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GOVERNMENT NOTICE No 784

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

T V N FORTESCUE,
Acting Clerk to the Legislative Council

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A BILL ENTITLED
AN ORDINANCE TO PROVIDE FOR THE ESTABLISH-
MENT OF WAGES COUNCILS AND A WAGES
ADVISORY BOARD FOR THE REGULATION OF
THE REMUNERATION AND CONDITIONS OF
EMPLOYMENT, AND FOR OTHER MATTERS
INCIDENTAL THERETO AND CONNECTED
THEREWITH

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

PART I—APPLICATION

1. This Ordinance may be cited as the Regulation of Wages and Conditions of Employment Ordinance, 1950 Short title
2. In this Ordinance unless the context otherwise requires,— Interpretation
- “board” means a wages board established under the provisions of sub-section (1) of section 4 of this Ordinance,
- “employee” means a person who is employed in employment to which this Ordinance applies,

“Member” means the Member of the Executive Council of the Colony for the time being responsible for labour matters,

“outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in his own home or in other premises not in the control or management of the person who gave out the materials,

“registered agreement” means any agreement relating to the rate of wages or the conditions of employment registered under the provisions of section 25 of this Ordinance,

“statutory minimum remuneration” means remuneration fixed by a wages regulation order,

“wages council order” means an order made under the provisions of sub-section (1) of section 6 of this Ordinance establishing a wages council,

“wages regulation order” means an order made under sub-section (3) of section 10 of this Ordinance,

“wages regulation proposals” means wages regulation proposals submitted pursuant to sub-section (1) of section 10 of this Ordinance

Application to
employment
under the Crown

3. This Ordinance shall apply to employment by or under the Crown in the same way and to the same extent as if the Crown were a private person but shall not apply to—

(a) persons in the armed services of the Crown, or 25

(b) the police, or

(c) persons in the civil employment of His Majesty's Government in the United Kingdom,

other than civilian employees either of the armed forces of the Crown or of His Majesty's Government in the United Kingdom who are engaged locally 30

PART II—APPOINTMENT OF WAGES ADVISORY BOARD

Appointment of
Wages Advisory
Board and
determination of
basic minimum
wage

4. (1) The Governor in Council shall appoint a Wages Advisory Board which shall, in accordance with the provisions of this section, upon being required as hereinafter mentioned by the Governor in Council so to do, inquire into the wages paid and the other conditions of employment of employees in the Colony 35

(2) The Governor in Council, if he is of the opinion that it is expedient to fix a basic minimum wage in respect of employees generally in any area of the Colony or in respect of any category of employees either generally or in any area of the Colony, may require the Wages Advisory Board to inquire into the matter. The Board shall thereupon inquire into the matter and submit recommendations to the Member which may specify the basic minimum wage which, in the opinion of the Board should be paid to all or any of the employees coming within its terms of reference and thereafter any such recommendation shall be deemed to be a wages regulation proposal within the meaning of section 10 of this Ordinance 45 50

(3) Subject to the provisions of sub-section (2) of this section, the Member may require the Board to inquire into the rates of wages and other conditions of employment of employees generally or of any specified category of employees either generally or in any specified area 55

(4) After completing any inquiry required by the Member under sub-section (3) of this section, the Wages Advisory Board shall make a report to the Member and in such report may recommend the establishment of a wages council or may make proposals in the nature of wages regulation proposals, and such proposals shall be deemed to be a wages regulation proposal within the meaning of section 10 of this Ordinance 60

5. (1) The provisions of the First Schedule to this Ordinance shall have effect with respect to the constitution, officers and proceedings of the Wages Advisory Board

Constitution,
proceedings and
powers of Wages
Advisory Board

(2) Where any matter is referred under section 4 of this Ordinance to the Wages Advisory Board the Board shall make all such investigations as appear to it to be necessary

(3) A Wages Advisory Board shall, for the purposes of any inquiry under this Ordinance have all the powers of a Commission of Inquiry under the Commission of Inquiry Ordinance in relation to the summoning of witnesses and the production of books, plans and documents, and as to contumacy and indemnity to witnesses

Cap 25

PART III—ESTABLISHMENT OF WAGES COUNCILS

6. (1) The Member, either in pursuance of a recommendation by the Wages Advisory Board made pursuant to sub-section (4) of section 4 of this Ordinance or of his own motion, if he is of the opinion that no adequate machinery exists for the effective regulation of the remuneration or the conditions of employment of any employees or groups of employees, may by order (hereinafter called a wages council order) establish a wages council to perform, in relation to the employees or groups of employees in employment to which this Ordinance applies, the powers and functions specified in the subsequent sections of this Ordinance

Establishment of
wages councils
Wages council
orders

(2) The powers and functions conferred on a wages council under the provisions of sub-section (1) of this section may be exercised in relation to—

