

1937

38326

C0533/486
KENYA

38326

SHOP HOURS LEGISLATION

Previous

16330/30

299

6/10

297

6/10

Library (Legal)

6/10

297

7/10

~~Mr. Flood~~ 309

7/10

Subsequent

1941

Mr. Flood 297

7/10

297

11/10

Library (Legal)

12/10

R 297

R 297

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R 309

15

Mr. Flood

16

R 297

26

R 297

26/7

309

26

R 297

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R 309

17/9

R 297

24/9

Library (Legal)

21/9

R 309

22

Mr. Flood's library

25

Mr. Dale

2/10

Mr. Flood

4

Room 303

6/10

C.I.

SHOP HOURS.
Nominal.

1. D.N. PRITT, K.C., M.P. (S/O TO S. OF S.) 13. Vis.
States that he has rec'd complaints on behalf of shop-
assistants in Kenya and enquires why the Kenya Govt.
allowed the proposed "Shop Hours (Amdt.) Order" to drop.

We havint heard of the Shop assistants' grievances, but a Bill was published in the Kenya Gazette of the 5th of June, copy herewith. This Bill obviously is in the employees' interests.

I submit Draft reply

C. J. Crossin, The
15/7/57

In the same Gazette there was published a Memorandum Shop assistants' Employment Bill.

? Callen send both to Mr Pitt.

J. J. Paine

Yes:

167.

2. to Mr Pitt. (has files) (ansd) 17 July 57

[Handwritten signature]

3. D. N. PRITT (S/O TO S. OF S.) 20. 7. 52
— Ackn. (2) with comments.

[Handwritten signature]

167

(spares to library)

4. Kenya 3pm 14.8.37 (on 58034/1/37)
Report of select bttee of leg. Co apptd
to consider the Shop Hours (Amend) Bill

Await the Ordinance

C. H. Parsonella
10/9/37
at once

7

(spares to library)

5. Gov. 543. 14.9.37
Ltr. two auth. + 12 plain copies of
Ord. 31 of 1937 - Shop Hours (Amend)
Ord. with legal report thereon

Mr. Dalrymple
No. 650
any more? It seems to me a
bit abrupt in spots but its then affair

L. W. Hunt
21.9.

No. 650

let file

2.10

G. S.

L. W. Hunt
21.9.

noted
12/10/37

6. Kenya 861 5 bound 4/3 6 OCT 1937

7. Gov. Kenya 16.9.37
Under copy of "Shop Hours (Amendment) Bill, 1937" showing
nature of principal Ord. affected by Amending Bill, which
has been in legal report file with (5)

No 7 retains an answer in the enclosure to No 5

? Put by

Clothes, White

7/10/37

P. H. H. H.
7/10
at once

Library (Legal)

L. W. Hunt

Handwritten signature

KENYA.

NO.

S.C. TD. 1/3/1/11/62



GOVERNMENT HOUSE

NAIROBI.

KENYA

RECEIVED

27 SEP 1937

C. O. REGY

16 September 1937.

The Acting Colonial Secretary of the Colony and Protectorate of Kenya presents his compliments to the Secretary of State for the Colonies and with reference to Kenya despatch No. 543 of the 14th September has the honour to enclose a copy of "The Shop Hours (Amendment) Bill, 1937 showing the Sections of the Principal Ordinance which are affected by the Amending Bill" which forms the enclosure to the Legal Report forwarded with the despatch.

A COPY
OF
THE SHOP HOURS (AMENDMENT) BILL, 1937
SHOWING THE SECTIONS OF THE PRINCIPAL
ORDINANCE WHICH ARE AFFECTED BY THE
AMENDING BILL

Hours of
employment

Subsection (1) of section 5 of the Principal Ordinance which it is proposed to replace:—

5. (1) No shop assistant shall be employed in or about a shop for more than fifty hours including meal times in any one week or more than nine hours in any one day.

Provided that for the purpose of stocktaking or other special emergency work that cannot be done during the usual hours, the working hours of shop assistants may be extended on days other than public holidays for periods not exceeding a total of one hundred hours in any year.

A Bill to Amend the Shop Hours 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 Shop Hours (Amendment) Ordinance, 1937, and shall be read as one with the Shop Hours Ordinance, 1925, hereinafter referred to as the Principal Ordinance.

Short title.
No. 24 of 1937.

2. Sub-section (1) of section 5 of the Principal Ordinance is hereby repealed and the following is substituted therefor:—

Repeat and replacement of Section 5 (1) of the Principal Ordinance.

Hours of employment of shop assistants.

"5. (1) An occupier shall not permit a shop assistant to work in a shop—

- (a) for more than eight hours in any one day, exclusive of intervals for meals, but so that such eight hours work together with such intervals for meals shall be completed within nine hours from the commencement of a day's work of such assistant;
- (b) for more than fifty hours, inclusive of intervals for meals, in any one week;
- (c) subject to the provisions of sub-sections (2) and (4) of this section, after one o'clock on any weekly half holiday;
- (d) subject to the provisions of sub-sections (2) and (4) of this section, on any Sunday;
- (e) subject to the provisions of sub-section (4) of this section, on any public holiday.

