

38252

C0533/484  
KENYA

38252

Prisons Ordinance

Previous			
1936	Mr Dale	11.1.	
	Mr. Perkins	1.3.	
	Mr Perkins	—	
	309	4/3	
	Sr G. Bushe	17/3	
1938	Mr Dawe	17	
	R 299	25/3	
	297	28/3	
	Mr. Burns	31	
	247	9/8	
	297	15/7	
	R 299	16/9	
	Mr Perkins		
	Mr Dale	6	
	Mr. Perkins	12.10	
	Mr Flood	15.10	
	Mr Perkins	15/10	
	Mr Flood	15.10	
	Room 309	15/10	
	Mr Perkins	✓	
	R 299	20/10	
	297	28/10	
	Kibera/Kapal	16/11	
	R 297	10/1/38	
	309	10/1	

C1 Title

1934  
The 2 with 12 printed copies of Order 21 of 1934 with legal report thereon (Spencer to library)

A cover  
A letter

It would have better if we could have had a statement of the reasons for restricting the remission ~~the~~ of sentences to prisoners serving from 6 months to 3 years. (See Section 2 of the Order).

? Subject to legal objections I should like to get the views of the Prison Commission on the Order.

C. G. Rowntree.  
16/9/37

~~Instances of nothing else at the~~

~~moment~~

This was sent to Mr Burns, Secretary to the Standing Advisory Committee on Penal Administration. I understand from him that there is nothing else waiting for the Committee at present.

? This can wait for the next meeting - Mr Burns to note.

C. G. Rowntree,  
6/10/37

M Roberts-Dray

any views?

26/6.10

No equal obs. But it would be useful  
to know why remission is <sup>now</sup> possible only to  
prisoners who get over 6 months and less than  
3 years, and why the qualifying period  
for ticket of leave has been reduced from

$\frac{2}{3}$  to  $\frac{3}{4}$  of the term

(W.C.)

14.10

I suppose that remission is absolute, i.e. a man  
who earns remission gets out & is not liable to have  
the balance held over his head like a ticket of leave  
man. Six months is apparently regarded as a useful  
minimum. The result is that a prisoner sentenced to  
6 months & one sentenced to 7 would both be the same  
time.

We can wait & see whether the Committee has any  
views, but I would call in due course.

J.E.G. Flood

15.10

I have noted this as a subject  
for the next meeting of the C'ttee. I  
am afraid I cannot say when  
that is likely to be.

R. Burns

15/10/37

Then we had better do it now i.e.

Signify our disallowance & call on them in

Mr. Dalis' minute saying it is not clear to the S. of S. why

2 Gov. Kenya 9/15. (Amud. Cons. 21 OCT 1937)

Library/Kenya

honore

Noted  
to file  
in library  
16/11/37

3 Gov. Kenya

724

27.11.37

(2 Amud.) Encs. copy of memorandum which contains the information requested

File received  
from Mr. Burns

today

16/11/37

Encl. to (3)

The qualifying period for ticket of leave has  
been extended to conform with the treatment  
of residents in England. No mention is  
made of the minimum of 6 months, for security  
under which minimum no remission can be  
earned.

Clough White  
10/1

I trust this is being considered by the Penal Officer

(W.C.)

11.1

This Ordinance was considered at the meeting  
of the Penal Administration Committee on the 21st  
December last and I attach the relevant extract from  
the minutes of the Committee. You will no doubt  
consider what action should be taken on the Committee's  
recommendations and I should be glad if five copies  
of any despatch which may be sent in consequence of  
these recommendations might be made available for  
the information of the Committee.

R. Burns

1. 3. 38.

Sr G Bashe

Mr Dawe asked me to draw your attention especially to para 3. of the draft - see herewith.

Clark, Mule 11/3

For. I never thought much of the point myself - but there it is.

H/B  
17/3

J. Dawe  
17.3

5 L.A. Kenya 172 3 Approved 24 MAR 1938

Mr Dawe has taken  
5 copies of No 5.  
Taken 17/3

C. O.

Mr. Costley-White 11/3/38

Mr. Sir G. Bushe 17/3

Mr. Dawe 17.3

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.



