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OF
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Colony and Protectorate of Kenya.

AN ORDINANCE

No 30 OF 1929

Assented to in His Majesty's name this thirty-first day of December, 1929

EDWARD GRIGG,
Governor

[31ST DECEMBER 1929] Date of assent

An Ordinance to Amend the Electric Power Ordinance

31st December, 1929

Date of commencement

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

1 This Ordinance may be cited as "the Electric Power (Amendment) Ordinance, 1929" and shall be read as one with the Electric Power Ordinance (Chapter 165 of the Revised Edition), hereinafter referred to as "the Principal Ordinance" Short title

2 Sub-section (2) (d) of section 27 of the Principal Ordinance is hereby repealed and the following substituted therefor — Repeal and replacement of section 27 (2) (d) of the Principal Ordinance

"(2) (d) Notwithstanding anything in this section contained, the owner or occupier of any premises shall not be entitled to demand or continue to receive for other than normal and regular use from any unauthorised distributor, a supply of electricity for any premises having a separate supply of electricity or a supply (in use or ready for use for the purposes for which such emergency supply of electricity is required) of gas, steam or other form of energy unless such owner or occupier has agreed with the distributors to pay to them such minimum annual sum as will give them a reasonable return on the capital expenditure incurred by them in providing such emergency supply and will cover other standing charges incurred by them in order to meet the possible maximum demand for those premises. The sum to be so paid shall be determined in default of agreement by arbitration in accordance with the provisions of the Arbitration Ordinance"

Cap 18

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

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

AN ORDINANCE

No 31 OF 1929

Assented to in His Majesty's name this thirty-first day
of December, 1929

EDWARD GRIGG,
Governor

Date of assent

[31ST DECEMBER, 1929]

**An Ordinance to make Provision for the Fencing
of Farms and Other Holdings**

Date of
commencement

By Notice

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

Short title and
commencement

1 This Ordinance may be cited as "the Fencing
Ordinance, 1929," and shall come into force on such date as
the Governor may by notice in the Gazette appoint

Interpretation

2 In this Ordinance, unless the context otherwise
requires —

Cap 18

"Arbitration" means arbitration in accordance with the
provisions of the Arbitration Ordinance or any Ordinance sub-
stituted therefor,

Cap 157

"Clean area" means any area declared to be free from
East Coast Fever, and to be a "clean area" by proclamation
under section 4 of the Diseases of Animals Ordinance,

"Contribution" means a contribution by an owner in
accordance with this Ordinance towards the cost of a dividing
fence and "to contribute" shall be construed accordingly,

"Cost" shall in respect of the erection, alteration or
repair of any fence, include any cost of or incidental to such
erection, alteration or repair, including the cost of the trans-
port of materials,

"Director" means the Director of Agriculture,

"Dividing fence" means, in relation to a holding, a
fence erected on or near as possible to any boundary of such
holding and separating such holding from another holding,
public road, or railway, and includes any means of passing
over or through such fence,

"Fence" means a structure—

(a) which is in conformity with the type and standard of
fence which may be prescribed by rules under this
Ordinance,

(b) which may be agreed upon between adjoining owners
and which in the opinion of the Director is not
less efficient than any fence of a type or standard
prescribed by rules under this Ordinance,

and "to fence" shall be construed accordingly

“ Fencing District ” means any defined area which has been declared by the Director by notice in the Gazette to be a fencing district for the purposes of this Ordinance ,

“ Holding ” means —

- (a) Any defined area of land held by any person or authority under separate grant, deed of transfer, or certificate of title , or
- (b) Any area of land held or occupied by virtue of a lease or licence under the provisions of any law for the time being in force in the Colony Provided that the unexpired portion of the term of such lease or licence is not less than ten years , or
- (c) Any native reserve or any other land lawfully occupied by natives , or
- (d) Any unalienated Crown land or forest reserve , or
- (e) Any area of land vested in a Municipal or Local Authority in accordance with the provisions of any law for the time being in force in the Colony ,

Provided that where two or more holdings adjoin each other and such holdings though held under separate titles are the property of one owner such holdings may with the approval of the Director , be deemed to be one holding for the purposes of this Ordinance ,

“ Infected area ” means any area declared to be infected with East Coast Fever and to be an “ infected area ” by proclamation under section 4 of the Diseases of Animals *Cap 157* Ordinance ,

“ Inspector ” means an officer of the Department of Agriculture and such other person or persons as the Governor may by notice in the Gazette appoint for the purposes of this Ordinance ,

“ Interest ” means such rate of interest as the Governor may by notice in the Gazette prescribe for the purposes of this Ordinance ,

“ Owner ” means —

- (a) Any person, company, co-partnership or public body in actual occupation or entitled as grantee, lessee, or licensee to occupy any land, or the representative or agent of any such person, company, co-partnership or public body ,
- (b) Any person lawfully occupying any land by virtue of a lease or licence from the Crown in accordance with the provisions of any law for the time being in force in the Colony, and the representative or agent of such person ,

- (c) In respect of unalienated land within a native reserve or in respect of other land lawfully occupied by natives, the person or authority in which the control of such land is lawfully vested,
- (d) In respect of unalienated Crown land and forest reserves, the person or authority in which the control of such land is lawfully vested,
- (e) In respect of any area of land vested in a Municipal or Local Authority in accordance with the provisions of any law for the time being in force in the Colony, such municipal or local authority,
- (f) In respect of a line of Railway, the Railway Authority,
- (g) In respect of a public road, the Road Authority,

" Public road " means any road lawfully constructed or maintained out of public funds and includes outspans and any land lawfully reserved, resumed or acquired for, any such road,

" Railway " means a line of railway under the control or management of the High Commissioner for Transport and includes any land lawfully reserved, resumed or acquired therefor

" Railway Authority " means the High Commissioner for Transport

" Repair " shall, in relation to any fence or ditch or any part thereof, include trimming, cutting, or in any other manner whatever putting and maintaining the same in good order,

" Road Authority " means the Governor or such person or authority as he may by notice in the Gazette appoint for the purposes of this Ordinance

Provided that when the roads or any of them in any area or district have been vested in or placed under the management and control of a Local Authority in accordance with the provisions of any law for the time being in force, the said Local Authority shall be the Road Authority for the purposes of this Ordinance in respect of the roads so vested in such Local Authority

PART I

DIVIDING FENCES, ADVANCES FOR ERECTION THEREOF AND CONTRIBUTIONS TOWARDS COST OF ERECTION

Bringing areas under the operation of the Ordinance

- 3 (1) Whenever it shall be made to appear to the Director,
- (a) that the majority of owners in any area are desirous of being brought under the operation of this Ordinance
 - (b) that such area is adequate in extent and suitable for the purposes of this Ordinance, and
 - (c) that the application of the provisions of this Ordinance to such area shall be beneficial to the agricultural interests of the owners, both individually and collectively, therein,

he shall by notice in the Gazette declare such area to be a fencing district

(2) On the declaration of any fencing district as aforesaid the District Commissioner concerned shall forthwith convene a meeting of all the owners in such fencing district by serving a written notice by hand or registered post on such owners prescribing a date and place for the holding of such meeting and setting forth the objects of such meeting Provided that such notice shall have been given not less than 30 days before the holding of such meeting

(3) At such meeting convened as aforesaid, the District Commissioner, who shall not vote, shall act as Chairman and shall record the votes of all owners who are in favour of being brought under the provisions of this Ordinance and of all those owners who are not so in favour Provided that any owner who shall be absent from the meeting and who has not expressed himself in writing to the contrary shall be deemed to be in favour of being brought under the provisions of this Ordinance and his vote shall be recorded accordingly

(4) If on the holding of such meeting a majority of two thirds of the owners vote in favour of being brought under the provisions of this Ordinance the District Commissioner shall transmit to the Governor a certificate under his hand of the voting of such meeting

(5) On the receipt of the District Commissioner's certificate as aforesaid the Governor may by proclamation in the Gazette declare that the provisions of this Ordinance shall apply to such fencing district and such fencing district shall thereupon become a "proclaimed district" for the purposes of this Ordinance

4 The Governor may, on the advice of the Senior Commissioner who shall first consult the Local Native Council or other native authority concerned, if he is satisfied that funds are available for that purpose from sources approved by him, declare by proclamation in the Gazette that the provisions of this Ordinance shall apply to any area within the jurisdiction of any Local Native Council or other native authority and such area shall thereupon become a "proclaimed district" for the purposes of this Ordinance

Bringing
Native
areas
under the
operation of
the Ordinance

5 (1) It shall be obligatory on the owner of a holding within a proclaimed district to erect and maintain a fence along the boundaries of the said holding and the erection of such fence shall be completed within a period which may be specified by the Director

Fencing
obligatory in
proclaimed
district

(2) If an owner fails to erect a fence in accordance with the provisions of the last preceding sub-section the Director may cause such fence to be erected and may recover the cost thereof from the owner in manner provided by section 13 of this Ordinance

6 (1) Whenever a fence has been erected in accordance with the provisions of the last preceding section the owner of the holding may require the owner of an adjoining holding, whether such last mentioned holding is within or without a

Adjoining
owner shall
contribute
half the cost

proclaimed district, to contribute half the cost of the erection and maintenance of that portion of the fence dividing the two holdings and such contribution shall be recoverable summarily as a civil debt

(2) Whenever a railway or public road abuts on a holding upon which a fence has been erected in accordance with the provisions of section 5, the owner of the holding may require the Railway or Road Authority, as the case may be, to contribute half the cost of the erection and maintenance of that portion of the fence which abuts on such railway or public road

Erection of fences in other than proclaimed districts and contributions towards cost thereof

7 (1) Notwithstanding anything in this Ordinance contained it shall be lawful for the owner of a holding, not being a holding within a proclaimed district to fence all or any of the boundaries of such holding

(2) (a) The owner of a holding in a clean area who has fenced such holding under the provisions of the last preceding sub-section may require the owner of an adjoining holding to contribute half the cost of the erection and maintenance of that portion of the dividing fence between the two holdings and such contribution may be recovered summarily as a civil debt

(b) The owner of a holding in an infected area who has fenced such holding under the provisions of sub-section (1) hereof may require the owner of an adjoining holding to contribute half the cost of the erection and maintenance of that portion of such fence dividing the two holdings and such contribution may be recovered summarily as a civil debt Provided that if such adjoining owner derives no benefit from such dividing fence then and in such case he shall not be liable to contribute as aforesaid and in the event of disagreement between the said owners on the question of the said contribution the matter shall be determined by arbitration

Provided that the contribution payable under this sub-section shall not exceed the amount which would be recoverable if the fence were a six-wire fence

(3) If a railway or public road abuts on the boundary of a holding which has been completely fenced under the provisions of sub-section (1) of this section the owner of the holding may require the Railway or Road Authority as the case may be to contribute half the cost of the erection and maintenance of that portion of the fence which abuts on such railway or public road Provided that such contribution shall not exceed the amount which would be payable if the fence were a six-wire fence

Notice to adjoining owners of intention to erect a dividing fence

8 (1) Every owner who intends to erect a dividing fence upon his holding under the provisions of sections 5 or 7 may, if he desires that the owner of an adjoining holding or Railway or Road Authority shall contribute to the cost of the erection and maintenance of such fence, transmit to that owner or authority written notice dated and in the form as nearly as possible set out in the Schedule to this Ordinance, of such intention, and when he transmits such notice he shall attach thereto the specification of the dividing fence which he desires to erect, together with a statement of the estimated cost thereof

(2) If the last mentioned owner or the Railway or Road Authority fail, within a period of one month after the date when the said notice was transmitted, to lodge with the owner who transmitted the notice an objection thereto, the latter may forthwith proceed with the erection of the dividing fence

(3) If an owner or the Railway or Road Authority to whom the said notice has been transmitted, lodge an objection within the said period and state therein that he desires to erect a dividing fence of a different type and transmit with the objection a specification of the type of fence he desires to erect, either party may, in default of agreement between them, claim that the matter shall be submitted to arbitration

(4) The provisions of this section shall apply *mutatis mutandis* in respect of a dividing fence existing at the commencement of this Ordinance provided in either case that the fence is in good order

9 If the whereabouts of any owner be unknown or if he be absent from the Colony, the notice mentioned in the last preceding section shall be deemed to be duly given—

Notice to
absentee
owner

(a) when it is given to a person generally or specially authorised by him to be his representative or agent or if there be no such authorised representative or agent known to the person required to give the notice,

(b) when it has been published once in the Gazette and three times in a newspaper published and circulating in the Colony

Provided that in the case described in paragraph (b) a period of three months shall be substituted for the period of one month prescribed by the last preceding section as the period within which objections shall be lodged or the terms of the notice shall be complied with

The cost of publication described in paragraph (b) shall be added to the contribution towards the cost of the fence required to be made by the owner whose whereabouts is unknown or who is absent from the Colony

10 If before the commencement of this Ordinance a holding has been completely enclosed by a fence the owner of such holding may, provided the fence is in good repair, require the owner of an adjoining holding or the Railway or Road Authority as the case may be to contribute towards the value of such fence in the same manner *mutatis mutandis* as is provided by sections 6 and 7

Contribution
towards the
cost of the
fence already
erected

Provided that should the parties concerned fail to agree as to the value of the said fence for the purposes of the aforesaid contributions the value thereof shall be determined by arbitration

11 An inspector may enter upon any holding to inspect any fence and if he be of the opinion that the same is in need of any repairs, he may give written notice to the owners to execute any such repairs within a period to be specified in the notice and in default of compliance with the terms of the said notice, the Director may proceed to execute such repairs and the costs thereof may be recovered summarily as a civil debt

Repairs

PART II

COMPULSORY FENCING TO PREVENT THE SPREAD OF STOCK DISEASES IN A CLEAN AREA

Fences in
infected areas
Cap 157

12 (1) For the purposes of preventing the spread of disease amongst stock, as defined in the Diseases of Animals Ordinance, and notwithstanding anything in this Ordinance contained, the Director may, in his sole discretion, by written notice, require any owner of any holding in an infected area within a clean area to erect and maintain a fence along the whole or any part of the boundaries of such holding and within such period of time as may be specified in such notice

(2) The specifications of any such fence required to be erected as aforesaid shall be determined by the Director

(3) If an owner who has been required to erect a fence under the provisions of sub-section (1) of this section shall fail to erect such fence within the period specified in the notice the Director may cause the same to be erected

Cost of
erection of
fences and
repayment of
same by
owners

13 (1) The cost of any dividing fence caused to be erected by the Director under this Part shall in the first instance be deducted out of moneys specifically appropriated for that purpose by Legislative Council

(2) The total cost of any such fence (not exceeding the cost of an ordinary six-wire fence) together with interest thereon shall be repaid in equal proportions by the owners of any two holdings divided by the said fence and such owners shall jointly be responsible for the repair and maintenance of such fence.

(3) The total cost and interest aforesaid shall be repaid in equal half-yearly instalments extending over a period of not more than ten years commencing towards the first instalment not less than two years from the date on which the erection of the fence was completed Provided that an amount not exceeding ten pounds shall be payable by each owner immediately on such completion Such moneys shall be secured and collected in such manner as the Governor may by rules under this Ordinance prescribe

Special
provisions
relating to
repayment by
lessees of
Crown lands of
cost of fences
erected

14 (1) In any case where Crown land has been fenced under the provisions of this Part and has before the erection of the fencing been leased or licensed under the provisions of any law for the time being in force in the Colony the lessee or licensee shall, if the unexpired portion of such lease or licence does not exceed ten years, in addition to the rent or fee payable under his lease or licence, pay to the Government the interest on the total cost to Government of such fence from the date of the completion thereof Provided that the lessee or licensee may if he so desire cancel his lease or licence

(2) If a lease or licence referred to in sub-section (1) of this section contains a right of conditional lease of the said land for any period exceeding ten years, then upon that right being exercised, the conditional purchaser shall, as from the date on which the purchase takes effect become liable for and shall pay to the Government from time to time as prescribed by this Part the instalments due to the Government, together

with interest. The period between the date of completion of the fence and the date when the lease takes effect shall be reckoned as part of the time within which the cost of erection shall be repaid, and the instalments which shall be payable during that period shall be added to the purchase price of the land and any instalments of purchase price which will become due under such terms of the lease as relate to conditional lease of the land shall be increased accordingly.

