

1938

38342

Part II

38342

KENYA

CO 533/499

Transport Licensing Legislation.

Previous

Part I

Subsequent

1939.

291 2/10  
 309 1/10  
 Mr Parkin 11/2  
 Mr Dale 12.10  
 Mr Parkin 14  
 R298 27/10.  
 R297. 11/4  
 309 17/11  
 Mr Dale 23.11  
 Mr Parkin 24  
 Mr Freeman 21  
 Mr Conkly White 29  
 R 299 10/12  
 297 13/12  
 309 14/12

Mr Parkin 18  
 297 16/12  
 Librasy Sopal 17/12  
 R 297 29/12  
 309 27/12  
 Mr Parkin 30  
 297 /  
 R 98 21/  
 R 89 21/1  
 98 15/5  
 R 89 10/5  
 Mr Pater 10/5  
 98 10/6  
 Mr. Ghedovich 10/6  
 Mr Pater 11/6  
 96 12/6  
 299 14/6  
 98

32 Gous Dep 561 \_\_\_\_\_ 20/9/38  
 Finds two autographed and twelve printed  
 copies of Transport Licensing Amendment  
 Ordinance, 1938, with Legal Report  
 (Spares to Library)

This Ordinance was forwarded to the SPS  
 as a Bill in <sup>a despatch at</sup> No 25 (in Part I of this  
 file) which contained the Governor's observations  
 on many of its provisions. Please see  
 my minute of 16/8/38, the comments in  
 which still hold good, since the Ordinance  
 as passed does not differ from the Bill  
 as far as the provisions are concerned on  
 which comments are made in that  
 minute. The Ordinance differs from  
 the Bill only in two respects, which are  
 shown in red in the "red ink" copy of  
 the Ordinance below to 32. Firstly,  
 Section 3 of the Principal Ordinance is  
 amended (by Section 2 of this Ordinance)  
 in two additional respects: these are  
 matters of detail and do not appear  
 to require comment. Secondly, a  
 new Section 22A is added to the Principal  
 Ordinance (by Section 5 of this Ordinance)

34 W. Harrigan % 1/11/38  
Gives explanation for points raised in No 33

This letter appears to dispose of the points of difficulty found in the Ordinance at (32), which, subject to Madala's observations, may now have its "4.3."

Clotby White  
19/11

If the implication of the new 22A is - it seems to be - that in the case of applications by newcomers the burden of showing the validity of the allegations made by the objector lies on the applicant, I think this really will not do. I can understand that there may be some one for making the applicant prove the desirability of a new road source, provided the objector has shown that there is already <sup>some</sup> hardship there: but to make him prove that the source would not be contrary to the public interest, or that over the conditions in his license have been observed, seems to me not only unfair but impossible. I do not see how he is to prove that he has complied with the conditions - it will be long enough for the objector to prove that he has not. I have taken this letter with Mr. Harrigan open?

(W.) 28/11

Now see Mr. Harrigan that subject to his further observations proper notice should be given in these terms, (when we can reach) (W.)

J.P. Bannister  
28/11

4  
Spoke to Mr. Dale, who agrees that the position will be met if, in sanctioning the Ord<sup>n</sup>, we draw attention to the objection to 22A(2), + suggest that further consideration be given to the desirability of amending it in the early part of next year.

Pt. aft. through Mr. Dale to me

Notes  
to Mr. Dale,  
Library  
17.12.38

35 Mr. Kings 7/11. 32 thousand. Com. 10.12.38

Frankie  
24/11

36 Mr. W. Harrigan (60) - 34 second - 25.11.38

DESTROYED UNDER STATUTE

Chas. Lloyd

37 1st Dec 38 27/11/38  
Two 12 copies of Vehicles Licensing (Amendment No 3) Regulations 1938 (Spaced to Library)

? Put by Clotby White 19/12

J.P. Bannister  
18/12

38 - Kenya 3pm. (on 38000/38) - 28.12.38.  
L. 12 copies of Transport Licensing  
(Appeals) Regns. 1938 (papers to file).

Section 23 of the Ordinance - (flag)  
provides for appeal to the Supreme  
Court: these regulations say when &  
how the appeal shall be made.

? Put by  
Clothy White 27/12

J.P. Pedler  
20/12  
at once

~~38~~  
39 - Extract from Kenya Gazette No 61 - 13/2/38  
(Registration directed on 38000/38)

Same as 38

Put by  
Clothy White same  
27/12

~~39~~  
Bill. No reply has been received to No 30.

J.P. Pedler R98.  
10/5/39

? Wait a month.

W.P. Pedler  
10.5.39

F.J. Pedler  
10.5  
at once

Bill no reply to No. 35

10th January  
10/6

Nearly 6 months  
ago. ? Now revised.

J.P. Pedler  
10/6

F.J. Pedler  
10/6  
at once

40 To Kenya A/2. Con 14639

~~40~~

GOVERNMENT NOTICE NO. 891

THE TRANSPORT LICENSING ORDINANCE, 1937  
REGULATIONS

IN EXERCISE of the powers conferred upon him by section 28 of the Transport Licensing Ordinance, 1937, His Excellency the Governor in Council has been pleased to make the following Regulations:—

1. These Regulations may be cited as the Transport Licensing (Appeals) Regulations, 1938.

2. An appeal under section 23 of the Transport Licensing Ordinance, 1937, shall be made to the Supreme Court within sixty days from the date of the decision of the Licensing Authority.