- (2) Where a shop is permitted to remain open—
- (a) under the provisions of section 7 of this Ordinance, after one o'clock in the afternoon on any weekly half holiday; or

- (b) under the provisions of section 8 of this Ordinance, on any Sunday; or
- (c) under the provisions of section 9 of this Ordinance, after the time fixed for closing by a closing order,

any shop assistant may, subject to the provisions of paragraphs (a) and (b) of sub-section (1) of this section, be permitted to work in such shop during the hours that such shop is permitted to remain open.

(3) Notwithstanding the provisions of paragraphs (a) and (b) of sub-section (1) of this section, the working hours of any shop assistant may, solely for the purpose of stocktaking, be extended for not more than two hours on any one day (other than on a Sunday or a public holiday) on not more than four days in any one week and on not more than thirty days in any one year.

(4) Notwithstanding the provisions of paragraph (b) of sub-section (1) of this section an occupier, upon giving reasonable notice to the officer in charge of the police station of the district in which the shop is situate of the names of the assistants concerned and the dates upon which he intends to extend their working hours, may (on not more than two occasions in any year and solely for the purpose of stocktaking) permit such shop assistants, in any case where a Monday is a public holiday, to work on the Saturday afternoon, on the Sunday immediately preceding such Monday, and on such Monday. An occupier who avails himself of the provisions of this sub-section shall not be permitted to extend the hours of his shop assistants under the provisions of sub-section (3) of this section.

(5) Save as is provided in this section, and that a shop assistant may remain in a shop for a period of fifteen minutes after the prescribed closing hour or after the hours permitted for his employment for the purpose of serving a customer who has entered the shop before the prescribed closing hour, or for the purpose of closing the shop, an occupier shall not permit an assistant to remain in his shop for a greater number of hours than those permitted under, or after the closing hour prescribed by, this Ordinance.

(6) Any shop assistant found in a shop after the closing hour prescribed by this Ordinance or after the hours permitted for his employment under this Ordinance shall be deemed to be in the employment of such occupier until the contrary is proved by such occupier."

8. Section 5 of the Principal Ordinance is hereby amended by renumbering sub-section (2) and (3) thereof as section "5A (1)" and sub-section "(2)" respectively; and by adding a marginal note thereto as follows—

Amendment of Section 5 (2) and (3) of the Principal Ordinance.

"Annual leave of absence."

and by renumbering sub-section (1) thereof as section "3".

Sub-sections (2) and (3) of section 5 of the Principal Ordinance which it is proposed to amend:—

(2) In each year of continuous service from the commencement of this Ordinance under the same employer a shop assistant shall be granted leave of absence on full pay for twelve clear working days to be taken in a consecutive period: Provided that the employer may fix the time of leave for the different shop assistants with reasonable regard to the exigencies of his business.

(3) For the purpose of this section the expression "the same employer" shall include in case of the death of an employer, the legal representative, heir or legatee of that employer, or in the case of insolvency or liquidation of the employer the receiver or liquidator, so long as such representative, heir, legatee, receiver or liquidator continues to carry on the business of that shop and to employ that shop assistant therein.

Section 8 of the Principal Ordinance which it is proposed to amend:—

8. All shops in townships and other areas to which this Ordinance applies shall be closed for the serving of customers on Sundays: Provided that where any local authority applies for exemption from Sunday closing the Governor in Council may grant such exemption either as to the whole or part of Sunday and either generally or in respect of any particular class of shops or trades.

Sunday closing.

Sub-section (1) of section 11 of the Principal Ordinance which it is proposed to amend:—

11 (1) After any order has been passed by a local authority it shall be submitted for the approval of the Governor in Council who shall consider any objections to the order and may either disallow the order or confirm the order with or without amendment. Every order so confirmed shall be published in the Gazette and thereupon shall have the force of law.

Approval of Governor in Council.

4. Section 8 of the Principal Ordinance is hereby amended by the deletion of the words "for the serving of customers" which occur in the second line thereof.

Amendment of Section 8 of the Principal Ordinance.

Amendment of section 9 of the Principal Ordinance.

9. Section 9 of the Principal Ordinance is hereby amended by adding thereto the following new sub-section:—
"(8) Notwithstanding anything contained in this section the Governor may permit a shop to remain open after the hour fixed for closing, on not more than four days in any year, on the occasion of a religious or official celebration:

Provided that no business shall be carried on, and no shop assistant shall be required to work, in such shop while the shop remains open under the provisions of this sub-section after the hour fixed for closing."

Amendment of section 11 of the Principal Ordinance.

6. Section 11 of the Principal Ordinance is hereby amended:—

- (a) by inserting the word "closing" after the word "any" and the word "order" which appear in the first line of sub-section (1) thereof; and
- (b) by substituting the words "any closing" for the word "an" which appears in the third line of sub-section (1) thereof.