15 Whenever the Director has incurred any costs in respect of the erection or maintenance of fencing under this Part of any town lands which are vested in any Municipal or Local Authority one-half of the cost shall be payable by such Municipal or Local Authority and also one-half by the adjoining owner in manner provided by this Part.

16 Nothing in this Part contained shall be construed as preventing any person liable thereunder for any part of the costs of the erection of a fence from contributing labour or transport towards such costs and any such contribution shall be set off against the amounts due under this Part.

17 If a fence erected under this Part divide the holdings of adjoining owners, each adjoining owner shall pay one-half of the amount to be repaid in accordance with this Part, of that portion of the fence dividing those holdings, together with the interest aforesaid.

18 No person shall whether or not the cost of the fence with the interest thereon have been repaid, remove any fence erected under this Part unless he has previously obtained the written permission of the Director and, in any proceedings for a contravention of this section, the burden of proving that he has previously obtained such permission shall be on the said person.

19 Whenever in a clear area a public road only becomes infected, it shall then be the duty of the Road Authority to erect fences on both sides of such public road to the extent required by and to the satisfaction of the Director.

Provided that whenever a fence erected under this section is no longer required for the purpose for which it was erected the Road Authority may sell that fence or any portion thereof to any person desiring to purchase it.

20 The Director may after consultation with the Road Authority cause fences to be erected —

(a) Along the boundaries of any road whether public or private,

(b) Along the boundaries of any number of holdings, and cost of any fence erected under this section shall be defrayed entirely out of the moneys specifically appropriated by the Legislative Council for the purpose of this Part and no contribution shall be payable by any owner or other person in respect of the fence,

Repayment of cost of fencing town lands under this Part

Contributions in kind towards tenancy under this Part

Liability of adjoining owners under this Part

Fence not to be removed without consent

Road Authority to erect fences on both sides of public road in certain cases

Buffer fencing

Provided that whenever a fence erected under this section is no longer required for the purpose for which it was erected the Director may sell that fence or any portion thereof to any person desiring to purchase it

Repair of fences erected under this Part

21 If any fence erected under this Part, or any gate connected therewith, be out of repair and the owners on either side fail to repair it, the Director may cause written notice to be served upon the person or persons liable to pay for the cost or part of the cost of the erection of the fence, to put the fence or the gate (as the case may be) in repair to the satisfaction of the Director and within a time to be fixed by the notice, and if such fence or gate be not put into satisfactory repair within the time so fixed, any person or persons nominated by the Director in writing may execute the repairs, and the cost thereof shall be added to and be deemed part of the cost of erection, and the provisions of this Part, relating to the repayment of the costs of the erection of the fence shall in all respects apply to the repayment and mode of securing repayment of the costs of such repairs

In any case in which in the opinion of the Director the service of such notice cannot be effected without loss of considerable time, the Director may cause the repairs to be executed without such notice, and the cost shall be recoverable from the owner or owners in manner aforesaid

PART III

OFFENCES

Leaving gates open

22 Any person who —

- (a) Opens and leaves open or unfastened, or
- (b) Finding open on passing through, neglects to shut and fasten any gate in any fence,

shall be liable on conviction in the case of a first offence, to a fine not exceeding five pounds, or, in default of payment to imprisonment of either description for a period not exceeding fourteen days, and in the case of a second or subsequent conviction to a fine not exceeding twenty pounds, or, to imprisonment of either description for a period not exceeding one month, or to both such fine and imprisonment

Malicious injury to fences

23 Any person who wilfully injures or removes any fence, gate, or other appliance or contrivance forming part of or incidental thereto, shall be liable on conviction to a fine not exceeding seventy-five pounds, or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment

Accidentally damaging fencing

24 (1) Any person who inadvertently or accidentally damages any fence or gate situated upon a holding or on a public road within a holding, shall forthwith repair the same, and in the event of his being unable to do so he shall forthwith report the injury and inability to repair to the owner of the holding or the Railway or Road Authority and deposit or give security for such sum as may be reasonably sufficient to cover the cost of the repair, and the owner shall thereupon on request give such person an acknowledgment of the sum deposited or secured

(2) If any person fail to comply with the requirements of this section he shall be liable to a fine not exceeding ten pounds, or, in default of payment, to imprisonment of either description for a period not exceeding fourteen days

25 Any person who having injured a fence or gate, or having climbed over or through a fence or gate without permission, fails, on request by the owner or lessee of the land on which it is situate or by some person authorised thereto by such owner or lessee, to give his correct name and address, shall be liable on conviction to a fine not exceeding twenty pounds, or, in default of payment to imprisonment of either description for a period not exceeding one month

26 Any person who wilfully fails to comply with or who contravenes any provision of, this Ordinance in respect whereof no penalty is expressly provided, shall be liable on conviction to a fine not exceeding twenty pounds, or in default of payment, to imprisonment of either description for a period not exceeding one month

Failure to
give name
after injury to
fence

Penalties
where not
expressly
provided

PART IV

GENERAL AND MISCELLANEOUS

27 (1) An owner shall have the right to fence his holding or to contribute towards the cost of erecting a dividing fence between such holding and any adjoining holding notwithstanding that such first-mentioned holding is subject to an easement or licence for grazing or an easement or licence for watering livestock thereon in favour of any other owner or person whomsoever, provided that reasonable means of ingress and egress be allowed to the livestock of the person enjoying the easement or licence as to the suitability or sufficiency of the gates, either of them may claim that the matter shall be submitted to arbitration

Fencing of
land to
grazing
servitude

(2) The holder of an easement or licence for grazing as in sub-section (1) of this section described shall be liable to the owner of the holding for a fair share of the costs of erection, maintenance and repair of the fence proportionate to his interest in the grazing rights over the holding, and in default of agreement between the owner and the person enjoying the easement or licence as to their respective shares in the grazing rights either of them may claim that the matter shall be submitted to arbitration

28 Save where other provision is made in this Ordinance whenever two owners or an owner and the Railway or Road Authority are unable to agree as to any matter arising under this Ordinance in respect of which a dispute has arisen between the two owners or an owner and the Railway or Road Authority, the matter shall be submitted to arbitration

Settlement
of disputes

29 (1) Whenever any person is convicted by a court of competent jurisdiction of a contravention of section 23 or section 24 of this Ordinance and it appears that such person has by that offence caused damage to the owner or occupier of a holding, the court may, at the request of such owner or occupier, as the case may be, but in the presence of the convicted person inquire summarily and without pleadings into the amount of damage so caused

Summary
proceedings
for recovery of
damages from
convicted
persons

(2) Upon proof of such damage the court may give judgment therefor in favour of such owner or occupier, as the case may be, and against the convicted person, and such judgment shall be of the same force and effect, and be executed in the same manner, as if it had been given in a civil action duly instituted before such court. Provided that judgment shall not be given under this section for a sum exceeding fifty pounds.

**Gates across
public roads**

30 Notwithstanding anything in this Ordinance contained it shall be lawful for an owner or Railway or Road Authority to erect a fence with a gate across a public road with the authority of the Governor in Council and subject to such conditions as he may prescribe in each case.

**Bush may be
cleared for
fencing**

31 Any person erecting any fence whatsoever on land covered with bush may clear the bush for a distance not exceeding five feet on each side of and above such fence and may remove any tree standing in the immediate line of such fence, and the cost of such clearing shall be deemed to be part of the cost of erecting the fence.

**Payment by
lessee to lessor
of fenced
holding under
this Ordinance**

32 (1) Whenever any holding fenced under this Ordinance is held under lease the unexpired portion of the term of which does not exceed ten years the owner shall be entitled during the remainder of the term of the lease to receive from the lessee as from the date when such holding became so fenced, a payment of interest on any sum which such owner has paid in respect of the fence. The owner shall have the same rights in respect of recovering any such payment as he has in law to recover rent due to him from the lessee, and the lessee shall have the right to determine the lease, unless the owner's liability to contribute towards the cost of the fence arose from any act of the lessee.

(2) Whenever a holding to which the provisions of sections 5 and 12 of this Ordinance apply has been leased by the owner thereof and the unexpired portion of the term of such lease exceeds ten years at the date on which the provisions of the said sections become applicable to such holding, the lessee shall be deemed to be the owner of the said holding for the purpose of this Ordinance. Provided that when the interest of the said lessee in the said holding terminates, half of the cost incurred by the lessee in fencing the said holding under section 5 of this Ordinance or half of the instalments paid by him under section 14 in respect of fencing, but excluding interest on such cost or instalments shall be repaid to the lessee by the owner of the holding and such amount may be recovered summarily as a civil debt.

(3) If a holding has been fenced under the provisions of this Ordinance and before the erection of the fence any person had a right or option to purchase or lease such holding then on the exercise of such right or option the cost of such fencing may be added to the purchase price and shall thereupon be deemed to be part thereof. Provided that the possessor of such right or option as aforesaid may waive the same.

**Give and
take line**

33 (1) If between two or more holdings a dividing line is formed by a water-course or a river (not being of such nature as to form a natural barrier for stock) or range of hills or ravine outcrops of solid rock along which it is impracticable or inexpedient to erect a fence, the owners concerned may agree upon a fair give-and-take line as a dividing line to be

fenced in accordance with this Ordinance, or, in default of such agreement any such owner may claim that the matter shall be submitted to arbitration.

(2) Any give and-take line so agreed or determined shall be deemed to be the boundary line for the purposes of this Ordinance, but shall not otherwise affect the titles to any such holdings.

34 (1) If any dividing fence whatever be out of repair the owner of each holding separated by the fence shall be liable for the cost of the repair to the extent to which under this Ordinance he would be liable to contribute to the cost of such fence, and either owner may serve upon the other owner a notice requiring him within a period of one week to assist in repairing such fence, and if such other owner fail to comply with the terms of such notice the owner who has served the said notice may himself repair it and recover from the other owner summarily as a civil debt the proportion of the cost of repair due from him.

Repair of fences

(2) Whenever the Railway or Road Authority has erected a fence in accordance with the provisions of this Ordinance and the owner of an adjoining holding is liable to contribute towards the cost of such fence the Railway or Road Authority may repair and maintain such fence and may recover from the said owner summarily as a civil debt the proportion of the cost of such repair and maintenance due from such owner.

(3) Save where other provision is made in this Ordinance any contribution for which any person is liable under this Ordinance may be recovered summarily as a civil debt.

35 Any owner of a holding separated from another holding by a dividing fence shall have the right at any time so to alter the fence as to make it a fence of a superior type. Provided that the owner of the adjoining holding separated by the fence shall not be liable to contribute to such alteration unless and until he derives benefit from the type of the fence as altered. The provisions of section 8 and of the next succeeding section shall apply *mutatis mutandis* as if the alteration were an erection or repair of the fence.

Right to alter type of fence

36 Any person erecting or repairing any dividing fence under the provisions of this Ordinance shall for himself, his servants, implements, materials, animals and vehicles have at all times reasonable access to any property for the purpose of carrying out the work reasonably required for the erection or repair.

Access to persons erecting fences

Provided that nothing in this section contained shall be construed as authorising the entry, without the consent of the occupant, upon land under cultivation or upon a garden, plantation or pleasure ground or the cutting down lopping or injury of any fruit trees, ornamental trees or shrubs.

37 For the purpose of inspection valuation or survey or of carrying out any of the provisions of this Ordinance any person authorised by the Director or any person appointed or nominated to determine a dispute in accordance with the provisions of the Arbitration Ordinance may enter upon any land and value measure, survey, take grades and levels, fell trees, and do all other acts necessary for such purposes.

Access by officials and surveyors

Cap 18

Provided that all damage caused by the exercise of the powers of this section shall, as far as possible be repaired, and so far as the repair of damage is not possible the value thereof shall be paid to the owner, and shall, in default of agreement, be submitted to arbitration

Lessor may
intervene in
and defend
proceedings
against his
lessee

38 If any civil proceedings be taken under this Ordinance against a lessee for which the owner would ultimately incur any liability the owner may intervene and defend such proceedings and any defence which is available to the lessee shall be available to the owner in addition to any other available defence

Special civil
jurisdiction of
subordinate
courts

39 The subordinate court of first or second class of the district in which the defendant in any civil proceedings under this Ordinance resides shall have jurisdiction to entertain such proceedings and give judgment for the amount claimed, notwithstanding that the proceedings or amount claimed is, under the law relating to subordinate courts, outside the ordinary jurisdiction of the said courts

Non-liability
of owner or
occupier for
injury caused
by contact
with fence

40 No owner or occupier of a holding shall be held liable in damages in respect of an injury caused to any person or to any property by such person or property coming in contact with any fence Provided that the injury has not been occasioned by the negligence of such owner or occupier in erecting, altering, maintaining or repairing the said fence

Fences to be
erected along
railway lines
and public
roads when
such railway
lines and
public roads
traverse fenced
holdings

41 (1) Whenever a line of railway traverses a holding, or part of a holding, which has been completely enclosed by a fence, or has been completely fenced except for that portion of the holding which abuts on such line of Railway, the Railway Authority shall on the request of the owner of such holding erect and maintain a fence on each side of that portion of such line of railway which traverses such holding or part thereof together with such gates, stiles or other devices as in the opinion of the Director are necessary to give reasonable access to such holding The cost of such fences erected as aforesaid together with the cost of their repair and maintenance shall be borne entirely by the Railway Authority

(2) Whenever a public road traverses a holding or part of a holding which has been completely enclosed by a fence before the public road traverses the holding, the Road Authority shall on the request of the owner of such holding erect and maintain a fence on each side of that portion of such public road which traverses such holding or part thereof together with such gates, stiles or other devices as in the opinion of the Director are necessary to give reasonable access to such holding The cost of such fences erected as aforesaid together with the cost of their repair and maintenance shall be borne entirely by the Road Authority

(3) Whenever a public road traverses a holding or part of a holding which has been completely fenced except for that portion of the holding which abuts on such public road, the Road Authority shall on the request of the owner of such holding erect and maintain a fence on each side of that portion of such public road which traverses such holding or part thereof together with such gates, stiles or other devices as in the opinion of the Director are necessary to give reasonable access to such holding The cost of such fences erected as aforesaid together with the cost of their repair and maintenance shall be borne half by the owner of the holding and half by the Road Authority

(4) Whenever a line of railway or public road abuts on a holding and the owner has completely enclosed his holding except for that portion which abuts on such line of railway or public road the owner of such holding may call upon the Railway or Road Authority to erect and maintain a fence along such portion of the line of railway or public road as abuts on such holding, and the cost of such fence together with the cost of its repair and maintenance shall be borne half by the owner of the holding and half by the Railway or Road Authority as the case may be

42 Save where in this Ordinance specific provision is made nothing in this Ordinance contained shall be construed as affecting any act done or right acquired prior to the commencement of this Ordinance under any contract, covenant, or agreement made between any lessor and lessee, or between the owners of adjoining holdings relative to dividing fences

Ordinance not
to affect
agreements as
to dividing
fences

43 Any right conferred or obligation or duty imposed by this Ordinance on an owner or lessee shall, if the Crown or Railway or Road Authority be the owner or lessee of a holding, whether by registration or otherwise, belong to or be binding upon it

Ordinance to
be binding
on Crown as
owner or lessee

44 (1) Whenever under this Ordinance any person has lawfully erected a dividing fence or has been lawfully required to contribute towards the cost of erection, repair or maintenance of a dividing fence such person may receive an advance to defray the cost of any such erection, repair or maintenance for which such person is liable

Advances

(2) Advances for the purposes of this section may be made from —

- (a) The Land and Agricultural Bank of Kenya,
- (b) Such other public funds as the Legislative Council may set aside for that purpose

Provided that the provisions of section 13 as to repayment of the cost and interest thereon in respect of fences erected by the Director shall, *mutatis mutandis*, apply in respect of the repayment of advances and interest thereon made under this section

