

1936

Kenya

No. 38240

SUBJECT C0533/474

Organization of Territorial Force

CLOSED
UNTIL

Previous

50530/56 for
[unclear]

see 50520/55

Subsequent

S. F. T.
1937

53 DEC 1963

Miss Chambers, H-704

1. Sir J. Byrne (Extract).----- 16th April, 1936.
[Defense] Would welcome appointment of Captain Lord Stratheden as
C.I. Territorial. Local Forces Staff Officer; enquires whether application
ial. would be successful, in which case notice could be given
to Colonel Fitzgerald.

3809 27/35

In para 4 of the Lt Col's despatch of the
5th of February it was suggested that
the Staff Officer for the new Volunteer
Unit in Kenya should be appointed
to the Staff of the O.C. Northern
District with the title of
Staff Officer, Local Forces, and
that in order to make the change
as smoothly as possible, it
would be preferable in the first
place to appoint an officer
now serving in one of the
Battalions of the N. Brigade rather
than an officer from the County.
It seems that the right officer
for this special post cannot be
found in E. Africa.

Perhaps Major Col or Colonel
Stafford will write to Colonel
Leese & ask the chance
of securing Capt. Lord Stratheden
for the post.

C.H. Curzon²⁶
28/4/36

J.J. Curzon
24/4

overmastering adjutant.

I agree with Maj. Cole that an informal enquiry might be made at the W.O. as to Stratheden's availability, but I suggest that the appointment should not be offered to anyone until we know precisely what form the new organization is to take, what staff duties would have to be taken over in addition to those of adjutant of a very small unit and what salary would attach to the combined appointments.

W.O. Officer

30.4.36

Sir C. Bentley

All Sir J. B. requires is for us to find out whether Lord Stratheden (if his R.C. staff think he is in a really good way) would in fact be willing and could be made available.

No app't can be made or even held at all, there is some agreement as to what the force will be. (They may even decide that the balance of advantage will be to carry on with the K.D.F.)

? Semi official as proposed.

S.L.O. 762

30-4

Sir J. Moffat

You should see the O.C.'s views that he has not just the sort of man required would be accepted.

Lord Stratheden's title and list of appointments - the fact that he is

a Guardsman will help - Kenya is - or was - free of occupation

Guardsman

As is A?

W.O.

2.7.5.26

To A

W.O.

at once

I have written to War Office. Lt Colonel Leese informed me that he had privately sounded Capt Lord Stratheden who would like the posting. It would seem that Lt Colonel Leese has also received from Regimental HQ G.O. Col. G.O. that no Regimental objection would be made.

We also discussed with the H.S. branch of W.O. who said that as far as they could foresee, had provided nothing happened meanwhile to alter the situation, they thought that there would be no difficulty over this officer's availability if we wanted him for Kenya.

I gathered that the recommendation of Capt Lord Stratheden to Kenya came from Lt Colonel Leese, who is also a Coldstreamer and knows him well. Col. L. told me that Lord Stratheden was a very efficient officer and did very well indeed in connection with T.A. personnel when he was Regtl. Adjutant. He had personality of the kind which should suit the Kenya requirements. The W.O. mentioned the desirability of letting them know the conditions of the appoint-

S.L.O. who is a colonel has been made adjutant in K.D.F.

salary ment, ~~salary~~ tour, leave etc. Lt-Col; Lese repeated Sir J. Byrne's statement that in Lord Stratheden's case the salary figure was perhaps not so material

The W.O. people quite understand that these enquiries ~~are~~ ^{are} provisional only, and no steps will be taken unless/until we ask for the officer.

I suggest that a reply can be given to Sir J. Byrne that from enquiries there is reasonable prospect of Lord Stratheden's services being available if applied for.

Handwritten notes:
It has been assumed...
that Lord Stratheden's services...
be...
been...
King's...
the...
not...
I have expanded the...
cover this point.

J.P. Bowen
2/3

AIR MAIL 2
11/5/36

So Sir J. Byrne - (S/O) - 11 MAY 1936

3. Governor, No. 277..... 30th May, 1936.

Transmits copy of the Interim Report of the Committee examining the re-organisation of the Defence Forces; requests steps be taken as soon as possible to obtain secondment of a suitable officer as Staff Officer, and suggests W.O. be asked to release Captain Lord Stratheden

The Interim Report serves to show the lines on which the Committee will make their final recommendations.

The proposed formation of a Volunteer Unit and a Compulsory Reserve follows closely the suggestions in the S. of B's despatch of the 5th of February. The chief object of the Interim Report is, however, to clear the way for the appointment of a Staff Officer.

Ans
3/5/36

We have ascertained semi-officially that there is a reasonable prospect that Lord Stratheden will be available, but the question of the terms of his appointment must now be considered. It has been suggested that he should be appointed to the War Office but it seems that Colonel Campbell feels strongly that the appointment should be an independent one. The reasons for this is not exactly clear and no doubt the War Office will require to be convinced of the need for this departure.

But the Governor's recommendations may go forward to the W.O. for the appointment of Lord Stratheden on the terms proposed in paragraph 5 of the despatch.

A.P. Bowen
19/6/36

J.P. Bowen
10/6.

If the Committee on the spot process is only that the... of the... Force... of the... Reserve Force... (that will... and... should... not be... to the... I do not... we... and object... as any... for the... appointment

While I was engaged, sitting at the
condition of service and raising that, if
available, it is desired that Capt. Ross
should have been proposed to rank as early as
possible, say in about 4 or 5 weeks time.

P.1. C. 11/6/36

The views on the Committee are Lord P. Scott
they are quoted but both that so.

as the Director of Staff Office to be taken
from the existing K & R and that the post should

be on the Director's staff. It is stated that the
responsibility for him is that that does not matter

to any other staff of course this because of the
the appropriate situation. It is stated that the

of least of last, and the selection
of a suitable candidate for staff office to be

at present in existence but the Director of Staff
to consider the possibility of evading the way to

But Kenya will not should have thought
about this

no proposed 11.0.36 12.6

Section was with the Hood, but

(a) I don't if it was appropriate
any change of policy being
recommended there could
offset this arrangement

(b) Sir J. Byrne, who has not
much longer to run as far as
may well want to get as much
of the influence as he
and have his successor on
a good watch.

As proposed?

Wes 13.6.36

Copy

Report, after all to be done of
the proposal.

John

Pro-Byrne

in order

SH has all

I am not sure whether to

has some account

Wesley

16/6/36

4 To W.O. (info and to 3) com 30 JUN 1936

5. Byrne. s/o 20th June, 1936.
Forwards copy of the Report of the Defence Forces
Committee, and requests early telegraphic authority to
publish it without delay or comment.

The Report is well reasoned
and closely follows the recommendations
contained in S. of S. despatches. I
think that its publication in Kenya
would be a most advisable as a
means of testing public opinion.
It deals with the re-organization

of an existing force and could not be construed as an addition to our military forces in E. Africa by other countries.

Chorman

2/7/36

I agree: I see nothing in the report which could not be made public but I suggest it had to be the 1.5.36 because it was 3.7.36 that I received it.

11.0.36

2.7.36

To Gen. del. 2/7/36

W.O. states that Capt the hon. Stathisen is desirous of a certificate for appnt. of Adjutant Ryo. Territorial Force & Staff off. of Ryo. Reserve three copies of report of service forwarded.

(Note)

We told the W.O. on the 30th June that if possible, Lord Stathisen should proceed to Kenya in about 4 or 5 weeks time.

There is the "Langley Castle" on the 7th of August or the "Mabiana" on the 22nd August. The former is fairly free & the

C.A. would want to know this week if they should reserve a passage progressively for the Langley Castle.

As there is no special urgency about the appointment & it is his wish to find Lord Stathisen as long notice as possible, we might in offering him the appointment say that if he accepts a passage will be reserved for him in the Langley Castle on the 7th of August.

After speaking to the W.O. and the Parkes, I advised a transfer offer in Dublin on the offer, particularly as it has been paid to the statement in para 5 of No. 2 on the 7th of August. They assumed that the salary of £750 will be subject to the R.A.R. salary levy & that the out-of-pocket allowance of £40 given to officers appointed to the R.A.R. will be granted in this case. We are not in a position to tell Lord Stathisen much about the duties attaching to the post, so I said that the duties will be explained to him on his arrival in Kenya. C.A. 16/7/36

Major Cole

I think we might omit C. J. The
we will no doubt start thinking about
it, but I think it will be too much to
have now especially for those who
propose it at this stage. The
main recommendation to the Gov.
if you agree will be on p. 14.

J. P. [Signature]

24/7

T. G. [Signature]
27/7

12 50-100 (93 Report in 10)

4 AUG 1956

13. Governor No. 373. 25 July, 1956.
Ref. No. 6; transmits printed copy of Report and comments
on the adoption of the various recommendations,
requests telegraphic authority for the publication
of the Bills annexed to the Report for subsequent
introduction into the Leg. Council.

14. Coll. Sec. 9 Gorak 3p. n. 25.7.56.
DESTROYED UNDER STATUTE reference in No. 13.

15. [Signature] from [Signature] to [Signature] on 24 July 56.
No. 13. The Committee recommend that the

Kenya Defence Force should be disbanded and
replaced by a volunteer force up to a strength
of a battalion to be known as "The Kenya
Regiment (Territorial Force)" drawn from men
between the ages of 18 and 35, and in special
cases up to 45. All members to serve for four
years and may be re-engaged thereafter for
further periods of two years. On completion
of such service members will be automatically
required to serve in a Reserve to the Regiment
for a further period of four years. It is
also recommended that there should be provision

in

in the legislation for the creation of a Special
Reserve to the Kenya Regiment, and for the
establishment of School Cadet Corps.

The next main recommendation is that there
should be a Compulsory Force to be called "The Kenya
Auxiliary Force" consisting of the balance of the able-
bodied European British subjects in the Colony.

The Bills to give effect to these proposals
were drafted by the Committee and have been seen by
the Attorney-General. The Executive Council have
unanimously advised approval of the recommendations
in the [Signature] and that the Secretary of State's
approval should be sought for the publication of the
Bills with a view to [Signature] introduction at the next
meeting of Legislative Council.

The Bills make no provision for the
numerical establishment of the Kenya Regiment
or the technical details in regard to training of the
Regiment or the Auxiliary Force, so it will be possible
to deal with the question of publication prior to the
settlement of details. I annex separate notes on
the two Bills in which I have drawn attention to
certain special features, e.g. the question of the
grant of the commissions direct from His Majesty,
the general increases in penalties for offences under
the Ordinance, etc.

The Staff Officer [Signature] and the Legal
Advisers should see the papers and they will no doubt

indicate what points are worth making in communicating
the report to the War Office.

No 14. Reply

[Signature]

10.8.56.

I am sending this to the W.O. (they have already had a revised copy of the report, including the Bills; but they had better not have a printed copy with the Govt. Secy. etc.) I am also indicating that for the moment the important part is the text of the Bills, with it is desired to publish in Kenya as a preliminary step.

Understand in Kenya
We shall have a copy of the Bill without waiting for the detailed comments - the original prepared for them from the original of course and for as they may affect the Bills.

The only comment which I have to suggest is for our country with the W.O. (subject to any views of the military advisers) - this does not seem to be any justification for singling out the King's force from other colonial forces for the special honor of having their officers commissioned direct by HM.

J.J. Cassin
13/8

I have studied the two bills contained in Appendix II and III.

Appendix II Kenya Regt. Turned Force.

Page 34, para. 3 (d). I agree with Mr. Pashin that the proposal to single out the Kenya T.F. for the special honour of having their officers commissioned direct by the King requires careful consideration. In principle I believe that the commissioning of officers of the Colonial Turned Force should be on the same basis as the Kenya T.F. officers to be commissioned direct by the King. The officers of the Kenya T.F. are granted commissions direct by the King para. 18 in page 37 which states that commissions may be cancelled by the Government at any time.

Appendix III Kenya Auxiliary Force.

Page 47, para. 9 (d). I think there should be some age limit beyond which recruits are not liable for service in this Force. Otherwise a somewhat ludicrous situation might, in theory arise should some very aged gentlemen fail to march and be fined (or imprisoned) for not doing so. I realize of course that this would not occur in practice, but I think it would be desirable to lay down an age limit of perhaps 55.

I agree
with Mr. Pashin's suggestion
of an age limit of 50
I think 55 is better
but 50 is better
perhaps 55

Main Report.

Mombasa coast defence unit. Para 47 of the
main Report. I consider that as suggested
by the Governor in para. 7 of 13, the
scheme of establishing this unit on a
voluntary basis should be tried
before the colony incurs the expense of
maintaining a wholly Regular unit.
The change over to a wholly Regular
unit could be made later if found
essential.

Proposed appointment of officers N. Side K.A.R.

(Para 70 of Main Report.) The Commission
that the Commission N. Side K.A.R. should
be granted the appointment of officers
would require careful consideration in relation
to the requirements of other military
appointments in the Colony. It is perhaps
not intended to consider the particular
question at the present moment.

W. S. Kirkup

16. VIII. 36.

Generally I have no fault
to find with either of the Bills
which appear to me to fulfil
their purposes.

I agree that no case has
been made for singling out
the Kenya Regt from other
Colonial Forces for the special

honour of having their officers
commissioned by the King. Moreover
I think that it would be found
to be a much more convenient
arrangement if the usual
practice of granting commissions
to officers by the Governor, were
followed in Kenya.

Mombasa Coast Defence Unit.

If Sir J. Byrnie desires
this unit to be formed on
a voluntary basis it is to be
formed as part of the Kenya Regt
and not as part of the K.A.R.
which would be the case if
it became a regular force
territorial unit. Conditions
of service, e.g. period of compulsory
training, might vary, and I think
that some provision for the unit ought
to be embodied in the Bill.

Chorman

(? 17/8)

I agree with Brig. Norman as regards
the part of commissions, and have
made some marginal comments on other
points raised in the two preceding minutes.

The other points which still are
are -

Penalties

I have obtained a copy of Art. 42, ^{Sec.} 31(1) of which provides for a fine not exceeding £100, or imprisonment not exceeding 6 months, or both. The relative ^{Sec.} 34(1) in the new bill increases this imprisonment to 2 years.

Art. 25 in the new bill is to be read as follows: "In the event of a soldier being found guilty of the offence of desertion, he shall be liable to a fine not exceeding £50 or imprisonment not exceeding 3 months or both."

The revised penalties appear to me to be somewhat excessive, but I do not see any doubt as to whether they are justifiable.

Is it competent for a Commanding Officer to sentence a member of the Force to a term of imprisonment?

Perhaps Major Bailey will say. The only case of inscription in the Colonies of which I am aware is (Howard) 1895.

