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GOVERNMENT NOTICE NO. 590

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

K. W. SIMMONDS,
Acting Clerk to the Legislative Council.

A Bill to Amend the Personal Tax Ordinance, 1940

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

1. This Ordinance may be cited as the Personal Tax (Amendment) Ordinance, 1945, and shall be read as one with the Personal Tax Ordinance, 1940, hereinafter referred to as the principal Ordinance. Short title.
No. 45 of 1940.
- 5 2. Section 2 of the principal Ordinance is hereby amended by substituting a colon for the full-stop at the end of the definition of "total income" and adding thereto the following proviso:— Amendment of
section 2 of
the principal
Ordinance.

"Provided that, with effect from the 1st day of January, 1940, item (k) of sub-section (1) of section 10 of the Income Tax Ordinance, 1940, shall not apply for the purposes of this definition."
- 10 3. Section 7 of the principal Ordinance is hereby amended by deleting sub-section (3) thereof and by substituting therefor the following sub-sections:— Amendment of
section 7 of
the principal
Ordinance.

15 "(3) If any individual is aggrieved by the demand of a collector under the provisions of this section he may, within thirty days after the date of such demand, apply to the collector in writing to revise the amount of the demand. Such application shall state the precise grounds of his objection, and if such collector

20 refuses to revise the amount of the demand, or if the individual and the collector are unable to reach agreement as to the amount of tax and penalty for which such individual is liable, such individual may, within twenty-one days after the date of such refusal or of such failure to reach agreement, appeal to any

25 magistrate having jurisdiction in the district or place in which such individual is for the time being staying or residing.

(4) The Supreme Court may make Rules governing appeals to magistrates under sub-section (3) of this section and providing for the method of tendering evidence and prescribing the procedure to be followed."

Repeal and replacement of section 10 of the principal Ordinance.
Power of magistrate.

4. Section 10 of the principal Ordinance is hereby repealed and the following section is substituted therefor:—

“10. If it appears that any individual makes default in the payment of any tax or penalty due from him, and whether or not a demand has been made upon such individual under the provisions of sub-section (2) of section 7 of this Ordinance, any magistrate, having jurisdiction in the district or place in which the individual in default is for the time being staying or residing, may, and upon an application in writing by a collector shall, issue a summons directing the individual to attend before him at a time to be named in the summons, to show cause why he should not be ordered to pay the amount due as a judgment debt.”

Amendment of section 16 of the principal Ordinance.

5. Section 16 of the principal Ordinance is hereby amended as follows—

(a) by inserting the figure and brackets “(1)” between the figures “15” and “16” and the word “There” in line one thereof;

(b) by adding thereto the following sub-sections:—

“(2) The Governor may exempt any person or class of persons from payment of the whole or any portion of the tax, and may in like manner rescind or vary any such exemption.

(3) The onus of proving exemption from the payment of the tax under the provisions of this section shall be upon the person claiming such exemption.”

MEMORANDUM OF OBJECTS AND REASONS

Clause 2 seeks to amend the definition of “total income”. When the principal Ordinance was enacted, Kenya residents who were members of the East African Forces were liable to pay personal tax by reference to their total incomes including their pay. As a result of the transfer of the Colony’s liability in respect of war expenditure to Imperial funds any pay issued to His Majesty’s Forces from those funds became exempt from Kenya Income Tax under the provisions of section 10 (1) (k) of the Income Tax Ordinance, 1940, and similarly such pay should have been excluded from “total income” for the purpose of personal tax. This effect was not appreciated until recently, with the result that sums have been paid in excess of the requirements of the existing law. It is not proposed to provide for the refunding of such excess payments because it was always the intention that pay issued to Kenya residents who were members of His Majesty’s Forces should be included in “total income”. The object of clause 2 is to legalize the collection of such payments in the past and to remedy the omission for the future.

Clause 3 remedies a drafting error in section 7 of the principal Ordinance. Sub-section (3) of that section empowered the Chief Justice to prescribe the procedure under which appeals against the payment of personal tax could be heard by a magistrate. It should have provided for the appropriate rules to be made by the Supreme Court.

