



THE OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA

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

VOL. LI—No. 34

NAIROBI, July 26, 1949

Price 50 Cents

GOVERNMENT NOTICE NO. 746

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

ALEX. M. WILKIE,
Acting Clerk to the Legislative Council.

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**A BILL TO AMEND AND CONSOLIDATE THE LAW
RELATING TO LOCAL GOVERNMENT IN
RURAL AREAS OF THE COLONY**

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

1. This Ordinance may be cited as the District Councils Ordinance, 1949, and shall come into operation upon such date as the Governor may, by notice in the Gazette, appoint. Short title and commencement.

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

“Central Roads and Traffic Board” means the Board established, under that name, by the Central Roads and Traffic Board Ordinance, 1929; No. 18 of 1929.

“Chairman” means the Chairman of a Council;

10 “Clerk” means the person for the time being lawfully acting as Clerk to a Council;

“Commissioner” means the Commissioner for Local Government appointed under the provisions of the Municipalities Ordinance, 1928;

15 “Council” means a District Council constituted under the provisions of this Ordinance;

“district” means the area placed under the jurisdiction of a Council;

“district road” means any road classified by the Governor as a district road under the provisions of this Ordinance; 20

“inspector” means the inspector appointed under the provisions of section 125 of this Ordinance;

“magistrate” means a magistrate of the first or second class;

25 “Member” means the Member of the Executive Council of the Colony, for the time being, responsible for Health and Local Government;

“Municipality” means a Municipality as defined by the Municipalities Ordinance, 1928;

30 “Municipal Board” means a Municipal Board constituted under the provisions of the Municipalities Ordinance, 1928;

“Municipal Council” means a Municipal Council constituted under the provisions of the Municipalities Ordinance, 1928;

35 “native areas” means the Native Lands, the Native Reserves, the Temporary Native Reserves, the Native Leasehold areas and any Native Settlement area, as defined in the Native Lands Trust Ordinance, 1938, and in Part VI of the Crown Lands Ordinance; No. 28 of 1938.
Cap. 140.

40 “public road” means a public road as defined under the Public Travel and Access Roads Ordinance; Cap. 113.

“Standing Committee” means the Standing Committee for Rural Areas established under the provisions of section 127 of this Ordinance;

45 “Township” means an area proclaimed as a Township under the provisions of the Townships Ordinance, 1930. No. 63 of 1930.

PART I—ESTABLISHMENT OF DISTRICTS AND CONSTITUTION OF DISTRICT COUNCILS

Powers of Governor in regard to District Councils.

3. Subject to the provisions of section 4 of this Ordinance, the Governor may, from time to time, by proclamation—

- (a) declare any area to be a district under the jurisdiction of a Council and constitute for such area a Council in accordance with the provisions of section 5 of this Ordinance; 5

Provided that no Municipality or Township shall be included in any district; 10

- (b) define the boundaries of any such district and assign a name to any such district:

- (c) divide any district into areas, to be known as "wards", and declare the number of elected members to be returned for each such ward; 15

- (d) with the consent of the Council concerned, divide any district or ward into polling districts.

Powers under preceding section to be exercised only after preliminary inquiry.

Cap. 25.

4. (1) Prior to the exercise of any of the powers conferred by section 3 of this Ordinance, the Governor may appoint the Member or the Commissioner to inquire into and report as 20 to the advisability of the exercise by the Governor of any of the powers so conferred; and for the purpose of such inquiry the Governor may confer upon the Member or the Commissioner all or any of the powers vested in a Commissioner under the provisions of the Commissions of Inquiry Ordinance. 25

(2) Notice of such appointment and particulars of the powers so conferred, shall be published in three consecutive issues of the Gazette.

(3) The report of the Member or Commissioner shall be submitted to the Governor through the Standing Committee, 30 and such Committee shall record its recommendations thereon.

Constitution of District Councils.

5. (1) There shall be constituted within every district, established under the provisions of section 3 of this Ordinance, a District Council which shall consist of—

- (a) such number of elected European members, not being 35 less than ten, as the Governor may, by notice in the Gazette, appoint, to be elected as hereinafter provided:

Provided that, for the Council for the rural area of the administrative district now known as the 40 Nyanza District, there shall be, in addition, not more than two elected Indian members of such Council:

Provided further that, if at any time no person stands for election or if, having been elected, the member so elected resigns or refuses to serve on a 45 Council and no other person stands for election, a Council shall nevertheless be deemed to be duly constituted under the provisions of this Ordinance, but in such case the Governor may nominate a person to be a member of the Council to fill such 50 vacancy;

- (b) one representative of any Municipal Council or Municipal Board, whose area is surrounded or bordered by the district, to be nominated by the Governor with the approval of the Municipal Council 55 or Board, as the case may be; and

- (c) where any area under the jurisdiction of a Council contains—
- 5 (i) only one administrative district, the district commissioner of such district;
 - (ii) not more than two administrative districts, the district commissioner of each such administrative district;
 - 10 (iii) more than two administrative districts, the district commissioners appointed by the Governor from two or more of such districts.

For the purposes of this paragraph the term "administrative district" means the whole or any part of such administrative district and the term "district commissioner" includes a district officer deputed by a district commissioner to attend a meeting 15 in the place of such district commissioner.

- (2) At any meeting at which a district commissioner is present, a district officer of the same district shall be entitled to attend in an advisory capacity but shall not be entitled to vote.
- 20 (3) The Provincial Commissioner or the Provincial Commissioners of the province or provinces, as the case may be, in which the area under the jurisdiction of a Council is situate, shall be entitled to attend and speak at any meeting of such Council and raise, and speak on, any matter, which shall be 25 considered by such Council.
- (4) The Governor may, at his discretion, nominate either one or two Indian members to any Council.

- (5) Where a vacancy is caused on any Council by the death, retirement or disqualification of any nominated member 30 or by a nominated member vacating his seat, the Chairman of such Council shall notify the Commissioner of such vacancy, and thereupon the Governor may nominate another person to fill such vacancy.

6. Every Council, shall, under the name of "The District Council of", be a body corporate with perpetual succession and a common seal (with power to alter such seal from time to time), and shall by such name be capable in law of suing and being sued, of acquiring, holding, and alienating land, and 40 subject to the provisions of this Ordinance or of any other law for the time being in force, generally of doing and performing such acts and things as bodies corporate may by law do and perform.

District Councils
to be bodies
corporate.

PART II—PROVISIONS RELATING TO ELECTIONS

45

REGISTRATION OF VOTERS

7. (1) A Council shall, as soon as possible after it has been constituted under the provisions of this Ordinance, and thereafter once in every three years, by a date to be fixed by the Commissioner, cause a list to be made of all Europeans 50 who are qualified to be enrolled as voters under the provisions of this Ordinance. Such list shall be subdivided into as many parts as there are wards of the district, and each such part shall show in alphabetical order the full name, residential address, occupation, and nature of the qualification of every voter 55 qualified to vote within the ward to which such part refers:

Preparation of
voters' roll.

Provided that in the case of the Council constituted for the rural area of the administrative district now known as the Nyanza District, such Council shall also cause a separate list to be made of all Indians who are qualified to be enrolled as voters.

(2) Where the boundaries of any district have been altered, or where the number of wards in a district has been increased or decreased or the boundaries thereof altered, the Council concerned shall, as soon as possible after such alteration, increase or decrease, cause such alterations to be made ⁵ in the respective voters' rolls as may be necessary to show correctly the particulars of voters resident in the district or in each ward, as the case may be.

(3) Where any ward has been divided into polling districts or any increase, decrease, alteration or adjustment of such ¹⁰ districts has been made, the Council concerned shall compile from the voters' roll of such ward a register of voters for each such polling district, consisting of the voters for the ward who are entitled to vote in such polling district.

(4) The Standing Committee may order all such steps to ¹⁵ be taken with regard to the preparation of the first voters' rolls for any district to which the provisions of this Ordinance apply, or may hereafter become applicable, as it may deem necessary to meet the circumstances of the case.

Registering officer.

8. The registering officer for the purpose of the ²⁰ preparation of voters' rolls under the provisions of this Ordinance shall be the Clerk of the Council concerned or such other person as such Council may, with the approval of the Commissioner, appoint.

Qualifications of European voters.

9. Subject to the provisions of this Ordinance, every ²⁵ person who is—

- (1) of European origin or descent; and
- (2) of not less than twenty-one years of age; and
- (3) either—

- (a) owns rateable property within the district of the ³⁰ capital value of one hundred pounds; or
- (b) (i) has resided in the district for twelve months out of the twenty-four months preceding the date of application for enrolment, and either
 - (ii) has been in occupation, for a like period, of ³⁵ premises in the district of an annual value of thirty-six pounds, or
 - (iii) is, at the date aforesaid, and has been for six months out of the preceding twelve months, in receipt of earnings at the rate of not less than ⁴⁰ ten pounds per month,

shall, upon application to the registering officer, be entitled to be enrolled in the European Voters' roll and to vote at the election of a European member:

Provided that a married woman who is qualified for ⁴⁵ enrolment under the provisions of paragraphs (1), (2) and (3) (b) (i) of this section shall be entitled to be enrolled notwithstanding that she does not possess either of the qualifications numbered (ii) and (iii) in paragraph (3) (b) of this section, if her husband is so qualified. ⁵⁰

Qualifications of Indian voters.

10. Subject to the provisions of this Ordinance, every person who is—

- (1) of Indian origin or descent; and
- (2) of not less than twenty-one years of age; and
- (3) either—

- (a) owns rateable property within the district of the capital value of one hundred pounds; or
- (b) (i) has resided in the district for twelve months out of the twenty-four months preceding the date of application for enrolment, and either

⁵⁵

- 5
- (ii) has been in occupation, for a like period, of premises in the district of an annual value of twelve pounds, or
 - (iii) is, at the date aforesaid, and has been for six months out of the preceding twelve months, in receipt of earnings at the rate of not less than five pounds per month,

shall, upon application to the registering officer, be entitled to be enrolled in the Indian Voters' roll and to vote at the
10 election of an Indian member:

Provided that a married woman who is qualified for enrolment under the provisions of paragraphs (1), (2) and sub-paragraph (b) (i) of paragraph (3) of this section shall be entitled to be enrolled notwithstanding that she does not
15 possess either of the qualifications required by sub-paragraphs (b) (ii) and (b) (iii) of paragraph (3) of this section, if her husband is so qualified.

11. (1) Notwithstanding anything in sections 9 and 10 of this Ordinance, no person shall be entitled to have his name
20 entered upon any voters' roll or to vote at any election prepared or held under the provisions of this Ordinance if such person—

- 25
- (a) has been found by a competent court to be of unsound mind; or
 - (b) has been convicted of a criminal offence, whether in the Colony or elsewhere, and has been sentenced to imprisonment for a term of not less than twelve months and has not received a free pardon:

Provided that such disqualification shall cease two years after the date of the expiration of the
30 sentence; or

- 35
- (c) has received relief from any public funds within twelve months prior to the date of his application to have his name entered upon the voters' roll; or
 - (d) has been declared bankrupt or insolvent by a competent court, whether in the Colony or elsewhere, and has not received his discharge; or
 - (e) is suffering from any disqualification provided by any enactment for the time being in force.

(2) During the continuance in force of this sub-section,
40 sub-section (1) of this section shall be read as if there were inserted therein the following paragraph:—

- 45
- "(f) is a subject of a State which is at war with His Majesty; if any doubt arises as to whether or not a person is a subject of a State at war with His Majesty, a certificate under the hand of the Commissioner of Police that such person is or is not such a subject, as the case may be, shall be conclusive proof of the fact."

This sub-section shall continue in force until the thirty-
50 first day of December, 1949, and shall then expire:

Provided that the Governor may, with the approval of the Legislative Council of the Colony, by notice published in the Gazette, declare that this sub-section shall remain in force until a date to be fixed in such notice or until repealed.

55 12. Every person who is enrolled in any voters' roll in respect of a property qualification shall be enrolled in the ward in which such property is situate, and shall be entitled to be enrolled once in each ward in respect of which he is so qualified; and every person who is enrolled in respect of a
60 residential qualification shall be enrolled in the ward in which he resides:

Disqualifications
of voters.

Voters to be
enrolled in ward
in respect of
which they
are qualified.

Provided that no person shall be enrolled in the same ward in respect of both a property and a residential qualification.

Notices of
objection to list.

13. The registering officer shall cause every voters' roll, compiled under the provisions of this Ordinance, to be deposited in the office of the Council concerned, for inspection by the public, and shall cause to be published in the Gazette and in a newspaper (if any) circulating in the district concerned, a notice that all objections and claims to be enrolled will be heard at a time and place to be stated in such notice: 10

Provided that such time shall not be less than fourteen days after the first publication of such notice.

Determination
of claims and
objections.

14. (1) A magistrate nominated by the Commissioner and having jurisdiction within the district shall hear and determine all claims and objections, and may enrol the names of any persons qualified which have been omitted from the appropriate voters' roll, and shall strike out the names of all persons not entitled to be enrolled: 15

Provided that the name of any person shall not be struck out until such person has had not less than seven days' notice of the investigation of his qualification, and such person shall, if he so desires, be heard in regard thereto either personally or by a representative. 20

(2) The hearing and determination of any claim or objection under the provisions of this section may be adjourned from time to time, and the decision upon any such claim or objection shall be subject to appeal to a Judge in Chambers if notice thereof be given to the Registrar of the Supreme Court by any interested person within seven days after the declaration of such decision. The Judge in Chambers hearing such appeal may uphold or reverse such decision and may make such order as to costs as may seem just. 25

Rolls to be in
force until new
rolls prepared.

15. Subject to the provisions of section 16 of this Ordinance, the voters' rolls when completed and amended, if necessary, by reason of any action taken under the provisions of section 14 of this Ordinance, shall be the voters' rolls for the district until the next voters' rolls shall in like manner be completed; and such voters' rolls shall be deemed to be conclusive and the only proof of the right of every person enrolled therein to vote at the election of members of the Council concerned. 35 40

Provisions for
addition of
names to
voters' rolls.

16. Any person who is not on the appropriate voters' roll in force for the time being in a district may at any time apply to the registering officer to be enrolled as a voter, and the registering officer, upon being satisfied that such person is qualified under the provisions of this Ordinance to be so enrolled, shall cause the name of such person to be placed on the voters' roll. If the registering officer refuses any application under this section the applicant may appeal to a magistrate having jurisdiction within the district, and the application shall be disposed of in the manner provided by section 14 of this Ordinance: 45 50

Provided that no person shall be enrolled under this section as a voter upon an application made after the date of publication of a notice of any election, under the provisions of section 25 of this Ordinance, until such election has been held. 55

Right of public
to inspect
voters' rolls.

17. Every voters' roll compiled under the provisions of this Ordinance shall be deposited at the office of the Council concerned, for inspection by the public during office hours.

18. Any person who wilfully makes any false statement, on an application to be enrolled in any voters' roll under the provisions of this Ordinance, shall be guilty of an offence and shall be liable, on conviction therefor, to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

Penalty for false statements.

