

1935

1935

38179//

KENYA
CO 533/460

38179//

KENYA-UGANDA RAILWAY AND HARBOURS.

KENYA AND UGANDA (TRANSFORM) ORDER IN COUNCIL.

Previous

23247/31.

Subsequent

See 38179/38/38

R. 297

R. 302

19/10

See Sidney Harbours 1910/2/38

89
B.9
minutes
title

1. A. C. M. Transport Conf.

11. March 35

Encls. for approval of H.M. a draft amending Transport
Order C. which vests the control of the Rly Administration in the O.A.S.
of Kenya & Uganda, also amends Article 3(1) to include road motor
services & aircraft services.

See minutes
below Nov 1-6 on
4652/35 &
the Sept report on
the Gibb Report
(copy here with)

See No 3
4652/35

The proposal to vest the High Commissionership
of the Transport Administration in the Governors
of Kenya and Uganda, has been agreed to in principle.

At the Governors' Conference in January this
year the terms of a draft Order-in-Council to amend
the Kenya and Uganda (Transport) Order-in-Council,
1925, accordingly, was considered and found to be
suitable, subject to any suggestions which the
attorney-generals of Kenya and Uganda might make.
The draft Order-in-Council now submitted has been
approved by the two East African Governments
concerned. It will be noted that the opportunity
has been taken to propose amendment of the
existing Transport Order-in-Council in two other
respects. First, to provide that the High
Commissioner may, and is to, act in the name of
the administration, and not in the name of the
High Commissioner as at present. This seems
highly desirable.

The second amendment relates to the services
over which the High Commissioner shall have control.
It is proposed to add motor services and aircraft
services to those named in article 3(1) of the
Order-in-Council of the 10th of December, 1925.
As regards aircraft services, it is obvious that
the amendment is only intended to apply to future
air services which may be inaugurated by the
Transport administration.

copy 6

subject to legal observations, a draft Order-in-Council may be prepared for submission to His Majesty in Council.

C.A. Gwynne with
7. 4. 35.

The first draft of this O.-in-C. is
flagged X in 46522/35 below.

Director
13/4

This file was withdrawn some weeks ago
and has been returned to me today.

21/5/35 M. Duncan.

It was again withdrawn on May 28 &
returned to me today.

17/6/35 M.D.

Subject to the two minor pencil amendments
than no observations to make.

21/6/35 M. Duncan.

25.6
25.6
See J. Calder

Then I think a draft may be prepared
for enactment. I don't much love the idea but
in its present shape it seems innocuous. Sir J.
Byrne also was not in favour at first but came
round and now supports it. It won't make much
practical difference I should say.

S.E.C. 27.6

Sir J. Gifford

3

Copy at 6A
in 46522/35

p. 4 G.C. (35) 11

of 1.8.34
on 4034/33

In para 7 of his minute on
the Gibb report the Secretary of State noted
what had been agreed in Governors' Conference on
this question of the Joint High Commissionership,
and said that he would await a further expression of
views on this question after the next meeting of the
Conference. He did not in his minute on the Gibb
Report refer to this question and we have therefore
no authoritative decision to go on in dealing with
the present paper.

I feel, however, that as the two present
Governors consider that the joint arrangement will
work there is no reason why we should raise any
objection, and as the draft Order-in-Council now
submitted has been accepted by our legal adviser I
think that we may "take the necessary steps to get
it approved by His Majesty".

W.S.

27 35

It is an arrangement but a view
of local approval we can go ahead on
the basis proposed

The Boya to see

Yes I feel sure I sh
would agree to this.

17/35

Est. Board 21/7/35

2. to see for personal letter above from
to C. Gifford

There is a P.C. meeting on 13th Aug.

? As in draft.

W.S. 31. 200

Director
31

By air mail 3 To Col. Walker (Rans) 1/8/35

Revised note dft ②

4 To Privy Council Office 2/8/35
DESTROYED UNDER STATUTE
(copy of a.c.c.)

BU

5 Privy Council Office 14 Aug 35
DESTROYED UNDER STATUTE
Lans is sealed + 248 plain copies of the Kenya
Legenda (Transport) Amdt. Dec. 1935.