45 The Governor in Council may make rules generally Rules for the better carrying out of the purposes of this Ordinance

SCHEDULE

To

Owner _____ of farm
Agent for the owner

Address

Notice of intention to fence

Take notice in terms of section 8 of the Fencing Ordinance, 1929, that I desire to have a fence erected along the boundary line of my farm

No _____ and your farm

No _____ The work will be commenced on or about
the _____ day of _____ 19_____

In accordance with the specification hereunder appended, and

I request that you will inform me whether it is your intention to contribute either labour or material or both, towards this fencing

If no reply or objection to the proposed specification reaches me within one month after the date of this notice, the work will be proceeded with in the usual manner

Date (Signature)

Owner

Agent for

SPECIFICATION

- (1) Height feet inches
- (2) Number of wires barbed,
Number of wires plain,
- (3) Distance apart of wires in inches from ground upwards,
- (4) Nature of straining posts,
- (5) Distance apart of straining posts, yards
- (6) Nature of standards, (*i.e.*), stone poles, non standards,
lbs, wooden posts (minimum diameter in
inches), etc ,
- (7) Distance apart of standards, yards
- (8) Nature of droppers,
- (9) Distance apart of droppers, feet
- (10) Number of gates single,
Number of gates double
- (11) Remarks If necessary further explaining construction
of fence, etc
- (12) Length of proposed fence, yards
- (13) Estimated cost, including erection, £

Owner

Agent for

AN ORDINANCE

No 32 OF 1929

Assented to in His Majesty's name this thirtieth day
of December, 1929

EDWARD GRIGG,
Governor

[31ST DECEMBER, 1929] Date of assent

**An Ordinance to Provide for the Cleansing of
Cattle**

By Notice

Date of
commencement

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 Cattle Cleansing Short title
Ordinance, 1929," and shall come into operation upon such
date as the Governor may by notice in the Gazette appoint

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

"cattle" means bulls, cows, heifers, calves and oxen,

"cattle owner" includes any person possessing jointly or
severally any right, title or interest in any cattle or
having the charge, control or management of any
cattle,

"clean area" means any area declared to be free from
East Coast Fever and to be a clean area by proclama-
tion under section 4 of the Diseases of Animals Cap 157
Ordinance,

"cleansing district" means any defined area which has
been declared by notice in the Gazette to be a
cleansing district for the purposes of this Ordinance,

"dipping tank" means any effective contrivance approved
by the Chief Veterinary Officer for the cleaning of
cattle by submersion and shall include structures
incidental thereto,

"effective tick destroying agent" means any aqueous
solution containing arsenious oxide or other
ingredient in such percentage or proportion as may
from time to time by notice in the Gazette be
prescribed by the Chief Veterinary Officer,

"engorged tick" means any tick obviously distended
with blood,

"guard area" means any holding or part of a holding
within a clean area which has a common boundary
with any infected area within such clean area,

" holding " means—

(a) any area of land held by any person or authority under separate grant, deed of transfer, or certificate of title, or

(b) any area of land held or occupied by virtue of a lease or licence under the provisions of any law for the time being in force in the Colony, or

(c) any native reserve or any other land lawfully occupied by natives,

" immune cattle " means cattle bearing any registered Government brand denoting that such cattle are immune to East Coast Fever,

" infected area " means any area declared to be infected with East Coast Fever and to be an infected area by proclamation under section 4 of the Diseases of Animals Ordinance,

" inspector " means any veterinary officer or stock inspector or such other officer as the Governor may by notice in the Gazette appoint for the purposes of this Ordinance,

" interest " means such rate of interest as the Governor may by notice in the Gazette prescribe,

" landowner " includes any person, company, co-partnership or public body in actual occupation of or entitled as owner to occupy any land, or the representative or agent of any such person, company, co-partnership or public body,

" tick infestation " means the presence on any cattle of one or more engorging ticks, not being " bont legged " (*Hyalomma aegyptium*) ticks,

" to clean " means to free and maintain free from tick infestation any cattle by the submersion of such cattle in a dipping tank containing an effective tick destroying agent and/or by hand dressing and clipping in such manner as the Chief Veterinary Officer may from time to time by notice in the Gazette prescribe

Proclaimed districts

3 (a) Whenever it shall be made to appear to the Senior Commissioner by representation of the majority of landowners and cattle owners in any area not included in a native reserve that such landowners and cattle owners are desirous of being brought under the operation of this Ordinance, the Chief Veterinary Officer after consultation with the Senior Commissioner shall, if he considers that such area can be satisfactorily controlled under the provisions of this Ordinance, declare such area to be a " cleansing district "

Provided that no area shall be declared to be a cleansing district under the provisions of this sub-section unless the Chief Veterinary Officer after consultation with the Senior Commissioner is satisfied that the application of the provisions of this Ordinance to such area shall be beneficial to the stock-owning interests of the owners, both individually and collectively, therein

(b) On the declaration of any cleansing district the Senior Commissioner or other officer authorised by him in writing shall convene a meeting of all the landowners and cattle owners in such cleansing district by serving a written notice by hand or registered post on such landowners and cattle owners prescribing a date and place for the holding of such meeting, and setting forth the objects of such meeting Provided that such notice shall have been given not less than 30 days before the holding of such meeting

(c) At such meeting convened as aforesaid the Senior Commissioner or other officer authorised by him in writing who shall not vote, shall act as Chairman and shall record the votes of all landowners and cattle owners who are in favour of being brought under the provisions of this Ordinance and of all those landowners and cattle owners who are not so in favour Provided that any absentee landowner or cattle owner who has not expressed himself in writing to the contrary shall be deemed to be in favour of being brought under the provisions of this Ordinance and his vote shall be recorded accordingly

(d) If on the holding of such meeting a majority of two-thirds of the landowners and cattle owners vote in favour of being brought under the provisions of this Ordinance the Senior Commissioner shall transmit to the Governor a certificate under his hand of the voting of such meeting

(e) On receipt of the Senior Commissioner's certificate as aforesaid the Governor may if he sees fit by proclamation in the Gazette declare that the provisions of this Ordinance shall apply to such cleansing district and such cleansing district shall thereupon become a "proclaimed district" for the purposes of this Ordinance

(f) (i) Notwithstanding anything in this section contained landowners not fewer than fifteen in number whose holdings adjoin each other and who are desirous of being brought under the provisions of this Ordinance may transmit to the Senior Commissioner a written request on that behalf signed and attested by a magistrate and the Senior Commissioner after consultation with the Chief Veterinary Officer shall thereupon transmit such written and attested request together with a definition of the area occupied by such landowners to the Governor

(ii) On receipt of the said written and attested request the Governor may if he sees fit by proclamation in the Gazette declare that the provisions of this Ordinance shall apply to the area occupied by the said landowners and the said area shall thereupon become a proclaimed district for the purposes of this Ordinance

4 The Governor may on the advice of the Senior Commissioner who shall first consult the Local Native Council or other native authority concerned if he is satisfied that funds are available for that purpose from sources approved by him, declare by proclamation in the Gazette that the provisions of this Ordinance shall apply to any area within the jurisdiction of any Local Native Council or other native authority and such area shall thereupon become a "proclaimed native district" for the purposes of this Ordinance

Bringing
native areas
under the
operation of
the Ordinance

Ordinance
shall apply
to guard
areas and
infected
areas within
clean areas

5 Notwithstanding anything to the contrary herein contained the provisions of this Ordinance shall apply to all guard areas and infected areas wholly within a clean area and such guard areas and infected areas shall be deemed to be proclaimed districts or proclaimed native districts as the case may be for the purposes of this Ordinance

Cattle cleaning
in proclaimed
districts
compulsory

6. Save as hereinafter provided, every cattle owner in a proclaimed district or proclaimed native district shall clean all cattle kept by him within such district at such hours on such dates and at such intervals as may from time to time be ordered in writing by an inspector

Powers of
inspectors

7 In any proclaimed district or proclaimed native district, every inspector shall have full power and authority to inspect and count any cattle at any time and to take a sample or samples from the contents of any dipping tank, and to call upon all owners to produce all cattle in their possession or under their control or on their holding for the purpose of inspection and enumeration

Chief Veteri-
nary Officer may
exempt owners
from provisions
of this
Ordinance

8 The Chief Veterinary Officer or inspector may, for considerations of weather, drought or condition of cattle, or other causes beyond the control of any landowner, or cattle owner, by writing under his hand, temporarily exempt such landowner or cattle owner from any of the provisions of this Ordinance. The Chief Veterinary Officer or inspector shall forthwith report each such exemption to the District Commissioner of the area in which such exemption is granted

Landowners
on whose land
cattle are kept
may be required
to provide
cleaning
facilities

9 (1) Every landowner in a proclaimed district or proclaimed native district on whose land cattle are kept with the consent of such landowner shall provide facilities including the construction and maintenance of dipping tanks and the provision of effective tick destroying agents in sufficient quantities for the cleaning of such cattle, to the satisfaction of an inspector. Every such landowner shall take adequate steps to enforce the cleaning of such cattle, and every landowner in a proclaimed district shall in addition keep a true and correct register, which shall be available for inspection by any inspector, and such register shall contain —

- (a) The names and particulars of all owners of cattle kept on such land,
- (b) The number of cattle on such land owned by each cattle owner, and
- (c) The number of cattle belonging to each cattle owner cleaned on each cleaning day

Provided that if the said landowner and cattle owner agree that the said cattle shall be cleaned by the landowner then and in such case the landowner may charge the cattle owner such sum for cleaning such cattle as may be prescribed in that behalf under the Diseases of Animals Ordinance and such sum may be recovered as a civil debt

Cap 157

(2) It shall be unlawful for any cattle owner as aforesaid to refuse or fail to submit the said cattle for cleaning in accordance with the provisions of this section

10 Should any person, company or co-partnership own land with cattle thereon, the property of such person, company or co-partnership, and be absent from or not have a representative or agent in this Colony having authority to carry out the terms of this Ordinance, any veterinary officer may authorise the due performance of the terms of this Ordinance in such manner as he may deem expedient, and any expenditure thereby incurred shall be recoverable by the Chief Veterinary Officer as a civil debt

Absent
landowners
with cattle
on land

11 (1) An inspector may —

Construction
and repair of
dipping tanks
compulsory

- (a) Require any landowner in a proclaimed district to construct a dipping tank or tanks of an approved design on the land of such landowner or may require such landowner to make efficient by repair or otherwise any existing dipping tank or tanks on such land at the expense of such landowner
- (b) Require the Local Native Council or other native authority of a proclaimed native district to construct a dipping tank or tanks of an approved design at such suitable place or places as may be approved by the inspector or may require such Local Native Council or other native authority to make efficient by repair or otherwise any existing dipping tank or tanks at the expense of such Local Native Council or other native authority

Provided that nothing in this sub-section contained shall be deemed to prohibit the erection of one or more dipping tanks for the common use of two or more landowners or cattle owners with the approval of a veterinary officer

(2) For the purposes of this section an inspector may enter upon any holding and may give written notice to the landowner or Local Native Council or other native authority to erect any tank or tanks or to execute any repairs within a period to be specified in such notice and in default of compliance with the terms of such notice the inspector may proceed to carry out such erection or execute such repairs and may recover the cost thereof from such landowner or Local Native Council or other native authority as a civil debt

(3) Any landowner or cattle owner who shall refuse or neglect or fail to comply with the terms of any notice given by an inspector under the provisions of this section shall be guilty of an offence

12 All orders or written notices given under sections 6, 7 or 11 of this Ordinance by the Chief Veterinary Officer or an inspector to the Local Native Council or other native authority of a proclaimed native district shall be communicated to such Local Native Council or other native authority through the District Commissioner

Orders and
notices to
native
authorities to
be given
through
District
Commissioners

13 (a) Any landowner or Local Native Council or other native authority may on application receive an advance to defray the cost of construction or repairs to any dipping tank or tanks which he may be required to erect or repair under the provisions of section 11 or which he may have already erected on or after the 1st day of June, 1925

Advances by
Land Bank or
from other
public funds
to defray cost
of erection of
dipping tanks

(b) Advances for the purposes of this section may be made from—

- (i) the Land and Agricultural Bank of Kenya, or
- (ii) such other public funds as the Legislative Council may set aside for that purpose

Interest on
cost of
construction of
dipping tank
payable by
tenant and
cost and
interest payable
by purchaser

14 When any dipping tank is constructed in a proclaimed district by any landowner —

- (i) Upon land held by any person as a tenant, such tenant shall pay yearly during the continuance of his lease the interest upon the cost of such construction Provided, however, that no tenant the unexpired term of whose lease does not exceed one year shall be liable to pay such interest
- (ii) Upon land otherwise lawfully occupied by any person such person shall pay yearly during the continuance of such occupancy the interest upon the cost of the said construction and on the conveyance by the land-owner to such person of the title to such land such person shall pay in augmentation and as part of the purchase money the cost of such construction

The Govern
ment may
provide dipping
tanks in
townships and
to facilitate
movement of
cattle and
may require
municipal or
local authority
to construct
dipping tanks
Cap 157

15 (1) In order to facilitate the movement of cattle in proclaimed districts and proclaimed native districts the Governor may provide dipping tanks in suitable places for the common use of cattle owners and may charge such fees for the cleaning of cattle in such tanks as may be prescribed in that behalf under the Diseases of Animals Ordinance

(2) The Governor may in proclaimed districts and proclaimed native districts provide dipping tanks in townships, not being townships under the control of a municipal or local authority, for the common use of cattle owners and may charge the fees prescribed in the last preceding sub-section for the cleaning of cattle in such tanks

(3) In proclaimed districts or proclaimed native districts the Governor may require municipal or local authorities to provide dipping tanks for the common use of cattle owners within areas under the control of such municipal or local authorities and such municipal or local authorities may charge the fees prescribed by sub-section (1) of this section for the cleaning of cattle in such tanks

Township and
municipal or
local authority
to keep
register

16 In every township or area in the control of a municipal or local authority in which dipping tanks have been constructed in accordance with the provisions of the preceding section, the District Commissioner or such municipal or local authority shall keep a true and correct register, which shall be open for inspection by an inspector, and such register shall contain—

- (a) the names and particulars of all owners of cattle within each township or area,
- (b) the number of cattle in such township or area owned by each cattle owner,
- (c) the number of cattle belonging to each cattle owner cleaned on each cleaning day

Governor
may appoint
analysts

17 The Governor may by notice in the Gazette appoint suitable persons to be analysts for the purposes of this Ordinance and may by such notice prescribe the fees or remuneration, if any, to be paid to such analysts

18 (a) The following procedure shall be followed by an inspector on the taking of a sample of the cleaning solution from any dipping tank — Procedure on taking samples

- (i) He shall first notify the owner of such dipping tank of his intention to take such sample
- (ii) He shall divide the sample taken into three parts placing each part in a separate bottle and shall seal and appropriately label each such bottle
- (iii) He shall then deliver one such bottle to the owner, retain one bottle for possible future comparison and shall deliver the third bottle to the analyst for analysis of the said sample

(b) Any cattle owner or landowner in any proclaimed district or proclaimed native district who shall use for the cleaning of any cattle any solution which on analysis fails to conform to the standard prescribed for an effective tick destroying agent shall be guilty of an offence

19 It shall be unlawful for any person to sell or offer or expose for sale as an effective tick destroying agent any article or fluid which does not conform to the standard prescribed under this Ordinance Tick destroying agent sold must conform to prescribed standard

20 In any proceedings under this Ordinance a certificate of analysis under the hand of an analyst shall be evidence of the facts therein stated Certificate of analyst to be evidence

21 In a proclaimed district or proclaimed native district— Penalties

- (a) any cattle owner who shall fail or neglect to clean his cattle in accordance with the provisions of this Ordinance, notwithstanding that such cattle are free from tick infestation, or
- (b) any person who shall hinder or impede or attempt to hinder or impede or who shall disobey the lawful orders of an inspector in the execution of his duties under this Ordinance,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred pounds or in default of payment of such fine to imprisonment of either description for a period which may extend to one year

22 Any person who shall contravene any of the provisions of this Ordinance, for which contravention no special penalty has been provided, shall be guilty of an offence and shall on conviction be liable to a fine of twenty pounds, and in default of payment of the said fine to imprisonment of either description for a period which may extend to three months General penalty

