

1934

23015

1934

23015

KENYA

CO 533/440

Northern Frontier Province Poll Tax Ordinance.

Previous

License (Legal)  
No 297

5/4

3338/33

Subsequent

38263/66

kg 291 0/1

kg 309 1/1

kg 309 17/1

kg 309 17/1

kg 309 26

kg 309 26

kg 309 26

kg 309 5/2

kg 309 6

kg 309 24/6

kg 309 2/5

kg 309 2/5

311 3/7

297 2/5

297 2/5

1. *Revenue Dept. 10/16/28* \_\_\_\_\_ # 10. Dec 23.  
*Trans. Dept. of Bill to amend N. A. P. Bill - Tax Distress &  
furnishes explanation of reasons for proposed amendments.  
Copy of present O.A. & attached.*

The most important part of the present proposals involves ~~the~~ return to the provisions of the original draft Bill (flagged on 35315/28 below), in giving power to impose on defaulters an immediate sentence of imprisonment or fine instead of waiting until procedure by distress has proved unavailing.

The wording of the proposed new section 6 follows ~~very closely~~ the wording of clauses 6 and 7 of the 1928 draft Bill (which was not viewed with favour) except that the maximum penalties are reduced from three months to one month and from £25 to <sup>£</sup>100/-. Clause 7(3), which read "notwithstanding and without prejudice to anything contained in this section the full tax may be recovered by distress", is omitted from the proposed new section.

A  
x should be full  
2

The other amendments, concerned with the definition of "headmen" and the reduction of the period of grace under sections 10 and 11 are of less importance, but good and sufficient reasons are advanced therefor.

On the main question, objections which were valid before tax had been imposed have less force now that the tax has been collected for three years without trouble, except in certain areas where the nature of the country and of its inhabitants render the existing procedure ineffective.

Wt  
2

It is to my mind a matter in which we should accept the local view, trusting in the discretion of the Administration. The Governor assures us that the new powers will be used with discretion and only in cases where the collection by distress has been

1. *Revenue Byrne Jan/168* \_\_\_\_\_ *# Dec 33.*  
*Trans. copies of Bill to amend N.P.P. Bill Tax Distress &*  
*provides explanation of reasons for proposed amendments.*  
*Copy of present Bill & attached.*

The most important part of the present proposals involves ~~the~~ <sup>a</sup> return to the provisions of the original draft Bill (flapped on 35315/28 below), in giving power to impose on defaulters an immediate sentence of imprisonment or fine instead of waiting until procedure by distress has proved unavailing.

The wording of the proposed new section 6 follows ~~very closely~~ the wording of clauses 6 and 7 of the 1928 draft Bill (which was not viewed with favour) except that the maximum penalties are reduced from three months to one month and from £25 to <sup>Rs</sup> 100/-.

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been



Mr. Flood.

Before and after this despatch reached the office we have been considering for Northern Rhodesia how to cut down the number of imprisonments for non-payment of tax, and a despatch has recently gone to the Governor. I do not suggest that the conditions in Northern Rhodesia and the Northern Frontier Province of Kenya are comparable, but I should be glad if you would get hold of the Northern Rhodesia papers to make sure that we are not heading for an undue degree of inconsistency.

I do not know whether the Somaliland Department could give you the benefit of any experience on the point of taxpayers disappearing over the frontier when the collector comes in sight.

W.C.S.  
26.6.34

Sir C. Bottomley

I think it's all clear in N. Rhodesia we aimed at cutting down imprisonment from 3 months to 1 month & Kenya only papers 1 month, so we shall be consistent (see 5635/13 2/1/34)

See despatch as in Mr Flood's former minute  
W.C.S. 5.2.34

After speaking to Mr. Flood, I have substituted a title - we know that Council meets on 15th Feb.

3. Governor's Office  
1 authenticated & 2 printed copies of The Northern Rhodesia Province Poll Tax (Amend.) Ordinance No 15 of 1934  
to Library

The suggestions in No 2 have been embodied in the Ordinance  
? Section 4f.

Chippendale  
27/24

J. Hunter  
27/24

Noted by  
G.H.W.