- (i) all employees, or
- (ii) the employees in any industry, undertaking or occupation, or
- (iii) the employees in any specified area, or
- (iv) any class of employee, or
- (v) any class of employee in any specified occupation, or
- (vi) any class of employee in any specified area

7. (1) Before making a wages council order the Member shall publish in the Gazette a notice of his intention to make such order, specifying a place where copies of a draft thereof may be inspected, and a time (which shall not be less than thirty days from the date of the publication) within which any objection to the draft order shall be sent to the Member

Making of
wages council
orders
Procedure

(2) Every objection shall be in writing and shall state—

- (a) the specific grounds of objection,
- (b) the omissions, additions or modifications asked for,

and the Member shall consider any such objection made by or on behalf of any person appearing to him to be affected, being an objection sent to the Member within the time specified in the notice, but shall not be bound to consider any other objection

(3) If there are no objections which the Member is required by the last preceding sub-section to consider, or if, after considering all such objections, he is of the opinion that all those objections will be met by modifications which he proposes to make under this sub-section or are frivolous he may make the order either in terms of the draft or subject to such modifications, if any, as he thinks fit being modifications which, in his opinion, do not effect important alterations in the character of the draft order as published

(4) Where the Member does not proceed under the last preceding sub-section he may, if he thinks fit withdraw the draft order, or amend it and if he amends it otherwise than

under the last preceding sub-section, all the provisions of this section shall have effect in relation to the amended draft order as they have effect in relation to an original draft order

(5) Where the Member makes a wages council order he shall publish it in the Gazette and in at least one local newspaper circulating in the Colony, and the order shall come into operation on the date on which it is so published or on such later date as is specified therein

Abolition and
variation of
limits of
jurisdiction of
wages councils

8. The Member may at any time by order abolish, or vary the limits of the jurisdiction of a wages council, and the provisions of the last preceding section shall apply in relation to any such order as they apply in relation to a wages council order

General
provisions
as to wages
councils

9. (1) The provisions of the Second Schedule to this Ordinance shall have effect with respect to the constitution and proceedings of wages councils

(2) A wages council shall consider, as occasion requires, any matter referred to it by the Labour Commissioner with reference to the industrial conditions prevailing as respects the employees and employers in relation to whom it operates, and shall make a report on the matter to the Labour Commissioner and may, if it thinks it expedient so to do, make of its own motion a recommendation to the Labour Commissioner and where such a recommendation is so made the Labour Commissioner shall report on the matter to the Member who shall forthwith take it into consideration

PART IV—WAGES REGULATION ORDERS

Power to fix
remuneration,
conditions of
employment
and holidays

10. (1) Subject to and in accordance with the provisions of this section a wages council shall have power to submit to the Member proposals (hereinafter referred to as wages regulation proposals) for fixing the remuneration to be paid and for prescribing the conditions of employment to be provided, either generally or for any particular work, by their employers to and for all or any of the employees in relation to whom the wages council operates

(2) Before submitting any wages regulation proposals to the Member a wages council shall make such investigations as it thinks fit and shall publish in the Gazette and in at least one local newspaper circulating in the Colony notice of the proposals, stating the place where copies of the proposals may be obtained and the period, not being less than thirty days, within which written representations with respect to the proposals may be sent to the council, and the council shall consider any written representations made to it within that period and shall make such further inquiries as it considers necessary and may then submit the proposals to the Member either without amendment or with such amendments as it thinks fit having regard to the representations

Provided that if the council, before publishing its proposals, resolves that, in the event of no representation with respect to the proposals being made to it within the said period, the proposals shall be submitted to the Member, the council shall thereupon, if no representation be made, submit the proposals to the Member

(3) Where the Member receives any wages regulation proposals, or any proposals made by the Wages Advisory Board under section 4 of this Ordinance, he may, with the approval of the Governor in Council, make an Order (hereinafter referred to as a wages regulation order) giving effect to the proposals as from such date as may be specified in the order

Provided that the Member may, if he thinks fit, refer the proposals back to the council or Wages Advisory Board as the

case may be, and the council or Wages Advisory Board shall thereupon reconsider them having regard to any observations made by the Member and may, if it thinks fit, re-submit the proposals to the Member either without amendment or with
 5 such amendments as it thinks necessary having regard to those observations, and where proposals are so re-submitted with amendment the like procedure shall be had thereon as in the case of original proposals

(4) The date to be so specified under sub-section (3) of
 10 this section shall be a date subsequent to the date of the order, and where the date so specified does not correspond with the beginning of the period for which wages are paid the order shall, as respects that employee, become effective as from the
 15 beginning of the next such period following the date specified in the order

(5) As soon as the Member has made a wages regulation order, he shall give notice of the making thereof to the wages council or the Wages Advisory Board as the case may be, and the Chairman of such council or Wages Advisory Board, as the
 20 case may be, shall publish the order in the Gazette and in at least one local newspaper circulating in the Colony for the purpose of informing, so far as practicable, all persons who will be thereby affected

