

1925

KENYA

607

C. O.
38415

DATE

21st August 1925.

22 AUG 25

DEPT. OF TRADE,
(INC. MARINE DEPT.)

REGULATION -

Mr. E. J. ...
Mr. Allen

SHIPPING BILL.

U.S. of S.

Fwd Memo containing Board's opinions on the Bill.

Permt U.S. of S.

Perk U.S. of S.

Secretary of State.

Previous Paper

MINUTES

O.A.C. 28293

Have been through this memo (see rough note within). The most important points are those of constitutional law, and on those I think the B/T must be advised to have an authoritative opinion, on the ground in view of the importance of the Merchant Shipping Act. Subject to any views which Mr. Thurston may have.

Send a copy of the memo to Mr. reference 48103 and draw attention to those points particularly ^(The main can of the) which are said by the Board to be ultra vires.

Say that in the event it will probably be best if the Bill is amended in the light of the Board's recommendations and submitted for further consideration before being introduced, an explanation being furnished on any points in which it is not considered possible to adopt

Handwritten note on the left margin: "Handwritten note on the left margin"

Subsequent Paper

16067
1930

The letter of the Board!

With regard to the comment on Clause
11, say that copies of said Rules issued
under the Bill should be sent home for
transmission to the Board's ~~approval~~

And ask for information as to
the qualifications of surveyors in the
Colony, as in the Board's remark
on Clauses 58 & 63.

Att. 27 and 10/17 this memo. &
~~copy of clause 10/17~~
enclose for information. Copy of clause 11

805

11 1 75

22

19

27 9 25

advice

Notes onObservations by B/T. on Newer Merchant
Shipping Bill.

- Cl. 2. No comment
- Cl. 3. ? agree with B/T.
- Cl. 5. ? let Newer explain omission of
clause excluding summary proceedings
if they wish.
- Cl. 10(3) ? B/T correct
- Cl. 11. ? work for Rules to be sent home when
issued.
- Cl. 14(9)-(12) ? B/T correct on the legal point
- Cl. 19. ? B/T correct
- Cl. 23. ? leave Newer to reply to this.
- Cl. 24-38. These clauses will require redrafting
in the light of the remarks of the
Board. I am sure that the Board
must be accepted as the judges of
what can or cannot be done by
a Col. Legislature as regards
the Merchant Shipping Acts.
- Cl. 45. ? B/T correct
- Cl. 55. ? B/T. now will have to be accepted.

Class-63

part

80-2

94

95

? explanation required.

Schedule

B/T. Long et.

Any further communication on this
subject should be addressed to—

The Assistant Secretary,
Mercantile Marine Department,
(address as opposite)

The following number is quoted—

18149/24.



MERCANTILE MARINE DEPARTMENT

BOARD OF TRADE

3, SANCTUARY BUILDINGS

GREAT SMITH STREET

LONDON, S.W.1

21st August 1924

C.O.
38415
22 AUG 45

Sir,

With reference to your letter of the
13th November, 1924 (49103/1924) concerning the
Kenya Colony draft bill entitled "The Shipping
Ordinance, 1924", I am directed by the Board of
Trade to transmit herewith, for the information of
Mr. Secretary Amery, a Memorandum containing the
Board's observations on the Bill.

The amendment of the part of the bill relating
to detention, by the insertion of a parenthesis
before Clause 5, appears to meet the point raised
by the Board in their letter of the 11th April 1923.

As regards the comment on clause 55 of the
Bill, I am to invite a reference to your letter
of 7th November 1922 (No. 51,140/22) forwarding
copy of a despatch from the Governor General of
Australia.

I have the honour to be,
Sir,

Your obedient servant,

G. C. Barker

Under Secretary of State,
Colonial Office,
S.W.1.

G. C. Barker
5/11/24
Done

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610

OBSERVATIONS BY THE BOARD OF TRADE ON A KENYA COLONY
DRAFT BILL TO MAKE PROVISION WITH RESPECT TO MERCHANT
SHIPPING AND MASTERS RELATING THERETO.

Generally speaking, the Bill appears to be framed on sound lines, except that the provisions relating to inquiries into shipping casualties and into the conduct of masters and officers are, in the Board's opinion, open to certain serious objections. The following observations are submitted on particular clauses of the draft Bill.

CLAUSE 2.

The definition of "Seaman" should follow that contained in Section 742 of the Merchant Shipping Act, 1894. This would exclude apprentices from the definition.

CLAUSE 3.