3. Any such appeal shall be made in the same manner as an appeal to the Supreme Court from the decision of a Subordinate Court given in exercise of its civil jurisdiction.

By Command of His Excellency the Governor in Council.  
Nairobi.

This 2nd day of December, 1938.

R. W. BAKER-BEALL,  
*Clerk to the Executive Council*

Kenya. 3pm. — 20/12/38.  
(on 38008/38)

7  
38

## COLONY AND PROTECTORATE OF KENYA

GOVERNMENT NOTICE No. 891

### THE TRANSPORT LICENSING ORDINANCE, 1937 REGULATIONS

IN EXERCISE of the powers conferred upon him by section 28 of the Transport Licensing Ordinance, 1937, His Excellency the Governor in Council has been pleased to make the following Regulations:—

1. These Regulations may be cited as the Transport Licensing (Appeals) Regulations, 1938.
2. An appeal under section 23 of the Transport Licensing Ordinance, 1937, shall be made to the Supreme Court within sixty days from the date of the decision of the Licensing Authority.
3. Any such appeal shall be made in the same manner as an appeal to the Supreme Court from the decision of a Subordinate Court given in exercise of its civil jurisdiction.

By Command of His Excellency the Governor in Council

Nairobi,

This 2nd day of December, 1938.

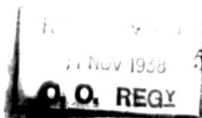
R. W. BAKER-BEALL,  
Clerk to the Executive Council.



THE SECRETARIAT,  
NAIROBI,  
KENYA.

WHEN REPLYING  
PLEASE QUOTE  
NO S D/Leg.Co.28/5/8/67  
AND DATE

NO S D/Leg.Co.28/5/8/67



11 November, 1958

The Chief Secretary of the Colony  
and Protectorate of Kenya presents  
his compliments to the Under-  
Secretary of State for the Colonies,  
and has the honour to forward  
twelve copies each of the  
undermentioned publications:

The Vehicles Licensing (Amendment  
No. 3) Regulations, 1958

Return of Land Grants, 1st July to  
30th September, 1958, under the  
Crown Lands Ordinance

Schedule of amendments to the  
McMillan Memorial Library Bill  
made by the promoters pursuant  
to Standing Rule and Order  
No. 100 of Legislative Council

COLONY AND PROTECTORATE OF KENYA

GOVERNMENT NOTICE No. 797

THE TRANSPORT LICENSING ORDINANCE, 1937  
REGULATIONS

IN EXERCISE of the powers conferred upon him by the Transport Licensing Ordinance, 1937, His Excellency the Governor in Council has been pleased to make the following Regulations;—

1. These Regulations may be cited as the Vehicles Licensing (Amendment, No. 3) Regulations, 1938, and shall be read ~~in~~ one with the Vehicles Licensing Regulations, 1938, hereinafter referred to as the Principal Regulations.

2. Regulation 10 of the Principal Regulations is hereby revoked and the following Regulation is substituted therefor:—

"10. (1) The Licensing Authority shall, as soon as may be, cause to be issued to the holder of a licence a certificate, hereinafter referred to as an "Identity Certificate", and a metal plate bearing the same ~~serial~~ number as the Identity Certificate, in respect of each vehicle authorized to be used under the licence. Such certificate shall be in the form set out in the Fourth Schedule to these Regulations, and the metal plate shall be of such size and bear such letters and figures as may be decided by the Licensing Authority.

(2) The holder of a licence shall, during such time as any vehicle is used under the licence, cause the appropriate Identity Certificate to be carried on such vehicle and maintained in a clean and legible condition.

(3) The holder of a licence shall, during the currency of the licence, cause the metal plate referred to in Sub-regulation (1) of this Regulation to be securely fixed to the back number plate of the vehicle in such a position as to be clearly visible to a person behind such vehicle."

By Command of His Excellency the Governor in Council.

Nairobi,

This 20th day of October, 1938.

R. W. BAKER-BEALL,  
Clerk to the Executive Council.



35  
*[Signature]*

C. O.

- Mr. Costley-White 24/11/38.
- Mr. Dale 2 S. II.
- Mr. Freeston. *26/11/38*
- Mr. A. J. Dawe.
- Sir H. Moore.
- Sir G. Tomlinson
- Sir J. Shuckburgh
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

*84*

*29*  
*Hand 1 on 1934 file*

DOWNING STREET.

~~November, 1938.~~

DRAFT.

KENYA.

NO. *744*

Governor.

Sir,

I have etc. to

acknowledge the receipt of your  
 despatch No. 561 of the 26th  
 September, and to inform you that  
 the power of disallowance will not  
 be exercised in respect of  
 Ordinance No. XXIV of 1938 entitled  
 "An Ordinance to Amend the Transport  
 Licensing Ordinance, 1937".