(6) Any wages regulation proposals and any wages regu-
 25 lation order for giving effect thereto may make different provision for different cases and may also contain provision for the amendment or revocation of previous wages regulation orders

11. (1) Any reference in this Part of this Ordinance to re-
 30 muneratation shall be construed as a reference to the amount obtained or to be obtained in cash by the employee from his employer clear of all deductions in respect of any matter whatsoever except any deduction lawfully made for the purpose of a contribution to any approved provident or pension fund or scheme

Computation of remuneration

(2) Remuneration (including a basic minimum wage) fixed
 35 by a wages regulation order is hereinafter referred to as "statutory minimum remuneration"

12. (1) If a contract between an employee to whom a
 40 a wages regulation order applies and his employer provides for the payment of less remuneration than the statutory minimum remuneration, or does not provide for the conditions of employment prescribed in a wages regulation order, it shall have effect as if for that less remuneration there were substituted the statutory minimum remuneration and as if there were inserted the
 45 prescribed conditions of employment as aforesaid

Effect and enforcement of wages regulation orders

(2) If an employer fails to pay to an employee to whom a wages regulation order applies remuneration not less than the statutory minimum remuneration or fails to provide any such employee with the conditions of employment prescribed in the
 50 order, he shall be guilty of an offence under this section and liable to a fine not exceeding four hundred shillings for each offence, and where the employer or any other person charged as a person to whose act or default the offence was due has been found guilty of an offence under this section consisting
 55 of a failure to pay remuneration not less than the statutory minimum remuneration, the court may order the employer to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid to the employee by way of remuneration, if the provision of this
 60 Part of this Ordinance had been complied with and the amount actually so paid

(3) Where proceedings are brought under the last preceding sub-section in respect of an offence consisting of a failure to pay remuneration not less than the statutory minimum remuneration, then—

(a) if the employer or any other person charged as a person to whose act or default the offence was due is found guilty of the offence, evidence may be given of any like contravention on the part of the employer or such other person in respect of any period during the twelve months immediately preceding the date of the offence, and

(b) on proof of the failure, the court may order the employer to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid during that period to the worker by way of remuneration, if the provisions of this Part of this Ordinance had been complied with, and the amount actually so paid

Provided that evidence shall not be given under paragraph (a) of this sub-section unless notice of intention to give such evidence has been served with the summons, warrant or complaint

(4) The powers given by this section for the recovery of sums due from an employer to a worker shall be in addition to and not in derogation of any right to recover such sums by civil proceedings

Provided that no person shall be liable to pay twice in respect of the same cause of action

Power of officers
to institute
proceedings

13. An officer acting under this Ordinance may, if it appears to him that a sum is due from an employer to an employee by reason of the payment to such employee remuneration less than the statutory minimum remuneration institute on behalf of and in the name of that employee proceedings for the recovery of that sum

Employee
waiting for
work on
employer's
premises—when
to be deemed to
be employed

14. (1) Subject to the provisions of sub-section (2) of this section for the purpose of calculating the amount due to an employee employed in any occupation, in respect of which a wages regulation order has been made, such employee shall be deemed to have been employed for all the time during which he was present on the premises of his employer, if he proves, to the satisfaction of the court, that he was so present with such employer's express consent

Provided that—

(a) where an employee resides on the premises of his employer, he shall not be deemed to be employed for any time during which he is present on the premises by reason only of the fact that he is so resident, and

(b) an employee while present during normal times in a room or place in which no work is being done shall be deemed to be present for a purpose not connected with his employment

(2) Nothing in this section shall render it necessary to remunerate any person employed as a casual labourer in respect of any time during which he is present on his employer's premises before the time appointed for the commencement or after the termination of the work for which he is engaged

Permits to
infirm and
incapacitated
persons

15. (1) If, as respects any employee employed or desiring to be employed in such circumstances that a wages regulation order applies or will apply to him, a labour officer is satisfied, on application being made to him for a permit under this section either by the employee or the employer or a prospective employer, that the employee is affected by infirmity or physical

incapacity which renders him incapable of earning the statutory minimum remuneration, he may, if he thinks fit, grant, subject to such conditions, if any, as he may determine a permit authorizing the employment of the employee at less than the statutory minimum remuneration, and, while the permit is in force, the remuneration authorized to be paid to the employee by the permit shall, if those conditions are complied with, be deemed to be the statutory minimum remuneration

(2) Where an employer, pursuant to any document purporting to be a permit granted under the preceding sub-section authorizing the employment of an employee at less than the statutory minimum remuneration, employs any employee, then, if the employer has notified the labour officer in question that, relying on that document, he is employing or proposing to employ that employee at a specified remuneration, the document shall, notwithstanding that it is not or is no longer a valid permit relating to that employee, be deemed, subject to the terms thereof and as respects only any period after the notification, to be such a permit until notice to the contrary is received by the employer from the labour officer

16. (1) Where an employee to whom a wages regulation order applies is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium

