

No. 38342

SUBJECT.

C0533/486

Transport Licensing Legislation

Previous

46572/37 E.A.

Subsequent

1938.

TRANSPORT

1. GOV. KENYA

640

25.10.37

The, with Comments, Bill entitled "Transport Licensing Ordinance, 1937" and as it is anticipated that the Bill will be introduced into Leg. Co. at the end of October, requests done by telegram.

The main points have appeared to be

- (1) Compulsory Third Party Insurance is not to be included in the Bill as it is more easily dealt with separately
- (2) A Transport Licensing Bd to be set up
- (3) Operation of Bill to be delayed till (2) is working, except
- (4) as regards water transport on Lake Victoria which requires immediate action, hence was tacked into the Bill.
- (5) All questions of Air deleted.

? Subject to legal advice the Bill may be approved.

Clough White,
C/W/S

The minute which follows deals not only with the draft Kenya Ordinance registered on this paper but also with the draft Uganda Ordinance registered on 40214/37. A copy of the minute (at any rate in so far as it relates to the Uganda Ordinance) should, therefore, be put on the latter file.

2. It will be recalled that in our letter of the 30th August to the Secretary to the Conference of East African Governors it was stated that the Secretary of State had no observations to offer on the general recommendations in the Mance report which had been accepted by all the Governments concerned. We

stated

30 on
46572/37

stated, however, that the Secretary of State would like to see, in draft form, the legislation by which it was proposed to give effect to those recommendations.

The Tanganyika Government accordingly submitted an Ordinance at the end of September; and it was indicated in a telegram sent to the Acting Governor on the 15th October that there was no objection to the enactment of legislation on the lines proposed in the draft Ordinance, subject to the omission of all reference to aircraft (it being proposed that the licensing of air services should be effected by means of regulations under Section 5 of the Air Navigation Act, 1936), and to consideration being given to one or two points of detail. That telegram was repeated to the Secretary to the Conference of East African Governors and is mentioned in paragraph 6 of the despatch from the Governor of Kenya.

3. It will now be desirable to consider the position as regards legislation in the two other Dependencies concerned.

As regards Uganda, reference should be made to the letter from the Uganda Government to the Secretary to the Governors' Conference registered at 38 on 46572/37. It was pointed out in that letter that a comprehensive Traffic Bill has already been enacted in Uganda, and that Part VIII of that Ordinance deals specifically with the control and co-ordination of public service vehicles. It has been decided, however, not to apply

Part

Part VIII immediately to commercial vehicles in Uganda owing to the complexity of the problem in the Protectorate. The recently constituted Traffic Control Board is to study the problem in detail and to report to the Government as soon as possible regarding the degree of control of commercial vehicles that appears desirable. In the meantime, the Carriage of Goods by Motor Ordinance (i.e. the Ordinance which protects railway interests against "unfair" road competition) is to remain in force. The Uganda Government is prepared, however, to introduce legislation at once to bring into effect a system of licensing dhow traffic. This is an urgent problem from the point of view of Tanganyika, and co-operation from Kenya and Uganda is essential - see the summary of the position in paragraph 4 of Mr. Seel's minute of the 8th October on 42267/37 Tanganyika. The principle that dhows should be licensed has, in effect, been accepted by the Secretary of State in giving approval to the Tanganyika Ordinance.

In accordance with the undertaking mentioned above - i.e. that immediate action would be taken to provide for the licensing of dhows - the Uganda Government has forwarded a draft Inland Water Transport (Control) Ordinance under which all ships plying on the inland waters of the Protectorate and conveying any goods or any person for hire or reward must obtain a licence from the Traffic Control Board which was established by the Uganda Traffic Ordinance of 1937. Mr. Faskin, Mr. Grossmith and I have examined this Bill in detail and have compared it with the corresponding provisions in the Kenya and Tanganyika draft

40214/37

draft Ordinances. (It will be appreciated that, unlike those Ordinances, it is not a comprehensive enactment since it deals only with dnows and not with all forms of transport, which are covered already by the Uganda Traffic Ordinance). As will be clear from the pencil notes on the file copy of the draft Ordinance, its provisions are practically identical with the corresponding provisions in the Kenya and Tanganyika draft Ordinances. We suggest, therefore, that the Acting Governor should be informed by telegraph forthwith that no objection is seen to the enactment of an Ordinance on the lines proposed. Under Clause 5 of the Ordinance the Transport Control Board may (with the prior approval or upon the directions of the Governor in Council) give an exclusive licence for the operation of ships in a given area or over given routes. The Tanganyika Government stated that as regards the similar, though wider, clause in the Tanganyika Ordinance (Clause 18) no exclusive licence would be granted without prior reference to the Secretary of State. In our communication to Uganda about their draft Ordinance we might say that similarly any proposal to grant an exclusive licence under Clause 5 should be referred to the Secretary of State for prior consideration.

In their letter to the Secretary to the Governors' Conference of the 6th October, the Government of Uganda urged that

some

some means should be found to co-ordinate consideration of applications for dnow licences - pointing out that a difficult and rather ludicrous position would arise if, say, an owner of a dnow operating on Lake Victoria were to have his application for a licence agreed to by two Governments but refused by a third. It is clear that consideration has been given to this question locally, since it is referred to at some length in paragraph 5 of the despatch from the Governor of Kenya on this file. It will be seen that in both Clause 7(4) of the Uganda Bill and in Clause 16(2) of the Kenya Bill it is provided that where an application is made for a licence to carry passengers or goods over any route which includes a portion of either Kenya or Tanganyika or both territories, the Board, before adjudicating on such an application, shall take such steps as may appear necessary to ascertain the views upon such application of the Licensing Authorities in the other two territories. This should suffice to ensure that uniform decisions are taken in the case of applications for licences in all three territories.

4. The draft Kenya Ordinance is, like the Tanganyika one, a comprehensive enactment dealing with all forms of transport except aircraft. The Tanganyika draft Ordinance was a modification (agreed to by Sir G. Rhodes) of an earlier Kenya draft, but in many cases Kenya has not adopted the modifications made by Tanganyika. Mr. Paskin, Mr. Crossmith and I have, however, been through the two draft Ordinances in detail. The task has been somewhat tedious, particularly in view of the fact that the Kenya Government has not seen fit to adopt

the

to present any
of amendments []

the Tanganyika order of clauses which, in our view, is a distinct improvement on the Kenya draft - see, for example, Tanganyika Clause 15 which sets out in one clause the matters which the Licensing Authority is to take into account when considering whether or not licences (of whatever type) are to be granted.

Generally speaking, however, the provisions of the Kenya Ordinance correspond with those of the Tanganyika Ordinance, although the order, and in some cases the wording, is different. I have indicated in the separate note attached to the file certain points of detail, including some divergences which, perhaps, might merit at least further enquiry.

The note also indicates certain points which, we suggest, might be brought to the notice of the Government of Kenya when a decision is communicated in regard to the draft Ordinance. Subject to consideration of those points we suggest that the draft Ordinance can be accepted and that the Governor can be informed by telegraph that its enactment is approved.

5. It may be mentioned in conclusion that, in accordance with our directions, all reference to third party insurance has been omitted from the Kenya Ordinance. Similarly, Part IX of the Uganda Traffic Ordinance has not yet been brought into operation - see paragraph 6 of the Uganda Government's letter at 38 on 46572/37.

7. Africa is at A. B. 104

Thae

16.11.37.

5

As indicated in Mr Lee's minutes, ~~the~~
both the Kenya & Uganda Bills have
been examined (& compared with the
T.T. Bill) jointly by Mr Lee, Mr Prosser
& myself; & Mr Lee's minutes & memo
represent our joint conclusions, to which
I have nothing to add.

I wd. however observe that
Kenya asked for observations by Tel., as
it was proposed to introduce the Bill
before the end of Oct.

1a

The Dept was however not read
on 1/11 & it was some days before
we could collect the H.P. & find a
mutually convenient time to go through
them.

Similarly Uganda has asked for
obs. by the end of Nov.

J.J. Pasani
12/11

I have made one or two marginal comments on
the memo. Otherwise I have no observations
apart from the action proposed.

(W.J.L.)

19.11.

The "big idea" is to go after the unfortunate dhows. It
was ruled on the T.T. paper that this should be done so I
say no more. Messrs Bustin Lee & Crossmill have done
well over this.

I might add however that the Indian Chambers of
Commerce in Kenya hailed the dhow regulation as another

W.J.L.
19.11.37

piece of anti Indian legislation so we may hear from I.O. about it.

? as proposed

J.C. Hand

Pl. see the minutes on

19.11.37

46872 EA - 42267 - the action which depends on change in railway is necessary in the interests of the T.T. railway & follows on T.T. action.

I agree that we should tel. approval to both places, but for the reasons shown at the end of the minutes we had better ask change for a copy of his debate.

[If the Bill was introduced at the end of October there can have been no great storm, and should have heard of it.]

WCH 20.11.37

see

20.11.37

at once

The telegram to Uqda is registered on 40244/3744

2/ Tel 198 to Gov. Karachi - 23/11/37

Notes for def. vide draft 2 and as at X-1022. 3/11/37

30/3/38 30 NOV 1957

(1 further proposed)

India's Office

To. Telegram from Govt of India & request consideration to give to request that Transport Bill should be postponed to give them time to examine it. Ask for copy of Bill & of Sir O. Mann's Report

min. D. Khan

objection is taken to the Bill on no ground more specific than that "Sindian claims" probably relate to §§ 3 and 9. It was requested that no provision in § 9 should not be used without reference to the S.F.S.

? The I.O. might be informed of this fact by way of a sep if no other concessions are to be made. objection is § 5 is, it is to be supposed, because there is no provision for the nomination of representatives of Indian interests to the Licensing Authority.

? However that change has already been asked for an account of Indian objections to his Bill in Leg. Co., and that until it is known what form, if any, these objections were it is not possible for the S.F.S. to request suspension of the Bill on the strength of a general and unclarified protest.

This copies of Mann's Report attached.

Clouery 6/12

This is a pretty typical Government of India performance. The Indians in Karachi object to the Transport Bill, and instead of putting up their objections to the Government and/or to the Secretary of State, they proceed to send resolutions to the Government of India which goes off at half cock without even waiting to find out what precisely has caused the Indians to object and has the colossal cheek to demand they should examine how far Indian interests are affected by the Bill and whether any representations are called for. The short answer

to that is that the regulation of transport in Kenya is for the Government of Kenya to consider, that the views of the Government of India do not amount to one row of beans.

The Indian objection is natural to any regulation of transport. They run lorries in unsafe conditions on the roads, drive them at excessive speeds, overload them with excessive numbers of passengers, and naturally resent any attempt at regulation. There is, however, nothing of a racial kind about the proposed legislation, and if the Government of Kenya wishes to impose regulations on motor traffic in the interests of the general public, then Indians must conform to them as well as anybody else, and the fact that some individual Indians may be affected is neither here nor there. The Indians are also, ~~and know~~, affected by the proposed dealing with the dhow traffic on the Lake, as we know from the press cutting flagged in 34051/37 (extract from the "Standard" of the 25th of October). In view of that we have already asked Kenya what attitude is adopted by the Indian members, but of course have not had time for a reply. Sir A. Wade told me this morning that he had heard that the Indians refused to serve on the Select Committee which was to be appointed to consider the Bill on the ostensible ground that Indians and Europeans were not being accorded equal representation of the Committee. This, Sir A. Wade said, would have been quite a new departure in Kenya, because the practice had always been to put two Europeans

to

to one Indian and the Indians hitherto had been quite contented with it. It is, however, clearly impossible to hold up the Bill until the Government of India cares to pronounce its opinion.