Clauses 4 and 5 seek to amend sections 10 and 16 of the principal Ordinance to make it clear that even though a demand for payment of personal tax has not been made by a collector a magistrate may require any individual, who has not paid the tax, to appear before him and to show why payment has not been made, and if possible to prove his title to exemption. Under section 7 of the principal Ordinance it is the duty of every individual to tender payment of the tax for which he is liable without demand by a collector. In practice many individuals fail to comply with this statutory requirement and where they have no permanent or postal address the only efficient means of determining their liability is to require their presence before a magistrate who can then hear any objection or appeal which may be submitted to him.

As the law stands at present the individual whose liability for personal tax is remitted by the Governor under the provisions of section 17 for any year is exempted from any further payments under the provisions of paragraph (f) of section 16. This is not intended and *clause 5* of this Bill deletes paragraph (f) of section 16 and substitutes for it a new sub-section giving a clear authority for the Governor to exempt any person or class of persons for such period as may be necessary.

No expenditure of public moneys will be involved if the provisions of this Bill becomes law.

Nairobi, 29th June, 1945.

S. W. P. FOSTER SUTTON,
Attorney General.

GOVERNMENT NOTICE No. 591

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

K. W. SIMMONDS,
Acting Clerk to the Legislative Council.

A Bill to Amend the Game Ordinance, 1937

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

1. This Ordinance may be cited as the Game (Amendment) Ordinance, 1945, and shall be read as one with the Game Ordinance, 1937, hereinafter referred to as the principal Ordinance. Short title.
No. 38 of 1937.
2. Section 2 of the principal Ordinance is hereby amended— Amendment of
section 2 of
the principal
Ordinance.
 - 5 (a) by inserting between the definitions of "an animal mentioned in a Schedule" and "Government" the following definition:—
"forest officer" has the same meaning as in section 2 of the Forest Ordinance, 1941;";
 - 10 (b) by inserting between the definitions of "meat" and "private land" the following definition:—
"police officer" means any person who is a member of the Police Force constituted under the Police Ordinance, 1930;". No. 64 of 1930.
3. Section 20 of the principal Ordinance is hereby repealed and Repeal and
replacement of
section 20 of
the principal
Ordinance.
 - 15 the following section is substituted therefor:—

"20. (1) Every person shall produce a valid licence or permit issued to him under the provisions of this Ordinance, and shall sign his name and give his address in writing, upon being required so to do by any magistrate, justice of the peace, police officer, forest officer, honorary game warden, any officer appointed under the provisions of section 3 of this Ordinance or any servant of the Game Department who is duly authorized in writing in that behalf by the Game Warden. Power to demand
licence,
signature and
address.

(2) Any person who fails without reasonable cause to comply with any of the provisions of this section shall be guilty of an offence."
4. Section 48 of the principal Ordinance is hereby amended— Amendment of
section 48 of
the principal
Ordinance.
 - 30 (a) by deleting the words "game warden or" in lines two and eleven thereof;
 - 35 (b) by inserting a comma followed by the words "any officer appointed under the provisions of section 3 of this Ordinance or any servant of the Game Department who is duly authorized in writing in that behalf by the Game Warden" between the words "warden" and "thinks" in line three and between the words "warden" and "finds" in line 12 thereof respectively.
5. Sub-section (1) of section 49 of the principal Ordinance is hereby amended— Amendment of
section 49 of
the principal
Ordinance.
 - 40 (a) by deleting the words "game warden or" in lines four, eight and ten thereof;
 - 45 (b) by inserting a comma followed by the words "any officer appointed under the provisions of section 3 of this Ordinance or any servant of the Game Department who is duly authorized in writing in that behalf by the Game Warden" between the words "warden" and "may" in line five, "warden," and "or" in line nine, and "warden" and "has" in line 10 thereof respectively.