ELECTIONS

19. (1) The first election of members of a Council constituted after the commencement of this Ordinance (hereinafter referred to as "members"), shall be held in the manner hereinafter prescribed as soon as may be after the voters' rolls in the district have been completed. The date of any such election shall be such date as may be determined by the Commissioner, by notice in the Gazette.

Holding of first elections and term of office.

(2) Of the members so elected, one-third, or as near as may be, shall retire on the thirtieth day of April immediately following the date upon which the first election was held, and one-third, or as near as may be, shall retire on the thirtieth day of April next ensuing, and the remaining one-third, or as near as may be, shall retire on the thirtieth day of April next again ensuing:

Provided that, where the district is divided into wards, and each ward is represented by more than one member, an equal proportion, or as near as may be, of the number of members representing each ward shall retire in accordance with the provisions of this sub-section.

(3) The order of retirement of members under this section shall be determined by lot.

20. (1) After such first election of members, whether such election was held under the provisions of this Ordinance, or of the Ordinance repealed by this Ordinance, an annual election shall be held upon the first day in March in each year, for the purpose of electing members to replace those members whose terms of office expire upon the thirtieth day of April next ensuing:

Annual elections and terms of office.

Provided that when the first day of March in any year falls on a Sunday or a public holiday, such election shall fall on the next succeeding day which is not a Sunday or a public holiday.

(2) The members elected at every such annual election to fill the vacancies caused by the retirement of members owing to the expiration of their term of office, shall hold office for a period of three years.

21. (1) Subject to any of the disqualifications mentioned in sub-section (2) of this section, any person, who is entitled to be enrolled and who is enrolled as a voter in any district, shall be eligible for election as a member of the Council of such district.

Qualifications of candidates.

(2) A person shall be disqualified for election as a member of any Council if he—

- (a) is not a British subject;
- (b) cannot read, write and speak the English language;
- (c) is in the employment of, or holds any office or place of profit under, or in the gift of, the Council;
- (d) has been convicted of a criminal offence, whether in the Colony or elsewhere, and has been sentenced to imprisonment for a term of not less than six months and has not received a free pardon;

Provided that the Governor may, by order, in any particular case, remove such disqualification; or

- (e) has received relief from any public funds within twelve months prior to the date of his nomination as a candidate for election.

Casual
vacancies.

22. (1) Any vacancy caused by the death of an elected member or by an elected member vacating his seat for any reason other than the expiration of his term of office, shall be deemed to be a casual vacancy.

(2) Whenever a casual vacancy occurs an election shall ⁵ be held as soon as possible, for the purpose of filling such vacancy, and the Councillor to be elected to fill such vacancy shall be elected in the manner provided for the election of candidates at the annual election. Any member elected to fill a casual vacancy under the provisions of this section shall hold ¹⁰ office for the remainder of the term for which the member, whose place he has taken would have been entitled to remain in office.

Circumstances
in which
councillors
and members
ipso facto
vacate office.

23. Any elected member who ceases to possess the qualifications required by the provisions of this Ordinance, ¹⁵ or who is a paid agent for any candidate at an election under the provisions of this Ordinance, or who becomes disqualified under the provisions of this Ordinance, shall *ipso facto* vacate his office, and the Chairman of the Council concerned shall, at the next meeting of the Council, declare the seat of such ²⁰ member to be vacant, and forthwith notify the Commissioner of such vacancy. Any such vacancy shall be filled by election in the manner prescribed by section 22 of this Ordinance:

Provided that a member whose seat has been declared vacant under the provisions of this section may, within fourteen ²⁵ days after the date of such declaration, apply to a Judge of the Supreme Court in Chambers to have such declaration set aside. Notice of the intention to make such application and the grounds thereof shall be given to the Clerk within seven days after such declaration. The order of the Judge in ³⁰ Chambers, as to the disqualification or otherwise of the member, shall be final and no appeal shall lie therefrom.

Returning
officers.

24. A Council may, with the approval of the Commissioner, appoint a returning officer for each election held under the provisions of this Ordinance: ³⁵

Provided that, where elections are held in more than one ward in the district, a returning officer shall be appointed for each such ward.

Notice of
election.

25. (1) The Clerk shall, not less than ten days prior to any election, cause to be published in the Gazette and in one ⁴⁰ or more newspapers (if any) circulating in the district and to be posted at such conspicuous places as he shall think fit within the ward or wards in which the election is to be held, a notice of such election, and in such notice he shall specify the names of the returning officers appointed under the provisions of ⁴⁵ section 24 of this Ordinance and the dates and places during and at which the returning officers will receive the nomination papers of candidates for the seat or seats to be filled by election and in the case of nomination papers sent by registered post, the address to which they shall be sent and the latest date upon ⁵⁰ which such nomination papers will be received by the returning officer.

(2) Any date specified, under the provisions of sub-section (1) of this section, shall be not less than ten days from the date of the publication of the notice. ⁵⁵

Nomination
of candidates.

26. (1) On the date and at the place fixed under the provisions of section 25 of this Ordinance the returning officer concerned shall attend at ten o'clock in the forenoon until one o'clock in the afternoon and shall receive the nomination of any duly qualified candidate for the seat to be filled.

(2) Every candidate shall be proposed and seconded and shall be supported by not less than three persons other than the proposer and seconder. The proposer and seconder and supporters shall be persons whose names appear on the appropriate voters' rolls for the district or ward, as the case may be, for which the candidate seeks election.

(3) Every nomination paper shall be in a form to be prescribed by rules made under the provisions of this Ordinance, and the signatures of the proposer and the seconder shall be witnessed by a person whose name appears on the appropriate voters' roll for the district or ward, as the case may be, for which the candidate seeks election, but a proposer shall not witness the signature of a seconder and a seconder shall not witness the signature of a proposer.

15 (4) Every such nomination paper, when completed, shall be—

(a) delivered to the returning officer by the candidate or by his proposer or seconder at the time, date and place specified; or

20 (b) if sent by registered post, received by the returning officer not later than the latest date specified, and any nomination paper which is not so delivered or received shall be rejected.

27. (1) Every candidate shall be described in his nomination paper in such manner as, in the opinion of the returning officer, is calculated sufficiently to identify such candidate. No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or on the ground that such nomination paper does not comply 30 with the provisions of this Ordinance or of any rules made thereunder, shall be valid unless such objection is made to the returning officer at, or immediately after, the time of delivery of the nomination paper. The decision of the returning officer as to the sufficiency of any nomination paper shall be final.

Description of candidates and examination of nomination papers.

35 (2) The returning officer shall permit any candidate and his proposer and seconder to examine the nomination paper of any other candidate.

28. (1) If at the expiration of the time appointed for the election, the number of any duly nominated candidates 40 for any district or ward, as the case may be, does not exceed the number of members to be elected for such district or ward, the returning officer shall forthwith declare such candidate or candidates to be elected, and the Clerk shall publish the result of the election in the Gazette.

Procedure for election of candidates.

45 (2) If the number of duly nominated candidates exceeds the number of members to be elected, the returning officer shall forthwith adjourn the election for the purpose of taking a poll, and the Clerk shall publish, as soon as possible, in the Gazette and in one or more newspapers (if any) circulating in 50 the district and cause to be posted at such conspicuous places as he shall think fit within the ward in which a poll is to be taken, a notice specifying—

(a) the ward in which the poll will be taken;

55 (b) the date on which the poll will be taken, which date shall not be less than fourteen days from the date of the publication of the notice;

(c) the names of the candidates as described in their respective nomination papers and the names of their proposers and seconds;

60 (d) the place at which a poll will be taken and the portion of the district or ward, as the case may be, allotted to each polling station.

(3) No election which is adjourned for the purposes of taking a poll shall be declared invalid for the reason that the poll was not held or completed before the thirtieth day of April in the year in which such election is held.

Death of candidate before the poll taken.

29. If, after an election has been adjourned for the purpose of taking a poll, one of the candidates nominated dies before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and in such case all the proceedings with reference to the election shall be commenced afresh: 5
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Provided that no fresh nomination shall be necessary in the case of a candidate who had been correctly nominated at the time of the countermand of the poll.

Retirement of candidate before taking a poll.

30. If after an election has been adjourned for the purpose of taking a poll, any candidate nominated for election is 15 desirous of retiring from the candidature, he may, not later than three days before the day of polling, sign and deliver a notice of his retirement to the returning officer, who, on receipt of such notice, shall, if the number of candidates is by such retirement reduced to the number of persons to be elected at 20 such election, declare the remaining candidates to be on that date duly elected, and, if the said number is not so reduced, shall omit the name of the person so retiring from the list of candidates and such person shall not be capable of being elected at such election. 25

Provisions as to voting.

31. (1) A registered voter shall be entitled to one vote in respect of each vacancy to be filled for the ward in which he is enrolled.

(2) Every voter shall vote only at the polling station appointed for the ward or polling district, as the case may be, 30 in respect of which his name appears upon the voters' rolls.

Power to make rules.

32. The Governor in Council may, from time to time, make rules for all or any of the following purposes—

- (a) for regulating the procedure in regard to the preparation of voters' rolls and for the making and disposing 35 of claims and objections;
- (b) for regulating the procedure in regard to the taking of polls at contested elections under the provisions of this Ordinance;
- (c) for prescribing such forms as he may think necessary 40 to be used in connexion with the matters dealt with in this Part of this Ordinance and any rules made thereunder;
- (d) for providing for the filling of vacancies in the event of failure to fill such vacancies by nomination or 45 election under the provisions of this Part of this Ordinance;
- (e) generally, for the better carrying out of the provisions of this Part of this Ordinance.

Penal provisions relating to elections.
No. 26 of 1935.

33. Sections 22 to 29, both inclusive, and section 31 of 50 the Legislative Council Ordinance, 1935, together with any rules made under section 31 thereof, shall apply *mutatis mutandis* to any election held under the provisions of this Ordinance.

Chairman of Council.

PART III—APPOINTMENT OF OFFICERS

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34. (1) In every district, established under the provisions of this Ordinance, there shall be elected at the first meeting of the Council of such district, and thereafter at the first meeting of such Council held after every annual election of members, one member of such Council who shall be Chairman, 60 and such Chairman shall hold office until his successor is appointed as in this section provided.

(2) At every meeting for the election of Chairman, the Provincial Commissioner or an administrative officer delegated by him shall preside and shall have a deliberative vote only:

Provided that, in the case of an equality of votes for two or more candidates, he shall determine the election by lot.

(3) Where the office of Chairman becomes vacant from any cause whatsoever the Council concerned shall, at the next ordinary meeting of such Council, choose one of its members to be Chairman, and the member so chosen shall serve as Chairman for the remainder of the period for which the Chairman, whose place he takes, had been elected.

35. A Council may appoint a member of such Council to be Deputy Chairman of the Council, and the Deputy Chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, hold office until the first meeting of the Council held after the next annual election of members.

Subject to the provisions of any by-laws made by the Council concerned, anything authorized or required to be done by the Chairman may be done by the Deputy Chairman during the absence or temporary incapacity of the Chairman.

36. (1) A Council may, subject to the approval of the Standing Committee, appoint as permanent, part-time or consulting officers, persons to be Clerk, Treasurer, Engineer and, subject to the provisions of section 67 of this Ordinance, Medical Officer of Health, and may pay such officers such salaries and allowances as the Council may, subject to the approval of the Standing Committee, determine.

(2) A Council may appoint such other officers as it may consider necessary and pay to such officers such salaries, fees and allowances as it may determine.

(3) No person shall be appointed to any office under this section who is a member of such Council, or who has been a member thereof within six months immediately preceding such appointment.

(4) A person holding the post of Clerk, Treasurer, Engineer or Medical Officer of Health may be removed from office if such removal has been decided upon by a resolution passed by a majority of the whole Council, and the Standing Committee has notified to the Council its approval of the removal of such officer:

Provided that the Council may suspend any such officer from the duties and emoluments of his office for incapacity, neglect or misconduct pending the sanction of the Standing Committee to his removal, and, in the event of such sanction being granted, such officer shall be deemed to have been removed from his office from the date of his suspension.

(5) The Governor may, from time to time, make rules for regulating the procedure in regard to the appointment by Councils of Clerks, Treasurers, Engineers, Medical Officers of Health and Sanitary Inspectors, and the conditions of appointment, tenure of office, salaries and duties of such officers.

PART IV—MEETINGS AND PROCEEDINGS

37. A Council shall hold an ordinary meeting for the dispatch of business on such days and at such hours at it may, from time to time, appoint, but not less often than once in every three months.

38. The Clerk shall give at least one week's notice in writing to each of the members of the time and place appointed for ordinary meetings of the Council:

Provided that the accidental omission to serve such notice on any member shall not affect the validity of any meeting.

Deputy
Chairman.

Clerk to Council
and other
officers.

Ordinary
meetings.

Notices of
ordinary
meetings.

Absence of members from meetings.

- 39.** (1) Any member of a Council who, without having first obtained leave from such Council—
 (a) absents himself from three consecutive ordinary meetings of the Council, or fails to attend any meeting of a Council for a period of two months; or
 (b) not being an *ex-officio* member of any committee, absents himself from three consecutive meetings of any committee of the Council of which he is a member, shall become disqualified from continuing to be a member, and the clerk shall, at the next ordinary meeting of the Council ¹⁰ after any such absence by a member, report the same to the Chairman who shall thereupon declare the seat of such member to be vacant.
 (2) Where a member having obtained leave from the Council leaves the Colony intending to be absent for not more ¹⁵ than eight months, the Council may, with the consent of the Governor, co-opt a person, not being a member of such Council, to discharge the duties of the absent member, during his absence from the Colony.
 (3) If any member is absent from the Colony for a period ²⁰ exceeding eight months, his seat shall then become vacant.

Meetings to be public.

- 40.** Every meeting of a Council shall be open to the public and the press:

Provided that this section shall not apply to any committee of a Council or to a committee of the whole Council. ²⁵

Quorum.

- 41.** Save as otherwise specially provided by this Ordinance all acts, matters and things authorized or required to be done by a Council, and all questions that may come before it, shall be done and decided by the majority of the members present at any meeting at which are present not ³⁰ less than one-half of the members or such larger proportion thereof as such Council may from time to time fix.

Chairman to preside at meetings and have casting vote.

- 42.** (1) At every meeting of a Council the Chairman, or in his absence the Deputy Chairman, shall preside. In the absence of the Chairman and of the Deputy Chairman the ³⁵ Councillors present shall elect a Chairman from amongst themselves to preside at such meeting, and such election shall, in the event of equality of votes for two or more candidates, be determined by lot.

(2) In the case of an equality of votes the Chairman of ⁴⁴ the meeting shall have a second or casting vote.

Special meetings.

- 43.** The Chairman may at any time and shall, at the request in writing of not less than one-third of the members, call a special meeting of the Council. The notice of any special meeting shall specify the object of the meeting, and no other ⁴⁵ subjects than those specified in such notice shall be discussed at such meeting.

Minutes to be kept and signed.

- 44.** Minutes of the proceedings of every meeting of the Council and of any Committee thereof shall be regularly entered in books kept for that purpose, and such minutes shall ⁵⁰ be confirmed at the same or the next ordinary meeting. Such minutes, when signed by a member describing himself as or appearing to have been Chairman of the meeting at which the minutes are confirmed, shall, in the absence of proof of error, be deemed to be a correct record of the proceedings of ⁵⁵ the meeting of which they purport to be the minutes.