(32)

2. My attention has been

drawn to the following point which  
 arises in connection with the new  
 Section 22A. of the Principal  
 Ordinance. An implication appears  
 to be contained in this section that,

FURTHER ACTION.

in the case of applications from <sup>persons</sup> individuals who were not carrying on the business of carrier <sup>on</sup> ~~prior to~~ the 15th of August, 1936, the burden of proving the negative of allegations made by an objector lies on the applicant. I appreciate that it may be advisable to make the applicant prove the desirability of a new road service in cases where an objector has shown that ~~available~~ transport facilities already exist on the <sup>route</sup> ~~road~~ in question. But to require an applicant to prove that the service which he has in contemplation would not be contrary to the public interest, or that the conditions of his licence have been complied with, would appear to put upon him a burden which is unfair and which it <sup>might be</sup> ~~is almost~~ impossible to discharge. The objector, on the other hand, should have no difficulty in proving the <sup>allegations</sup> ~~negative~~. It appears to me that the <sup>onus</sup> ~~onus~~ <sup>should be</sup> ~~should be~~ <sup>placed</sup> ~~placed~~ <sup>on</sup> ~~on~~ <sup>him</sup> ~~him~~ <sup>who</sup> ~~who~~ <sup>makes</sup> ~~makes~~ <sup>it</sup> ~~it~~. I would therefore suggest that consideration should be given to the desirability of introducing legislation

to

C. O.

- Mr. to amend this section in the
- Mr.
- Mr. early part of next year.
- Mr. A. J. Dawe. I have, etc.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir J. Shuckburgh.
- Permi. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

**DRAFT.**

FURTHER ACTION.

In reply please quote

No. L. 379/1/26.

and Date



LEGAL DEPARTMENT  
ATTORNEY GENERAL'S OFFICE  
PO BOX N. 111  
Nairobi, Kenya

1st. November, 1938.

Dear Dale,

Thank you for your letter No. 38342 of the 20th October, 1938, on the subject of the Transport Licensing (Amendment) Ordinance, 1938.

2. With regard to paragraph 1 thereof, we felt that persons who were operating on the road prior to the date fixed under Section 12 of the Ordinance had prima face shown a necessity and that therefore it was only just and equitable that in such cases, if there was an objection to the grant of a licence, the burden of proving such objection should be on the objector. On the other hand we considered that in the case of newcomers the onus should, in the first place, be upon them to prove necessity.

3. I agree with the comments contained in your paragraph 2, that as Section 12 was amended to extend protection to Road Service Licences, there should have been a cross reference in that section to Section 14 and Section 14 should have been made subject to Section 12. However, the Board, in considering applications for Road Service Licences did in fact interpret Section 14 subject to Section 12, and as Section 12(5) only applies to applications for the first year, all of which have been dealt with already, the point has, I suggest, become academic.

Sorry to have caused you this trouble.

Kind regards,  
Your sincerely,

W.L. Dale, Esq.,  
Downing Street,  
LONDON.

*W. Mangin*

C. O.

For Mr. Dale's signature.

Mr. Dale. 12.10  
Mr. Parkin 14/x f.



Downing Street,  
20<sup>th</sup> October, 1938.

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

Dear Harragin,

**DRAFT.**

W. HARRAGIN, ESQ.  
(A.G., Kenya.)

I am a little puzzled by the new Section 22A which has been added to the Transport Licensing Ordinance by the new amending Ordinance (No. 24 of 1938). I am not clear why the

provisions relating to the burden of proof are restricted to ~~any~~ applications for licences of the kind expressly

mentioned in the section. <sup>Would it be better if a general rule that not be proper that any person objecting, on any of the grounds stated, at any time,</sup>

to the granting of any licence should have to prove the truth of his

objections? Another thing I do not understand at the moment is the date mentioned in the new section,

~~Presumably the 15th August, 1938. Perhaps this is the date on which the amending Ordinance passed the Legislative Council. But~~

FURTHER ACTION.

HOW-

~~how does the section fit in exactly~~  
 with Section 12 of the principal  
 Ordinance? One is inclined to  
 look for the same date in both, but  
 the twelve months mentioned in  
 Section 12 apparently will in fact  
 begin on the 1st of January, 1939.  
 Could you let me have a line of  
 explanation on this matter which I  
~~expect you will readily be able to~~  
 give?

There is another ~~small~~  
~~— a small one.~~  
 point. I notice that Section 12(3)  
 of the principal Ordinance has now  
 been amended to include a reference  
 to Section 15 of the principal  
 Ordinance. Ought not a reference also  
 to be made now to Section 14, since  
 Section 12 has been extended to cover  
 road ~~surface~~ <sup>surface</sup> licences? Similarly  
~~perhaps~~ it might have been advisable  
 to make the provisions of Section 14  
 subject to Section 12. However, But

The inference from the new s. 22A  
 seems to be that, in every other case,  
 it will be open to an objector merely  
 to state his objection and then throw  
 upon the applicant the burden of  
 proving that there is nothing in  
 the objection.

G. O.

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

having regard to the wording of  
 Section 14 perhaps the <sup>rather</sup> omission  
 does not matter much.

Could you let me have a line  
 of explanation?

Yours sincerely  
 (Sd) H. Dale

DRAFT.

FURTHER ACTION.

KENYA  
No. 561



30  
15  
GOVERNMENT HOUSE  
NAIROBI  
KENYA



24 September, 1938.

Sir,

I have the honour to forward herewith two authenticated copies and 12 printed copies of Ordinance No. XXIV of 1938 entitled "An Ordinance to Amend the Transport Licensing Ordinance, 1937", which duly passed its third reading in the Legislative Council on the 18th August, 1938, and to which Sir Robert Brooke-Popham assented in his Majesty's name on the 13th September.