Clause 3 of the Bill, which the Government of India think may be objected to, simply sets up the Transport Licensing Board and the only ground on which Indians might object would be that there is no statutory inclusion of an Indian. This, of course, is sheer nonsense, since a statutory authority to grant licences has nothing racial about it. The provision in Clause 3 for the grant of exclusive licences is necessary to enable omnibus services to be regulated and licensed in places like Nairobi or to regulate the establishment of regular services along main roads as in the case of Uganda. The Secretary of State has requested that no exclusive licence should be granted without his being consulted. I submit a draft reply to the India Office.

J. T. G. Howd

7.12.1937

Sir A. Wade

Off submitted. Mr. Flood has not added words to cover the *in* gain in a letter from the Gov. to the S. G. B., which he had not previously seen.

Wed. 7.12.37

P.T.O.

Confirmed by a letter from the Gov. - see separate

20/5.

I must trouble you with this as there is a risk of trouble with the Government of India.

I agree that the Bill should not be held up. Government in Kenya will become impracticable - it is difficult enough already - if we are to consult Govt of India before we do anything in that Colony. Best we must return as soft as we can, & leave out last part of para 5 of aft. & revised para 6.

ascd
S. 12.57

lnj
8.12.37

2. 20 (190 = 1, 2, 3 and Main Report) - 4 April, 9 - DEC 1937

7. Extract from Sir E. Brooks Popham's letter to S. of S. dated 25.11.37

8. Kenya 1119 (1/2, 4 & 5/10. emb.). A/1. 18 DEC 1937

Spence to / change

9. 11/Col. Sec.

To 12 copies of Report of Select Committee of Leg. Co on the Transport Licensing Bill

The following points in this Report appear to be worthy comment:-

1. All the alterations to the Bill recommended in 2) on this file have been made with one exception referred to below. (These alterations are to Clauses 5(3), 4, 17(3), 24(3) and 30.

The previous Bill, which was suggested, which was included in the original Bill, has been deleted from the T.T. Order (S 21), but no explanation has been given.

2. The suggestion at (d) in No 2 in file has not been adopted.
3. The Amendments to Clause 3 elaborate the restriction of the licensing authority. Only subclause (4) which gives the Gov power to remove or nominate members "on the ground of incapacity or misbehaviour" appears to be worth mention.

9. T.T. Order 20/37 S. 9. Uganda 24/37 S 171

4. A subclause is added to Clause 9 whereby the granting of an "exclusive licence" has to be announced six months in advance.

Not added 9 T.T.

5. A subclause is added to Clause 12 ("Protection of Existing Interests") whereby the clause is to operate for one year only.

6. To Clause 25 a subclause is added requiring that Regulations made under the Ordinance shall be laid before the Leg. Co. for 40 days during which period the Leg. Co. may revoke or amend them.

Uganda has not included (S 11) an appeal to the Governor.

7. If the suggestion at the end of the Report, that a Special Appeal Tribunal be set up to hear appeal cases under the Ordinance, is accepted legal obscur will no doubt be required at a later stage.

~~_____~~
~~_____~~

T.T. papers (4226/37) and copy of Uganda Ordinance attached

Chokwehale
24/12

M. P. S. K.

10.

I attach a note, as requested, which will make
continental reference to the TT papers (as necessary)

Clothing, White
7/1/38

11. India Office (P.O. 5746/37) — 31.12.37.
(5 Ann.) Details provisional commands of Govt. of
India on the Bill & would be glad to learn Colonial
Office views thereon.

The Govt of India has three requests:—

1. Inclusion of an a representative of Indian
interest in the Licensing Board.

I have found no
trace of a similar request being put forward
by Indians in Kenya. In the Report of the
Investigating Officer (under the Kenyan) such a request
is notable by its absence. There was an
Indian on the Committee who made no dissenting
recommendation to this effect.

? Reply that the Gov
is being consulted & that he will no doubt
bear in mind § 128 of the Report when recommending
to the Board — a bill Gov.

2. ^{provisions} Exemption of legislation restricting the dealers. The answer

is set in a minute of Mr Seale on 4226/37—
flagged. ? Reply to IO in this sense.

3. Consideration of 'exclusive licenses' by Leg Co before granting.

The Leg Co Officer's Report on the Bill at (9) Kenyan
recommendations that the grant of an exclusive license
must be announced six months in advance.
This will give interested members time to raise
the point in Leg Co & in effect meets the
IO's wishes. ? Inform IO accordingly.

Clothing, White
7/1

No. 9.

It will be seen from my marginal comments
on No. 10 & on the early white minute of 29/12
that, with the exception of the new clause 30(1)
the amendments proposed to the Kenya Bill
(→ the mission to visit a province & cl. 19(1)
as suggested in No. 1) are in line with amendments
made in T.T., & I do not have to make
comment.

T.T. have deleted
the proviso.

M. Dale said however consider the
words introduced in cl. 30(1) in No. 9.

No. 11. I am disinclined, at this stage, to
send any detailed reply to No. 11, especially
on some of the comments suggested which
I propose for amendment which may
not be adopted by the Leg Co.
I shall reply that a copy of No. 11 is
being sent to the Govt for his comment.
& please a further communication when
his observations are received.

I send copies to Govt for their
own go.
When received. M.P.S.K. to consider X.

M.P.S.K.
5/1/38.

(1) Three
M.P.S.K.
S. 1

- ① Decree to the Board for
action except X above
- ② Vaguer action as at X on
Pt. of min.
- ③ Refer to No 6

M. Annan of the I. O.
inquired whether we should
have any objection to the
Govt. of India making
a public statement in the
terms of the last sentence
of (5). After consulting
Sir C. B. B. I have
told him that we have
no objection.

A. D. Andrews
2.2.

Further communication on this subject should be sent to—
The Under Secretary of State for India,
Colonial Office,
London, S.W. 1.
The following reference quoted:
P. & J. 5776/37.



INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.

31st December, 1937.

Telephone—
Whitehall 8140. L.O. Ext. No.
Telegrams—
Retaxandina, London.

RECORDED
C.O. 100

Sir,

I am directed by Lord Zetland to acknowledge receipt of your letter No. 38342/37 dated the 9th December, 1937, regarding the Kenya Transport Control Bill, and to express his gratitude for the information forwarded to him. The Bill has now been considered by the Government of India and provisionally their comments are as follows.

1. From paragraph 128 of the Mance Report it appears that the Commission recommended that the composition of the Transport Licensing Board should include one member commanding the confidence of the Indian community. The Government of India therefore suggest that clause 3(1)(b) of the Bill should specifically provide for this, in order to safeguard Indian interests. Statutory provision to this effect would be more satisfactory to Indian sentiment than administrative assurances, but failing statutory provision the Government of India would most strongly press for a public declaration that the Board will have at least one Indian member.
2. The Government of India note from paragraph 106 of the Report that Sir Osborne Mance did not consider it necessary that restrictions should be introduced in the present number or operation of dhows. They therefore suggest that the provisions relating to dhows might be excluded from the scope of the Bill.
3. The Government of India suggest that provision should be made on the lines of section 5(1) of the Kenya Native Marketing Ordinance, 1935, for the proposal for the grant of any exclusive transport license to be debated in the Legislative Council before the license is issued.

Copy to Kenya 13

Lord Zetland trusts that Mr. Ormsby-Gore will give careful consideration to the observations made by the Government of India, and would be glad to learn in due course his views on them.

I am, Sir,
Your obedient servant,

J. H. Churchill

The Under Secretary of State,
Colonial Office,

S. W. 1.

In no (2) hereon reference is made to the SFS's Telegram to T.T. of 16th October (2 on 42267/3) T.T. The amendments suggested at (c) (d) and (e) in the T.T. Telegram and repeated in the Telegram to Kenya hereon are

Clause 6 (3) of T.T. Ordinance and
Clause 5 (3) of Kenya Ordinance } excision of

... either ... or" in view of the fact that the intention appears to be that licensee may use his vehicle both for his own purposes and ~~to~~ to carry goods of other persons.

Clause 26 (3) of T.T. Ordinance and
Clause 24 (3) of Kenya Ordinance } removal of

provision whereby police may seize a suspected document and thereafter make possessor justify his possession of it. The SFS suggested that power should be taken to destroy a suspect document instead of the power to make the possessor justify himself, but in the Report at (7) it is recommended that less only power to require all reasonable information shall be taken — see the new Clause 30 on p. 6 of the Report.

Clause 32 of T.T. Ordinance and
Clause 30 of Kenya Ordinance } removal of provision

empowering police to arrest without a warrant for every offence under the Ordinance. SFS suggested arrest without warrant "only if offender refuses name & address, or gives wrong one, or is likely to abscond". The new Clause 31 to the Kenya Ordinance proposed by the Leg Co Report allows arrest without warrant only if there is reasonable ground to believe ~~an offender~~ will not appear in court in answer to a summons.

This suggestion has been adopted both in T.T. & in the Kenya Leg Co Report at (7)

This seems to be almost as objectionable as the provision it has been deleted. But m: Dale s.d. Constan. J.P.

that a person has committed an offence

This follows the T.T. Ord. which has been passed. No need to comment. J.P.

Cloughdale 4/1



THE SECRETARIAT,
NAIROBI,
KENYA.

WHEN REPLYING
PLEASE QUOTE
No. S.D./Leg. Co. 26/3/8/65.
AND DATE

RECORDED

21 DEC 1937

C. O. REGY

15 December, 1937.

The Acting Colonial 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 Report of the Select Committee
of the Legislative Council on the
Transport Licensing Bill;

38068/37

The Report of the Standing Finance
Committee on the Draft Estimates
of Revenue and Expenditure for the
year 1938.

R E P O R T
O F
THE SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT UPON THE PRO-
VISIONS OF A BILL TO PROVIDE FOR THE CO-ORDI-
NATION AND CONTROL OF MEANS OF AND FACILITIES
FOR TRANSPORT

Your Excellency,

We, the members of the Select Committee of the Legislative Council appointed to consider and report upon the provisions of the above Bill, have the honour to submit our Report.

We met at the Attorney General's Office on the 17th and 24th November, and on the 7th December.

We recommend that the Bill be amended in the following respects -

1. That Clause 2 be amended -

(a) by substituting the word "person" for the word "persons" which appears in the third line of the definition of "driver";

(b) by deleting therefrom the definition of "ship" and substituting therefor the following definition -

"'ship' includes every description of vessel used in navigation propelled otherwise than by oars or hand paddles and every lighter, barge, or like vessel-used in navigation however propelled;"

and

(c) by deleting therefrom the definition of "public service vehicle" and substituting therefor the following definition -

"'public service vehicle' means a motor vehicle constructed or adapted for the carriage of both passengers and goods;"

Mina of Uganda 28/37

(See 1A of 1937)

2. That Clause 3 be amended -

(a) by inserting therein the following new sub-clauses as sub-clauses (2) to (6) -

"(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.

(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~~ 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 re-nomination to the Licensing Authority at the expiration of each such period."

(b) by renumbering old sub-clauses (2) and (5) as sub-clauses (7) and (8) respectively;

(c) by inserting the following new sub-clauses as sub-clauses (9), (10) and (11) :-

"(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:

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

- (d) by renumbering old sub-clauses (4) to (8) inclusive as sub-clauses (12) to (16) respectively;
- (e) by substituting the bracketted number "(7)" for the bracketted number "(2)" which appears in sub-clause (3) thereof;
- (f) by substituting the bracketted numbers "(12)" for the bracketted number "(4)" which appears in sub-clause (5) thereof; and
- (g) by inserting the following new sub-clause as sub-clause (17) -

"(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."