Meetings deemed to be duly held.

- 45.** Whenever the minutes of the proceedings of a meeting have been recorded and confirmed, such meeting shall, until the contrary is proved, be deemed to have been duly convened and held, and all the members present at such meeting ⁶⁰ shall be deemed to have been duly qualified; and, in the

case of proceedings so recorded of a committee, the committee shall, until the contrary is proved, be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

5 46. The minutes of the proceedings of a Council shall at all reasonable times be open to the inspection of any ratepayer or voter of the district, and any such ratepayer or voter may obtain a copy thereof or an extract therefrom on payment of such fee (if any) as may be prescribed by such Council.

Minutes to be open to inspection.

10 47. The members present at any meeting may from time to time adjourn such meeting; and, if at any meeting a sufficient number of members are not present to exercise the powers vested in a Council, the members present or, if there be no members present, the Clerk shall adjourn the meeting and **15** may appoint for the adjourned meeting such day and hour as may be considered suitable.

Adjournment of meetings.

48. (1) A Council may from time to time appoint out of its own body such and so many committees, either of a general or special nature, consisting of such number of **20** members as such Council may think fit, for the purpose of examining and reporting upon any matter or performing any act which in the judgment of such Council would be more conveniently performed by means of a committee, and may delegate to any committee such powers (other than power to **25** raise money by rate or loan or any other power as to the exercise of which special provision is made in this Ordinance) as it may think fit. The Chairman shall be *ex officio* a member of every such committee.

Appointment of committees.

(2) A Council shall from time to time appoint a Finance **30** Committee for regulating and controlling the finances of such Council.

Appointment and functions of Finance Committee.

(3) No expenditure shall be incurred unless provision has been made therefor on a detailed estimate previously submitted by the Finance Committee and approved by the Council **35** concerned.

(4) A committee of a Council may, subject to the directions of the Council, co-opt any person, whether a member of the Council or not, to be a member of such committee:

Provided that where any such co-opted member is not a **40** member of the Council he shall not be entitled to vote upon any matter.

49. (1) The quorum of every committee of a Council shall be fixed by such Council, but shall in no case be less than two members.

45 (2) Each committee shall report its proceedings to its Council, but, to the extent to which the Council so directs the acts and proceedings of the committee, shall not require the approval of the Council.

(3) Each committee shall elect its own chairman, and **50** such election shall, in the event of an equality of votes for two or more candidates, be determined by lot.

(4) Every committee appointed by a Council may be dissolved, after notice of motion to that effect, by the vote of the majority of the whole Council.

55 50. (1) Every committee appointed by a Council may meet from time to time and may adjourn from place to place as it may think proper, but no business shall be transacted at any meeting of the committee unless the quorum of members fixed by such Council is present or if no such quorum has **60** been fixed, unless three members of such committee are present.

Procedure at meetings of committees.

(2) At all meetings of the committee the chairman of the committee, if present, shall preside. In the absence from any meeting of the chairman of the committee, the members present shall elect a chairman from amongst themselves to preside at such meeting. In the case of an equality of votes the chairman of the meeting shall have a second or casting vote.

(3) All of the provisions of this Ordinance, which apply to Committees appointed by the Council under the provisions of section 48 of this Ordinance, shall apply *mutatis mutandis* to 10 Road Area Committees appointed under the provisions of this section.

**Validity of acts
of Council and
officers.**

51. All otherwise lawful acts of a Council or of any person acting as Chairman, member, Clerk or any other Council official, as the case may be, shall, notwithstanding that 15 it be discovered that there was some defect in the election or appointment of any such person or that he was disqualified, be as valid and effectual as if such person had been duly elected or appointed and qualified.

**Authentication
and execution
of documents.**

52. (1) Every order, notice or other document requiring 20 authentication by a Council shall be deemed to be sufficiently authenticated if signed by two members or by the Clerk or by any other officer of such Council, duly authorized in that behalf by any resolution or by-law of the Council.

(2) Every contract and every instrument and document 25 which a Council is lawfully empowered to execute shall be deemed to be duly executed by or on behalf of such Council if signed by the Chairman or by the Clerk or by any one or more members duly authorized in that behalf by any resolution or by-law of such Council.

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**Exemption of
councillors, etc.,
from personal
liability.**

53. No matter or thing done or omitted to be done and no contract entered into by a Council, and no matter or thing done or omitted to be done by any member or officer or servant of such Council or other person acting under the direction of such Council, shall, if the matter or thing was done or omitted 35 to be done or the contract was entered into in good faith for the purposes of this Ordinance or of any by-law in force in the district, subject any such person to any action, liability, claim or demand whatsoever; and any expense incurred by such Council or any such person, in consequence of any such action, 40 shall be paid by such Council out of its revenues:

Provided that nothing in this section shall exempt any such member, officer or servant or other person aforesaid from liability to be surcharged by the inspector under the provisions of section 125 of this Ordinance.

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**Member not to
vote on question
in which he has
pecuniary
interest.**

54. (1) No member shall be present at the discussion upon any matter in or before a Council or a committee thereof in which he has directly or indirectly, by himself or his partner, any pecuniary interest apart from any interest in common with the public.

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(2) Every member who knowingly contravenes the provisions of this section shall be guilty of an offence and shall, for every such offence, be liable, on conviction therefor, to a fine not exceeding fifty pounds, and on conviction his seat on the Council shall become vacant.

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**Travelling
expenses of
members.**

55. (1) A Council may, from time to time, subject to the approval of the Member, vote such reasonable sums as it deems sufficient to defray the actual travelling expenses and reasonable subsistence allowances of members attending meetings of such Council or of any committee thereof, or attending 60 to any business of the Council when authorized by resolution of the Council to do so.

(2) A member voting upon any such question shall not thereby become liable to any penalty under the provisions of section 54 of this Ordinance.

56. (1) No officer or servant of a Council shall in any way be concerned or interested in any bargain, contract, or arrangement whatever made by or with such Council.

(2) Every officer or servant who knowingly contravenes the provisions of this section, shall be guilty of an offence and shall, for every such offence, be liable, on conviction therefor, **10** to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Interest of officers or servants in contracts.

PART V—POWERS AND DUTIES

GENERAL POWERS

15 **57.** A Council may, subject to the approval of the Governor, apply to the Government for any land required for any purpose authorized by this Ordinance to be acquired compulsorily for, and on behalf and at the expense of, the Council; and any purpose authorized by this Ordinance shall be deemed **20** to be a public purpose within the meaning of the Indian Land Acquisition Act, 1894, or any enactment replacing the same.

Power to acquire land compulsorily.

58. (1) A Council may enter into contracts for the supply of goods or for the purpose of any work or service which it is, under the provisions of this Ordinance, empowered to **25** take or carry out:

Power to enter into contracts

Provided that, except in cases of emergency, no contract the amount of which exceeds one hundred and fifty pounds, shall be made except after public tender, of which at least fourteen days notice shall be given in the Gazette and in one **30** newspaper circulating in the district, or, if there be no such newspaper, by exhibiting a notice in a conspicuous place at or near the public entrance to the offices of the Council:

Provided further that a Council need not accept the lowest or any tender.

35 (2) A Council may enter into contracts with any other Council or with any Municipal Council or Board or any association or any African District Council for or with respect to the doing and the control or management by either or both of the contracting parties of any of the things provided **40** for in this Ordinance, or of any matter or thing which such Council and such other Local Authority is by law empowered to do, control, and manage.

(3) A Council may enter into contracts with the Government of the Colony for the purpose of any work or service for **45** which such Government is responsible within or adjacent to the district under the jurisdiction of the Council or for any matter which such Council is authorized to carry out under the provisions of this Ordinance.

(4) All contracts lawfully made under the provisions of **50** this section shall be valid and binding on such Council and its successors and all other parties thereto, their heirs, successors, or legal representatives, as the case may be.

59. A Council may—

55 (a) acquire, hire, erect, maintain and keep in repair such offices and buildings as may be required for the purposes of the Council;

Powers of councils. Buildings.

(b) plant trees or remove trees in or on any public place;

Trees in public places. Firerangers.

(c) engage and remunerate such staff, as the Council may consider necessary, for the control of grass fires;

60 (d) arrange for the lighting of public places and the erection and maintenance of lights for that purpose;

Lighting public places.

Medical and
funeral expenses
of persons
employed by
the Council

(e) pay the medical and funeral expenses of any person employed by the Council who suffers injury or dies as the result of an accident occurring in the course of his employment or as a result of illness contracted in consequence of such employment; 5

Pension funds
for officers
and servants.

(f) subject to the provisions of any by-laws made under the provisions of paragraph (k) of section 68 of this Ordinance, establish, control, manage, maintain, and contribute to any pension, provident or benevolent fund intended for the benefit of the officers and servants of the Council, and grant pensions and gratuities from any such fund to such officers or servants on their retirement from the service of the Council and to dependants on the death of such officers or servants; 10

Outspans.

(g) establish and maintain outspan grounds within the district; 15

Pounds.

(h) establish and maintain pounds within the district and make such charges in connexion therewith as may be prescribed;

Grants to
institutions.

(i) subject to the consent of the Governor— 20

(i) make grants of money towards the establishment and maintenance of schools and public libraries and museums within or without the district;

Bursaries.

(ii) provide bursaries to assist parents resident in the district in educating and maintaining their children at any school; 25

Hospitals.

(iii) make grants of money towards the establishment and maintenance of hospitals and dispensaries, whether within or without the district;

(iv) acquire, establish and maintain, either by itself or jointly with any other council or any municipal council or municipal board, or any association or any African District Council, hospitals and dispensaries within or without the district, and make such charges in connexion therewith as shall be fixed by law; 30
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(v) provide treatment free of charge for indigent patients who are inhabitants of the district;

Residences for
officers.

(vi) acquire houses as residences for officers and persons appointed under the provisions of section 36 of this Ordinance; 40

(vii) in cases where a pension, provident or benevolent fund has been established under the provisions of paragraph (f) of this section, grant from the revenues of the Council additional or increased pensions or gratuities to officers or servants on their retirement from the service of the Council and to dependants of deceased officers and servants of the Council where such officer or servant has been employed for a period of at least five years immediately prior to the establishment of a pension, provident or benevolent fund; 45
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(viii) in cases where no pension, provident or benevolent fund has been established under the provisions of paragraph (f) of this section, or in cases where no benefits accrue from any fund so established, grant from the revenues of the Council pensions or gratuities to officers or servants on their retirement from the service of the Council and to dependants of deceased officers and servants of the Council; 55
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Road services.

(ix) operate for hire or reward road transport services for the carrying of passengers, mails and goods, for the benefit of the inhabitants of the district;

- District nursing
sisters and
medical
services.
- Aerodromes.
- Ambulances.
- Welfare centres.
- Markets.
- Schools.
- Burials,
cemeteries, etc.
- Disposal of
property.
- Provided that—
- (i) no sale or other alienation of immovable property shall take place without the consent of the Governor, who may require that the proposal of the Council to alienate such property shall be published in two successive issues of the Gazette and of one or more newspapers (if any) circulating in the district under the jurisdiction of the Council; and
- (ii) all moneys received by the Council from the sale or other alienation of immovable property shall be appropriated to the redemption and extinction of existing debt incurred for capital purposes:
- Provided that where due provision has been made for the redemption and extinction of any such debt, or where no such debt exists, the Governor may authorize the Council to apply all moneys so received to such capital expenditure as may be approved by him:
- Provided further that nothing in this paragraph shall apply to moneys received in respect of rentals in respect of leases granted by the Council;
- Expenditure
for carrying
out the
purposes of this
Ordinance.
- Classification
of roads.

ROADS

60. (1) The Governor shall, as soon as may be after the establishment of any district under the provisions of this Ordinance, classify all public roads within such district, and shall, whenever necessary, classify any new public roads.

(2) Public roads shall, when so classified, be described as either—

- (a) main trunk roads; or
(b) district roads.

Powers under
Public Travel
and Access
Roads Ordinance
to be exercised
by Council.

Cap. 113.

Council to
control district
roads.

District roads
in native areas.

No. 28 of 1938.
Cap. 140.

61. From and after the date upon which any Council is constituted for any district under the provisions of this Ordinance, such Council shall, within such district, exercise all or any of the powers and carry out the duties of, and for the purposes of such Ordinance shall be deemed to be, a district 5 road board established under the provisions of the Public Travel and Access Roads Ordinance.

62. (1) A Council shall have the general control and care of all district roads and of all bridges, fords, drifts, culverts, drains and other accessories on any such roads or used in 10 connexion therewith, and such Council may make, construct, alter, repair, and, if necessary, temporarily close any such road or any such bridge, ford, drift, culvert, drain and other accessory, which are hereby vested in such Council in trust to keep and maintain the same for the use and benefit of the public: 15

Provided that a Council shall not commence to construct or carry out any road work the cost of which is estimated to exceed one thousand pounds without the consent of the Standing Committee nor until it has furnished such plans and specifications as may be required by the Commissioner. 20

(2) A Council may order that any district road or part thereof shall be closed, absolutely or subject to conditions imposed by such Council, to all traffic or to traffic of a particular kind and may order the suspension of all or any traffic on any district road for any specified period or may 25 declare the times during which, and the conditions under which, any particular kind of traffic may use such road.

(3) As soon as possible after an order under the provisions of sub-section (2) of this section has been made, such Council shall display such road signs or warning notices or barriers as 30 it considers will suffice to convey to the public adequate intimation of the effect of any such order and shall publish in a newspaper (if any), circulating in the district, notice of any order closing a road to all traffic.

(4) Any person who is aggrieved by any order, made 35 under the provisions of sub-section (2) of this section, may appeal against such order to the Governor, whose decision thereon shall be final.

(5) A Council may delegate all or any of the powers conferred upon it by sub-section (2) of this section to any of 40 its members or employees in respect of all the district roads or any of them, within its jurisdiction. Any member or employee to whom such powers are delegated shall, in exercising such powers, exercise them in the name and on behalf of such Council, and shall carry out, in the name and on 45 behalf of such Council, the duties imposed upon the Council by sub-section (3) of this section.

63. (1) Where any public road (not being a main trunk road) which is mainly required to serve the population of a district, crosses any part of a native area, which is not within 50 such district, a Council may, with the approval of the Governor and subject to the provisions of the Native Lands Trust Ordinance, 1938, and of Part VI of the Crown Lands Ordinance, exercise all such powers and carry out all such duties in respect of such road as it would, under the provisions of this Ordinance, have exercised or carried out if such road had been 55 within such district.

(2) Where any public road (not being a main trunk road) which is mainly required to serve the population of a district, crosses any part of a forest area, a Council may, with the 60 approval of the Governor, exercise all such powers and carry out all such duties in respect of such road as such Council would, under the provisions of this Ordinance, have exercised or carried out if such road had been within such district.