DOWNING STREET.

*Amended 1 on 1938/10/24*

24 March, 1938.

Sir,

I have etc. to *refer to* acknowledge

**DRAFT.**

(3)

KENYA

NO. 172

GOVERNOR

~~the receipt~~ of your despatch No. 724

of the 27th November, 1937, on the

subject of the Prisons (Amendment)

Ordinance, 1937, and to inform you

that that Ordinance was considered

at a meeting of the Penal Administration

Committee in December last (in which

connection reference is invited to

my circular despatch (2) of the 29th

of January, 1937).

2. The Committee observed that

there was no provision in the Ordinance

as now amended for the conditional

release

**FURTHER ACTION.**

5 extra copies to be made for Mr. Burns as requested in his minute of 1/3/38.

release of prisoners serving a life sentence.

It was thought that Section 42 <sup>of the Principal Ordinance</sup> would exclude

Section 41 from being <sup>constituted</sup> constituted in such a

way as to allow the conditional release of

such prisoners.

3. As regards Sub-Section 3 of the

new Section 48A of the Ordinance, it was

understood by the Committee that the

intention was that the issue of a warrant

should be the starting point, whereafter

proceedings should take place, mutatis mutandis,

in the manner provided by the Fugitive

Offenders Act, 1881. Doubt was then felt

by the Committee whether ~~the~~ the Court might

not hold that the intention was to apply

the Fugitive Offenders Act, 1881, and that

the revocation of the licence constituted

C. O.

Mr.

Mr.

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.

constituted in effect a new offence

under that Act, requiring an Order

in Council under Section 32 of the

Act to confirm it. It was suggested

that it should be considered whether

it might not be desirable to avoid

any such technical question arising

<sup>by making</sup> by making, in consultation with the

<sup>Govts. of the</sup> other territories concerned, <sup>an Ordinance</sup> express

reciprocal provisions in respect of

<sup>for</sup> the return of persons whose licences

have been revoked, <sup>which would contain</sup> in itself the procedure to be adopted.

4. You will, no doubt, arrange

for consideration to be given to

<sup>for any action to be</sup> (and any action taken that if

these points, should you think fit.

I have, etc.

(Signed) W. ORMSBY GORE

DRAFT.

FURTHER ACTION.

4  
6

C

Penal Administration Committee  
21.12.37

III. The Committee then considered the provisions of Kenya Ordinance No. XXI of 1937 relating to the remission of sentences and a grant of licences to prisoners to be at large. It was suggested that there was no provision for the conditional release of prisoners serving a life sentence; it was argued that Section 42 of the main Ordinance would preclude Section 41 being construed to admit of conditional release of such prisoners.

As regards subsection 3 of the new section 48A Sir Alison Russell said that he understood that it is intended that the warrant should be the starting point, and that proceedings thereafter should mutatis mutandis take place in manner provided by the Fugitive Offenders Act, 1881. A doubt has been raised whether a court might not hold that the intention was to apply the Fugitive Offenders Act, 1881, and that the revocation of a licence constituted, in effect, a new offence under that Act, requiring an Order in Council under section 32 of the Act to confirm it. It is suggested for consideration whether it might not be desirable to avoid any such technical question arising by making, in consultation with the other territories concerned, express reciprocal provisions in respect of the return of persons whose licences have been revoked.

KENYA

No. 724



GOVERNMENT HOUSE

NAIROBI  
KENYA

RECEIVED

- 3 DEC 1957

C. O. REGD

27 November, 1957.

Sir,

With reference to your despatch No. 915 of the 21st October last intimating that His Majesty will not be advised to exercise his power of disallowance in respect of the Prisons (Amendment) Ordinance, 1957, I have the honour to enclose a copy of a memorandum which has been furnished by the Commissioner of Prisons and which contains the information requested in paragraph 2 of your despatch.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*R Brooke-Polham*

AIR CHIEF MARSHAL,  
GOVERNOR.

THE RIGHT HONOURABLE

W. ORMSBY GORE, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W. 1.

*Answered. (5)*

17/5/29.