Employers not
to receive
premiums

Provided that nothing in this sub-section shall apply to any such payment duly made in pursuance of any instrument of apprenticeship if such payment is made—

(a) not later than four weeks after the commencement of the apprenticeship, or

(b) at any time with the approval of a wages council

(2) If any employer acts in contravention of this section, he shall be liable in respect of each offence to a fine of four hundred shillings and the court may, in addition to imposing a fine, order him to repay to the employee or other person by whom the payment was made the sum improperly received by way of premium

17. (1) The employer of employees to whom a wages regulation order applies shall keep such records as are necessary in English to show whether or not the provisions of this Part of this Ordinance are being complied with as respects them, and the records shall be retained by the employer for two years

Records and
notices

(2) An employer shall exhibit in the prescribed manner such notices as may be prescribed for the purpose of informing his employees of any wages regulation proposals or wages regulation order affecting them, and shall give notice in any other prescribed manner to the said employees of the said matters and of such other matters if any, as may be prescribed

(3) If an employer fails to comply with any of the requirements of this section he shall be guilty of an offence and liable in respect of each offence to a fine not exceeding one hundred shillings, and to an additional fine of forty shillings for each day during which the omission continues after such conviction

18. (1) Where the immediate employer of any employee is himself in the employment of some other person and that employee is employed on the premises of that other person that other person shall for the purposes of this Part of this Ordinance be deemed to be the employer of that employee jointly with the immediate employer

Joint liability of
agent and
superior
employer
specified
operation

(2) Where an employer is charged with an offence under this Part of this Ordinance, he shall be entitled, upon information duly laid by him and on giving to the prosecution not less than three days' notice in writing of his intention to have any other person to whose act or default he alleges that the offence in question was due, brought before the court at the time appointed for the hearing of the charge, and if after the commission of the offence has been proved the employer proves that the offence was due to the act or the default of that other person that other person may be convicted of the offence

(3) Where a defendant seeks to avail himself of the provisions of sub-section (2) of this section—

(a) the prosecution as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him if he gives evidence and to cross-examine any witnesses called by him in support of his pleas and to call rebutting evidence,

(b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto

(4) Where it appears to an officer acting for the purposes of this Part of this Ordinance that an offence has been committed in respect of which proceedings might be taken under this Part of this Ordinance against an employer, and the officer is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the employer could establish a defence under sub-section (2) of this section the officer may cause proceedings to be taken against that other person without first causing proceedings to be taken against the employer

In any such proceedings the defendant may be charged with and, on proof that the offence was due to his act or default, be convicted of the offence with which the employer might have been charged

Appointment
of officers
No 2 of 1938

19. (1) All officers appointed as labour officers under the provisions of the Employment Ordinance, 1938 shall be deemed to be officers appointed to act for the purposes of this Ordinance

(2) The Member may appoint such other officers as he may deem necessary for carrying out the provisions of this Ordinance

(3) Every officer acting under this Ordinance shall be furnished by the Labour Commissioner with a certificate of his appointment or authority so to act and when so acting, shall if so required by any person affected produce the certificate to such person

Powers of
officers

20. (1) An officer acting under this Ordinance shall have power for the performance of his duties—

(a) to require the production of wages sheets or other records of wages kept by an employer, and records of payments made to outworkers by persons giving out work, and any other such records as are required by this Part of this Ordinance to be kept by employers, and to inspect and examine those sheets, or records, and copy any material part thereof,

(b) to require any person giving out work and any outworker to give any information which it is in his power to give with respect to the names and addresses of the persons to whom the work is given out or from whom the work is received, as the case may be, and with respect to the payments to be made for the work,

- (c) at all reasonable times to enter any premises at which an employer to whom a wages regulation order applies carries on his business (including any place used, in connexion with that business, for giving out work to outworkers and any premises which the officer has reasonable cause to believe to be used by or by arrangement with the employer to provide living accommodation for employees),
- (d) to inspect and copy any material part of any list of outworkers kept by an employer or person giving out work to outworkers
- (e) to examine, either alone or in the presence of any other person, as he thinks fit with respect to any matters under this Part of this Ordinance, any person whom he has reasonable cause to believe to be or to have been an employee to whom a wages regulation order applies or applied or the employer of any such person or a servant or agent of the employer employed in the employer's business and to require every such person to be so examined and to sign a declaration of the truth of the matters in respect of which he is so examined

Provided that no person shall be required under paragraph (e) of this sub-section to give any information tending to incriminate himself

(2) An officer acting under this Ordinance may institute proceedings for any offence thereunder and may conduct any such proceedings

(3) (a) An officer acting under this Ordinance shall not disclose any information obtained in the exercise of the powers conferred by this section without the consent of the employer concerned otherwise than in connexion with the execution of this Ordinance

Provided that nothing in this sub-section shall apply to a disclosure of any information made for the purpose of any criminal proceedings which may be taken by virtue of this Ordinance or otherwise