2. A copy of the Legal Report by the Attorney General is also enclosed.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*Adm Wade*

GOVERNOR'S DEPUTY.

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



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 day of  
1938. 13 SEP. 1938

R. BROOKE-POPHAM

*Governor*

AN ORDINANCE TO AMEND THE TRANSPORT  
LICENSING ORDINANCE, 1937

**ORDINANCE No. XXIV of 1938**

**An Ordinance to Amend the Transport Licensing Ordinance, 1937**

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 Transport Licensing (Amendment) Ordinance, 1938, and shall be read as one with the Transport Licensing Ordinance, 1937, hereinafter referred to as the Principal Ordinance.

Short title.

No. 40 of 1937.

2. Section 3 of the Principal Ordinance is hereby amended—

Amendment of section 3 of the Principal Ordinance.

(a) by deleting therefrom the first six lines of sub-section (1) thereof and substituting therefor the following:—

“3. (1) There is hereby established a Transport Licensing Board, which shall be the Licensing Authority for the purposes of this Ordinance, and which shall consist of five persons from time to time appointed by the Governor in Council, who shall also appoint one of such persons to be chairman of the Board.”;

(b) by deleting therefrom the word “nominated” wherever it appears in sub-sections (2), (3), (4), (5) and (6) thereof;

(c) by substituting the word “appoint” for the word “nominate” which appears in the seventh line of sub-section (1) thereof;

(d) by substituting the word “appointment” for the word “nomination” which appears in the ninth line of sub-section (1) thereof;

(e) by substituting the word “re-appointment” for the word “renomination” which appears in the third line of sub-section (6) thereof;



**ORDINANCE No. XXIV of 1938**

**An Ordinance to Amend the Transport Licensing Ordinance, 1937**

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

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Short title  
No. 40 of 1937.

2. Section 3 of the Principal Ordinance is hereby amended—

Amendment of section 3 of the Principal Ordinance.

(a) by deleting therefrom the first six lines of sub-section (1) thereof and substituting therefor the following:—

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(b) by deleting therefrom the word “nominated” wherever it appears in sub-sections (2), (3), (4), (5) and (6) thereof;

(c) by substituting the word “appoint” for the word “nominate” which appears in the seventh line of sub-section (1) thereof;

(d) by substituting the word “appointment” for the word “nomination” which appears in the ninth line of sub-section (1) thereof;

(e) by substituting the word “re-appointment” for the word “renomination” which appears in the third line of sub-section (6) thereof;

(f) by deleting therefrom sub-section (7) thereof and substituting therefor the following:—

"(7) In the event of the absence of the chairman from any meeting of the Licensing Authority the members present shall choose one of their number to act as chairman for that meeting."

(g) by substituting the words "chairman or the person chosen to act as chairman under sub-section (7) of this section" for the words and commas "Attorney General, or the public officer authorized by him under sub-section (7) of this section," which appear in the second and third lines of sub-section (8) thereof;

(h) by inserting the words "or the person chosen to act as chairman under sub-section (7) of this section" immediately after the word "chairman" which appears in the first line of sub-section (10) thereof;

(i) by substituting the word "person" for the words "other public officer" which appear in the third line of sub-section (15) thereof; and

(j) by inserting therein as sub-section (3A) the following new sub-section:—

"(3A) Where any member of the Licensing Authority is absent from the Colony for any period in excess of six weeks the Governor in Council may, at the request of the chairman, by notice in the Gazette, appoint a member in substitution for the member who is so absent from the Colony. Any member so appointed shall hold office until the member in whose place he has been appointed returns to the Colony."

3. Section 12 of the Principal Ordinance is hereby amended—

(a) by inserting the comma and words ", a road service licence" between the word "licence" and the word "or" which appear in the first line of sub-section (1) thereof;

(b) by inserting the words "or passengers" between the word "goods" and the word "for" which appear in the seventh line of sub-section (1) thereof;

Amendment of section 12 of the Principal Ordinance.

(c) by substituting the words "goods or passengers" for the word "goods" which appears in the tenth line of sub-section (1) thereof; and

(d) by repealing sub-section (3) thereof and substituting therefor the following—

"(3) The provisions of this section shall apply to an application for a licence in respect of the first year of the operation of section 4 of this Ordinance and thereafter the provisions of section 11 and of section 15 of this Ordinance shall apply."

4. Sub-section (2) of section 15 of the Principal Ordinance is hereby amended by inserting therein the words "subject to the provisions of section 12 of this Ordinance" between the word "shall" and the word "have" which appear in the second line thereof.

Amendment of section 15 (2) of the Principal Ordinance.

5. The Principal Ordinance is hereby amended by inserting therein the following new section as section 22A:—

Amendment of the Principal Ordinance. Burden of proof.

