the Minister; and

(b) if two or more similar representations have been made to the Minister before the publication of the notice in accordance with subsection (1) of section 3, an order may be treated as having been made in consequence of each of those two or more representations.

(7) Upon receipt of an application submitted under this section the Minister may call for any further particulars from the applicant, which he may consider necessary, and shall cause such application, with any such particulars, to be laid before the Governor-General in Council for consideration, and if the Governor-General in Council is satisfied that it is expedient in the public interest so to do and in particular having regard—

(a) to the number of pioneer companies already established or about to be established for the production of the product or products mentioned in such application;

(b) to the production or anticipated production of such pioneer companies, and of other businesses established or about to be established in the industry or industries;

he may give a pioneer certificate, or decide not to give any such certificate: Provided that where any such application is made by persons proposing to register a company in connection with that application, and in consequence thereof the Governor-General in Council decides to give a pioneer certificate under this section, following the registration of such company, his decision may be expressed to be subject to such conditions as he may specify, and the Minister shall give notice in writing of such decision and of any such conditions to those persons and, if the company is registered within three months of the date of such notice and the Governor-General in Council is satisfied that such conditions, if any, have been or will be complied with, such certificate shall be given accordingly.

(8) A pioneer certificate shall be in the terms of the application, subject to such variations thereof as the Governor-General in Council may think fit and in addition thereto—

(a) shall state the permissible by-products which may be produced in addition to the pioneer product or products and may limit the proportion of the permissible by-products in relation to the pioneer product or products either in quantity or in value or in both; and

(b) notwithstanding the provisions of section 11, may prescribe a maximum tax relief period enjoyable by the pioneer company by virtue of that pioneer certificate in any case where the pioneer company has acquired or proposes to acquire assets from any company to which a pioneer

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certificate has been given under this Ordinance, or under the Aid to Pioneer Industries Ordinance, 1952, or to take over the whole assets of any other existing company.

Power and
procedure
for amending
a pioneer
certificate by
adding an
additional
pioneer
product.

5. (1) At any time during its tax relief period a pioneer company may make an application in writing to the Minister to amend its pioneer certificate by adding an additional pioneer product to the pioneer product or products specified in such certificate.

(2) Such application shall specify the additional pioneer product and the reasons for the application.

(3) The provisions of subsection (7) of section 4, except the proviso to that subsection, shall apply, *mutatis mutandis*, to any application under this section.

Provision for
case where
pioneer
certificate
operates
retrospect-
ively.

6. Subject to the provisions of this Ordinance relating to the cancellation of pioneer certificates, where, by virtue of subsection (4) or (5) of section 4 a certificate is to be operative from a retrospective date, then any act or thing which has been done or which has happened, for the purposes of the principal Ordinance, since that date which would not have been done or happened if that certificate had been in force at that date, shall, whenever necessary for the purposes of this and the principal Ordinance, be treated as not having been done or not having happened, and if the act consists of the payment of any tax by a company, certified to be a pioneer company, that tax shall be repaid, in the manner provided in the principal Ordinance, as soon as may be after the expiration of three months from the production day of that company.

Fixing of
dates of
production
day and
amount of
qualifying
capital
expenditure.

7. (1) In this section "the material date" means—

(a) in relation to a pioneer company engaged in a manufacturing, processing, mining or agricultural pioneer industry, the date on which the company begins to produce a pioneer product in marketable quantities; and

(b) in relation to a pioneer company engaged in a pioneer industry consisting of the provision of services, the date on which the company is ready to provide such services on a commercial scale.

(2) Not later than one month after the material date a pioneer company shall make an application in writing to the Commissioner to certify the date of its production day and shall propose a date to be so certified and give reasons for proposing that date.

(3) Not later than one month after its production day has been finally determined and certified or within such extended time as the Commissioner may allow, a pioneer company shall make an application in writing to the Commissioner to certify the amount of its qualifying capital expenditure incurred prior to production day and shall supply full particulars of its capital expenditure so incurred.

