

ELECTRIC POWER ORDINANCE

No. 23 of 1932.

Previous

17252/31

Subsequent

Sec. 11797/32 Genl.
(Machinery Act of 1932)

3184/33

Rogay

16/9/32

Mr. Stude

18/6

Mr. Achuar

18/8

Mr. Keff

26/9

309 Mukimani

27/8

Mr. Roberts Gray

18.10

Mr. Dossah

19

Mr. Allen

25/10

Liben

24/10

Mr. Allen

21/10

Mr. Priestman

24/10

Mr. Dossah

22

Mr. Roberts Gray

25.

Mr. Allen

29/7

Rm

State
Library

No. 12 copies of Annual Statement, 1931,
signed under the Electric Power Act

? put by

A.H.D.
1876-32

affidavit
1876
alone

ind

2. D/Gov. 417. 30th Aug. 32.

Trans. two authenticated and 12 printed copies of the
Electric power (Amat) Order., 1932, together with
Report by Attorney General.

(Spare copies to Library)

The maximum penalty under clause
6 seems severe.

: Subject to any legislative
enquiry non disallowance (53)

H.E. Poulshur
27/9/32

Section 107, as it appears in Chapter 166
of the 1926 revision, provided that any person acting
in the manner specified wilfully, fraudulently, "or
by culpable negligence" shall ~~forfeit a certain sum to~~
~~the licensee~~ "without prejudice to.....
the punishment of the offender" "forfeit and pay to
the licensee a certain sum. No great objection
could be taken to that. Now, however, the offender,
instead of being liable to pay a penalty to the
licensee

licensee, is liable to a fine or imprisonment or both. In other words, any infringement of the provisions of the section becomes a criminal offence; and the words quoted above are thrown open to objection, for it is contrary to fundamental principles to impose the penalty of imprisonment for negligence of this nature, ~~and~~ ^{or} to impose a penalty of fine and imprisonment and at the same time preserve liability to separate punishment for the same offence. I suggest, therefore, that the reference to culpable negligence and the words within brackets "or the punishment of the offender" should be deleted.

A
B

Robert Gray

18.10.32.

We can hardly dwell on, or even define signifying n-d-n, on such a point as this.

Despatch on line of G 3, adding as in Mr. Roberts' Whig minute, and asking that an early opportunity be taken for effecting the necessary amendment.

Sturges
 I have spoken with Mr. Roberts
 but he holds to his point & sticks to the
 former case if this was intended.
 I suggest, as at B & that I desire
 an addl. note to be made
 respecting health as in the report
 when of culpable negligence
 & def. archd.

V. H. R. 21/10/32
 Grace

Mr. Priestmann 24/10/32

Mr. *Driscoll*
Rohilla *W*
Mr. *Allen* 24.10.
Mr. Parkinson

C.D.
R. 26 OCT
D 98

Downing Street,

28 October, 1932.

Mr. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh.
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Sir,

I have the honour to acknowledge the receipt of your despatch No.417 of the 30th of August, forwarding authenticated copies of the Electric Power (Amendment) Ordinance, 1932, and to inform you that His Majesty will not be advised to exercise his power of disallowance in respect of this ordinance.

DRAFT.

KENYA

No. 809

Govr.

omit

2. I note, however that, whereas Section 107, as it appeared in Chapter 160 of the 1925 edition of the Laws of Kenya, provided that any person acting in the manner specified wilfully, fraudulently, or by culpable negligence" should "(without prejudice to..... the punishment

any other neglect or remedy for

punishment of the offender,
forfeit and pay to the licensee

a certain sum, Section 6 of
Ordinance No-23 of 1932 makes.

which preserves the
words quoted above,

the offender, instead of being
liable to pay a penalty to the
licensee, liable to a fine or
imprisonment, or both. In other
words, any infringement of the
provisions of the Section be-

comes a criminal offence,

3. I shall be glad to learn

if this was intended. If so,

I ^{am advised} consider that it is ^{not} contrary

to ~~fundamental~~ ^{unusual} principles to

impose ^a the penalty of imprison-

ment for ^{negligence} ~~negligence~~ of this

nature, ~~or~~ to impose a penalty

of fine and imprisonment, and,

at the same time, preserve

liability to separate punishment

although the conduct of the person
concerned was not fraudulent but
merely negligence, and when his
conduct is fraudulent his
conviction under section 107 would
be no bar to a subsequent
prosecution for theft

and contrary to fundamental
principles



for the same offence. ⁴ I suggest:

therefore, that the reference to culpable negligence, and the words within brackets "or the punishment of the offender" should be deleted, and that if desired an additional section ⁵ could be inserted prescribing penalties as in the repealed section for culpable negligence.