"22A. (1) Where, upon an application for an A licence, a B licence, a road service licence, or an inland water transport licence, made by an applicant who was on the 15th day of August, 1938, and who is at the date of the application carrying on the business of a carrier of goods and/or passengers for hire or reward, in respect of any vehicle or ship in use upon any road or upon any inland water on or before the 15th day of August, 1938, any person objects to the grant of the licence on any of the following grounds:—

(a) that suitable transport facilities in the district, or between those places, in respect of which the application has been made, are or, if the application were granted, would be, either generally or in respect of any particular type of vehicles, in excess of requirements; or

(b) that the grant of the licence applied for would be contrary to the public interest; or

(c) in the case of an application for a licence in respect of a year subsequent to 1939 that the conditions of a licence held by the applicant have not been complied with.

the burden of proving such objection shall lie upon such person.

(2) The provisions of sub-section (1) of this section shall apply to an application for a licence for the year 1939, and to an application for subsequent years by the same applicant for a renewal of his licence in respect of any vehicle or ship referred to in sub-section (1) of this section or in respect of any vehicle or ship which replaces any such vehicle or ship provided it is not of a greater carrying capacity than the carrying capacity of the vehicle or ship which it replaces."

Amendment of section 30 of the Principal Ordinance.

6. Section 30 of the Principal Ordinance is hereby amended—

- (a) by substituting the words "Any police officer in uniform" for the words "Any police officer, or any other person duly authorized in writing by the Licensing Authority," which appear in the first and second lines of sub-section (1) thereof;
- (b) by deleting therefrom the words "or such authorized person" which appear in the twelfth and thirteenth lines of sub-section (1) thereof and in the third, fifth and seventh lines of sub-section (2) thereof; and
- (c) by deleting therefrom the words "or duly authorized person" which appear in the first and second lines of sub-section (2) thereof.

Passed in the Legislative Council the eighteenth day of August, 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-BEAL**

*Acting Clerk to the Legislative Council.*

(2) The provisions of sub-section (1) of this section shall apply to an application for a licence for the year 1939, and to an application for subsequent years by the same applicant for a renewal of his licence in respect of any vehicle or ship referred to in sub-section (1) of this section or in respect of any vehicle or ship which replaces any such vehicle or ship provided it is not of a greater carrying capacity than the carrying capacity of the vehicle or ship which it replaces."

Amendment of  
section 30 of  
the Principal  
Ordinance.

6. Section 30 of the Principal Ordinance is hereby amended—

- (a) by substituting the words "Any police officer in uniform" for the words "Any police officer, or any other person duly authorized in writing by the Licensing Authority," which appear in the first and second lines of sub-section (1) thereof;
- (b) by deleting therefrom the words "or such authorized person" which appear in the twelfth and thirteenth lines of sub-section (1) thereof and in the third, fifth and seventh lines of sub-section (2) thereof; and
- (c) by deleting therefrom the words "or duly authorized person" which appear in the first and second lines of sub-section (2) thereof.

Passed in the Legislative Council the eighteenth day of August, 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-BEAL

*Acting Clerk to the Legislative Council.*

LEGAL REPORT

THE TRANSPORT LICENSING (AMENDMENT) BILL, 1938

The object of this Bill is to make the following amendments to the Transport Licensing Ordinance, 1937 -

Clause 2 - The Principal Ordinance provides that the Attorney General shall be chairman of the Board. It is considered preferable to exclude any reference to the Attorney General in the Ordinance and to provide that the Governor in Council may appoint any person to be chairman.

The other amendments proposed in this Clause, except paragraph (j) which is designed to make provision for the appointment of a substitute member when a member is temporarily absent from the Colony, are consequential.

Clause 5 - Section 12 of the Principal Ordinance gives certain protection to existing interests so far as vehicles requiring A or B licences and ships requiring Inland Water Transport licences, are concerned, but no such protection is afforded to passenger-carrying vehicles which, under the provisions of the Ordinance, are required to have a road service licence. The Secretary of State is of the opinion that such passenger-carrying vehicles should in this respect be treated on an equal footing with goods-carrying vehicles, and the Transport Licensing Board, to which

body the matter was referred, is of the same opinion. This Clause is therefore designed to bring passenger-carrying vehicles within the protection afforded to existing interests by section 12 of the Principal Ordinance. The amendment to section 12(3) is merely to give effect to the decision to defer the introduction of section 4 of the Ordinance until 1st January, 1939.

Clause 4 - This amendment rectifies a drafting omission in the Principal Ordinance.

Clause 5 - It is considered desirable to clarify the position with regard to the burden of proof which will lie on objectors who object to the grant of licences to a certain class of applicant.

Clause 6 - The object of this amendment is to limit the power of stopping vehicles to police officers in uniform. Both the Secretary of State and the Transport Licensing Board are of the opinion that this power should be limited to such police officers, since otherwise the driver of a vehicle when signalled to stop would not be in a position to know whether he was required by law to stop or, indeed, whether it would be prudent for him to do so.

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 amending 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,  
18th August, 1938

*William O'Brien*  
ATTORNEY GENERAL

C O P Y  
O F  
THE TRANSPORT LICENSING (AMENDMENT) BILL,  
1938, SHOWING THE SECTIONS OF THE  
PRINCIPAL ORDINANCE WHICH ARE  
AFFECTED BY THE AMENDING BILL



Licensing  
Authority

Section 3 of the Principal Ordinance which it is proposed to amend.

3 (1) There is hereby established a Transport Licensing Board (in this Ordinance referred to as "the Licensing Authority") which shall consist of—

- (a) the Attorney General, who shall be chairman, and
- (b) four such other persons as the Governor in Council may from time to time nominate.