3. That Clause 4 be amended -

- See copy of bill on file*
- (a) by substituting the word "motor" for the word "goods" which appears in the first line of paragraph (a) of sub-clause (1) thereof; and
 - (b) by deleting therefrom paragraph (b) of sub-clause (1) thereof, and substituting therefor the following -

"(b) for hire or reward convey any person by means of any motor vehicle designed to carry more than six persons and the driver of such vehicle;"

4. That Clause 5 be amended -

- (a) by deleting therefrom paragraph (b) of sub-clause (1) thereof and substituting therefor the following -
"(b) For passenger and public service vehicles -
a road service licence.

A road service licence is used in respect of a public service vehicle may authorise the holder to carry for hire or reward both goods and passengers."

(b) by deleting from sub-clause (2) thereof the words "whether by road transport or any other kind of transport" which appear in the sixth and seventh lines thereof;

(c) by inserting the commas and words ", unless the Licensing Authority, in its discretion, otherwise determines," between the word "but" and the word "it" which appear in the seventh line of sub-clause (2) thereof; and

(d) by deleting the word "either" which appears in the fourth line of sub-clause (5) thereof, and by substituting the word "and" for the word "or" which appears in the sixth line thereof.

alteration of suggestion of S.F.S. See 2 in file and see C.O.(2) 4-2667/59 IT.

5. That Clause 6 be amended by deleting therefrom the words "Every licence shall, unless previously revoked, continue in force for one year from the date on which it is expressed to take effect" and substituting therefor the following words "Subject to the provisions of sub-section (2) of this section, every licence shall, unless previously revoked, remain in force until the thirty-first day of December in the year in which it is issued".

as appropriate Government alteration

6. That Clause 9 be renumbered as Clause 9(1) and the following sub-clause be added thereto -

delete operation of grant of exclusive licences

"(2) Where the Licensing Authority intends to grant an exclusive licence under the provisions of sub-section (1) of this section, it shall by notice in the Gazette and in a local newspaper circulating in the area to which the proposed exclusive licence relates, give notice of its intention to grant such licence, and no such licence shall be granted until a period of six months after the date of publication of such notice has elapsed."

7. That the word "vehicle" be inserted between the word "Goods" and the word "Licences" which appear in the heading to Clause 10 thereof.

8. That Clause 12 be amended -

- (a) by renumbering Clause 12 as "12(1)"; and
- (b) by adding thereto the following new sub-clauses -

"(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."

what should be first year only

9. That Clause 13 be amended -

(a) by deleting therefrom the heading thereto, and substituting therefor the following -

"B. ROAD SERVICE LICENCES";

(b) by renumbering the Clause as "13(1)";

(c) by deleting therefrom the words "In the case of passenger-carrying vehicles, every" and substituting therefor the word "Every"; and

(d) by adding thereto the following new sub-clause -

"(2) If the licence is required in respect of a public service vehicle, the applicant shall also furnish the particulars required, in the case of an application for an 'A' or 'B' licence, under paragraph (c) of sub-section (1) of section 10 of this Ordinance."

10. That Clause 14 be renumbered as "14(1)" and the following new sub-clause be added thereto -

*See (2) in part -
inserted as requested
by 198*

"(2) In any case in which the Licensing Authority refuses to grant a licence, or grants a licence which differs from the licence applied for, or attaches conditions to which the applicant does not agree, the Licensing Authority shall, if requested by the applicant, state in writing the reasons for its decision."

11. That Clause 17 be amended -

(a) by inserting the following paragraph in sub-clause (2) thereof -

"(c) a condition specifying the types and sizes of tyres that shall or shall not be used on the authorised vehicles;"

(b) by relettering paragraphs (e), (f) and (g) thereof as (f), (g) and (h) respectively;

(c) by deleting therefrom paragraph (h) thereof and substituting therefor the following -

"(i) a condition that they shall be so used only in a specified district or between specified places;

(j) a condition that goods shall be so carried only for specified persons."

*Mention suggested
198 in
2) a file*

(d) by substituting the words "that section" for the words "the preceding sub-section" which appear in the fifth line of sub-clause (3) thereof;

(e) by deleting therefrom sub-clause (4) thereof; and

(f) by renumbering sub-clause (5) thereof as "(4)".

12. That Clause 21 be amended by inserting the words "any local authority in whose area the routes intended to be served are situate, or by" between the word "by" and the word "persons" which appear in the fourth line of sub-clause (2) thereof.

deleted at request of SGT
See (d) in (2) on
A2267/37 TT
But see 330 below

13. That sub-clause (3) of Clause 24 be deleted.

14. That Clause 28 be renumbered as "28(1)" and that the following be added thereto as sub-clause (2) -

laying the
regulations
before the
leg.

"(2) All regulations made under this section shall have the same force and effect as if they had been enacted in this Ordinance and shall be laid as soon as conveniently may be before the Legislative Council; and if a resolution is passed within forty days of their being so laid before the Legislative Council praying that any such regulation shall be revoked or amended, such regulation shall thenceforth be deemed to be revoked or amended, but without prejudice to anything done thereunder."

15. That Clause 29 be amended by substituting the words "shall, if required by the Licensing Authority, keep" for the words "shall keep" which appear in the second line of sub-clause (1) thereof.

16. That the following new Clause be inserted as Clause 30 -

"Power to stop and inspect vehicles.

30.(1) Any police officer, or any other person duly authorised 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 authorised person may reasonably request in order to ascertain whether or not the provisions of this Ordinance or Regulations are being complied with.

See § 24(b) new
subsec

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

17. That Clause 30 be deleted and the following be substituted therefor -

"Arrest.

31. Any police officer, of or above the rank of assistant sub-inspector, having reasonable grounds for believing that any person has committed an offence against this Ordinance and that such person will not attend the court in answer to any process which may be issued against him, may arrest such person without a warrant."

See (c) in 2-11

42267/8 TT

Similar to § 32 of Ordinance

There are several matters in respect of which we would like to make certain recommendations although they do not involve any amendments to the Bill -

Licences:

With regard to "C" Licences, while we appreciate the necessity for these, we are of the opinion that the fee prescribed should be as small as possible and should not, in any case, exceed \$2/50 per vehicle. We make no recommendation with regard to the fee for other licences, but we consider it very desirable that these should, if at all possible, be uniform in the three territories.

Appeals:

With regard to appeals, we do not consider that the Supreme Court is the most suitable Tribunal for deciding such matters as are likely to form the subject of appeals under this Ordinance; nor, having regard to the fact that the Attorney General who is the Chairman of the Board is also a member of Executive Council, are we of the opinion that the appeal should lie to the Governor in Council. The most suitable Appeal Court would, in our opinion, be an independent body of, say, three persons appointed specially for the purpose of hearing appeals from the Licensing Authority. It would, of course, be necessary to legislate for such a body empowering it to make binding and final decisions and to award costs to the successful party.

Although, therefore, we have retained the right of appeal to the Supreme Court in order to maintain uniform practice with Tanganyika and Uganda, we recommend that enquiries be made through the medium of the Governors' Conference with a view to ascertaining whether or not the other Territories would agree to amend their legislation so as to provide for the establishment of Appeal Tribunals on the lines suggested.

Inter Territorial Consultations:

Although specific provision has been made in the Bill with regard to inter-territorial consultations in the case of Inland Water Transport Licences, we consider that in the administration of the Ordinance generally the Licensing Authorities in the three territories should keep in close touch with one another in order that the practice and policy may be kept as uniform as possible.

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

SD. W. HARRAGIN	(CHAIRMAN)
SD. E. B. HOSKING	(MEMBER)
SD. C. H. WALMSLEY	(MEMBER)
SD. S. H. FAZAN	(MEMBER)
SD. F. F. CAVENDISH BENTINCK	(MEMBER)
SD. CONWAY HARVEY	(MEMBER)
SD. ROBERT SHAW	(MEMBER)
SD. G. BURNS	(MEMBER)

Nairobi,

14th December, 1937

6

Extract from Sir R. Brooke-Popham's letter dated 25.11.37
to Secretary of State.

x x x x

3. The Indians have refused to sit on the Select Committee over the Transport Bill. Actually it was very foolish of them, because I had been talking just before Council started to Pilling and Harragin about having two Indian Members on the Select Committee instead of one, which would have been normal. Then, as it was time to begin, I said we would continue the discussion in the interval, but in the meantime Isher Dass got up, and, after a violent tirade, said that the Indians refused to sit on any Committee to consider details of the Bill, so naturally I could do no more. It may be that the proposed Bill wants amendments in certain detail, but I am completely convinced that it is absolutely necessary. Abdul Wahib informs me that he told the Indian members they had made fools of themselves.

x x x x

5 23
16.508

38342/37

C. O.

Mr. Flood. 7.12.

Mr.

Mr.

Sir H. Moors.

Sir G. Tomlinson.

X Sir C. Bottomley. 7.12

Sir J. Shuckburgh.

+ Permt. U.S. of S. 7.12

Parly. U.S. of S.

X Secretary of State. 7.12 37

DOWNING STREET

9

December, 1937.

Important

C. O.
D. 9

Sir,

I am etc. to acknowledge
the receipt of your letter of J. 5438 37
of the 4th of December regarding the
Transport Control Bill which has
recently been introduced into the
legislature of Kenya. A copy of
the Bill is enclosed for the
information of the Marquess of
Zetland together with a copy of
Sir Osborne Mance's Report on
Co-ordination of Transport in East

Africa, as requested. A copy of
concerns with the Gov. of Kenya

2. I am to explain that the
control of transport in East Africa
has been engaging ^{serious} public attention
for a considerable time past, and
it is obviously necessary that the
Government should be empowered to
regulate

DRAFT.

THE UNDER SECRETARY OF STATE,
INDIA OFFICE.

Copy info. to Kenya

Bill
Name Report
Next Gov. 25 Oct.
To Gov. 25 Nov (1)
To Gov. No 2
To Gov. 30 Nov
No 3

FURTHER ACTION.

copy cony Gov LF

on the
subject
of this
Bill
is
also
enclosed.

regulate the conditions under which vehicles may be allowed to ply for hire for the transport of goods or passengers, especially the latter. It is understood that many vehicles are employed in the transport of goods and passengers which are not suitable and involve grave risks to the *safety of the* public using them, while they also are a cause of damage to the roads in Kenya. It is therefore necessary for Government to take power to regulate road transport and to see to it that no vehicle is licensed for service unless it is suitable. It is possible that some vehicles which are at present in use will have to be withdrawn, and if such are owned by Indians, as is no doubt the case in some instances, ~~there~~ ~~is~~ ~~no~~ ~~doubt~~ ~~that~~ ~~objections~~ ~~may~~ ~~be~~ ~~raised~~, but ~~it~~ ~~will~~ ~~be~~ ~~obvious~~ to the Government of India *may be assured* that no racial discrimination is involved by regulating motor vehicles.

3. As regards Clause 9 of this Bill, which empowers the Government to grant exclusive licences for the operation of regular services over particular

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

DRAFT.

though it is understood that the Indian members of the Legislative Council referred to above on a Committee of that body which was being set up to consider details of this Bill.

FURTHER ACTION.

particular routes, ~~I am to explain~~ ~~that~~ this provision is intended to allow Government to grant licences for the operation of regular services over particular routes where it will be obvious that unrestricted competition could only have evil results. *the case of* Mr. Ormsby Gore has, as in ~~Uganda~~ ~~and~~ ~~Tanganyika~~, requested that no such ~~exclus~~ licence may be granted without his being consulted.

4. It is also understood that some Indians feel aggrieved over the proposal to regulate and control dhow traffic on Lake Victoria, which is the object of ~~Clause~~ ~~Section~~ 15 of the Bill.