64. (1) For the purpose of the construction or maintenance of roads, or the carrying out of any works which a Council is empowered by this Ordinance to carry out, such Council may, by its agents or servants, enter upon any land,
 5 and remove therefrom any clay (other than kaolin), country rock, gravel, murram, lime, sand, shale, shingle, slate or surface soil:

Power to take material for roads and works.

Provided that—

10 (a) prior to the exercise of the powers conferred by this section, such Council shall give notice by personal service or by registered post to the last-known address of the owner or occupier of such land;

15 (b) compensation shall be payable by such Council to the owner or occupier of such land for any damage done to buildings, roads or crops, or otherwise, and for any interference with the rights of occupancy of such land;

20 (c) any pit or quarry made in the exercise of the rights conferred upon a Council under the provisions of this section shall be filled up, or fenced by and at the expense of such Council.

(2) If any person, interested in any land in respect of which the powers conferred by this section are to be exercised by a Council, notifies such Council in writing within fourteen days of the issue of the notice, referred to in paragraph (a) of sub-section (1) of this section, that he objects to the exercise of such powers, such Council shall not proceed to exercise its rights in that behalf, without the approval of the Member.

(3) Any dispute as to the amount of any compensation payable by a Council under this section shall be settled by agreement with the person concerned or, failing such agreement, by arbitration under the provisions of the Arbitration Ordinance.

Cap. 18.

(4) For the purposes of this section the expression "owner or occupier" shall, in respect of unalienated Crown lands, include the Commissioner of Lands, and shall, in respect of land in the Native Areas, not being Crown lands, include the Provincial Commissioner of the province within which such lands are situated.

40 **65.** The Member may recover from a Council any expenditure incurred by the Government of the Colony in respect of compensation for land resumed under the Crown Lands Ordinance, or any other law, for the purpose of any district road within the jurisdiction of such Council.

Compensation for land used for district roads.

45 PUBLIC HEALTH

66. A Council may contribute towards any expenditure incurred by the Government of the Colony within the district, for the maintenance of public health, the emoluments of medical officers, and of health and sanitary inspectors.

Council may contribute to public health expenditure.

50 **67.** (1) Notwithstanding anything contained in the Public Health Ordinance, the Governor may, if a Council so requests, declare such Council to be a "local authority" within the meaning of such Ordinance.

Council may be declared a "local authority" under Public Health Ordinance. Cap. 124.

(2) Where a Council is declared to be a local authority under the provisions of this section, such Council may appoint a medical officer of health, sanitary inspectors or other necessary officers and servants, and such Council shall be vested with all the powers and charged with all the duties prescribed for local authorities under the provisions of such Ordinance:

60 Provided that the Governor shall not so declare a Council to be a local authority unless and until such Council has exercised the power to impose a district rate under the provisions of section 76 of this Ordinance.

BY-LAWS

Power to make
by-laws.

68. (1) A Council may make by-laws in respect of all or any of the following purposes:—

- (a) for regulating any of the things which a Council is empowered under the provisions of this Ordinance 5 to do, establish, maintain or carry on;
- (b) for regulating the proceedings of and preserving order at its meetings and meetings of its committees, and for prohibiting, restricting and regulating the publication and disclosure of the Council's documents and 10 records and the proceedings of any committee of the Council, and for regulating the duties and privileges of its members, officers and servants;
- (c) for protecting from damage or interference, any works or property of the Council situated or being in, under 15 or over any public place or other place within the district;
- (d) for regulating the imposition and collection of a flat rate per head of native labour employed within the district and for requiring employers of native 20 labour to render returns of all such labour employed by them, at such times and in such manner as the Council may require;
- (e) where the Council has been declared to be a local authority under the provisions of sub-section (1) of 25 section 67 of this Ordinance, for preserving the public health and for preventing the outbreak and spread of infectious and communicable disease;
- (f) for securing the eradication of any weed, which may be declared by the Governor to be noxious, from any 30 land within the district and for compelling owners or occupiers of such land to cause any such weed to be eradicated from their land;
- (g) for regulating the conveyance and disposal of dead bodies; 35
- (h) for preserving public decency;
- (i) for controlling and regulating native dances on farms or elsewhere within the district;
- (j) for regulating, managing and controlling the use of hospitals and dispensaries established by the 40 Council;
- (k) (i) for permitting or requiring all or any of its officers or servants to become members of any pension, provident or benevolent fund or funds established, controlled, managed or maintained by the Council 45 under the provisions of section 59 of this Ordinance;
 - (ii) for fixing the contributions, if any, to be made by such members and by the Council;
 - (iii) for making periodical valuations of such funds and for the enforcement of any increase in the contributions thereto or diminution in the benefits arising therefrom as may be shown by any valuation to be necessary for maintaining the solvency thereof;
 - (iv) for prescribing the age at which persons in the service of the Council shall be permitted or required 55 to become members of the fund and the age at and the conditions under which they shall be permitted or required to retire from the service of the Council;
 - (v) for determining the amount of pension or other benefit to be paid to members on retirement from the 60 service of the Council and to their dependants on the death of such members;

- (vi) for regulating the management and investment of funds and the appointment or election where necessary of members of a committee for that purpose;
- 5 (vii) for prescribing that no moneys while in the provident or benevolent fund of the Council and no rights acquired by a contributor thereto shall, while such contributor is in the service of the Council be assignable or transferable or liable to be attached, sequestrated or levied upon in respect of any debt or claim whatsoever, other than a debt due to the Council;
- 10 (viii) for vesting the property, money and assets pertaining to such funds in trustees for the purpose of administering the same in accordance with the directions of any committee of management, by and against whom all actions at law, relating to such fund, shall be brought;
- 15 (ix) for regulating the retirement, removal and resignation of members of such committees of management or trustees and for the filling of vacancies caused thereby;
- 20 (x) for prescribing that no pension or right to a pension shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or of being attached or subjected to any form of execution under a judgment or order of a court of law, and for withholding, suspending or entirely discontinuing the payment of the same in the event of a beneficiary attempting to assign, transfer or otherwise cede, pledge or hypothecate any such pension or right;
- 25 (xi) for prescribing that, in the event of any person in receipt of an annuity, from the Council, being convicted and being sentenced to imprisonment without the option of a fine for a term exceeding one month, any such annuity shall, during such period of imprisonment, be payable to his dependants;
- 30 (xii) for entering into an agreement with one or more other councils to establish a united pension, provident or benevolent fund for the benefit of persons in the service of any council which is a party to such agreement:

Provided that—

- 45 (i) every such united fund shall be established by separate resolution passed by each such council and approved by the Member and shall be subject to such by-laws as may be made under the provisions of sub-paragraphs (a) to (k) of this paragraph and adopted by each of the councils concerned;
- 50 (ii) such by-laws shall provide for the management and investment of such united fund being vested in a joint board consisting of representatives of such councils, which are members of the said fund, and of the employees, and for the election of the members of such board;
- 55 (iii) the expenses of the administration of a united fund so established shall be defrayed by the councils concerned in such proportions as may be agreed upon between them from time to time;
- 60 (iv) any council, other than a council concerned in the establishment of such united fund, may by resolution approved by the Member and subject to such terms as may be mutually agreed upon

between such joint board and such council, join in and become a party to any agreement relating to a united fund.

- (l) for prohibiting, restricting or regulating under permit the quarrying of stone, lime, clay or other material 5 on any premises;
- (m) for prohibiting, restricting, regulating or controlling, hawkers and pedlars;
- (n) for regulating, managing and controlling the use of welfare centres; 10
- (o) for prohibiting, restricting, regulating or controlling the keeping of wild, dangerous or noisy animals;
- (p) for regulating and licensing the keeping of dogs;
- (q) for the regulation and control, under permit or otherwise, of the construction of buildings and other 15 structures and of the execution of work on existing buildings and structures, and may in such by-laws prescribe the conditions subject to which the construction of buildings and other structures and the execution of work on existing buildings and structures 20 may be undertaken and carried out;
- (r) prescribing fees and charges in respect of anything which the Council is empowered under the provisions of this Ordinance to do, establish, maintain, carry on, control, manage, regulate, restrict or license. 25

(2) No by-law under this section shall be inconsistent with or repugnant to the provisions of any Ordinance relating to public health, or to any other law in force within the district.

(3) Where the Council considers that the operation of any building by-law in force in its district would be unreasonable in relation to any particular case, it may, with the consent of the Member, relax the requirements of the by-law or dispense with compliance therewith: 30

Provided that the Council shall give notice of any such proposed relaxation or dispensation in such manner and to 35 such persons, if any, as the Member may direct, and the Member shall not give his consent before the expiration of one month from the giving of such notice and, before giving his consent, shall take into consideration any objection which may have been received by him. 40

(4) (a) If any building or other structure is being or has been constructed, or if any work is being or has been executed in contravention of any by-law made under the provisions of sub-paragraph (q) of sub-section (1) of this section or of any permit granted under such by-law, the Council may give notice 45 in writing to the owner of the premises in respect of which such contravention is taking or has taken place, if he is known and resides in the Colony, and the occupier, if any, of such premises, requiring such owner and occupier on or before such day as may be specified in such notice, by a statement in 50 writing under his hand or under the hand of an agent duly authorized in that behalf and duly served upon the Council to show sufficient cause to a committee appointed by the Council for the purpose why such building, structure or work shall not be removed, altered or pulled down. 55

(b) If such owner or occupier fails to show sufficient cause why such building, structure or other work shall not be removed, altered or pulled down, the Council may carry out the removal, alteration or pulling down specified in the notice and recover any expenses involved, from the owner or occupier, 60 as a debt due to the Council.

69. (1) No by-law shall be made or amended by a Council unless and until a copy of such proposed by-law or amendment has been deposited at the office of such Council for inspection

by any person, at all reasonable times, and a notice has been published in a newspaper (if any) circulating in the district and exhibited in a conspicuous place, at or near the public entrance to the Council's offices, not less than fourteen days prior to the meeting of the Council, to be held for the purpose of making such by-law or amendment, setting forth the general purport of the proposed by-law or amendment and stating that a copy thereof is available for such inspection.

(2) Any objection to any such proposed by-law or amendment shall be lodged with the clerk within thirteen days after the publication or exhibition of such notice.

70. (1) After any by-law has been made or amended by a Council, such by-law or amendment shall be submitted to the Commissioner, for the approval of the Standing Committee, together with—

- (a) a copy of the minutes of the meeting of such Council at which such by-law or amendment was adopted;
- (b) a certificate by the clerk that the provisions of section 69 of this Ordinance have been complied with;
- (c) copies of any objections, to the adoption of such by-law or amendment, which have been lodged in writing, with the clerk, or, if none has been lodged, a statement to that effect.

(2) Subject to the provisions of section 127 of this Ordinance, the Standing Committee may approve, alter or reject any such by-law or amendment.

(3) Upon approval, by the Standing Committee, of any by-law or amendment (with or without alteration thereof) such by-law or amendment shall be published in the Gazette and shall thereupon have the force of law within the district.

(4) A copy of the Gazette containing any by-law made by a Council shall be evidence of the due making of such by-law and of the contents thereof.

71. The Governor in Council may at any time after having given to a Council reasonable notice in that behalf and having heard such Council thereon, make, amend or revoke any by-law which such Council may make, amend or revoke. Every by-law, amendment or revocation made under the provisions of this section shall be notified to the Council, by the Commissioner, and shall be published in the Gazette.

72. A Council may, by by-law, prescribe a fine or imprisonment, or both, which may be imposed, for the breach of any by-law made under the provisions of this Ordinance and may also prescribe different fines and different terms of imprisonment in case of successive or continuous breaches, but no such fine shall exceed fifty pounds, and no such term of imprisonment shall exceed six months. Any such by-law may provide that, in addition to any such penalty, any expense incurred by the Council in consequence of a breach of any such by-law, or in the execution of any work directed by any such by-law to be executed by any person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

73. Where a Council is empowered to make by-laws prohibiting, restricting or regulating the doing of any act, and such by-laws require any person to obtain a permit from a specified authority before the doing of such act, such by-laws may require a deposit of such sum, or the execution of a bond with or without sureties in such sum, as may be prescribed in such by-laws, in addition to any fee which may be prescribed, such sum to be refunded or such bond to be void, as the case may be, if the person to whom such permit is granted complies with all the conditions of such permit.

Submission of
by-laws for
approval of
Standing
Committee.

Power of
Governor in
Council to
make, etc.,
by-laws.

Penalties for
breaches of
by-laws.

By-laws may
require deposit
or bond for
compliance
with permit
to do any act.

Prosecution for
contravention
of by-laws.

74. All offences against any by-law in force within the district, shall be deemed to be offences against this Ordinance, and in any prosecution for contravening the provisions of any such by-law it shall be sufficient to allege that the accused is guilty of contravening a by-law, the number and title of which ⁵ shall be stated, of the Council concerned and to allege the act constituting such contravention.

PART VI—RATING POWERS

Interpretation.

75. In this Part, unless the context otherwise requires—

“elected members” means the persons who have become ¹⁰ members of a Council under the provisions of paragraph (a) of sub-section (1) of section 5 of this Ordinance;

“improvements” means all work actually done or materials used on, in or under land, by the expenditure of capital or labour by any owner or occupier of such land; ¹⁵

“occupier” means any person in actual occupation of rateable property without regard to the title under which he occupies;

“owner” in the case of any freehold land, means the person owning such land, and, in the case of leasehold and ²⁰ other land, means the person holding such land directly from the Crown as lessee or licensee;

“rateable property” means all land within a district, except—

(a) land occupied by a building used primarily for public ²⁵ worship and by the necessary curtilage of such building;

(b) land used for burial;

(c) land used exclusively for the purposes of any charitable or educational institutions supported mainly by endowments or voluntary contributions; ³⁰

(d) land laid out and used for the purpose of sport or recreation and controlled in accordance with rules or regulations approved by a Council:

Provided that any land used as a recreation ³⁵ ground conducted for profit or as a racecourse shall not be entitled to the benefit of this exemption;

(e) land held by the Crown;

“unimproved value of land” means the sum which the owner’s estate or interest in any land, unencumbered by any ⁴⁰ mortgage or other charge, might be expected to realize at the time of valuation, if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose if the improvements, if any, thereon, therein or thereunder had not been made. ⁴⁵

THE DISTRICT RATE: PRELIMINARY PROCEDURE

The district rate.

76. (1) An annual rate upon land (herein referred to as “a district rate”) may be imposed by a Council as hereinafter provided.

A method of taxation shall be adopted.

(2) Before a Council may impose a district rate, the ⁵⁰ following procedure shall be carried out:—

(a) Such Council shall, by resolution passed by a majority of not less than two-thirds of its elected members, adopt one or other of the following methods of rating— ⁵⁵

- (i) a rate upon the unimproved value of land;
- (ii) a flat rate upon the area of land;
- (iii) a graduated rate upon the area of land.

5

(b) Before such Council may vote upon any such resolution, at least sixty days' notice shall be given at a meeting of such Council of the intention to move such a resolution, and a copy of the proposed resolution shall be published in the Gazette and in one or more newspapers (if any) circulating within the district, once in each week for six consecutive weeks, and exhibited in a conspicuous place at or near the public entrance to the offices of such Council.