Forgetting of the Order in Council
in the country should, I think,
be deferred pending publication
of the Order in E. Africa
(Cp. No 2 or 2/5005/28)

I have spoken to the manager of
the Privy Council Office who has
agreed to defer anything
until he hears further from
the C.

I submit Draft to Mr.
Transport in reply to No 1,
for Cam
C. J. Foxworth
29/8/35

W. Walker
10/11

By air mail
29/8/35

6 To H.C. Transport Conf - cons 20 AUG 1935
(copy 2 sealed + 24 plain copies O.C. in C. in S)
(Answer)

7 To H.C. Transport Conf (copy 6 a.c.c.) 23 AUG 1935

Revised note
29/8/35

8 To Kenya Conf (4) (1466 + 10 in C in S) } 26
9 Kenya Conf (3) (- - -) } A/1/35
35

10 Kenya Transport H.C. Transport Tel 13 Conf. 25 Sept 35
States that O.C. will be published on 30 Sept 35

BU

DESTROYED UNDER STATUTE

Draft revised

O.D. 5

11 To Privy Council Office (copy 6 + 10) 27/9/35
DESTROYED UNDER STATUTE
BU

12 H.C. Transport - Conf - 24.10.35

Spec to help
Trans. f. conf: copies of Suppl. No. 39 to Kenya
Official Gazette containing the Kenya Legenda
(Transport) Amdt. Order in Council 1935.

DESTROYED UNDER STATUTE

? Party
C. J. Foxworth
21/11/35

See heading
J. Walker
2/11

A. Hunter
21/11

2

56

C. O.

Mr. Grossmith.
Mr. *Director*
Mr.

Sir C. Parkinson.
Sir G. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh.
Permit U.S. of S.
Parly U.S. of S.
Secretary of State

AIR MAIL.

Answered by No 10

DOWNING STREET,

20 AUGUST, 1935.

DRAFT.

TRANSPORT.

KENYA-UGANDA.

CONFIDENTIAL.

HIGH COMMISSIONER.

Sir,

I have, etc., to acknowledge the receipt of your confidential despatch of the 14th March last, transmitting the draft of an Order in Council to amend the Kenya and Uganda ~~Company~~ (Transport) Orders in Council, 1925 and 1927, so as to provide for the introduction of a Joint High Commissionership of the Kenya and Uganda railway and harbours Administration, vested in the officers Administering the Governments of Kenya and Uganda.

No.

2/8/35

*2 letters Copy to Dir C
2 to High Comm
(behind No 1)*

FURTHER ACTION

*Copy to Kenya
Uganda*

*to send
J. Shuckburgh
Lff*

*with
1 plain
copy of the
Dir C to each.*

*Copy to Dir C
(1)
(8) Kenya
(9) Uganda
High Comm office (11)*

2. The terms of the draft

*(amended)
amending*

~~Amended~~ Order in Council, which were approved by both the Governments of Kenya and Uganda, also provide for two additional amendments, (a) that the High Commissioner may sue and be sued in the name of the Administration, and (b) that motor road services and aircraft services ~~shall~~ be added to the services over which the High Commissioner shall have control.

3. The draft Order in Council was considered by His Majesty in Council on the 13th August, and I now transmit to you two sealed and twenty-four plain copies of His Majesty's Order dated the 13th August, amending the Kenya and Uganda Transport Orders in Council of 1926 and 1927 accordingly. I shall be obliged if you will retain one sealed copy in your capacity as Officer Administering the Government of Kenya and transmit one sealed copy to the Officer Administering the Government of Uganda.

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Boltonley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Party. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

6 is
A copy of this despatch has been forwarded to the Governments of Kenya and Uganda and to the Secretary to the Governors' Conference.

I have, etc.,

4. Publication of the Order in Council in this country has been deferred pending local publication in East Africa. I request, therefore, that I may be informed by telegraph in due course, of the date on which it will be published in Kenya and Uganda.