~~have, etc.~~

5. Pending the receipt of your reply to this dispatch no action will be taken to H.M. in respect of the Electric Power (Amendment) Bill, 1932

(Sgd.) R. O'NEILFE-LISTER

Libraig

—
Please see 06 of the Draft
at No 2: the Roberts Wray's
criticism.

Can you find any precedent,
wherein regard to that criticism
of the new provision proposed

sec 107 (1) of the Principal Act?

dt Allen

26/10

Compared with sec 17 of the
Old Coast Elec Supply Ordinance
(Cap. 57) the Kenya provisions seem
mild

J. H. Drummond

26/10

KENYA.

No. 417



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
26
26 SEP 1932
COL. OFFICE

AUGUST, 1932.

Sir,

I have the honour to forward herewith two authenticated and twelve printed copies of an Ordinance entitled "the Electric Power (Amendment) Ordinance, 1932" together with a Legal Report by the Attorney General.

Ordinance.

Legal Report.

2. This Ordinance passed its third reading in the Legislative Council on the 20th July, 1932, and His Excellency the Governor assented to it in His Majesty's name on the 18th August, 1932.

*Answered 80928.07 1932
J.M. - (4 in 23202/34)*

I have the honour to be,

Sir,

Your most obedient, humble servant,

M. L. Gordon

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.C.B., M.C., R.F.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON S.W.1.



Colony and Protectorate of Kenya.

IN THE TWENTY-THIRD YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
JOSEPH ALOYSIUS BYRNE, K.C.M.G., K.B.E., C.B.,
Governor.

Assented to in His Majesty's
name this *18th* day of August, 1932.

Governor.

AN ORDINANCE TO AMEND THE ELECTRIC
POWER ORDINANCE

No. XXIII of 1932

An Ordinance to Amend the Electric Power Ordinance.

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, 1932," 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. Section 4 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 4 of the Principal Ordinance.

4. (1) (a) Except as provided in sub-section (2) of section 3 of this Ordinance no public or local authority, company or person not being a licensee under this Ordinance shall generate, or, subject to the provisions of the Electric Supply Line Ordinance, shall transmit a supply of electrical energy or construct, maintain or operate works for such generation or transmission of electrical energy.

Licensees only may supply electrical energy on sale or construct or maintain supply lines or other works.
Cap. 166.

(b) Notwithstanding the provisions of sub-section

(1) (a) of this section:—

(i) The Governor in Council may authorize any public or local authority, company or person in any place not within the licensed area of any authorized distributor and whose primary business or occupation is not the supply of electrical energy to supply such energy for sale or any other consideration to one or more particular authorities, companies or persons not within any such licensed area.

Supply to particular consumers under authority of the Governor in Council.

Authority of Governor for private generating plants.

Cap. 106.

Public or local authorities to use only electrical energy, save with permission of Governor in Council.

Exemption for locomotives and vehicles and the lighting thereof.

Authorized distributor only may receive bulk supply.

Repeal and replacement of section 62 of the Principal Ordinance. For protection of human life, public or private property and contraband and safety of employed.

(ii) The Governor may authorize any such authority in any place not within any such licensed area, or any company or person whether within any such licensed area or not, to generate or, subject to the provisions of the Electric Supply Line Ordinance, to transmit a supply of electrical energy for its or his own use and to erect, maintain and operate the works necessary therefor:

Provided that where the rated capacity of the generating plant does not exceed 25 kilowatts and the pressure in any part of the system connected thereto does not exceed 150 volts in the case of direct current or 50 volts in the case of alternating current, and provided further that no part of such system is without the close or curtilage of the premises in which the electrical energy is generated, no licence or authority shall be necessary.

(3) No public or local authority may use, within the licensed area of an authorized distributor, any form of energy for power or lighting purposes (excepting portable power and portable lighting purposes) other than electrical energy, without the authority of the Governor in Council:

Provided that nothing in this sub-section shall prevent the use of steam or internal combustion engines for locomotive purposes, or the generation of electrical energy for the lighting of such vehicles.

(6) No public or local authority, company or person not being licensed as an authorized distributor shall receive a supply of electrical energy from a bulk supply licensee, nor shall a bulk supply licensee supply electrical energy except to such an authorized distributor.

3. Section 62 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

62. (1) In the execution of works in connexion with the construction, modification, maintenance or operation

of any electrical supply line or apparatus or conductor connected thereto, every public or local authority, company or person shall—

(a) in no way injure the works, conveniences or property belonging to any other such authority, company or person, nor obstruct or interfere with public traffic, except with the previous written consent of the Governor;

(b) take adequate precautions to protect from danger any person engaged upon such works by the provision and maintenance in safe and efficient condition of the necessary safety appliances for the use of such persons and by ensuring their proper use, or by other means approved by the Governor;

(c) take adequate precautions to prevent any conductor or apparatus from being accidentally or inadvertently electrically charged when persons are working thereon;

(d) ensure that only persons qualified by knowledge or experience to understand the danger involved undertake work where technical knowledge or experience is required in order to avoid danger.