10

(3) A Council may, from time to time, vary the method of rating for the purpose of the district rate, but no more than one of the methods of rating referred to in this section shall be in force within the district at one time; and whenever it is desired to substitute one method of rating for another 15 method of rating, the procedure laid down in sub-section (2) of this section shall in all cases be followed:

20

Provided that, where a Council has adopted, as a method of rating, a rate upon the unimproved value of land and a valuation roll has been prepared, in accordance with the provisions of section 80 of this Ordinance, no other method of rating referred to in sub-section (2) of this section shall be substituted therefor without the consent of the Governor in Council.

INDUSTRIAL RATE: PRELIMINARY PROCEDURE

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(1) A Council may, by resolution passed by a majority of not less than two-thirds of its elected members, in addition to the rate imposed under the provisions of section 76 of this Ordinance, impose a special rate (hereinafter referred to as "an industrial rate"), upon areas of land used 30 for other than agricultural or residential purposes, in the manner provided by section 88 of this Ordinance.

(2) Before a Council may vote upon any such resolution the procedure prescribed by paragraph (b) of sub-section (2) of section 76 of this Ordinance shall be complied with.

35 SPECIAL PROVISIONS WHEN A DISTRICT RATE IS IMPOSED IN THE FORM OF A RATE UPON THE UNIMPROVED VALUE OF LAND

40

(1) As soon as may be after a Council has adopted, as a method of rating, a rate upon the unimproved value of land, a person appointed in that behalf by the Governor (hereinafter called a "valuer") shall prepare a valuation roll of all rateable property within the district, without cost to such Council.

Valuation roll
and appointment
of valuer.

45

(2) Not less than once in every five years after the completion of the first valuation roll for the district, or such longer period as the Governor may approve, the Governor shall cause a new valuation roll of all rateable property within the district to be prepared by such valuer as he may appoint:

Provided that the Governor in Council may direct that the 50 whole or any portion of the cost of preparation of any valuation roll (not being the first valuation roll for the district) shall be borne by such Council.

(3) For the purposes of this section, the valuation shall be deemed to be completed on the date the valuation roll is 55 signed by the President of the Valuation Court under the provisions of section 84 of this Ordinance.

60

(1) Every valuer shall, before entering upon the valuation entrusted to him, make before a magistrate or justice of the peace a solemn declaration, which shall be lodged with and preserved by the Council, in the terms following:—

Declaration of
valuer.

"I, do solemnly and sincerely declare that I will to the best of my skill

and knowledge and without favour and prejudice truly and impartially appraise and value all such rateable property as I shall be required to value for the purposes of assessment, and that I will conscientiously value the same at and for the full and fair value thereof; and I make this solemn declaration conscientiously intending to fulfil the same.

Declared at this day of
....., 19.....

Before me: "

10

(2) Every valuer shall, on completion of the valuation entrusted to him, attach to such valuation a certificate under his hand, that such valuation is the valuation to which the declaration, provided for in sub-section (1) hereof, refers.

Valuation roll
to be prepared
in writing.

80. The valuation roll shall be prepared in writing in a form to be approved by the Commissioner and in such manner as to show to the best of the knowledge and opinion of the valuer—

- (1) the name and address of the owner;
- (2) the area, description and situation of the property; 20
- (3) the unimproved value of the land.

Valuer to have
power of entry
and inspection.

81. (1) Every valuer provided with written authority signed by the Chairman or Clerk shall, for the purpose of making any valuation as aforesaid, have power to enter at all reasonable hours, in the daytime, into and upon any land or buildings within the district, and shall also have power to inspect and make extracts from all registers or other records or any deeds or instruments belonging to or in the custody or possession of any Government officer or any person, in which are contained particulars of any rateable property, whether such person is or is not interested in such rateable property.

(2) Any person who wilfully obstructs a valuer from exercising the powers conferred on him by this section shall be liable to the penalties prescribed in sub-section (3) of this section.

(3) A valuer may require from the owner or occupier of rateable property such written particulars in regard to such rateable property as may be necessary for enabling such valuer to make a correct valuation thereof, and any owner or occupier who neglects to furnish such particulars within fourteen days after being called upon to do so, shall be guilty of an offence and liable on conviction therefor, to a fine not exceeding twenty pounds in respect of each offence, and any person who furnishes to any valuer a false statement of value or of any other such particulars, shall be guilty of an offence and liable on conviction therefor, to a fine not exceeding fifty pounds in respect of each offence:

Provided that no person convicted under the provisions of this section shall thereby become exempt from liability to furnish any information lawfully demanded by the valuer.

Inspection of
provisional roll;
objections.

82. (1) When the valuation roll has been completed it shall be laid before the Council concerned and shall lie at its office for public inspection, and any person may, at all reasonable times, inspect the same and take copies of extracts therefrom.

(2) Such Council shall, by notice in the Gazette and in one or more newspapers (if any) circulating in the district, call upon all persons interested, to lodge in writing with the Clerk, within a specified time, being not less than one month from the first publication of such notice, any objections they may

have in respect of any such valuation or in respect of the omission from such valuation roll of property alleged to be rateable property, and whether held by the person objecting or by others, or in respect of any other error, omission or 5 misdescription in such valuation roll.

(3) No person shall be entitled to urge any objection before the Valuation Court, referred to in section 82 of this Ordinance, unless he has first lodged such an objection.

83. (1) After the expiration of the time specified in a 10 notice published under the provisions of sub-section (2) of section 82 of this Ordinance, the Member shall appoint a Valuation Court consisting of not less than three persons who may or may not be members of the Council. Such persons shall, before the first sitting of the Court, appoint a president 15 from among themselves. The Clerk or some other person appointed by the Member in that behalf, shall act as clerk to such Court.

(2) Such Court shall thereafter, at meetings duly called by the president or clerk, proceed to consider the valuation 20 roll and any objections made, and may make such alterations or amendments in the valuation roll, either by way of reduction, increase, addition or omission as to it may seem expedient:

Provided that no alteration or amendment by way of increase or addition shall be made unless the person appearing 25 to be directly affected thereby has had at least seven days' prior notice, by registered post to the last known address of such person, from the clerk, of the date of the sitting of the court at which any proposal for such increase or addition will be considered, and such person may either forward any objections 30 to such increase or addition, in writing, to the president or clerk before such date, or present the same for consideration at such sitting and the Valuation Court shall hear and consider all such objections.

(3) At every sitting of such Court three members present 35 shall constitute a quorum, and the president thereof, if present, shall preside, and, if the president is absent, the members of the Court present shall elect a person from among themselves to act as president during such absence. All decisions of such Court shall be arrived at by the vote of a majority of the members 40 present and, in case of an equality of votes, the president or the member acting as president shall also have a casting vote.

(4) No person shall sit on the hearing of any matter in which he shall be directly interested or concerned as being 45 primarily liable to pay the rates in question or any part thereof.

(5) Where for any reason there are vacancies in such Court, or inability to act, so that a quorum cannot be formed, the Member may, without any notice, appoint other persons 50 temporarily or permanently to fill such vacancies or the places of the members unable to sit.

(6) The clerk shall, by publication in the Gazette and in one or more newspapers (if any) circulating in the district, give not less than seven days' previous notice of the date fixed 55 for the first sitting of such Court.

(7) At every sitting of such Court the members of a Council and any person who has lodged any objection to any valuation, and any person the valuation of whose property is objected to or proposed to be increased, or whose property 60 it is proposed to add to the roll, may appear either in person or by a representative.

Valuation
Court; duties
and proceedings.

(8) At every sitting of such Court the Court may call and examine any witnesses on oath or affirmation and call for the production of all such papers or documents as it may deem necessary, and every valuer by whom any valuations under consideration have been made shall attend such Court and answer on oath or affirmation all questions which may be put to him by or through the Court in regard thereto.

(9) The Court shall keep a record of its proceedings and a note of the assessment, objection, and finding in regard to each objection, and shall cause any deposition taken before it to be taken down in writing and signed by the deponent, and shall authenticate it by the signature of the president, or member acting as president, as having been taken before such Court, and every such deposition so taken down and authenticated shall be accepted without further proof as prima facie evidence in a prosecution for perjury in connexion with any matter contained in such deposition.

Valuation roll.

84. When the Valuation Court has completed its examination of the valuation roll, and has made such alterations and amendments therein as it may deem necessary, the president of the Court shall sign and certify the same. He shall further cause to be inserted once in the Gazette and in one or more newspapers (if any) circulating in the district not less than twice within a period of two weeks, an advertisement, informing all persons interested, of the completion thereof, and that it will become fixed and binding upon all parties concerned who do not, before a date to be specified in such notice, being not less than one month from the date of the first publication of such advertisement, appeal from the decision of the Valuation Court in the manner provided in section 85 of this Ordinance.

Right of appeal from decision of Valuation Court.

85. (1) Any person who is aggrieved by the value put upon any property owned or occupied by him, may appeal against such valuation, within one month from the decision of the Valuation Court, to a magistrate holding a court of the first class within the district, and such magistrate shall inquire into and determine such valuation, and his decision thereon shall be final and conclusive:

Provided that if any question of law shall arise as to the principle upon which any valuation has been or should be made, such magistrate may, at the request of the Council or the party objecting, reserve such question of law for the decision of the Supreme Court, and such question shall be stated in the form of a special case and may be argued before and determined by the Supreme Court, which may make such order as to costs as to the Court shall seem fit.

(2) A Council may appeal, within one month, against the decision of the Valuation Court in respect of any rateable property in the district, to such magistrate, and such appeal shall be subject to the provision set forth in sub-section (1) of this section in respect of appeals by the owner or occupier of property.

Power to remit rates, to cause rateable property omitted to be valued, and to cause revaluations.

86. Notwithstanding anything to the contrary in this Ordinance contained, a Council may from time to time—

- (a) remit any rate, imposed on any rateable property, in such cases as may be approved by the Member;
- (b) cause any rateable property omitted from the valuation roll or new rateable property to be valued in the manner, in this Ordinance provided, and cause the current rate to be collected in respect thereof;
- (c) cause a valuation to be made of any rateable property which is subdivided after the date when the valuation in respect of such property has become

- 5
- fixed and binding, and cause the valuation to be apportioned according to the subdivisions of such property, and cause any rate due in respect thereof to be assessed for the next ensuing rateable year and collected according to such subdivision;
- 10
- (d) cause a new valuation to be made of any rateable property which, from any cause particular to such property and arising since the last valuation thereof, has materially increased or decreased in value;
- 15
- (e) cause any error appearing in the valuation roll from time to time in force to be corrected in any case where some clerical error or some error as to the name of the owner has been made in such roll, and cause any rate due in respect thereof to be collected according to the corrected roll:
- 20
- Provided that—
- (i) upon the making of any such interim valuation the same forms shall be observed and the same proceedings taken as nearly as can be *mutatis mutandis* as are prescribed with regard to general valuations, except that in the direction of the Council the prescribed notices may be served in writing upon the person concerned instead of being published;
- 25
- (ii) every such valuation, revaluation, correction and apportionment shall be subject to any objection made thereto at the next succeeding Valuation Court which may be appointed by the Council under the provisions of this Ordinance and to the same right of appeal as is provided in section 30 85 of this Ordinance;
- 35
- (iii) in the case of any property which is added to the roll or the valuation of which is increased under the provisions of this section, if, at the next succeeding sitting of the Valuation Court, the value of such property is fixed at a sum less than that on which the last preceding rate has been levied, the owner shall be entitled to a refund of any rate paid by him in excess of that which would have been paid if the rate had been levied on the value as fixed by the said Valuation Court.
- 40

87. Subject to the provisions of section 76 of this Ordinance, a Council may, by resolution passed by a majority of 45 the elected members of such Council, impose a rate for each financial year upon the unimproved value of land, as shown by the valuation roll, of such amount as such Council shall determine:

Provided that no such rate shall, in any one financial 50 year, exceed half of one per centum without the sanction of the Governor in Council.

Imposition of rate.

**SPECIAL PROVISIONS WHEN THE DISTRICT RATE IS IMPOSED IN
THE FORM OF A FLAT RATE OR GRADUATED RATE
UPON THE AREA OF LAND**

55 **88.** (1) As soon as practicable after a Council has adopted, as a method of rating for the purpose of the district rate, a flat rate or graduated rate upon the area of land, such Council shall cause to be prepared an area roll of all rateable property in the district, which shall show in respect of each 60 property—

Area roll to be prepared by Council.

- (a) the name and address of the owner;
- (b) the description and situation of the property;
- (c) the area of the land in acres.

(2) Where the method of rating adopted is that of a graduated rate upon the area of land, the Council shall classify every rateable property by one of the following methods:—

- (a) Every rateable property shall be classified according to the purposes for which it is used, or, in the case of unused land, according to the purposes for which it is suitable, and the particulars of such classification in respect of each rateable property shall be shown in the area roll. For the purposes of this method of valuation, land shall, in the first place, be classified as 10 either agricultural land or pastoral land; and agricultural land shall be classified further under headings which shall indicate its character and relative unimproved value;
- (b) in every ward within the district, every rateable 15 property shall be classified into divisions on a graduated scale according to its size, each division containing such number of acres as the Council may, by resolution passed by a majority of the elected members of the Council, resolve in respect of each 20 ward, and such resolution may provide that the number of acres in each division may vary in different areas of each ward; and the divisions into which each rateable property is classified shall be shown in the area roll.

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Powers of
Council for
compilation of
area roll.

89. For the purpose of compiling the area roll, a Council or any person authorized by a Council in that behalf, shall have all the powers conferred upon valuers by section 81 of this Ordinance, and all the provisions of such section shall *mutatis mutandis* apply.

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Provisional area
roll; inspection
and objection.

90. (1) When the area roll has been completed it shall lie at the office of the Council concerned, for public inspection, and any person may at all reasonable times inspect the same and take copies or extracts therefrom. Such Council shall, by notice in the Gazette, and in a newspaper (if any) circulating 35 in the district, call upon all persons interested to lodge in writing with the clerk, within a specified time not being less than one month from the first publication of such notice, statements of any objections they may have in respect of the classification of any rateable property shown in the area roll, or in respect of 40 the omission therefrom of property alleged to be rateable property and whether held by the person objecting or by any other person, or in respect of any other error, omission, or misdescription contained in such roll.

(2) After the expiration of the period specified in such 45 notice, such Council shall inquire into all objections received and shall make such alterations and amendments to the area roll as they may deem necessary, and the Chairman shall then sign and certify the area roll, and shall cause to be inserted once in the Gazette and in a newspaper (if any) circulating in 50 the district not less than twice within a period of two weeks, an advertisement informing all persons interested of the completion of the area roll, and that the same will become fixed and binding upon all parties concerned who shall not, before a date fixed in such advertisement, not being less than one 55 month from the date of the first publication of such advertisement, appeal from the decision of such Council in the manner provided in sub-section (3) of this section.

(3) Any person who is aggrieved, by the classification or area fixed in respect of any property owned or occupied by 60 him, may appeal within such period of one month against the decision of the Council concerned, to a magistrate holding a

court of the first class within the district, and the decision of such magistrate thereon shall be final and conclusive.