5. ~~I am to point out that~~ ~~No~~ communication from the Indian community has been received in the Colonial Office, and, so far as the Secretary of State is ~~aware~~ ~~no~~ ~~representation~~ has been made to the Government of Kenya. ~~It would~~ ~~therefore~~

therefore appear that the Government of India have proceeded to take action on the receipt of direct messages from Kenya, though the Indian community in that Colony is well aware of the proper procedure to adopt if it desires to put forward representations on any subject.

6. I am to enclose a copy of a despatch from the Governor of Kenya forwarding a copy of the Bill, together with a print of the report of a Committee on Transport in 1936 and copies of a telegram and despatch sent to the Governor. Similar legislation exists in Uganda and Tanganyika, and in view of the Governor's statement as to the urgency of the matter, it is not proposed to ask ^{him} the Governor to delay the enactment of the Ordinance. It will be observed, however, that apart from the provisions relating to Inland Water transport, it is not intended to bring ^{it actually} the enactment into force until July next.

I am, etc.

There will of course be fully examined ~~considered~~ ^{consultation} by the D.G. in ~~the~~ ^{with} the Gov. of Kenya, and should it ~~be found~~ ^{prove that they are} well founded, amending legislation could then be considered.

6. Similar legislation exists in Uganda and Tanganyika; and Mr. Arushy Gore does not feel that he could properly ask the Governor of Kenya now to postpone enactment of the Bill.

It however the Governor should report ~~there should be~~ specific objection to any of the provisions of the Bill when it has been enacted, whether enacting plan the Sub-committee from ^{or any other} ~~person~~ ^{the Colony,} ~~Community~~ ^{in Kenya,}

(Signed) E. W. FLOOD

Any further communication on this subject should be addressed to—

The Under Secretary of State for India,
Public & Judicial Department,
India Office, London, S.W. 1,
and the following reference quoted:—

P. & J. 5438/37.

Telephone :—
Whitehall 8140. I.O. Est. No. _____
Telegrams :—
Retaxandum, London.



INDIA OFFICE,

WHITEHALL,

LONDON, S.W. 1.

4 December, 1937.

Sir,

I am directed by the Secretary of State for India to forward for the information of the Secretary of State for the Colonies, a copy of a telegram from the Government of India regarding the Kenya Transport Control Bill. Lord Zetland has no information about the Bill apart from the enclosed telegram, but would be grateful if Mr. Secretary Ormsby Gore would give his sympathetic consideration to the Government of India's request that the enactment of the bill should be postponed in order to give them time to examine it from the point of view of the Indian interests involved. He would also be glad if he could be furnished with a copy of the Mance Commission's Report for transmission to the Government of India, and with a copy of the Bill for his own information.

I am, Sir,

Your obedient Servant,

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

H. Peel

Amie
Copy to Kenya

P & J
5170
1937

IT/RTH/AN

(147 words)

5228

DECODE OF TELEGRAM

(COPIES
CIRCULATED)

From Government of India, Department
of Education, Health and Lands,
to Secretary of State for India

Dated New Delhi, 29th November, 1937.

Received 29th November, 1937, 6 p.m.

F.195/37 L. & O.

East Africa. Indian Congress and elected members of Kenya Legislative Council have sent us telegram strongly invoking our support for request that further progress with Transport Control Bill, which has passed (? second) reading in Kenya Legislative Council, be postponed. Government of India have not had opportunity of examining Bill, which appears to be that published on pages 1301 to 1324 Kenya Gazette dated October 18th, 1937, nor have any previous representations (? reached) them regarding it. Indian claims probably relate to sections (3) and (9) of the Bill which deal respectively with constitution of licensing authority and grants of exclusive licences. Indian community in Kenya appear seriously perturbed. Government of India would be grateful if time could be given them to examine how far Indian interests are affected by the Bill and whether any representations by them are called for. They will endeavour to do so as quickly as possible and hope that the Colonial Office will agree to postponement involved. They would also be glad to receive by air mail copy of Mance Commission's Report, which appears to bear on the subject matter of the Bill.

C. O.

Mr. Flood. 26.11.37. 65

38342/37. Kenya.

Mr.

Mr.

Sir H. Moore.

Downing Street.

Sir G. Tomlinson.

Sir C. Bottomley.

30. November, 1937.

Sir J. Shuckburgh.

Perm. U.S. of S.

Party. U.S. of S.

Sir,

Secretary of State.

I have the honour to refer

DRAFT.

to your despatch of the 25th of
October, No. 640, on the subject of
the draft Bill to co-ordinate and
control means of and facilities for
transport, and to confirm my telegram
No. 198 of the 23rd of November, a
copy of which I enclose for convenience
of reference. I do not desire to make
any further comment upon the provisions
of the Bill, but my attention has been
called to statements ^{in the Press} which would
appear to show that some of the
Indian community regard the proposals
for the control of the dhow traffic
on Lake Victoria as directed against

KENYA.

NO. 10.17

GOVERNOR!

Telegram No. 198. 23.11.37.

No 2

copy to 20-6

FURTHER ACTION.

Indian

*Coded & Ltr
7.0pm 23/11/37
Jhu*

C. O.

Mr. Lee 22 /11/37

Mr. Dale 23

Mr. Flynn 23 *above*

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Chubbburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

No. 198

*2
24*

Your despatch of 25th

October 640. I approve introduction

into Council of draft Ordinance

subject to consideration of following

observations:-

(a) I assume that consideration

will be given to possible amendment

of Ordinance on lines suggested in

(c), (d) and (e) in my telegram of

15th October to Governor, Tanganyika.

(b) Clause 14. The latter part

of this clause corresponds to clause

16(2) in Tanganyika Ordinance but it

would appear that there is no

provision in Kenya Ordinance similar

to that in Clause 16(1) of Tanganyika

Ordinance - i.e. requiring licensing

Authority

DRAFT.

TELEGRAM
CODE

GOVERNOR

NAIROBI.

(2 on 42267/37)

*Copy to Kenya
29/11/37*

FURTHER ACTION.

*Dep. to Kenya
required to ask about
this provision*

India interests. It is possible, therefore,
that the question may be raised in India,
and I should accordingly be glad to learn
what attitude is adopted in Council by
the Indian Members when the measure is
under discussion. It would probably be
convenient if you could supply me with an
advance copy of the report of the Council
debate.

I have, etc.

authority to state in writing reason for a decision. Prima facie it would appear desirable that some such provision should appear in Kenya Ordinance.

(c) Drafting of Clause 17(4) appears to require some revision since it appears that provisions unnecessarily repeat, in respect of particular classes of licences, provisions which have already been included for all classes of licences in Clause 17(2). Similarly in Clause 17(3) reference to "the matters to which it is required to have regard under the preceding sub-section" appears erroneous, since preceding sub-section deals with conditions which are to be imposed, not matters which are to be taken into consideration.

(d) Clause 19(1). Proviso to the corresponding Tanganyika Clause (21)(1)

has

G. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

has been omitted in Kenya Ordinance but, prima facie, it would appear desirable that some such proviso should be inserted.

As a matter of Administrative procedure I would ask that no exclusive licence should be granted under Clause 9 of Ordinance without prior reference to me. Similar request has been made to Tanganyika and to Uganda.

Secer.

la

Detailed points concerning Kenya Ordinance.

42267/37

1. Although the Governor of Kenya refers in paragraph 6 of his despatch to the Secretary of State's telegram of the 15th October to the Acting Governor of Tanganyika, he has made no comment ^{on the points raised in} (c), (d) and (e) of that telegram. The Kenya clauses corresponding to Clauses 6(iii), 26(iii) and 32 of the Tanganyika Ordinance have the same wording as that submitted by Tanganyika. It is suggested, therefore, that in replying to the Government of Kenya we should say that it is assumed that consideration will be given, before the enactment of the Ordinance, to the points dealt with at (c), (d) and (e) of the telegram in question.

W.D.

2. The Tanganyika Ordinance makes provision for what is called a "public service vehicle" - which is a motor vehicle constructed or adapted for the carriage of both passengers and goods. In Kenya, however, the definition "public service vehicle" means only a motor vehicle carrying passengers for hire or reward; there is no provision for the composite vehicle which appears in the Tanganyika Ordinance. Similarly, there is apparently no such provision in the Uganda Traffic Ordinance of 1937, except that the definition of "commercial vehicle" in that Ordinance means any motor vehicle constructed or adapted for use and used primarily for the conveyance of goods in the course of trade or agriculture. The reason for including the Tanganyika definition of "public service vehicle" is given in paragraph 52 of the report of the local Tanganyika Committee.

42267/37

It

1a

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42267/37

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W.D.

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42267/37

11

It seems a pity that the three Governments have not been able to arrive at uniform definitions for different classes of vehicle, but presumably the divergence is not likely to give rise to any practical difficulty, and it may be that there is not the same need in Kenya to provide for a class of vehicle which caters for both passengers and goods.

3. Kenya Ordinance - Clause 4(vi).

In the corresponding Tanganyika clause (Clause 5(v)) there is a sub-section (c) which is not reproduced in the Kenya Ordinance - namely, providing that the section is not to apply "to the use of a vehicle for police, fire brigade or ambulance purposes". Presumably, however, we need not comment on this.

Such vehicles can be exempted under cl. 4 (b) (f) J.P. (w)

4. Kenya Ordinance - Clause 9.

This corresponds to Clause 13 in the Tanganyika Ordinance - i.e. giving the power to grant an exclusive licence. The Tanganyika Government has already stated that no such licence would be granted without prior reference to the Secretary of State. Presumably the Government of Kenya should be asked to adopt a similar procedure.

5. Kenya Ordinance - Clause 10.

Sub-section (²~~1~~) of the corresponding Tanganyika clause (Clause 10) has apparently been omitted altogether from the Kenya Ordinance - it is not clear why. It seems doubtful, however, whether it is necessary to make any enquiry on this point.

Not necessary (that w)

32

6. Kenya Ordinance - Clause 14.

This clause empowers the Licensing Authority to grant or refuse a road service licence and provides that it is to take into consideration any representation or objections which may be made to the grant of a licence by persons who are already providing transport facilities along or near to ^{the route of} any part thereof. This corresponds to Clause 16(ii) in the Tanganyika Ordinance, but, so far as can be traced, there is no provision in the Kenya Ordinance similar to that in Clause 16(i) of the Tanganyika Ordinance - namely, the provision that where a licence is refused or where conditions are attached to the grant of a licence to which the applicant does not agree, the Licensing Authority is required to state in writing the reason for his decision if requested by the applicant.

It would appear desirable on general grounds that some such provision should appear in the Kenya Ordinance, and it is suggested that the attention of the Governor might be called to the omission.

(w.)

7. Kenya Ordinance - Clause 15(i)(b).

In the corresponding Tanganyika clause (Clause 14(b)) the words "and motive power" appear after the word "construction", but these words have been omitted both from the Kenya Ordinance and from the Uganda Inland Water Transport Ordinance. Here again perhaps we need make no reference to the omission.

(w.)

8. Kenya Ordinance - Clause 17(iii).

In the corresponding Tanganyika clause (Clause 12) it is provided (sub-clause (e)) that the Licensing Authority may impose conditions for securing that the wages, conditions and hours of employment are to be in accordance with particulars attached to the licence. No such provision appears in the corresponding section of the Kenya Ordinance - although the point may perhaps be covered by Clause 17(24)(d).

It is thought

Prima facie it would appear that the provisions in Clause 17(~~24~~⁴) unnecessarily repeat, in respect of particular classes of licences, provisions which have already been included for all classes of licences in sub-clause (~~24~~²) of Clause 17. This is a point on which the Legal Advisers will no doubt advise as to whether any reference is necessary.