H To Kenya, Conf(2) (3 answers) 6/3. 3 JULY 1934

Liby (Legal) 1/10/34

N

KENYA

No 79

CONFIDENTIAL.



GOVERNMENT HOUSE

NAIROBI

KENYA

June, 1934.

Sir,

I have the honour to refer to your Confidential telegram No. 26 dated 7th February 1934, and to forward herewith two authenticated and 12 printed copies of an Ordinance intituled "the Northern Frontier Province Poll Tax (Amendment) Ordinance, 1934", which duly passed its third reading in the Legislative Council on the 26th of April 1934, and to which I assented in His Majesty's name on the 29th of May 1934, together with a copy of the Legal Report by the Attorney General, and a Comparative Table.

I have the honour to be,

Sir,

Your most obedient, humble servant,

  
BRIGADIER-GENERAL.

G O V E R N O R.

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

LEGAL REPORT

THE NORTHERN FRONTIER PROVINCE POLL TAX  
(AMENDMENT) BILL, 1934.  
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This Bill, which is designed to facilitate the collection of tax in the Northern Frontier District, was approved, subject to certain amendments, by the Secretary of State in a recent telegram.

The Secretary of State's suggestions have been embodied in the Bill.

A Comparative Table is attached.

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

Nairobi,  
28th April, 1934.

*W. H. D. O'Connell*  
ATTORNEY GENERAL

COMPARATIVE TABLE

THE NORTHERN FRONTIER PROVINCE HOTEL TAX (AMENDMENT)  
BILL, 1934.

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Clause.	Remarks.
1.	Short title.
2.	New.
3.	New.
4.	New.
5.	New.

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Colony and Protectorate of Kenya.

IN THE TWENTY-FIFTH YEAR OF THE REIGN OF  
HIS MAJESTY KING GEORGE V.  
JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.,  
*Governor.*

Assented to in His Majesty's  
name this 27<sup>th</sup> day of *May*,  
1934.

*J. L. BYRNE*  
*Governor.*

AN ORDINANCE TO AMEND THE NORTHERN  
FRONTIER PROVINCE POLL TAX ORDINANCE,

1930

9

**ORDINANCE No. XV of 1934**

**An Ordinance to Amend the Northern Frontier Province Poll Tax Ordinance, 1930.**

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 Northern Frontier Province Poll Tax (Amendment) Ordinance, 1934, and shall be read as one with the Northern Frontier Province Poll Tax Ordinance, 1930; hereinafter referred to as the Principal Ordinance.

Short title

No. 53 of 1930

2. Section 2 of the Principal Ordinance is hereby amended by inserting therein the following definition —  
“ headman ” includes a manyatta elder.”

Amendment of section 2 of the Principal Ordinance

3. Section 6 of the Principal Ordinance is hereby repealed and the following section substituted therefor —

Repeal and replacement of section 6 of the Principal Ordinance.

6. (1) The poll tax leviable under this Ordinance shall be payable on the first day of January in each year.

Poll tax, when payable.

(2) Any tribesman who without reasonable excuse shall make default in the payment of the poll tax shall be liable on conviction to imprisonment for a period not exceeding one month or to a fine not exceeding three times the amount of tax due.

Penalty for non-payment of poll tax.

(3) The magistrate may when passing judgment order that the whole or any part of the fine recovered shall be applied in payment of the poll tax due.

(4) Imprisonment under this section shall not operate as a satisfaction or extinguishment of the judgment debt.”

## No. XV

## Northern Frontier Province Poll Tax

1984

Amendment  
of section 10  
of the  
Principal  
Ordinance.

4. Sub-section (1) of section 10 of the Principal Ordinance is hereby amended by the deletion of the words "three months" in the fourth line thereof and the substitution thereof of the words "one month".

Amendment of  
section 11 of  
the Principal  
Ordinance.

5. Sub-section (2) of section 11 of the Principal Ordinance is hereby amended by deleting the words "within three months from the date of such communication" in the fourth and fifth lines thereof and substituting therefor the words "within such period as the Governor shall consider reasonable (which period shall be communicated to the tribe at the same time as the above-mentioned communication)."

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

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.