The powers of a Commanding Officer are set down in the King's Regulations for the Army and Air Force (para 572-575) and in the Army Act (Sec. 138). As far as imprisonment and fines are concerned, these powers are as follows:

- Officers - Imprisonment, 12 months (except by Court Martial)
- Fines, 100 guineas (except for absence and loss of property, when War Office approval must be given)
- Imprisonment, 12 months (except by Court Martial)
- Fines, 100 guineas (except for loss of property)

- Warranted Officers - Imprisonment, 12 months (except by Court Martial)
- Fines, 100 guineas (except for loss of property)
- Imprisonment, 12 months (except by Court Martial)
- Fines, 100 guineas (except for loss of property)

and deduction of pay from absence without authority confirmed by the records in the War Office is in the opinion of the King's T.F. would not be competent to sentence a member of the Force to a term of imprisonment. A T.A. Commanding Officer in this country has, in theory, the same powers as the Regular Commanding Officer described above, subject that for loss of Govt property a T.A. soldier must be charged before a

Civil suit, who can impose a fine up
in suspension are not causing £5. (Territorial
and Reserve Force Act, 1907). In practice,
a T.A. commanding officer rarely if
ever exercises his power of awarding
detention. (Though he does impose fines
for drunkenness on return in arrested
camp. Failure to report for annual
training is not dealt with by the
C.O. but by the Civil Courts.

W. B. B. B.

2. VIII 36

I am sorry to have held these papers
up but pressure of work recently has been
very great. I annex my comments in a memorandum.

(over)

.. 28. 8

I must send this on because of the
absurd recommendation of the Committee that the
commissions in the Force should be granted direct
from H.M. The Committee in paragraph 50 simply
say that they are strongly of opinion that the
high privilege of holding commissions direct
from the King, accorded to officers of the
Territorial Army in England, should be accorded
to the officers of the Kenya Regiment, and the
Governor simply recommends the proposal. The
idea at the back of it is, of course, that the

Kenya settler is of finer clay than anybody else and
also cannot but regard it as an attempt to belittle
the position of the Governor. I can easily imagine
some of the gentlemen in Kenya saying that they would
not accept any commission from any Governor, quite
forgetting that the Governor is the King's
representative. Accordingly I am sure Major Bish
and the Inspector General think commissions must be
granted by the Governor and can easily make
perfectly good sense for it on the ground that the
Governor is His Majesty's representative and
Commander in Chief in the territory and that uniform
practice has been that commissions in Colonial Forces
of all natures and in forces of the Dominions
are granted by the Governor or Governor General as
the case may be.

With regard to the Territorial Force Bill,
it follows pretty closely the existing Chapter 42 of
the Kenya Laws, but since that chapter has never been
invoked in practice, the various points to which
Mr. Dale draws attention have not ^{arisen} arisen. I have made a few
marginal comments and I agree with his view that
something will have to be done with Clauses 29 and 30.
29 is really rather extraordinary as it empowers the
Commanding Officer, not being below the rank of
Captain, to sentence any officer or member of the
Regiment who is guilty of an offence to the penalty
provided, if any is laid down, or a fine not exceeding

10, or one month's imprisonment, or both. It is true that the words "or any court having jurisdiction" find their place in Section 29, but I think something much more definite is required. The Commanding Officer should only have the powers provided by the Army Act for military offences as prescribed by that Act and by the King's Regulations. I quite agree with Major Bishop that these powers should not be given and it would seem preferable to transfer to a competent civil court the enforcement of penalties for offences other than those relating to military discipline. It is to be noted that from Section 26(1) officers and members of the Regiment are intended at all times to be subject to military law and a religiously minded Commanding Officer might find himself in a position of very queer and extensive powers.

I agree that the thing will have to be referred to the War Office, but it is rather expedient to say something quickly to Kenya. After all, the Bills are sent to us in draft and Kenya want to publish them. We can, I think, send a despatch giving general approval and saying that the Bills may be published, but that they should not actually be introduced into

Council

Council until the observations of the Army Council have been received.

Drafts herewith. M Dale has seen & they

meet his views

Sir H. Balfour

On the point of fact, can you

confirm the statement (the paper is)

the Dept. of Kenya that commissions

in Dominion forces are granted by the

Governor General & not by H. M. India?

Sir J. Burke

Sir J. Shackleton

8/9/36

Please see the attached minutes.

R.W.

11/9/36

It is a fact readily ascertainable, but I should doubt whether officers in Dominion forces get their commissions direct from the King. It may be that in some cases they are granted by the Governor General in the King's name. However that may be, I do not think that the

reference in paragraph 3 is quite accurate, and I would suggest that the reference to the Dominions had better come out.

J.B.

14.9.36.

These details are...

15.9

...will be sent to you...

...the best...

...of the best...

...to be...

...the King...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

...to be...

S. J. L.

Mr. James

*Shirley
7/9
approved on fax
18.9*

20. Deputy Governor tel. No. 219. 16.9.36.
Ref. No. 13; in view of the proximity of the Legislative
Council session, requests relax aphis authority to proceed
with the Bill.

DESTROYED UNDER STATUTE

? Tel. as in d.t.

then get off dep. of Monday's air mail

[One point not dealt with in off. ...
ref. to Brig. Norman ...
including provision in the KR (T.F.) Bill
from the Great Britain ...
2nd set off of ...
from ...]

19/9

AIR MAIL

21 to ...

SEP 1936

Governor tel. No. 219.

20 and 19.9.36

27/9

25 to ...

24

Col. Secy. 3pn. ----- 19.8.36.
Requests that a copy of the Regulations in force in U.
for the Territorial Army and all amendments, be transmit
ted by air mail.

DESTROYED UNDER STATUTE
McEvans

The principal regulations are
dated 1929 and are published in handbook
form, price 1/6d. net. Since 1929, 108
amend. have been issued, priced at each
2/6. Total cost is then 18/6d. I think
we should be justified in asking Keenan
to be in charge of the course in
agreed to instructions can be issued
to the Crown Agents for the
M. Stationery Off.

19/36

E.L. Evans
1.9.36

25 30 1A

7 SEP 1936

DESTROYED UNDER STATUTE

Specimen
by air mail
10/9/36

26 To Kenya 712 (w/c 25) A/1
(Answer)

10 SEP 1936

64

as regards Brigade's Normal's minutes
 of 17/8. It shd. be observed that
 Sir J. Byrne's proposal is not that
 the Coast Defense Battery shd. be
 formed on a voluntary basis,
 but on a semi-voluntary basis,
 i.e. the Battery Commander wd.
 be a regular officer, the rest
 of the regular officers
 & the regular officers
 B. Empire N.C.O.'s

(v. No. 9
 50240/11/36)

17 OCT 1936
 50240/11/36

28. Governor tel. No. 246. 19:10:36.
 Ref. No. 21; requests that W.O. observations may be
 communicated in view of necessity of introducing
 legislation at next Session of the Leg. Council.

Draft letter to W.O. Kennedy
 C. H. Smith
 19.10.36

24 to W.O. com. 20. OCT 1936

the two letters (3)

Refer. Minutes (not decision)
 of 21 and 23.

30 to Gov. tel. No. 246 (25 and) 24 Oct 36

31. Governor tel. No. 252. 26.10.36.
 30 and; desirable to introduce Bill in some form at
 forthcoming session and requests W.O. will be able
 to communicate main amendments at very early date.

32 W.O. (S.O.) 26.10.36
 (Transmit advanced copy of proposed clause
 on Kenya Reg. (Territorial Force) Bill.)

I submit for consideration a draft telegram
 and a draft official letter to Mr. Wade, which
 have been prepared in consultation with Mr. Dale,
 who spoke on the telephone to Mr. Guthrie and Graeme
 of the Judge Advocate General's Department, on 14/10/36.
 Para 2 of the draft telegram was told that the
 Bill might be published, subject to the deletion
 of the clause providing for the granting of
 commissions by the Governor, and it is to be assumed
 that they have been published. It would, of
 course, be possible for the Bills now to be introduced
 to be published and for all the amendments arising out
 of the drafts herewith to be tabled by the
 Attorney-General; and the draft telegram has, however,
 been prepared on the assumption that the Attorney-
 General will probably prefer to prepare a revised
 draft before introducing the Bill. The telegram
 has therefore been made a little fuller than might
 otherwise have been necessary).

Major Bishop may perhaps wish to
 get Capt. Smith's consent to his draft
 being sent out so in this way to Kenya.
 If it is explained how very helpful it
 wd. be to the Govt. of Kenya, I have no
 doubt that he wd. have no objection.

J. P. Cassin
 27/10 W.O. Sec.
 27.

By and made
19/11/36

3/4

To Kenya 933 (4/20 37+38) A//

19 NOV 1936

Per P.S. Co.

22. 11. 36



409



THE OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA

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SUPPLEMENT

KENYA PROCLAMATIONS, RULES AND REGULATIONS
(No. 40)

Government Notice No. 645

ARRIVAL

Name	Rank	From Leave or on 1st Appointment	Date of Leaving England	Date of Embarkation	Date of Arrival at Mombasa
Leut. T. Leahy	Company Officer, Military	1st Appointment	30th Sept., 1936	—	10th Oct., 1936

* Bombay.

DEPARTURE

Name	Rank	On Leave or Termination of Appointment	Date of Departure
Miss F. F. ...	Class. Class II, K. U. R. & H.	Leave	11th October, 1936

APPOINTMENTS

Private ... District Officer, Central Province, with effect from 5th October, 1936.

Junior Over Messenger to be District Officer, District, Rift Valley Provinces, with effect from 10th October, 1936.

PRELIMINARY ORAL SWAHILI EXAMINATION

Mrs. M. F. ... Department.

J. S. ... Department.

VERNACULAR EXAMINATION—KAMBA (PART ORAL PART ONLY)

Mrs. J. Lambert, Administration.

A. D. V. W. ...
Colonial Secretary.

Colony and Protectorate of Kenya

Government Notice No. 646

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

R. W. BAKER-BEALL,
Acting Clerk of the Legislative Council.

A Bill to Provide for the Establishment of a Regiment to be known as the Kenya Regiment (Territorial Force).

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

PART I

1. This Ordinance may be cited as the Kenya Regiment (Territorial Force) Ordinance, 1936, and shall come into operation on the day to which the Governor may by notice in the Gazette appoint a day, and shall apply to each military district in the Colony, and may be appointed and established under the provisions of this Ordinance.

2. In this Ordinance, unless the context otherwise requires, the following expressions shall have the following meanings:

"active service" means every member of the Regiment who is called out for the purpose of repelling external aggression or for aiding the civil authorities in the protection of life and property and preventing and suppressing internal disorder in the Colony, and shall be deemed to be in active service;

"cadets" means all boys serving in cadet units subject to the provisions of this Ordinance;

"commanding officer" means an officer in command of any military district, unit or detachment;

"member" means any warrant officer, non-commissioned officer or man enrolled in or belonging to the Regiment;

"military district" means a military district appointed and established under this Ordinance;

"officer" means any person appointed by the Governor to hold commissioned rank in the Regiment.

"peace training" means all such training as may be prescribed under this Ordinance other than training on active service;

"permanent staff" means all officers, warrant officers, non-commissioned officers, armourers, clerks and storekeepers or any other persons appointed under section 39 of this Ordinance;

"prescribed" means prescribed by regulations;

"regulations" means regulations made under the provisions of this Ordinance;

"Reserve" means the Reserve established under the provisions of section 7 of this Ordinance;

"Special Reserve" means the Special Reserve formed under the provisions of section 8 of this Ordinance;

"unit" means any portion of the Regiment which may be declared by the Governor to be a unit for the purposes of this Ordinance.

PART II

CONSTITUTION OF REGIMENT.

Formation of Regiment.

3. (1) The Governor may by notice in the Gazette, establish under this Ordinance a Regiment or Company to be known as the Kenya Regiment (Territorial Force), throughout the Colony referred to as "the Regiment", and to accept on behalf of His Majesty the services of any persons to become officers or members of the Regiment.

(2) Upon such notice the Regiment shall be deemed to be lawfully established.

(3) The Regiment shall be under the supreme command of the Governor, and under the command of the Commander of Local Forces, Kenya and Uganda, who shall be responsible to the Governor for the organization, discipline, and efficiency of the Regiment.

(4) The officers of the Regiment shall be commissioned by the Governor.

(5) The Governor may, by notification in the Gazette, declare any portion of the Regiment to be a unit for the purposes of this Ordinance.

(6) Upon such notice a unit shall be deemed to be lawfully constituted.

4. (1) Every officer of the Regiment must be a British Member, subject of European race or origin and shall upon being commissioned take the prescribed oath.

(2) Every member of the Regiment must be a British subject of European race or origin between the ages of eighteen and forty-five years, and shall upon enrolment take the oath and complete the attestation form as prescribed.

Provided always that the age limit may be extended by regulations for such classes of warrant officers, non-commissioned officers and men as the Governor may decide.

5. Every officer and every person who has tendered his services and whose services have been accepted and who has been enrolled as a member of the Regiment shall be liable to be called out for active service within the limits of the Colony and to undergo such peace training as may be prescribed from time to time. Provided that notwithstanding anything in this Ordinance contained any officer or member of the Regiment may, when taking an oath as prescribed, sign a declaration in the form prescribed to the effect that he is willing to serve under this Ordinance outside the Colony in the event of the Governor deeming such a course essential.

6. Every member enrolled under the provisions of this Ordinance for service in the Regiment shall except as herein after provided serve for a minimum period of four years, and thereafter shall serve for four years in the Reserve formed under the next succeeding section.

Provided that the Governor may, on the recommendation of the Commander of Local Forces, Kenya and Uganda, curtail, to such extent as he may think reasonable, the period of service to be undergone, under this section, by any person who produces evidence of previous service with the Kenya Auxiliary Force established under the Kenya Auxiliary Forces Ordinance, No. 193 of 1935, or with any of His Majesty's Forces, regular or auxiliary, of such a nature as to satisfy the Governor that his service with the Regiment should be so curtailed.

7. The Governor may establish a Reserve to the Regiment (to be known as the Kenya Regiment (Territorial Force) Reserve) in such manner as may be prescribed; and such Reserve shall form part of the Regiment.

Establishment of Kenya Regiment (Territorial Force) Reserve.

"peace training" means all such training as may be prescribed under this Ordinance other than training on active service;

"permanent staff" means all officers, warrant officers, non-commissioned officers, armourers, clerks and storekeepers or any other persons appointed under section 39 of this Ordinance;

"prescribed" means prescribed by regulations;

"regulations" means regulations made under the provisions of this Ordinance;

"Reserve" means the Reserve established under the provisions of section 6 of this Ordinance;

"Special Reserve" means the Special Reserve formed under the provisions of section 7 of this Ordinance;

"unit" means any portion of the Regiment which has been declared by the Governor to be a unit for the purposes of this Ordinance.

CONSTITUTION OF REGIMENT.

Formation of Regiment.