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to include duly authorized servants of the Game Department among the persons who are given powers to require the production of licences under section 20, powers of search and seizure under section 48, and powers of arrest under section 49.

2. The opportunity has been taken to delete the term "game warden" from these sections. There is only one Game Warden, and the persons to whom it was intended, by the term "game warden", to give the powers conferred by these sections are all officers appointed under the provisions of section 3 of the principal Ordinance, that is to say, all officers of the Game Department.

3. The existing section 20 of the principal Ordinance gives power to require the holder of a licence or permit to produce it. Alternatively he may sign his name. This provides no check in the case of a person who has been "lent" a licence by a licence-holder. The proposed new section will require a person to produce his licence and to sign his name and give his address. The case of a person who has inadvertently left his licence or permit at home is met by the words "without reasonable cause" in the proposed sub-section (2).

4. No expenditure of public moneys will be involved if the provisions of this Bill become law.

T. A. BROWN,
Nairobi, 14th June, 1945. *Acting Attorney General.*

GOVERNMENT NOTICE No. 592

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

K. W. SIMMONDS,
Acting Clerk to the Legislative Council.

A Bill to Amend the Kenya and Uganda Railway Ordinance, 1927

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

Short title.

No. 15 of 1927.

Amendment of section 2 of the principal Ordinance.

No. 41 of 1941.

Amendment of section 70 of the principal Ordinance.

No. 41 of 1941.

No. 41 of 1941.

1. This Ordinance may be cited as the Kenya and Uganda Railway (Amendment) Ordinance, 1945, and shall be read as one with the Kenya and Uganda Railway Ordinance, 1927, hereinafter referred to as the principal Ordinance.

2. Section 2 of the principal Ordinance is hereby amended by deleting therefrom the definition of "Firebreak" and substituting therefor the following definition:—

"'Firebreak' means a firebreak constructed and maintained in accordance with such specifications and dimensions, and sited at such places, as may be specified by the High Commissioner in a notice served under sub-section (1) of section 7B of the Control of Grass Fires Ordinance, 1941.".

3. Section 70 of the principal Ordinance is hereby amended—

(1) by deleting paragraphs (a), (b), (c) and (d) of sub-section (2) thereof and by substituting therefor—

"(a) at the time such fire originated he had on his land a firebreak, and that such firebreak was in good condition; or

(b) if at the time such fire originated he had no firebreak on his land, up to the date upon which such fire occurred the High Commissioner had not served upon him a written notice under the provisions of sub-section (1) of section 7B of the Control of Grass Fires Ordinance, 1941:".

(2) by deleting the word "section" in line 1 of proviso (c) of sub-section (2) thereof, and by substituting the word "sub-section" therefor;

(3) by adding thereto the following sub-section:—

"(3) Nothing contained in sub-section (2) of this section shall apply to land situate in any native area as defined in section 2 of the Control of Grass Fires Ordinance, 1941.".

MEMORANDUM OF OBJECTS AND REASONS

This Bill is complementary to the Control of Grass Fires (Amendment) Bill.

Clause 2 seeks to substitute a new definition of "firebreak" to conform with the procedure contemplated by the proposed new section 7B in the Control of Grass Fires (Amendment) Bill.

Clause 3 is the corollary of clause 2 and seeks to delete the requirement that a person claiming under sub-section (2) of section 70 of the principal Ordinance should prove that there was a firebreak on railway land, and to substitute for it the requirement either that he had a firebreak as specified by the High Commissioner in a notice served under sub-section (1) of section 7B of the Control of Grass Fires Ordinance, 1941, or that no such notice had been served. By the proposed new sub-section (3) of section 70 land in native areas is excluded from the operation of sub-section (2) of section 70, for the reason that native areas are excluded from the proposed new section 7B in the Control of Grass Fires (Amendment) Bill.

No expenditure of public moneys will be involved if the provisions of this Bill become law.