Agree. In addition, the
purpose of cl. 17(2)
"with regard to matters...
preceding sub-section"
may be in a case
where conditions, etc.
being made with
consideration.
In cl. 17(4) something
may have been done with
the drafting. What is
"any of them"?

9. Kenya Ordinance - Clause 19(i).

The proviso^x to the corresponding Tanganyika clause (Clause 21(i)) has been omitted in the Kenya Ordinance. Prima facie it would appear desirable that some such proviso should be inserted, and it is suggested that a reference to the omission might be made when a communication is sent to the Governor.

(over)

[* " Provided that the Licensing Authority shall not
renew or suspend a licence unless it is satisfied, after
holding a public inquiry, if the holder of the licence
requests it so to do, that owing to or licence not
to renew or suspend]

AIR MAIL

KENYA
No. 640



GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED
- 1 NOV 1937
C. O. REGY

25 October 1937.

Sir, C. O. REGY

(30) on 46572/37
E.A.

with reference to the letter from the Colonial Office no. 46572/37 of the 30th August addressed to the secretary to the Governors' Conference, I have the honour to transmit to you, for such observations as you may desire to offer, a copy of a Bill to provide for the Co-ordination and Control of means of and facilities for transport, which has been published in the Gazette of the 19th October for introduction into the Legislative Council.

2. The Bill is substantially that recommended in 1936 by the Kenya Transport Co-ordination Committee, a copy of whose Report is enclosed, and supported by Sir Osborne Mance and the Transport Policy Board, and has been revised in consultation with the Governments of Tanganyika Territory and Uganda. Provision is made for the setting up of a Transport Licensing Board, under the chairmanship of the Attorney General, to control road and inland water transport.

Handwritten notes:
Further forward (3)
copy to W. J.

3. It will be observed that no provision is made in this Bill for compulsory third party insurance. Compulsory third party insurance is already provided for, in respect of public service vehicles, in the Traffic Ordinance, 1928. The question of rates for such insurance applicable to all motor vehicles has been under discussion for some time locally with the Accident Insurance Association of East Africa, and before further

action/

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

5504/29/37
cont.

action is taken in this connection I propose to await the information which in view of representations made by the Accident Offices Association in London you have suggested to the Uganda Government (in your despatch No. 415 of the 10th September) should be obtained from Nyasaland on this subject. Compulsory third party insurance would, in any case, be more appropriately provided for either in an amendment to the Traffic Ordinance or in a comprehensive measure embracing both the Traffic Ordinance and the present Bill on the lines of the Federated Malay States Bill.

4. Clause 1 of the Bill empowers the Governor to appoint a date or dates upon which the Ordinance shall come into operation and to appoint different dates for the different purposes and different parts or provisions of the Ordinance. It is not proposed that the provisions relating to road transport should be brought into operation until the Licensing Board is ready and staffed to deal with this important section of its work. The Carriage of Goods by Motor (Prohibition) Ordinance, 1932 will expire in the normal course on the 31st December, 1938 and it is not therefore proposed specifically to repeal this Ordinance. The sudden application of the road transport provisions on the 1st January, 1938, before the Board has had time and opportunity to consider its policy, would only create chaos, and at present the 1st July, 1938 appears to be an appropriate date from which to apply these provisions.

5. The immediate urgency for the introduction of the Bill arises from the need to establish control of inland water transport on Lake Victoria, and it is proposed that the provisions relating to inland water transport should become operative on the 1st January, 1938.

Since/

Since the Lake waters fall under the jurisdiction of three territories, it is necessary to establish some procedure for co-ordination of the work of the three territorial licensing authorities in this connection. The procedure contemplated is laid down in Clause 16¹⁵(2) of the Bill and is that, where an application is for a licence to carry passengers and for goods over any route which includes a portion of the inland waters of either or both of the other two territories, the licensing authority before adjudicating upon such application shall take such steps as may appear to it to be necessary to ascertain the views upon the application of the licensing authorities in the other territory or territories concerned. Under Clause 3(7) the licensing authority may delegate its powers to any individual member of the authority, and would probably delegate a member to meet and confer with delegates of the licensing authorities of the other territories in regard to applications for licences covering the waters of more than one territory. Various methods for securing this co-ordination have been examined, and that now proposed appears to be the best practical solution.

6. In view of the provisions of the Colonial Air Navigation (Application of Acts) Order in Council, 1937, to which you have drawn attention in your telegram of the 15th October to the government of Tanganyika, all references to aircraft transport have been deleted from the Bill.

7. The cost of the proposed organization in a full working year, including expenses of members of the licensing authority and the salary and allowances of a secretary and inspectorate and clerical staff is not likely to be less than £2,000. Provision for the expenditure contemplated for next year will be made in the

Public Works Department head of the estimates for 1938, and it is intended that this should be wholly covered by fees to be charged for licences issued under the Ordinance. It is not desired to obtain any financial contribution on this account from the Railway. Such a contribution might lead weight to the impression that the licensing authority was in some way associated with and influenced by the Railway Administration, whereas the authority should be regarded as independent and guided only by the public interest.

8. It is anticipated that the Bill will be introduced into the Legislative Council at the end of this month, and it would therefore be appreciated if such observations as you may wish to offer might be communicated to me as soon as possible by telegram.

9. Copies of this despatch are being sent to the Governments of Tanganyika Territory and Uganda, and to the Secretary to the Governors' Conference.

I have the honour to be,

Sir,

Your most obedient,
humble servant,

W Brooke-Popham

AIR CHIEF MARSHAL

G O V E R N O R.

COLONY AND PROTECTORATE OF KENYA



A BILL TO PROVIDE FOR THE CO-ORDINATION
AND CONTROL OF MEANS OF AND FACILITIES
FOR TRANSPORT

1213—906. C. C.—18-10-37

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A Bill to provide for the Co-ordination and Control of means of and facilities for Transport

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

PART I

PRELIMINARY

1. This Ordinance may be cited as the Transport Licensing Ordinance, 1937, and shall come into operation on such date or dates as the Governor may by proclamation appoint, and the Governor may appoint different dates for the different purposes and different parts or provisions of this Ordinance.

Short title and commencement

2. In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

Interpretation

“authorized vehicle” has the meaning assigned to it by section 5 of this Ordinance;

“carriage of goods” includes the haulage of goods;

“chairman” means the chairman of the Transport Licensing Board established under section 3 of this Ordinance;

“driver” in relation to a trailer means the driver of the vehicle by which the trailer is drawn, and where a separate person acts as steersman of a motor vehicle includes that person as well as any other person engaged in the driving of the vehicle, and the expression “drive” shall be construed accordingly;

“fares” includes sums payable in respect of a contract ticket or a season ticket;

“goods” includes goods or burden of any description;

“goods vehicle” means a motor vehicle constructed or adapted for use for the carriage of goods or a trailer so constructed or adapted;

“licence” means a licence granted under this Ordinance;

"motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads;

"owner" in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement means the person in possession of the vehicle under that agreement;

"prescribed" means prescribed by Regulations;

"public interest" means the interests and convenience of the inhabitants of the Colony as a whole;

"Regulations" means regulations made by the Governor in Council under this Ordinance;

"ship" means every description of vessel used in navigation not propelled by oars;

"trailer" means a vehicle drawn by a motor vehicle;

"public service vehicle" means a motor vehicle carrying passengers for hire or reward;

"road" means the carriageway or portion of any road to which the public has right of access for vehicular traffic being that portion commonly in use for vehicular traffic and includes the portion of any bridge used for that purpose;

"road authority" means the Director of Public Works or his duly authorized representative, except where the roads or any of them within any area or district have been vested in a local authority under any Ordinance, in which case the local authority or its duly authorized representative is the road authority for the purposes of this Ordinance.

PART II

APPOINTMENT OF TRANSPORT LICENSING BOARD AND LICENSING OF FORMS OF TRANSPORT

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) In the absence of the Attorney General from any meeting of the Licensing Authority the chairman for such

Licensing
Authority.

meeting shall be a public officer authorized in writing by the Attorney General.

(3) At all meetings of the Licensing Authority the Attorney General, or the public officer authorized by him under sub-section (2) of this section, together with two other members of the Licensing Authority shall form a quorum.

(4) 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.

(5) 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 (4) of this section such salaries, remuneration and allowances, if any, as the Governor in Council may determine.

(6) 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.

(7) 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.

(8) 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.

Licensing
Authority to
submit
annual
report.

4. (1) No person shall, except under and in accordance with the terms of a licence—

Licensing
of
transport.

(a) use a goods vehicle on a road for the carriage of goods—

- (i) for hire or reward; or
- (ii) for or in connexion with any trade or business carried on by him.

(b) for hire or reward convey any person by means of any motor vehicle—

- (i) designed to carry more than six persons, including the driver of such vehicle; or
- (ii) not designed exclusively for the conveyance of persons and their personal effects.

(c) upon the inland waters of the Colony convey by means of any ship—

- (i) any goods or any person for hire or reward; or
- (ii) any goods for or in connexion with any trade or business carried on by him.

(2) When a goods vehicle is being used on a road for the carriage of goods the driver of the vehicle, if it belongs to him or is in his possession under an agreement for hire, hire purchase or loan, and in any other case the person in whose ownership or possession the vehicle is, shall for the purposes of this Ordinance be deemed to be the person by whom the vehicle is being used.

(3) Where at any time goods are carried in a goods vehicle, being a vehicle which has been let on hire by the person who at the time of the carriage of the goods is within the meaning of this Ordinance the user of the vehicle, the goods shall be deemed to be carried by that person for hire or reward.

(4) For the purposes of this Ordinance—

- (a) the delivery or collection by a person of goods sold, used or let on hire or hire purchase in the course of a trade or business carried on by him;
- (b) the delivery or collection by a person of goods which have been, or are to be, subjected to a process or treatment in the course of a trade or business carried on by him;
- (c) the carriage by a person engaged in agriculture in any locality of goods for or in connexion with the business of agriculture carried on by another person in that locality, so long as the goods are carried in a vehicle which the person carrying them is authorized by a licence to use for the carriage of goods for or in connexion with his agricultural business;
- (d) the carriage of goods in a vehicle which is being used under, and in accordance with the regulations appli-

cable to, a licence taken out by a manufacturer or dealer under section 11 of the Traffic Ordinance, No. 26 of 1928, 1928, or by a repairer of mechanically propelled vehicles;

(e) the carriage of goods in a vehicle by a manufacturer, agent or dealer, whilst the vehicle is being used by him for demonstration purposes,

shall not be deemed to constitute a carrying of goods for hire or reward.

(5) It is hereby declared that, for the purposes of this Ordinance, the performance by a local or public authority of its functions shall be deemed to be the carrying on of a business.

(6) This section shall not apply—

- (a) to the use for any purpose other than the carriage of goods for hire or reward of a trailer when drawn by a vehicle constructed solely for the carriage of not more than six passengers, including the driver, and their effects;
- (b) to the use of a vehicle for the purposes of funerals;
- (c) to the use by a local authority, or a person acting in pursuance of a contract with a local authority, of a vehicle for road cleansing, road watering or the collection or disposal of refuse, night-soil, or the contents of cesspools, or for the purpose of any law relating to the weights and measures or the sale of food and drugs;
- (d) to the use of a vehicle for towing a disabled motor vehicle or for removing goods from a disabled vehicle to a place of safety;
- (e) to the use of any ship owned by the Government of the Colony or by the High Commissioner for Transport for the Colony of Kenya and the Protectorate of Uganda;
- (f) to the use of any vehicle or class of vehicles exempted by the Governor in Council by notice in the Gazette. For the purposes of this paragraph "vehicle" includes any ship.
- (7) If any person uses a goods vehicle, motor vehicle or ship in contravention of this section he shall be guilty of an offence against this Ordinance.

licence and a maximum number may be specified in the licence for vehicles or trailers of each type.