Section 15 of the Principal Ordinance which it is proposed to amend:—

15. In the case of any contravention of or failure to comply with the provisions of this Ordinance the occupier of the shop shall be guilty of an offence punishable with a fine not exceeding:—

(a) In the case of a first conviction five pounds (or in default of payment to simple imprisonment for a period not exceeding fourteen days);

(b) In the case of a second conviction ten pounds (or in default of payment to simple imprisonment for a period not exceeding one month);

(c) In the case of a third or subsequent conviction thirty pounds (or in default of payment to simple imprisonment for a period not exceeding two months):

Provided that in the case of a shop assistant employed after hours in contravention of the Ordinance the occupier shall not be guilty of an offence against the Ordinance if he proves that his shop assistant was engaged only in serving customers whom he was already serving or who were in the shop before the closing hour or that there was reasonable ground for believing that the article supplied to the customer was required in case of illness.

7. Section 15 of the Principal Ordinance is hereby amended by deleting therefrom the proviso thereto.

Amendment of Section 15 of the Principal Ordinance.

OBJECTS AND REASONS

Although the Shop Hours Ordinance, 1925, provides that a shop shall not be open for serving customers after a certain hour, yet, in fact, employees are frequently kept at work in the shop long after that hour behind closed doors. The object of this Bill is to remedy this state of affairs.

Section 5 of the Principal Ordinance at present provides that no shop assistant shall be employed in or about a shop for more than fifty hours including meal times in any one week or more than nine hours in any one day. In this Bill provision is made to the effect that subject to the exceptions hereafter mentioned, no person shall employ any shop assistant for more than fifty hours in any one week including intervals for meals, or for more than eight hours in any one day excluding intervals for meals to be completed within nine hours from the commencement of the assistant's work, or on any Sunday or public holiday.

~~Provision is also made for the extension of the working hours of shop assistants during stocktaking and other emergency work which cannot be performed during the usual hours. There is a further provision to the effect that, except in exceptional circumstances, no assistant shall be permitted to remain in a shop for more than a quarter of an hour after closing time.~~

Finally, as the Principal Ordinance stands at present, all shops affected by it must be closed "for the serving of customers" on Sundays—it is provided in this Bill that such shops must be physically closed on Sundays.

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

AIR MAIL

KENYA
No. 543



GOVERNMENT HOUSE
NAIROBI
KENYA

14 September 1937

RECEIVED
20 SEP 1937
C. O. REEVE

Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. XXXI of 1937 entitled "An Ordinance to Amend the Shop Hours Ordinance, 1925", together with a Legal Report thereon by the Acting Attorney General,

2. This Ordinance passed its third reading in the Legislative Council on the 11th August, and I assented to it in His Majesty's name on the 28th August.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

R. Brooke-Popham

AIR CHIEF MARSHAL

GOVERNOR.

THE RIGHT HONOURABLE
W. GIMNEY GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1.



Colony and Protectorate of Kenya

IN THE FIRST 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 28 day of
1937. 28

R. BROOKE-POPHAM

Governor

AN ORDINANCE TO AMEND THE SHOP HOURS
ORDINANCE, 1925

ORDINANCE No. XXXI of 1937

An Ordinance to Amend the Shop Hours 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 Shop Hours (Amendment) Ordinance, 1937, and shall be read as one with the Shop Hours Ordinance, 1925, hereinafter referred to as the Principal Ordinance.

Short title.
No. 24 of 1925.

2. Sub-section (1) of section 5 of the Principal Ordinance is hereby repealed and the following is substituted therefor:—

Repeal and replacement of Section 5 (1) of the Principal Ordinance.
Hours of employment of shop assistants.

"5. (1) An occupier shall not permit a shop assistant to work in a shop—

- (a) for more than eight hours in any one day, exclusive of intervals for meals, but so that such eight hours work together with such intervals for meals shall be completed within nine hours from the commencement of a day's work of such assistant;
- (b) for more than fifty hours, inclusive of intervals for meals, in any one week;
- (c) subject to the provisions of sub-sections (2) and (4) of this section, after one o'clock on any weekly half holiday;
- (d) subject to the provisions of sub-sections (2) and (4) of this section, on any Sunday;
- (e) subject to the provisions of sub-section (4) of this section, on any public holiday.

- (2) Where a shop is permitted to remain open—
- (a) under the provisions of section 7 of this Ordinance, after one o'clock in the afternoon on any weekly half holiday; or
 - (b) under the provisions of section 8 of this Ordinance, on any Sunday; or
 - (c) under the provisions of section 9 of this Ordinance, after the time fixed for closing by a closing order,

any shop assistant may, subject to the provisions of paragraphs (a) and (b) of sub-section (1) of this section, be permitted to work in such shop during the hours that such shop is permitted to remain open.

(3) Notwithstanding the provisions of paragraphs (a) and (b) of sub-section (1) of this section, the working hours of any shop assistant may, solely for the purpose of stocktaking, be extended for not more than two hours on any one day (other than on a Sunday or a public holiday) on not more than four days in any one week and on not more than thirty days in any one year.

(4) Notwithstanding the provisions of paragraph (b) of sub-section (1) of this section an occupier, upon giving reasonable notice to the officer in charge of the police station of the district in which the shop is situate of the names of the assistants concerned and the dates upon which he intends to extend their working hours, may (on not more than two occasions in any year and solely for the purpose of stocktaking) permit such shop assistants, in any case where a Monday is a public holiday, to work on the Saturday afternoon, on the Sunday immediately preceding such Monday, and on such Monday. An occupier who avails himself of the provisions of this sub-section shall not be permitted to extend the hours of his shop assistants under the provisions of sub-section (3) of this section.