(2) For the contravention of any of the provisions of sub-section (1) of this section, the public or local authority, company or person responsible for the execution of the work shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds.

(3) Any person who, in contravening any of the provisions of sub-section (1) of this section or who, by any omission or negligent act in respect of any electric supply line, apparatus or conductor under his control, or who wilfully tampering with any electric supply line, apparatus, conductor or safety appliance causes hurt to any person or injury to any property shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding twelve months or both.

Penalty.

Penalty for negligence in control of apparatus etc. and wilful tampering with lines and apparatus.

Repeal and replacement of section 86 of the Principal Ordinance. Meter to be used except by agreement.

4. Section 83 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

" 83. (1) The amount of electrical energy supplied by the licensee to any consumer, or the electrical quantity contained in the supply (according to the method by which the licensee elects to charge), hereinafter referred to as "the value of the supply," shall, except as otherwise agreed between such consumer and the licensee, be ascertained by means of an appropriate meter or meters which may be duly certified as hereinafter provided, and fixed and connected with the supply system in a manner approved by the Governor.

(2) Such meter, whether the property of the licensee or of the consumer, may be sealed by the licensee with an approved seal bearing the licensee's distinguishing brand or mark impressed thereon.

(3) The licensee may, in order to protect such meter or any other apparatus belonging to him, instal suitable cut-outs on a consumer's premises on the supply side of any such meter or other apparatus and seal such cut-outs with an approved seal bearing the licensee's distinguishing brand or mark impressed thereon.

(4) Where any seal affixed under the provisions of sub-sections (2) and (3) of this section is broken without the authority of the licensee the consumer upon whose premises the seal was placed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds:

Provided that where it can be proved that the offence was committed by some person other than the consumer, that person shall be punishable as if he were the consumer upon whose premises the breach occurred."

5. Section 100 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

" 100. (1) In addition to any meter which may be placed upon the premises of any consumer to ascertain the value of the supply, the licensee may place upon such consumer's premises such meter or other apparatus

Sealing of meters by licensee.

Placing and sealing of cut-outs on consumers' premises by licensee.

Penalty for unauthorized breaking of seals.

Repeal and replacement of section 100 of the Principal Ordinance. Licensee may instal meters to measure supply or to check measurement.

as he may desire for the purpose of ascertaining or regulating either the amount of electrical energy supplied to the consumer or the number of hours during which the supply is given, or the maximum power taken by the consumer, or any other quantity or time connected with the supply: Provided that the meter or apparatus shall be of some construction and pattern, and shall be fixed and connected with the supply system in some manner approved by the Governor, and shall be supplied and maintained entirely at the cost of the licensee and shall not, except by agreement, be placed otherwise than between the mains of the licensee and the consumer's terminals.

(2) Such meter or other apparatus may be sealed by the licensee with an approved seal bearing the licensee's distinguishing brand or mark impressed thereon.

(3) Where any such seal is broken without the authority of the licensee the consumer upon whose premises the seal was placed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds:

Provided that where it can be proved that the offence was committed by some person other than the consumer, that person shall be punishable as if he were the consumer upon whose premises the breach occurred."

6. Section 107 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

" 107. (1) Any person who wilfully or fraudulently ~~or by culpable negligence~~ injures or permits to be injured any works of the licensee, or alters the index of any meter for ascertaining the value of the supply, or prevents any such meter from duly registering the value of the supply, or fraudulently abstracts, consumes, or uses the electrical energy of the licensee shall be guilty of an offence and shall (without prejudice to any other right or remedy for the protection of the licensee or the punishment of the offender) be liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding one year, or both.

Sealing of meters or other apparatus by licensee.

Penalty for unauthorized breaking of seals.

Repeal and replacement of section 107 of the Principal Ordinance.

Wilful injury to works, tampering with meter or fraudulent use of energy.

Penalty.

No. XXXIII

Electric Power

1932

Evidence of tampering with meter or fraudulent use of energy.

(2) The existence of artificial or unlawful means for causing such alteration or prevention (when such meter is under the custody or control of the consumer), or for abstracting, consuming or using the electrical energy of the licensee, shall be prima facie evidence that such alteration, prevention, abstraction or consumption, as the case may be, has been fraudulently, knowingly and willfully caused or permitted.

Licensee may discontinue supply.

(3) In any case in which any person has willfully and fraudulently injured or permitted to be injured any works of the licensee, or altered the index of any meter for ascertaining the value of the supply, or prevented any such meter from duly registering the value of the supply, the licensee may also, until the matter complained of has been remedied, but no longer, discontinue the supply of electrical energy to the person so offending (notwithstanding any contract previously existing)."