(4) After considering any application made under subsection (2) or (3), together with such further information as he may call for, the Commissioner shall issue a certificate to the company certifying the date of its production day or the amount of its qualifying capital expenditure, as the case may be, and the provisions of Parts XI and XII of the principal Ordinance (relating to objections and appeals), and of any rules made thereunder, shall apply, *mutatis mutandis*, as if such certificate were a notice of assessment given under such provisions.

(5) The Commissioner shall notify the Minister of the date of the production day of the company and of the amount of its qualifying capital expenditure incurred prior to that date, when the same have been finally determined and certified, and on the receipt of such notification the Minister shall require the company to declare, within a period not exceeding thirty days, in what respects the proposals and estimates made in its application for a pioneer certificate, or any conditions contained in its pioneer certificate, have not been fulfilled.

8. (1) Where a certificate issued under section 7 certifies that a pioneer company has incurred qualifying capital expenditure to an amount less than £5,000 prior to production day, the Minister shall cancel the company's pioneer certificate.

Cancellation and amendment of pioneer certificates.

(2) Where a certificate issued under section 7 certifies that the date of the production day of a pioneer company is more than one year later than the estimate thereof given in the company's application for a pioneer certificate, the Minister shall cancel the company's pioneer certificate unless he is satisfied that the delay is due to causes outside the control of the company, or to other good and sufficient cause.

(3) Where, in any case in which the provisions of subsections (1) and (2) do not apply, the Minister is of the opinion that a pioneer company has contravened any provision of this Ordinance, or has failed to fulfil any estimate or proposal made in its application for a pioneer certificate or any conditions contained in its pioneer certificate, he shall report the circumstances to the Governor-General in Council, who may either cancel the company's pioneer certificate or direct that the company's tax relief shall be restricted to such period as may be appropriate notwithstanding the provisions of section 11.

(4) Where a pioneer company makes application to the Minister for its pioneer certificate to be cancelled, the Minister shall cancel such certificate.

(5) Where any pioneer certificate is cancelled under this section the certificate shall be deemed never to have had any effect in relation to such company.

9. The contents of any application made or of any certificate given under this Part with respect to a pioneer company shall not, except at the instance of such company, be published in the Gazette or in any other manner:

Publication of pioneer certificate, etc., prohibited except at instance of pioneer company.

Provided that the Minister shall cause to be published by notice in the Gazette and in the Regional Gazettes the name of any company—

- (i) to whom a pioneer certificate has been given, or
- (ii) whose pioneer certificate has been cancelled.

10. The Minister may from time to time specify the forms of application to be made under this Part.

Forms.

PART III.—INCOME TAX RELIEF

11. (1) The tax relief period of a pioneer company shall commence on the date of the production day of such company and, subject to anything prescribed under paragraph (b) of subsection (8) of section 4 or to any direction given under subsection (3) of section 8, shall continue for two years and thereafter for such further period or periods as may be authorised under the subsequent provisions of this section.

Tax relief period.

(2) Upon the issue by the Commissioner of a certificate certifying that a pioneer company has incurred, by the end of two years from the commencement of its tax relief period, qualifying capital expenditure of not less than any one of the following amounts, its tax relief period shall *ipso facto* be extended by the period herein set out after that amount—

- (a) £15,000, one year;
- (b) £50,000, two years;
- (c) £100,000 three years.

(3) Where the tax relief period of a pioneer company has been extended by one year under subsection (2) and the Commissioner certifies that the pioneer company has incurred, by the end of that one year, qualifying capital expenditure of not less than £50,000, or of not less than £100,000, its tax relief period shall *ipso facto* be further extended by one or two years, as the case may require, from the end of the first extension.

(4) Where the tax relief period of a pioneer company has been extended by two years under subsection (2), or by one year under subsection (2) and by a further one year under subsection (3), and the Commissioner certifies that the company has incurred, by the end of those two years, qualifying capital expenditure of not less than £100,000, its tax relief period shall *ipso facto* be further extended by one year from the end of those two years.