S. W. P. FOSTER SUTTON,
Nairobi, 29th June, 1945. *Attorney General.*

GOVERNMENT NOTICE No. 593

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

K. W. SIMMONDS,
Acting Clerk to the Legislative Council.

A Bill to Amend the Control of Grass Fires Ordinance, 1941

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

1. This Ordinance may be cited as the Control of Grass Fires (Amendment) Ordinance, 1945, and shall be read as one with the Control of Grass Fires Ordinance, 1941, hereinafter called the principal Ordinance. Short title.
No. 41 of 1941.
2. Section 2 of the principal Ordinance is hereby amended by inserting the following definition between the definitions of "firebreak" and "local authority":—
 " 'High Commissioner' means the High Commissioner for Transport established by the Kenya and Uganda (Transport) Orders in Council, 1925 to 1938;". Amendment of
section 2 of
the principal
Ordinance.
3. Section 5 of the principal Ordinance is hereby amended by deleting sub-section (1) thereof and substituting the following therefor:—
 "(1) (a) The local authority, in the case of any area referred to in paragraphs (a) or (b) of the definition of 'local authority' in section 2 of this Ordinance, and
 (b) in the case of any other area, the Director after consulting the local authority of such area,
 may by order prohibit the burning of vegetation except at such times and under such conditions as may be stated in the order, and by such order may exempt any person from the provisions thereof." Amendment of
section 5 of
the principal
Ordinance.
4. Section 7 of the principal Ordinance is hereby amended—
 (a) by substituting a full stop for the colon which appears immediately after the word "property" in the fifteenth line of paragraph (a) of sub-section (1) thereof;
 (b) by deleting the proviso to paragraph (a) of sub-section (1) thereof;
 (c) by adding immediately after sub-section (3) thereof the following sub-section:—
 "(4) Nothing in this section contained shall apply to—
 (a) railway land adjoining a railway; and
 (b) land which is contiguous to railway land adjoining a railway." Amendment of
section 7 of
the principal
Ordinance.
5. The principal Ordinance is hereby amended by inserting immediately after section 7 thereof the following sections:—
 "7A. (1) Notwithstanding anything contained in the immediately preceding section a local authority may by order require that in any specified place or area within its jurisdiction firebreaks shall be constructed and maintained by any owners or occupiers of land situate in such place or area; and such order shall be published in the Gazette and in one newspaper circulating within such place or area at least one month prior to the coming into operation of such order.
 (2) Any owner or occupier who, in contravention of any order made under the provisions of sub-section (1) of this section, fails to construct or maintain the half firebreak on his side of a boundary shall be guilty of an offence.
 (3) Where any owner or occupier, in contravention of any order made under the provisions of sub-section (1) of this section, fails to construct or maintain the half firebreak on his side of a boundary, then, without prejudice to any penalty to which such owner or occupier may be liable under the provisions of sub-section (2) of this section, the local authority or the owner or occupier of the land adjoining such boundary shall be entitled to—
 (a) enter upon the land of such first-mentioned owner or occupier without being answerable for any act of trespass, and may construct and maintain the half firebreak on the side of the boundary which is occupied by such first-mentioned owner or occupier; and

Insertion of new
sections 7A and
7B in the
principal
Ordinance.

Local authorities
empowered
to order
compulsory
firebreaks.

Firebreaks on
land adjoining
railway land.

(b) recover from such first-mentioned owner or occupier the cost of such construction and maintenance.

(4) Nothing in this section contained shall apply to—

- (a) any native area;
- (b) the boundary of any owner or occupier where such boundary adjoins a native area;
- (c) railway land adjoining a railway; and
- (d) land which is contiguous to railway land adjoining a railway.

7B. (1) Notwithstanding the definition of 'firebreak' in section 2 of this Ordinance, the High Commissioner may serve a written notice requiring the owner or occupier of land which is contiguous to railway land adjoining a railway to construct within such period as may be specified in the notice, and thereafter to maintain, firebreaks which shall be to such specifications, of such dimensions, and sited at such places, as may be specified in the notice:

Provided that nothing in this section contained shall apply to any native area.