(b) An officer contravening the provisions of this sub-section shall be liable to a fine not exceeding two thousand shillings

21. Any person who obstructs an officer acting under this Ordinance in the exercise of any power conferred by this Ordinance, or refuses to comply with any requirement of such an officer made in the exercise of any such power, shall be liable on conviction to a fine not exceeding four hundred shillings

Penalty for failing to allow inspection or hindering any officers

22 If any person makes or causes to be made or knowingly allows to be made any entry in a record required by this Part of this Ordinance to be kept by employers, which he knows to be false in a material particular or, for the purposes connected with this Part of this Ordinance, produces or furnishes or causes or knowingly allows to be produced or furnished, any wages sheet record, list or information which he knows to be false in a material particular, he shall be guilty of an offence and shall be liable to a fine not exceeding four hundred shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment

Penalty for false entries or records, producing false records or giving false information

PART V—JOINT INDUSTRIAL COUNCILS AND REGISTERED
AGREEMENTS

Interpretation

No 1 of 1943

- 23.** (1) For the purposes of this Part of this Ordinance—
 “association of employers” means any combination of employers, whether registered or not under the Trade Unions and Trade Disputes Ordinance, 1943, the object or one of the objects of which is to regulate conditions of employment of employees in any trade, industry or undertaking in which such employees or any of them are engaged,
 “an approved organization of employees” means—
 (a) any registered trade union which is, in the opinion of the Labour Commissioner, sufficiently representative of employees in the trade, industry or undertaking concerned,
 (b) the duly appointed employees’ representatives of a Joint Industrial Council,
 (c) any other group of employees approved in writing in that behalf by a labour officer
 (2) An association of employers may represent—
 (a) any employer who is a member of such association, and
 (b) any employer, not being a member of the association, who has intimated in writing to the Labour Commissioner that he has agreed to be represented by such association

Establishment
of Joint
Industrial
Councils

24. (1) Any employer or group of employees being desirous of establishing a Joint Industrial Council to ensure good industrial relations between employer and employees in any undertaking may submit to the Labour Commissioner proposals for the establishment of a Joint Industrial Council and the proposed constitution of such Joint Industrial Council Upon receipt of such proposals the Labour Commissioner, or an officer appointed by him in that behalf, shall consult the representatives of the other interested party and may, in his discretion, after making such inquiry as he deems necessary and if the parties concerned agree, approve the establishment and the constitution, with or without amendment, of such Joint Industrial Council and thereupon both the employer and the employees shall be bound by the rules of such constitution

(2) Where, prior to the commencement of this Ordinance, the Labour Commissioner has approved the establishment and constitution of a Joint Industrial Council such Council shall, unless within sixty days from the date of the commencement of this Ordinance either party to the establishment of such Council objects in writing to the Labour Commissioner be deemed to have been approved pursuant to the provisions of sub-section (1) of this section

Registered
agreement
Terms of

25. (1) Where any employer or association of employers has entered into any written agreement with employees or with an approved organization of employees prescribing the remuneration to be paid and other conditions of employment to be provided in any trade, industry or undertaking, either party may submit the agreement to the Labour Commissioner with a request that it be registered

(2) Any agreement providing for the matters referred to in sub-section (1) of this section which the Labour Commissioner has, prior to the commencement of this Ordinance, approved shall, unless within sixty days from the date of such commencement, either party to the agreement notifies

the Labour Commissioner in writing of his objection to its registration, be deemed to have been registered pursuant to the provisions of sub-section (1) of this section

26. A registered agreement shall have effect from such
 5 date and for such period as may be provided in such agree-
 ment and every contract of service entered into between an
 employer and the employees to whom such agreement relates
 shall if inconsistent with the terms of such agreement be
 deemed to be varied to the extent necessary to render it con-
 10 sistent with the terms of such agreement

Date and
duration of
registered
agreement

27. (1) If the Labour Commissioner is satisfied that in
 any undertaking there is no approved organization of
 employees, the employer in such an undertaking may submit
 to the Labour Commissioner a memorandum in writing
 15 (hereinafter referred to as a memorandum of terms of employ-
 ment) settling out the remuneration and other conditions of
 employment of the employees in such undertaking which
 already exist or which he is prepared to offer and the Labour
 Commissioner may, if he is satisfied that such conditions are
 20 reasonable, register such memorandum of terms of employ-
 ment

Memorandum
of employment
Terms of

(2) Any memorandum of terms of employment providing
 for the matters referred to in sub-section (1) of this section
 which the Labour Commissioner has, prior to the commence-
 25 ment of this Ordinance, approved, shall, unless within sixty
 days from the date of such commencement, the employer
 notifies the Labour Commissioner in writing of his objection
 to its registration, be deemed to have been registered pursuant
 to the provisions of sub-section (1) of this section