(5) Save as is provided in this section, and that a shop assistant may remain in a shop for a period of fifteen minutes after the prescribed closing hour or after the hours permitted for his employment for the purpose of serving a customer who has entered the shop before the prescribed closing hour, or for the purpose of closing

the shop, an occupier shall not permit a shop assistant to remain in his shop for a greater number of hours than those permitted under, or after the closing hour prescribed by, this Ordinance.

(6) Any shop assistant found in a shop after the closing hour prescribed by this Ordinance or after the hours permitted for his employment under this Ordinance shall be deemed to be in the employment of such occupier until the contrary is proved by such occupier."

3. Section 5 of the Principal Ordinance is hereby amended by renumbering sub-sections (2) and (3) thereof as section "5A (1)" and sub-section "(2)" respectively; and by adding a marginal note thereto as follows—

Amendment of Section 5 (2) and (3) of the Principal Ordinance

"Annual leave of absence."

4. Section 8 of the Principal Ordinance is hereby amended by the deletion of the words "for the serving of customers" which occur in the second line thereof.

Amendment of Section 8 of the Principal Ordinance

5. Section 9 of the Principal Ordinance is hereby amended by adding thereto the following new sub-section:—

Amendment of section 9 of the Principal Ordinance

"(8) Notwithstanding anything contained in this section the Governor may permit a shop to remain open after the hour fixed for closing on not more than four days in any year on the occasion of a religious or ceremonial celebration:

Provided that no business shall be transacted, and no shop assistant shall be required to work, in such shop while the shop remains open under the provisions of this sub-section after the hour fixed for closing."

6. Section 11 of the Principal Ordinance is hereby amended—

Amendment of section 11 of the Principal Ordinance

- (a) by inserting the word "closing" between the word "any" and the word "order" which appear in the first line of sub-section (1) thereof; and
- (b) by substituting the words "any closing" for the word "an" which appears in the third line of sub-section (2) thereof.

7. Section 15 of the Principal Ordinance is hereby amended by deleting therefrom the proviso thereto

Amendment of Section 15 of the Principal Ordinance

Passed in the Legislative Council the eleventh day of August, in the year of our Lord one thousand nine hundred and thirty-seven.

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-BEALL

Acting Clerk to the Legislative Council.

LEGAL REPORT

THE SHOP HOURS (AMENDMENT) BILL, 1937

Experience has shown that the existing provisions of the Shop Hours Ordinance, 1925, regulating the daily and weekly hours of shop assistants, leave scope for evasion and the object of this Bill is to tighten up those provisions. Opportunity has also been taken to make a few other minor amendments.

Clause 2: The proposed section 5 provides that, subject to certain exceptions, a shop assistant shall not be required to work for more than nine hours, inclusive of meals, in any one day or for more than fifty hours in any one week or on any weekly half holiday, Sunday or public holiday.

Clause 3 renumbers and reproduces two sub-sections of the existing section 5 of the Principal Ordinance.

Clause 4: It will be observed that under the law as it stands all shops in townships to which the Principal Ordinance applies must be closed "for the serving of customers" on Sundays. This section left a loophole inasmuch as no prosecution could succeed unless evidence was forthcoming that the shop was open for the purposes of serving customers. It has, therefore, been decided to delete the words "for the serving of customers" and the effect will be that all shops must be physically closed on Sundays.

Clause 5: Among the Indian community a ceremony is held once a year on the occasion of the Diwali festival when the priests attend the shops and give

LEGAL REPORT

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Clause 5: Among the Indian community a ceremony is held once a year on the occasion of the Diwali festival when the priests attend the shops and give

their blessings, the books for the new year then being opened. It has been represented that, under the Principal Ordinance as amended by the Bill, it would be impossible to hold this ceremony, which takes place after the closing hour, without infringing the law. This Clause is designed to exempt shops from the provisions of the Ordinance on such occasions, subject to the proviso that no business shall be transacted and that shop assistants shall not be required to work.

Clause 6: Under the existing law every order made by a local authority has to be confirmed by the Governor in Council. This appears to be unnecessary in the case of an order made by the local authority with regard to a weekly half-holiday and the subject of this Clause is to confine such confirmation to closing orders only.

Clause 7: This clause deletes the proviso to section 15 as provision has to be made in the Ordinance.

No Comparative Table accompanies the Bill since the amendments contained therein are not modelled on any Colonial Ordinance or Imperial Act. A copy of the Bill, however, showing the sections of the Principal Ordinance which are affected by the Bill 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,
12th August, 1957.

H. W. Williams
ACTING ATTORNEY GENERAL

*Not altogether
agree with the
amendments*

Not here

(on 30024/1/37) 4
REPORT OF
THE SELECT COMMITTEE OF LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT UPON THE
PROVISIONS OF A BILL TO AMEND THE SHOP HOURS
ORDINANCE, 1925.