(2) Where an owner or occupier fails to comply with the terms of any notice served upon him under the provisions of sub-section (1) of this section, the High Commissioner shall be entitled to enter upon the land of such owner or occupier without being answerable for any act of trespass, and may construct and maintain firebreaks to such specifications and of such dimensions, and sited at such places, as have been specified in the notice.

(3) Where, under the powers conferred upon him by sub-section (2) of this section, the High Commissioner has entered upon land and constructed a firebreak, the owner or occupier of such land shall, on demand by the High Commissioner, pay to the High Commissioner a sum at the rate of thirty shillings per mile towards the cost of constructing such firebreak; and, where the High Commissioner maintains such firebreak, the owner or occupier of such land shall, in advance, pay to the High Commissioner on the first day of January in each year a sum at the rate of thirty shillings per mile towards the cost of maintenance by the High Commissioner of such firebreak. If any owner or occupier fails, on demand, to pay to the High Commissioner any sum of money made payable under this sub-section, the High Commissioner may recover such sum of money as a civil debt.

(4) Where any owner or occupier of land which is contiguous to railway land adjoining a railway constructs a firebreak in accordance with the provisions of a notice served upon him under the provisions of sub-section (1) of this section, or where the High Commissioner under the powers conferred upon him by sub-section (2) of this section, enters upon the land of such owner or occupier and constructs a firebreak, the High Commissioner shall pay to the person entitled thereto compensation for any damage to trees, crops or other produce caused by the construction of such firebreak.

(5) Nothing in this section contained shall be deemed to preclude an owner or occupier of land which is contiguous to railway land adjoining a railway—

- (a) from constructing and maintaining any firebreak as specified by the High Commissioner in a notice served on him under sub-section (1) of this section at his own expense; or
- (b) if such firebreak has been constructed by the High Commissioner, from thereafter maintaining such firebreak to the satisfaction of the High Commissioner at his own expense."

Repeal and
replacement of
section 10 of
the principal
Ordinance.
State of danger.

6. Section 10 of the principal Ordinance is hereby repealed and the following section is substituted therefor:—

"10. (1) In the case of any area referred to in paragraphs (a) or (b) of the definition of 'local authority' in section 2 of this Ordinance, the local authority may by order declare a state of danger in respect of any area within its jurisdiction, and in the same or any subsequent order may prohibit the burning of vegetation within the whole or any part of such area for such period and under such conditions during the continuance of the state of danger as it may think fit, and by such order may exempt any person from the provisions thereof. Every order made under the provisions of this sub-section shall be published in the Gazette and in one newspaper circulating within such area, and, in the case of an order prohibiting the burning of vegetation shall be so published at least seven days prior to its coming into operation.

- (2) (a) In the case of any area referred to in paragraphs (c), (d) or (e) of the definition of 'local authority' in section 2 of this Ordinance, the Provincial Commissioner may by order declare a state of danger. Every such order shall be published in the Gazette and in one newspaper circulating within such area.
- (b) Upon a state of danger being declared under the provisions of this sub-section, every District Commissioner having jurisdiction within such area may by order prohibit the burning of vegetation within the whole or any part of his district, for such period as he may think fit during the continuance of the state of danger.
- (c) Every order made by a District Commissioner under the provisions of this sub-section shall—
- (i) in the case of any district, or part thereof, which is not within a native area, be published in one newspaper circulating within such district or part thereof at least seven days prior to its coming into operation;
- (ii) in the case of any district, or part thereof, which is within a native area, be communicated by the District Commissioner to the appropriate native authority in such manner as he shall think fit at least seven days prior to its coming into operation."

MEMORANDUM OF OBJECTS AND REASONS

Clause 3 seeks to transfer to municipal and district councils the power to prohibit the burning of vegetation, which is conferred upon the Director of Agriculture by the existing section 5 of the principal Ordinance.