(5) A pioneer company wishing to obtain a certificate for the purposes of the foregoing provisions of this section shall make an application in writing to the Commissioner not later than one month after the date on which its tax relief period, or any extension thereof, ends, or within such further period as the Commissioner may allow, and such application shall contain particulars of all expenditure incurred by the company by the requisite date which the company claims should be accepted as qualifying capital expenditure.

(6) After considering any application made under subsection (5), together with such further information as he may call for, the Commissioner shall issue a certificate to the company, certifying the amount of the qualifying capital expenditure incurred by the company by the requisite date.

(7) Where the Commissioner is satisfied that a company has incurred a loss in any accounting period falling within a tax relief period ascertained under the foregoing provisions of this section he shall issue a certificate to the company to that effect, and to the tax relief period finally ascertained under the foregoing provisions of this section there shall be added a further period of relief equivalent to the aggregate of all accounting periods for which such certificates have been issued to the company.

(8) The provisions of Parts XI and XII of the principal Ordinance (relating to objections and appeals) and any rule made thereunder shall apply *mutatis mutandis* as if any certificate given by the Commissioner under the provisions of this section or notice of refusal to give a certificate under subsection (7) of this section were a notice of assessment given under the provisions of that Ordinance.

12. If the trade or business of a pioneer company is carried on by it before and after the end of its tax relief period, then for the purposes of the principal Ordinance and this Ordinance—

- (i) that trade or business shall be deemed to have permanently ceased at the end of the tax relief period of the pioneer company;

(ii) in respect of that trade or business, the pioneer company shall be deemed to have set up and commenced a new trade or business on the day following the end of its tax relief period;

(iii) the pioneer company shall make up accounts of its old trade or business for a period not exceeding one year commencing on its production day, for successive periods of one year thereafter, for the period not exceeding one year ending at the date when its tax relief period determined under subsections (1), (2), (3) and (4) of section 11 ends, and, where the tax relief period has been extended under subsection (7) of section 11, in similar manner as though the first day of such extension were the production day of the pioneer company; and

(iv) in making up the first accounts of its new trade or business the pioneer company shall take as the opening figures for those accounts the closing figures in respect of its assets and liabilities as shown in its last accounts in respect of its tax relief period, and its next accounts of its new trade or business shall be made up by reference to the closing figures in such first accounts and any subsequent accounts shall be similarly made up by reference to the closing figures of the preceding accounts of its new trade or business.

13. Prior to the expiration of its tax relief period, a pioneer company shall not carry on any trade or business other than a trade or business the whole of the profits of which are derived from its pioneer enterprise.

Restrictions on trading prior to end of tax relief period.

14. (1) For the purposes of the principal Ordinance and this Ordinance, the Commissioner may direct that—

Power to direct in certain events.

(i) any sums payable to a pioneer company in any accounting period which, but for the provisions of this Ordinance, might reasonably and properly have been expected to have been payable, in the normal course of business, after the end of that period shall be treated as not having been payable in that period but as having been payable on such date, after that period, as the Commissioner thinks fit and, where such date is after the end of the tax relief period of the pioneer company, as having been so payable, on that date, as a sum payable in respect of its new trade or business; and

(ii) any expense incurred by a pioneer company within one year after the end of its tax relief period which, but for the provisions of this Ordinance, might reasonably and properly have been expected to have been incurred, in the normal course of business, during its tax relief period shall be treated as not having been incurred within that year but as having been incurred for the purposes of its old trade or business and on such date, during its tax relief period, as the Commissioner thinks fit.

(2) Where a direction has been made under this section with respect to a pioneer company and thereafter the length of the tax relief period of the pioneer company is varied, under any of the provisions of this Ordinance, the Commissioner may amend such direction accordingly.

(3) In determining whether a loss has been made in an accounting period for the purpose of subsection (7) of section 11 of this Ordinance, and for that purpose only, the Commissioner may in his absolute discretion exclude any sum which may be in excess of an amount which appears to the Commissioner to be just and reasonable, paid or payable by the company in respect of

- (i) remuneration to directors of the company ;
- (ii) interest, service, agency or other similar charges made by a person who is or is controlled by a shareholder of the company.