91. Notwithstanding anything in this Ordinance contained, a Council may from time to time—

- 5 (a) remit any rate imposed on any rateable property in such cases as may be approved by the Member;
- (b) cause any rateable property omitted from the area roll or new rateable property to be added to the area roll and classify any such rateable property in accordance with the provisions of section 88 of this Ordinance; and cause the current rate to be collected in respect thereof;
- 10 (c) amend the area roll in respect of any rateable property which is subdivided and cause any rate in respect thereof to be assessed and collected according to such subdivision;
- (d) amend the area roll from time to time in any case where some clerical error or some error as to the name of the owner has been made in such roll, and cause any rate due in respect thereof to be collected according to the corrected roll;
- 15 (e) remove from the area roll any property which shall at any time cease to be rateable property;
- (f) amend the classification of any rateable property when such shall at any time be necessary, and cause any rate due in respect thereof to be collected according to the corrected classification:

Provided that—

- 30 (i) upon the making of any addition or alteration to the area roll, the same forms shall be observed and the same proceedings taken as nearly as can be *mutatis mutandis* as are hereinbefore prescribed with regard to the preparation of the roll in the first instance except that in the discretion of the Council the prescribed notices, in writing, may be served upon the person interested instead of being so published;
- 35 (ii) every such addition or other alteration shall be subject to any objection made thereto by any interested person and to the same right of appeal as is provided in section 90 of this Ordinance.

92. Subject to the provisions of section 76 of this Ordinance, a Council may by resolution, passed by a majority of the elected members of such Council, impose a flat rate per acre for each financial year upon all rateable property, as shown by the area roll, of such amount as the Council shall determine:

Provided that—

- 50 (a) no such rate shall exceed ten cents per acre in any one financial year without the sanction of the Governor in Council; except that
- (b) the total sum payable in respect of any rateable property under the provisions of this section shall not be less than twenty shillings for each financial year.

93. (1) Subject to the provisions of section 76 of this Ordinance, a Council may, by resolution passed by a majority of the elected members of such Council, impose for each financial year upon all rateable property as shown by the area roll a graduated rate of such amount per acre in respect of each class or division of land shown by the area roll, as the Council shall determine:

Powers to remit rates and amend area roll.

Imposition of flat rate.

Imposition of graduated rate.

Provided that the total sum payable in respect of any rateable property under the provisions of this sub-section shall not be less than twenty shillings for each financial year.

(2) In fixing the rates per acre chargeable in respect of the different classes or divisions of land, the Council shall be guided by the relative unimproved values of the different classes or divisions of land throughout the district at the time the rates are imposed. 5

(3) No such rate shall in any one financial year exceed in the aggregate the amount which would be produced by a uniform rate of ten cents per acre over the whole of the district without the sanction of the Governor in Council: 10

Provided that for the purpose of calculating the aggregate under this sub-section no account shall be taken of the proviso to sub-section (1) of this section. 15

SPECIAL PROVISIONS WHEN AN INDUSTRIAL RATE IS IMPOSED

Industrial area roll to be prepared.

94. (1) As soon as practicable after a Council has resolved to impose an industrial rate, it shall cause to be prepared a separate area roll (hereinafter referred to as "the industrial area roll") of all rateable properties used for other than agricultural or residential purposes. 20

(2) The industrial area roll shall show, in respect of each such rateable property—

- (a) the name and address of the owner or occupier;
- (b) the description and situation of the property; 25
- (c) the area of the property in acres;
- (d) the purposes for which the property is used;
- (e) the area of land in acres which is used for each purpose.

Powers of Council for compilation of industrial area roll.

95. For the purpose of compiling the industrial area roll, a Council or any person authorized by a Council shall, by its agents or servants, have all of the powers conferred upon valuers by the provisions of section 81 of this Ordinance. 30

Provisional industrial area roll; inspection and objection.

96. (1) When the industrial area roll has been completed it shall be kept at the office of the Council concerned, for public inspection, and any person may at all reasonable times inspect the same and take copies or extracts therefrom. The Council shall, by notice published in the Gazette and in a newspaper (if any) circulating in the district, call upon any person interested, to lodge in writing with the clerk, within a specified time, being not less than one month from the first publication of such notice, a statement of any objections he may have in respect of the inclusion of any rateable property shown in the industrial area roll, or in respect of the omission therefrom of property alleged to be rateable property and to be used for other than agricultural or residential purposes, whether held by the person objecting or by any other person, or in respect of any other error, omission or misdescription in the industrial roll. 35

(2) After the expiration of the period specified in such notice, the Council shall inquire into all objections received and shall make such alterations and amendments to the industrial area roll as it may deem necessary, and the chairman shall then sign and certify the industrial area roll, and shall cause to be inserted once in the Gazette and in a newspaper (if any) circulating in the district not less than twice within a period of two weeks, an advertisement informing all persons interested, of the completion of the industrial area roll, and that the same will become fixed and binding upon all parties concerned who shall not, before a date specified in such advertisement, being not less than one month from the date of the first publication thereof, appeal from the decision of the Council in manner provided in the next succeeding sub-section. 60

(3) Any person who is aggrieved by the inclusion in the industrial area roll of any property owned or occupied by him may appeal within such period of one month, against the decision of the Council, to a magistrate holding a subordinate court of the first class within the district, and the decision of such magistrate shall be final and conclusive.

97. Notwithstanding anything in this Ordinance contained, a Council may—

- 10 (a) remit any industrial rate imposed on any rateable property in such cases as may be approved by the Governor in Council;
- 15 (b) cause any rateable property omitted from the industrial area roll or new rateable property to be added to the industrial area roll and cause the current industrial rate to be collected in respect thereof;
- (c) amend the industrial area roll in respect of any rateable property which is subdivided and cause any industrial rate in respect thereof to be assessed and collected according to such subdivision;
- 20 (d) amend the industrial area roll from time to time in any case where some clerical error or some error as to the name of the owner or occupier has been made in such roll and cause any industrial rate due in respect thereof to be collected according to the corrected roll;
- 25 (e) remove from the industrial area roll any property which shall at any time cease to be rateable property.

98. Where a Council resolves, under the provisions of section 77 of this Ordinance, to impose an industrial rate, such rate shall be imposed, for each financial year, in respect of each rateable property shown in the industrial area roll, of such amount per acre of land as the Council shall in each case determine:

Provided that the total amount payable under the provisions of this section, in respect of any such rateable property, shall be not less than twenty shillings, nor, except with the consent of the Governor in Council, more than one thousand shillings.

Imposition of industrial rate.

THE DISTRICT RATE: GENERAL PROVISIONS

99. No valuation contained in any valuation roll compiled under the provisions of this Ordinance, and no area or classification of land contained in any area roll compiled under the provisions of this Ordinance, and no rate based upon any such valuation roll or such area roll, shall be rendered void or be affected by reason of any mistake or variance in the description of any rateable property or in the name of the owner thereof; and no valuation roll or area roll compiled and authenticated under the provisions of this Ordinance shall be capable of being challenged or set aside by reason of any informality.

Valuation on area roll not to be challenged or set aside.

100. Every rate imposed by a Council shall become due and payable upon a day to be fixed by such Council, of which day and of the amount of which rate, the Council shall give at least thirty days' notice by advertisement in the Gazette and in a newspaper (if any) circulating in the district:

Notice of rates.

Provided that every rate shall become due and payable within the financial year for which or for part of which it is imposed.

Payment of rates.

101. (1) When a Council has given notice of the day upon which such rate will become due and payable, every person liable for such rate shall pay the amount for which he has been charged at the offices of such Council, and if any person fails to do so, proceedings may be taken against him as hereinafter provided. 5

(2) A Council may allow a discount, not exceeding two and a half per centum, on any rates paid on or before the date on which such rates become due and payable under the provisions of section 100 of this Ordinance. 10

(3) A Council may charge and collect interest on rates, remaining unpaid on the due date for payment thereof, at a rate not exceeding one per centum per month. 15

Enforcement of payment of rates.

102. (1) If after the time fixed for the payment of any such rate any person fails to pay the rate due from him, a Council may cause a printed or written demand to be made upon such person to pay the amount stated in such demand within fourteen days after service thereof, and if any person who has had such demand delivered to him personally or left at his ordinary place of residence or place of business or office makes default in the payment thereof, the Council may apply to a magistrate having jurisdiction within the district, for a warrant to recover such rates from the persons liable to pay the same. 20

(2) The magistrate shall grant such warrant on production of a list of the names and addresses of any persons so in default, and the amount due by them, with a certificate by the clerk that such persons have been severally required to make payment of such rates in accordance with the provisions of sub-section (1) of this section, and that such rates are due and do not exceed the maximum rates fixed by or under the provisions of this Ordinance. 30 35

(3) Every such warrant shall contain every authority and be executed in all respects as though it were a writ of execution issued out of the court of such magistrate. 35

Recovery of rates.

103. (1) Notwithstanding the provisions of section 102 of this Ordinance, a Council may in its discretion, after the time fixed for the payment of any such rates, recover from the person in default (without further notice or demand) the amount of the rates due from such person, irrespective of the amount thereof, by action in the court of a magistrate having jurisdiction within the district, whether the person liable for the same is resident within the jurisdiction of such court or not. 40 45

(2) Where it is not possible to effect service of a summons within the limits of the jurisdiction of such court, such service shall be effected in such manner as such court shall direct.

Proceedings against persons liable for rates.

104. Where any person, who is liable to pay any rate and is in default as regards payment thereof, is not resident within the jurisdiction of the court of a magistrate having jurisdiction within the district, a Council may, at its option, make the demand referred to in section 102 of this Ordinance upon, or take proceedings under the provisions of section 104 of this Ordinance against, any person receiving any rents or profits of the rateable property in respect of which such rate is unpaid, or who would receive the same if such rateable property were let or occupied. 50 55

105. (1) Where any rate imposed upon any rateable property remains unpaid for a period of three months after the date on which such rate became due and payable, a Council may, at any time within twelve months after the imposing of the rate, in writing, demand the amount of such rate or any part thereof from any tenant or occupier for the time being of such rateable property, to the extent of any rent due and payable by the tenant at the date of such demand and, on non-payment thereof, may, after one month from the date of such demand, recover the same from such tenant or occupier in the same manner as though he were the owner of such rateable property.

(2) Every such tenant or occupier may deduct from any rent or other amount payable by him to such owner or his successors in title, any amount of rates so paid by or recovered from him, and the production of the receipt for such rates shall be a good and sufficient discharge, for the amount so paid or recovered, as payment on account of such rent or other amount.

106. In any proceedings to impose or recover rates or consequent upon the imposing or recovering of any rates, as well as in all other proceedings under the provisions of this Ordinance, the valuation rolls, area rolls, and records of a Council, and all entries made therein and extracts or certified copies thereof signed by the Chairman or Clerk, and also all copies of any newspaper containing any notice necessary to be proved, shall upon production thereof, be prima facie evidence of the imposing of such rate and of the contents thereof without any evidence that the notices required by or other requirements of this Ordinance have been complied with:

Evidence.

Provided that it shall be competent for any party to any such proceedings to tender evidence to prove the contrary.

107. The person who is the owner of any rateable property at the date when a rate becomes due and payable in respect of such property under the provisions of section 100 of this Ordinance, shall be liable for payment of the amount of such rate, and, in the case of joint owners of rateable property, they shall be jointly and severally liable for the rate due thereon:

Owner liable for rates.

108. Provided that, in the case of the owner being absent from the Colony, any person receiving the rent or being in charge or control of such property shall be liable for such rate.

108. The proceeds of the district rate or rates levied under the provisions of this Ordinance may be applied for and towards all purposes in respect of which the Council concerned is authorized, under the provisions of this Ordinance, to incur expenditure.

Application of rates.

109. (1) (a) For the purpose of making grants to any hospital or dispensary for the benefit of natives employed within the district, which a Council is empowered under the provisions of this Ordinance to make, or for meeting the cost of treatment of such Africans in hospitals and dispensaries established by a Council under the provisions of this Ordinance, such Council may, by resolution, passed by a majority of at least two-thirds of the elected members of the Council, adopt, as an additional method of rating, a flat rate per head of natives employed within the district.

Rate upon employers of native labour.

Proceedings for recovery of rates unpaid for three months.

(b) Notice of such resolution shall be given and advertised in the same manner and for the same periods as if such resolution were a resolution to adopt a method of rating for the purposes of a district rate under the provisions of section 76 of this Ordinance.

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(c) Where such a method of rating has been adopted, the Council may, from time to time, by resolution passed by a majority of the elected members of the Council, impose a rate upon employers of native labour in the district, of such amount in respect of each native employed by them as the Council shall determine.

(d) For the purposes of this section "native" shall include any casual native labourers and any natives residing on farms under the provisions of the Resident Labourers Ordinance, 1937.

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No. 30 of 1937.

(2) A Council may exercise the powers conferred upon it by this section in respect of either—

- (a) the district as a whole; or
- (b) any part of the district:

Provided that such powers shall not be exercised in respect of part of the district, without the consent of the Governor.

No. 63 of 1930.

(3) Notwithstanding anything in sub-section (1) of section 3 of this Ordinance contained, the term "district" in this section may, on the application of a Council and with the approval of the Governor, to be given before the first imposition of the rate, include any township declared to be a township under the provisions of the Townships Ordinance, 1930, whose area is surrounded or bordered by the area of jurisdiction of such Council, and the Governor may in his discretion appoint, as members of such Council, for the purpose of the administration by such Council of any such hospital, one or more persons as representative of such township.

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PART VII—GENERAL FINANCIAL PROVISIONS

REVENUE AND BORROWING POWERS

Revenues.

110. The revenues of a Council shall include—

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- (a) all rates levied by such Council;
- (b) one-half of all fines imposed by any competent court in respect of any contravention of the provisions of this Ordinance or of any by-laws made thereunder;
- (c) Government grants;
- (d) all other moneys recoverable by such Council or to which such Council is entitled under the provisions of this Ordinance or of any other law in force in the Colony.

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Payment of rates
before transfer
of premises.

111. (1) No transfer of any premises within a district wherein a rate is imposed under the provisions of this Ordinance shall be registered against the title to such premises until a written statement signed by the Clerk or other officer authorized in that behalf by the Council concerned, shall be produced to the Principal Registrar of Titles, showing that all rates and charges (if any) for a period of three years immediately preceding such date, due in respect of such premises on account of any rates imposed under the provisions of this Ordinance, have been paid to the Council.

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(2) The Clerk or other officer authorized thereto by the Council shall give the said statement on the demand of the owner of the premises or his attorney or agent, upon payment

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by him of all charges due (if any) and of a fee, to be fixed by resolution of the Council, not exceeding two shillings for each such statement.

112. (1) There shall be paid to a Council, from the general revenues of the Colony, an annual grant for the maintenance and improvement of all roads within the district, which have been classified, under the provisions of section 60 of this Ordinance, as District Roads. The amount of such grant shall be determined by the Governor in Council, after consultation with the Central Roads and Traffic Board.