(7) A motor vehicle which is acquired by, or under a hire purchase agreement comes into the possession of, the holder of a C licence after the grant thereof shall cease to be an authorized vehicle on the expiration of one month from the date on which it was acquired by him or came into his possession, unless before the expiration of that period the holder delivers to the Licensing Authority a notice in the prescribed form of the vehicle having been acquired by him or having come into his possession.

(8) A motor vehicle specified in the licence shall not, while it remains so specified, be capable of being effectively specified in any other licence.

(9) A person may be the holder of two or more licences whether of the same class or of different classes.

6. (1) Every licence shall, unless previously revoked, continue in force for one year from the date on which it is expressed to take effect: Provided that if on the date of the expiration of a licence proceedings are pending before the Licensing Authority on an application for the grant of a new licence in substitution for an existing licence held by the applicant, the existing licence shall continue in force until such application is disposed of.

(2) With a view to enabling goods vehicles, passenger-carrying vehicles or any ship to be used temporarily—

(a) for the purpose of a seasonal business;

(b) for the purpose of the execution of a particular piece of work; or

(c) for any other purpose of limited duration,

a licence of any class may be granted for a period of less than one year, but not exceeding three months, and any licence granted under this or the next following sub-section is in this Ordinance referred to as a short-term licence.

(3) If on the date of the expiration of a goods vehicle licence, other than a short-term licence, proceedings are pending before the Licensing Authority on an application by the holder of that licence for the grant to him of a new licence, the existing licence shall continue in force until the application is disposed of, without prejudice, however, to the exercise in the meantime of the powers of suspension and revocation conferred by this Ordinance.

Duration of licences.

7. No licence of any class shall be transferable except with the written consent of the Licensing Authority, and in the case of an exclusive licence, with the written consent of the Governor in Council, endorsed on such licence.

Licence not transferable.

8. (1) It is hereby declared that nothing in this Ordinance is to be treated as conferring on the holder of a licence of any class any right to the continuance of any benefits arising from the provisions of this Ordinance, or from a licence, or from any conditions attached to a licence.

Protection of public interest.

(2) The grant of a licence of any class under this Ordinance shall not relieve the holder from complying with the provisions of any law in force in respect to motor vehicles or ships.

9. Notwithstanding any other provisions of this Ordinance, the Licensing Authority may, with the approval of the Governor in Council, and subject to such conditions as it may think fit to impose, grant to any person an exclusive licence authorizing such person to operate vehicles or ships, as the case may be, for the carriage of passengers or goods in such areas, over such routes or between such places and for such period as the Licensing Authority may decide, and the provisions of this Ordinance regarding applications for and objections to the grant of a licence shall apply to the applications for and grant of any exclusive licence as herein mentioned.

Exclusive licences.

PART III PROCEDURE ON APPLICATION FOR LICENCES

A—GOODS LICENCES

10. (1) In the case of goods vehicles, a person applying for a licence shall submit to the Licensing Authority a statement in the prescribed form—

Procedure on application for goods vehicles licences.

(a) containing, as respects motor vehicles proposed to be used under the licence which belong to the applicant or are in his possession under a hire purchase agreement or which if the application is granted he intends to acquire or obtain possession of under such an agreement, such particulars as may be prescribed;

(b) stating the number and type of hired motor vehicles and of trailers proposed to be so used; and

- (c) specifying, in the case of an application for an A licence or a B licence, the facilities for the transport of goods intended to be provided by him under the licence for other persons, including particulars of the district within which, or the places between which, it is intended that the authorized vehicles will normally be used for the purpose of carrying goods for hire or reward, and the rates proposed to be charged therefor.

(2) A separate application shall be made in respect of each permanent base or centre from which it is intended that the authorized vehicles will normally be used:

Provided that where applications are made by a person for an A or B licence in respect of two or more bases or centres the Licensing Authority may, if it thinks fit, grant a single licence in respect of those applications or any of them.

11. (1) Subject to the provisions of the next succeeding section, the Licensing Authority—

(a) on an application for an A licence or for a B licence, shall have full power in its discretion either to grant or to refuse the application, or to grant a licence subject to such conditions as it may impose or to grant a licence in respect of motor vehicles other than those of which particulars were contained in the application, or in respect of motor vehicles or trailers less in number than, or differing in type from, those for the use of which authorization was applied for; and

(b) on an application for a C licence, shall grant the application, subject to such conditions as may be necessary in the public interest, unless the applicant is the holder of a licence which is suspended, or unless a licence previously held by him has been revoked, in either of which cases the Licensing Authority shall have full power in its discretion either to grant or to refuse the application.

(2) The Licensing Authority in exercising its discretion shall have regard primarily to the public interest, including the interest or interests of persons requiring, as well as those of persons providing, facilities for transport, and, in particular,

Discretion of
Licensing
Authority to
grant or
refuse goods
vehicle licences.

shall have regard in the case of an application for an A licence or for a B licence—

(a) where the applicant is the holder of an existing licence of the same class, to the extent to which he is authorized to use goods vehicles thereunder for the carriage of goods for hire or reward;

(b) to the previous conduct of the applicant in the capacity of a carrier of goods;

(c) to the number and type of vehicles proposed to be used under the licence;

(d) in determining the number of vehicles to be authorized, to the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair,

and, in the case of an application for a B licence, also to the extent to which the applicant intends that the vehicles proposed to be used under the licence shall be used for the carriage of goods for hire or reward.

12. 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 Licensing 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:

Protection of
existing
interests.

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.

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B—PASSENGER-CARRYING VEHICLES

Procedure on application for a road service licence.

13. In the case of passenger-carrying vehicles, every person applying for a road service licence shall submit to the Licensing Authority—

- (a) particulars of the type or types of vehicles to be used; and
- (b) in the case of regular services, the time-tables and fare-tables of the services which it is proposed to provide under the licence; and
- (c) in any other case, such particulars as to the frequency of the services and the times expected to be taken on the journeys included in those services as the Licensing Authority may require.

Discretion of Licensing Authority to grant or refuse a road service licence.

No. 26 of 1928.

14. On an application for a road service licence, the Licensing Authority shall not grant such licence if it appears to it from the particulars furnished in pursuance of section 13 of the Ordinance that the provisions of the Traffic Ordinance, 1928, relating to the speed of motor vehicles are likely to be contravened, and in exercising its discretion to grant or refuse a road service licence in respect of any routes and its discretion to attach conditions to any such licence shall have regard to the following matters—

- (a) the suitability of the routes on which a service may be provided under the licence;
- (b) the extent, if any, to which the needs of the proposed routes or any of them are already adequately served;
- (c) the extent to which the proposed service is necessary or desirable in the public interest;
- (d) the needs of the areas through which the proposed routes or any of them pass as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services and the provision of unremunerative services) and the co-ordination of all forms of passenger transport, including transport by rail,

and take into consideration any representations or objections which may be made in the prescribed manner by persons who are already providing transport facilities along or near to the routes or any part thereof or by any local authority in whose areas any of the routes is situate.

C—INLAND WATER TRANSPORT LICENCES

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 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.

D—GENERAL

16. A person applying for a licence under the provisions of this Part shall, in addition to the particulars which he is required under the provisions of this Part to furnish with his application, give to the Licensing Authority any information which it may reasonably require for the discharging of its duties in relation to the application and in particular shall, if required by the Licensing Authority, submit to the Licensing Authority such particulars as the Licensing Authority may require with respect to any business as a carrier of passengers or goods for hire or reward carried on by the applicant at any time before the making of the application and of the rates charged or proposed to be charged by the applicant and of the wages and conditions and hours of employment of persons employed in connexion with the vehicles or ships proposed to be used under the licence:

Procedure on application for inland water transport licence.

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

Power to call for further particulars.

PART IV

CONDITIONS, VARIATION, REVOCATION AND SUSPENSION OF LICENCES. PENALTY FOR NON-COMPLIANCE WITH CONDITIONS OF LICENCES AND OBJECTIONS TO APPLICATIONS AND APPEALS IN CONNEXION WITH LICENCES.

Conditions of licences.

17. (1) It shall be a condition of every goods vehicle or road service licence—

- (a) that any authorized vehicles are maintained in a fit and serviceable condition;
 - (b) that the provisions of any law for the time being in force relating to limits of speed and weight, laden and unladen, the loading of goods vehicles, and the number of passengers to be carried, are complied with in relation to the authorized vehicles;
 - (c) that the provisions of this Ordinance and of the Regulations relating to the keeping of records shall be complied with.
- (2) The Licensing Authority may attach to a licence of any class all or any of the following conditions—
- (a) a condition that the authorized vehicles or ships shall or shall not be used in a specified area or over specified routes;
 - (b) a condition that certain classes or descriptions of goods shall or shall not be carried;
 - (c) a condition specifying the charges or the maximum or minimum charges to be made for the carriage of goods;
 - (d) conditions as to the wages, conditions and hours of employment of persons employed in connexion with the authorized vehicles or ships;
 - (e) such other conditions as may be prescribed in the public interest or with a view to preventing un-economic competition.

and in addition to the above in the case of goods vehicle or road service licences—

- (f) a condition specifying the maximum laden weights of any authorized vehicle;

(g) a condition specifying the number and type of vehicles and trailers to be used,

and in addition to the above in the case of B licences—

- (h) a condition that goods shall be carried only for specified persons.
- (3) Subject to the provisions of section 14 of the Ordinance and to the Regulations, the Licensing Authority may attach to a road service licence such conditions as it may think fit with regard to the matters to which it is required to have regard under the preceding sub-section, and in particular for securing that—
- (a) the fares shall not be unreasonable;
 - (b) where desirable in the public interest the fares shall be so fixed as to prevent wasteful competition with alternative forms of transport, if any, along the routes or any part thereof, or in proximity thereto;
 - (c) copies of the time-table and fare-table shall be carried and be available for inspection in vehicles used on the service;
 - (d) passengers shall not be taken up or shall not be set down except at specified points or shall not be set down between specified points,

and generally for securing the safety and convenience of the public; and the Licensing Authority may from time to time vary in such manner as it thinks fit the conditions attached to a road service licence.

(4) The Licensing Authority may in its discretion attach to an A or B licence as respects the user of the authorized vehicle, or any of them for the carriage of goods for hire or reward all or any of the following conditions, that is to say—

- (a) a condition that certain classes or descriptions of goods only shall be carried;
- (b) a condition that the rates to be charged shall not be lower than such amount for the goods authorized to be carried as the Licensing Authority may consider reasonable;

and in the case of a B licence the Licensing Authority may attach, in addition to the foregoing—

- (c) a condition that they shall be so used only in a specified district or between specified places;
- (d) a condition that goods shall be so carried only for specified persons;

(e) such other conditions as the Licensing Authority may think fit to impose in the public interest.

(5) The Licensing Authority may, from time to time, cancel or vary any of the conditions attached to a licence under the provisions of this Ordinance.

Variation of goods vehicle licences.

18. (1) On the application of the holder of a goods vehicle licence of any class the Licensing Authority by whom the licence was granted may at any time during its currency vary the licence by directing that additional vehicles shall be specified therein, or that vehicles specified therein shall be removed therefrom, or that the maximum number of motor vehicles or of trailers specified in the licence in pursuance of paragraphs (b) and (c) respectively of sub-section (6) of section 5 of this Ordinance shall be increased or reduced.