23 The Governor in Council may make Rules— Rules

- (a) prescribing the form of certificate of analysis to be issued under this Ordinance,
- (b) generally for the better carrying out of the objects and purposes of this Ordinance

24 The Cattle Cleansing Ordinance (Chapter 158 of Repeal the Revised Edition) is hereby repealed

AN ORDINANCE

No 33 OF 1929

Assented to in His Majesty's name this thirtieth day
of December, 1929

EDWARD GRIGG,
Governor

Date of assent

[31ST DECEMBER, 1929]

**An Ordinance to Provide for the Holding of
Investigations in Cases of Fire**

**Date of
commencement***31st December, 1929*

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

Short title

1 This Ordinance may be cited as "the Fire Inquiry
Ordinance, 1929 "

Police officer
to repair to
any fire and to
make due
inquiry into
cause thereof

2 Whenever any fire causing injury to person or
property shall take place in any part of the Colony,
it shall be the duty of the officer of police to whom such fire
shall first become known to proceed himself or to send some
other police officer forthwith to the spot where such fire
shall have occurred, and the officer who shall so proceed to
the spot, after performing such services as he may be required
to perform in the due execution of his duty as an officer of
police shall make all due inquiry into the origin or cause of
such fire

To receive
statements of
any person able
to give
information

3 Such officer of police shall receive the statements of
any person who is able to give information respecting such
fire

To fill up soon
after, form
in Schedule

4 Such officer of police shall further, so soon after as
he conveniently can, fill up the form given in the Schedule
to this Ordinance, and shall attach thereto the substance of
any information given to him as to the origin or cause of the
fire

To forward
form to
Commissioner
of Police and
magistrate

5 Such officer of police shall so soon as possible,
forward to the Commissioner of Police and to the magistrate
of a subordinate court of the first or second class exercising
jurisdiction in the district in which such fire shall have taken
place, copies of the form filled up by him under section 4
of this Ordinance

Holding
inquiry

6 The magistrate to whom the said form shall have
been transmitted shall, if he think fit, or if information
on oath is made to the effect that the informant has reasonable
grounds for believing that the fire was unlawfully and
maliciously set, hold an investigation into the origin or cause
of the fire so reported

Provided that the magistrate shall hold such an investigation if so directed in writing by the Attorney General

7 Such investigation may be held at such time and place as the magistrate may direct, and for the purposes of such investigation the magistrate shall have power to enter together with any witnesses on the land on which the fire occurred

Time and
place of
holding
investigation

8 It shall be lawful for the magistrate to issue summonses free of charge to any witnesses that he may deem proper to attend any such investigation at such place as the magistrate may fix, any such summonses to be served in the same manner as are other summonses issuing from the subordinate courts and any person disobeying any summons may be proceeded against in like manner and be subject to the like penalties as provided for in the Criminal Procedure Ordinance, and the provisions of such Ordinance generally which relate to inquiries into cases triable by the Supreme Court shall, so far as is possible consistently with the provisions of this Ordinance apply to proceedings under this Ordinance

Magistrate to
summon
w tnesses
free of cost

Summons
governed by
the Criminal
Procedure
Ordinance

Cap 7

9 All evidence given before a magistrate in virtue of this Ordinance, shall be given upon oath, and shall be taken down by the magistrate in the same manner as the depositions of witnesses on inquiry into cases triable by the Supreme Court

Evidence on
inquiry to
be on oath

10 The magistrate shall after making such an investigation as aforesaid forward a certified copy of the proceedings to the Colonial Secretary for the information of the Governor, and a certified copy of the proceedings may be obtained by any member of the public from the magistrate holding the investigation upon payment of the usual fees charged for making copies or documents as laid down in the table of Court fees

Magistrate to
forward result
of investigation
to the Colonial
Secretary

11 Any person giving false evidence at any investigation held under the provisions of this Ordinance shall be deemed guilty of wilful and corrupt perjury and shall be liable to be proceeded against and punished accordingly

False
witnesses
liable to be
indicted for
perjury

12 Nothing in this Ordinance shall in any way prevent any person from at any time being charged with having caused any fire, nor shall anything in this Ordinance entitle any person, save and except any person against whom a charge shall have been laid for having maliciously caused the fire about which the inquiry is held, to refuse to answer any question put by the magistrate, as to the cause of such fire, but no statement or answer made by any person under this Ordinance shall be admissible in evidence in any proceeding either civil or criminal against such person, save and except in any criminal proceeding for perjury committed under this Ordinance

Nothing to
prevent any
person being
charged with
cause of fire,
nor is any
person, except
one charged
with having set
the fire,
entitled to
refuse to give
evidence

13 Whenever any fire causing injury to person or property shall take place in any district or area of the Colony in which there are no police other than tribal police, then and in such case the duties imposed upon an officer of police under sections 2 and 3 of this Ordinance shall be carried out by a tribal police officer, who shall as soon as possible make his report to a magistrate of a subordinate court of the first or second class exercising jurisdiction in the district

Duties of
police officers
to be carried
out by tribal
police in areas
where there
are no police

THE SCHEDULE

(Section 4)

FIRE REPORT FROM DISTRICT

Name of District	Name of estate or place where fire occurred	Date of fire	At what hour reported, and at what hour extinguished	Whether supposed to be accidental or otherwise	Description and amount of property destroyed, and supposed value thereof	How many police present	Any other remarks

Signature of officer of police

AN ORDINANCE

No 34 OF 1929

Assented to in His Majesty's name this thirty-first day
of December, 1929

EDWARD GRIGG,
Governor

Date of assent

[31ST DECEMBER, 1929]

**An Ordinance to Amend the Maintenance Orders
Enforcement Ordinance**

Date of
commencement

31st December, 1929

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

Short title

1 This Ordinance may be cited as "the Maintenance Orders Enforcement (Amendment) Ordinance, 1929," and shall be read as one with the Maintenance Orders Enforcement Ordinance (Chapter 169 of the Revised Edition), hereinafter referred to as "the Principal Ordinance"

Repeal and
replacement of
section 10 of
the Principal
Ordinance

2 Section 10 of the Principal Ordinance is hereby repealed and the following is substituted therefor —

"10 Where the Governor is satisfied that reciprocal provisions have been made by the legislature of any British possession or any territory under His Majesty's protection or any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His

Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, or in any other part of His Majesty's dominions, for the enforcement within such possession, protectorate or territory of maintenance orders made by courts in the Colony, the Governor may by proclamation extend this Ordinance to such possession, protectorate or territory and this Ordinance shall thereupon apply in respect of such possession, protectorate or territory as though the reference to England or Ireland were references to such possession, protectorate or territory and the references to the Secretary of State for the Colonies were references to the Governor of such possession, protectorate or territory."

AN ORDINANCE

No 35 OF 1929

Assented to in His Majesty's name this thirty-first day of December, 1929

EDWARD GRIGG,
Governor

[31ST DECEMBER, 1929] Date of assent

An Ordinance to make Provision for the Employment and Conservation of Waters and to Regulate Water Supply, Irrigation and Drainage

By Proclamation

Date of commencement

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

PART I

PRELIMINARY

1 This Ordinance may be cited as "the Water Short title Ordinance, 1929."

2 In this Ordinance, unless inconsistent with the context or subject-matter, the following expressions shall have the meanings hereby assigned to them that is to say —

"Applicant" means any person who has applied for a water right under this Ordinance

"Authorisation" means an authorisation to construct works under this Ordinance

"Authorised" means authorised under the provisions of this Ordinance or of any Rule or notice thereunder

"Body of water" means water contained in, or flowing in, a spring stream, natural lake, or swamp, or in or beneath a watercourse and includes the water diverted or abstracted therefrom, or stored therein, by means of works under a licence, but shall not include—

Definitions and interpretations of terms

- (a) the water in a swamp, the boundaries of which are wholly within the boundaries of the land owned by any one landholder and which do not cross or abut against the boundaries of the said land, and to or from which no stream extending beyond the boundaries of the said land flows, either continuously or intermittently,
- (b) the water in a spring, which is situated wholly within the boundaries of the land owned by any one landholder and which does not naturally discharge water into a watercourse extending beyond the boundaries of the aforesaid land or abutting on its boundaries

Provided that this definition shall be subject to the provisions of section 86 of this Ordinance

“ Company ” means any incorporated or limited company, the object and powers of which extend to or include the construction or operation of works for the exercise of a water right

“ Department ” means the Public Works Department

“ Develop ” means make available for beneficial use

“ Director ” means the officer for the time being appointed to the post of Director of Public Works

“ Easement ” means the right to occupy so much of the lands of another as may be necessary for, or incidental to, the construction and/or maintenance of authorised works and/or the exercise of a water right

“ Flood water ” means any water flowing in a stream in excess of the normal flow

“ Irrigation ” means the practice of causing water to flow upon or spread over or under the surface of land for agricultural purposes

No. 3 of 1925

“ Landholder ” in relation to land means the Crown, or the registered owner of the land, or the person in whom the land is vested by law, or any person to whom a mining lease or mining claim has been granted under the provisions of the Mining Ordinance, 1925, or any Ordinance amending or replacing the same, and shall include —

- (a) Any person lawfully holding or occupying land in accordance with the provisions of any law empowering the Government to allot land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions
- (b) Any person who by any established right, custom or estate whatsoever is, or is entitled to be, the holder or possessor of land

“ Land Surveyor ” means a surveyor licensed under Rules made under the Land Surveyors Ordinance or any *Cap 147* Ordinance amending or replacing the same

“ Licence ” means the document conveying a water right

“ Licensee ” means the holder of a licence under this Ordinance

“ Normal flow ” means the ordinary flow at any particular point of a stream as certified by the Water Board from time to time to be the normal flow at that point

“ Operator ” means any person authorised to construct works under this Ordinance by authorisation or to divert, abstract, or use water by licence, and includes an applicant

“ Permit ” means any permit issued under section 145 *Cap 140* of the Crown Lands Ordinance, and shall include a water permit or written permission to divert abstract obstruct, or use water or to construct works, which has been signed by the Director or by any of his predecessors in office or on his or any of their behalf

“ Persons ” means any person or body of persons or body corporate, and their heirs executors administrators, or other legal representatives of such person, to whom the context can apply according to law

“ Prescribed ” means prescribed under the provisions of this Ordinance, or of any Rule or notice thereunder

“ Qualified engineer ” means a person registered under this Ordinance as a qualified engineer

“ Riparian,” as applied to land, means abutting on or traversed by a body of water

“ Spring ” means water emerging from beneath the surface of the ground

“ Stream ” means the water contained in a watercourse, and includes a river

“ Water Board ” means the Water Board established under this Ordinance

“ Watercourse ” means a natural channel or depression in which water flows, either continuously or intermittently

Provided that this definition shall be subject to the provisions of section 86 of this Ordinance

“ Water right ” means the right to divert, abstract, obstruct, store or use water or to drain lands as granted and held by licence under this Ordinance, and includes the right to construct and maintain works authorised under this Ordinance for the purposes of the licence

“ Works ” means any structure, apparatus, contrivance, device or thing, for carrying, conducting, providing, or utilising water, excepting hand utensils or such other contrivances as may be specified in the Gazette by order of the Water Board

3 This Ordinance shall apply throughout the Colony Application
and com-
mencement and shall come into operation on such day as the Governor shall by proclamation in the Gazette appoint

PART II

WATER RIGHTS

Water the
property of the
Crown and
vested in the
Governor in
Council

Right to use
water vested
in the
Governor in
Council

Right to use
water may be
acquired only
under this
Ordinance

Cap 140

Purposes for
which a water
right may be
acquired

4 (1) The water of every body of water is hereby declared to be the property of the Crown, and its control is hereby declared to be vested in the Governor in Council on behalf of the Crown, subject to the provisions of this Ordinance

(2) This section shall not apply to any part of the Protectorate of Kenya which is now or may hereafter be held on lease from His Highness the Sultan of Zanzibar

5 The right to the use of every body of water is hereby declared to be vested in the Governor in Council, and no person shall divert abstract, obstruct or use water from a body of water, otherwise than under the provisions of this Ordinance

6 After the coming into operation of this Ordinance, no conveyance, or lease of land, or any other instrument of whatsoever description dealing with land, including any mining lease, or mining claim, shall convey to or vest in any landholder any property or right, or interest or privilege, exclusive or otherwise, with respect to any body of water, and any provision in any document purporting to convey or vest in any landholder any such property, right, interest or privilege shall be void and of no effect, and, except for any right specifically granted by, or on behalf of, Government in any title under the Crown Lands Ordinance 1902, or under the Crown Lands Ordinance, or in any written agreement, no right shall exist or be acquired, or be deemed to have been acquired (other than by a revocable authority conveyed by permit) by any person by length of usage, or otherwise than as it may be acquired or conferred under this Ordinance

7 The purposes for which a water right may be acquired are the following —

- (a) Domestic purpose, which shall mean and include the provision and employment of water for household and sanitary purposes, the watering and dipping of stock, and the essential requirements of such farming operations as are not of an industrial nature
- (b) Public purpose which shall mean and include the provision and employment of water for municipalities, townships, villages, and communities, and for all reasonable demands for steam raising on railways or for other purposes connected with public undertakings, not involving the use of water for the generation of power
- (c) Minor irrigation purpose, which shall mean and include the provision and employment of water for irrigation of land used for orchards, gardens, nurseries, or land for other requirements in connection with farming operations not exceeding five acres in area
- (d) Industrial purpose, which shall mean and include washing and treating of coffee, vegetable fibre, or other agricultural or mineral products, or the essential requirements of other industries and mining

(e) Power purpose, which shall mean and include the provision and employment of water for the development of power

(f) General irrigation purpose

(g) Other purpose

8 (1) Applications for water rights for the same purpose or for different purposes shall receive consideration in accordance with the circumstances of each case, but no water right shall be granted which in the opinion of the Water Board would be likely to interfere with the essential domestic requirements of riparian land according to this Ordinance, without the authority of the Governor in Council

Riparian
amenities
safeguarded

(2) The Water Board may reserve such part of the flow of a stream as in its opinion is required for domestic purposes on lands riparian to the stream, and where apportionment of such part amongst landholders is required to be made the Water Board shall determine such apportionment after having taken into especial consideration the length of frontage of each holding on the stream

9 A licence shall not be required for the abstraction or use of any water from any body of water for domestic purposes by any person having lawful access thereto, if such abstraction or use is made without the employment of works

When licence
not required

Provided that in the case of small bodies of water or during drought the Water Board may in its absolute discretion by written order require a riparian landholder to allow to pass to lower riparian landholders such proportion of the flow of a stream as appears to the Water Board to be equitable, and may prohibit any practice which in the opinion of the Water Board causes an undue reduction of the flow of a stream and any person who fails to obey an order of the Water Board given under this section shall be guilty of an offence against this Ordinance

10 In all cases of proposed diversion, abstraction, obstruction, storage, or use of water from a body of water, other than those referred to in the last preceding section, application must be made in the manner prescribed by this Ordinance for a licence for the diversion, abstraction, obstruction or storage of water. The execution, construction, erection or employment of works, the diversion, abstraction, obstruction or storage of water from or in a body of water, except as hereinbefore provided, without, or prior to, the receipt of an authorisation, licence or sanction under this Ordinance, shall be an offence under this Ordinance

When licence
is required

11 Projects for the use of water, or for the drainage of land, are of five classes, namely —

Classification
of projects

State projects

Private projects

Community projects

Public projects

Urban projects

State projects take precedence over all others

12 (1) Whenever the Governor in Council, on the advice of the Water Board established under this Ordinance, may have decided upon a project to use, or may consider it desirable in the public interest to reserve the right to use, the water, or portion of the water, of any body of water, or upon a project for draining land, such State project or reservation shall take precedence over all other projects for the use of such water, or drainage of such land

(2) Licences may be issued, on such terms as the Water Board may in each case specify, for water rights for use of water in an area, treated or to be treated, in whole or in part, as a State project, or for use in connection with a body of water affected by a State project, until such time as such water is required for the State project, or when and for as long as water is available in excess of the requirements of the State project