38320
Your Excellency,

We, the members of the Select Committee appointed to consider and report upon the provisions of the above Bill, have the honour to recommend that the Bill be amended in the following respects:-

1. That clause 2 be amended by deleting the word "an" which occurs in the seventh line of sub-section (5) of the proposed new section 5 and by substituting therefor the words "a shop."
2. That clause 3 be amended by deleting the last two lines thereof and by substituting therefor the following words -
"annual leave of absence."
3. That the following new clause be inserted as clause 5 -

"b. Section 9 of the Principal Ordinance is hereby amended by adding thereto the following new sub-section:

"(c) Notwithstanding anything contained in this section the Governor may permit a shop to remain open after the hour fixed for closing on not more than one day in any year on the occasion of a religious or ceremonial celebration:
Provided that no business shall be transacted, and no shop assistant shall be required to work, in such shop while the shop remains open under the provisions of this sub-section after the hour fixed for closing."

4. That clauses 5 and 6 be renumbered as clauses 6 and 7 respectively.
5. That clause 5 (now clause 6) be deleted and the following clause be substituted therefor:

"6. Section 11 of the Principal Ordinance is hereby amended -

- (a) by inserting the word "closing" between the word "any" and the word "order" which appear in the first line of sub-section (1) thereof; and
- (b) by substituting the words "any closing" for the word "an" which appears in the third line of sub-section (2) thereof.

We have the honour to be,
Your Excellency's obedient servants,

(Sd.) Theodore Wallace, Chairman
E.B. Hosking (Member)
F. Cavendish-Bentinck (Member)
M. Maxwell (Member)
Shamsud-Deen (Member)

Nairobi,

5th August, 1937

Incl. under Kenya app. of 14/8/37.
(on 38034/1/37)

38320

REPORT OF
THE SELECT COMMITTEE OF LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT UPON THE
PROVISIONS OF A BILL TO AMEND THE SHOP HOURS
ORDINANCE, 1925.

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"(c) Notwithstanding anything contained in this section the Governor may permit a shop to remain open after the hour fixed for closing on not more than one day in any year on the occasion of a religious or ceremonial celebration: Provided that no business shall be transacted, and no shop assistant shall be required to work, in such shop while the shop remains open under the provisions of this sub-section after the hour fixed for closing."

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(a) by inserting the word "closing" between the words "any" and the word "order" which appear in the first line of sub-section (1) thereof; and
(b) by substituting the words "any closing" for the word "an" which appears in the third line of sub-section (2) thereof."

We have the honour to be,
Your Excellency's obedient servants,

- | | |
|-------------------------|----------|
| (Sd.) Theodore Wallace, | Chairman |
| E.B. Hosking | (Member) |
| F. Cavendish-Bontick | (Member) |
| M. Maxwell | (Member) |
| Shamsul-Deen | (Member) |

TELEPHONE: CENTRAL 1094.
TELEGRAMS: 14 TEMPLE.

R 217

REC-
21 JUL 1937
C.O.

18
3.
2, PUMP COURT,
TEMPLE, E.C. 4.
20th July, 1937.

Dear Ormsby-Gore,

2.
Thank you very much for your letter of the 17th July, regarding the grievances of shop assistants in Kenya. I note that the Gazette you send me happens to be dated two days later than the letter from the Colony asking me to investigate the matter. I hope that the terms of the Governor's proposed amendments will meet the grievances of my friends out there.

Yours sincerely,
S. M. M. M.

The Rt. Hon. W. Ormsby-Gore, M.P.

30326/27

19

C. O.

Mr. ¹⁵⁷ G. Smith
Mr. Paskin 16

and (3)

Mr. Flood 16
Sir C. Parkinson. Mr. Boyd

For the signature

Sir G. Tomlinson.

Sir C. Bottomley

Sir J. Shuckburgh.

Permt. U.S. of S.

17th

July 1937

Copy, U.S. of S.

Secretary of State.

DRAFT.

N. Pitt, Esq.
K.C., M.P.

Shop Hours (Amendment) Bill

Thank you for your letter of the 13th of July regarding the grievances of shop assistants in Kenya. I had not previously heard of these grievances or of the Bill which is said to have been prepared in 1926. I have ^{found} ~~known~~ however that the Government of Kenya has approved the introduction into the Legislative Council of a Bill to amend the Kenya Shop Hours Ordinance, 1925, and that the ~~draft~~ Bill was published in the Official Gazette of the

FURTHER ACTION.

The Colony on the 5th of
June this year. I enclose
a ^{copy} of this Bill, & of a
Nambona Ship Assisants Employment
Bill wh. was published in
an same Gazette.

W. Wainwright

(L.S.)

EDWARD GRIGG,

12th November, 1925.

●. XXIV.

1925.



Colony and Protectorate of Kenya.

IN THE SIXTEENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.

EDWARD WILLIAM MACLEAY GRIGG,

K.C.V.O., C.M.G., D.S.O., M.C.

Governor.

An Ordinance to Regulate Shop Hours and to Regulate the Employment of Shop Assistants.

[12TH NOVEMBER, 1925.]