This clause seeks to repeal certain unspecified provisions of the Merchant Shipping Acts. As regards certain sections of those Acts which have Imperial application the clause would be ultra vires. If the legislature of a colony wish to repeal any parts of the Imperial Merchant Shipping Act they should specify exactly what it is intended to repeal. In the present case there appears to be nothing in the draft Ordinance which is inconsistent with the Merchant Shipping Acts, except clauses relating to inquiries which are referred to later, and Clause 55, which appear to be ultra vires. It is suggested, that this clause should be omitted.

CLAUSE 5.

There is no provision in this clause dealing with the procedure for the prosecution of the offence named, but it is to be observed that in the corresponding section in the Imperial Act (Section 457) summary proceedings are excluded.

CLAUSE 10 (3).

There is a reference in this Sub-clause to Clause 12 of the Ordinance as to the recovery and payment of the costs of survey. This reference would appear to be to Clause 12.

CLAUSE 11.

It is presumed that the Imperial rules as to Courts of Survey will be followed.

CLAUSE 14 (6) to (9).

These Sub-clauses appear to assume that Section 463 of the Merchant Shipping Act, 1894, applies to the Colony. It seems doubtful, however, whether this Section applies out of the United Kingdom, and it would be preferable to re-enact the whole Section with the appropriate changes.

CLAUSE 19.

In view of Clause 7 (10), it is suggested that this clause is not necessary.

CLAUSE 23.

It is not clear whether Sub-clauses (a) and (b) of this clause are intended to apply to emigrant ships and to be an application of Section 366 of the Merchant Shipping Act, 1894. It is doubtful how far the Governor in Council can make rules as to diet and water for passengers, except in the case of emigrant ships.

CLAUSES 24 to 38.

These clauses appear to have been drafted without regard to the provisions of the Imperial Merchant Shipping Act as to colonial legislation, and if they are recast with due consideration to the provisions of Section 478 of the Imperial Act the defects of many of the clauses which, as they now stand, are ultra vires, will be avoided.

Special attention is called to the following points:-

(a) CLAUSE 26 (1). Although a person authorised to hold a Preliminary Inquiry in the United Kingdom may apply to a Court to hold a Formal Investigation, this power is never exercised, Formal Investigations being only ordered by the Board of Trade. No objection is seen to the Port Captain having the same power as a Receiver of Wreck in the United Kingdom, but it is a question whether the "other person authorised as mentioned in Section 25 (not 4)" should be given the power to apply for a Formal Investigation to be held.

(b) CLAUSE 26 (6). The Board are not aware whether there are in Kenya a sufficient number of persons having the requisite qualifications to enable a list of assessors to be drawn up, and it is possible that if two assessors holding masters' certificates or two assessors holding first class engineers' certificates are wanted, the Authorities may have to await the arrival of a British ship whose officers could be appointed as assessors. If that is the position, reference to a "list" of assessors should be deleted.

(c) CLAUSE 26 (5). The words "Port Captain as being the" should be deleted, as it may not necessarily be the Port Captain who has applied to a Court to hold a Formal Investigation. Alternatively, if so desired, the act could be laid upon the Port Captain and the words "as being the person who has applied to a Court to hold such investigation" could be omitted.

(d) CLAUSES 30 and 31 (3). These clauses relating to the suspension of certificates of competency are contrary to Section 478 (5) of the Merchant Shipping Act, 1894, which precludes any other authority than the Court dealing with

officers' certificates as the result of an Inquiry. The Board of Trade have no authority to assume power to suspend a certificate on the recommendation of a Court.

CLAUSE 46.

In Sub-clauses (b), (f) and (g) the words "this ordinance" should be substituted for "the Merchant Shipping Acts".

CLAUSE 51.

This clause requires a survey to be made by two surveyors, viz. a ship surveyor and an engineer surveyor. In the United Kingdom an engineer surveyor is qualified to carry out the full survey of a vessel, although in the case of large vessels the survey is usually apportioned between two or sometimes three surveyors (viz. an engineer surveyor, a nautical surveyor and a ship surveyor).

CLAUSE 55.

This Clause purports to re-enact, with certain changes, Section 7 of the Merchant Shipping Act, 1894. The Board are of opinion that it is not open to a Colony to amend Part I of the Imperial Act, and as the Section already applies in the Colony, its alteration is ultra vires.

CLAUSES 57 & 58.

These clauses have not been amended to accord with Section 7 of the Merchant Shipping Act, 1900.

CLAUSE 58.

This clause adopts the Board of Trade Freeboard Tables, and it is considered that the modifications mentioned in Sub-clause 3 should also be those made by the Board of Trade. In that event Sub-clause 4 would not be necessary.

CLAUSES 58 & 63.

The Board would be glad to learn the technical qualifications of the Surveyors in the Colony who may be required to make surveys under these clauses with regard to loadline.

CLAUSE 59.

For the word "submission" substitute the word "submersion".

CLAUSE 60.