3. (1) The Governor may by notification in the Gazette establish under this Ordinance a regiment for the Colony known as the Kenya Regiment (Territorial Force), throughout this Ordinance referred to as "the Regiment", and to accept on behalf of His Majesty the services of any qualified persons to become officers or members of the Regiment.

(2) Upon such notification the Regiment shall be deemed to be lawfully constituted.

(3) The Regiment shall be under the supreme command of the Governor and under the command of the Commander, Local Forces, Kenya and Uganda, who shall be responsible to the Governor for the organization, discipline, and efficiency of the Regiment.

(4) The officers of the Regiment shall be commissioned by the Governor.

(5) The Governor may, by notification in the Gazette, declare any portion of the Regiment to be a unit for the purposes of this Ordinance.

(6) Upon such notice a unit shall be deemed to be lawfully constituted.

4. (1) Every officer of the Regiment must be a British subject of European race or origin and shall upon being commissioned take the prescribed oath.

(2) Every member of the Regiment must be a British subject of European race or origin between the ages of eighteen and forty-five years, and shall upon enrolment take the oath and complete the attestation form as prescribed.

Provided always that the age limits may be extended by regulations for such classes of warrant officers, non-commissioned officers and men as the Governor may decide.

5. Every officer and every person who has tendered his services and whose services have been accepted and who has been enrolled as a member of the Regiment shall be liable to be called up for active service within the limits of the Colony, and to undergo such peace training as may be prescribed from time to time: Provided that notwithstanding anything in this Ordinance contained, any officer or member of the Regiment may, when taking an oath as prescribed, sign a declaration in the form prescribed to the effect that he is willing to serve under this Ordinance outside the Colony in the event of the Governor deeming such a course expedient.

Liability of those who have tendered and have been accepted.

6. Every member enrolled under the provisions of this Ordinance for service in the Regiment shall except as hereinafter provided serve for a minimum period of four years, and thereafter shall serve for four years in the Reserve formed under the next succeeding section.

Provided that the Governor may, on the recommendation of the Commander, Local Forces, Kenya and Uganda, curtail to such extent as he may think reasonable, the period of service to be undergone under this section, by any person who produces evidence of previous service with the Kenya Auxiliary Force established under the Kenya Auxiliary Force Ordinance, No. 103 of 1934, or with any of His Majesty's Forces, regular or auxiliary, of such a nature as to satisfy the Governor that his service with the Regiment should be so curtailed.

7. The Governor may establish a Reserve to the Regiment (to be known as the Kenya Regiment (Territorial Force) Reserve) in such manner as may be prescribed, and such Reserve shall form part of the Regiment.

Establishment of Kenya Regiment (Territorial Force) Reserve.

Special Reserve to the Regiment.

8. The Governor may form a Special Reserve to the Regiment in such manner as may be prescribed and those persons who offer their services and whose services are accepted, shall be liable, when the whole or any part of the Regiment is called out for active service, to render services with such portion of any local force as the Governor may decide. The Special Reserve shall be subject to such peace training as may be from time to time prescribed.

PART III. CADETS.

Cadet Units.

9. The Governor may appoint Cadet Units, the description, number, equipment, and organization of which, shall be as the Governor may from time to time prescribe. Cadet Units shall not form a Regiment, but shall be affiliated to it and regarded as a part thereof. The Cadet Units shall be composed of boys between the ages of fourteen and eighteen.

Qualifies for peace training.

10. All boys who, with the consent of their parents or guardians, are admitted to a Cadet Unit shall be required to undergo such an annual course of peace training as may be prescribed.

Certificates of efficiency.

11. A cadet who has undergone the prescribed course of instruction for any one year, and passed the prescribed tests, shall be reckoned as a cadet for that year, and if he is retained in the unit for not less than three years, and his conduct after instruction in cadet units has proved satisfactory, he shall be entitled on attaining the age of eighteen years to receive a certificate of efficiency. Holders of such certificates may be transferred to the Regiment's training men.

PART IV. ADMINISTRATION.

Military districts.

12. The Governor may, by notice in the Gazette, appoint and establish military districts throughout the Colony with the number and designation of units of the Regiment to be allotted to and trained in any military district.

Calling out of Regiment for active service.

13. The Governor may, by notice in the Gazette, call out the whole or any part of the Regiment for active service and when so called out they shall be held to that service until such time as the Governor may, by notice in the Gazette, declare that they are relieved from that service.

14. Notwithstanding anything to the contrary in this Ordinance contained, no officer or member of the Regiment whilst called out or employed on active service shall be entitled to obtain discharge therefrom during the continuance of such service.

Not entitled to discharge when on active service.

15. The Governor may at any time discontinue the service of any unit of the Regiment or cause the same to be disbanded, or release from service any officer or discharge any of the members of such unit.

Power to disband or discharge.

16. The executive military command and inspection of the Regiment or units thereof shall be vested in such officers as may be appointed by the Governor.

Officers in executive command.

17. The Governor may prescribe the tests as he thinks fit which must be satisfied by candidates for appointments to commissions and promotion to various ranks.

Tests for appointment and promotion to various ranks.

18. The Governor may cancel the commission of any officer at any time, provided that the commission of an officer shall not be cancelled without the holder thereof having notified in writing any complaint or charge made, and of the action proposed to be taken against him, nor without his being called upon to show cause in relation thereto, and provided further that no such notification shall be necessary in the case of an officer absent from duty without leave for a period of three months or more.

Cancellation of commission.

19. (1) The Governor may place officers of the Regiment on the retired list, and officers on that list may, with the approval of the Governor, wear their rank and wear the prescribed uniform.

Retirement of officers.

(2) The terms of compulsory retirement of officers of the Regiment shall be as prescribed:

20. An officer of the Regiment, except when on active service, or in anticipation of being called out on the same, may, by writing under his hand, tender his resignation of his commission, but shall not, unless otherwise ordered by the Governor, be relieved of the duties of his appointment until the acceptance of his resignation is notified in the Gazette.

Resignation of commission.

21. (1) A uniform, with distinctive marks or badges, Uniforms, arms, and accoutrements, shall be prescribed for every unit of the Regiment and issued to members thereof, to be maintained at their own expense for such periods and under such conditions as may be prescribed.

(2) Arms, ammunition, and equipment shall be issued under prescribed conditions to members of the Regiment, and each member to whom a rifle has been issued shall be bound to keep it in his personal possession, and be responsible for its maintenance in good order and condition; and to produce the same for inspection whenever called upon to do so.

(3) When called out for active service, or when undergoing peace training, members shall bring with them their equipment and any ammunition which may have been placed in their custody.

20. The Regiment shall be paid at a prescribed daily rate for the days in which they are called out for active service under the provisions of this Ordinance, and they may also be granted such monetary or other allowances as may be laid down in regulations.

21. (1) Each officer and member of the Regiment shall reckon his service as an officer or member from the date of his appointment or enrolment in the Regiment, and shall during such service be reckoning as such, and shall undergo such military training, peace training, instruction, and other such exercises as may be prescribed.

(2) Officers occupied in proceeding to or returning from a camp or place of assembly or instruction shall not be regarded as part of any period of peace training, instruction, or service prescribed under this section.

(3) Every member of the Regiment who, without leave or permission as prescribed, evades or fails to perform with proper zeal the full course of training allotted to him for that year, shall be guilty of an offence against this Ordinance.

PART V.

PROVISIONS FOR ACTIVE SERVICE.

22. When the Regiment or any portion thereof is called out for active service, the Governor may authorize and appoint officers of the Regiment or of the public service in the Colony, to obtain and take possession of buildings and other premises, supplies of foodstuffs, forage, transport, animals and vehicles, and all other articles, necessary for the maintenance in the field of the Regiment or any portion thereof, and of other forces

acting in co-operation therewith. A written requisition may, under this section, be made on any person in manner prescribed, but so that every person so requisitioned upon shall be entitled in due course to receive compensation for everything obtained or taken from him.

25. (1) The officer in command of the Regiment on active service in the field when so empowered by the Governor may requisition the authorities controlling any transport system in the Colony to supply suitable engines and rolling stock and marine transport and every other form of transport necessary for the conveyance of officers and members of the Regiment or other forces, together with their animals, guns, baggage, stores, supplies and personal transport, and to convey the same by air, road, rail or water, to and from any point within or outside the Colony, as may be necessary.

Transport facilities.

(2) The Governor may, under like circumstances, authorize any officer to assume control over any transport system within the territory or any portion thereof.

PART VI.

DISCIPLINE.

26. The provisions of the Army Act, 1914 and 1915, and of the Army Act, 1919, and all Acts amending or substituted for the same, shall, so far as they are applicable, apply to officers and members of the Regiment and to the permanent staff at all times and shall apply to the Reserve and Special Reserve during peace training, when they are on active service and when they are called out for active service subject to the following modifications:

(a) The words "the Regiment" may be read therein for the words "regular force"; the words "officer or member of the Regiment" for the words "officer or soldier"; and the word "Governor" for the words "His Majesty" and "Secretary of State".

(b) No sentence of a court-martial upon the trial of an officer or a member of the Regiment, Reserve or Special Reserve shall be carried into execution unless confirmed by the Governor.

Pay and allowances

Duration of training

Commanders of the

Officers and members of the Regiment and Special Reserve as mentioned in the Army Act

Officers and members not punishable under this Ordinance as well as under the Army Act

27. Notwithstanding the provisions contained in section 26 of this Ordinance, no officer or member of the Regiment, Reserve or Special Reserve shall be liable to be punished for any offence under the provisions of this Ordinance as well as under the provisions of the Army Act.

Refusal to undergo peace training as an officer.

28. Any member of the Regiment who refuses or neglects to undergo such peace training as shall be prescribed from time to time shall be guilty of an offence.

Reservation of right to prosecute otherwise than under this Ordinance.

29. Nothing in this Ordinance contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Ordinance, in all cases in which he would by law, without this Ordinance, be liable to such prosecution, but no person convicted or acquitted of any crime or offence under the provisions of this Ordinance or under the Army Act shall be liable to be again tried for the same crime or offence.

Offences by officers or members of other His Majesty's forces.

30. Whenever the Regiment or any portion thereof and other of His Majesty's forces are associated together under one command, any act committed by officers or members of the Regiment, which would if committed in respect of or in relation to, the officers or members or institutions of the Regiment, be an offence against this Ordinance, or the Army Act, so far as applicable, or any modifications or adaptations thereof effected in terms of this Ordinance, shall, if committed in respect of or in relation to, the officers or members or institutions of His Majesty's forces be deemed to be a similar offence, and shall be triable and punishable as prescribed by this Ordinance or by the Army Act, so far as applicable.

Penalty for refusing or neglecting to assemble or march as called out for active service.

31. (1) Any officer or member of the Regiment called out for active service, who refuses or neglects to assemble or march as ordered, shall be liable on conviction to a fine not exceeding one hundred pounds, or to a term of imprisonment not exceeding six months, or to both such fine and such imprisonment.

(2) Any officer or member of the Regiment called out for active service as provided under the preceding sub-section shall, as from the date of such calling out, also be subject to the provisions of section 26 (2) of this Ordinance.

32. Any person who—

(1) agrees with, or induces, or attempts to induce any officer or member of the Regiment to neglect or to act in conflict with his military duty in that force; or

(2) is a party to, or aids or abets, or incites to the commission of, any act whereby any lawful order given to any officer or member of the Regiment or any law or regulation with which it is the duty of any member of that force to comply may be evaded or infringed; or

(3) supplies, or is a party to supplying, any officer or member of the Regiment with intoxicating liquor when that officer or member is on military duty and is prohibited under regulations or instructions from receiving or using intoxicating liquor;

shall be guilty of an offence against this Ordinance.

33. Any officer or member of the Regiment who, without proper authority and permission, gives, sells, pledges, lends or otherwise disposes of any moneys, animals, ammunition, accoutrements, clothing, supplies or any other article entrusted to or held by him for the service of the Regiment shall be guilty of an offence against this Ordinance, and, in addition to any penalty for such an offence which may be imposed under this Ordinance, he may be ordered by the court or other authority competent to impose that penalty to make good the loss or deficiency caused by the gift, sale, pledge, loan or other disposition; and every such gift, sale, pledge, loan or disposition shall be null and void.

34. Any person who contravenes any regulations against the regulations providing for and regulating the requisitioning in time of war of accommodation or supplies in pursuance of section 24 of this Ordinance shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding six months.

35. Any officer or member of the Regiment who, without proper authority and permission, gives, sells, pledges, lends or otherwise disposes of any moneys, animals, ammunition, accoutrements, clothing, supplies or any other article entrusted to or held by him for the service of the Regiment shall be guilty of an offence against this Ordinance, and, in addition to any penalty for such an offence which may be imposed under this Ordinance, he may be ordered by the court or other authority competent to impose that penalty to make good the loss or deficiency caused by the gift, sale, pledge, loan or other disposition; and every such gift, sale, pledge, loan or disposition shall be null and void.

Aiding or inducing members of the Regiment in dereliction of duty.

Personation.

Regulations.

Wrongful disposition of property.

Officers and members not punishable under this Ordinance as well as under the Army Act

27. Notwithstanding the provisions contained in section 26 of this Ordinance, no officer or member of the Regiment, Reserve or Special Reserve shall be liable to be punished for any offence under the provisions of this Ordinance as well as under the provisions of the Army Act.

Refusal to undergo peace training an offence.

28. Any member of the Regiment who refuses or neglects to undergo such peace training as shall be prescribed, from time to time shall be guilty of an offence.

Provisions of this Ordinance shall not apply to any person who is not a member of the Regiment.

29. Nothing in this Ordinance contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Ordinance, in all cases in which he would by law, without this Ordinance, be liable to such prosecution; but no person convicted or acquitted of any crime or offence under the provisions of this Ordinance or under the Army Act, shall be liable to be again tried for the same crime or offence.

Offences by officers and members of His Majesty's forces.

30. Whenever the Regiment or any portion thereof and other of His Majesty's forces are associated together under one command, any act committed by officers or members of the Regiment, which would if committed in respect of, or in relation to, the officers or members or institutions of the Regiment, be an offence against this Ordinance, or the Army Act, so far as applicable, or any modifications or adaptations thereof effected in terms of this Ordinance, shall if committed in respect of, or in relation to, the officers or members or institutions of His Majesty's forces be deemed to be a similar offence, and shall be triable and punishable as prescribed by this Ordinance or by the Army Act, so far as applicable.

Penalty for refusing or neglecting to assemble when called out for active service.

31. (1) Any officer or member of the Regiment called out for active service, who refuses or neglects to assemble or march as ordered, shall be liable on conviction to a fine not exceeding one hundred pounds, or to a term of imprisonment not exceeding six months, or to both such fine and such imprisonment.