2. The proposed new section 7A in clause 5 will empower local authorities to order compulsory firebreaks in areas situate within their jurisdiction, and any owner or occupier who fails to comply with the order will be guilty of an offence. Without prejudice to any penalty to which a defaulting owner or occupier may be liable, the section gives to a local authority, or to the owner or occupier of the land adjoining the land of the defaulter, the same remedy as is provided by sub-section (2) of section 7 of the principal Ordinance. Native areas and railway land are excluded from the provisions of this proposed section.

3. The object of clause 4 and the proposed new section 7B in clause 5 is to substitute new provisions, in the case of the Railway, for the provisions which exist in section 7 of the principal Ordinance. By section 7 a person can be compelled by an owner or occupier of adjoining land to construct and maintain his half of a firebreak, which means (by virtue of the definition of "firebreak") 30 feet on his side of the common boundary. In the case of the Railway, there is such a variation in conditions along their railway lines that a firebreak as defined in the principal Ordinance is of little use. No definition which fixes either the dimensions or the siting of a firebreak is practicable in the case of land adjoining railway land because the requirements must necessarily vary with the different conditions prevailing at different places along the railway line. Sub-section (1) of the proposed new section 7B will empower the High Commissioner to serve a notice requiring an owner or occupier of land adjoining a railway to construct and maintain on his land firebreaks of such dimensions and sited at such places as may be specified in the notice. If the owner or occupier fails to comply with the notice, sub-section (2) will empower the railway authorities to enter upon his land and do the work. In the latter case the owner or occupier will be required to pay to the High Commissioner the sum of thirty shillings per mile of firebreak as his contribution towards the cost of construction, and thirty shillings per annum towards the cost of maintenance. By sub-section (4) compensation will be payable by the High Commissioner for any damage to trees, crops or other produce caused in the course of construction. Native areas are excluded from the provisions of this proposed section.

4. Clause 6 seeks to transfer to municipal and district councils the power to declare a state of danger which is conferred upon the Governor by the existing section 10 of the principal Ordinance, and to maintain the existing powers of municipal and district councils to prohibit the burning of vegetation upon a state of danger being declared. By sub-section (2) of the proposed new section 10, in the case of areas which come under the jurisdiction of local authorities other than municipal and district councils, the Provincial Commissioner is empowered to declare the state of danger, and each District Commissioner is given the power to make the order prohibiting the burning of vegetation.

5. It is not possible to estimate the expenditure of public moneys which will be involved if the provisions of this Bill become law.

Nairobi, 13th June, 1945.

T. A. BROWN,
Acting Attorney General.

GOVERNMENT NOTICE No. 594

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

K. W. SIMMONDS,
Acting Clerk to the Legislative Council.

A Bill to Confer on the Supreme Court Temporary Jurisdiction in Certain Matrimonial Causes where the Relevant Marriage took place on or after the Third day of September, Nineteen Hundred and Thirty-nine

BE IT 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 Matrimonial Causes (War Marriages) Ordinance, 1945.
- Interpretation. 2. (1) In this Ordinance, unless the context otherwise requires—
“the appointed day” means such day as His Majesty may by Order in Council appoint in pursuance of the provisions of the Matrimonial Causes (War Marriages) Act, 1944;
“marriage” includes a purported marriage which was void *ab initio* and “husband” and “wife” shall be construed accordingly.
(2) The jurisdiction conferred by or under this Ordinance on any court shall be concurrent with any jurisdiction as respects the same matters which would, apart from this Ordinance, be exercisable by any other court.
- Extension of jurisdiction of Supreme Court to certain marriages irrespective of domicile. No. 33 of 1939. 3. (1) In the case of marriages to which this section applies—
(a) the Supreme Court shall have jurisdiction in and in relation to proceedings for divorce or for nullity of marriage as if both parties were at all material times domiciled in the Colony;
(b) section 5 of the Matrimonial Causes Ordinance, 1939 (which restricts the presentation of petitions for divorce during the first three years after marriage) shall not apply:
Provided that this sub-section shall not apply in relation to any proceedings for divorce or for nullity of marriage unless those proceedings were commenced not later than five years after the appointed day.
(2) The marriages to which this section applies are marriages celebrated on or after the 3rd day of September, 1939, but before the appointed day, where the husband was, at the time of the marriage, domiciled outside the Colony, and the wife was, immediately before the marriage, domiciled in the Colony:
Provided that this section shall not apply to any marriage if, since the celebration thereof, the parties thereto have at any time resided together in the country in which the husband was domiciled at the time of the residence, and for the purposes of this proviso the whole of the United States of America, the whole of India and the whole of any British possession outside India (other than the Colony) shall each be treated as one country.
(3) This section shall not extend or alter the jurisdiction of the Supreme Court in, or in relation to, any proceedings for divorce or for nullity of marriage where, at the commencement of those proceedings, the parties are domiciled anywhere in the Colony.