28 A memorandum of terms of employment shall have
 30 effect from such date as may be provided in the memorandum
 and, subject to any variations approved by the Labour Com-
 missioner, shall remain in force while any employee to whom
 it relates remains in such employment and every contract of
 35 service entered into with any employee in respect of employ-
 ment to which such memorandum applies shall, if inconsistent
 with the terms of such memorandum be deemed to be varied
 to the extent necessary to render it consistent with the terms
 of such memorandum

Date and
duration of
memorandum
of terms of
employment

29. No agreement shall be registered and no memo-
 40 randum of terms of employment shall be approved if it is
 inconsistent with the terms of conditions of employment
 regulated under the provisions of any other law in force in
 the Colony

Agreement not
to be registered
nor memo-
randum of
terms of
employment
approved if
inconsistent with
other law

30. (1) No alteration shall be made in respect of any
 45 remuneration or other condition of employment regulated by
 a registered agreement until such agreement has been in
 operation for a period of not less than six months

Restriction on
alteration of
registered
agreement or
memorandum
of terms of
employment

Provided that the Labour Commissioner may, in writing,
 50 consent to such an alteration if he is satisfied that the special
 circumstances of the case render it desirable that such altera-
 tion shall sooner be made

(2) No alteration shall be made in respect of any
 remuneration or other condition of employment contained
 55 in a memorandum of terms of employment without the
 approval of the Labour Commissioner

31. Where any wages council has been established in
 relation to employees in any industry undertaking or occupa-
 tion, no agreement or memorandum of terms of employment

Prior reference
to wages council
where appointed

relating to employees in such industry, undertaking or occupation shall be registered without prior reference to such wages council

Amendment of
registered
agreements

32. (1) Subject to the provisions of section 30 of this Ordinance, either party to a registered agreement who desires 5 any variation of the terms thereof shall give notice containing the proposals for such variation to the Labour Commissioner, and shall forward a copy of such notice to the other party to such agreement, and such other party shall, within 10 fourteen days or such longer period as the Labour Commissioner may approve of the receipt of such notice by him, signify in writing to the party making the proposals and to the Labour Commissioner whether or not he agrees to all or any of the proposals made in such notice

(2) Where agreement to such proposals is reached 15 between the parties to such agreement, the Labour Commissioner may vary such registered agreement accordingly

No 71 of 1948

(3) Where no such agreement is reached the matter shall become subject to the provisions of the Trade Disputes (Arbitration and Inquiry) Ordinance, 1948 20

(4) No registered agreement which relates to employees in any industry, undertaking or occupation in respect of which a wages council has been established shall be varied without reference to such council

Penalty

33. Any person who fails to signify to the party making 25 any proposals and to the Labour Commissioner whether or not he agrees to all or any of such proposals as required by sub-section (1) of section 32 of this Ordinance, shall be guilty of an offence and shall be liable to a fine not exceeding 30 four hundred shillings and to an additional fine not exceeding one hundred shillings for each day on which the offence is continued after conviction therefor

PART VI—GENERAL

Rules

34. The Governor in Council may make rules generally 35 for better carrying out the objects or purposes of this Ordinance and without prejudice to the generality of the foregoing words such rules may—

- (a) provide for the powers of a wages council and the Wages Advisory Board to enforce the attendance of witnesses and to take evidence on oath or otherwise 40 on any matter concerned with the subject of an inquiry under this Ordinance,
- (b) regulate the establishment, constitution and management of Joint Industrial Councils,
- (c) prescribe all matters which are authorized or required 45 by this Ordinance to be prescribed

Repeal
No 55 of 1946

35. The Minimum Wages Ordinance, 1946, is hereby repealed

Provided that minimum wages prescribed by the Governor in Council under the Ordinance hereby repealed and in 50 force at the time of the coming into operation of this Ordinance shall be deemed to have been prescribed by a wages regulation order made under section 10 of this Ordinance and shall continue in force but only until other provision shall be made under this Ordinance

FIRST SCHEDULE

(Section 5)

CONSTITUTION OFFICERS AND PROCEEDINGS OF THE WAGES
ADVISORY BOARD

1 The Wages Advisory Board shall consist of persons appointed by the Member, of whom—

- (a) not more than three persons shall be independent members one of whom shall be appointed by the Member to act as Chairman and another may be appointed by the Member to act as Deputy Chairman in the absence of the Chairman
- (b) not more than two persons shall be representative of employers,
- (c) not more than two persons shall be representative of employees

2 (a) The Member may appoint such number of persons as he thinks fit as assessors to be available to the Board, being persons who, in his opinion, have an expert knowledge of any of the matters with which the Board's inquiry is concerned

(b) An assessor shall not vote or otherwise be a party to any report or recommendation of the Board

3 The Member may appoint a secretary and such other officers as he thinks fit to the Board

4 The proceedings of the Board shall not be invalidated by reason of any vacancy therein or by any defect in the appointment of a member