(3) The Governor in Council may from time to time, on the advice of the Water Board, publish in the Gazette a notice setting forth the land required for the development of any State project, and Crown lands required for such State project may by notice in the Gazette be reserved from sale or other disposal

(4) When any of the land required for the State project has been sold, leased, allotted, or otherwise disposed of by the Crown, prior to publication of the notice as hereinbefore prescribed in the Gazette, the procedure for the acquisition of the land so disposed of shall be in accordance with the law in force for the time being relating to the acquisition of land for public purposes

(5) The reservations in this section may be exercised by the Governor in Council notwithstanding that the construction of the projected works may not be done by Government or paid for out of Government funds

Private projects

13 (1) Private projects are those which concern the use of water or the drainage of swamps within the limits of the land of the operator, whether the works are constructed entirely on the land of the operator or partly on the land of other persons

Private project conducted by an association of operators

(2) Two or more operators who have a common interest in the employment of water or in the drainage of swamps may unite in an association for the exercise of a water right under a licence for a private project. Any application for a water right in such a case shall be accompanied by a statement of the terms and objects of the association, and the rules under which such an association proposes to exercise the water right must be specified in writing and submitted to and approved by the Water Board, as must also any modification of such rules at any later date

(3) The proportion of participation shall be presumed to be equal between members, unless the contrary is laid down in rules made by the association, adopted as provided in the preceding sub-section

(4) The grant of a water right to an association of operators under the provisions of this section shall be subject to such terms governing action to be taken during operation, upon withdrawal of members of the association, or upon dissolution of the association, as the Water Board may prescribe, or as may be prescribed in Rules made under this Ordinance

14 Community projects shall be such as are conducted *Community projects* on lines specified in Rules made under this Ordinance by a community of landholders operating under a water right for one or more of a series of authorised purposes connected with the use of water or with drainage or reclamation, entirely or for the greater part within their own holdings, not being public or urban projects

15 Public projects shall include projects which involve *Public projects* the supply of water or of electrical energy derived from the energy of moving water, to persons other than the operator, in consideration of payment therefor, or the drainage or reclamation of lands in consideration of payment therefor

16 Urban projects shall mean projects undertaken, *Urban projects* operated or maintained by a municipal authority, corporation, or other body, for the supply of water to municipalities or townships, and shall include projects, howsoever originated and constructed, which are taken over and operated by a municipality, corporation, or other water works authority, for the supply of water to a municipality or township

17 It shall be lawful for the Water Board to determine *Water Board to determine class of project* to which class any proposed project shall be deemed to belong

18 (1) For the purpose of carrying out the provisions of *Constitution of Water Board* this Ordinance, a Water Board shall be established by the Governor in Council

(2) The Director shall be Chairman of the Water Board, and the members thereof shall be the following persons, namely —

- (a) The Attorney General,
- (b) The Chief Native Commissioner,
- (c) The Commissioner for Local Government, Lands and Settlement
- (d) The Director of Agriculture,
- (e) The Surveyor General,

and four representatives of the public who shall be appointed from time to time by the Governor by notice in the Gazette

Provided that, in the case of absence or inability to attend, the Chairman and any of the officers included in paragraphs (a), (b), (c), (d) and (e) above may be represented by a deputy

(3) The Water Board shall meet at such times and places as the Chairman shall direct, but shall ordinarily meet in Nairobi

(4) The powers, duties, and obligations of the Water Board may, at any time, be exercised by a quorum thereof consisting of not less than half the number of members

(5) At any meeting of the Water Board the Chairman shall preside, and in his absence his deputy shall act as Chairman, and in the case of the absence of the Chairman and his deputy, the Board shall elect one of the members as Chairman

(6) The four representatives of the public above referred to shall hold office during the Governor's pleasure

(7) The Chairman presiding at a meeting shall, in the event of an equal division of votes, have a second or casting vote

(8) No member of the Board shall be allowed to vote on any matter in which he may have an interest, pecuniary or otherwise

(9) The Board may from time to time make Rules regulating its procedure

(10) The executive work and requirements of the Water Board shall be carried out by such engineers, surveyors, inspectors and clerks or other staff of the Department as may be specially appointed for the purpose of the administration of this Ordinance, and by such other persons as the Director may approve

(11) There shall be made such hydrographic surveys and investigations as will ensure that adequate knowledge is secured of the varying flow of streams, the alteration of the level of the water of lakes, the capacity of power reaches, and the probable future demands for water, to enable the Water Board to apportion water rights equitably, and to make such reservations as may be required in the future for public purposes and applications for water rights, as well as to ensure that the requirements of riparian landholders as regards water for domestic purposes are adequately protected

(12) Any of the powers, duties, or obligations vested by this Ordinance in the Water Board, except the power to grant, alter or cancel water rights, easements, licences or sanctions, may, by resolution of the Water Board, be deputed by the Water Board to the Director

**Appointment
of District
Water Boards**

19 (1) The Governor may, on the advice of the Water Board, appoint District Water Boards to assist in the administration of this Ordinance in any areas of the Colony

(2) The constitution, membership, chairmanship, meetings, duties, and areas of operation of a District Water Board shall be as provided by Rules made under this Ordinance

(3) A District Water Board shall be advisory to the Water Board on matters pertaining to applications for water rights or the alteration thereof in any part of its area

(4) The powers of a District Water Board shall be such powers as may be granted by Rules made under this Ordinance

(5) The Governor may, on the advice of the Water Board, appoint any local authority or body of persons with their concurrence, to exercise within any area such of the duties and powers of a District Water Board as he may decide

**Rights of
holders of
pre-existing
permits**

20 (1) A holder of a permit, not being a permit terminating on the 31st day of December of the year of issue or renewal, who has made, and is, at the time of the coming into operation of this Ordinance, making beneficial use of water in conformity with the terms of the said permit, if application be made by him to the Water Board for a water right under this Ordinance within six months after the date of the coming into operation of this Ordinance and after receipt by the Water Board of any particulars it may require regarding the diversion, abstraction, obstruction or use of the water or other matters pertaining thereto, shall be entitled to receive a licence under this Ordinance

Provided that the licence shall authorise the diversion, abstraction, storage, or use of a discharge or the construction of works or the diversion, abstraction, storage or use of a proportion of the flow of a stream or all or any of them, which shall be determined by the Water Board after consideration of the discharge or proportion of the stream which at the time of the coming into operation of this Ordinance is being diverted, abstracted and beneficially used, and of the works constructed, and of the probable future utilisation of the body of water by other users, and shall be issued under such terms and conditions as may be decided by the Water Board

Provided also that if in the opinion of the Water Board a licence should not be issued until after hydrographic survey or other investigation has been made, or if for any other reason the Water Board deems it desirable to delay the issue of a licence, the Water Board may issue a sanction under section 88 of this Ordinance in lieu of the said permit

(2) When a permit or a renewal thereof terminating on the 31st day of December has been issued and is being made use of in conformity with the terms thereof, a sanction may be issued by the Water Board under section 88 of this Ordinance in lieu of the said permit

21 (1) When a period of twenty-four months after the coming into operation of this Ordinance shall have elapsed, or such further period as may be determined by the Governor in Council by notice in the Gazette, all diversions or abstractions of water from a body of water or obstruction of a body of water effected under any authority or law whatsoever, other than the authority of this Ordinance, except in so far as they become lawful under the terms of this Ordinance, shall cease to be lawful

(2) Every person who has been, prior to the coming into operation of this Ordinance, diverting, or abstracting, or obstructing water, or allowing water to be diverted, abstracted, or obstructed, within the boundaries of land held by him under any terms of tenure, shall either discontinue to divert, abstract or obstruct water, and, if required by the Water Board, cause to be removed any works constructed, maintained or used by him which cause to be diverted or abstracted or which obstruct or impede the flow of any body of water, or shall, within six months from the date of the coming into operation of this Ordinance, or within such further period as may be determined by the Governor in Council by notice in the Gazette, apply for a water right under this Ordinance, and shall supply such particulars as may be required by Rules made under this Ordinance or as the Water Board may specify regarding the works, diversion and use of the water

22 (1) Any person contemplating an application for a water right under this Ordinance may, upon submitting in the manner prescribed by Rules made under this Ordinance, a general description of his proposals and a list of lands which might be affected by the construction and operation of the work in connection therewith together with the names and addresses of the holders of the same and upon payment of the prescribed fee, obtain from the Water Board authority to do the necessary preliminary investigation in connection with the location of such work, which authority may prescribe a time limit within which such investigation is to be completed, and

Termination
of permits

Authority to
enter upon
lands for
purposes of
survey, etc

after he has obtained such authority he may with such assistants as are necessary enter into and upon any public or private lands to take levels, make surveys and do other necessary work in connection with such location, doing no damage

(2) The Water Board shall issue no such authority until it has served a notice on each landholder that application to enter his lands has been made by a stated person

(3) The grant of such authority shall in no way be deemed to authorise the doing of damage upon any lands entered upon, and if any damage is done, compensation shall, failing agreement between the parties as to the amount of such compensation, be determined by arbitration under the Arbitration Ordinance

Cap 18

**Application for
a water right**

23 Every applicant under this Ordinance shall file with the Water Board the following documents in duplicate, accompanied by the prescribed fee —

(a) An application on a form provided, in which the applicant shall set forth his name, residence and occupation, the number and locality of his holding, or the area of a mining lease or mining claim, the land where water is required to be used, a description of the body of water from which the water required is to be diverted, abstracted, stored or used, the point of diversion, abstraction, storage, or use, the purpose for which water is required, an estimate of the normal and minimum flow of the stream from which diversion or abstraction or storage is applied for, a statement whether a proportion of the normal flow or flood water or both is required, a description of the character and size of the works to be constructed or installed, together with all other relevant particulars which may be asked for in the form of application or subsequently required for a full understanding of the proposals of the applicant

(b) A request for the right to construct any work referred to in the application across any road, or road reserve, if any, which may be affected by such works

(c) A general map drawn in Indian ink or by means of other indelible process on tracing linen or other substantial material to such a scale as will allow all requisite details to be legibly recorded, signed by the applicant, showing the body of water, the position of the intake, forebay, flume, dam, power house, reservoir, pipes, canals, spillways, or other works and lands, if any, which may be affected, the names of the landholders, and the Land Registration numbers and boundaries of the farms affected by the proposed works

(d) Such plans as may be required in Rules made under this Ordinance or by the Water Board

**Application for
right involving
drainage or
reclamation**

24 For the requirements specified as applying to applications for water rights involving the diversions or use of water there shall be substituted in connection with applications for water rights involving reclamation, drainage or other proposals, such particulars or proposals as the Water Board may specify

25 The application, map and plans (if any) filed as above prescribed, or a true copy thereof, shall be open for examination by the public at all times during office hours at the office of the Director, and at any other place deemed desirable by the Water Board

Application
and plans to
be open for
inspection

26 Upon receipt by the Water Board of the application together with all particulars, map, and plans (if any) which it may have required the applicant to furnish, to enable a full understanding of the applicant's proposals, either as originally submitted or as varied, to be arrived at, and if in its opinion the proposed water right would be likely to be in the public interest, or not adverse to it, it shall register the application, and shall endorse its conditional approval on both copies of the application, map, and plans (if any) connected therewith, and shall return one copy of each to the applicant

Approval of
application

27 (1) If the application, map and plans (if any) have been conditionally approved as provided in the last preceding section, the Water Board shall prepare a draft notice setting forth —

Procedure if
the application
for water right
is approved

(a) A statement that the application has been filed with the Water Board, and the date of registration of the application, and that objections may be filed with the Water Board within sixty days from the date of the first publication of the notice.

(b) The name and address of the applicant

(c) The place at which the water is proposed to be diverted, abstracted or impounded

(d) The place at which water is proposed to be used

(e) The purpose for which water is proposed to be used

(f) General particulars of the proposed works.

(g) Any information considered necessary by the Water Board to enable the applicant's proposals to be understood

(2) The draft notice shall be transmitted to the applicant and the applicant shall, if he desires to acquire a water right, within fifty days from the date of receipt of the notice, cause it to be published in some newspaper, which may be named by the Water Board, published in the Colony, and having circulation in the locality in which the proposed works would be situated, not less than on two occasions within one fortnight, and in two successive issues of the Gazette

(3) In any case where the application relates to the diversion, obstruction or use of a body of water within, abutting on or flowing into a Native Reserve, a copy of the draft notice shall be sent by the Water Board to the District Commissioner of the district which might be affected, who shall, if in his opinion the interests of any native would be affected, cause such native to be informed of the terms of the application

(4) If it appears to the Water Board to be in the public interest so to do, it may require the applicant to publish the notice in the same newspaper and in a second newspaper having circulation in the locality of the proposed works, on four occasions or less, within thirty days or may require such notice to be published in a modified or altered form

(5) An objection to the application, if any, shall be filed with the Water Board in duplicate within sixty days from the date of the first publication of the notice or of the modified or altered notice, if modification or alteration has been required, and shall set forth the address of the objector, the specific grounds for objection, and a copy of the objection shall be forthwith served by the objector on the applicant.

(6) The Water Board shall consider the objection, and if in its opinion the alleged grounds of objection are not *prima facie* sufficient to warrant an enquiry, it shall so decide, and shall notify the objector in writing of such decision, but if it considers the alleged grounds sufficient to warrant public enquiry, it shall fix a day for holding the enquiry.

(7) The Water Board may, for the purpose of such hearing, summon and examine witnesses upon oath or affirmation, may adjourn such hearing to obtain further evidence, or until the applicant has submitted plans, or altered plans, or other documents, may dismiss the objection, or may direct the applicant to amend his application, or may dismiss the application.

Procedure if application for water right is not approved

28 If after receipt by the Water Board of such application, map and plans (if any) as may be prescribed, together with such full particulars of the applicant's proposals as it may have required, and if, in its opinion, the proposed water right would not be in the public interest, or would unduly interfere either with the undertakings of other operators or of riparian holders, the Board shall endorse its disapproval upon one copy of the application and any other necessary documents relating thereto, and shall state its reasons for disapproval and shall return one copy of each document to the applicant.

Authorisation

29 (1) The application, map and plans (if any) shall be filed at the office of the Director, and if the application has been finally approved by the Water Board the Water Board shall authorise the construction of the works by authorisation, and may fix in the authorisation a time limit, within which the construction of the works is to be begun, and another within which it is to be completed.

(2) The authorisation for the construction of works shall be a document, on a form prescribed by the Water Board, or in Rules made under this Ordinance and there shall be endorsed thereon the number which the licence shall bear if or when issued to the operator on completion of the works in accordance with the authorisation and modifications thereof, if any, and to the satisfaction of the Water Board.

(3) No material deviation from the map or plans filed shall be made without written permission, and any question arising as to whether any deviation is material shall be decided by the Water Board.

Inspection of works during construction

30 (1) Any works authorised under this Ordinance may, if the Water Board so determines be constructed subject to inspection during construction by officers of the Department, and the cost of such inspection, or of such portion thereof as the Director declares to be necessary in the interest of the safety of life and property may be required by the Water Board to be borne by the operator.