*Date of
commencement.*

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

1. This Ordinance may be cited as "the Shop Hours
Ordinance, 1925." *Short title.*

2. This Ordinance shall come into operation on such
date and in such townships or other areas as the Governor
in Council may by proclamation appoint. *Application of
Ordinance.*

3. In this Ordinance the following expressions shall,
unless the contrary intention appears, have the meanings
hereby respectively assigned to them, namely:— *Interpretation.*

"Local authority" means the council of any municipality
constituted under the Municipal Corporations Ordinance, 1922,
and in any township or other area where no such council
exists the district commissioner.

"Occupier" means the person, company, association, or partnership having charge of any shop or owning the business thereof or employing any person in or in connection with a shop and includes the manager, agent or other person acting or apparently acting in the general management or control of any shop.

"Public holiday" means any public holiday established under the provisions of the Public Holidays Ordinance, 1912, or any amendment thereof.

"Retail trade or business" includes the business of a barber or hair-dresser, the sale of refreshments or intoxicating liquors and retail sales by auction; but does not include the sale of programmes, catalogues, refreshments, intoxicating liquors and other similar sales at theatres and places of amusement.

"Shop" includes any premises where any retail trade or business is carried on.

"Shop assistant" means any person employed in or about a shop, but does not include an occupier or any person employed solely as a caretaker or as cleaner or other domestic servant. Provided that in any shop where not more than three persons are employed, the occupier of that shop not being the owner or part owner of the business shall for the purposes of this Ordinance be deemed to be a shop assistant.

"Week" means the period between midnight on Saturday and midnight on the succeeding Saturday thereof.

4. (1) On at least one weekday in each week a shop assistant shall not be employed about the business of a shop after one o'clock in the afternoon.

This provision shall not apply to the week preceding a public holiday if the shop assistant is not employed on the public holiday and if on one weekday in the following week in addition to the public holiday the employment of the shop assistant ceases not later than one o'clock in the afternoon.

(2) The occupier of a shop shall fix and shall specify in a notice in the prescribed form, which must be affixed in the shop in such manner and at such time as may be prescribed, the day of the week on which his shop assistants are not employed after one o'clock, and may fix different days for different shop assistants.

Conditions of employment and notice.

(3) Intervals for meals shall be allowed to each shop assistant in accordance with the first schedule to this Ordinance.

This provision shall not apply to any shop if the only persons employed therein as shop assistants are members of the family of the occupier of the shop, maintained by him and dwelling in his house.

5. (1) No shop assistant shall be employed in or about a shop for more than fifty hours including meal times in any one week or more than nine hours in any one day: Hours of employment.

Provided that for the purpose of stocktaking or other special emergency work that cannot be done during the usual hours, the working hours of shop assistants may be extended on days other than public holidays for periods not exceeding a total of one hundred hours in any year.

(2) In each year of continuous service from the commencement of this Ordinance under the same employer a shop assistant shall be granted leave of absence on full pay for twelve clear working days to be taken in a consecutive period. Provided that the employer may fix the time of leave for the different shop assistants with reasonable regard to the exigencies of his business.

(3) For the purpose of this section the expression "the same employer" shall include in case of the death of an employer, the legal representative, heir or legatee of that employer or in the case of insolvency or liquidation of the employer the receiver or liquidator, so long as such representative, heir, legatee, receiver or liquidator continues to carry on the business of that shop and to employ that shop assistant therein.

6. In all rooms of a shop where female shop assistants are employed in the serving of customers the occupier of the shop shall provide seats behind the counter or in such other position as may be suitable for the purpose; and such seats shall be in the proportion of not less than one seat to every three shop assistants employed in such room. Seats for female staff.

7. (1) Every shop shall, save as otherwise provided by this Ordinance, be closed for the serving of customers not later than one o'clock in the afternoon on one weekday in every week. Closing of shops on weekly half-holiday.

(2) The local authority may by order fix the day on which a shop is to be closed (in this Ordinance referred to as "the weekly half-holiday") and any such order may either fix the same day for all shops or may fix:—

- (a) Different days for different classes of shops; or
- (b) Different days for different parts of the township or area:

Provided that no such order shall be made unless the local authority after such inquiry as shall be prescribed are satisfied that the occupiers of a majority of shops affected by the order approve the order.

(3) Unless and until such an order is made affecting a shop the weekly half-holiday as respects the shop shall be such day as the occupier may specify in a notice affixed in the shop, but it shall not be lawful for the occupier of the shop to change the day oftener than once in any period of three months.

(4) Where a shop is closed for a whole day on the occasion of a public holiday, it shall be lawful for the occupier of the shop to keep the shop open for the serving of customers after the hour it is required under this section to be closed on the half-holiday immediately preceding the public holiday.

(5) This section shall not apply to any shop in which the only trade or business carried on is trade or business of any of the classes mentioned in the second schedule to this Ordinance; but the local authority may by order made and revocable in the manner hereinafter provided with respect to closing orders extend the provisions of this section to shops of any class exempted under the second schedule if satisfied that the occupiers of a majority of the shops of that class approve the order.

Sunday closing.