(Sgd.) MALCOLM MacDONALD

C. O.

38097/35

72

Mr. *Franklin*

Kenya

Mr.

Mr.

Mr. Barkinson.

Sir G. Tomlinson.

* Sir C. Bottomley. 31 f

Air Mail

4^{1/2} for S.C. Bottomley

Sir J. Shuckburgh.

Permt. U.S. of S.

Party, U.S. of S.

Secretary of State.

1 AUG 1935

DRAFT. comm

Col. Chas. Walker C.M.G.

9/10

| | |
|-------|-------|
| C. D. | |
| R | 1-AUG |
| D | 1 " |

You write to me on May 31 about the Joint High Commissionship for the Transport (T/Fin/52). The draft Order-in-Council has ^{now} been approved by the S. of S. for submission to H.M. in Council on August 13th. We will write to you officially by Air Mail as soon as possible after that date.

FURTHER ACTION.

Recive early to send up to C. to P.S. Office G.

YOURS SINCERELY
(SIGNED) W. C. BOTTOMLEY.

Extract from Personal letter to Sir C. Battersley
from Col. Walker dated 3rd May, 1935 (T/F in 152) 8

There is also another question on which it would be helpful if you could give an early decision, and that is the Joint High Commissionership, the Confidential despatch regarding which was sent home on the 14th March, 1935. If the Joint High Commissionership is going to be inaugurated, it would be helpful if the Governor of Uganda could be consulted by the Railway as Joint High Commissioner, before anything final is done as regards next year's estimates or the future financial policy of the railway, which would involve the size of the Reserve to be built up, any general rate reductions which might be contemplated, etc.

Ans. ①



19

TRANSPORT
KENYA-UGANDA
CONFIDENTIAL

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

11/12 March, 1935.

Sir,

I have the honour to refer to my confidential telegram No.3 of the 20th February 1935, and to Item VII of the Proceedings of the recent special meeting of the Governors' Conference held at Entebbe in January last, dealing with the vesting of the executive control of the Kenya and Uganda Railways and Harbours in a Joint High Commissionership, when the following conclusions were adopted:-

15 on 46906/35
see 301 665-735

Amended (9)

"THE CONFERENCE AGREED

- (1) that the existing transport Orders-in-Council should be amended so as to provide for a Joint High Commissionership composed of the Officers Administering the Governments of Kenya and Uganda, and that the draft amendment in the Appendix to Paper No.GC(35)11 appeared a suitable one subject to any suggestions which the Attorneys Generals of Kenya and Uganda might have to make, and
- (2) that the delegation of powers by the Joint High Commissionership, suggested in Paper No.GC(35)11, to the Governor of Kenya, was satisfactory."

and to enclose herewith a draft amending Transport Order-in-Council which vests the control of this Administration in the Officers administering the two Governments of Kenya and Uganda. This draft amending Order-in-Council has been approved by both the Governments of Kenya and Uganda and I request that you will be so good as to take the necessary steps to get it approved by His Majesty.

2. The previous history of the case is as follows:-
The question was first discussed by the Governors' Conference in October 1933 when the Gibb Report was being considered and the following were the conclusions reached:-

"THE....."

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

"THE CONFERENCE

RECOGNISED that there were merits and demerits in replacing the present High Commissioner for Transport, Kenya and Uganda, by a Commission consisting of the two Governors of Kenya and Uganda, but, while on the whole considering that the principle of a Joint High Commissionership with delegation of such executive powers as were necessary to the Governor of Kenya should be accepted,

AGREED

- (1) that the question should be left over for reconsideration after Sir Joseph Byrne's return, and
- (2) that, in the meanwhile, an examination should be carried out to ascertain whether satisfactory arrangements could be made whereby the present heavy debt obligations for the capital cost of the Railways and Harbours, which were carried by the Kenya Government, could be re-adjusted so that Uganda bore her fair share."

At that time the Conference had before them the views of the Kenya and Uganda Railway Advisory Council and the Governments of Kenya and Uganda as follows:-

Kenya and Uganda Railway Advisor, Council Minute 807, Part II (7), 16-18th August, 1933.