Capital
allowances
and losses.

15. (1) The income of a pioneer company in respect of its old trade or business, falling to be ascertained in accordance with the provisions of the principal Ordinance for any accounting period, shall be so ascertained (after making any necessary adjustments in consequence of a direction under section 14), without any regard to the provisions of section 20 of the principal Ordinance.

(2) Where an asset is used for purposes of the new trade or business of a pioneer company, any capital expenditure incurred by the pioneer company in respect of such asset before the end of its tax relief period shall, for the purposes of the Fourth Schedule to the principal Ordinance, be deemed to have been incurred on the day following the end of its tax relief period: Provided that where such expenditure gives rise to an initial allowance under the provisions of the said Schedule, and the tax relief period of the pioneer company has been extended under subsection (7) of section 11 of this Ordinance (on account of a loss in one or more accounting periods) the rate at which such initial allowances shall be computed shall be the appropriate rate *per centum* determined from the First Table to the said Schedule reduced at the rate of $\frac{1}{3}$ th for each year comprised in the total period of such extension.

(3) Where a pioneer company incurs a loss during an accounting period in its old trade or business that loss will be deemed for the purpose of computing total income but not income to have been incurred by the company on the day on which its new trade or business commences. For the purposes of this subsection a loss shall be computed in the same manner as income is computed under the provisions of subsection (1) of this section and without regard to the provisions of subsection (3) of section 14 of this Ordinance.

(4) For each accounting period the Commissioner shall issue to the pioneer company a statement showing the amount of income ascertained for the purpose of subsection (1) or loss computed for the purpose of subsection (3) and the provisions of Parts XI and XII of the principal Ordinance (relating to objections and appeals), and of any rules made thereunder, shall apply, *mutatis mutandis*, as if such statement were a notice of assessment given under such provisions.

Returns of
income.

16. So much of the provisions of Part X of the principal Ordinance, as are applicable in the case of a company, shall apply in all respects as if the income of a pioneer company in respect of its old trade or business was chargeable to tax.

Profits
exempted
from income
tax.

17. Subject to the provisions of subsection (6) of section 18, including the effect of a cancellation as therein mentioned, where any statement issued under subsection (4) of section 15 has become final and conclusive the amount of the income shown by such statement shall not form part of the assessable income, total income or chargeable income of the pioneer company for any year of assessment and shall be exempt from tax under the principal Ordinance: Provided that the Commissioner may, in his absolute discretion and before such a statement has become final and conclusive, declare that the whole or a specified part of the amount of such income is not in dispute and such undisputed amount of income shall be exempt from tax under the principal Ordinance, pending such a statement becoming final and conclusive.

18. (1) As soon as any amount of income of a pioneer company has become exempted under section 17, that amount shall be credited to an account to be kept by the pioneer company for the purposes of this section.

Certain dividends exempted from income tax.

(2) Where at the date of payment of any dividends by the pioneer company such account is in credit those dividends, or so much of those dividends, where (after the end of its tax relief period) the amount thereof exceeds such credit, as equal the amount of such credit, shall be debited to such account.

(3) So much of the amount of any dividends so debited to such account as are received by a shareholder in the pioneer company shall, if the Commissioner is satisfied with the entries in such account, be exempt from tax, under the principal Ordinance, in the hands of that shareholder and shall, for the purposes of the principal Ordinance, be deemed to be paid out of income on which tax is not paid or payable.

(4) Any dividends debited to such account shall be treated as having been distributed to the shareholders or any particular class of shareholders, of the pioneer company in the same proportions as those shareholders were entitled to payment of the dividends giving rise to the debit.

(5) The pioneer company shall deliver to the Commissioner a copy of such account, made up to date specified by him, whenever called upon so to do by notice in writing sent by him to its registered office, until such time as he is satisfied that there is no further need for maintaining such account.