12th November, 1957.

The Hon'ble,  
The Colonial Secretary,  
NAIROBI.

Thro'  
The Hon'ble,  
The Attorney General,  
NAIROBI.

THE PRISONS (AMENDMENT) ORDINANCE, 1957

Ref: Your No. S/A.P.P.50/9/5/2/55 of 20th October, 57,  
enclosing the Secretary of State's Despatch No. 915  
of 21st October, 1957.

With reference to para. 2 of the Secretary of State's despatch the amendments were introduced primarily in order to avoid sundry complications which had arisen in connection with the interpretation of Section 42 of the Prisons Ordinance, and to afford simplification which will be readily understood by African Staff and prisoners.

2. In the course of consideration of the matter it appeared that such simplification could be introduced by bringing the provisions regulating remission of sentence and release on licence more into line with the procedure in the Home Prisons, which has now been accomplished by these amendments.

5. The extension of the grant of "a licence to be at large in the Colony" to recidivists under the amendment is a measure which is expected to lead to a reduction of recidivism. Hitherto recidivists, no matter how bad their previous history may have been, have been granted unconditional release upon remission. It is anticipated that their release only upon the conditions attached to their licence will have a restraining influence at least during the period for which the licence remains in force, which is considered to be the most critical period for a prisoner after his discharge from prison.

4. As it was desired to extend the granting of  
release.....

release on licence to all prisoners serving sentences of 5 years and upwards (not only to first offenders as hitherto) it was not necessary for the provisions for release on remission to apply to such sentences, and Section 40(1) was therefore amended accordingly.

5. On the other hand, one third of the aggregate sentence appeared to be too large a proportion of the sentence to remit in the case of a recidivist who might be eligible for release on licence, and as the proportion remitted to convicts serving terms of Penal Servitude in the English Prisons amounts to one quarter of the total sentence, it was deemed appropriate to introduce a similar provision in this country.

COMMISSIONER OF PRISONS.

JHE/V.

38252/37

2/10

C. O.

Mr. Colquhoun 15/10/37

Mr. Parkin 16/10/37

and (3)

Mr.

21, Feb 1937

Sir H. Moore.

SLT

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.



DRAFT.

Kenya  
No 915.  
Gov

Sir  
I have etc to ackn  
the receipt of your despatch  
10522 of the 7th of  
September and to inform  
you that His Majesty will  
not be advised to exercise  
his power of disallowance  
in respect of Ordinance  
No XXI of 1937 of the  
Legislative Council of  
Kenya, entitled "An  
Ordinance to Amend the  
Prisons Ordinance, 1930".

2. I have, however,  
to observe that it is  
not clear <sup>for what reasons</sup> why <sup>any</sup> permission  
of sentence is <sup>restricted</sup> allowed  
to prisoners sentenced  
for a period of <sup>more than</sup> 6  
months and under 3  
years; <sup>or</sup> is it clear  
why, under Section 42,  
the ~~fraction~~ <sup>of the total</sup>

why under ~~Section 42~~  
as amended

FURTHER ACTION.

has been amended to extend the period

sentence which it is necessary for a prisoner  
to complete in order to  
qualify for "a license to be  
at large in the Colony---"  
~~has been raised from two-thirds~~  
to three-quarters of his sentence.

~~As I would~~  
I request that I may be  
informed of the reasons for these  
amendments. - I have etc.

(Signed) W. ORMSBY GORE.

KENYA.

No. 522



13 SEP 1937

C. O. REGD

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

7 SEPTEMBER, 1937.

38252

Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. XXI of 1937 entitled "An Ordinance to Amend the Prisons Ordinance, 1950", together with a Legal Report thereon by the Attorney General.

2. The Ordinance passed its third reading in the Legislative Council on the 28th of July last, and the Governor assented to it in His Majesty's name on the 28th of August.

*Command. ②*

I have the honour to be,

Sir,

Your most obedient,  
humble servant,

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE

W. ORMSBY GORE, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON. S.W. 1

LEGAL REPORT  
THE PRISONS (AMENDMENT) BILL, 1937

Clauses 2 and 3 amend sections 40 and 42 of the Prisons Ordinance, 1930, by restricting remission of sentences to prisoners serving sentences of imprisonment of more than six months and less than three years, and extending the release of prisoners on licences to recidivists.