(2) No such inspection shall be held to imply Government guarantee of work, constructed or to support or justify any claim whatsoever against Government in connection with the works

31 Upon any inspection under the provisions of the last preceding section, the Water Board may order the operator to make any addition or alteration which it considers necessary for the security of any works, whether completed or in course of construction, and if such order is not complied with to the satisfaction of the Water Board within such period as may be specified by the Water Board, the authorisation may be cancelled or modified by the Water Board

Works to be made secure

32 When any work for carrying, storing or using water is not of sufficient capacity to carry store or use the quantity or discharge to which right has been acquired by the operator, his right shall be limited to the quantity or discharge which such work is capable of carrying, storing or using, and in case of dispute as to such quantity or discharge the Water Board may order an inspection of the work, and the licence may be issued by the Water Board for the quantity or discharge of water which the work is capable of carrying, storing or using in a beneficial manner

Water right limited by capacity of works

33 (1) Upon the expiration of the time mentioned in the authorisation for the construction of works, or at any time before such date if the construction is sooner completed, the operator shall submit a completion certificate upon a prescribed form, whereupon an inspection may be made by an officer appointed for the purpose by the Water Board to ascertain that the works have been completed in accordance with the authorisation, that the easements, if any, for the works have been obtained, that agreements, if any, have been entered into for the supply of water for utilisation on lands which are not the property of the applicant or for drainage of lands, and that the works as constructed are of the required capacity

Completion certificate and inspection

Provided that if the work is not completed within the said time limit, a progress report shall be substituted for the completion report hereinbefore prescribed, and the operator may apply for an extension of the time limit of the authorisation, which extension may be refused or may be sanctioned upon such terms as the Water Board may prescribe

34 (1) Upon completion of the works to the satisfaction of the Water Board, and in accordance with the terms of the authorisation or amended authorisation, the Water Board shall issue a licence to the operator to divert, abstract, use or store the discharge or quantity of water to which he is entitled and in accordance with the terms of the licence, and of the authorisation, or any approved modification thereof, and such licence shall bear the number accorded to the authorisation, with priority from the date on which the application, containing full details of the applicant's proposals together with such particulars maps or plans as may have been required, was received by the Water Board

Licence

(2) A licence may be issued for a fixed period or otherwise as the Water Board may decide

Water for
non-riparian
lands

35 If at any time it is made to appear to the Water Board, after giving due consideration to future requirements for the development of land riparian to the body of water, that the water in any body of water is not all required for the reasonable and beneficial use of holders of land riparian to the body of water, and if in its opinion a proportion of the water can be more beneficially utilised on lands not riparian to the body of water, it shall be lawful for the Water Board to authorise by licence the diversion of water on to non-riparian land within the catchment area or across the natural watershed of the river into any other catchment area.

Unless there is, in the opinion of the Water Board some good reason for deciding otherwise, the applications for the use of the water on land within the same catchment area shall have preference over applications for the use of water on land not within the same catchment area.

Limitation of
water right

36 The right of a licensee to divert, abstract, use or store water shall be limited to the quantity or proportion of the discharge of the stream whether it be normal flow or flood discharge, granted by licence, and in accordance with the terms of the licence, or in accordance with other right lawfully exercised under the provisions of this Ordinance.

Provided that every licence shall be subject to cancellation or alteration by the Water Board by reason of waste of water, or non-use, misuse or partial use only of the water right granted, or non-compliance with the conditions of the licence, and if so cancelled or altered the water right shall thereupon be determined or be altered.

Provided also that no licence for a public project or urban project shall be cancelled or altered either in whole or part except by the Governor in Council, but in so far as an urban project licence is temporarily not required in whole or in part for the purpose for which it was issued, a licence for a definite period in respect of the same supply may be issued to any person upon application for a water right under this Ordinance.

Water Board
may prescribe
measuring and
controlling
devices

37 (1) The Water Board may prescribe, in a licence, that the operator shall construct, fix, and maintain in a sound and efficient manner, wells, flumes, sluice gates, valves or other controlling or measuring devices, ensuring that only the quantity of water, or proportion of the flow of the stream, which the operator is authorised to abstract, divert, use or store, shall be abstracted, diverted, used or stored by the operator in exercise of the water right, or it may, subsequent to the issue of the licence, at any time require the licensee to construct, fix and maintain such well, flume, sluice gates, valve or other controlling or measuring device.

(2) The Water Board may prescribe the design, materials and method of construction of such controlling or measuring device.

(3) Every licensee storing water in a reservoir shall, at the discretion of the Water Board, and according to plans approved by it, construct, fix and maintain flumes, wells, sluice gates, or other controlling or measuring devices at points on the stream to be determined, and (if required so to do) on each and every stream, or body of water, discharging into or from such reservoir, for the purpose of determining the amount of water flowing into or stored in such reservoir or the flow below the reservoir, or both.

(4) If any licensee neglects or refuses to commence the construction or fixation of the said flumes, weirs sluice gates valves or other controlling or measuring devices, within three months after notice to do so by the Water Board, or to prosecute the said construction diligently, or to maintain the same satisfactorily, the Water Board may—

(a) construct, fix and maintain or cause to be constructed, fixed and maintained, the said flumes, weirs, sluice gates, valves or other controlling or measuring devices,

(b) open or cause to be opened the sluice gates, valve or outlet of a reservoir, or failing such outlet, demolish or cause to be demolished any works in order to provide an outlet, close or cause to be closed any canal or pipe or other work for diverting or abstracting water, to permit such quantity of water to flow down the stream for the use of other persons, as the Water Board may deem proper, until the said licensee shall construct, fix or maintain the said flumes, weirs, sluice gates, valves or other controlling or measuring devices

(5) All costs and charges in connection with the said operations shall be paid by the licensee, and if not so paid shall in addition to any other penalties provided under this Ordinance be recoverable as a debt due to the Crown, and if the licensee further refuses or fails to comply with the said requirements, the Water Board may cancel his licence

38 (1) Any operator constructing any works under the Road crossings provisions of this Ordinance shall during such construction keep open for safe and convenient travel all public roads and rights of way therefor publicly used as such, when they are crossed by, or interfered with by, such works, and shall, before water is admitted to such works, construct to the satisfaction of the Director, or at the Director's option refund to the Director the cost of construction by the Department or other roadway authority, of a substantial bridge with proper and sufficient approaches thereto over such works, and such railings, fences, guard posts, culverts, facewalls and other structures and appurtenances as the Director may declare to be necessary in the public interest and all such bridges, approaches and appurtenances shall thereafter be always maintained by the operator, while the water right is valid, or alternatively at the Director's option at the expense of the operator

(2) The Department or other roadway authority may at any time on the order of the Director renew or alter such bridge or structures or works in connection therewith, and the operator shall pay, if so required by the Director, for such proportion of the renewal, alteration and maintenance thereof, or any of them, as is in the opinion of the Director rendered necessary or desirable in the public interest on account of the existence of the works of the operator

Provided that an operator may appeal against an order of the Director or other roadway authority within 30 days of such order to the Governor in Council whose decision shall be final

Efficient utilisation and procedure owing to abnormal conditions determined by Water Board

Alteration of quantity of water authorised to be diverted by licensees

Water right to be appurtenant to the land for which issued

Licensee may abandon

39 Questions as to full, efficient and beneficial utilisation, as to adverse effect of works, or as to limitation of supply owing to abnormal conditions shall be decided by the Water Board, whose written decision shall be final, and binding

40 (1) Whenever it may be shown to the satisfaction of the Water Board that owing to drought or natural changes, increased demands on a body of water, or other causes, the diversion, abstraction, storage or use of the water authorised to be diverted, abstracted, stored or used by a licensee causes inequity and causes a shortage of water for domestic or other purposes which in the opinion of the Water Board should have priority, it may revise and alter the discharge or quantity of water which any licensee is authorised to divert, abstract, store or use as appears to it equitable. The quantity so altered shall thereafter be the discharge or quantity which the licensee is authorised according to this Ordinance to divert, abstract, store or use

(2) The Water Board may decide what compensation (if any) shall be paid and by whom it shall be paid in respect of any loss incurred by the putting into operation of the provisions of sub-section (1) of this section, subject to appeal to arbitration as provided for under section 74 of this Ordinance if an objection is lodged with the Water Board within thirty days of the date of the decision of the Water Board

Provided that if it is decided that compensation shall be payable such compensation shall be recoverable as a civil debt

41 (1) When issuing a licence, the Water Board shall specify, as far as practicable, the particular portion of any land, or the particular undertaking, to which the water right is to be appurtenant. Such water right shall thereupon, save as herein provided, be appurtenant to such portion of land or such undertaking, and the water right shall pass with any demise, devise, alienation, transfer or other disposition of the same, whether by operation of law or otherwise

(2) When the land or undertaking to which the water right is appurtenant passes to another landholder or owner the said licence shall be surrendered to the Water Board for endorsement thereon of the name of the new landholder or owner

(3) If the land affected by the works, and to which the water right is appurtenant, has been or is about to be divided in ownership, the licence shall be surrendered to the Water Board, and such new licence as may be issued by the Water Board shall be dependent upon the acquisition of such easements, if any, as may be required, and may be issued with such modifications of the original licence as in the opinion of the Water Board may be rendered necessary or desirable by the circumstances

42 Any licensee may, by notice in writing to the Water Board, abandon the whole or any part capable of separation of the water right acquired and upon such abandonment the Water Board may direct such licensee forthwith to remove all or any works erected in connexion with such water right, and in the event of the refusal or failure of such licensee to remove such works the Water Board may remove all or any of such works, and may recover the cost of such removal from such licensee

Provided that where any land or undertaking to which a water right is appurtenant is mortgaged or charged, no abandonment of such water right shall be effective without the consent in writing of the mortgagee or chargee

43 Every licence and water right shall be subject to subsequent readjustment by the Water Board after hydrographic survey of the body of water has been made, and after reasonable notice has been given to all parties affected. Such readjustment shall not affect the priority of the licence

Readjustment
of licence

44 An operator may obtain permission from the Water Board to change the point of diversion or abstraction of the water used by him, or the position of the works on giving such notice and complying with such terms as the Water Board may require or impose and subject to the acquisition of such easements as may be required

Change of
point of
diversion

45 Whenever the holder of the land to which a water right is appurtenant desires to have the water apportioned between two or more parts of the land in respect whereof the water right was originally obtained, he may apply to the Water Board for an apportionment, and the Water Board, on its being proved to its satisfaction that the water rights of others will not be prejudiced or imperilled, may, after notice to all the persons interested or believed to be interested, amend the licence originally granted, or may issue two or more licences to conform to the apportionment authorised. Such new licences, issued in accordance with this section, shall not authorise in the aggregate, the diversion or storage of more water than the discharge or quantity authorised to be diverted, abstracted, stored or used by the original licence

Apportion-
ment

46 Any licensee holding two or more licences may mingle the waters authorised by such licences, and may construct works to carry and use such mingled water

Mingling
waters

Provided that the plans of such works shall be subject to the approval of the Water Board in all respects as new works are approved under this Ordinance and that except as to the mingling of such waters and the construction and maintenance of such works, the water right of the said licensee under the said licence shall in no wise be enlarged or altered

47 The production of a licence or authorisation or a copy thereof purporting to be certified by the Chairman of the Water Board shall, without further proof be evidence in all courts of the matters and things therein mentioned

Licence as
evidence

48 Every operator shall maintain and retain his works in a good, proper and workmanlike manner to the satisfaction of the Water Board, so that the same shall, at all times, be of sufficient strength and capacity for the fulfilment of the purpose for which they were constructed, and so that no damage shall occur to any road, property or work in the vicinity, and any person aggrieved by the failure or neglect of such operator so to do, shall be entitled within a reasonable time after such failure or neglect has been discovered to serve the operator with notice thereof, and if the operator declines or fails to remedy any defect, inefficiency or neglect, it shall be competent to such person to institute an action to recover damage in respect of any loss sustained by him in consequence thereof

Works to be
kept in repair

Drainage of
irrigated lands

49 (1) In the case of all water rights involving the irrigation of lands, provision shall be made by the operator for the efficient drainage of such lands and the delivery of the residue of used or unused water to a watercourse or a body of water by drainage or other works

(2) Whenever in the opinion of the Water Board no provision or insufficient provision has been made by the operator for the delivery of used or unused water to a watercourse or body of water, or for the drainage of irrigated lands or swamps created by any diversion or abstraction of water, the Water Board may order and require the operator to construct and maintain such works as will in the opinion of the Water Board cause such water to be so delivered

(3) If any operator fail within a reasonable time to obey an order of the Water Board given under this section, his licence may be cancelled by the Water Board, and the water right shall thereupon become null and void, and he shall be guilty of an offence against this Ordinance

Water not to
be released
without notice

50 No water stored or penned back by any operator shall be released without reasonable notice being given to all persons whose property is liable to injury from the releasing of such water, and the operator shall not by reason of anything in this Ordinance contained be relieved from liability for any loss, damage or injury sustained by anyone arising from the release of such water

Damage to
public works
to be made
good

51 Every operator shall be liable for and shall make good, in such manner as the Director or any officer delegated by him may determine, all damage to any public works which may be occasioned by reason of the works of the operator breaking, or being defective in construction, or out of repair, or of insufficient capacity, and in the event of such works not being made good after notice so to do has been served on the operator by the Director, the Director may make good the works and recover the cost thereof in any competent court

Authority to
Department
to interfere
with works

52 Any officer of the Department or other person thereto empowered by the Governor engaged in the construction of any road or public works may, upon due notice to the operator, cross divert or otherwise interfere with the work of such operator, and for such reasonable period as may be necessary, provided that he or they shall do as little damage as possible, and shall restore the work to a condition in which it will as speedily as possible fulfil its required purpose

Operator must
produce
documents on
order of
Water Board

53 Every operator, upon the written order of the Water Board, or any person authorised by the Water Board for that purpose, shall produce for inspection any licence, authorisation, map, plan, specification, drawing or other document relating to the works or to the water right of such operator or to the flow of water in the said works or in the body of water affected by the works

Corrections of
errors in
licence or
authorisation

54 Any operator whose licence or authorisation has been issued imperfectly or without compliance with all or any of the terms of this Ordinance governing the issue thereof or which contains some inaccuracy which can be corrected without affecting the water rights of other parties, or which is incomplete or indefinite in its terms and conditions may apply to the Water Board for the amendment and re-issue thereof, and the Water Board may amend and re-issue such licence or authorisation accordingly

55 An operator who has received an authorisation under this Ordinance to construct works, where the works authorised or a portion of them would, when constructed, be situated upon lands not held by the operator, may acquire an easement on, over, or through the land on which the works would be situated, and shall not exercise the authorisation unless or until the easement has been acquired

Operator
may acquire
easement

56 All encumbrances attaching to the land shall be borne by the person who before the grant of the easement was legally liable for or held the encumbrances

Encumbrances

57 An easement shall include the right of access to any piece of land contiguous to the water of the operator in so far as may be necessary for the purpose of constructing, inspecting, maintaining and repairing the works of the operator and for any purpose necessary for the effective enjoyment of the easement

Easement
includes right
of access

58 An easement shall include a right to take such materials existing naturally on the land as may be approved in writing by the Water Board from the land on, over or through which the easement has been granted, for the purpose of constructing, maintaining or repairing any work thereon

Easement
includes right
to take
materials

59 When works have been executed by an operator on another landholder's land, the land occupied solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of compensation and except in the case of an easement for drainage or reclamation, remain available to the holder of the property in respect of which the easement is held for his own purposes, and he may remove such excavated material, provided that no damage shall be done to the works of the operator or the works obstructed or interfered with by such removal

Landholder
may use land
for farm
purposes

60 An operator who has acquired an easement which includes the construction of a canal shall be responsible for taking and maintaining adequate measures for preventing the introduction into the canal of a greater quantity of water than that which the canal is capable of carrying, and he must not cause damage to the land in respect of which the easement is held by permitting the accumulation of weeds, silt, or other obstruction or nuisance which might cause flooding, or any other damage of whatsoever description. The cost of any damage caused in this manner by the operator may be recovered from the operator by the landholder in any competent court

Operator must
avoid flooding
lands and
maintain canal
satisfactorily

61 In the event of damage by scour or otherwise being caused to the land in respect of which the easement is held by the works of an operator, the holder of the land in respect of which the easement is held may demand and the Water Board may by order require the operator to construct at his sole expense, or partly at the expense of such holder, such additional works as will in the opinion of the Water Board make the works to cease causing damage. If the operator fail to comply with an order of the Water Board given under this section, the Water Board may cancel his licence which shall thereupon be null and void

Damage caused
by works of
operator

Operator shall construct works to enable landholder to enjoy his existing works if interfered with

62 An operator who has acquired an easement for the construction of works on another landholder's land which—

- (a) prevent the landholder passing freely over or on to his land as heretofore, or
- (b) interfere with his existing works, or structures, or devices, upon his land,

shall at his own expense, construct and maintain in repair, to the satisfaction of the Water Board, and under conditions which it may prescribe, which conditions shall be binding on the operator—

- (i) such bridges and other structures or devices as will make communication safe and convenient as may be decided by the Water Board, or
- (ii) such works, structures, or devices as are necessary to enable the holder effectually to enjoy the use of works, structures, or devices interfered with as may be decided by the Water Board

