

1938

38334

C0533/499  
KENYA

38334

Public Trustees Ordinance

Previous

1937

ca 38259/138

Subsequent

1945

297

2/6

309

2/6

Mr Paskin

30/6

Mr Duncan

2/7/38

Mr Dale

13

Mr Duncan

13/7/38

Mr Paskin

15/7

Mr. W. W. W. W. W.

15/7

303

16/7

299

18/7

297

18/7

Library (Keele)

19/7

297

B J  
Title

1. Gov 334

15/6/38

Two sets two authenticated and twelve printed copies of Ordinance No VI of 1938, together with Legal Dept and enclosure.

(Spares to Library.)

see the Enclosure

minute of 2 April Dec 3 p.m.

15.6.38

14/2/37 on  
38259/1/37

attached

RESOLUTION

The important thing in this order is section 2 which constitutes a Board to advise the Public Trustee on his investment of trust funds. The matter was raised in 38259/1/37 (see (29), (27) & the Duncan's minute of 14.12.37 thereon).

The personnel of the Board as originally suggested was the Treasurer, the A.G., & the Public Trustee. As now provided in the order, the third member has been changed to a non-official nominated by the Gov. That seems an improvement.

? Subject to legal advice signify non-dissolution.

Munro  
28/6

M. Duncan.

In your minute of 14/11/37 on

38253/1/37 You suggested that when  
this legislation was received the  
whole position shd. be reviewed.  
You may perhaps like to discuss  
before we proceed further.

J.J. Paskin  
30/6

I think this had better go to Mr. Dale,  
in the first instance, for any observations  
which he may have to make with regard  
to the terms of the Ordinance generally.

2/7/38 H. Duncan.

There is no objection. The order appears to  
be in accordance with what was intended  
in the Bill. Williams file.

W.J. Dale.

13.7.

Mr. Paskin.

I think that section 2 of the Public Trustee's  
(Amendment) Ordinance 1938 is quite  
satisfactory, and that consequently no  
discussion is necessary.

13/7/38 H. Duncan.

seen draft for  
closing file  
47

I have discussed with Mr. Dale who thinks  
it was the intention of the H. G. C. to  
repeal section 5 & 6 in general.  
Signifying non disagreement.  
15/7/38



15 June, 1938.

Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. VI of 1938 entitled "An Ordinance to Amend the Public Trustee's Ordinance, 1925", together with a Legal Report and enclosure prepared by the Attorney General.

2. This Ordinance passed its third reading in the Legislative Council on the 26th April, 1938, and I assented to it in His Majesty's name on the 14th May.

3. You will observe that section 2 gives legislative effect to a proposal, approved by your predecessor in a despatch regarding the case of Miss Bright-Williams, that commissioners should be appointed to advise the Public Trustee in the investment and disposal of trust funds.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*R Brooke-Johnson*

AIR CHIEF MARSHAL,  
GOVERNOR.

THE RIGHT HONOURABLE  
MALCOLM MACDONALD, M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W. 1.

## LEGAL REPORT

## THE PUBLIC TRUSTEE'S (AMENDMENT) BILL, 1938

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The object of Clause 2 of this Bill is to appoint the Attorney General, the Treasurer and one person not in the public service as Commissioners to advise the Public Trustee on the investment of trust funds.

Clause 3 repeals section 5 of the Principal Ordinance which was replaced by section 4 of the Public Trustee's (Amendment) Ordinance, 1937.

Clause 4 corrects a typographical error.

No Comparative Table accompanies the Bill since the amendments contained therein are not modelled on any Colonial Ordinance or Imperial Act, but a copy of the Bill showing the sections of the Principal Ordinance which it is proposed to amend is enclosed for transmission to the Secretary of State.

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

Nairobi,

29th April, 1938.

*W. H. King*  
ATTORNEY GENERAL

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COPY OF THE PUBLIC TRUSTEE'S (AMENDMENT) BILL,  
1938, SHOWING THE SECTIONS OF THE PUBLIC  
TRUSTEE'S ORDINANCE, 1925, WHICH IT IS  
PROPOSED TO AMEND.

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**A Bill to Amend the Public Trustee's  
Ordinance, 1925**

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

1. This Ordinance may be cited as the Public Trustee's (Amendment) Ordinance, 1938, and shall be read as one with the Public Trustee's Ordinance, 1925, hereinafter referred to as the Principal Ordinance.

Short title.

No. 7 of 1925.

2. (1) The Attorney General, ~~and~~ the Treasurer, ~~of the Colony~~ <sup>of the</sup> are hereby appointed Commissioners for the purpose of advising the Public Trustee as to the investment of trust funds, and the disposal of such investments, administered by him.

Appointment of Commissioners.

*and the Treasurer will  
in the Public Trustee  
to be appointed by  
the Governor.*

(2) No trust funds shall be invested, and no investments shall be disposed of, by the Public Trustee save with the consent of the Commissioners appointed under sub-section (1) of this section.

3. Section 5 of the Principal Ordinance is hereby repealed.

Repeal of section 5 of the Principal Ordinance.