Clause 4 further amends the provisions dealing with the release of prisoners on licence so that by reciprocal arrangements with neighbouring territories a person serving a sentence in one territory may, if so released, be allowed to proceed to his home in another territory, and, if his licence is revoked, may be arrested on a warrant issued by a magistrate in the former territory and returned thereto. Similar legislation is being introduced in Uganda and the Tanganyika Territory.

Clauses 5 and 6 empower the Commissioner, superintendent or visiting justice to punish prison offenders by delaying the granting of licences to be at large.

No Comparative Table accompanies the Bill since the amendments contained therein are not modelled on any Colonial Ordinance or Imperial Act.

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

Nairobi,  
28th July, 1937

*H.C. Wilson*  
ACTING ATTORNEY GENERAL



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 day of  
1937. 28 AUG. 1937

R. BROOKE-POPHAM

Governor

AN ORDINANCE TO AMEND THE PRISONS  
ORDINANCE, 1930

14

**ORDINANCE No. XXI of 1937**

**An Ordinance to Amend the Prisons 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 Prisons (Amendment) Ordinance, 1937, and shall be read as one with the Prisons Ordinance, 1930, hereinafter referred to as the Principal Ordinance.

Short title.

No. 37 of 1930.

2. Sub-section (1) of section 40 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and replacement of section 40 (1) of the Principal Ordinance.

“(1) Every criminal prisoner under sentence of imprisonment for more than six months and less than three years may after the completion of six months' imprisonment earn a remission of one-seventh of the remaining period of his sentence by industry, accompanied by good conduct.”

Remission.

3. Section 42 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 42 of the Principal Ordinance.

“42. The Commissioner may grant to any prisoner under sentence of imprisonment for a term of three years or upwards who has completed three-quarters of any such sentence and has been of good behaviour while undergoing his sentence a licence to be at large in the Colony or in any other territory specified in a notice issued by the Governor under section 48A of this Ordinance or in such part of the Colony or of such other territory as in such licence may be specified and it shall be lawful for the Commissioner to revoke or alter such licence at his pleasure:

Licences to prisoners to be at large.

Provided that no such licence shall be granted to any prisoner sentenced to imprisonment for life."

Amendment of the Principal Ordinance.

4. The Principal Ordinance is hereby amended by inserting immediately after section 48 thereof, the following new section 48A, :—

Surrender of person in neighbouring territory whose licence has been revoked.

"48A. (1) The Governor may from time to time by notice in the Gazette declare any neighbouring territory to be a territory with the Government of which reciprocal arrangements have been made by the Government of the Colony for the surrender of persons whose licences have been revoked.

(2) Whenever a warrant has been issued under the last preceding section for the apprehension of a person whose licence has been revoked, it shall be lawful for the magistrate issuing such warrant to forward it for execution to any court having jurisdiction in such other territory.

(3) Any warrant issued by a court having jurisdiction in such other territory for the apprehension of a person who has been released on licence in such territory and whose licence has been subsequently revoked may be executed in the Colony in the same manner and subject to the same conditions as if the provisions of Part II of the Fugitive Offenders Act, 1881, applied to such warrant."

44 and 45 Vict. c. 69.

Amendment of section 58 of the Principal Ordinance.

5. Section 58 of the Principal Ordinance is hereby amended by inserting immediately before the word "by" in line seven thereof the words "by delaying for a period not exceeding seven days the granting of a licence under section 42 of this Ordinance."

Amendment of section 59 of the Principal Ordinance.

6. Section 59 of the Principal Ordinance is hereby amended—

(a) by inserting immediately after paragraph (4) thereof a new paragraph as follows—

"(5) delay for a period not exceeding twenty-eight days the granting of a licence under section 42 of this Ordinance.":

and

(b) by substituting a semi-colon for the colon immediately after the word "punishment" in paragraph (4) thereof.

Passed in the Legislative Council the twenty-eighth day of July, 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.*