When the Governor in Council proposes to nominate a person to the Licensing Authority he shall, before making the nomination, require such person to declare whether he has any, and if so what, financial interest in any transport undertaking operating in the Colony.

(2) No person shall be appointed a nominated member of the Licensing Authority—

- (a) if he is insolvent or has assigned his estate for the benefit of his creditors or has made an arrangement with his creditors;
- (b) if he is of unsound mind or has been convicted of an offence and sentenced to imprisonment therefor without the option of a fine.

### A Bill to Amend the Transport Licensing Ordinance, 1937

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 Transport Licensing (Amendment) Ordinance, 1938, and shall be read as one with the Transport Licensing Ordinance, 1937, hereinafter referred to as the Principal Ordinance.

Short title.  
No. 40 of 1937.

2. Section 3 of the Principal Ordinance is hereby amended—

Amendment of section 3 of the Principal Ordinance.

(a) by deleting therefrom the first six lines of sub-section (1) thereof and substituting therefor the following:—

"3. (1) There is hereby established a Transport Licensing Board, which shall be the Licensing Authority for the purposes of this Ordinance, and which shall consist of five persons from time to time appointed by the Governor in Council, who shall also appoint one of such persons to be chairman of the Board."

(b) by deleting therefrom the word "nominated" wherever it appears in sub-sections (2), (3), (4), (5) and (6) thereof;

(c) by substituting the word "appoint" for the word "nominate" which appears in the seventh line of sub-section (1) thereof;

(d) by substituting the word "appointment" for the word "nomination" which appears in the ninth line of sub-section (1) thereof.

(e) by substituting the word "re-appointment" for the word "renomination" which appears in the third line of sub-section (6) thereof.

(3) A nominated member of the Licensing Authority shall become disqualified to retain, and shall *ipso facto* cease to hold, his office as such member if he becomes subject to any of the disabilities set out in the last preceding sub-section or if he is absent from four consecutive meetings of the Licensing Authority without the leave of the Licensing Authority.

(4) The Governor in Council may remove of incapacity or misbehaviour, any nominated member from his office.

(5) If a nominated member of the Licensing Authority resigns before the expiry of the period for which he is appointed, his place shall be filled by an appointment made by the Governor in Council; and any person appointed in place of any such nominated member shall hold office for the remainder of the period for which such nominated member would otherwise have held office.

(6) The nominated members of the Licensing Authority shall hold office for three years, and each such nominated member shall be eligible for re-nomination to the Licensing Authority at the expiration of each such period.

(7) In the absence of the Attorney General from any meeting of the Licensing Authority the chairman for such meeting shall be a public officer authorized in writing by the Attorney General.

(8) At all meetings of the Licensing Authority the Attorney General, or the public officer authorized by him under sub-section (7) of this section, together with two other members of the Licensing Authority shall form a quorum.

(9) Meetings of the Licensing Authority shall be held at such times, on such occasions and at such places as the chairman may determine.

(10) The chairman shall have a deliberative vote and in the case of equality of votes shall also have a casting vote. A decision of the majority of the members present at a meeting of the Licensing Authority shall be deemed to be the decision of the Licensing Authority.

(11) The business of the Licensing Authority shall be conducted in such manner as may be prescribed:

(a) by inserting the words "or the person chosen to act as chairman under sub-section (7) of this section" immediately after the word "chairman" which appears in the first line of sub-section (10) thereof;";

(f) by deleting therefrom sub-section (7) thereof and substituting therefor the following:—

"(7) In the event of the absence of the chairman from any meeting of the Licensing Authority the members present shall choose one of their number to act as chairman for that meeting."

(g) by substituting the word "chairman" for the words and commas "Attorney General, or the public officer authorized by him under sub-section (7) of this section," which appear in the second and third lines of sub-section (8) thereof;

(h) by substituting the word "person" for the words "other public officer" which appear in the third line of sub-section (15) thereof; and

(i) by inserting therein as sub-section (3A) the following new sub-section:—

"(3A) Where any member of the Licensing Authority is absent from the Colony for any period in excess of six weeks the Governor in Council may, at the request of the chairman, by notice in the Gazette, appoint a member in substitution for the member who is so absent from the Colony. Any member so appointed shall hold office until the member in whose place he has been appointed returns to the Colony."

to act as chairman under this section!

(3) A nominated member of the Licensing Authority shall become disqualified to retain, and shall *ipso facto* cease to hold, his office as such member if he becomes subject to any of the disabilities set out in the last preceding sub-section or if he is absent from four consecutive meetings of the Licensing Authority without the leave of the Licensing Authority.

(4) The Governor in Council may remove, on the ground of incapacity or misbehaviour, any nominated member of the Licensing Authority from his office.

(5) If a nominated member of the Licensing Authority be removed or vacate his office under this section, or die or resign before the expiry of the period for which he was appointed, his place shall be filled by an appointment by the Governor in Council; and any person appointed to fill the place of any such nominated member shall hold office for the remainder of the period for which such nominated member would otherwise have held office.

(6) The nominated members of the Licensing Authority shall hold office for three years, and each such nominated member shall be eligible for renomination to the Licensing Authority at the expiration of each such period.