This clause has not been amended to accord with Section 8 of the Merchant Shipping Act, 1906.

CLAUSE 65.

For the words "Receiver of Wrecks" substitute the words "Receiver of Wreck".

CLAUSE 94.

After the words "apparel saved" and before the words "reasonable amount" insert the word "a". No objection is raised to this clause; but it is pointed out that no specific right to salvage is given in respect of property, and it is considered that a clause on the lines of Section 546 of the Imperial Act should be inserted.

CLAUSE 95.

Paragraph 4 of the report by the Attorney General of Kenya Colony of 31st July, 1924, suggests that exception might possibly be taken to this clause, but the Board see no objection to it.

CLAUSE 102.

For the word "this" in the second line substitute the word "the".

CLAUSE 106.

Clause 105 (1) appears to be more comprehensive than Section 42 of the Merchant Shipping Act, 1906, as under it shipowners would probably be liable for repatriation

expenses where a seaman has deserted or left his vessel under circumstances in which the owners are not liable under the Merchant Shipping Act, 1906. It should be made clear that Clause 106 relates only to Clause 105, and Sub-clause 3 should be amended to apply to cases not coming within Clauses 105 and 106. Such cases would be those in which seamen are relieved after discharge by the seaman's consent or desertion, as indicated in Clause 105.

CLAUSE 107.

The penalty of imprisonment for breach of Clause 105 goes beyond the provisions of the Imperial Act.

SCHEDULE.

Clause 73 (b) provides for the transmission to "Lloyd's Agents for East Africa" of a description of wreck taken into possession and exceeding £20 in value. There is no reason why the description of the wreck referred to should not go to the local Lloyd's Agents but the fee of £1 prescribed in the Schedule refers to the reports required to be sent by the receiver to the "Secretary of Lloyd's in London". The latter words should be altered to agree with the words in Clause 73 (b).

Kenya

38215/25

616

Back Sept 12
Offices 12/9/25

- Stuchey
- L. Shuckburgh.
- Davis.
- Grindle.
- Masterton Smith.
- Ormsby-Gore.
- Amery.

and

15 Sept 1925

Sir,

DRAFT.

Assistant Secy,
Merchant Marine Dept,
Bof T.

I am re to act the recd of
 your letter, m 18149/25, of
 the 21st of August & request
 you to thank the Board of Trade
 for their memo on the
 Kenya draft bill entitled
 'The Shipping Ordⁿ 1925'.
 A copy of a despatch which
 is being sent to the Dept for

on the subject is enclosed

for info

(Signed) H. T. ALLEN

for Under Secretary of State

Letter 14/9/25

B97/38415/25

Kenya

- Mr. Strachey
- Mr. J. Shackburgh
- Mr. C. Davis
- Mr. G. Grindle
- Mr. J. Masterfon Smith
- Mr. Omsby-Croft
- Mr. Amery

Ind

SEP 17 1925

15. Sept. 1925

DRAFT.

Kenya

No. 408

O. A. G.

(49103/25)

Copy B/Grange - 15 SEP 1925

With ref. to your ~~letter~~
 Sir Robert Compton's despatch No. 126
 of the 19th of Sept. 1924 I have
 to transmit to you the enc. copy
 of a letter from the Board
 memorandum which has
 been received from the B. of
 regarding the draft Shipping
 Bill, which was referred
 to the Board for observation.
 You will no doubt give
 careful consideration to the remarks
 contained in this memorandum

*Memorandum
incl. in 35415*

and in particular to those

or clauses in the Bill which

are regarded as being ultra

vires. It will be desirable,
in my opinion, for

~~if you will~~ ^{cancel} the Bill

to be redrafted in the light

of the Board of Trade's observations,

and ~~if you will~~ ^{forward} the

revised draft to me, with

explanations regarding any

parts ~~to~~ which it is not

considered possible to adopt

the Board's recommendation,

for further consideration before the

measure is introduced into

the Legislative Council.

3. with reference to clause 11
of

Mr. Strachey

Mr. J. Strickland

Mr. G. Davis

Mr. G. Grindle

Mr. J. Masterton Smith

Mr. Ormsby-Gore

Amery

DRAFT.

of the Bill, you will be glad

to forward ~~me~~ in due course

with copies of any notes made

regarding Courts of Survey, for

transmission to the B.O.T.

4. ~~with~~ ^{reg} ~~ard~~ ^{ards} regarding

clauses 58 and 63 of the

Bill, I shall be glad if

of the information of the Board
you will furnish particulars

of the ~~Surveyors~~ ^{Surveyors} technical

qualifications of the ~~Surveyors~~ ^{Surveyors}

in the Colony who may be

required to make surveys

under these clauses with

regard to coastline.

(Signed) L. S. AMERY