J. F. C. TROUGHTON

Acting Clerk of the Legislative Council.

23015/Sir King

20

C. O.

Mr. Frasier 6/2 Jan

Mr.

Mr.

Mr. Tomlinson

Sir C. Bottomley

Sir J. Shackburgh

Sir G. Grindle

Parlm. U.S. of S.

Parly. U.S. of S.

Secretary of State

coded receipt  
11:30 AM

7/2/34

W.P.

C.D.	
A	7 FEB
B	7

17c

DRAFT. Tel.

Gov. Nairn

N<sup>o</sup> 26 Conf. your dep. 11 Dec  
 168 Conf. Introduction of  
 Bill approved. I suggest  
 that fine to be imposed  
 under amended section 6(2)  
 should be limited to three  
 times amount of tax due,  
 and words "of other description"  
 shd. be omitted.

SECRET

Form 297

KENYA

NO 168

CONFIDENTIAL



GOVERNMENT HOUSE

NAIROBI

KENYA

11 December, 1950.

Sir,

No 15 Nov/30

No 1

No 2

In reference to the Bill (No. 10 of 1949) for the purpose of amending the Northern Frontier Province Poll Tax Ordinance of 1930, which was received the approval in principle of my Executive Council, and which I propose, subject to your consent, to introduce at a subsequent meeting of Legislative Council.

2. The necessity for the proposed amendments has arisen from the difficult nature of the country, the vastness of its extent, and the migratory nature of its inhabitants. Experience has shown that these factors have facilitated the evasion of payment and enormously increased the difficulties of collection.

3. Under Section 6 of the existing law, before a sentence of imprisonment in default of payment can be imposed a distress warrant must first be executed against the defaulting party. The difficulty of doing so is described by the Acting Provincial Commissioner in the following words:-

"All District Commissioners have been gravely hampered by the words 'in default of Distress' because the necessity of executing a Distress Warrant in default of imprisonment is, owing to local conditions, sufficient to

enable ...

THE RIGHT HONOURABLE

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

ansd. del. (2)

enable the tribesmen concerned to disappear. I do not think it can be necessary to stress how easily this can be done when the extent of the area, the impenetrability of the bush in many parts, and the presence of two long frontiers is remembered. Everything is in favour of the tribesman who wishes to disappear whilst the Distress Warrant is being executed."

4. I am aware that in paragraph 2 of Lord Passfield's Confidential Despatch (3) of 3rd July 1930, attention was drawn to the fact that the procedure under Clause 7 of the original Northern Frontier Province Roll Tax Bill differed from that provided in Section 8 of the Native Hut and Poll Tax Ordinance and the wish was expressed that the Clause should be amended to correspond with the relevant Section of Cap. 51. In deference to that request the Clause was amended and a thorough attempt has since been made to give effect to it in the collection of taxation.

As mentioned above, experience has shown that a power to impose an immediate sentence of imprisonment is necessary in some areas for the levying of tax from those defaulters whose intention is to evade the Ordinance. Such evasion has been facilitated in areas adjacent to the Italian frontier, the crossing of which during periods of collection ensures immunity from payment and is frequently practised.

It is unnecessary to assure you that the clause will be used with discretion and only in cases where the collection by distress has been proved by experience to be impossible through deliberate evasion on the part of defaulters.

I trust therefore that in the light of the facts which I have described you will be prepared to agree to this amendment which I consider to be vital to the efficient collection of the tax.

5. The arguments which have been detailed in the foregoing paragraphs apply with equal force to the proposed ...

proposed reduction of the period of grace under Sections 10 (1) and 11 (2) of the Ordinance, from 3 months to 1 month. [w 8116]

In regard to this the Acting Provincial Commissioner has reported as follows:-

"The fixing of a lump sum payable by a proclaimed tribe. Experience has proved that this section is rendered nugatory by the fact that a period of three months must elapse before action can be taken should the tribe fail to pay. The fact that it is necessary to fix a lump sum means that passive resistance is being offered and the delay allows the particular tribe or section time to flit across the Italian or Abyssinian borders and await better days. This is one of the main reasons why tax at wajir had become more and more difficult to collect."