(7) In the absence of the Attorney General from any meeting of the Licensing Authority the chairman for such meeting shall be a public officer authorized in writing by the Attorney General.

(8) At all meetings of the Licensing Authority the Attorney General, or the public officer authorized by him under sub-section (7) of this section, together with two other members of the Licensing Authority shall form a quorum.

(9) Meetings of the Licensing Authority shall be held at such times, on such occasions and at such places as the chairman may determine.

(10) The chairman shall have a deliberative vote and in the case of equality of votes shall also have a casting vote. A decision of the majority of the members present at a meeting of the Licensing Authority shall be deemed to be the decision of the Licensing Authority.

(11) The business of the Licensing Authority shall be conducted in such manner as may be prescribed:

(f) by deleting therefrom sub-section (7) thereof and substituting therefor the following:—

"(7) In the event of the absence of the chairman of the Licensing Authority the person who is one of their number at the meeting shall be the chairman for the words and the public officer authorized in writing by the Attorney General under sub-section (7) of this section in the second and third lines

of the words "other than the third line of sub-

section herein as sub-section (3A) the following new sub-section:—

"(3A) Where any member of the Licensing Authority is absent from the Colony for any period in excess of six weeks the Governor in Council may, at the request of the chairman, by notice in the Gazette, appoint a member in substitution for the member who is so absent from the Colony. Any member so appointed shall hold office until the member in whose place he has been appointed returns to the Colony."

(3) A nominated member of the Licensing Authority shall become disqualified to retain, and shall *ipso facto* cease to hold, his office as such member if he becomes subject to any of the disabilities set out in the last preceding sub-section or if he is absent from four consecutive meetings of the Licensing Authority without the leave of the Licensing Authority.

(4) The Governor in Council may remove, on the ground of incapacity or misbehaviour, any nominated member of the Licensing Authority from his office.

(5) If a nominated member of the Licensing Authority be removed or vacate his office under this section, or die or resign before the expiry of the period for which he was appointed, his place shall be filled by an appointment by the Governor in Council; and any person appointed to fill the place of any such nominated member shall hold office for the remainder of the period for which such nominated member would otherwise have held office.

(6) The nominated members of the Licensing Authority shall hold office for three years, and each such nominated member shall be eligible for renomination to the Licensing Authority at the expiration of each such period.

(7) In the absence of the Attorney General from any meeting of the Licensing Authority the chairman for such meeting shall be a public officer authorized in writing by the Attorney General.

(8) At all meetings of the Licensing Authority the Attorney General, or the public officer authorized by him under sub-section (7) of this section, together with two other members of the Licensing Authority shall form a quorum.

(9) Meetings of the Licensing Authority shall be held at such times, on such occasions and at such places as the chairman may determine.

(10) The chairman shall have a deliberative vote and in the case of equality of votes shall also have a casting vote. A decision of the majority of the members present at a meeting of the Licensing Authority shall be deemed to be the decision of the Licensing Authority.

(11) The business of the Licensing Authority shall be conducted in such manner as may be prescribed:

(f) by deleting therefrom sub-section (7) thereof and substituting therefor the following:—

"(7) In the event of the absence of the chairman from any meeting of the Licensing Authority the person chosen one of their number to act as chairman under this section shall be the public officer appointed under sub-section (7) of this section for the words and other in the third line of sub-section (7) of this section."

to act as chairman under this section'

— as therein as sub-section (3A) the following new sub-section:—

"(3A) Where any member of the Licensing Authority is absent from the Colony for any period in excess of six weeks the Governor in Council may, at the request of the chairman, by notice in the Gazette, appoint a member in substitution for the member who is so absent from the Colony. Any member so appointed shall hold office until the member in whose place he has been appointed returns to the Colony."

Provided that until such procedure has been prescribed, the Licensing Authority shall conduct its business in such manner as the chairman may determine.

(12) The Governor in Council may appoint such persons to act as officers and servants of the Licensing Authority as he considers requisite to enable it to discharge its duties under this Ordinance.

(13) There shall be paid from the revenues of the Colony to the members of the Licensing Authority and to the officers and servants appointed under sub-section (12) of this section such salaries, remuneration and allowances, if any, as the Governor in Council may determine.

(14) The Licensing Authority may delegate to any individual member of the Licensing Authority, or to any Provincial Commissioner, District Commissioner or any other person, any of its functions under this Ordinance:

Provided that any act done by any such individual member of the Licensing Authority, or by any such Provincial Commissioner, District Commissioner or other person, shall be subject to the prior approval of the chairman.

(15) All licences issued under this Ordinance and all communications from the Licensing Authority shall be under the hand of the chairman or of some other public officer duly authorized by the chairman. A notification of any such authorization shall be published in the Gazette under the hand of the chairman.

(16) The chairman shall submit to the Governor for publication an annual report of the proceedings of the Licensing Authority containing particulars with respect to such matters as the Governor may direct.

(17) No member of the Licensing Authority or any officer thereof shall be personally liable for any act or default done or omitted to be done in good faith in the course of the operations of the Licensing Authority under the provisions of this Ordinance.

Section 12 of the Principal Ordinance which it is proposed to amend:—

12. (1) If, on an application for an A or B licence or an inland water transport licence, made not later than such date as the Governor in Council may by notice in the Gazette appoint, the applicant shows to the satisfaction of the Licens-

Licensing Authority to submit annual report.