(2) The foregoing provisions of this Ordinance as to applications for goods vehicle licences of any class, as to the grant or refusal of licences of any class (except the provisions of section 12), and as to the attaching of conditions to goods vehicle licences, shall apply in relation to the variation of any such licence: Provided that the Licensing Authority shall be bound to grant an application for a variation consisting only of the removal of a specified vehicle from the licence, or of a reduction in the maximum number specified as aforesaid, or of the specification in the licence in substitution for a specified vehicle of a vehicle of the same or of a less weight unladen.

(3) Where it comes to the knowledge of the Licensing Authority that a vehicle specified in a licence has ceased to be used under the licence for any reason other than a fluctuation in business, or is specified in another licence, it may vary the licence by directing that the vehicle shall be removed therefrom.

(4) When a Licensing Authority by whom a C licence was granted receives notice under sub-section (7) of section 5 of this Ordinance that the holder of the licence has acquired, or come into possession of, a vehicle as therein mentioned, it shall vary the licence by directing that the vehicle shall be specified therein.

Power to revoke or suspend licences.

19. (1) A licence of any class may be revoked or suspended by the Licensing Authority on the ground that any of the conditions of the licence have not been complied with.

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(2) In any case where a licence is revoked or suspended the Licensing Authority shall, if requested by the licence-holder, state in writing under the hand of the chairman the grounds for the revocation or suspension.

(3) The Licensing Authority may, in lieu of revoking or suspending a goods vehicle licence, direct that any one or more of the vehicles specified therein shall be removed therefrom, or that the maximum number of motor vehicles or of trailers specified in the licence in pursuance of paragraphs (b) and (c) respectively of sub-section (6) of section 5 of this Ordinance shall be reduced, and references in this or any other section of this Ordinance to the revocation or suspension of a licence shall be construed as including a reference to the giving of a direction under this sub-section.

20. (1) Subject to the provisions of this section, any person who fails to comply with any condition of a licence of any class held by him shall be guilty of an offence against this Ordinance.

Penalty for non-compliance with and exceptions from conditions of licences.

(2) In the case of a goods vehicle licence, and notwithstanding that a vehicle is an authorized vehicle, the conditions of the licence shall not apply while the vehicle is being used for any purpose for which it might lawfully be used without the authority of a licence.

21. (1) The Licensing Authority shall, subject as in this section hereinafter contained, publish in the prescribed manner notice of an application for a goods vehicle or road service licence specifying the time within which and the manner in which objections may be made to the grant of the application.

Objections to certain applications or variations of goods vehicle or road service licences.

(2) It shall be the duty of the Licensing Authority, on an application to which this section applies, to take into consideration any objections to the application which may be made by persons who are already providing facilities, whether by means of road transport or any other kind of transport, for the carriage of goods or passengers for hire or reward in the district, or between the places, which the applicant intends to serve, on the ground that suitable transport facilities in that district, or between those places, 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 contrary to public interest, or on the ground that any of the conditions of a licence held by the applicant have not been

complied with: Provided that, on an application for the grant or variation of an A licence, the Licensing Authority shall not be bound to take into consideration objections made by a person who holds a B licence and does not hold an A licence.

(3) This section shall apply to every application for the grant for one year of an A licence or of a B licence, or for the variation of such a licence by a direction that additional vehicles shall be specified therein or that the maximum number of motor vehicles or of trailers specified in the licence in pursuance of paragraphs (b) and (c) respectively of sub-section (6) of section 5 of this Ordinance shall be increased, or, in the case of a B licence, that the district specified in the licence within which, or the places so specified between which, the vehicles can be used for the carriage of goods for hire or reward shall be varied or extended, not being—

- (a) an application which the Licensing Authority is bound to grant; or
- (b) an application for a licence to expire not later than an existing licence under which the vehicles to which the application relates are authorized to be used for the purposes of a business which the applicant has acquired or intends to acquire; or
- (c) an application as respects which the Licensing Authority is of opinion that, having regard to its trivial character, it is not necessary that any opportunity should be given for objection.

(4) This section shall apply to every application under sub-section (2) of section 6 of this Ordinance for a short-term licence unless the Licensing Authority is of opinion either—

- (a) that, having regard to the trivial nature of the application, it is not necessary that any opportunity should be given for objection; or
- (b) that the application has been made with reasonable expedition and that the demand for the use of the vehicles to be authorized under the licence is so urgent as to render compliance with the requirements of this section impracticable.

(5) The Licensing Authority may hold such inquiries as it thinks necessary for the proper exercise of its functions

under this Ordinance, including inquiries into the applicant's reliability, financial stability, and the facilities at his disposal for carrying out mechanical repairs.

(6) Where, on an application for the grant of an A licence or a B licence, the Licensing Authority proposes to grant the application in respect of vehicles other than those of which particulars were contained in the application, it shall publish notice of its proposal as if that proposal were an application to which this section applies, and thereupon the provisions of this section with respect to the making and consideration of objections shall apply accordingly:

Provided that it shall not be necessary for the Licensing Authority to publish such a notice if it is satisfied that the variation, subject to which it proposes to grant the application, will not materially increase the total carrying capacity of the authorized vehicles.

22. (1) The Licensing Authority shall, in the case of an application for an inland water transport licence, publish in the prescribed manner notice of such application specifying the time within which, and the manner in which, objections may be made to the grant of the licence.

Objections to applications for inland water transport licence.

(2) On any such application, the Licensing Authority shall take into consideration any objections to the application which may be made by persons who are already providing transport facilities for the carriage of goods or passengers for hire or reward between the same places which the applicant intends to serve.

23. (1) Any person who—

- (a) being an applicant for the grant or variation of a licence, is aggrieved by the decision of the Licensing Authority on the application; or
- (b) having duly made an objection to any such application as aforesaid, being an objection which the Licensing Authority is bound to take into consideration, is aggrieved by the decision of the Licensing Authority thereon; or
- (c) being the holder of a licence, is aggrieved by the revocation or suspension thereof,

Provision for appeals in connexion with licences.

may within the prescribed time and in the prescribed manner appeal to the Supreme Court.

(2) The case shall be heard by a judge of the Supreme Court to be assigned by the Chief Justice for the purpose.

(3) In hearing any such appeal such judge shall have all the powers which may be exercised by a judge in the hearing of an ordinary civil suit, and may permit any party to appear before him either personally or by advocate.

PART V

OFFENCES AND PROSECUTIONS

24. (1) If, with intent to deceive, any person—
- (a) forges within the meaning of Chapter XXXIV of the Penal Code, or alters or uses or lends to or allows to be used by any other person a licence, or any document, plate or mark by which the subject of the licence is to be identified as being licensed under this Ordinance; or
- (b) makes or has in his possession any document, plate or mark so closely resembling a licence, or any such document, plate or mark as aforesaid, as to be calculated to deceive; or
- (c) alters an entry in a record under section 29 of this Ordinance,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) If any person, for the purpose of obtaining the grant of a licence to himself or any other person, or the variation of a licence, or for the purpose of preventing the grant or variation of any licence or of procuring the importation of any condition or limitation in relation to a licence, knowingly makes any false statement, he shall be guilty of an offence under this Ordinance and be liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) If a police officer has reasonable cause to believe that a document carried on a motor vehicle or ship or by the driver or master thereof is a document in relation to which an offence under this section has been committed, he may seize the document and, when any document is seized under this section, either the driver, master or the owner

Forgery, etc.
of licences.

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of the vehicle or ship shall, if the document is still detained and none of them has previously been charged with an offence under this section, be summoned before a magistrate of the first or second class to account for his possession of the said document, and the magistrate shall make such order respecting the disposal of the said document and award such costs as the justice of the case may require.

For the purpose of this sub-section the expression "document" shall include a plate, and the power to seize shall include power to detach from the vehicle or ship.

25. (1) A person guilty of an offence under this Ordinance for which no special penalty is provided shall be liable, in the case of a first offence, to a fine not exceeding twenty pounds, and in the case of a second and subsequent conviction to a fine not exceeding fifty pounds.

(2) If any person acts in contravention of, or fails to comply with, the Regulations, and contravention of or failure to comply with the Regulations is not made an offence under any other provision of this Ordinance, he shall, for each offence, be liable on conviction before a magistrate of the first or second class to such maximum penalty not exceeding a fine of twenty pounds, as may be prescribed by the Regulations.

Prosecutions and penalties for offences.

PART VI

MISCELLANEOUS PROVISIONS

26. All fees payable under this Ordinance and all fines imposed in respect of offences under this Ordinance or the Regulations shall be paid into the general revenue of the Colony.

Financial provisions.

27. Such fees, payable at such times and in such manner as the Governor in Council may prescribe, shall be charged by the Licensing Authority in respect of the grant or variation of licences.

Fees in respect of licences.

28. The Governor in Council may make Regulations for any purpose for which Regulations may be made under this Ordinance and for prescribing anything which may be prescribed under this Ordinance and generally for the purpose of carrying this Ordinance into effect, and, in particular, but without prejudice to the generality of the foregoing provisions, may make Regulations with respect to any of the following matters—

General power of making Regulations.

(a) the forms to be used and the particulars to be furnished for any of the purposes of this Ordinance;

- (b) the procedure on applications for, and the determination of questions in connexion with, the grant, variation, suspension and revocation of licences;
- (c) the issue of licences, and the issue of copies of licences in the case of licences lost or destroyed;
- (d) the means by which vehicles or ships are to be identified, whether by plates, marks or otherwise, as being authorized for use under this Ordinance;
- (e) the custody of licences, the production, return and cancellation of licences on expiration, suspension or revocation, and the custody, production and return of documents and plates; and
- (f) the notification to the Licensing Authority of vehicles or ships which have ceased to be used under a licence, and in the case of vehicles different Regulations may be made as respects different classes or descriptions thereof and as respects the same class or description of vehicles in different circumstances.

Records as to hours of work, journeys, loads, etc.

29. (1) Subject to the provisions of the Regulations, the holder of a licence shall keep or cause to be kept, in accordance with the Regulations, current records showing—

- (a) as respects every person employed by him as a driver or statutory attendant of an authorized vehicle, or master of a ship, the times at which that person commenced and ceased work and particulars of his intervals of rest and the like information as respects himself when acting as such a driver or attendant or master;
- (b) as respects every journey of a vehicle or ship on which goods are carried under the licence, particulars of the journey, of the rates charged and of the greatest weight of goods carried by the vehicle or ship at any time during the period to which the record relates and the description and destination of the goods carried,

and the Regulations may make provision for requiring drivers of authorized vehicles and masters of ships, to carry the prescribed documents and to make any prescribed entries therein.

(2) Subject to the provisions of the Regulations, the Licensing Authority may dispense with the observance, as

respects the carriage of goods under a licence granted by it, of any requirements of the Regulations, and may grant such dispensation either generally or as respects any particular vehicle or ship or as respects the use of vehicles or ships for any particular purpose.

(3) The holder of a licence shall preserve every record kept under the Regulations for a period of six months, commencing on the date on which the record is made, and for such further period, not exceeding six months, as may be required by the Licensing Authority or a police officer not below the rank of superintendent, and during the period for which he is required by or under this sub-section to preserve a record shall, if required so to do at any time by the Licensing Authority or by any person authorized in that behalf by the Licensing Authority or by any person authorized in that behalf by a police officer not below the rank of superintendent, produce the record for the inspection of the Licensing Authority or of the person so authorized.

(4) If any person fails to comply with the provisions of this section or of the Regulations, he shall be guilty of an offence under this Ordinance.

30. All offences under this Ordinance shall be cognizable to the police.

Offences to be cognizable to the police.

OBJECTS AND REASONS

This Bill is a redraft of the Bill published for criticism on the 31st August, 1937.