5 The Member may make rules as to the meetings and procedure of the Board, including rules as to the quorum, but, subject to the provisions of this Ordinance and to any rules so made, the Board may regulate its procedure in such manner as it thinks fit

6 There shall be paid to members of and assessors to, the Board such remuneration and such travelling and other allowances as the Member may approve and all such remuneration and allowances shall be paid out of the general revenues of the Colony

7 The appointment of the Board shall be by notice in the Gazette, which shall specify its members and terms of reference

SECOND SCHEDULE

(Section 9)

CONSTITUTION, OFFICERS AND PROCEEDINGS OF WAGES COUNCILS

1 A wages council shall consist of persons appointed by the Member, that is to say—

- (a) of not more than three persons who shall be independent members, one of whom shall be appointed as Chairman and another as Deputy Chairman to act in the absence of the Chairman, and
- (b) such equal number of persons as the Member thinks fit, to represent employers and employees respectively, half of whom shall represent employers and half shall represent employees

2 Before making any appointment under sub-paragraph (b) of paragraph 1 of this Schedule, the Member shall consult any organizations appearing to him adequately to represent employers, or, as the case may be, employees concerned

3 The Member may appoint a secretary and such other officers as he thinks fit of a wages council

4 The proceedings of a wages council shall not be invalidated by reason of any vacancy therein or by any defect in the appointment of a member

5 A wages council may, if it thinks fit delegate any of its powers under this Ordinance (except the power to submit wages regulation proposals) to a committee or, as the case may be, sub-committee consisting of such number of persons, being members of the council, as the council thinks fit

Provided that the members of the committee or sub-committee representing employers and the members of the committee or sub-committee representing employees shall be equal in number

6 The Member may make rules as to the meetings and procedure of a wages council and of any committee or, as the case may be sub-committee thereof, including rules as to the quorum and the method of voting, but, subject to the provisions of this Ordinance and to any rules so made, a wages council and any committee or, as the case may be, sub-committee thereof may regulate its procedure in such manner as it thinks fit

7 The term for which a member of a wages council is to hold office shall be such as may be determined by the Member at the time of his appointment, and the conditions subject to which he is to hold office shall be such as may be prescribed

8 There may be paid to the members of a wages council appointed under sub-paragraph (b) of paragraph 1 of this Schedule such remuneration, and to any member of any such council such travelling and other allowances as the Governor may approve, and all such remuneration and allowances shall be paid out of the general revenues of the Colony

9 Every appointment of a wages council shall be by notice in the Gazette which shall specify its members and terms of reference

MEMORANDUM OF OBJECTS AND REASONS

This Bill will provide machinery for the regulation of the remuneration and the general conditions of employment of employees throughout the Colony

The Bill is divided into six Parts

Part I contains an interpretation clause and a clause providing that the Bill will apply (with certain exceptions) to employment under the Crown

Part II provides for the appointment of a Wages Advisory Board and sets out its powers and duties

Clause 5 and the First Schedule contain provision for the constitution and proceedings of the Wages Advisory Board

The principal duties of the Wages Advisory Board will be—

- (a) at the request of the Governor in Council if he is of opinion that it is expedient to fix a basic minimum wage in respect of employees generally in any area of the Colony or in respect of any category of employees either generally or in any area of the Colony, to inquire into the matter and submit recommendations to the Member for Labour as to the basic minimum wage which in the opinion of the Board should be paid to employees coming within its terms of reference or
- (b) if so required by the Member for Labour to inquire into the rates of wages and other conditions of employment of employees generally or any specified category of employees, either generally or in any specified area, and either to recommend the establishment of a wages council or to make proposals which are called wages regulation proposals

It will be appreciated that paragraph (a) above refers to basic minimum wages, while paragraph (b) refers to wages and conditions of employment and is not confined to basic minimum wages

Part III of the Bill provides for the establishment of wages councils. These are to be established by orders, made by the Member for Labour, termed wages council orders. A wages council order may (subject to the preliminaries and procedure mentioned below) be made by the Member for Labour, either in pursuance of a recommendation by the Wages Advisory Board or of the Member's own motion, if he is satisfied that no adequate machinery exists for the effective regulation of the remuneration or of the conditions of employment of any employees or groups of employees. Wages council orders may be made in relation to all employees, or the employees in any industry, undertaking or occupation, or in relation to any class of employee or any class of employee in any specified occupation or specified area (*Clause 6*)

Before making a wages council order the Member must publish in the Gazette a notice of his intention to make the order specifying the place where copies of a draft of it may be inspected. Objections may then be made and sent to the Member and objections by persons who will be affected by the order must be considered. After considering objections, the Member may either withdraw the order or proceed with it (as drawn or with unimportant alterations), or amend it substantially. If he amends it substantially, he must publish the amended draft order and again consider objections by persons affected. Wages council orders when made must be gazetted (*Clause 7*)

Wages councils are to consist of persons appointed by the Member, of whom not more than three are to be independent persons and of the others half are to represent employers and half employees (*Clause 9 (1) and the Second Schedule*)