Protection of existing interests

8. Section 12 of the Principal Ordinance is hereby amended—

Amendment of section 12 of the Principal Ordinance.

(a) by inserting the comma and words " a road service licence" between the word "licence" and the word "or" which appear in the first line of sub-section (1) thereof;

ing Authority that, during the twelve months immediately preceding such date, he carried on either wholly or mainly the business of a carrier of goods for hire or reward, the Licensing Authority shall, unless it is satisfied that, having regard to the previous character of the applicant as a carrier of goods, he is not a fit person to receive a licence, grant to the applicant a licence of the class applicable to the business carried on by him in respect of the vehicles or ships, as the case may be, regularly employed by him during the said twelve months in such business.

Provided that the Licensing Authority may if it thinks fit permit the applicant to substitute for the said vehicles, or ships, as the case may be, employed by him as aforesaid, vehicles or ships of a similar type or, in the case of an application for an A or B licence, vehicles of an aggregate weight unladen not greater than the aggregate weight unladen of the said vehicles.

(2) Any licence granted pursuant to the provisions of this section shall be subject to the provisions of section 17 of this Ordinance.

(3) The provisions of this section shall apply only to an application for a licence in respect of the first year of the operation of this Ordinance and thereafter the provisions of section 11 of this Ordinance shall apply.

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

15. (1) In the case of a ship every person applying for a licence for the carriage of passengers and/or goods shall submit to the Licensing Authority—

- (a) particulars of the type or types of ships to be used;
- (b) particulars of the construction of such ship;
- (c) the total number of crew to be carried in such ship;
- (d) the number of passengers such ship is intended to carry;
- (e) the places between which such ship is intended to be navigated, and the services to be provided thereby.

(2) The Licensing Authority, on an application for an inland water transport licence, shall have full power in its discretion either to grant or refuse the application, but in exercising its discretion shall have regard primarily to the

Procedure on application for inland water transport licence.

Discretion of Licensing Authority to grant or refuse inland water transport licence.

(b) by inserting the words "or passengers" between the word "goods" and the word "for" which appear in the seventh line of sub-section (1) thereof;

(c) by substituting the words "goods or passengers" for the word "goods" which appears in the tenth line of sub-section (1) thereof; and

(d) by repealing sub-section (3) thereof and substituting therefor the following—

"(3) The provisions of this section shall apply to an application for a licence in respect of the first year of the operation of section 4 of this Ordinance and thereafter the provisions of section 11 and of section 15 of this Ordinance shall apply."

4. Sub-section (2) of section 15 of the Principal Ordinance is hereby amended by inserting therein the words "subject to the provisions of section 12 of this Ordinance" between the word "shall" and the word "have" which appear in the second line thereof.

Amendment of section 15 (2) of the Principal Ordinance.

public interest, to the extent to which the existing transport services serve the routes proposed to be served in the application and to the fares and rates proposed to be charged:

Provided that, where such application is for a licence to carry passengers and/or goods over any route which includes a portion of the inland waters of either the Uganda Protectorate or the Tanganyika Territory or both of these territories, before adjudicating upon such application the Licensing Authority shall take such steps as may appear to it to be necessary to ascertain the views upon such application of any Licensing Authority appointed in either or both of those territories.

Section 30 of the Principal Ordinance which it is proposed to amend:—

Power to stop  
and inspect  
vehicles.

30. (1) Any police officer, or any other person duly authorized in writing by the Licensing Authority, may stop any vehicle or ship and/or inspect any vehicle or ship with a view to ascertaining whether or not the provisions of this Ordinance or of any Regulations made thereunder are being complied with, and may demand for inspection the production of any licence, certificate, document or record of any description whatsoever which may, under the provisions of this Ordinance or of any Regulations made thereunder, be required to be carried on such vehicle or ship, and may require the driver or any other person travelling on such vehicle or ship to give such information as such police officer or such authorized person may reasonably request in order to ascertain whether or not the provisions of this Ordinance or Regulations are being complied with.

(2) Any person who obstructs any police officer or duly authorized person in the exercise of the powers conferred on such police officer or such authorized person by this section, or fails to comply with any lawful order given by such police officer or such authorized person or refuses to give any information when requested so to do by such police officer or such authorized person shall be guilty of an offence under this Ordinance.

6. Section 30 of the Principal Ordinance is hereby amended— Amendment of section 30 of the Principal Ordinance.

- (a) by substituting the words "Any police officer in uniform" for the words "Any police officer, or any other person duly authorized in writing by the Licensing Authority," which appear in the first and second lines of sub-section (1) thereof;
- (b) by deleting therefrom the words "or such authorized person" which appear in the twelfth and thirteenth lines of sub-section (1) thereof and in the third, fifth and seventh lines of sub-section (2) thereof; and
- (c) by deleting therefrom the words "or duly authorized person" which appear in the first and second lines of sub-section (2) thereof.

#### OBJECTS AND REASONS

The object of this Bill is to make the following amendments to the Transport Licensing Ordinance, 1937.

Clause 2.—The Principal Ordinance provides that the Attorney General shall be chairman of the Board. It is considered preferable to exclude any reference to the Attorney