(2) In addition to such grant there shall be paid to a Council, from the general revenues of the Colony, such proportion, as the Governor in Council may direct, of any expenditure incurred by such Council upon the employment of staff and upon the provision and maintenance of offices necessary for the carrying out of the duties and obligations imposed on the Council by this or any other law, provided the details of such expenditure have been approved by the Governor.

113. (1) Additional road grants may also be paid, from the general revenue of the Colony, to a Council in respect of expenditure in any financial year on account of—

- (a) the construction and maintenance of new district roads;
- (b) the improvement of existing district roads; and
- (c) new permanent bridges or other special works in connexion with district roads.

(2) Every application, for a grant under the provisions of this section, shall be forwarded to the Commissioner and shall show details of the works proposed, the estimated cost thereof, the proportion of such cost which it is proposed to meet from such grant and any other information which may be required by the Commissioner.

114. There shall be paid to a Council, from the public revenues of the Colony, all sums derived by the Government of the Colony from the taxation of vehicles (not being motor vehicles) belonging to persons having a residence or place of business within the district where such vehicles are ordinarily housed or kept:

Provided that such Council may be required to pay to the public revenues of the Colony a collection fee not exceeding five per centum of the amount so payable to the Council.

115. Where any Council has, under the provisions of section 67 of this Ordinance, been declared to be a local authority within the meaning of the Public Health Ordinance, there shall be payable to such Council from the public revenues of the Colony—

- (1) a sum equal to one-half of the annual emoluments of the Medical Officer of Health and of all qualified Sanitary Inspectors appointed by such Council under the provisions of this Ordinance;
- (2) a sum equal to one-half of any expenditure incurred by such Council in connexion with outbreaks of infectious diseases, and such proportion, if any, of other expenditure, in connexion with measures taken for the purpose of promoting and maintaining the public health, as the Governor in Council may determine, provided the details of such expenditure have been approved by the Governor.

116. The Member may at any time make advances to a Council in respect of any grants payable or to become payable under the provisions of this Ordinance and any such advances shall be free of interest and shall be deducted from such grants when paid:

Grant from general revenues for maintenance and improvement of roads.

Additional road grants.

Vehicle licences to be paid to the Council.

Public health grants.

Cap. 124.

Member may make advances on account of grants.

Provided that no such advance shall be made in any financial year in respect of grants for a succeeding financial year.

Borrowing powers.

117. (1) A Council may from time to time, by a majority of the councillors present at a meeting specially convened for the purpose and at which the majority of voting shall be not less than a majority of the whole Council, raise loans in such amounts and upon such conditions as the Governor in Council may approve. ⁵

(2) Such loans shall be a charge on the property and ¹⁰ revenues of such Council, and upon any land which may be specially placed at the disposal of the Council under the provisions of any law:

Provided that this sub-section shall not be deemed to confer upon the Council any power other than such powers as ¹⁵ may be conferred by such law, to alienate any such land.

(3) If at any time any interest due on any loan to a Council remains unpaid for three months after demand therefor in writing has been lodged with the Clerk by the person entitled thereto or by his duly authorized representative, an application may be made by such person or his representative to the Supreme Court for the appointment of ²⁰ a receiver of the property and revenues on which the loan is secured.

(4) On the hearing of such application the Court may ²⁵ make such order and give such directions as under the circumstances shall seem expedient for the raising and payment of the moneys due, and, in particular, the Court may order that a district rate or rates of such amount or amounts as it may determine shall be levied upon all rateable property within the ³⁰ district. Any rate so ordered, shall have the same incidence as any other rate imposed by such Council and may be enforced in like manner, and the proceeds thereof shall be paid into Court or otherwise as the Court shall direct.

(5) If at any time default be made in the repayment of ³⁵ any such loan, or of any instalment thereof, after a period of thirty days from the date on which such loan or instalment shall have become repayable, the like proceedings may be instituted on the application of the person to whom such repayment shall be due or of his duly authorized representative. ⁴⁰

(6) The Court, on such application, in addition to any order which it may make under the provisions of sub-section (4) of this section, may, if it thinks fit, order the sale of any property on which such loan may be secured, subject to the provisions of any law as regards the alienation of any ⁴⁵ lands vested in the Council under the provisions of such law.

Financial year; statement of accounts.

118. (1) For the purposes of this Ordinance the financial year shall be the twelve months ending on and including the thirty-first day of December of each and every year.

(2) The accounts of a Council shall, as soon as practicable, be balanced for the preceding financial year and an annual statement or abstract thereof shall be prepared. Copies of such annual statement or abstract, and of the inspector's report made under the provisions of section 124 of this Ordinance shall be laid before the Council not later than its first ⁵⁵ ordinary meeting in the month of May following, and shall be delivered to any inhabitant of the district on application and on payment of such fee, if any, as may be prescribed by resolution of such Council.

(3) Such annual statement or abstract shall be prepared ⁶⁰ in such form and shall contain such information as the Commissioner may require, and such portions thereof or extracts

therefrom, together with such portions or extracts from the inspector's report, as the Commissioner may direct, shall be published in a newspaper (if any) circulating in the district.

119. (1) Not less than one month before the expiry of any financial year, a Council shall approve detailed estimates of the revenue and expenditure of such Council for the next financial year.

(2) A summary of such annual estimates shall be published in the Gazette, and in a newspaper (if any) circulating in the district, at least fourteen days before the date of the meeting of such Council at which such estimates are presented for the approval of the Council, and a copy of such annual estimates shall be delivered to any inhabitant of the district on application and on payment of such fee, if any, as may be prescribed by resolution of such Council.

(3) A Council shall, before the commencement of each financial year, submit a copy of such annual estimates as approved by the Council, to the Commissioner for approval by the Standing Committee, and when approved by such Committee, an abstract thereof shall be published in the Gazette, if in the opinion of the Member such publication is necessary.

No Council shall, except with the sanction of the Standing Committee, incur any expenditure which has not been included in such approved estimates:

Provided that reallocations of expenditure within the limits of the approved estimates, which shall not increase or decrease any one item of expenditure by more than one hundred and fifty pounds, may be made by the Council.

30 (4) For the purpose of approval, by the Standing Committee, under sub-section (3) of this section, estimates shall be prepared in such form and shall contain such detailed information as the Commissioner may require.

(5) A copy of all estimates approved in accordance with the provisions of this section shall be recorded in the minutes of the Council.

120. (1) A Council may, from time to time, obtain from the Government of the Colony advances of moneys required for the proper carrying out of the provisions of this Ordinance.

40 (2) A Council may obtain advances from any bank by way of overdraft in such amounts and upon such conditions as may be approved by the Governor.

(3) All moneys so advanced, and the interest thereon (if any), shall constitute a liability of the Council concerned and shall be a charge on the property and revenues, present and future, of such Council; and the provisions of section 117 of this Ordinance for the security of such advances and for the recovery thereof shall apply in all respects as if such advances were loans raised under the provisions of that section.

50 **121.** Save where any loan or advance by way of overdraft has been authorized as provided in this Ordinance, no person or bank lending money to a Council shall have any remedy or right whatsoever to recover such loan or advance from such Council:

55 Provided that, if a Council borrows any money which it is not legally bound to repay, all the members who have joined in authorizing the borrowing of such money shall be jointly and severally liable to repay the amount so borrowed and all interest thereon, and such moneys may be recovered from them by action in any competent court.

Annual estimates
to be framed by
the Council.

Advances from
Government and
overdrafts.

Illegal
borrowing.

Depreciation regulations.

122. (1) A Council shall make regulations providing for the annual setting aside by the Council of amounts to create adequate reserve funds to provide for the entire or partial replacement of assets of such Council which, owing to the depreciation or other cause, will require at some future date ⁵ to be replaced, and providing for the investment of such funds.

(2) Such regulations shall be submitted for the approval of the Standing Committee who may approve the same with or without modification, and, when approved, shall be published ¹⁰ in the Gazette:

Provided that, if a Council fails to make such regulations and to submit the same for such approval within a period of twelve months from the date on which the Governor requires the Council so to do, such regulations may be made ¹⁵ by the Governor.

(3) Such Council shall pay annually out of its revenues, into the reserve funds so created, such contributions as may be required under the provisions of any regulations made under the provisions of this section, and no such moneys or ²⁰ any part thereof shall, without the sanction of the Governor, be used either permanently or temporarily for any purpose other than the purposes for which they have been contributed. All interest or other revenues derived from such reserve funds shall be paid into and become part of such funds. ²⁵

ACCOUNTS AND AUDIT

Accounts to be kept.

123. (1) A Council shall cause proper books and accounts to be provided and true and regular records to be entered therein of all transactions of such Council, and such books and accounts shall be open to the inspection of any ³⁰ member of such Council, ratepayer or creditor of such Council, without fee or charge. Any such person may make copies of or extracts from any such books or accounts.

(2) All such books and accounts shall, in order to provide for the production of comparative statements of revenue, ³⁵ expenditure, cost, and general uniformity in the accounts of Councils, be kept in such form and manner as the Commissioner may direct.

Audit of the accounts, etc., of the Council.

124. (1) The Governor shall appoint one or more persons, being officers of the public service, from time to time to inspect, examine and report upon the accounts and records of a Council, and such Council shall, by the Clerk or other officer authorized by such Council, produce and lay before the person or persons so appointed all books and accounts of the Council together with all vouchers, papers and writings ⁴⁵ relating thereto.

(2) An inspector shall certify, not less than once in each financial year, whether or not—

- (a) the accounts of the Council are in order;
- (b) the accounts present a true and correct statement of ⁵⁰ the financial position of the Council and of its transactions;
- (c) due provision has been made on account of redemption and repayment of all moneys borrowed by the Council; ⁵⁵
- (d) the value of the assets of the Council has been fairly stated;

- (e) the amounts set aside for depreciation and renewal of the assets of the district are adequate and in accordance with regulations made under the provisions of section 122 of this Ordinance;
- 5 (f) all of his requirements and recommendations have been complied with and carried out.
- (3) The inspector in his report shall state his opinions and observations upon all questions arising out of the certificate given by him under the provisions of sub-section (2) of 10 this section, and upon all matters affecting the economical and efficient administration and conduct of services which in his opinion call for special notice, and shall draw attention to all cases in which it appears to him that the provisions of this Ordinance or of any other law in force in the Colony have 15 not been carried out or that any acts, matters or things have been performed or carried out without due authority.
- (4) The Clerk shall, immediately upon the receipt of the inspection report or reports or copies thereof, submit the same to the Chairman of the Council, and shall thereafter lay the 20 same before such Council at its next ensuing meeting.

(5) The Council shall pay to the Governor, within three months from the date of the signing and certifying by such inspector of the accounts of the Council for any financial year, such sum as the Governor may determine, but such sum shall 25 not exceed one per centum of the total expenditure, brought to account and certified by such inspector for that financial year, of such Council:

Provided that, where for the purpose of an effective audit, the accounts of a Council require to be completed, adjusted 30 or balanced by such inspector, such proportionately higher fee, as the Governor may determine, shall be charged and paid.

125. (1) An inspector shall disallow every payment made without due authority according to law, and shall surcharge the same on the person or persons making or authorizing such 35 payment, and shall charge against any person or persons responsible therefor the amount of any deficiency or loss occasioned by the negligence or misconduct of such person or persons or of any sum which ought to have been brought to account by any such person or persons, and shall in every case 40 certify the amount due from such person or persons.

(2) For the purposes of this section the pecuniary responsibility for a surcharge in respect of any such payment shall rest upon the Treasurer or other official making the payment, except where such payment is made upon instructions (recorded in the minutes or in writing) from the Council or from any committee or member of the Council, given after the irregularity has been pointed out; and the pecuniary responsibility for a surcharge in respect of any such payment, when such payment is made upon such instructions, 50 shall rest upon the person or persons giving or joining in giving of such instructions. A member of a Council shall be deemed to have joined in giving such instructions unless he has caused his vote against the resolution, in that connexion, to be recorded in the minutes.

55 (3) An appeal shall lie to the Supreme Court from any decision of an inspector given under the provisions of this section, or the person surcharged may, in lieu of such appeal, appeal to the Governor, whose decision shall be final.

(4) Every sum certified by an inspector, or found on 60 appeal, to be due from any person under the provisions of this section, shall be paid into the fund from which it was taken within thirty days from the date of the inspector's certificate or decision on appeal, as the case may be, and, if such sum is

Inspector's power to surcharge.

not so paid, the inspector shall take all necessary steps to recover the same from the person surcharged in any competent court, and shall be paid by the Council his reasonable costs and expenses in any such proceedings.

(5) In any proceedings for the recovery of such sum the 5 inspector's certificate shall be conclusive evidence that the sum is due and payable by the person charged.

(6) On the production of such certificate the court shall give a decree for the sum sued for, and every such decree shall have the effect of a decree made under the provisions of the 10 Civil Procedure Ordinance, 1924.

No. 3 of 1924.

Powers of
Inspector to
take evidence.

126. (1) For the purpose of any examination under the provisions of section 124 of this Ordinance, an inspector may hear and receive evidence and examine witnesses upon oath or affirmation (which oath or affirmation the inspector is hereby 15 empowered to administer), and may, by summons under his hand, require all such persons, as he may think fit, to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers (including the minutes of the proceedings of the Council or of any com- 20 mittee thereof), as may be necessary for such examination.

(2) Any person so required who, without reasonable excuse—

- (a) neglects or refuses to comply with such summons;
- (b) having appeared, refuses to be examined on oath or 25 affirmation or to take such oath or affirmation; or
- (c) having taken such oath or affirmation refuses to answer such questions as are put to him,

shall be guilty of an offence and shall be liable on conviction therefor, for every such neglect or refusal, to a fine not 30 exceeding thirty pounds or to imprisonment for a term not exceeding six months.

PART VIII—CENTRAL ORGANIZATION

Standing
Committee for
Rural Areas.

127. (1) There is hereby established a Standing Committee for Rural Areas to perform the duties imposed upon 35 it by this Ordinance or by any other enactment, relating to local government, for the time being in force in the Colony.

(2) The Standing Committee shall consist of—

- (a) The Commissioner for Local Government, who shall be chairman; 40
- (b) the Director of Medical Services;
- (c) the Director of Public Works; and
- (d) such other person or persons as the Governor may, by notice in the Gazette, appoint:

Provided that in the case of absence or inability to attend, 45 any officer mentioned in paragraphs (b) or (c) of this sub-section, may be represented by a deputy, appointed by such officer.

(3) Members of the Standing Committee appointed under the provisions of paragraph (d) of this sub-section shall hold 50 office during the Governor's pleasure.

(4) (a) In the absence of the chairman from any meeting of the Standing Committee a chairman for such meeting shall be chosen by the members present, from among the members 55 present at such meeting.

(b) At all meetings of the Standing Committee four members shall form a quorum.

(c) The chairman of the meeting shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote. A decision of a majority of the members

present and voting at a meeting of the Standing Committee shall be deemed to be the decision of the Standing Committee.

(5) The Standing Committee shall, in addition to any other duties which may be imposed upon it by this Ordinance or by any other law, advise the Governor and the Governor in Council upon all matters in regard to which the approval of the Governor or Governor in Council is required, under the provisions of this Ordinance or in regard to which the Governor or the Governor in Council is empowered to make rules, regulations or by-laws, under the provisions of this Ordinance, or upon any matters which may be submitted to it by its Chairman.