"Council unanimously agreed to recommend that the post of High Commissioner for Transport should be abolished and that the Governors of Kenya and Uganda in Conference should assume the duties and obligations imposed by the Order-in-Council upon the High Commissioner, such Governors in Conference delegating to the Governor of Kenya power to deal with administrative matters where prompt action is essential, and that the Order-in-Council be amended accordingly. Council further agreed to recommend that when questions arose concerning the Tanganyika Railway system, particularly with regard to competition in common areas of influence, the Governor of Tanganyika should be asked to assist them in their deliberations."

Kenya Government - extract from Paper No. 33(33)83 dated 22.9.33

Organisation and Control

"(iii) That the Governors of Kenya, Uganda and Tanganyika should be constituted a Transport Board for all questions of railway, water-borne, road or aerial transport in the three territories.

(iv) That...

(iv) That the functions of this Transport Board should be:-

- (a) To keep the transport policy of the three territories under constant review, and
- (b) to examine at an early date the possibility of making an immediate advance towards the unification of the transport systems of the three territories, by vesting the control of transport policy in a commission consisting of the Governors of the three territories.

(v) That pending the examination referred to in (iv) (b) above, no alteration should be made in the present arrangements whereby the control of the Kenya & Uganda Railways & Harbours is vested in the Governor of Kenya as High Commissioner for Transport.

(vi) That if, as a result of the examination by the Governors of the three territories, vide (iv) (b) above, it is found not to be possible to vest control of the transport systems in a commission composed of the three Governors, the proposal to vest the control of the Kenya & Uganda Railways & Harbours in the Governors of Kenya and Uganda jointly in the manner recommended by the Kenya and Uganda Railway Advisory Council should be adopted as a first step in the direction of the ultimate goal of complete unification of control of the transport systems of the three territories."

Uganda Government - extract from Paper No. GC(33)85, dated September, 1933.

"(d) Governors in Conference The support of public opinion in Uganda has been given to the idea of control by the Governors in Conference and this Government accepts the recommendation of the Railway Advisory Council that the present duties of the High Commissioner under the Order-in-Council should be assumed by the Governors of Uganda and Kenya in conference, power being delegated to the Governor of Kenya "to deal with administrative matters when prompt action is essential." The recommendation that the assistance of the Governor of Tanganyika should be invited by the Conference at their deliberations on any matter, such as competitive construction, services or rates, in which the Tanganyika Railway may be concerned has already been dealt with."

3. The question was again discussed at the Governors' Conference in May 1934 when the following conclusions were

reached:-....

reached:-

"THE CONFERENCE AGREED

- (1) that if a satisfactory formula could be devised whereby necessary powers were delegated to the Governor of Kenya, it would be desirable if the High Commissionership were vested jointly in the Governors of Kenya and Uganda; and
- (2) that the Governors of Kenya and Uganda before the next meeting of the Conference should consider if they could agree upon any such formula."

4. When the question was first considered I saw grave objection to a Joint High Commissionership as it seemed to me that it would be impossible to devise a satisfactory arrangement by which the necessary powers could be delegated to the Governor of Kenya for the conduct of the ordinary business of the Railway - and the Governor of Kenya in that he lives at the Railway headquarters and is in constant touch with the General Manager must, in fact, exercise most of the executive control - but as a result of deep consideration of this subject and discussions with the Governor of Uganda, I am now convinced that a Joint High Commissioner, as arranged in the draft amending Order-in-Council, would have many advantages and improve the constitutional position. Further, I consider the delegation of powers to the Governor of Kenya, as detailed in Paper No.GC(35)11, is likely to be a satisfactory arrangement, and changes in these powers can be made by the two Governors inter se at any time should such be found to be necessary.

MS 4
16/22/55

5. The proposal to amend the existing Transport Order-in-Council with a view to introducing the Joint High Commissionership, offers a suitable opportunity to make two other small amendments in these Orders-in-Council which appear to be necessary.