(6) Notwithstanding the foregoing provisions of section 17 and this section, where it appears to the Commissioner that any amount of exempted income of a pioneer company, or any dividend exempted in the hands of a shareholder, ought not to have been exempted by reason of—

(i) a direction under section 14 having been made with respect to a pioneer company, after any income of such company has been exempted under the provisions of section 17, or

(ii) the cancellation of a pioneer certificate, the Commissioner may, at any time within six years of the date of any such direction or cancellation, make such additional assessments upon the pioneer company or any shareholder as may appear to be necessary in order to counteract any benefit obtained from any such amount which ought not to have been exempted or direct such company to debit its account, kept in accordance with subsection (1) with such amount as the circumstances require, and the provisions of Parts XI and XII of the principal Ordinance (relating to objections and appeals), and of any rules made thereunder, shall apply, *mutatis mutandis*, as if such direction were a notice of assessment given under such provisions.

19. During its tax relief period a pioneer company shall not—

(a) make any distribution to its shareholders, by way of dividend or bonus, in excess of the amount by which the account, to be kept by such company under section 18, is in credit at the date of any such distribution ; or

Dividend and loan restrictions during a tax relief period.

(b) grant any loan without first obtaining the consent of the Minister, whose consent shall only be given if he is satisfied that the pioneer company is obtaining adequate security and a reasonable rate of interest for any such loan.

Exclusion of
small com-
panies relief.

20. A pioneer company shall not be entitled to any relief under section 27A of the principal Ordinance.

Provisions
for planta-
tion industry.

21. For the purpose of the principal Ordinance and this Ordinance the trade of a Company which operates a plantation and to which a pioneer certificate has been granted, shall be deemed to have commenced on the date when planting first reaches maturity and any expenditure incurred on the maintenance of a planted area up to that date shall be deemed to have brought into existence an asset and be qualifying plantation expenditure for the purposes of the Fourth Schedule to the principal Ordinance.

Repeal,
savings and
transitional
provisions.
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22. (1) The Aid to Pioneer Industries Ordinance, 1952 (hereinafter in this section referred to as the former Ordinance) is repealed: Provided that subject to the provisions of this section, the former Ordinance shall continue to apply in relation to any company to which a pioneer certificate has been given under the former Ordinance before the date on which this Ordinance comes into operation.

(2) Any representation, application or objection made under the former Ordinance shall be deemed to have been made under this Ordinance.

(3) Any industry declared to be a pioneer industry under the former Ordinance and any products so declared to be pioneer products shall be deemed to have been declared to be a pioneer industry, or pioneer products, under this Ordinance.

(4) Any company to which a pioneer certificate has been given under the former Ordinance may, at any time within one year after the date on which this Ordinance comes into operation, elect to be treated as though it had received a pioneer certificate under this Ordinance and not under the former Ordinance: Provided that—

(a) where the tax relief period of any company so electing has begun before it so elects the date of commencement of that period under the former Ordinance shall be accepted as the date of commencement of the company's tax relief period under this Ordinance;

(b) any direction given under section 12 of the former Ordinance shall be effective for determining the length of the company's tax relief period for the purposes of this Ordinance.

Objects and Reasons

The object of this Bill is the same as that of the Aid to Pioneer Industries Ordinance, 1952, which it will supersede. It is to encourage the setting up of new industrial enterprises by giving pioneer relief, that is, the remission of income tax on profits which are earned during an initial period varying according to the capital invested in fixed assets. The relief offered in the Bill is more generous, the conditions for obtaining it, less onerous and the procedure quicker and more flexible. Orders declaring pioneer industries made under the present Ordinance will be deemed to have been made under the new one. Existing pioneer certificates will remain in force but holders may elect to be treated as if their certificates had been issued under the new Ordinance. The Bill is published in substitution for that published in the Supplement to *Official Gazette* No. 49 of 22nd August, 1957 at page C137. There have been a few changes which do not affect the substance of the Bill.

K. O. MRADIWE,
Minister of Commerce and Industry,
Federation of Nigeria