Operator desiring easement shall serve notice on landholder

63 An operator claiming an easement under this Ordinance shall serve a notice in writing on the holder of the land over, or through which he desires to acquire the easement, and shall in the notice state or provide the following particulars, and whatever other further particulars may be required by Rules to be made under this Ordinance, that is to say, he shall provide—

- (a) A description of the proposed works and a statement of their use
- (b) A statement of the quantity or discharge of water, if any, to be diverted or dealt with
- (c) A map showing clearly the nature and locality of the works or the area of swamp or lands to be reclaimed if the easement is for reclamation of a swamp or lands
- (d) A statement of the area of the land, if any, occupied by the works, flooded as a result of the works, required for purposes of inspection and maintenance of the works, required for the excavation or collection of material for the works, required for the deposit of spoil or material derived from the works, or required for a road or roads to obtain access to the works
- (e) A statement of the compensation which is offered, and the period of time during which he wishes to enjoy the easement

If the landholder agrees, particulars to be embodied in deed

64 If the landholder agrees to the claim for an easement either as originally proposed or as modified by agreement, the operator shall embody the particulars and other matters pertaining thereto in a deed and after execution by the parties concerned, shall send two copies of the deed, which shall be certified by the Registrar of Titles, to the Water Board

If the landholder does not agree to the claim, application for easement may be made

65 If the landholder does not within two months after the service of the notice agree to the claim for an easement or to any other matter necessary for the easement, the operator may apply to the Water Board for an easement in the manner prescribed by Rules to be made under this Ordinance and shall serve notice of the application upon the landholder

66 The Water Board may either dismiss the claim for an easement, or with the approval of the Governor in Council award the easement with or without modification and subject to such conditions as it deems just, but if the amount of compensation to be paid is the subject of disagreement between the operator and the landholder, and if the claim is awarded by the Water Board and the amount of compensation recommended by it is not agreed to by the parties, the decision on the question of the amount of compensation to be paid by the operator shall be referred to arbitration under the Arbitration Ordinance

Claim for
easement may
be dismissed
or granted

Cap 18

67 An easement acquired under this Ordinance shall lapse if the works authorised be not completed and the water be not utilised within one year from the date of the award or within such further period as the Water Board may fix, or if at any time the water right is not substantially made use of in accordance with the terms of the licence for a continuous period of two years

Easement shall
lapse if works
not completed
within a
definite period

68 (1) If any work, constructed on the land of a person other than the operator, be out of repair or require cleansing, the operator or his agent shall if required in writing by the landholder to repair or cleanse the work, carry out the requirements within a reasonable time, and if he fail to do so, the landholder may cause all things necessary for carrying out the said repairs or cleansing to be done, and may recover the cost from the operator in any competent court

Operator shall
keep his works
in a state
of repair

(2) Such repairs or cleansing shall not be unreasonably demanded, and in the event of a dispute between the parties the Water Board shall decide what shall be considered reasonable repairs or cleansing

(3) An operator who allows or suffers any such works to be out of repair or to be in such state as to require cleansing, shall be liable for all damage which may arise therefrom

69 (1) The landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the Water Board either before or after the construction of the works, apply for a water right to make use of the works or the proposed works for the diversion, abstraction, storage or use of whatever water he may become entitled to divert, abstract, store or use under this Ordinance

Landholder
may demand
and obtain use
of the works of
an operator

Provided that before a licence or authorisation is issued by the Water Board such proportionate cost of the works shall be paid by the landholder to the operator who constructed or is constructing the works as may be agreed on between the parties, or failing agreement as may be decided by the Water Board, and such agreement or decision shall be final and binding on all parties

(2) The operator who constructed the works may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of the works made use of until he has in writing surrendered such right of user. In the event of disagreement the decision of the Water Board shall be final

(3) The landholder shall prove to the satisfaction of the Water Board that the works of the operator can be satisfactorily used for the purposes of the landholder and without material detriment to the operator

(4) If the works require modification to enable the landholder to enjoy their use the landholder, unless the matter is otherwise agreed, shall pay to the operator --

(a) The entire cost of modifying them in the manner approved by the Water Board

(b) The cost of constructing and maintaining such devices for apportioning the quantities of water as the Water Board may prescribe or approve

(5) The Water Board may at a later date modify the scale of payment, upon application by either party, when it is proved to its satisfaction that altered conditions have rendered a revision of the rates of payment just and equitable. Such alteration of rates of payment shall have effect from a date to be specified in a notice to be posted to both parties by the Water Board but shall not have retrospective effect.

Easements to be registered

Cap 142

Cap 140

Cap 143

70 An easement acquired under this Ordinance shall be registered against the title affected. If the property is registered under the Registration of Titles Ordinance the operator shall lodge with the Registrar of Titles two executed copies of the easement for registration purposes. If the property is registered under the Crown Lands Ordinance or the Land Titles Ordinance the operator shall submit the original, together with one unexecuted copy for registration. A plan, which shall be signed by the Surveyor General, shall be attached to each document granting the easement.

Determination of easement

71 (1) An easement acquired under this Ordinance shall determine if and when, at any time, the licence or authorisation, for the exercise of which the easement has been acquired, is cancelled as provided for in this Ordinance, and on the date of such cancellation.

(2) In the event of the cancellation of any licence or authorisation, any works constructed by the operator on the lands of another person shall, where the operator is the sole user, if not removed by the operator within one year from the date of the cancellation, become the property of such other person, unless otherwise decided by the Water Board.

(3) In the event of cancellation or alteration of an easement the Water Board shall notify the landholder over whose land the easement has been granted and the Registrar of Titles. The landholder concerned may take such action as shall cause his title to be freed from the easement, and the onus of taking such action shall rest with the landholder.

Governor in Council may order drainage of swamp

72 (1) In the event of there existing wholly or partly upon any alienated land any swamp or any natural or unauthorised obstruction to the natural flow of water which has the effect of leading to a diminution of the flow by evaporation or absorption or otherwise, the Governor in Council, upon application by the Water Board, may order that such swamp or other feature be drained or that such obstruction be removed.

(2) The Governor in Council may order such work and method of execution of work as the public interest may appear to justify or require, and may make such order as to the allocation and collection of the cost of the necessary works and as to their subsequent maintenance as may appear to be equitable having regard to the benefits which might accrue to

other parties from the execution of such works and the increased provision of water expected therefrom. Such order may state that such work shall be State-aided to such an extent as may be authorised by Legislative Council.

Provided that no landholder whose land is riparian to a body of water shall be deprived under this section of reasonable access to water except by agreement or on payment of compensation.

73 When swamps encroach upon the holdings of various holders and some of them desire to effect their reclamation in common, the Governor in Council may compel a dissenting minority to pay all expenses collectively with the operating majority, understanding as the majority those who represent the major part of the area of land considered to be reclaimable by the Water Board.

A minority of holders of land in or abutting on a swamp may be required to contribute to cost of drainage

74 Whosoever parties cannot agree as to the compensation to be paid by one to the other, under the provisions of this Part, the amount of compensation shall be determined by arbitration under the Arbitration Ordinance.

Compensation to be decided by arbitration

Cap 18

PART III

GENERAL PROVISIONS

75 The powers conferred, and the duties and obligations imposed, by this Ordinance shall in any area of Crown land declared to be a native reserve or a communal reserve be exercised subject to the provisions of any law for the time being in force relating to land in native reserves or communal reserves.

Application of Ordinance to native reserves

76 Upon the expiration of the time allowed in an authorisation or any extension of such time for the completion of works under this Ordinance the rights therein granted to the operator shall cease and determine and any works at the date of such determination constructed, erected, fixed or acquired may be taken over and operated or disposed of according to the order of the Governor in Council if not completed within the time allowed.

Forfeiture of rights if works are not completed within the time allowed

77 (1) Subject to the payment of compensation therefor, the Governor in Council may, if at any time he shall deem it advisable in the public interest to do so, take over and operate or otherwise dispose of the works of any operator authorised under this Ordinance, and in such event every licence granted in connexion with such works shall forthwith determine.

Expropriation of works

(2) In the event of disagreement regarding the compensation to be paid for expropriated works it shall be determined by arbitration under the Arbitration Ordinance.

Cap 18

78 When the Water Board is satisfied after due enquiry that any licensee has abandoned the use of any water, or has wasted any water to which his licence entitled him, the Water Board, if it deems just and proper, may thereupon by order declare a cancellation of the licence, and the water right shall thereupon cease and determine.

Cancellation of water right for waste or non-user

Provided that if waste and not entire cessation of use is found to prevail or to have prevailed, the Water Board may issue a new licence entitling the licensee to such reduced quantity of water as appears to it justifiable

Abandoned works

79 (1) It shall be lawful for the Governor in Council on behalf of the Crown to enter upon, use, order the use of, maintain, vary, destroy or remove abandoned works, wherever situated without payment of any compensation whatsoever

(2) Works may be regarded as abandoned when it is proved to the satisfaction of the Water Board that they have remained substantially unused for any of the purposes of this Ordinance by any licensee lawfully entitled to make use of them under this Ordinance for a period of one year

(3) No action by the Water Board shall be taken, as in this section provided, except after the publication of a notice in the Gazette to the effect that the said works have been proved to the satisfaction of the Water Board to be abandoned and that failing lawful employment thereof within the period of one month from the date of the issue of the Gazette in which the notice appears the right to use vary, or dispose of the works in question will be assumed by the Crown

Offences and penalties

80 (1) Any person who does or commits any of the following acts shall be guilty of an offence under this Ordinance —

- (a) Wilfully or maliciously obstructs, molests or hinders an inspecting officer, engineer or surveyor of the Department, a qualified engineer, a Government surveyor or a land surveyor, or other person duly authorised by the Water Board in the exercise of his duties under this Ordinance
- (b) Without authority under this Ordinance knowingly or wilfully defaces, alters or removes or causes to be defaced, altered or removed, any survey mark, water gauge, well, or measuring device or other work structure, or appliance for the purpose of water control or investigation
- (c) Without authority under this Ordinance throws or conveys or causes or permits to be thrown or conveyed, any rubbish, dirt, trade refuse or other offensive or unwholesome matter or thing into or near to any body of water or water contained in any work, in such a manner as to cause pollution thereof
- (d) Wilfully or maliciously hinders, interrupts, or causes or procures to be interrupted or hindered, any operator under this Ordinance or his manager, contractors servants, workmen or any of them in the lawful exercise of any of the powers and authorities of this Ordinance conferred
- (e) Wilfully or maliciously lets off or discharges water from the works of any operator so that the said operator loses the use of the said water
- (f) Lays or causes to be laid, erected or constructed any work to communicate with the work of any operator, with the intention of drawing water from the said work without authority under this Ordinance

- (g) Unlawfully interferes with the works or water supply of any operator

Such person, for any such act as aforesaid, shall be liable on summary conviction to a penalty not exceeding two thousand shillings and in default of payment to imprisonment for a period not exceeding three months

(2) Any person who, without authority under this Ordinance, obstructs, interferes with, diverts or abstracts water from any watercourse or any body of water, or who negligently allows such obstruction, interference, diversion or abstraction shall be guilty of an offence under this Ordinance, and shall be liable on summary conviction to a penalty not exceeding one hundred shillings a day or part of a day for every day during which such offence is continued, or in default of payment to imprisonment for a period not exceeding three months, and in addition to any other penalty to the destruction of any works executed and the confiscation of any plant or machinery used, and the cost of the destruction of such works may be recoverable by the Director from such person in any competent court

(3) Any person who, being entitled to construct, erect or maintain works or to divert, abstract or obstruct water under his Ordinance—

- (a) constructs, erects, or maintains works without authority or in a manner contrary to authority conveyed under this Ordinance,
- (b) diverts or abstracts water in excess of the quantity which he is authorised to divert or abstract,
- (c) fails to erect, construct, or maintain a measuring device, if so required under this Ordinance,
- (d) fails to obey an order of the Water Board or other authority, lawfully given under this Ordinance,

shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding sixty shillings a day or part of a day for every day during which such offence is continued or in default of payment to imprisonment for a period not exceeding three months

81 (1) The conviction of any person under the last preceding section shall not relieve him from any liability to answer in damages to any other sufferer by the wrongful acts aforesaid or any of them

Liabilities of offender

(2) Every operator who wilfully violates any of the provisions of this Ordinance, or any of the Rules made thereunder, or of the terms or conditions of his licence or authorisation shall, in addition to all other penalties, be liable to have his licence or authorisation cancelled

82 Every person who shall be guilty of an offence against this Ordinance or against any Rule made under this Ordinance shall for every such offence be liable to the penalty expressly imposed by this Ordinance or by any Rules made thereunder, but if no penalty is expressly imposed he shall be liable to a penalty of not more than one thousand shillings or in default of payment to imprisonment for a period not exceeding three months

Penalty for offence against this Ordinance

**Penalties may
be recovered
by authorised
person**

No 5 of 1925

**Recovery of
penalty does
not prejudice
right to take
other
proceedings**

**Government
not liable at
law**

**Power of
Water Board
to declare
matters
pertaining to
bodies of
water**

**Qualified
engineer**

Sanctions

83 (1) Except where it is otherwise provided, all penalties imposed by this Ordinance, or by any Rules in force under it, may be recovered by any person thereto authorised by the Governor

(2) The said penalties may be recovered from the person actually committing the offence or from the person in whose employment he is, and on whose behalf he is acting, or from both, or if the person actually committing the offence is a resident native labourer, or a member of his family, under the Resident Native Labourers Ordinance, 1925, from the person on whose farm such resident native labourer or the member of his family may have been actually residing at the time of the offence

84 (1) Every penalty imposed upon any person by this Ordinance or by any Rule made under the powers conferred by this Ordinance shall be without prejudice to the right of the Water Board to recover from such person—

- (a) any sum for any damage sustained by it through his act or default,
- (b) the cost and expenses incurred by it in remedying any such damage

(2) The payment of any such penalty shall not bar or affect the right of the Water Board or any person authorised by it to bring any action or to take any proceeding against such person

85 No action at law shall lie against or be maintainable against the Crown, the Government, the Water Board, or any officer of Government for any act done on account of an authorisation, licence or sanction, or for any damage caused thereby

86 The Water Board is hereby empowered for all the purposes of this Ordinance to declare whether particular channels or depressions are watercourses and whether particular bodies of water are streams, swamps, natural lakes or springs, and to declare, define or delineate the boundaries thereof, and all matters pertaining thereto, and to alter such declaration

87 (1) Where in the provisions of this Ordinance, or of any Rules made thereunder, it is required that any acts shall be done or requirements be provided by a qualified engineer the provisions as to such engineer shall be those embodied in Rules made under this Ordinance

(2) The onus of proof that projects, plans, documents, and applications required under this Ordinance to be supplied, prepared, or provided by a qualified engineer have been so supplied, prepared or provided shall be with the party presenting or using them

88 (1) Notwithstanding anything contained in this Ordinance, it shall be lawful for the Water Board to authorise by sanction for any fixed period of time the diversion, abstraction, obstruction, or use of water and the works required therefor according to such terms and conditions as the Water Board may embody in the sanction or as may be prescribed by Rules made under this Ordinance

(2) In the event of any works not being in conformity with a sanction, or in the event of a sanction having been terminated the Water Board may forthwith demolish any such works and recover the cost of such demolition from the person concerned in any competent court

(3) A sanction shall not grant a water right, shall not be appurtenant to any piece of land, and shall not be transferable

(4) A sanction may be renewed at the discretion of the Water Board for such period as it may think fit

(5) A sanction or a copy thereof certified by the Chairman of the Water Board shall be evidence in any court of the matters comprehended in the sanction

89 The Governor in Council may direct that State works may be executed in augmentation, modification, or improvement and subject to provisions herein contained, in supersession of, any other works, for or comprising the employment of waters, and he may at any time order that any works contemplated or under execution or completed, shall be State-aided to such an extent as may be authorised by the Legislative Council

90 (1) Every operator, and his managers, servants and workmen shall afford to any inspecting officer such information as is within their knowledge and power in all matters relating to any inquiry held by him under the provisions of this Ordinance, and shall submit to such inspecting officer all plans, specifications, drawings and documents relating to the construction maintenance, repair or state of repair of the works or any portion thereof

(2) The production of instructions in writing signed by the Chairman of the Water Board or his deputy shall be sufficient evidence of the authority of such inspecting officer

91 (1) The Water Board, or any person deputed by it, may in the exercise of the right of the Crown to the control of bodies of water enter upon any land and inspect such bodies of water and take such measures as are thought fit for the conservation and regulation of such water and for its preservation from pollution and for the protection of the bed over which it flows and for removing any obstruction from and for clearing and deepening such bed or may interfere summarily to prevent the excessive or illegal diversion, waste or pollution of such water or interference with such bed, and it shall not be necessary for the Water Board or any person deputed by it to obtain an injunction or other order of a court to entitle it or him to make such entry or to take such measures

(2) Compensation shall be paid to the holder of any such land for any actual injury by the measures, other than measures for the avoidance of waste or removal of unauthorised works or stopping unauthorised diversion abstraction or obstruction of water, taken under the powers conferred by this section, and failing agreement the amount of such compensation shall be determined by arbitration under the Arbitration Ordinance Cap 18

- (18) Drainage and reclamation of swamps
- (19) Water power rights
- (20) Abandoned works
- (21) Appointment, powers and duties of water bailiffs
- (22) Investigation of water resources and establishment of water gauges and marks
- (23) Constitution, powers, obligations, duties and membership of District Water Boards and all matters pertaining thereto
- (24) Generally for the better carrying out of the objects of this Ordinance

Such Rules may provide for the imposition of a penalty for the infraction thereof not exceeding one thousand shillings and in default of payment thereof a term of imprisonment of either description not exceeding three months.