(2) Any officer or member of the Regiment called out for active service as provided under the preceding sub-section shall, as from the date of such calling out, also be subject to the provisions of section-26 (2) of this Ordinance.

32. Any person who

(1) agrees with or induces, or attempts to induce any officer or member of the Regiment to neglect or to act in conflict with his military duty in that force; or

(2) is a party to, or aids or abets, or incites to the commission of, any act whereby any lawful order given to any officer or member of the Regiment or any law or regulation with which it is the duty of any member of that force to comply may be evaded or infringed; or

(3) supplies, or is a party to supplying, any officer or member of the Regiment with intoxicating liquor when that officer or member is on military duty and prohibited from regulations or instructions from receiving or taking intoxicating liquor;

shall be guilty of an offence against this Ordinance.

33. Any officer or member who fraudulently obtains or attempts to obtain, or induces or attempts to induce any officer or member of the Regiment to obtain, leave or absence at special rates, or to evade any rule of military discipline, shall be guilty of an offence against this Ordinance.

34. Any person who commits any offence against the regulations providing for and regulating the requisitioning in any command of accommodation or supplies in pursuance of section 24 of this Ordinance shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding five years.

35. Any officer or member of the Regiment who, without proper authority and permission, gives, sells, pledges, lends or disposal of, or otherwise disposes of, any moneys, animals, ammunition, accoutrements, clothing, supplies or any other article entrusted to or held by him for the service of the Regiment shall be guilty of an offence against this Ordinance, and, in addition to any penalty for such an offence which may be imposed under this Ordinance, he may be ordered by the court or other authority competent to impose that penalty to make good the loss or deficiency caused by the gift, sale, pledge, loan or other disposition; and every such gift, sale, pledge, loan or disposition shall be null and void.

Aiding or inducing members of the Regiment to desertion of duty.

Penalty for contravening the Ordinance in any way

36. Any person who commits an offence against this Ordinance or who wilfully contravenes or fails to comply with any of the provisions of this Ordinance, or the regulations shall, when no other penalty is provided for, be liable on conviction by a subordinate court of the first class to a fine not exceeding ten pounds or to a term of imprisonment for a period not exceeding one month, or to both such fine and such imprisonment.

Liability of action

37. Every civil action against, and every criminal prosecution of, any person in respect of anything done, in pursuance or in contravention of this Ordinance shall be commenced within six months after the cause of the proceedings has arisen and notice in writing of any civil action and the cause thereof shall be given to the defendant one month at least before the commencement thereof.

Disclosure of information.

38. Any officer or member of the Regiment or any person employed in the public service, who discloses any information or any other secret or confidential information relating to the defence of the Colony, which comes within his cognizance shall, unless acting under the due authority and in the execution of his duty (the burden of proof whereof shall be upon him) be guilty of an offence against this Ordinance.

PART VII DISCIPLINARY PROVISIONS.

Power to constitute permanent staff.

39. The Governor may from time to time constitute for the Regiment a permanent staff consisting of such officers, warrant officers, non-commissioned officers and men as he may deem necessary.

Governor may award gratuity or pension in certain events.

40. (1) In the case of any member of the Regiment who shall be temporarily or permanently disabled by reason of any wound or injury received or sickness contracted by him when on active service as provided in section 13 of this Ordinance, the Governor may award such member such gratuity or yearly pension as to him may seem fit, but except with the sanction of the Legislative Council, no such gratuity shall exceed two hundred and fifty pounds and no such pension shall exceed one hundred pounds per annum.

(2) The Governor may grant to the widow or family of any such member who may be killed in action or on active service as provided in section 13 of this Ordinance a pension or allowance of such amount as to him may seem fit.

(3) No pension or gratuity payable under this Ordinance shall be assignable or transferable, nor shall the same be attached or levied upon for or in respect of any debt or claim due by the recipient thereof or his wife.

41. The Governor may from time to time make regulations for all or any of the matters or things following connected with the Regiment—

- (1) the numerical establishment of units of the Regiment and cadets, and the various grades, ranks and appointments therein;
- (2) the appointment, promotion, transfer, resignation, and release from service of officers;
- (3) the enrolment, posting, transfer, leave, vacation, reduction, discharge and dismissal of warrant officers, non-commissioned officers and men, and the disbandment of units;
- (4) the discipline, including the punishment, and the rules for the control, discipline, pay, allowances, leave, transfer, release from service, charges, and dismissal;
- (5) the discipline of the Regiment;
- (6) the assembling of courts of inquiry and rules regarding the attendance of witnesses;
- (7) the punishment of officers or members of the Regiment from carrying out the full course of their training for any one year;
- (8) the issue and care of accoutrements, ammunition, supplies, animals and other clothing and equipment for the Regiment and for cadets;
- (9) the conveyance by road, rail, or water of officers and members of the Regiment and their transport and equipment when travelling on duty;
- (10) the general government and management of the Regiment;
- (11) drill and peace training instruction;
- (12) peace training, including camps of exercise;
- (13) the formation and control of the Reserve;
- (14) the formation and control of Cadet Units; and

(15) all matters which are by this Ordinance required or permitted to be, or which are necessary or convenient to be prescribed, or for assuring the discipline and good government of the Regiment, or for carrying out and giving effect to this Ordinance.

42. The Territorial Force Ordinance and all regulations made thereunder are hereby repealed.

OBJECTS AND REASONS.

This Bill, together with the Kenya Auxiliary Force Bill, is designed to give effect to the recommendations of a Committee appointed by His Excellency the Governor on the 4th April, 1936, to consider suggestions for the re-organization of the Defence Forces of the Colony.

This Bill is modelled on the Territorial Force Ordinance (Chapter 43 of the Revised Edition) which it repeals, and makes provision for the establishment of a Volunteer Force to be known as the Kenya Regiment (Territorial Force), the main function of which will be to train officers, non-commissioned officers and instructors to take their places as such in the event of external aggression.

If the provisions of this Bill become law the total estimated recurrent annual cost of the Kenya Regiment on a basis of two companies will be £2,851. Every additional company will cost £1,772 in the first year.

Government Notice No. 647.

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

R. W. BAUER-BEALL,
Acting Clerk of the Legislative Council.

A Bill to Provide for the Establishment of the Kenya Auxiliary Force:

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

PART I

ESTABLISHMENT, ORGANIZATION AND ADMINISTRATION

1. This Ordinance may be cited as the Kenya Auxiliary Force Ordinance, 1936, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint.

2. In this Ordinance, unless the context otherwise requires, the following expressions have the following meanings:

"active service" means every member of the Auxiliary Force on a call-out for the purpose of repelling external aggression or for aiding the civil authority in the protection of life and property, or for preventing and suppressing internal disorder in the Colony which is called to be on active service;

"peace training" means all such training as may be prescribed under this Ordinance for an training on active service;

"prescribed" means prescribed by regulations;

"regulations" means regulations made under the provisions of this Ordinance.

3. (1) There shall be established in the Colony in connection with the Kenya Regiment (Territorial Force) Ordinance, 1936, a force to be known as the Kenya Auxiliary Force (throughout this Ordinance referred to as the Auxiliary Force), which shall be under the supreme command of the Governor, and the members of which shall be liable, in accordance with the provisions of this Ordinance, to be called out for active service within the limits of the Colony and to undergo such peace training as may be prescribed.

Kenya
Auxiliary
Force,
No. of 1936

Class II—Persons who have attained the age of thirty years and have not attained the age of fifty-five years.

D. (1) Subject to the provisions of this Ordinance every male British subject, both of whose parents are of European origin or descent, who has attained the age of eighteen years and who has not attained the age of fifty-five years and who is ordinarily resident in the Colony shall attend at the office of the District Commissioner of his administrative district within one month after the commencement of this Ordinance or of attaining the age of eighteen years or of becoming so resident as aforesaid, as the case may be, and shall enrol himself as a member of the Auxiliary Force in the class appropriate to his age, and every person liable to enrol himself shall nevertheless be deemed to be enrolled as a member of the Auxiliary Force:

Compulsory enrolment of male British subjects between the ages of 18 and 55 years.

Provided that any person failing to enrol himself as provided for in this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

(2) Subject to the permission of the Governor, any male person who is not a British subject but who has the other qualifications required by sub-section (1) of this section, may volunteer to serve in the Auxiliary Force; and in such case such person shall attend at the office of the District Commissioner as aforesaid and upon taking the prescribed oath shall enrol himself as a member of the Auxiliary Force in the Class appropriate to his age.

(3) Notwithstanding anything in this section contained, members of the Medical and Veterinary professions in actual practice shall only be enrolled or deemed to be enrolled and liable to serve in the Auxiliary Force in their professional capacity.

(5) For the purpose of ascertaining what persons are liable to serve in the Auxiliary Force and the best use which can be made of their services in time of emergency regulations may be made requiring all or any persons to give, from time to time, such particulars regarding themselves as may be prescribed and requiring employers to give, from time to time, particulars of all persons in their employ and the nature of their employment.

Right of persons to elect as to Class in which they are enrolled.

10. Notwithstanding anything in the last preceding section contained, any person liable to be enrolled and to serve in the Auxiliary Force or who volunteers for service therein may, with the permission of the Commander, elect to enrol as a member of the Class preceding the Class appropriate to his age.

Provided that upon such enrolment such person shall be liable to perform all the duties and shall be subject to all the obligations imposed by this Ordinance and by the regulations upon the members of the Class in which he is enrolled.

11. Notwithstanding anything to the contrary in this Ordinance contained, the Classes of persons set out in the First Schedule to this Ordinance shall be exempted from such of the obligations imposed by this Ordinance as are specified in such Schedule.

Exemptions for health reasons.

12. (1) All persons who are certified under the hand of a medical officer specially appointed by the Governor to be medically unfit for service under this Ordinance by reason of bodily or mental infirmity or unsuitness shall be exempt from service in the Auxiliary Force.

(2) The Governor in Council may by order exempt any person or any class of persons from all or any of the obligations imposed by this Ordinance or by the regulations.

Preparation of lists of persons liable to serve.

13. (1) The District Commissioner of each administrative district shall, within two months after the commencement of this Ordinance, and during the month of January in each succeeding year, prepare a list, in the form given in the Second Schedule to this Ordinance, containing the names of all persons in the district who are liable for enrolment and service or who volunteer for service under the provisions of this Ordinance.

(2) When such list has been prepared the District Commissioner shall cause a copy thereof to be affixed in a conspicuous manner at his office and court-house, and shall cause a notice to be inserted in at least one newspaper of the day on which and the place at which he will hold a court for the purpose of hearing objections to such list, which day shall not be earlier than two weeks nor later than four weeks (unless for special reasons) after the date on which the copy of such list was affixed as aforesaid.

(3) Upon the date and at the place so notified the District Commissioner shall hold a court, and shall, on due proof by the oath of such person as he shall see fit to examine or by statutory declaration or affidavit, correct all errors in such list, either by adding thereto the names of persons liable to enrolment and service or by striking out the names of persons who have been exempted. Such court may be adjourned from day to day until all questions as to the correctness of the list have been determined. The decision of the District Commissioner upon any question arising in regard to the correction of the list shall be subject to appeal to the Court of a First Class Magistrate.

(4) As soon as all questions as to the correctness of the list have been determined by the District Commissioner shall forthwith transmit such corrected list to the Commander.

14. Any member of the Auxiliary Force who leaves or changes his residence in the District to reside in another District shall forthwith notify the District Commissioner and the District Commissioner shall be liable to make such notification shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding one month or a fine not exceeding five pounds.

PART III.

ARMS, EQUIPMENT AND TRAINING

15. Ranges, ammunition, equipment and uniform as may be prescribed shall be provided by the Government for the members of the Auxiliary Force and regulations shall be issued in accordance with regulations.

16. Every member of the Auxiliary Force in possession of a Government rifle, ammunition, equipment and uniform as hereinafter provided shall be responsible for the same and for keeping the same in a good and safe condition, and shall be liable for any loss of or damage to such rifle, ammunition, equipment or uniform, due to his act, neglect or default.

17. (1) The peace training of each Class of the Auxiliary Force shall be carried out in accordance with regulations made under this Ordinance and every member of the Auxiliary Force shall undergo such peace training in any year as shall be notified in accordance with the provisions of section 19 of this Ordinance.

20. The time occupied in proceeding to or returning from a camp or place of assembly or instruction shall not be reckoned as part of the prescribed period of peace training.

Power to exempt from peace training.

18. A District Commandant may, with the approval of the Commander, exempt any member of the Auxiliary Force in his District from the performance of the whole or any part of his compulsory peace training under the provision of section 17 of this Ordinance.

Notification of time and place of peace training.

19. The date and place of every course of peace training shall be notified by the Commander and notice of such date and place published in the Gazette and in the Auxiliary Force Orders and in such other manner as may be prescribed shall be sufficient notice to every member of the Auxiliary Force.

Penalty for non-attendance at peace training.

20. If any member of the Auxiliary Force without reasonable cause or excuse, after the publication of the notice prescribed by the last preceding section, fails to attend at the place mentioned in such notice, the purpose of undergoing the prescribed course of peace training, or fails to complete such course, then and in only such case, such member shall be liable, on conviction before a magistrate of the first or second class, to a fine not exceeding ten pounds or, to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

Provided that no such conviction shall be deemed to exempt the person convicted from the fulfilment of his obligations under the provisions of the regulations.

PART IV.

Mobilization.

Calling out and mobilization of the Auxiliary Force.

21. (1) Whenever in the opinion of the Governor it shall be necessary to repel external aggression, or to aid the civil authority in the protection of life and property and to prevent and suppress internal disorder in the Colony, the Governor may, by proclamation, call out and mobilize the Auxiliary Force or such part or parts thereof as he may deem necessary for active service.

Provided that a proclamation under this sub-section may call out the members of either Class or both Classes mentioned in section 8 of this Ordinance, but so that the members enrolled in Class II shall not be called out until the members enrolled in Class I have been called out.

Provided further that the Governor may, by such proclamation, in lieu of calling out and mobilizing the Auxiliary Force or any part thereof as aforesaid, order the Auxiliary Force or such part or parts thereof as he may deem necessary to hold itself in readiness for immediate mobilization.

(2) In the case of sudden and imminent danger in any province or district, when it is not possible to obtain the authority of the Governor without undue delay, the civil officer in charge of such province or district may, for the defence of the province or district or any part thereof or for the protection of life and property therein, by proclamation, in the name of the Governor call out the members of the Auxiliary Force resident in such province or district, but in such case such officer shall forthwith report to the Governor such calling out and any subsequent steps taken by him.

22. Members of the Auxiliary Force shall, when they are on active service or when called out in a manner provided by the last preceding section or when ordered to hold themselves in readiness for mobilization in manner provided in the second proviso to section 21 (1), be subject to the provisions of the Army Act 1 and 45 Vict. Ch. 58, and all Acts amending or substituted for the same, by law as applicable, but so that the Regulations under section 31 of this Ordinance may prescribe that any provisions of those Acts shall not apply to the Auxiliary Force.