MEMORANDUM OF OBJECTS AND REASONS

By virtue of section 4 (a) of the Matrimonial Causes Ordinance, 1939 (No. 33 of 1939), a decree of dissolution of marriage or of nullity of marriage cannot be made in the Colony unless the petitioner is domiciled in the Colony at the time when the petition is presented. By a recent Imperial enactment war-time marriages contracted by women domiciled in England with men domiciled elsewhere are enabled to be dissolved by British Courts notwithstanding that a woman on marriage acquires the domicile of her husband and under English law jurisdiction in divorce is determined by the country of domicile. That Act also provides for recognition in all British Courts (other than Dominion Courts) of similar dissolutions effected by decree in British Courts outside the United Kingdom by virtue of express jurisdiction in the same sense conferred by the laws of those territories. Since such war-time marriages have occurred in the Colony, it is thought desirable to provide an equivalent remedy in the event of desertion by the husband to the country of his domicile, or in the event of any other cause arising for the dissolution of such marriages.

Nairobi, 29th June, 1945.

S. W. P. FOSTER SUTTON,
Attorney General.

GOVERNMENT NOTICE NO. 595

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

K. W. SIMMONDS,
Acting Clerk to the Legislative Council

A Bill to Amend the Asian Officers' Family Pensions Ordinance, 1942

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

1. This Ordinance may be cited as the Asian Officers' Family Pensions (Amendment) Ordinance, 1945, and shall be read as one with the Asian Officers' Family Pensions Ordinance, 1942, hereinafter referred to as the principal Ordinance. Short title.
No. 10 of 1945.
- 5 2. Section 2 of the principal Ordinance is hereby amended by deleting the proviso to sub-section (4) thereof and substituting therefor the following proviso:— Amendment of
section 2 of
the principal
Ordinance.

"Provided that on the dissolution of any marriage, which is under this section deemed to be a valid marriage for the purposes of this Ordinance, by reason of the death of the wife of that marriage or by reason of a divorce or annulment, then for the purposes of this Ordinance—

 - 10 (a) the first marriage after such death or divorce or annulment shall also be deemed to be a valid marriage, and
 - 15 (b) such divorce or annulment only and no other divorce or annulment shall be deemed to be a valid divorce or annulment."
- 20 3. Section 5 of the principal Ordinance is hereby amended by inserting between the comma and the word "all" in line one of sub-section (3) thereof the words "all contributions made from the general revenue of the Colony to the credit of members,". Amendment of
section 5 of
the principal
Ordinance.
- 25 4. Section 12 of the principal Ordinance is hereby amended by deleting item (a) of sub-section (1) thereof, and by re-numbering items (b) to (f) as items (a) to (e) respectively. Amendment of
section 12 of
the principal
Ordinance.
- 30 5. The principal Ordinance is hereby amended by inserting the following new section immediately after section 13 thereof:— Insertion of new
section 13A in
the principal
Ordinance.
Contributions
to Fund from
public revenue.

"13A. (1) Upon the coming into operation of this section there shall be paid to the Fund from the general revenue of the Colony to the credit of each member a sum equal to the total amounts which would have been paid to his credit if contributions had been made from the general revenue of the Colony at the rate of two and one-half per centum of his annual salary or pension for the time being from the commencement of this Ordinance, plus three and one-half per centum interest compounded annually.