8. All shops in townships and other areas to which this Ordinance applies shall be closed for the serving of customers on Sundays: Provided that where any local authority applies for exemption from Sunday closing the Governor in Council may grant such exemption either as to the whole or part of Sunday and either generally or in respect of any particular class of shops or trades.

9. (1) A local authority may make an order (in this Ordinance referred to as "a closing order") fixing the hours on the several days of the week at which either throughout the area of the local authority or in any specified part thereof all shops or shops of any specified class are to be closed for serving customers.

(2) The hour fixed by a closing order (in this Ordinance referred to as "the closing order") shall not be earlier than 4 o'clock or later than 4.30 o'clock in the afternoon, unless it be shown to the satisfaction of the Governor in Council that special reasons exist for specifying a later closing hour but the closing hour shall not in any case be later than 6 o'clock in the afternoon, and every closing order shall specify the hour of opening which shall not be earlier than 6 o'clock in the morning.

(3) Until a closing order is made no shop shall be opened earlier than 6 o'clock in the morning and all shops shall be closed not later than 6 o'clock in the afternoon: Provided that this subsection shall not apply to any shop in which the only trade or business carried on is a trade or business of any of the classes included in the third schedule to this Ordinance.

(4) A closing order may:—

(a) Define the shops and trades to which the order applies; and

(b) Authorise sales after the closing hour in cases of emergency and in such other circumstances as may be specified or indicated in the order; and

(c) Contain any incidental, supplemental or consequential provisions which may appear necessary or proper

(5) Nothing in a closing order shall apply to any shop in which the only trade or business carried on is a trade or business of any of the classes mentioned in the third schedule to this Ordinance.

(6) Notwithstanding anything contained in this section any shop may remain open until 7 o'clock in the afternoon on one day in each week. The day on which shops of a particular class may so remain open may be specified in a closing order. In the absence of any such order affecting a particular shop the occupier of such shop shall specify the day by a notice affixed in the shop, but it shall not be lawful for him to change the day oftener than once in any period of three months.

Procedure of making orders.

10. A local authority shall give notice of the intention to make a closing order and shall specify the terms to be fixed by the order. A period shall be stated during which objections may be made to the proposed order. After considering any objections the local authority may make the order.

Approval of Governor in Council.

11. (1) After any order has been passed by a local authority it shall be submitted for the approval of the Governor in Council who shall consider any objections to the order and may either disallow the order or confirm the order with or without amendment. Every order so confirmed shall be published in the Gazette and thereupon shall have the force of law.

Revocation of orders.

(2) The Governor in Council may, at any time on the application of a local authority rescind the revocation, alteration or amendment of an order made by a local authority.

Special provisions as to trading elsewhere than in shops.

12. It shall not be lawful in any locality in which this Ordinance applies to carry on in any place, and being a shop, retail trade or business of any class at any time when it would be unlawful in that locality to keep a shop open for the purpose of retail trade or business of that class, and, if any person carries on any trade or business in contravention of this section, this Ordinance shall apply as if he were the occupier of a shop and the shop were being kept open in contravention of the Ordinance:

Provided that—

(a) The prohibition imposed by this section shall as respects any day other than the weekly half-holiday be subject to such exemptions and conditions (if any) as may be contained in any closing order; and

(b) Nothing in this section shall be construed as preventing a barber or hair-dresser from attending a customer in the customer's own residence, or the holding of an auction sale of private effects in a private dwelling-house; and

(c) Nothing in this section shall apply to the sale of newspapers;

(d) Nothing in this section shall apply to theatres or places of public entertainment.

13. Where several trades or businesses are carried on in the same shop and any of those trades or businesses is of such a nature that if it were the only trade or business carried on in the shop a closing order would not apply to the shop or the shop would be exempt from the obligation to be closed for the weekly half-holiday the shop may be kept open after the closing hour for the purposes of those trades or businesses alone; but on such terms and on such conditions as may be prescribed and the exemption from the obligation to be closed for the weekly half-holiday or under the closing order shall apply to the shop so far as the purposes of those trades or businesses alone are concerned.

Provisions as to shops in which more than one business is carried on.

14. (1) Notwithstanding anything contained in the Criminal Procedure Ordinance it shall be the duty of the police to investigate and prosecute all offences under this Ordinance.

Powers of police.

(2) Any police officer or constable thereto authorised by any officer in charge of a police station may enter any shop in any township or area to which this Ordinance applies and demand information to ascertain whether or not the provisions of this Ordinance are being observed.

15. In the case of any contravention of or failure to comply with the provisions of this Ordinance the occupier of the shop shall be guilty of an offence punishable with a fine not exceeding—

Penalties.

(a) In the case of a first conviction five pounds (or in default of payment to simple imprisonment for a period not exceeding fourteen days);

(b) In the case of a second conviction ten pounds (or in default of payment to simple imprisonment for a period not exceeding one month);

(c) In the case of a third or subsequent conviction thirty pounds (or in default of payment to simple imprisonment for a period not exceeding two months):

Provided that in the case of a shop assistant employed after hours in contravention of the Ordinance the occupier shall not be guilty of an offence against the Ordinance if he proves that his shop assistant was engaged only in serving customers whom he was already serving or who were in the shop before the closing hour or that there was reasonable ground for believing that the article supplied to the customer was required in case of illness.