Discipline of the Auxiliary Force as to be prescribed by Army Act, 1 and 45 Vict. Ch. 58.

Provided that—

(a) the words "the Auxiliary Force" shall be read therein for the words "Regular Force"; the words "member of the Auxiliary Force" for the words "officer or soldier", as the case may be, and the word "Governor" for the words "His Majesty" and "Secretary of State";

(b) no sentence as a court-martial upon the trial of a member of the Auxiliary Force shall be carried into execution unless confirmed by the Governor or such officer as he may appoint on his behalf.

23. On the mobilization of the whole or any part of the Auxiliary Force for active service, every resident (whether he is or he is not a member of the Auxiliary Force) shall be liable to provide transport and supplies in his possession if so required; and any person who without reasonable cause or

Liability of population to provide transport, etc.

excuse, fails to comply with the requirements of this section shall be liable on conviction before a magistrate of the first or second-class, to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Auxiliary Force not to be called out for ceremonial purposes. Penalty for

24. No member of the Auxiliary Force shall be liable to be called out for ceremonial purposes or for any purpose other than as provided in this Ordinance.

25. Any member of the Auxiliary Force who after any notice has been published in pursuance of the provisions of section 15 of this Ordinance, without reasonable cause or excuse fails to attend or neglects to attend without the permission of some competent authority, or refuses or neglects to obey the command of his superior officer, shall be liable, on conviction before a magistrate of the first or second class, to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both the said fine and imprisonment.

Provided that no such conviction shall be deemed to exempt the person convicted from service or from any liability to serve under the provisions of this Ordinance.

MISCELLANEOUS PROVISIONS

Member not to be punished for absence

Notwithstanding the provisions of section 14 of this Ordinance no member of the Auxiliary Force shall be liable to be punished for any offence under the provisions of this Ordinance as well as under the provisions of the Army Act.

Temporary absence of member exemption from service of certain provisions of 1936.

27. The provisions of this Ordinance shall not apply to any member of the Auxiliary Force during his temporary absence from the Colony, nor to any person while serving in the Kenya Regiment (Territorial Force) Ordinance, 1936, or in the Reserve or Special Reserve thereof.

Provided that except as hereinafter provided every person on the date of the completion of his service with the Kenya Regiment (Territorial Force) or with the Reserve or Special Reserve thereof shall be deemed to be a member of the Auxiliary Force in Class II thereof as provided for in section 8 of this Ordinance and to be subject in all respects to the provisions of this Ordinance.

Provided further that the provisions of the above proviso shall not apply to any officer or member of the Kenya Regiment (Territorial Force) (excluding the Reserve thereof) between the ages of eighteen and thirty who has been permitted to resign therefrom before having completed the full term of his service therewith, nor to any such officer or member of the Kenya Regiment (Territorial Force) (excluding the Reserve thereof) whose services with the Regiment has been unsatisfactory. A certificate signed by the Commanding Officer of the unit to which such officer or member belongs to the effect that such officer or member was permitted to resign or a certificate signed by the Commanding Officer of such unit and approved by the Commander, to the effect that the service of any officer or member of the Kenya Regiment (Territorial Force) has been unsatisfactory shall be sufficient for the purposes of this proviso, provided that in the latter case the certificate shall be shown to the officer or member of the Auxiliary Force concerned before being sent to the Commander. Any such officer or member who has been permitted to resign or whose service has been unsatisfactory shall be deemed to be a member of the Auxiliary Force in Class II thereof and to be subject in all respects to the provisions of this Ordinance except that the amount of peace training to be done by him shall be in the discretion of the Commander.

28. Nothing in this Ordinance contained shall be deemed to prevent any member of the Auxiliary Force from volunteering to serve in any of His Majesty's Regular or other Forces.

29. Any employer who

- (a) by dismissing an employee or by reducing his wages or in any other manner whittens or penalizes him for entering upon or carrying out any service or training as aforesaid; Provided that this paragraph shall not be construed to require an employer to employ any person in his employ any wages or salary for the time he is absent from work for the purpose of peace training or during the time he is engaged on active service; or
- (b) by words, conduct, or otherwise directly or indirectly compels, induces, or prevails upon, or attempts to compel, induce, or prevail upon, any person in or seeking his employ to do or refrain from doing any service or peace training under this Ordinance for which he is liable or eligible.

Right of members to volunteer to serve in His Majesty's Forces.

Co-operation with employers.

shall be guilty of an offence and shall be liable, on conviction before a first or second class magistrate, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Governor may
award
gratuity or
pension in
certain events

30. (1) In the case of any member of the Auxiliary Force who is temporarily or permanently disabled by reason of any wound or injury received or sickness contracted by him, when on active service as provided by section 21 of this Ordinance, the Governor may award to such member such gratuity or yearly pension as to him may seem fit, but, except with the sanction of the Legislative Council, no gratuity shall exceed two hundred and fifty pounds and no such pension shall exceed one hundred pounds per annum.

(2) The Governor may grant to the widow or family of any such member who may be killed in action or on active service as provided in section 21 of this Ordinance a pension or allowance of such amount as may be prescribed.

(3) No pension or gratuity payable under this Ordinance shall be assigned or transferable, nor shall the same be attached or levied upon for or in respect of any debt or claim due to the recipient thereof or his wife.

Penalty

31. Any person who contravenes or fails to comply with any of the provisions of this Ordinance for which no other penalty is provided shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds.

Power to
make regulations

32. (1) The Governor may from time to time make regulations providing for all or any purposes whether general or to meet particular cases that may be convenient for the administration of this Ordinance or that may be necessary or expedient for carrying out the objects or purposes of this Ordinance and where there may be in this Ordinance no provision or an insufficient provision in respect of any matter or thing necessary or expedient for giving full effect to this Ordinance; providing for or supplying such omission or insufficiency and without prejudice to the foregoing powers, providing for all or any of the following matters:

- (a) the general government, discipline, peace training and management of the Auxiliary Force;
- (b) the establishment of units of the Auxiliary Force and the various grades, numerical establishment, ranks and appointments therein;

(c) the attendance at drills, inspection, classes and courses of instruction of members of the Auxiliary Force and the examination of members of the Auxiliary Force as to proficiency in military professional subjects, and the granting of certificates of proficiency in military professional subjects;

(d) the appointment to, seniority of, promotion in and tenure of commissioned or non-commissioned ranks in the Auxiliary Force;

(e) the leave of absence, suspension, reduction and discharge of members of the Auxiliary Force;

(f) the conditions of physical fitness for service in the various units of the Auxiliary Force;

(g) the rates of pay and allowances and issues of rations to members of the Auxiliary Force as called out under section 21 of this Ordinance;

(h) the enrolment of all persons in the service in the Auxiliary Force;

(i) the court of appeal, the procedure and powers of courts of officers and courts of members;

(j) the payment of compensations to widows or families of members of the Auxiliary Force as provided in section 30 of this Ordinance;

(k) the requisitioning of means of conveyance and transport for service with the Auxiliary Force as called out under section 21 of this Ordinance;

(l) the conveyance by air, road, rail, or water of members of the Auxiliary Force and their transport and equipment when travelling on duty;

(m) the requisitioning of goods, provisions, supplies and accommodation for members of the Auxiliary Force when called out under section 21 of this Ordinance;

(n) the issue and care of arms, accoutrements, ammunition, supplies, animals and transport, clothing and equipment for the Auxiliary Force;

(o) the compiling of registers of transport and the duties of members of the Auxiliary Force in connection therewith;

(p) the establishment and conduct of camp, regimental or district institutions for providing recreation and refreshment to members of the Auxiliary Force;

OBJECTS AND REASONS

This Bill, together with the Kenya Regiment (Territorial Force) Bill, is designed to give effect to the recommendations of the Committee appointed by His Excellency the Governor on the 4th April, 1936, to consider suggestions for the re-organization of the Defence Forces of the Colony.

This Bill is modelled on the Defence Force Ordinance, 1927, which it repeals and makes provision for the establishment of a Force to be known as the Kenya Auxiliary Force, the main function of which will be to train all citizens fit in the Kenya Regiment to defend the Colony in the event of Internal Disturbances. A considerable number of important alterations have been made, and there are a large number of minor alterations.

If the provisions of this Bill are accepted, the total estimate of the expenditure required to establish and maintain the auxiliary force will amount to £2,017 of which £2,403 will be non-recurrent and £1,644 recurrent.

Clause of the Bill.	Remarks.
1.	Short title. Partly new, but c.f. section 1 of Chapter 42, Revised Edition of Laws of Kenya.
2.	Interpretation. Partly new, but c.f. section 2 of Chapter 42, Revised Edition of Laws of Kenya.
3.	Partly new, but c.f. section 3 of Chapter 42, Revised Edition of Laws of Kenya.
4.	C.f. section 4 of Chapter 42, Revised Edition of Laws of Kenya. The second proviso has been omitted.
5.	C.f. section 5 of Chapter 42, Revised Edition of Laws of Kenya. Proviso 1B new.
6.	C.f. section 6 of Chapter 42, Revised Edition of Laws of Kenya, but period of service to be 2 years followed by four years in the reserve.
7.	New, but c.f. section 7 of Chapter 42 of the Revised Laws of Kenya.
8.	New.
9, 10 and 11.	New, but c.f. sections 8 and 9 of Chapter 42, Revised Laws of Kenya.
12.	C.f. section 10 of Chapter 42, Revised Edition of Laws of Kenya.
13.	C.f. section 11 - do
14.	C.f. section 12 - do
15.	C.f. section 13 - do
16.	C.f. section 14 - do
17.	C.f. section 15 - do
18.	C.f. section 16 - do
19.	C.f. section 17 - do
20.	C.f. section 18 - do
21.	C.f. section 19 - do
22.	C.f. section 20 - do
23.	C.f. section 21 - do
24.	C.f. section 22 - do
25.	C.f. section 23 - do
26.	C.f. section 24 - do

38 Feb 7 36

C. O.

- Mr. *Parkinson*
- Mr. *Parkinson*
- Mr. *Parkinson*
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- First U.S. of S.
- Party, U.S. of S.
- Secretary of State.

17 18 Nov 1898

DRAFT.

Recd. 10/10/36
War Office

Sancti...
 receipt of *2700* copies of the
11th November (No. 108)
 (M.O.S.) regarding the
 Draft Ordinance for the
 establishment of the
 Kenya District (Central
 Force) and the Kenya
 Auxiliary Reserve, and
 to request you to inform
 the Army Council that
 he is in agreement with the
 other copies of the
 proposed to be drawn up and
 the Ordinance as passed by
 the

Copy to Kenya (39)

FURTHER ACTION.
 Copy con & Gov.
 of air & rail
 Major *[Name]*
 23.11

Tel. No.—Whitehall 9400.

Any further communication on this subject should be addressed to—
The Under-Secretary of State,
The War Office,
London, S.W. 1,
and the following number quoted.

0165/2313 (M.O.2)

RECEIVED
26 NOV 1936
C.O. REGY



SECRET

THE WAR OFFICE,
LONDON, S.W.1.

11th November, 1936.

35
37

Sir,

With reference to previous correspondence on the subject of the draft ordinances for the Kenya Regiment (Territorial Force) and the Kenya Auxiliary Force, I am commanded by the Army Council to state that in view of the fact that Mr. Secretary Grimsby Gore has consented to the Governor of Kenya his approval for the introduction of the Kenya Territorial Force Bill on the understanding that it may be necessary to introduce amendments to the ordinances at a later date in order to render them fully satisfactory and effective, they are of the opinion that no good purpose would be served by commenting further at this stage.

I am to say that the Council suggest that they should reserve any further remarks which they may have to make until such time as they have had an opportunity of perusing these ordinances in the form in which they are finally enacted.

I am,

Sir,

Your obedient servant,

A. H. Williams

The Under Secretary of State,
Colonial Office,
Downing Street,
London, S.W.1.

copy to Kenya (2)

Mr. Packer 28/2.

Mr. Flood. 28/2.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Holtomley.

Sir J. Shackburgh.

Permal. U.S. of S.

Partly. U.S. of S.

Secretary of State.

DRAFT

U.S. of S.

Tel. (8/2)

Dep. (8/2)

FURTHER ACTION.

Sir,

I am in receipt of the receipt from letter No. 0165 (2513 (H.O. 2) of the

28th of October 1914 in relation to the information you have received from the A.C. in the matter of the

re-organization of the forces of the A.C. in the matter of the re-organization of the

forces of the A.C. in the matter of the re-organization of the forces of the A.C. in the matter of the

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re-organization of the forces of the A.C. in the matter of the re-organization of the forces of the A.C. in the matter of the

Kenya to introduce a
satisfactory measure
The current session of
the Legislative Council.

(Signed) J. E. W. Flood

C. O.

Air Mail

58240/36.

Mr. Paskin. 27/2.

Mr. Dale. 27

Major Bishop. 29/10

Mr. Flood. 28

Sir G. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parliamentary Secretary.

Secretary of State.

NOV 1936

DOWNING STREET.

19 October, 1936.

23 OCT

DRAFT

Kenya

No. 874

With reference to the my

Secretary of State's telegram

no. 428 of the 28th of October

enclose copies of two letters

which were sent to the War Office
on the subject of the (Territorial Force)

To War Office 23rd September

(23)

and Auxiliary Force Bills, together

To War Office 17th October

(27)

with a draft of a letter (with its

Order

(No. 33)

enclosure) which we understand the

War Office is proposing to send to us
in reply. This draft letter was

prepared in the light of the comments
made by the various departments of the

War Office but has not yet been
officially approved, though we

understand that it is not likely to be

materially

FURTHER ACTION.

(continued)

Copy 33/1/11. Tel.

h.w. 1/11 to

be placed on 7/11

297
9/11

303

materially altered. The War Office very kindly let us have it in this form in advance in order to give the Attorney-General a few more days in which to think about the amendments which will be required. We will send out the official letter by air mail as soon as we get it, and will also telegraph the officers from the draft in any material respect.

As regards the detailed amendments I do not think it is necessary to offer suggestions beyond:

(a) The general comment that the suggested amendment to Clause 26 of the Territorial Force Bill which will make members of the Regiment subject to the Army Act when on "military service"

as defined in the Existing Territorial Force Ordinance, will cover a good deal of the ground dealt with in the various comments in the Secretary of State's despatch of the 21st of September, and in the correspondence with the War Office.

(b) the suggestion in the last paragraph

but

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Batemley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Party. U.S. of S.
- Secretary of State.

DRAFT.