Production of Gazette to be evidence of validity of regulations

98 The production of a copy of the Gazette containing any order, rule, or notice purporting to have been made under this Ordinance shall be evidence, until the contrary is proved, of the due making of such rule or notice, and that all preliminary steps have been duly taken necessary to give full force and effect to the same

Repeal
Cap 140

99 Section 145 of the Crown Lands Ordinance and all Rules made thereunder are hereby repealed without prejudice to anything lawfully done thereunder previous to the coming into operation of this Ordinance

AN ORDINANCE

No 36 OF 1929

Assented to in His Majesty's name this thirty-first day of December, 1929

EDWARD GRIGG,
Governor

Date of assent

[31ST DECEMBER, 1929]

An Ordinance to Extend the existing Legislative Council of the Colony to a date not later than the 20th day of February, 1931

**W
B**

Date of commencement

22nd January, 1930

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

Short title

I This Ordinance may be cited as "the Legislative Council (Emergency) Ordinance, 1929," and shall be read as one with the Legislative Council Ordinance (Chapter 24 of the Revised Edition), hereinafter referred to as "the Principal Ordinance"

2 Notwithstanding anything contained in the Principal Ordinance the Legislative Council now existing shall be dissolved on the 20th day of February, 1931, unless it shall have been previously dissolved by the Governor by Proclamation and the provisions of the Principal Ordinance shall apply as if the 20th day of February, 1931, were the end of a period of three years from the date of the first election

Extension of
existing
Council

AN ORDINANCE

No 37 OF 1929

Assented to in His Majesty's name this thirty-first day of December, 1929

EDWARD GRIGG,
Governor

[31ST DECEMBER, 1929] Date of assent

**An Ordinance to Repeal the Alteration of Time
Ordinance, 1928**

4th January, 1930

Date of
commencement

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 Alteration of Short title Time (Repeal) Ordinance, 1929," and shall come into operation at midnight on the 4th day of January, 1930

2 At and after midnight on the 4th day of January, 1930, time within the Colony and Protectorate shall be deemed to be and shall be two and one half hours fast on Greenwich mean time

3 The Alteration of Time Ordinance, 1928, is hereby repealed

Repeal of
Ordinance
No 11 of
1928

AN ORDINANCE

No 38 OF 1929

Assented to in His Majesty's name this thirty-first day of December, 1929

EDWARD GRIGG,
Governor

[31ST DECEMBER, 1929] Date of assent

**An Ordinance to Amend the Natives' Arms
Ordinance**

31st December, 1929

Date of
commencement

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 Natives' Arms Short title (Amendment) Ordinance, 1929," and shall be read as one with the Natives' Arms Ordinance (Chapter 137 of the Revised Edition), hereinafter referred to as "the Principal Ordinance"

Amendment of
section 3 of
the Principal
Ordinance

2 Section 3 of the Principal Ordinance is hereby amended by adding at the end of the section the following —

Provided that no employer, owner, or occupier shall give or issue to any native any such permission or permit as is mentioned in paragraphs (b), (c) or (d) of this section without the written authority of a district commissioner to give or issue permissions or permits

The district commissioner may authorise any employer, owner, or occupier to give or issue such permissions or permits either generally or to such numbers of natives only as the district commissioner may decide, and subject to such conditions as the district commissioner may think fit

Provided further that every employer, owner or occupier who is authorised to give or issue such permissions or permits as aforesaid shall within seven days of giving or issuing any such permission or permit report to the district commissioner the giving or issuing of such permission or permit together with the particulars prescribed by section 4 of this Ordinance "

Power to
revoke

3 Any permission or permit given or issued under the provisions of the Principal Ordinance may at any time be revoked by the employer, owner, or occupier giving or issuing the same or by a district commissioner

Provided that any employer, owner or occupier who revokes any permission or permit given or issued by himself shall within seven days report to the district commissioner the revocation of such permission or permit and the reasons therefor

(2) In the event of any works not being in conformity with a sanction, or in the event of a sanction having been terminated, the Water Board may forthwith demolish any such works and recover the cost of such demolition from the person concerned in any competent court

(3) A sanction shall not grant a water right, shall not be appurtenant to any piece of land, and shall not be transferable

(4) A sanction may be renewed at the discretion of the Water Board for such period as it may think fit

(5) A sanction or a copy thereof certified by the Chairman of the Water Board shall be evidence in any court of the matters comprehended in the sanction

89 The Governor in Council may direct that State works may be executed in augmentation, modification, or improvement and subject to provisions herein contained, in supersession of any other works, for or comprising the employment of waters, and he may at any time order that any works contemplated or under execution or completed, shall be State-aided to such an extent as may be authorised by the Legislative Council

Joint State
and other
works

90 (1) Every operator, and his managers, servants and workmen shall afford to any inspecting officer such information as is within their knowledge and power in all matters relating to any inquiry held by him under the provisions of this Ordinance, and shall submit to such inspecting officer all plans specifications, drawings and documents relating to the construction, maintenance, repair or state of repair of the works or any portion thereof

Information
to be afforded
to inspecting
engineer

(2) The production of instructions in writing signed by the Chairman of the Water Board or his deputy shall be sufficient evidence of the authority of such inspecting officer

Proof of his
authority

91 (1) The Water Board, or any person deputed by it, may in the exercise of the right of the Crown to the control of bodies of water enter upon any land and inspect such bodies of water and take such measures as are thought fit for the conservation and regulation of such water and for its preservation from pollution and for the protection of the bed over which it flows, and for removing any obstruction from and for clearing and deepening such bed or may interfere summarily to prevent the excessive or illegal diversion, waste or pollution of such water or interference with such bed, and it shall not be necessary for the Water Board or any person deputed by it to obtain an injunction or other order of a court to entitle it or him to make such entry or to take such measures

Right of entry
of the Crown

(2) Compensation shall be paid to the holder of any such land for any actual injury by the measures, other than measures for the avoidance of waste or removal of unauthorised works or stopping unauthorised diversion, abstraction or obstruction of water, taken under the powers conferred by this section, and failing agreement the amount of such compensation shall be determined by arbitration under the Arbitration Cap 18 Ordinance

Cap 18

Water Board
may institute
proceedings

92 The Water Board shall be entitled to institute and maintain any proceeding in any court against any person accused of any offence against this Ordinance, and may in its own name take any civil proceeding against any person

Statement
under oath

93 The Water Board may require any statement called for under this Ordinance, or under any Rules thereunder, to be verified by oath, affidavit, affirmation or declaration

Notices,
how given

94 (1) A notice required to be served in pursuance of this Ordinance, or of Rules under it, shall be served—

- (a) by delivery of the same personally to the person required to be served, or, if such person is absent or cannot be found, to his agent, or
- (b) by leaving the same at the usual or last known place of abode of such person, or
- (c) by post addressed to the usual or last known place of abode of such person or
- (d) in the case of a notice required to be served on a local authority, or corporate body or company, by delivering the same to their clerk, or secretary, or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office

(2) Provided that if the landholder is not known and after diligent inquiry cannot be found, the notice may be served by leaving it, addressed to the landholder, with some occupier of the land, or, if there is not an occupier, then by causing it to be put in a conspicuous position on the property

(3) Provided also that a notice required to be given to a landholder may be addressed by the description of the "landholder" of the land or premises described (in the address) in respect of which the notice is given, without further name or description

(4) Provided further that where under the provisions of this Ordinance notices or other documents require to be served on or by a native in a native reserve or communal reserve the notices or other documents shall have the same force and effect if served on or by the Chief Native Commissioner or such officer as he may appoint

Proof of
orders

95 All documents purporting to be orders made by the Governor in Council, or by the Governor, or by the Water Board, or by the Director, or by the officer deputed by the Water Board or Director, as the case may be shall be received in evidence and shall be deemed to be those orders without further proof of handwriting or otherwise unless the contrary is shown

Water Appeal
Board

96 (1) There shall be established a Water Appeal Board which shall consist of—

- (a) a judge of the Supreme Court (who shall be Chairman) to be appointed by the Governor on the advice of the Chief Justice, and
- (b) two other persons, who shall be appointed by the Governor from time to time

(2) In every case in which a licence has been cancelled by the Water Board under the powers conferred by this Ordinance, the person whose licence has been cancelled may appeal to the Water Appeal Board within thirty days of the date of the cancellation of his licence

(3) On the hearing of the appeal, the Water Appeal Board may confirm the order of the Water Board cancelling the licence, or may revoke such order

(4) For the purpose of every appeal under this section, the Water Appeal Board shall have all the powers vested in commissioners under sections 10, 11 and 12 of the Commissions of Inquiry Ordinance

Cap 25

(5) The Water Appeal Board may make such Rules in connection with the hearing of appeals under this section as to it may seem fit

(6) All appeals heard by the Water Appeal Board shall be decided by a majority of votes of the Chairman and the members of the said Board

(7) Every decision of the Water Appeal Board shall be final and binding on all parties concerned

97 The Governor in Council may, on the advice of the Rules Water Board, from time to time, make Rules providing for all or any purposes whether general or to meet particular cases that may be convenient for the administration of this Ordinance, or that may be necessary or expedient for carrying out the objects or purposes of this Ordinance, and where there may be in this Ordinance no provision or no sufficient provision in respect of any matter or thing necessary or expedient for giving full effect to this Ordinance, providing for or supplying such omission or insufficiency, and without prejudice to the foregoing powers, providing for all or any of the matters following —

- (1) Privileges or rights of riparian holders
- (2) Examinations, fees, registration and other matters pertaining to qualified engineers
- (3) Units of water
- (4) Charges for diversion, abstraction, storage and use of water and fees for services in connexion with water rights and sanctions
- (5) Drainage of lands
- (6) Associations of operators
- (7) Community, public and urban projects
- (8) Controlling and measuring devices
- (9) Action during drought
- (10) Sanctions
- (11) Water rights in Native Reserves
- (12) Temporary works and diversions of water
- (13) Documents and plans to be submitted by applicants under this Ordinance
- (14) Forms to be used under this Ordinance
- (15) Inspection of works
- (16) Relations between operators and municipal and other local authorities
- (17) Easements

- (18) Drainage and reclamation of swamps
- (19) Water power rights
- (20) Abandoned works
- (21) Appointment, powers and duties of water bailiffs
- (22) Investigation of water resources and establishment of water gauges and marks
- (23) Constitution, powers, obligations, duties and membership of District Water Boards and all matters pertaining thereto
- (24) Generally for the better carrying out of the objects of this Ordinance

Such Rules may provide for the imposition of a penalty for the infraction thereof not exceeding one thousand shillings and in default of payment thereof a term of imprisonment of either description not exceeding three months

Production of Gazette to be evidence of validity of regulations

98 The production of a copy of the Gazette containing any order, rule, or notice purporting to have been made under this Ordinance shall be evidence, until the contrary is proved, of the due making of such rule or notice, and that all preliminary steps have been duly taken necessary to give full force and effect to the same

**Repeal
Cap 140**

99 Section 145 of the Crown Lands Ordinance and all Rules made thereunder are hereby repealed without prejudice to anything lawfully done thereunder previous to the coming into operation of this Ordinance

AN ORDINANCE

No 36 OF 1929

Assented to in His Majesty's name this thirty-first day of December, 1929

EDWARD GRIGG,
Governor

Date of assent

[31ST DECEMBER, 1929]

An Ordinance to Extend the existing Legislative Council of the Colony to a date not later than the 20th day of February, 1931

Date of commencement

22nd January, 1930

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

Short title

1 This Ordinance may be cited as "the Legislative Council (Emergency) Ordinance, 1929," and shall be read as one with the Legislative Council Ordinance (Chapter 24 of the Revised Edition), hereinafter referred to as "the Principal Ordinance"

2 Notwithstanding anything contained in the Principal Ordinance the Legislative Council now existing shall be dissolved on the 20th day of February, 1931, unless it shall have been previously dissolved by the Governor by Proclamation and the provisions of the Principal Ordinance shall apply as if the 20th day of February, 1931 were the end of a period of three years from the date of the first election

Extension of
existing
Council

AN ORDINANCE

No 37 OF 1929

Assented to in His Majesty's name this thirty-first day of December, 1929

EDWARD GRIGG,
Governor

[31ST DECEMBER, 1929] Date of assent

**An Ordinance to Repeal the Alteration of Time
Ordinance, 1928**

4th January, 1930

Date of
commencement

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 Alteration of Short title Time (Repeal) Ordinance 1929," and shall come into operation at midnight on the 4th day of January, 1930

2 At and after midnight on the 4th day of January, 1930, time within the Colony and Protectorate shall be deemed to be and shall be two and one half hours fast on Greenwich mean time

3 The Alteration of Time Ordinance, 1928, is hereby repealed

Repeal of
Ordinance
No 11 of
1928

AN ORDINANCE

No 38 OF 1929

Assented to in His Majesty's name this thirty-first day of December, 1929

EDWARD GRIGG,
Governor

[31ST DECEMBER, 1929] Date of assent

**An Ordinance to Amend the Natives' Arms
Ordinance**

31st December, 1929

Date of
commencement

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 Natives' Arms Short title (Amendment) Ordinance, 1929," and shall be read as one with the Natives' Arms Ordinance (Chapter 137 of the Revised Edition), hereinafter referred to as "the Principal Ordinance"

Amendment of
section 3 of
the Principal
Ordinance

2 Section 3 of the Principal Ordinance is hereby amended by adding at the end of the section the following —

"Provided that no employer, owner, or occupier shall give or issue to any native any such permission or permit as is mentioned in paragraphs (b), (c) or (d) of this section without the written authority of a district commissioner to give or issue permissions or permits

The district commissioner may authorise any employer, owner, or occupier to give or issue such permissions or permits either generally or to such numbers of natives only as the district commissioner may decide, and subject to such conditions as the district commissioner may think fit

Provided further that every employer, owner or occupier who is authorised to give or issue such permissions or permits as aforesaid shall within seven days of giving or issuing any such permission or permit report to the district commissioner the giving or issuing of such permission or permit together with the particulars prescribed by section 4 of this Ordinance "

Power to
revoke

3 Any permission or permit given or issued under the provisions of the Principal Ordinance may at any time be revoked by the employer, owner, or occupier giving or issuing the same or by a district commissioner

Provided that any employer, owner or occupier who revokes any permission or permit given or issued by himself shall within seven days report to the district commissioner the revocation of such permission or permit and the reasons therefor