(6) There shall be an appeal from any decision of the Standing Committee, given under the provisions of this Ordinance, to the Governor in Council, whose decision thereon shall be final.

128. The Governor may at any time require any officer in the service of the Government of the Colony to conduct or cause to be conducted such investigations, researches and inquiries as the Governor may deem necessary for any purpose of this Ordinance or for assisting any Council in the carrying out of its duties under the provisions of this Ordinance, and generally for promoting the efficiency of local government in rural areas; and all necessary facilities shall be given by Councils to any officer conducting any such investigations, researches and inquiries.

Inquiries.

129. (1) Every Council constituted under the provisions of this Ordinance, shall render to the Commissioner, not later than the thirty-first day of March in each year, a report of the work of such Council and of the affairs of the district for the preceding financial year.

Reports to be rendered by Council.

(2) Such report shall be rendered in such form as may be directed by the Commissioner, and shall be accompanied by such statistics as the Commissioner may require.

(3) A copy of such report shall be delivered, by the Clerk, to any inhabitant of the district, on application and on payment of such fee, if any, as may be prescribed by resolution of such Council.

130. (1) Every Council shall furnish to the Commissioner a certified copy of any record or minutes of its proceedings and of the proceedings of any committee appointed by such Council and of a record of any accounts of the Council, and such reports, statistics and documents as the Commissioner may from time to time require.

Minutes, etc., of Council to be furnished.

(2) Minutes of the proceedings of each meeting of a Council or of a committee thereof shall be forwarded within ten days after the date upon which such minutes were confirmed in the manner prescribed by this Ordinance or any by-law made thereunder.

131. The Commissioner shall render to the Governor through the Member, not later than the thirtieth day of June in each year, a comprehensive report upon the affairs and activities of all Councils constituted under the provisions of this Ordinance.

General report to be rendered to the Governor by the Commissioner.

132. (1) The Central Roads and Traffic Board shall advise the Governor upon the following matters:—

Functions of Central Road Board.

- (a) The grants payable from the general revenue of the Colony in respect of roads under the provisions of sections 112 and 113 of this Ordinance.
- (b) The classification of roads in respect of which such grants are payable.
- (c) All other matters concerning roads in districts.

(2) The Central Roads and Traffic Board shall control any road-making or other plant which may be placed at its disposal for the purpose of hire to any Council and shall prescribe charges for the hire of such plant, and shall do all other things necessary in regard to the conditions of hiring of such plant. 5

Governor's
powers of
nomination
in certain
circumstances.

PART IX—SPECIAL POWERS OF THE GOVERNOR

133. (1) Pending the first election of members of a Council for any district constituted under the provisions of this Ordinance, the Governor may, by proclamation, nominate 10 and appoint such number of persons as he shall select, being not less than ten, to form a Council with jurisdiction over any area which under the provisions of this Ordinance—

- (a) has been constituted a district; or
- (b) has been severed from a district (of which it formed 15 part) and constituted a separate district.

(2) Every such Council shall exercise all or any of the powers and authorities and shall carry out the duties conferred or imposed upon a Council by this Ordinance or by any other law, and shall be subject to the obligations attaching to the 20 exercise thereof.

(3) The period of office of every such Council shall be from the date of such proclamation until the date upon which a Council shall be duly constituted in accordance with the provisions of this Ordinance; and upon such latter date such 25 first-mentioned Council shall be dissolved.

(4) Where any area has been so severed from a district and constituted a separate district, the Governor may, by proclamation, declare that all by-laws which at the date of such severance were operative in such area shall, notwithstanding 30 such severance, continue to have full force and effect in such separate district, until altered or revoked under the provisions of this Ordinance.

Power to
dissolve
Councils.

134. If any Council at any time neglects to hold a meeting for the space of six months, the Governor may dissolve 35 such Council and may, by proclamation, nominate and appoint other persons, being not less than three in number, to form a Council for the purpose of this Ordinance, and every such Council shall be competent, and is hereby required, to exercise all the powers and authorities vested in the Council which has 40 been dissolved.

Power to reduce
Government
contributions
in certain
circumstances.

135. If at any time it appears that the revenues of a Council are not being properly used in the best interests of the district as a whole, or that the administration of the affairs of a Council is wasteful or inefficient, or that a Council 45 has failed to act in conformity with the provisions of this Ordinance, the Governor in Council may, on the recommendation of the Standing Committee, and after such inquiry (at which inquiry the Council shall be heard), as he may deem necessary—

- (a) reduce the road grants payable, under the provisions of sections 112 and 113 of this Ordinance, for the next succeeding financial year by such amount as he shall determine; or
- (b) dissolve such Council and, by proclamation, nominate 55 or appoint other persons being not less than three in number, to form a Council for the same purposes and with the same powers as are prescribed in section 134 of this Ordinance:

Provided that any such reduction of the road grant shall 60 be notified to the Council concerned within one month after the commencement of the financial year in respect of which such grants are payable.

PART X—LEGAL PROCEDURE

136. (1) Where any matter is by this Ordinance directed to be determined by arbitration, such matter shall, except as may be otherwise expressly provided, be determined by a person, as arbitrator, to be agreed upon by the parties to the arbitration, or, failing such agreement by the parties, to be nominated by the Commissioner on the application of either party.

(2) The expenses of any such arbitration shall be borne and paid as the arbitrator may direct.

137. Every person who is guilty of any offence against the provisions of this Ordinance shall, for every such offence, be liable, on conviction therefor, to the penalty expressly prescribed by this Ordinance, or, if no such penalty be prescribed, to a fine not exceeding fifty pounds.

138. All fines, penalties or other moneys payable in respect of any offence against the provisions of this Ordinance may be recovered before any court of competent jurisdiction.

139. Save as in this Ordinance otherwise expressly provided, where any fine has been imposed under the provisions of this Ordinance, and the person convicted does not forthwith pay the same, the court imposing the fine may direct that such person shall suffer imprisonment for a term not exceeding one month if the fine does not exceed ten pounds, or for a term not exceeding three months if the fine exceeds ten pounds.

140. All fines recovered in respect of offences against the provisions of this Ordinance or of any by-law made thereunder shall be paid, as to one-half, into the revenues of the Council concerned, and as to the remaining one-half into the general revenue of the Colony.

141. The Clerk or any other person, authorized in that behalf by a Council, may prosecute, in subordinate courts, for all offences against this Ordinance, and the provisions of any law in force in the Colony, relating to prosecutions by private persons, shall apply to all such prosecutions.

142. Any police officer may arrest without warrant any person who commits any offence against the provisions of this Ordinance, and any officer of the Council, in uniform or wearing a visible badge of office and authorized on that behalf, in writing, by a Council may arrest, without warrant, any person who, in his presence, commits any such offence and may detain such person until he can be delivered into the custody of a police officer to be dealt with according to law.

145. Provided that no person shall be arrested or detained without a warrant unless reasonable grounds exist for believing that, except by the arrest of such person, he may not be found or made answerable to justice without delay, trouble or expense.

143. When any matter or thing is, under the provisions of this Ordinance, or by any order or notice made and published thereunder, directed to be or prohibited from being done, or where any authority is, under the provisions of this Ordinance, given to any person to direct to or prohibit from doing any matter or thing, and such act so directed to be done remains undone or such act so prohibited from being done is done, then in every such case every person offending against such direction or prohibition shall be deemed to be guilty of an offence against this Ordinance.

144. The books and registers of any Council and any extracts therefrom certified by the Clerk or other officer authorized thereto by such Council shall, in any proceedings

Arbitration.

General penalties.

Recovery of penalties.

Default in payment of fines.

Appropriation of penalties.

Conduct of prosecutions.

Powers of arrest.

Persons offending against order or notice to be deemed guilty of an offence.

Books of Council to be prima facie evidence on sums due.

for the recovery of any rates or charges for any service, be prima facie evidence of the amounts so due.

Contraventions
of Ordinance
or by-law by
company or
partnership.

145. If any offence against any of the provisions of this Ordinance is committed by a company or partnership, every director, manager, secretary or person having the management or control, in the Colony, of the business or property in the case of a company, and every such person and each partner in the case of a partnership, shall be responsible for such offence, and shall be liable on conviction therefor, to the punishment prescribed for such contravention: 10

Provided that nothing in this section contained shall be deemed to exempt from liability any other person guilty of any such offence.

Actions against
a Council.

146. Any action against a Council shall be brought within twelve months from the date upon which the cause of such action arose, and all such costs, charges and expenses as such Council may be put to or may become chargeable with, by reason of the prosecution or defence of any such action or under the judgment of any court, shall be paid out of the revenues of the Council. 15 20

PART XI—MISCELLANEOUS

Power of officers
to enter premises.

147. (1) Any Council or any officer of any Council duly authorized in writing, may, at all reasonable times, enter into or upon any premises within the district for the purpose of exercising any power of inspection, inquiry or execution of works which is given to the Council under the provisions of this Ordinance or of any by-law or regulation made thereunder. 25

(2) The Medical Officer of Health or any sanitary inspector may, when entering into or upon any premises in exercise of the powers conferred by this section, be accompanied by a police officer. 30

(3) Any by-law made under the provisions of this Ordinance may confer on a Council, its officers and servants, such powers of inspection, inquiry, and execution of works as may be reasonably necessary for the proper carrying out or enforcement thereof. 35

Obstructing
officers.

148. The following persons shall, on conviction for any of the offences mentioned in paragraphs (a) to (d), inclusive, of this section, be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months:— 40

- (a) Any person who wilfully obstructs any member of any Council or any officer or servant of a Council in the execution of his duty as such.
- (b) Any occupier of premises who prevents the owner of such premises from complying with any of the requirements of a Council. 45
- (c) Any occupier of premises who, on demand, refuses or wilfully omits to disclose or wilfully misstates the name of the owner of such premises.
- (d) Any person who refuses to answer to the best of his ability or knowingly makes false answers to inquiries made by the Medical Officer of Health or any sanitary inspectors specially authorized by him in writing for the purpose of discovering cases of any infectious disease or possible sources of infection of any such disease. 50 55

Saving of Public
Health
Ordinance.
Cap. 124.

149. Nothing in this Ordinance contained shall be deemed to override the provisions of the Public Health Ordinance.

150. The Member may make rules for the purpose of exercising adequate control over works carried out under the provisions of this Ordinance, the cost of which is met either wholly or partly from Government grant, and more especially in regard to the following:—

- (1) providing for the making of investigations and surveys by officers in the service of the Government of the Colony in connexion with such works;
- (2) providing for the inspection of such works under construction, and defining the powers and duties of inspecting officers;
- (3) providing for the adoption by Councils of standardized designs and specifications for such works, and for materials used in the construction thereof;
- 15 (4) providing for the adoption by Councils of standardized contract documents to be used in connexion with such works;
- (5) providing for the methods to be adopted for the purchase by Councils of goods and materials required for such works;
- 20 (6) sanctioning and giving binding effect to any scheme for the provision of hospitals and dispensaries, and generally for regulating the establishment of hospitals and dispensaries.

151. The Local Government (District Councils) Ordinance, 1928, is hereby repealed:

No. 21 of 1928

Provided that a Council constituted under the provisions of the Ordinance hereby repealed shall be deemed to have been constituted under the provisions of this Ordinance and the members of such Council shall continue to hold office to the same extent as if this Ordinance had not been enacted.

MEMORANDUM OF OBJECTS AND REASONS

This Bill repeals and re-enacts with amendments the Local Government (District Councils) Ordinance, 1928. The amendments effected are by no means extensive but since the provisions to be amended were widespread throughout the Ordinance and since it was a convenient opportunity to further the policy of conferring upon Members powers hitherto exercisable by the Governor it was decided that the most suitable method of effecting the desired amendments was by repeal and re-enactment.

The principal amendments effected to the provisions of the repealed Ordinance by this Bill are as follows:—

- (a) by clause 3 the power of the Governor, by proclamation under section 3 of the Ordinance, to divide a district into road areas is deleted, since such a division is no longer necessary;
- (b) by clause 5 the first proviso to section 5 (1) (a) of the Ordinance is amended to provide for the election of not more than two Indian members of the Council for the Nyanza District instead of only one such member;
- (c) by clause 10 the provisions of section 11 of the Ordinance which required an Indian to be also a British subject or a British protected person as a qualification for enrolment on the Indian Voters Roll has been deleted. This has the effect of enfranchising any person of Indian origin or descent;
- (d) by clause 26 (3) the provision in sub-section (3) of section 27 of the Ordinance requiring the signatures of the proposer and seconder of a candidate for nomination to be witnessed by a magistrate, justice of the peace or notary public has been deleted and instead provision is made for such signatures to be witnessed by a person whose name appears on the voters' roll for the district or ward;

Power to
make Rules.

- (e) by clause 39 (1) (b) provision is made for a member of a council, other than an *ex officio* member, serving on a committee of the Council to become disqualified if he absents himself for three consecutive meetings of the committee. Section 38 of the Ordinance only provided for disqualification upon absence from three consecutive ordinary meetings of the Council;
- (f) by clause 48 (4) new provision is made for a committee of a Council to co-opt persons, whether members of the Council or not, as members of the committee; but no such co-opted member who is not a member of the Council may vote on any matter;
- (g) by clause 50 new provision is made that, in the event of a Council failing to determine in respect of any committee what number of members shall be a quorum, no business shall be transacted unless three members are present;
- (h) consequent upon the deletion by clause 3 of power to divide districts into road areas, section 51 (which provides for the appointment of a Road Area Committee), section 100 (which provides power to impose separate rates in road areas) and sub-section (2) of section 123 (which requires separate accounts to be kept for each road area, have been repealed;
- (i) by clause 57 a new provision is inserted whereby a District Council is enabled, with the approval of the Governor, to apply to Government to acquire compulsorily on behalf of and at the expense of the Council land required for any purpose authorized by the provisions of the Bill;
- (j) by clause 58 provision is made for a Council to make contracts involving amounts up to Sh. 3,000 without the necessity of inviting tenders. Section 56 of the Ordinance limited the amount to Sh. 1,500;
- (k) by clause 59 the powers of a District Council are extended to include the operation of road transport services, the making of grants for establishing district nursing sisters and medical services, the establishment and maintenance of aerodromes and markets, the establishment and maintenance of schools, the burial of persons and the establishment and maintenance of mortuaries, cemeteries and crematoria;
- (l) by clause 60 the provision of section 58 of the Ordinance classifying district roads as either main or minor roads has been omitted as being no longer necessary;
- (m) by clause 68 the by-law making powers of a District Council are extended to include the making of by-laws for the following additional matters:—
 - (i) regulating the conveyance and disposal of dead bodies;
 - (ii) controlling hawkers and pedlars;
 - (iii) controlling the use of welfare centres;
 - (iv) controlling the keeping of wild, dangerous or noisy animals;
 - (v) controlling the construction and repair of buildings.

It is not possible to estimate what additional expenditure of public moneys will be incurred if the provisions of this Bill become law.

Nairobi,
9th July, 1949.

K. K. O'CONNOR,
Attorney General.