(27)

but one of my letter to the War Office of the 17th of October, that it might be desirable (in order to avoid possible ambiguity and conflict between the two Ordinances) to provide that Territorial Force Officers and Non-Commissioned Officers employed with the Coast Defence Unit should generally under the R.A.F. Ordinance, has been put differently in the Secretary of State's telegram of the 17th of October, because we realised that there are of course many provisions of the R.A.F. Ordinance which would not be applicable to such Officers and Non-Commissioned Officers.

(draft herewith)

I desire to invite particular attention to the fact that, in the short time available for the examination of these Bills in the Colonial Office and War Office, it has not been possible to deal

FURTHER ACTION.

Tel. No. Whitehall 9400.

Any further communication on this subject should be addressed to
The Under-Secretary of State,
The War Office,
London, S.W.1.
At the following number quoted.

0165/3515 (M.O. 2.)



THE WAR OFFICE,
LONDON, S.W.1.

SECRET

REC

28th October, 1936.

C. O. REGY

Sir,

I am commanded by the Army Council to acknowledge the receipt of Colonial Office letters No. 38240/36 dated 25th September and 20th October, 1936, and No. 38240/1/36 dated 17th October, 1936, and to state for the information of Mr. Secretary Oswald Gore, that they have perused the Report of a local Committee, appointed to consider suggestions for the reorganisation of the defence forces in Kenya Colony, and that they forward herewith certain remarks thereon. In view, however, of the Colonial Office letter dated 20th October, the Council's Survey of the draft Ordinances has not been completed, and they may have some further remarks to make at a later date. From such examination as they have made of the Kenya Regiment (Territorial Force) Ordinance, however, the Council consider that extensive redrafting will be necessary before the Ordinance can be rendered either satisfactory or effective for the purposes desired. That being so, it would, in their opinion, serve no useful purpose nor would it suffice to set out in full the many matters which call for reconsideration, amendment or elucidation, but by way of illustration certain observations have been embodied in the separate paper which forms an annexure to this letter. The Council are aware that reference has already been made to some of these points in the despatch referred to in the next succeeding paragraph.

2. I am to say that the Council agree generally with the views expressed in the despatch dated 21st September, 1936, addressed to the Governor of Kenya, a copy of which was forwarded with Colonial Office letter of 23rd September, 1936, particularly as regards the grave difficulties in the way of accepting the recommendation that commissions in the Kenya Regiment should be granted direct by His Majesty The King; the necessity for a clearer exposition of Clause 25, and the inadvisability of such wide general powers of fine or imprisonment being conferred upon a Commanding Officer.

The Under-Secretary of State,
Colonial Office,
Downing Street,
S.W.1.

War Office Comments on Report of a local Committee, appointed to consider suggestions for the reorganization of the defence forces in Kenya Colony.

A. Kenya Regiment (T.F.) Ordinance.

1. No provision is made, for the application of the Army Act to members of the Regiment during peace-time training, as is the case with the Territorial Army at home.

2. Clause 25(3).

Instead of "with proper zeal", there might be substituted some such expression as "without reasonable cause or excuse".

3. Clause 26(2).

When the Army Act is applied to officers and members of the Regiment under Clause 25(3), those officers and men would still be subject to the penal clauses of the Ordinance (and regulations made thereunder). Consequently, an Officer of the Regiment committed an offence which was a breach both of the Ordinance and of a provision of the Army Act to which the Ordinance is subject, his commanding Officer could punish him under the Ordinance but could not punish him at all under the Army Act.

4. Clause 26(2)(b).

It would not be either expedient nor practicable to require all sentences passed on active service to be confirmed by the Governor before being put into execution.

(cf. draft Kenya Auxiliary Force Ordinance, Clause 22, proviso (b)).

5. Clause 29.

In Clause 29 powers of punishment are given to "any court having jurisdiction". But the Ordinance apparently does not in terms set up any court having jurisdiction. The omission to set up such a court to punish offences against the Ordinance is particularly noticeable when consideration is given to Clause 39 which would apply to non-members of the Regiment.

6. Clauses 29, 37 and 39.

(a) The words 'any person' (e.g. in Clause 37 and 39) would include officers and members of the Regiment. As the draft now stands, an officer or member of the Regiment would be punishable either under Clause 29 or under Clause 39 for a breach of the Ordinance; Clause 39 provides for no authority or tribunal to award the punishment. It may be that it was intended that Clause 39 should be applicable only to persons who are not officers or members of the Regiment, but this point requires elucidation.

(b) There is a substantial difference in the scope between Clauses 29 and 39. As at present drafted, there appears no obvious explanation of this. Clause 29 provides a penalty for breach of the Ordinance or the regulations thereunder in cases where no other penalty is provided. But under Clause 39, as drafted, the words 'where no penalty is specially provided' would appear to be misplaced because they have no reference to the words 'or any of the regulations' which immediately follow. The effect of this would be that if by regulations the Governor provided a penalty for a breach of any particular regulation, that penalty would be awardable under Clause 39 but not under Clause 29 because under the latter Clause the penalty provided in the Clause and not by the regulation would prevail.

(c) It is not easy to discover whether any, or if so what, distinction is intended to be drawn in Clauses 29 and 39 between an offence against the Ordinance and a contravention of or failure to comply with the provisions of the Ordinance.

7. Clause 32.

The difference between 'crime' and 'offence' in Clause 32 is not apparent, nor are those words defined in the Ordinance.

8. Clause 33.

Clause 33 would appear to suffer from want of precision; as at present drafted its meaning or intention are not clear.

Kenya Auxiliary Force Ordinance.

Sufficient opportunity has not yet been given for more than a cursory glance at the provisions of this Ordinance. Members of the Auxiliary Force do not appear to be subjected to 'military law' at all but they can be subjected to the Army Act in the circumstances set out in Clause 22. Clause 25 however appears to give magistrates, even in active service conditions, power to try and punish a member of the Auxiliary Force for such a purely military offence as disobeying the commands of his superior officer.

THE WAR OFFICE,

WHITEHALL.

32

44

S.W. 1.

26 Oct

RECEIVED

NOV 4 1918

SECY

My dear Birk,

As promised
herewith a copy of what I
have drafted re being

there is absolutely no
guarantee that the
reply, after discussion
is A.G. J.A.C. and
we and I should not
have any influence
to this. If you have

hear that in mind I
shall be glad, but you
will notice that there is
little in it but a present
wish to be so

Your son

Smelly

European volunteers of the right type are not available locally on for other sufficient reasons. Appropriate provision should therefore be made in the Ordinance for Territorial Force Officers and Non-Commissioned Officers who may be serving with the Coast Defence Unit King's African Rifles to be made subject to the Provisions of the K. A. R. Ordinance.

Your obedient servant,

6. Clauses 29, 37 and 39.

(a) The words 'any person' (e.g. in Clause 37 and 39) would include officers and members of the Regiment. As the draft now stands, an officer or member of the Regiment would be punishable either under Clause 29 or under Clause 39 for a breach of the Ordinance; Clause 39 provides for no authority or tribunal to award the punishment. It may be that it was intended that Clause 39 should be applicable only to persons who are not officers or members of the Regiment; but this point requires elucidation.

(b) There is a substantial difference in phraseology between Clauses 29 and 39 as at present drafted; there appears no obvious explanation of this except faulty drafting. Clause 39 provides a penalty for breaches of the Ordinance and the regulations made thereunder in cases where no penalty is provided. But under Clause 29, as drafted, the words 'for which no penalty is specially provided' would appear to be misplaced because they have no reference to the words 'any of the regulations' which immediately follow. The effect of this would be that if by regulation the Governor provided a penalty for a breach of any particular regulation, that penalty would be awardable under Clause 39 but not under Clause 29 because under the latter Clause the penalty is fixed in the Clause and not by the regulation would prevail.

(c) It is not easy to discover whether any, or if so what, distinction is intended to be drawn in Clauses 29 and 39 between an offence against the Ordinance and a contravention of or failure to comply with the provisions of the Ordinance.

7. Clause 32.

The difference between 'crime' and 'offence' in Clause 32 is not apparent, nor are these words defined in the Ordinance.

8. Clause 33.

Clause 33 would appear to suffer from want of precision; as at present drafted its meaning or intention are not clear.

B. Kenya Auxiliary Force Ordinance.

Sufficient opportunity has not yet been given for more than a cursory glance at the provisions of this Ordinance. Members of the Auxiliary Force do not appear to be subjected to military law at all but they can be subjected to the law of the land in the circumstances set out in Clause 21. Clause 22 however appears to give a measure of discipline in a live service. It is not clear whether and how a member of the Auxiliary Force can be punished for such a military offence as disobeying the commands of his superior officer.

41

B. Kenya Auxiliary Force Ordinance.

Sufficient opportunity has not yet been given for more than a cursory glance at the provisions of this Ordinance. Members of the Auxiliary Force do not appear to be subjected to military law at all but may be subjected to the Army Act in the circumstances set out in Clause 22. Officers however appear to give a Magistrate, even in certain conditions, power to imprison a member of the Auxiliary Force for such a military offence as directed by the order of his superior officer.

RECEIVED
COPY FOR REGISTRATION
26 OCT 1936
C. O. REGY

51
322/10/36

Program from the Governor of Kenya to the Secretary of State for the Colonies

Dated 26th October, 1936. Received at 11.9 am. 26th Oct., 1936

IMPORTANT

No. 258 Your telegram No. 246 is essential in view of popular feeling over considerable modifications and on receipt of the bill in form or other amendments introduced to the existing provision with a view to the Government of Kenya to be in effect from 1st January 1937.

I trust you will be able to communicate immediately in order to enable bill with any major amendments to be placed on the Statute Book.

C. O.

Mr. Ford 24-10

Mr. *small*

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Govt. of State.

*copy - sent
4-0-4-24/10/36
P.S.*

Q 297

Ans

RECEIVED
H 26 OCT
D 26 1936

Oct 1936

No. 246

your telegram No 246

DRAFT

code

*your office
has crossed details*

comments not yet available but

Nairobi

view of Army Council is that

bill as it stands is altogether

in many ways undesirable

and also will have to be

completely revised

*(Based on a tel. from
with Mr. J. A. G. Dept.)*

See

FURTHER ACTION.

Mr. [Name] 4/10
Mr. Parkin 19/10
Mr. [Name]

79

Mr. Parkinson
Sir G. Tomlinson 19 OCT
Sir G. Bottomley 20 "
Sir J. Shuckburgh
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Immediate

20 October 1956

DRAFT

I am to report the letter from
this Department of the 20th of September
and the 19th of October regarding the
reports for the reorganisation
of the Kenya Forces of Kenya, and
to request you to inform the
Privy Council that the former
Kenya is most anxious that
the Kenya Regiment (Paratroop
Force) Bill and the Kenya
Auxiliary Force Bill should be
introduced into the Legislative
Council of the Colony at the
forthcoming session commencing on the
28th of October.

(a copy has been received from)

FURTHER ACTION.

In the Ministry file with
according

Accordingly be pleased to
receive the observations
of the Army Council on the
points raised in the two
letters from this Department
at the earliest possible
date.

Yours etc.

16140000. E. W. FLOOD

17 October, 1936

Dft on
EB240/1/36/ *Kenya*

Sir

With reference to the letter from this office No. EB240/24 of the 2nd of September in regard to the proposals for the reorganisation of the Defence Force of Kenya, I am pleased by Mr. Secretary Urquhart's note to state for the information of the War Office Council that further consideration has been given to the proposal in paragraph 7 of Kenya Dispatch No. 373 of the 25th of July that the Government is not in favour of the recommendation (in paragraph 27 of the Committee's Report) that the personnel of the Coast Defence Unit at Mombasa should be composed entirely of regular soldiers.

copy 2 Kenya (38)

In War Office letter No. 0165/2297 (H.O.2) of the 7th of May it was stated that the War Council considered the arrangements for the raising and organisation of the Unit, proposed in the Governor's

Secret

THE UNDER SECRETARY OF STATE,
WAR OFFICE.

Secret despatch of the 2nd of April, to be sound.

Sub. at therefore to any further observations which the Army Council may desire to offer, the Secretary of State wishes to inform the Governor that he approves his proposal to proceed with the experiment of organizing this unit on a compulsory basis, on the understanding that the Governor is satisfied that there are likely to be sufficient volunteers available who would not be required in other essential services in time of war.

If this proposal is approved, it is intended to invite the Governor's attention to the fact that Section 4 of the King's African Rifles Ordinance authorizes the raising of one or more battalions of troops, and the section is defined in section 2 in terms which would not appear to include an artillery unit. An amendment of the Ordinance would therefore be necessary to cover the raising of a King's African Rifles (Coast Defence Unit) as proposed in the despatch of the 2nd of April.

It is also proposed to suggest to the Governor that both the King's African Rifles

Secret despatch of the 2nd of April, to be sound.

Sub. at therefore to any further observations which the Army Council may desire to offer, the Secretary of State wishes to inform the Governor that he approves his proposal to proceed with the experiment of organising this unit on a semi-voluntary basis, on the understanding that the Government is satisfied that there are likely to

be sufficient European volunteers available who would not be required for other essential services in time of war.

It is proposed, it is intended to invite the Governor's attention to the fact that Section 4 (1) of the King's African Rifles Ordinance authorises the raising of "one or more battalion or battalions of troops..." and that "battalion" is defined in Article 2 in terms which would not appear to include an artillery unit. An amendment of the Ordinance would therefore be necessary to cover the raising of a "King's African Rifles (Coast Defence Unit)" as proposed in the despatch of the 2nd of April.

It is also proposed to suggest to the Governor that both the King's African Rifles

Ordinance and the draft Kenya Regiment (Territorial Force) Bill should be examined with a view to any amendments being made which may be required to cover the case of Territorial Force Officers and

Non-Commissioned Officers being attached to the King's African Rifles (Coast Defence Unit). For example if

is not clear that an Ordinance in the terms of the draft Bill would authorize the appointment in any other regiment of Officers and Non-Commissioned Officers appointed under it, and it will be for general application rather than specific, it should be included in the Bill for this purpose.

As regards discipline, the position appears to be that the European Territorial Force Officers attached to the Coast Defence Unit would be governed by section 305 of the King's African Rifles Ordinance as it stands, and also by clause 26 of the draft Bill which (though similar) is not identical, while Territorial Force Non-Commissioned Officers would be covered by clause 26 of the Bill but by no provisions

Ordinance and the draft Kenya Regiment (Territorial Force) Bill should be examined with a view to any amendments being made which may be required to cover the case of Territorial Force Officers and Non-Commissioned Officers being attached to the King's African Rifles (Coast Defence Unit.) For example it is not clear that an Ordinance in the form of the draft Bill could authorize the employment in any other regiment of Officers and Non-Commissioned Officers appointed under it, and it will be for consideration whether similar provisions could be inserted in the Bill for this purpose.