Amendment of section 125 of the Principal Ordinance

7. Section 125 of the Principal Ordinance is hereby amended by the addition thereto of the following subsection —

(7) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to applications for authority of the Governor in Council under sections 4 (1) (b) and 39 (3) of this Ordinance."

Passed in the Legislative Council the twenty-ninth day of July, in the year of Our Lord one thousand nine hundred and thirty-two.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

H. E. BADLER
Acting Clerk of the Legislative Council.

The object of this Bill is to amend the Principal Ordinance in certain respects.

Clause 2. - As the law now stands a person may not, without a licence under the Ordinance, generate and use electricity outside the premises on which it is generated; nor can he supply for sale to persons residing on such premises. Nor may a public authority (Government Department) or local authority generate energy even for its own use within its ^{own} property without such licence. On the other hand, any private person may generate and use electricity, up to any power, on his own property and for his own use without any form of licence or authority. The procedure associated with the granting of licences involves some months' delay and also involves expenditure on advertising and on legal assistance. In the circumstances it was thought desirable that the procedure should be simplified in certain cases, in which this can be done without detriment to any interest concerned by substituting a form of authority for a licence. It was, therefore, proposed to provide that the Governor in Council or the Governor, as the case may be, may grant an authority outside a licensed area, to any public or local authority or any person to generate electricity for their own use and to sell energy to one or more particular persons. It is also provided that a public or local authority may instal a small plant (not exceeding 25 kilowatts rated capacity) inside or outside a licensed area for the generation of electricity for their own use without licence or authority. At the same time it was deemed desirable to bring private authority plants over a certain capacity under a form of and it is therefore proposed that such plants if over 25 kilowatts

rated capacity (or carrying in the associated system current over a certain pressure) should only be operated under authority from the Governor. This will throw no additional technical obligations on the owner of the plant and the only effect will be that the controlling authority will have a record of all such plants in the Colony and can take such steps as may be necessary to see that the plants comply with such regulations as applied to them and were reasonably safe in use.

Clause 3. - This relates to one of the main objects of this Bill and is intended to bring clearly within the scope of the criminal law acts of omission and negligence on the part of any person having control over electric power apparatus whereby hurt is caused to any person. The need for some such legislation has already arisen in this country on various occasions.

Clauses 4 and 5. - These clauses make provision for the sealing of the meters which may be installed in consumers' premises under sections 88 and 100 respectively of the Principal Ordinance, and provide penalties for tampering with such seals. These amendments are designed to give additional protection to licensees against theft of energy.

Clause 6. - Penalties for offences against Section 107 of the Principal Ordinance, which relates to injury to a licensee's works, altering the index of meters, and fraudulent use of energy, at present consist of a forfeit to the licensee of the sum not exceeding Shs.150 plus amount of the damage. The offender is also liable to prosecution under the ordinary law. It was felt that for offences of this kind there should be more direct procedure and penalties. The major offence under this clause is injury to a licensee's works and for this class of offences the penalty provided is not

considered excessive.

Clause 7. - Section 125 of the Principal Ordinance lays down the procedure to be observed in the case of any authority or consent required under the Ordinance. It is considered that this procedure can properly be dispensed with in the case of fringe orders and in the case of any authority required under the proposed new section 4 (1) (b) (clause 2 of the Bill).

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

James
ATTORNEY GENERAL.

Nairobi,

29th July, 1932.

ELECTRIC POWER ORDINANCE

Statement Required under Section 150 for the year ended 31st December, 1931

No. of Application	Date of Application	Application made by	Nature of Application	Decision of Governor in Council
1	25/9/30	The East African Power & Lighting Co., Ltd.	For a licence to construct a Generating Station at the junction of the Maragua and Tana Rivers (stage I of the original Maragua-Tana Scheme application of 13/5/29).	Application approved. Generating Station licence No. 3 issued to Company.
2	11/3/31	The East African Power & Lighting Co., Ltd.	For permission to extend the Shimanzi (Mombasa) Generating Station by the addition of a 1500 k.w. Turbo Alternator 'Babcock' & Wilcox Boiler, Switchgear, etc., and necessary extension to the Building.	Application approved.
3	25/8/31	Kenya Tea Co., Ltd.	For local Generating and Distributing Licences for the generation and supply of Electrical Energy in the Kericho District for private purposes only and not for sale.	Approved subject to certain conditions which had not been complied with at 31/12/31.
4	15/12/31	The East African Power & Lighting Co., Ltd.	For local Generating and Distributing Licences for the generation and supply of Electrical Energy in the Township of Eldoret.	Under consideration.

15
Ed