Section 5 of the Principal Ordinance which it is proposed to repeal:—

5. The Public Trustee shall serve a notice of his intention to apply for such order upon all executors and next of kin of the deceased known to him to be resident in the Colony except in the circumstances set out in section four sub-section (e) and (f) and shall cause such notice to be published in the Gazette or in one weekly newspaper or both at the discretion of the Public Trustee and to be posted in a conspicuous place at the Supreme Court and after the expiration of fourteen days from the date of such publication and posting he shall apply to the Court for an order to administer the estate of such deceased person; and the said Court shall, if satisfied by

*Fourteen days  
notice to be  
given on  
application.*

affidavit that the case is within the provisions of this Ordinance, make such order upon the petition of the Public Trustee accordingly; which order, when made, shall give to the Public Trustee the same power over all the estate wheresoever situate or left of the deceased person, except as hereby enacted, as he would have had, if letters of administration of such estate had been granted to him, subject nevertheless to any orders which may from time to time be made by the Court on petition as hereinafter mentioned touching the same or the administration thereof:

Provided always that the Court may order such further notice as it may think fit to be given before making such order, and provided further that it shall not be necessary for the Public Trustee to serve such notice as is in this section mentioned in any case where the Public Trustee shall have obtained the consent in writing of the executors (if any) or of all parties interested in the estate (other than creditors), as the case may be, to make such application to the Court as in this section is provided for, subject however and without prejudice to the right of the Public Trustee to take possession of and administer any estate consisting solely of property not exceeding Sh. 2,000 as hereinbefore provided.

Section 7 of the Principal Ordinance which it is proposed to amend:—

Grant to Public Trustee may be revoked and grant made to other person.

7. (1) At any time after a grant of letters of administration to the Public Trustee under this Ordinance, any person to whom the Court might have committed administration if no such grant had been made may apply to the Court for revocation of such grant and for a grant to himself of probate of the will or letters of administration, but no such application shall be made until seven days after notice in writing of intention to make it shall have been given to the Public Trustee.

Upon such application the Court, after hearing the Public Trustee if he appears, may revoke the grant to the Public Trustee and grant probate or letters of administration to the applicant subject to such limitations and conditions as the Court may think fit:

Provided that letters of administration granted to the Public Trustee shall not be revoked as aforesaid unless such application be made within six months after the grant to the

4. Sub-section (3) of section 7 of the Principal Ordinance is hereby amended by deleting therefrom the word "second" which appears in the third line thereof.

Amendment of section 7 of the Principal Ordinance.



Public Trustee and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

(2) Upon such revocation and new grant, all the interest, powers, rights and duties of the Public Trustee in regard to the estate affected by such grant, and all liabilities of the Public Trustee under any contract or agreement entered into by him in relation to such estate or any part thereof, shall cease; and such portion of the estate as shall be left unadministered by the Public Trustee shall vest in the person obtaining such new grant, subject nevertheless to all lawful contracts theretofore made relating to such estate and to the allowance and payment of all outlays, disbursements, costs, fees, charges and expenses reasonably incurred in the administration thereof.

(3) The provisions of this section shall apply in the case of an estate of which the Public Trustee has taken possession under the second proviso to section 4 in like manner as if there had been a grant of letters of administration to the Public Trustee on the date upon which he took possession.

#### OBJECTS AND REASONS

The object of Clause 2 of this Bill is to appoint the Attorney General and the Treasurer as Commissioners to advise the Public Trustee on the investment of trust funds.

Clause 3 repeals section 5 of the Principal Ordinance which was replaced by section 4 of the Public Trustee's (Amendment) Ordinance, 1937.

Clause 4 corrects a typographical error.

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



Colony and Protectorate of Kenya

IN THE SECOND YEAR OF THE REIGN OF

HIS MAJESTY KING GEORGE VI

HENRY ROBERT MOORE BROOKE-POPHAM

G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C. *Governor*

Assented to in His Majesty's  
name this 1938. 1 A M day of

P. BROOKE

*Governor*

AN ORDINANCE TO AMEND THE PUBLIC  
TRUSTEE'S ORDINANCE, 1925

**ORDINANCE No. VI of 1938**

**An Ordinance to Amend the Public Trustee's Ordinance, 1925**

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

1. This Ordinance may be cited as the Public Trustee's (Amendment) Ordinance, 1938, and shall be read as one with the Public Trustee's Ordinance, 1925, hereinafter referred to as the Principal Ordinance.

Short title.  
No. 7 of 1925.

2. (1) The Attorney General, the Treasurer, and one person not in the public service to be nominated by the Governor, are hereby appointed Commissioners for the purpose of advising the Public Trustee as to the investment of trust funds, and the disposal of such investments, administered by him.

Appointment of Commissioners.

(2) No trust funds shall be invested, and no investments shall be disposed of, by the Public Trustee save with the consent of the Commissioners appointed under sub-section (1) of this section.

3. Section 5 of the Principal Ordinance is hereby repealed.

Repeal of section 5 of the Principal Ordinance.

4. Sub-section (3) of section 7 of the Principal Ordinance is hereby amended by deleting therefrom the word "second" which appears in the third line thereof.

Amendment of section 7 of the Principal Ordinance.

Passed in the Legislative Council the twenty-sixth day of April in the year of our Lord one thousand nine hundred and thirty-eight.

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

R. W. BAKER

Acting Clerk to the Legislative Council