An amendment defining the powers of officers to be that the European Territorial Force Officers attached to the Coast Defence Unit would be covered by section 10 of the King's African Rifles Ordinance as it stands, and also by clause 26 of the draft Bill which (though similar) is not identical, while Territorial Force Non-Commissioned Officers would be covered by clause 26 of the Bill but by no provisions

of

of the King's African Rifles Ordinance, having regard to the definition in Section 2. In this connection attention is invited to the observations on Clause 26 (1) of the Bill in paragraph 6 of Colonial Office despatch No. 774 of the 21st of September. It is a matter for consideration whether it would not be desirable (in order to avoid possible ambiguity and conflict between the two Ordinances) to provide that Territorial Force Officers and Non-Commissioned Officers employed with the Coast Defence Unit, should come under the King's African Rifles Ordinance. It would appear that certain parts of the Territorial Force Ordinance (i.e. clauses 15 and 16 and clauses 18-20 of the Bill) would have to continue to apply to them.

Before communicating with the Governor on this aspect of the question, it would be desirable to be

be grateful if he could be furnished with the views of the Army Council on the questions raised in this letter and any other aspects of the matter on which they may desire to comment.

I am,

Sir,

Your most obedient servant,

Handwritten signature

be grateful if he could be furnished with the views of the Army Council on the questions raised in this letter and any other aspects of the matter on which they may desire to comment.

I am,

Sir,

Your most obedient servant,

John W. Flood

23

G. O.

38240/36 Kenya

Mr. Flood. 7 /9/36.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

X Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

WJ 18-9

Downing Street,

23 September, 1936.

DRAFT.

THE UNDER SECRETARY OF STATE,
WAR OFFICE.

I am etc. to transmit to

you, to be placed before the Air

the enclosure of a memorandum

the Governor of Kenya, together with

minutes of the recent

Committee appointed to consider

suggestions for the reorganisation of

the Defence Forces of the Colony, in

which are embodied two draft

Ordinances; one to provide for the

establishment of a Kenya Regiment

(Territorial Force); the second to

provide

*Fr. Gov. No. 179
No. 151*

*To ditto 236 21-9-36
(acc. alt.)*

Kenya 30

2 Drafts.

FURTHER ACTION.

provide for the establishment of
an Auxiliary Force in the Colony.

2. As it is a matter of some
urgency to ensure that the Report
and the draft legislation shall
receive publicity and discussion

in Kenya, Mr. Ormsby Gore has
and (of the rights)
authorised publication without prior
reference to the Army Council, but

the Bills will not actually be
into Council or
introduced and carried into law
until such time as further directions

are given. Mr. Ormsby Gore's views
generally are embodied in the enclosed
despatch which he has addressed to

the Governor and he would be grateful
for an expression of the views of the
Army Council upon the provisions of
the Bills, more particularly in regard

to

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT

FURTHER ACTION

to the powers which it is ^{sought} said to
confer upon Commanding Officers, and
the penalties prescribed.

3. I am also to invite
attention to ^{the} suggestion that
commissions for the proposed Kenya
Regiment should be granted by His
Majesty the King. The Army Council
will observe that in Mr. Ormsby Gore's
opinion this would be a serious
departure from existing practice
and might have very awkward results
so that he is not prepared at present
to accord approval. The Army
Council may, however, wish to furnish
some observations upon that point.

I am, etc.

(Signed) J. E. W. FLOOD

38240/26

G. O.

Mr. Passin 10/9.
 Mr. Flood. 19.9 about
 Mr.
 Sir C. Parfinson.
 Sir G. Tomlinson.
 Sir C. Bottomley.
 Sir J. Shackbury.
 Permt. U.S. of S.
 Parly. U.S. of S.
 Secretary of State.

DES 61 II
 H O
 19 SEP.
 1919 9 30
 No. 219

Coded. Wash - 22
 3 part
 19/9/26
 1500 60

(20) Your tel. of 16th Sept. No. 219.

WJ

Resp. follows by air mail stating that I approve

DRAFT. Tel.

Governor
 Nairobi

proposals generally but
 point of detail in
 Only part
 effect
 Satisfied
 of advantage has
 maintaining conditions
 practice followed - all
 Colonies whereby commissions
 are granted by Governor
 as H.M.'s Representative
 & Comander in Chief
 Bills may be published

FURTHER ACTION.

Subject, to deletion of Clause 3(4)
in first one
but should not be introduced into Council

pending consideration of my despatch
and views of ^{Army Council} ~~the~~ office which

I am ~~not~~ reporting.

Great delay but various legal

careful

examination

K.S.
C.O.

38240/36 Kenya

21

Mrs. Flood. 7/19/36.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Permt. U.S. of S.

Privy. U.S. of S.

Secretary of State

AIR MAIL

Downing Street,

21 September, 1936.

See (3) on 38240/37
(9)

W.S. 18-9

DRAFT.

KENYA.

NO. 724

GOVERNOR.

(13) the minutes of the meeting of the Council of the 25th July in which I forward

copies of the Report of the Committee

which recently considered the

reorganisation of the Defence Forces

of the colony, and of the two

Bills prepared to give effect to the

Committee's recommendations.

2 Drafts.

FURTHER ACTION.

Copy to W.O. comp.
dft.

Copy to W.O. (22)

2. I find myself in general

agreement with the Report of the

Committee and, subject to what is

stated in the following paragraphs of

this

this despatch, I consider that the Bills may be published for information. There will probably be further correspondence, however, and they should not actually be introduced until I am in a position to furnish you with the observations of the Army Council whose advice is being sought. There are many difficulties in the way of accepting the Committee's recommendation, which I only endorse because I am sure that commissions in the Kenya Regiment should be granted direct by His Majesty the King. The constitutional practice followed in the Dominions and in all Colonies is that commissions in the local forces are granted by the Governor by virtue of his position as

into the Legislative Council.

His

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

His Majesty's Representative and Commander in Chief in each territory. This principle has solid constitutional support and it would, I think, be inadvisable to make any departure from it even in the somewhat exceptional circumstances of the proposed Kenya Regiment. I regret that I cannot accept your recommendation on this subject, but I am sure that the balance of advantage lies in maintaining the well-recognised practice.

4. In the draft Bill to provide for the establishment of the Kenya Regiment, I observe that the provisions of the existing Chapter 42 of the Laws have been generally followed. That Ordinance, however,

is

is not altogether satisfactory as would, I think, have been discovered had it been applied in practice, and I propose to make some comments on ^{of the Bill} point of detail. Clause 3(4) will have to be deleted in accordance with the decision conveyed to you in the foregoing paragraph of this despatch but I may observe in passing that it is consistent with the definition of the word "officer" adopted in Clause 2 as well as with Clauses 15 and 18. Clause 17 requires that, before any person can be confirmed in his ^{appointment} establishment as an officer, he must satisfy the Governor as to his qualifications. This is taken from Clause 15 of the former Ordinance, but it is nowhere stated what confirmation.

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Dollanley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT

FURTHER ACTION.

confirmation in his appointment means. An officer is appointed by virtue of receiving his commission and once the commission has been issued his appointment takes effect. There is no question of appointment on probation as in the case of civil officers. In any event, it is doubtful whether the clause is required at all since it is merely a direction to the Governor as to what he is to consider in appointing persons to commissions and in approving their promotion to higher rank. It might be sufficient, if anything is really necessary, to state simply that the Governor may prescribe such tests as he thinks fit which

which must be satisfied by candidates for appointment to commissions and for promotion to various ranks.

6. In Clause 26(1) there appears to be a misprint. It is not quite clear what is intended, but I think that it should run as follows:

"Officers and members of the Regiment, at all times, and officers and members of the Special Reserve, when called out for active service

as it stands there seems no point in repeating the words "Officers of the Regiment" who have already been mentioned.

In the same section I think that the words "subject to military law" require closer definition. The phrase is nowhere defined in the Ordinance and has

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bollenby.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Partly. U.S. of S.
- Secretary of State.

DRAFT

FURTHER ACTION.

has no particular meaning. I am aware that the section as drafted copies exactly Section 24(1) of the existing Ordinance mutatis mutandis, but since this Ordinance will be ^{the proposed} effective enactment, I think it better to adopt some accurate definition. The military law in Kenya should presumably be the Ordinance (to which, in course, the persons affected are subject) together with the Army Act when it is applied. If the intention is that members of the Regiment shall be subject to the Army Act and the King's Regulations at other times than when called up for active service, then a specific statement to that effect should be made. In

the present Ordinance (Section 24(2))
 two phrases are used "active service"
 and "military service". In the
 definitions "military service" and
 "active service" are both given clear
 definitions. "Military service" is being
 defined as service when called by
 the Governor to aid the civil power
 or when assembled in any camp at
 training or exercises, or similarly
 employed, or men in uniform. In the
 Bill under mention the first part has
 been incorporated in the definition of
 "active service", but the second part
 has been omitted. It would seem,
 therefore, that there is no real
 provision for the discipline of the
 Force when undergoing training save
 in so far as might have been laid down
 under

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permi. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT

FURTHER ACTION.

under the provisions of ^{Clause} Section 26(1)
 which, as I have already pointed out,
 are not satisfactory.
 7. Clause 32 is modelled on
 the existing Section 29, but the
 words "convicted or" have
 presume, accidentally omitted. As
 the clause stands it would
 allow a person to be convicted of a
 crime under the Ordinance and tried
 again for the same offence, though if
 he were acquitted, it would not be
 possible to set on foot a subsequent
 prosecution.
 8. Clauses 29 and 39 of the
 Bill provide for the infliction of
 penalties upon persons who are guilty
 of offences against the Ordinance,
 and Clause 29 gives the Commanding
 Officer

inflicting

Officer powers of a fine or imprisonment upon any officer or member of the Regiment. This provision is modelled

Clause
upon Section 26 of the existing Ordinance, but it appears to me to go much further than is expedient or practicable. In particular I have some doubts as to the propriety of allowing a Commanding Officer to send offenders to prison in the case of a unit such as the proposed Regiment.

Under the Army Act and King's Regulations a Commanding Officer has no power to inflict imprisonment on officers or non-commissioned officers, or to impose fines, except for loss of Government property under certain conditions. In the case of soldiers a Commanding Officer has power to award

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bollowley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Partly. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

award detention, which is carried out in the Military Detention Barracks, up to 28 days, and to impose fines up to £2 for drunkenness and up to £4 for loss of Government property. Anything in excess of this requires a court martial and I think that on reflection you will agree with my view that the general powers of the proposed Regiment ought not to be conferred upon the Commanding Officer of the Kerri Regiment. I propose to address you further on this subject when I have obtained the opinion of the Army Council.

Clause
9. Section 40 reproduces *Clause* Section 37 of the existing Ordinance, but the words "for the protection of persons acting in the execution of

this

this Ordinance" should, I think, be ^{omitted} deleted. The purpose of the section appears to be to impose a time limit upon proceedings under the Ordinance including proceedings against members of the Force. If so, the words which I have quoted should be deleted.

10. In Clause 43(3) I think that the word "arrested" is probably a mistake for "deported".

11. Clause 44(1) gives the Governor power to make regulations for "pensions, gratuities and compensation for losses sustained on duty". This power does not seem completely

consistent with Clause 43(1) and it should be made clear whether the intention is to empower the Governor to ^{provide for} issue additional pensions or not.

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT

perhaps 38
fifty-five

12. In regard to the Auxiliary Force Bill I observe that there is no ^{superior} age limit. In existing legislation the limit is ¹⁴⁷ 50 and no doubt you will agree that the same limit should be inserted in the Bill.

13. Clause 5(2) as it stands does not make any provision for enrolment of persons who are already resident in Kenya and who are

13. No doubt this is a transient and provision would be made for all such persons to enrol within a fixed period.

14. In Section 9(2) the words "otherwise qualified in regard to origin or descent" appear somewhat vague. Also, should any alien wish to enrol and take an oath,

FURTHER ACTION.

the terms of the oath will require to be very carefully scrutinised.

15. ^{Clause} Section 28 provides that it should be the duty of every employer to give all proper facilities for enabling any person in his employ to carry out the service or training for which he is liable, but the phrase is, in my opinion, too vague for its use in a legislative enactment. It would be very difficult in practice to say what all proper facilities really are, and the phrase might give rise to considerable disputes.

Also under ^{Clause} Section 28(3) the burden of proving that an employee was not dismissed because of his service or training is thrown upon the employer, and the two provisions together might

give

C. O.

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

DRAFT.

FURTHER ACTION.

give rise to very serious difficulty.

I therefore suggest that subsection 1 of

subsection 2(a) and subsection 3 of

this ^{Clause} section should be deleted.

16. ^{Clause} In the case of Section 29

I assume that "arrested" should read

"sequestered" as in the corresponding

provision in the other Bill.

17. It is in ^{Clause} subsection

whether some provision ought not to

be inserted into this Bill on the

lines of ^{Clause} Sections 27 and 40 of the

Kenya Regiment (Territorial Force)

Ordinance.

18. The penalty provided by

^{Clause} Section 34(1) of the ^{Kenya Regiment} Ordinance is

£100 or imprisonment up to two years

for neglecting to assemble when

called out for active service, but

the

the corresponding penalty in
^{clause} Section 31 of the existing Ordinance
 is a fine of £100 or six months' ^{only}
 imprisonment and it is for consider-
 ation whether ^{the heavier} such heavy penalties
 are really required. ^{Clause} Section 29 also
 imposes a heavy penalty on members
 of the Regiment who refuse to undergo
 training. Similarly in Section 30
 of the Auxiliary Corps Bill the penalty
 for non-attendance at training has been
 increased from 15 or one month's
 imprisonment up to £50 or imprisonment
 up to three months.

19. So far I have not made any
 comment upon the financial ^{aspect,} provisions
 of the Bill, but I note that the total
 expenditure which will be required will
 amount to £11,387 in the first year.

This

C. O.

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

DRAFT.

This involves a considerable increase
 in the Colony's expenditure and I
 agree with you that this increase will
 require serious consideration from
 the Standing Finance Committee when
 the Estimates are under consideration.
 My approval must, therefore, be
 regarded as subject to the examination
 of the financial implications of the
 report when they have been further
 considered.
 I have, etc.

(Signed) W. ORMSBY GORE

FURTHER ACTION.

I have not examined the (19)
provision in every Dominion but
in Canada the grant of commissions
is regulated by A. 55 & 34 of cap 132
& in Australia by sec 8 of the Defence
Act.

In Canada the act provides
that "Commissions of Officers in the
Military shall be granted by HM
during pleasure" & that "the
G. G. may cause his signature to be
affixed to any commission granted or
renewed under this Act."

In Australia the act provides that
the G. G. may

III Affair & private affairs of the
Defence Force and reserve commissions
etc.

The position of Australia & N.Z.
is different from that of the other
Dominions in that s. 11(1) c of
the Act provides that "the
provisions of this Act shall apply in
relation to & Borneo in relation to
press raised in, that Dominion as
they apply in relation to & in relation to
press raised in, any other part of HM's
dominions which is situated outside the
U.K & B. India & is not a Dominion."