6. In order to facilitate the enforcement of rules which lay on the headman of the area the responsibility of furnishing information for the compilation of a tax roll, a definition of the term "headman" to include "Manyatta elder" has been introduced into the Amending Ordinance.

7. A copy of the proposed rules, for which your approval is sought, is appended herewith.

8. I would invite your attention to paragraph 3 of Sir Edward Grigg's Confidential despatch of 10th May 1930, in which the arguments for the imposition of taxation in the Northern Frontier Province were elaborated. The same arguments apply with equal force to the need for adequate machinery to ensure its efficient collection; and I would emphasise the fact that failure to provide such machinery to meet this need which might result in a breakdown would be serious both in its moral effect on the tribesmen and in its repercussion on the Revenue of the Province.

Not Nov 5/30

9. In regard to the general working of the Northern Frontier Province Poll Tax Ordinance, I am glad to report that except for the difficulties experienced in some areas, which have been referred to

in paragraph 4 above, the general collection in the Province has hitherto proceeded smoothly and without incident.

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER-GENERAL.

G O V E R N O R .

A BILL TO AMEND THE NORTHERN FRONTIER PROVINCE  
POLL TAX ORDINANCE, 1930.

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

Short title. 1. This Ordinance may be cited as "the Northern Frontier Province Poll Tax (Amendment) Ordinance, 1933", and shall be read as one with the Northern Frontier Province Poll Tax Ordinance, 1930, hereinafter referred to as "the Principal Ordinance".

No.53 of 1930.

2. Section 2. of the principal Ordinance is hereby amended by inserting therein the following definition:

"headman" includes a manyatta elder.

Repeal and replacement of Sec.6. of Principal Ordinance.

3. Section 6 of the principal Ordinance is hereby repealed and the following section substituted therefor:-

"Poll Tax when payable.

6.(1). The poll tax leviable under this Ordinance shall be payable on the first day of January in each year.

Penalty for non-payment of poll tax.

(2). Any tribesman who without reasonable excuse shall make default in the payment of the poll tax shall be liable on conviction to imprisonment of either description for a period not exceeding one month or to a fine not exceeding one hundred shillings or to both.

(3). The magistrate may when passing judgment order that the whole or any part of the fine recovered shall be applied in payment of the poll tax due.

(4). Imprisonment under this section shall not operate as a satisfaction or extinguishment of the judgment debt."

Amendment of  
Section 10.  
of the  
Principal  
Ordinance.

4. Sub-section (1) of section 10. of the Principal Ordinance is hereby amended by the deletion of the words "three months" in the fourth line thereof and the substitution therefor of the words "one month".

Amendment of  
Section 11.  
of the  
Principal  
Ordinance.

5. Sub-section (2) of section 11 of the Principal Ordinance is hereby amended by deleting the words "within three months from" in the fourth and fifth lines thereof and substituting therefor the words "within a reasonable period after".

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THE NORTHERN FRONTIER PROVINCE POLL TAX ORDINANCE,  
1930.

R U L E S.

IN EXERCISE of the powers conferred upon him by Section 15 of the Northern Frontier Province Poll Tax Ordinance, 1930, His Excellency the <sup>Acting</sup> Governor in Council has been pleased to make the following Rules:-

1. These Rules may be cited as "The Northern Frontier Province Poll Tax (Amendment) Rules, 1933", and shall be read as one with the Northern Frontier Province Poll Tax Rules, 1933, hereinafter referred to as "the Principal Rules".

2. The Principal Rules are hereby amended -  
(a) by the addition after rule 4 (6) thereof of the following Rule:-

"5. (1) A collector may at any time require the headman of any area to furnish him with the names of all persons in such area and with such other information as he may require for the compilation of a tax roll or for any matter relating thereto.

(2) Any headman who, without lawful excuse, shall when so required neglect or refuse to furnish a collector with such information or who shall in such information furnish any false particulars shall on conviction be liable to a fine not exceeding Shs. 60/- or to imprisonment for a term not exceeding one month."

and (b) by renumbering Rule 5 as Rule 6.

BY Command of His Excellency the Acting  
Governor in Council.

Nairobi.

This                      day of                      1933.