(2) From and after the coming into operation of this section there shall be paid to the Fund from the general revenue of the Colony to the credit of each member a contribution at the rate of two and one-half per centum of his annual salary or pension as the case may be:

Provided that no contribution shall be paid from the general revenue of the Colony in the case of a member—

 - 45 (a) who is transferred from the service of the Government to other public service and the provisions of section 19 or section 20 of this Ordinance apply;
 - (b) whose contributions to the Fund have ceased under the provisions of this Ordinance.

(3) Notwithstanding the provisions of sub-section (1) of section 21 of this Ordinance, in the case of a member who is married or is a widower with children of pensionable age, who retires from the public service before attaining the age of 55 and is granted a pension from the funds of the Colony, who continues to contribute at the rate at which he was contributing immediately prior to his retirement, the contributions from the general revenue of the Colony shall be paid to his credit in the Fund at the rate of two and one-half per centum of his annual pension.

(4) All contributions payable to the Fund from the general revenue of the Colony to the credit of any member under the

provisions of this section shall be paid on the last day of each calendar month, and shall accrue daily.

(5) Any Asian officer who has not elected to become a member of the Fund under the provisions of section 11 of this Ordinance may within ninety days from the coming into operation of this section or within such extended period as the Governor may in any particular case allow, and subject to the provisions of section 11 of this Ordinance, elect to become a member of the Fund."

Amendment of section 17 of the principal Ordinance.

6. Section 17 of the principal Ordinance is hereby amended by deleting the word "thereunder" and substituting therefor the words "made by a member and no contributions paid from the general revenue of the Colony to the credit of a member".

Amendment of Schedule B of the principal Ordinance.

7. Schedule B of the principal Ordinance is hereby amended by inserting immediately below the words "INSTRUCTIONS FOR THE USE OF THE TABLES" the words following:—

"N.B.—In these Tables wherever the word 'contribution' or 'contributions' appears, the reference is both to the members' contribution or contributions and to the contribution or contributions from the general revenue of the Colony to the credit of each member."

MEMORANDUM OF OBJECTS AND REASONS

The object of *clause 2* of this Bill is to remedy an omission in the proviso to sub-section (4) of section 2 of the principal Ordinance, which deals with cases where a marriage is dissolved by divorce but does not deal fully with cases where a marriage is annulled.

By the definition of "Asian officer" in sub-section (1) of section 2 of the principal Ordinance power is given to the Governor to approve officers who are not members of the Kenya Asian Local Civil Service for membership of the Fund. Paragraph (a) of sub-section (1) of section 12 thereof conflicts with that power. *Clause 4* of the Bill seeks to delete that paragraph.

Pensions payable under the European Widows and Orphans Pensions Scheme are based on an assumed interest rate of 6 per cent; that is to say, it is assumed that moneys contributed, if invested, would yield an interest rate of 6 per cent. The Asian Officers' Family Pensions Ordinance, 1942, is based on the premise that the average rate of interest earned by moneys in the Fund is 3½ per cent. It is considered that there can be no justification for a self-supporting fund for Asians when Europeans have a scheme which is subsidized by Government. It is proposed, therefore, that the Fund set up under the Asian Officers' Family Pensions Ordinance, 1942, should be subsidized by the Government to an extent sufficient to achieve the result that benefits per £1 contribution are the same as in the case of Europeans, and it is considered that the subsidization should take the form of a payment into the Fund by the Government of a sum equal to a percentage of the officer's salary. The Government Actuary has advised that the appropriate percentage is 2½ per cent. *Clauses 3, 5 and 6* of this Bill seek to make legal provision for such payment.

It is estimated that an annual expenditure of public funds of approximately £880 (based on existing salaries) with effect from the 1st of May, 1942, will be involved if the provisions of this Bill become law.

Nairobi, 3rd July, 1945.

S. W. P. FOSTER SUTTON,
Attorney General.