I have not examined the position in every Dominion but in Canada the grant of commissions is regulated by s. 53 & 54 of cap. 132 & in Australia by sec 8 of the Defense Act.

In Canada the act provides that "Commissions of Officers in the militia shall be granted by HM during pleasure" & that "The G. G. may cause his signature to be affixed to any commission granted in accordance with this Act".

In Australia the act provides that the following...

vii. Appoint & promote officers of the Defense Force and issue commissions to them

The position of Australia & N.Z. is different from that of the other Dominions in that s. 167 C of the Army Act provides that "the provisions of this Act shall apply in relation to... & Borneo in relation to... forces raised in, that Dominion as they apply in relation to... in relation to forces raised in, or the part of HM's dominions which is situated outside the U.K & B. India & is not a Dominion."

I do not see the case otherwise
that constitutional practice but
within the terms of local legislation
that regulate the grant of
commissions - the Dominions, &
the terms of such legislation vary.
In any case the relation of such
legislation to the Army Act is I think
a matter for the War Office rather
than I.O. *handwritten note: in the
case of those Dominions which it
applies by virtue of s. 2(1b) requested
above*

11/9/56

*But under s. 26(1)
the Force is at all times
subject to military law.
But what is military law?*

*The old s. 29 now
"committed or acquitted of;
which is better I think"*

MEMORANDUM.

TERRITORIAL FORCE BILL.

The point about the granting of commissions
needs clearing up. The clauses are conflicting;
compare 3(4), ² ~~for~~ the (definition of "officer") and
15.

+ clause 18

*It is taken from the
old s. 15(1) & (2).*

Clause 17: What is meant by "confirmed in his
appointment as an officer"? Clause 17 does not
seem to be required at all since it is merely
directed to the Governor (who presumably is
responsible for promotions) as to what he is to
consider when promoting.

*They should be
"and members of
the Force" and
"subject to military law"*

Clause 25(1): The words "Regiment" seem to be
a misprint and must come out. I do not know what is
meant by the phrase "subject to military law". The
military law of Kenya is presumably this Ordinance
(to which of course they are subject) and the Army
Act when it is applied under the terms of Clause 26(2).

It will be noticed that formerly (that is in Cap. 42)
they used two phrases "out of service" and "military
service". Military service was defined to be (1)
service when aiding a civil authority and (2)
when undergoing training. In the new Bill they have
incorporated (1) in the definition of "out of service"
and left out (2) altogether, and so far as I can see
there seems to be no provision whatever for the
discipline of the Force when it is undergoing
training.

Clause 32. I do not know why "acquitted of".
I should think "tried for" ought to be substituted.

Clauses

Clauses 29 and 39. Clause 29 with its reference to the Commanding Officer is copied from Cap. 42; but there seem to me to be objections to it apart from the question whether it is intended by it to confer on the Commanding Officer jurisdiction (I think clearly it is so intended though it ought to be made plain). The propriety of giving power to a Commanding Officer to send offenders to prison seems to me open to question. Taking the clause as it stands even with the proviso the Commanding Officer will have far greater powers than he has, according to the law, at the moment, in England. Further, what is to happen to the fine and what is to happen if the offender does not pay. It seems to me that it will not do to insert casually like this a provision giving a Commanding Officer jurisdiction into what is really a clause dealing with the jurisdiction of the Civil Courts and the whole thing needs reconsideration. It may be that the easier way to deal with this is to make all the members of the Force subject to the Army Act whenever they are undergoing training or on active service. When they are not they should be subject to the jurisdiction of the Civil Courts only. Clauses 29 and 39 overlap, since 39 covers "any person who is guilty of an offence against this Ordinance".

Clause 40: It appears that the intention of this clause is to impose a time limit on all proceedings including proceedings against the members of the Force. If this is so, the opening words

words "For the protection of persons acting in the execution of this Ordinance" are wrong and should be deleted.

Clause 43(3): "Arrested" is, I imagine, a mistake for "sequestered".

Clause 44(3): This power to prescribe pensions, etc., does not fit in with Clause 43(1) and it should be made clear whether this is a power to prescribe additional pensions, or not.

copy from the 57.
Geo. 14
comes from the old 57.

THE AUXILIARY FORCE BILL.

Clause 9(1): I think that there should be an age limit. The old limit was 50 for compulsory enrolment. Is there any reason for departing from this? Clause 9(1) does not make provision for enrolment of the people who are already resident in Kenya and over 18. Presumably they ought to be given a certain time within which to enrol after the commencement of the Ordinance. There are not some provisions regarding taxing over the people who, I suppose, are already enrolled under the old Defence Force Ordinance.

None whatever 11.10.57

9(2): What is meant by the phrase "other who qualified in regard to age and origin or descent"? Another point here which seems to me to require watching is the taking of an oath by aliens. This oath is to be prescribed by regulations, but I imagine its terms will require close scrutiny.

It needs a European J.

Clause 28: I do not like the phrase "all proper facilities". Who can say what all proper facilities are? Coupled with provisions of Sub-section (3) (which I think most objectionable) this goes too far.

I would suggest that ^{Subsections} ~~clauses~~ 1, 2(a) and 3 should come out.

I should think they would probably want provisions in this Bill on the lines of Clauses 27 & 40 of the other.

Clause 29(3): See my comment on Clause 43(3) of the other Bill.

PENALTIES:

I think they might be asked to reconsider some of these, particularly those referred to by Mr. Howard and the penalty imposed by Clauses 28 & 37 of the Territorial Force Bill, and Clause 26 of the Auxiliary Force Bill.

(15)

E 17 75

Kenya Auxiliary Force Bill, 1936.

This Bill follows largely the Kenya Defence Force Ordinance, 1927.

Section 3(1) provides that the Auxiliary Force cannot be called out for active service beyond the limits of the Colony.

Section 5(2). The Governor may appoint in each Auxiliary Force District a District Commandant and such other officers as he may deem expedient.

Under the Kenya Defence Force Ordinance the District organisation consisted of a Local Defence Committee which included the District or Resident Commissioner. District Commandants were appointed by the Governor after consultation with the Local Defence Committees. Also, the Local Committees were responsible for drawing up their own schemes of local defence. Presumably, in future, the selection of District Commandants will be made on the recommendation of the Commander, Local Forces.

Section 8. There are to be two classes of the Auxiliary Force, namely:

Class 1. Persons who have attained the age of 18 years and have not attained the age of 30 years.

Class 2. Persons who have attained the age of 30 years.

Section 9 makes enrolment compulsory for male British subjects of 18 years and over. Failure to enrol renders a person liable to a fine not exceeding £10 or a term of imprisonment not exceeding one month, or both fine and imprisonment. Under the

former

former Kenya Defence Force Ordinance enrolment of persons over 50 was voluntary. I should have thought it quite unnecessary to compel a man over 60 to enrol.

Section 9(4) provides that regulations may be made requiring employers to give particulars of all persons in their employ and the nature of their employment from time to time. This is admirable from the military point of view, but will no doubt provoke comment in the Legislative Council.

Section 11. Exemptions. This is new. There is a printed schedule of classes of persons exempt from all obligations imposed by the Ordinance. The former Kenya Defence Force Ordinance provided that the Governor-in-Council should exempt any person or class of persons from all or any of the obligations imposed by the Ordinance or by any regulations made thereby.

Section 13. The preparation of lists of persons liable to serve is to be a duty of the District Commissioner, not the District Commandant. But Section 14 provides that any member of the Auxiliary Force who leaves the Auxiliary Force District to resign in another Auxiliary Force District shall forthwith notify the District Commissioner and the District Commandant of each such District. Failure to do so renders him liable to imprisonment up to a month or a fine not exceeding £10.

Section 17

Section 17 requires that each class of the Auxiliary Force shall receive peace training. (c.f. the note above under Section 9 regarding Class 2.) The training is to be prescribed by regulations under the Ordinance.

Section 20. The penalty for non-attendance at peace training is a fine not exceeding £20 or imprisonment up to 3 months or both. Under the Kenya Defence Force Ordinance the penalty was a fine not exceeding £5 or imprisonment up to one month.

Section 22 renders it an offence punishable with a fine not exceeding £50 or imprisonment up to 3 months, if an employer fails to give all proper facilities for enabling any person in his employ to enter upon and carry out any service or peace training in the Auxiliary Force for which he is liable or eligible. The burden of proof is upon the employer.

This is based on Section 8 of the South Africa Act, No. 13 of 1912.

Section 22. Gratuities or pensions. This is identical with Section 43 of the Kenya Regiment (Territorial Force) Bill.

Section 33 repeals the Kenya Defence Force Ordinances.

E 76 n

NOTE.

Bill to provide for the establishment of a Regiment
to be known as the Kenya Regiment,
-(Territorial Force).

This is based largely on the Territorial Force Ordinance, Cap.42 of the Revised Edition of the Laws of Kenya.

Section 2 - INTERPRETATION

The expression "active service" has the following meaning:-

"Every member of the Regiment when called out for the purpose of repelling external aggression or for aiding the civil authority in the protection of life and property and preventing and suppressing internal disorder in the Colony shall be deemed to be on active service". (cf. paraa 10 and 12 of the Report)

"Officer" means any person appointed by the Governor to hold commissioned rank in the Regiment. But see Section 3(iv) which provides that the officers of the Regiment shall be commissioned by H.M. the King. Under the former Territorial Force Ordinance, Cap.42, officers were commissioned by the Governor. It is a particular recommendation of the Committee that officers of the Kenya Regiment should have the high privilege of holding their commissions direct from His Majesty in the same way as officers of the Territorial Army in England. (See

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paragraph 50 of the Report). So far as I have been able to find out from enquiries in the Colonial Office and Dominions Office, commissions to officers of volunteer units in the Dominions and Colonies are granted entirely by the Governor-General or the Governor respectively. In the case of the Kenya Regiment there seems no adequate reason for making an exception.

Section 3(iii)

"The Regiment shall be under the supreme command of the Governor and under the command of the Commander, Local Forces, Kenya and Uganda, who shall be responsible to the Governor for the organisation, discipline and efficiency of the Regiment."

In paragraph 39 of the Report the Committee suggested that the Commander should be the Commander, Northern Brigade, K.A.R., with the new title of "Commander, Northern Brigade and Local Forces, Kenya and Uganda".

N.B. - It is a recommendation that the Commander should be a Brigadier (see para.70 of the Report).

Section 3(iv)

"The officers of the Regiment shall be commissioned by the King."

See Note above.

Section 4. - MEMBERSHIP.

"Every member of the Regiment must

be

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be a British subject of European race or origin between the ages of 18 and 45 years, and shall upon enrolment take the oath and complete the Attestation Form as provided."

This rules out Indians, which is intentional for the time being. It will be recalled that no oath was required on enrolment in the former Kenya Defence Force.

Section 5.

Every officer and every person enrolled in the Regiment shall be liable to be called up for active service within the limits of the Colony. But any officer or member of the Regiment may, when taking an oath as prescribed, sign a declaration to the effect that he is willing to serve outside the Colony in the event of the Governor deeming such a course expedient.

Section 6.

This provides for a minimum period of four years' service and four years with the Reserve of the Kenya Regiment. But the Governor may, on the recommendation of the Commander, permit a person to curtail his service if he has served in the Auxiliary Force or with any of His Majesty's Forces, regular or auxiliary.

Section 7.

This provides for the creation

of

of the Special Reserve of the Regiment. This is quite new and appears to be based on the analogy of the Territorial Army in England. Persons accepted for service in the Special Reserve will be liable, when the whole or any part of the Regiment is called up for active service, to render service with such portion of any local force as the Governor may decide. The Special Reserve is subject to such peace training as may from time to time be prescribed.

Sections 9, 10 & 11.

These empower the Governor to appoint cadet units which are to be affiliated to the Kenya Regiment and regarded as a training unit for

1. Cadet units to be comprised of boys between 14 and 18 years. The Prince of Wales School, Kabete, is the only institution in Kenya where it would be possible to start a cadet unit. It is understood that there are some 100 boys there between the ages of 14 and 18 and that there is already an unofficial organisation on the lines of an O.T.C. Incidentally, it is proposed that assistance to Cadet

Corps.

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Corps should take the form of instruction by the permanent staff of the Kenya Regiment, the loan of rifles, the free issue of ammunition for training courses, and financial grants towards camp and equipment expenses.

Part 4 of the Bill provides for the administration of the Regiment and is based largely on Chapter 3 and Cap. 42.

Section 18 says that the Governor may cancel a commission of an officer at any time. But surely if the officers are commissioned by the King cancellation can only be done with His Majesty's approval.

DISCIPLINE - PART 6.

Section 28.

The penalty for refusing to undergo peace training is somewhat severe, i.e. a fine not exceeding £50 or a term of imprisonment not exceeding six months, or both fine and imprisonment.

Section 29.

This is the general penalty clause for offences against the Ordinance i.e. a fine not exceeding £10 or a term of imprisonment not exceeding one month, or both fine and imprisonment. This is on the lines of Section 26 of Cap. 42. But there is the new proviso that an

officer

officer under the rank of Captain shall only have power to convict for an offence under any Regulation issued under the Ordinance. The power to convict for an offence against the Ordinance itself is restricted to officers of the rank of Captain or higher.

MISCELLANEOUS - PART 7

Section 43

is new. It empowers the Governor to award a gratuity or pension in certain events. For temporary or permanent disablement contracted on active service the maximum gratuity or pension which the Governor can award without consulting Legislative Council is £250 and £100 respectively. I should have thought it would have been possible to prescribe by Regulations the pensions for permanent disablement as under Section 43(11) the Governor may assign to the widow or family of a member of the Regiment killed in action, a pension or allowance of such amount as may be prescribed by Regulations.

The Governor had had authority to award gratuity or pension to the King's officers.

Section 45.

This repeals Cap. 42 and all Regulations made thereunder.

Extract from a Personal and Private letter
from Sir Joseph Byrne to Sir Cecil Bottomley
dated 27th July, 1936.

x x x

Last week I sent Maffey a cutting giving the East African Standard's leading article on the Defence Committee Report. I now send you Commander Condran's comments. These two papers represent settler opinion in the Colony. I think it may be accepted that the recommendations are looked upon with favour by the bulk of the people affected. I directed that the Report should be considered in last Friday's Executive Council, and I have heard from Wade that as I anticipated - the advice tendered was that the Secretary of State should be asked to approve of the publication of the two Bills with a view to early introduction.

The controversial financial and other details can then be considered in Select Committee and afterwards. I am opposed to the employment of a completely regular white staff with the Coast Defences; We can easily get the few volunteers we require, whereas the cost of regulars would at present be prohibitive.

See for details of Ref. 100

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