- (1) Experience has shown that the present Transport

Orders-.....

Orders-in-Council which arrange for the High Commissioner to sue or to be sued, by name instead of in the name of the Administration is inconvenient and it is therefore considered that Article 1 (2) should be amended so that the High Commissioner may sue and be sued in the name of the Administration.

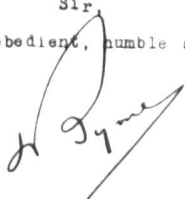
(ii) At present the Transport Orders-in-Council do not include road motor services, e.g. the existing Masindi Port-Bhitiaba service is not covered and provision is not made for the inauguration of aircraft services in the future should such be considered necessary as has occurred in the case of other Railway administrations. It is therefore deemed desirable to take this opportunity to amend Article 3 (1) to include road motor services and aircraft services.

6. A copy of this despatch has been forwarded to the Governments of Kenya and Uganda and to the Secretary to the Governors' Conference.

I have the honour to be,

Sir,

Your most obedient, humble servant,



HIGH COMMISSIONER.

14

DRAFT AMENDING ORDER-IN-COUNCIL

TO THE

KENYA AND UGANDA (TRANSPORT) ORDERS-IN-COUNCIL,
1925 AND 1927.

WHEREAS the Kenya and Uganda (Transport) Orders-in-Council, 1925 and 1927, made provisions for the establishment of a High Commissioner for Transport for the Colony and Protectorate of Kenya and the Protectorate of Uganda and for matters relating thereto:

AND WHEREAS it is expedient to amend the said Orders, as hereinafter appears:

NOW, THEREFORE, HIS MAJESTY, by virtue and in exercise of the powers in this behalf by the British Settlements Act, 1887, the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:-

1. The Kenya and Uganda (Transport) Orders-in-Council, 1925 and 1927, are hereby amended in the following respects:-

(1) By the deletion of Article 1 (2) and the substitution of the following in the place thereof:

"1. (2). The High Commissioner for Transport (hereinafter referred to as "the High Commissioner") shall be a Corporation Sole under that name with perpetual succession and an official seal and may sue and be sued in the name of the Services whether in contract or in tort by the ordinary procedure of law."

(2) By the deletion of Article 2 and the substitution of the following in the place thereof:

"2. (1). The High Commissioner [for Transport] shall

consist.....

[2] omit

consist of -

(a) the officer administering the Government of Kenya; and

(b) the officer administering the Government of Uganda.

acting, save where specifically otherwise provided herein, jointly or in conference.

" (2). At such times as the said Officers are not in Conference and subject as hereinafter provided the Officer administering the Government of Kenya shall have full executive power and authority over the Services but shall report to the Officer administering the Government of Uganda not later than the next Conference all acts done and decisions made by him when so acting. Provided that the said Officers may by agreement decide

(a) What acts and decisions shall be deemed to be acts and decisions of a minor administrative nature involving no important principle and which need not be so reported and

(b) the matters which shall not be dealt with by the Officer administering the Government of Kenya without prior reference to the Officer administering the Government of Uganda.

" (3) (a) The Officers administering the said Governments shall meet in conference on matters relating to the services as and when occasion arises; Provided that such meetings shall take place at least twice in each year.

(b) In the event of the said Officers failing to reach agreement on any matter relating to the services.....

16
end

services, such matter shall be referred to the Secretary of State for his decision."

(3) By the insertion of the words "road motor services, aircraft services" between the words "railways" and "ports" which appear in Article 3 thereof.

(4) By renumbering Article 4 thereof as Article 4 (1) and by inserting the following sub-Article as sub-Article 4 (2).

"(2). All acts done by the High Commissioner and all forms and documents used and entered into shall be in the name of the Services."

2. This Order may be cited as the Kenya and Uganda (Transport) Amendment Order-in-Council, 193 , and shall be read as one with the Kenya and Uganda (Transport) Orders-in-Council, 1925 and 1927, and the said Orders may be cited as the Kenya and Uganda (Transport) Orders-in-Council, 1925, 1927 and 193 .