Provisions with respect to offences

16. (1) Where an offence for which the occupier of a shop is liable under this Ordinance has in fact been committed by some manager, agent, servant, or other person, the manager, agent, servant or other person shall be liable to the like penalty as if he were the occupier.

(2) Where the occupier of a shop is charged with an offence against this Ordinance he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, he proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Ordinance and the said other person has committed the offence in question without his knowledge, consent or connivance, the said other person shall be convicted of such offence and the occupier shall be exempt from any fine.

17. The Governor in Council may make rules:—

(a) For prescribing anything which under this Ordinance is to be prescribed;

(b) As to the mode of ascertaining the opinion of occupiers of shops;

(c) As to the conduct of local inquiries and matters incidental thereto;

Power to make rules

(d) As to the procedure for obtaining the revocation of a closing order;

(e) To add any business or trade to or remove any business or trade from the second or third schedule to this Ordinance;

(f) For exempting from the provisions of this Ordinance, subject to such conditions as may be prescribed, the sale of foodstuffs and other necessaries to travellers; and

(g) Generally for carrying into effect the provisions of this Ordinance.

18. Nothing in this Ordinance

Exemptions

(1) Shall apply to any bazaar or sale of work for charitable or other purposes from which no private profit is derived, nor to the hawking of newspapers nor to the business of an undertaker;

(2) Shall apply to the delivery of ice to hospitals and nursing institutions or in case of sickness to private persons;

(3) Shall apply to any bookstall or refreshment room at any railway station: Provided that the provisions affecting the hours of employment of shop assistants shall apply to the assistants at bookstalls and refreshment rooms at railway stations.

(4) Shall prevent customers from being served with victuals, stores or other necessaries for a ship on her arrival at or immediately before her departure from a port, at a time when the shop in which they are sold is required to be closed.

FIRST SCHEDULE

INTERVALS FOR MEALS.

(See Section 4 (3)).

Intervals for meals shall be arranged so as to secure that no person shall be employed for more than six hours without an interval of at least twenty minutes being allowed during the course thereof.

Without prejudice to the foregoing provision where the hours of employment include the hours from 11.30 a.m. to 2.30 p.m. an interval of not less than three-quarters of an hour shall be allowed between those hours for a meal and the interval for a meal shall be increased to one hour in cases where that meal is not taken in the shop, or in a building of which the shop forms part or to which the shop is attached :

Provided that an assistant employed in the sale of refreshments or in the sale by retail of intoxicating liquor need not be allowed the interval for a meal between 11.30 a.m. and 2.30 p.m. if he is allowed the same interval so arranged as either to end not earlier than 11.30 a.m. or to commence not later than 2.30 p.m.

SECOND SCHEDULE

TRADES AND BUSINESSES EXEMPTED FROM THE PROVISIONS AS TO WEEKLY HATE-HOLIDAYS

(See Section 7 (5).)

The sale by retail of intoxicating liquors.

The sale of refreshments.

The sale of motor, cycle, and air-craft supplies and accessories to travellers.

The sale of newspapers and periodicals.

The sale of rice, fish, milk, cream, bread, confectionary, fruit, vegetables, flowers and other articles of a perishable nature.

The sale of tobacco and smokers' requisites and of the preparation locally known as "pansopari."

The sale of medicines and medical and surgical appliances.

Retail trade carried on at an exhibition or show, if the local authority certify that such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show.

THIRD SCHEDULE

TRADES AND BUSINESSES EXEMPTED FROM PROVISIONS OF CLOSING ORDERS.

(See Section 9).

The sale by retail of intoxicating liquors.

The sale of refreshments for consumption on the premises.

The sale of newspapers.

The sale of tobacco and smokers' requisites and of the preparation locally known as "pansopari."

The sale of medicines and medical and surgical appliances.

Post Office business.

Passed in the Legislative Council the twenty-eighth day of August, in the year of Our Lord one thousand nine hundred and twenty-five.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and found by me to be a true and correct printed copy of the said Bill.

R. W. LAMBERT,

Clerk of the Legislative Council.

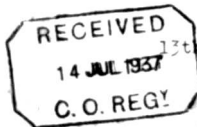
Presented for authentication as a correctly and faithfully printed copy of the Bill as passed by the Legislative Council.

E. H. DENHAM,

Colonial Secretary.

T. L. O. GOVER,

Attng Attorney General.

TELEPHONE CENTRAL 1984.
TELEGRAMS 18 TEMPLE.2, PUMP COURT,
TEMPLE, E.C. 4.

13th July, 1937.

Dear Ormsby-Gore,

I have been approached on behalf of certain shop-assistants in Kenya who complain that they were told by the Government that a "Shop Hours (Amendment) Ordinance", remedying a number of their grievances, would be passed in 1936, and they were actually supplied with a draft of the proposed Ordinance. They now complain that the matter has been allowed to drop, and their grievances are unremedied. Can you tell me what has happened?

Yours sincerely,

The Rt. Hon. W. Ormsby-Gore, M.P.