The functions of a wages council are, in the first place, to consider any matter referred to it by the Labour Commissioner with reference to the industrial conditions prevailing as respects the employees and employers in relation to whom it operates and to report to the Labour Commissioner with or without making a recommendation. If a recommendation is made, the Labour Commissioner must report to the Member. The member is bound to consider any such recommendation (*Clause 9*)

Another function of a wages council is (subject to the preliminary procedure mentioned below) to submit to the Member for Labour proposals, termed wages regulation proposals, for fixing the remuneration to be paid and prescribing the conditions of employment to be provided, either generally or for any particular work, by their employers to and for all or any employees in relation to whom the wages council operates. The Member may, on receiving a wages regulation proposal, make an order giving effect to it. This is termed a wages regulation order. Or the Member may refer the proposals back for further consideration (*Clause 10 (3)*)

Before submitting wages regulation proposals to the Member a wages council is to make such investigation as it thinks fit, is to advertise notice of its proposals, and to consider written representations made to it with regard to the proposals (*Clause 10 (2)*)

Wages regulation orders must be published in the Gazette and in a local newspaper for the information of persons affected (*Clause 10 (5)*)

Remuneration fixed by a wages regulation order is termed "statutory minimum remuneration" (*Clause 11 (2)*)

The effect of a wages regulation order is stated in *clause 12*. That clause provides that, where a wages regulation order applies, any contract between an employee and his employer which does not provide for the statutory minimum remuneration or for any other conditions of employment prescribed in the wages regulation order shall be varied so as to have effect as if the statutory minimum remuneration and those conditions of employment were inserted in it. The clause also makes it an offence for the employer to fail to pay the statutory minimum remuneration or to fail to provide the conditions of employment prescribed in the wages regulation order.

Clause 14 deals with the question of when an employee waiting for work on an employer's premises is to be deemed to be employed, and *clause 15* permits the employment of injured and incapacitated persons at less than the statutory minimum remuneration.

Clause 16 forbids the receipt of premiums by employers except payments made in respect of apprenticeship.

Clause 17 prescribes the records and notices which must be kept and exhibited by employers and *clause 18* deals with criminal liability of agents and superior employers and provides for a special defence which is to be open to an employer in proceedings brought under Part IV of the Ordinance.

Part V provides for the establishment of Joint Industrial Councils and for registered agreements.

Clause 24 enables any employer or group of employees desirous of establishing a Joint Industrial Council for the purpose of ensuring good industrial relations between employer and employees to submit to the Labour Commissioner proposals for the formation of such a Council. The Labour Commissioner is empowered, after due consultation with the interested parties, to approve the formation and constitution of such a council. Where any such Council has been approved, both the employer and the employees are to be bound by the rules of its constitution.

Clause 25 deals with the registration of mutually negotiated agreements which fix the remuneration to be paid and other conditions of employment to be provided in any trade, industry or undertaking. The clause provides that either party to such an agreement made between an employer or association of employers and employees or an approved organization of employees may submit the agreement to the Labour Commissioner for registration.

Clause 26 provides that the agreement so registered shall have effect from such date and for such period as may be provided in it. Statutory sanction is thus given to these agreements.

Where in any undertaking there is no approved organization of employees capable of negotiating a registered agreement, the

employer in such an undertaking may, if he thinks fit, submit to the Labour Commissioner a memorandum of the remuneration and other conditions of employment which already exist in the undertaking or which he is prepared to offer and the Labour Commissioner, if he is satisfied that such remuneration and conditions are reasonable may register the memorandum. After registration, such a memorandum (called a "memorandum of terms of employment") will remain in force and be binding while any employee to whom it relates remains in such employment (*Clauses 27 and 28*)

Clause 29 prohibits the registration of any agreement or memorandum of terms of employment if it is inconsistent with the terms or conditions of employment regulated under the provisions of any other law in force in the Colony

Sub-clause (1) of clause 30 prohibits the alteration of the remuneration or any other condition of employment regulated by a registered agreement until it has been in operation for a period of not less than six months unless the consent in writing of the Labour Commissioner is given, and *sub-clause (2)* prohibits any alteration in respect of any remuneration or other condition of employment contained in a memorandum of terms of employment without the approval of the Labour Commissioner

Clause 31 prohibits the registration of any agreement or memorandum of terms of employment in relation to employees where a wages council has been established without prior reference to such wages council and *clause 32* states the procedure for amending registered agreements

Part VI contains general provisions

Clause 34 enables the Governor in Council to make rules for the better carrying into effect the objects and purposes of the Ordinance

Clause 35 repeals the Minimum Wages Ordinance, 1946, but preserves minimum wages prescribed under that Ordinance and in force at the commencement of the new Ordinance. Such minimum wages are to continue in force until other provision is made under the new Ordinance

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

Nairobi,
26th June, 1950

K K O'CONNOR,
Attorney General