The Bill, as now drafted, differs, *inter alia*, from the one already published, in the following respects:—

- (a) The control of aircraft has been deleted from the Bill as this form of transport is already dealt with under the Colonial Air Navigation (Application of Acts) Order in Council, 1937, in force in the Colony.
- (b) Provision is made (clause 9) for exclusive road and inland water licences to be granted by the Transport Licensing Board, with the approval of the Governor in Council.
- (c) Inter-territorial consultation regarding inland water transport is provided for in clause 15 (2).
- (d) The Transport Licensing Board is empowered to attach conditions to a "C" licence.
- (e) The Attorney General is made Chairman of the Board.
- Such expenditure of public funds as will be necessary if this Bill becomes law will be covered by additional revenue.



COLONY AND PROTECTORATE OF KENYA

**Report of a Committee Appointed to Investigate
and Consider the Desirability of Co-ordinating
and Regulating all Forms of Transport in
the Colony**

Price : 2/-

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the Colony

The expenses incurred in connection with the Committee were approximately £110, and the cost of printing and publishing this Report is estimated by the Government Printer at £40. These figures take no account of the time spent by officers of Government not specially seconded for service with the Committee.

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Report of a Committee Appointed to Investigate and Consider the Desirability of Co-ordinating and Regulating all Forms of Transport in the Colony

Your EXCELLENCY,

We, the Committee, appointed by Your Excellency under Government Notice No. 732 of the 22nd October, 1935, have the honour to submit our report.

2. The Committee, as originally appointed by Your Excellency, consisted of—

- The Attorney General (*Chairman*);
- The General Manager, Kenya and Uganda Railways and Harbours;
- The Commissioner for Local Government, Lands and Settlement;
- The Director of Public Works;
- The Hon. Conway Harvey;
- Captain C. B. W. Anderson; and
- Mr. Abdul Wahid, O.B.E.

Subsequently, under Government Notice No. 823 of the 21st November, 1935, Your Excellency appointed Major the Hon. G. H. Riddell, M.V.O., to be a member of the Committee.

During the absence from the Colony of Mr. Abdul Wahid, from early January to the beginning of March, the Hon. D. D. Puri served on the Committee as a substitute member.

3. Our terms of reference were as follows:—

1. To investigate and consider—
 - (1) The desirability in the interests of all sections of the community, of co-ordinating and regulating all forms of transport in the Colony, having due regard to—
 - (a) present conditions, and probable future developments, in the Colony and the adjacent East African territories in transport by air, lake craft, rail or road
 - (b) the necessity for avoiding uneconomic and/or dangerous competition;

- (e) the need for encouraging in the public interest a higher standard of transport:
- (2) The best means whereby any desirable measure of co-ordination can be secured, having regard to the necessity for all forms of transport in the Colony to be safe and dependable and subject to proper regulation and control.
 - (3) The best means whereby suitable co-operation in dealing with this matter can be arranged with the neighbouring territories.
2. To report their findings with recommendations for giving effect to their proposals.

4. The Committee held its first meeting on the 6th November, 1935, and met on thirteen subsequent occasions—the 21st January, the 5th, 6th, 26th and 27th February, the 14th, 16th and 17th April, the 12th, 13th and 15th of May, and the 19th and 20th of June, 1936. All the meetings of the Committee were held in Nairobi.

Unfortunately, the Commissioner for Local Government, Lands and Settlement was, owing to illness, unable to attend any of the meetings held after the 6th February.

NEED FOR INQUIRY.

5. We understand that the decision by Government to carry out an inquiry of this comprehensive nature arose directly out of recommendations received from the Central Roads and Traffic Board (appointed under the Central Roads and Traffic Board Ordinance, 1929, to advise on traffic matters) as a result of applications received from certain road transport organizations for exclusive licences of operation in specified areas, and after considering the views of the General Manager of the Railways and Harbours Administration submitted in his letter of the 4th July, 1935 (Appendix E).

INQUIRIES IN ADJACENT TERRITORIES.

6. Shortly after the appointment of the Committee, the Report of the Tanganyika Committee dated the 16th November, 1935, on the question of competition between Road Transport and Railways in Tanganyika Territory, and the Report of the Uganda Committee, dated the 12th December, 1935, on Road Accidents, became available, and have been of great assistance to us in our deliberations. The policy of including important memoranda dealing with the problems under investigation in

the report as appendices, adopted by the Tanganyika Committee, has been found particularly helpful and has been followed in this report.

EVIDENCE AND DATA.

7. At our first meeting we decided to invite evidence, both written and oral, from persons interested in transport undertakings. Invitations were accordingly issued through the medium of the following publications:—

The East African Standard,
The Kenya Daily Mail,
The Mombasa Times,
The Coast Guardian,
The Kenya Weekly News, and
The Official Gazette.

8. In addition, letters inviting memoranda and oral evidence were sent to the various individuals and organizations shown in Appendix A.

In reply to these invitations we received a large number of memoranda, and, in addition, heard oral evidence from a number of representative people. The names of those who gave written or oral evidence, or both, are shown in Appendix B.

9. To assist the Committee in obtaining a picture of existing road transport conditions, the Provincial Commissioners and District Officers were asked to supply information in regard to road motor vehicle services, both passenger and goods. The information so supplied has been briefly summarized in Appendix C.

10. A large number of reports and Acts relating to the co-ordination and regulation of transport in other countries and colonies was placed at our disposal by the General Manager of the Kenya and Uganda Railways and Harbours. A full list is shown in Appendix D.

DEVELOPMENT OF TRANSPORT.

11. The matter which we have been asked to consider and report upon is one of supreme importance to the economic welfare of the Colony. But it is a problem of considerable complexity and, to the best of our knowledge, has not yet been completely and satisfactorily solved in other countries.

We are aware of the difficulties that have been encountered in countries where transport has been allowed to develop under a system of free competition, and of the difficulty and cost of regulating matters at a stage when vested interests have been created. And indeed, even at this early stage in the transport history of this Colony, it is clear that vested interests exist in all forms of transport, the most important of which is the Kenya and Uganda Railways and Harbours services.

In making our recommendations therefore, we have been influenced and guided by the necessity of avoiding any proposals which would have the effect of stifling or hindering the development of new forms of transport on economic lines, or which would involve the introduction of cumbersome, expensive and restrictive machinery in excess of the requirements of a comparatively undeveloped Colony like Kenya. At the same time, we are anxious to submit recommendations which will be constructive and lead to the proper development and organization of all forms of transport, each in its most suitable sphere of action; and the recommendations in this report are submitted in the hope that they will—

- (a) lead towards a gradual improvement in transport generally;
 - (b) facilitate the provision in due course of adequate, efficient, but not wasteful or extravagant, transport services of all kinds at a minimum cost to the user and general taxpayer; and
 - (c) tend to develop each form of transport along lines most advantageous to the community as a whole, and in such a manner that the transport industry will become a co-ordinated whole, with a minimum of waste and overlapping, either as regards the supply of services, or (what is often overlooked) in the expenditure of capital on the provision of facilities, such as roads and railways, which are not fully utilized.
12. We have therefore made the focal point of our recommendations the establishment of a body which, guided solely by its interpretation of the general "public interest", will provide for the co-ordinated development of the road, rail, air and inland-water systems of transport. The guiding principle of "public interest" will allow that measure of flexibility to be imported into the decisions of this body as may be justified by the development taking place in each or any form of transport.

TRANSPORT COSTS.

13. In order that the comparative economic merits of the different forms of transport may be appreciated, it is essential that full detailed costs be known. So far as rail transport is concerned, such figures are published in great detail in the Annual Report of the General Manager of the Kenya and Uganda Railways and Harbours. With regard to road and air transport, however, detailed figures are not available. We are aware that the Transport Policy Board has had this matter under review, and that certain figures were submitted to it, but in some respects these figures gave an incomplete picture of the cost to the country of the road facilities provided, particularly as regards the effective (as distinct from the actual) loan charges and allowances for depreciation. In order that proper comparisons may be made, it is, in our opinion, necessary that all such charges should be included. Rail costs include all such charges, whereas road costs are frequently taken to refer only to operating costs, or the charges of road transport organizations, which may in fact be only a small proportion of the total cost paid by the user and taxpayer.

We are therefore of the opinion that some acceptable basis of road costs should be agreed upon in order that statistics can be compiled in a manner which will enable reasonable comparisons to be made with the cost of other forms of transport.

14. We also recommend that similar cost figures be kept in respect of air services, including the provision and maintenance of aerodromes, the control and inspection, personnel, etc. We hope therefore that the Transport Policy Board of the Governors' Conference will be able to arrange for such figures to be obtained and published.

ROAD *versus* RAIL.

15. While we realize that the problem for consideration concerns all forms of transport, perhaps its most important aspect in this Colony is the relationship of rail transport to road transport, but as the Tanganyika Report referred more particularly to this matter it was very gratifying to find the problem so well stated therein. In consequence, it has not been found necessary to repeat much of the information contained in that Report and its Appendices, thereby saving much time and expense. We may state at once that we fully appreciate the difficulty of attempting to equalize conditions so as to

make road and rail transport really competitive, and a memorandum submitted by the General Manager, Kenya and Uganda Railways and Harbours, outlining briefly some of the problems to be discussed, is included in Appendix G.

16. Now it has been urged that the ultimate objective to be attained for the proper development of all forms of transport within a territory is the provision of a "fair basis of competition" between the different forms, and, subject to suitable regulation, to allow within this definition the more intrinsically suitable forms of transport to prevail. State railways are, however, theoretically controlled by their customers, and their rating policy is adjusted accordingly, whereas other forms of transport are free to select their spheres of operation and to apply such rates as will prove most remunerative to their owners.

17. We realize that the general problem in Kenya Colony is much intensified by the fact that a railway tariff policy has been adopted, in the interests of the majority, which grants very low rates to primary produce, and which, in consequence, must charge high rates on imports, which thereby become vulnerable to road competition. We feel that so long as the Colony demands a policy of this sort, special protection must be given to the Railway, and that any legislation which may be introduced as a result of the recommendations contained in this report must be capable of providing such protection, particularly between Mombasa and up-country stations, when such protection is shown to be in the public interest. Several witnesses, representing road transport and farming interests, in their evidence before the Committee definitely supported this principle.

(The bearing of this question on railway rating policy was brought to our notice, and recent correspondence with the Governments of Kenya and Uganda in this connection, together with a memorandum to the Railway Advisory Council dated the 16th July, 1935, is included in this report as Appendix F.)

We consider, however, that, while existing approved tariff policies undoubtedly accentuate the position as detailed in the preceding paragraphs, even a more balanced and normal tariff would not eliminate the danger of road transport (particularly small unorganized units) seriously crippling railway finances by taking the cream of the traffic and leaving to the Railway the bulky low-rated traffic.

Consequently, if a "fair basis of competition" is to be the ultimate objective in this Colony, it is clear that either the Railway must be released from its obligations as a common carrier, subject to rating policies and administrative conditions laid down by the Government it serves, or that similar conditions must attach to other competitive forms of transport. To apply in this Colony either of these alternatives would result, on the one hand, in the elimination of all other forms of transport except the Railways, and, on the other hand, would be such a complete reversal of the economic policy under which the Colony has so far developed as to render it impracticable within any measurable period of time.

18. We are aware that the Secretary of State and the Government of Kenya do not consider that legislation of the completely prohibiting type, such as the Carriage of Goods by Motor (Prohibition) Ordinance, 1932, which is designed to protect the Railway against competition between the coast and certain up-country stations, can be maintained indefinitely, and that such protection as is justified in the public interest should be provided by a more flexible and modern type of legislation. There is, moreover, evidence that the existing legislation is being evaded with a resulting loss of revenue to the Railway Administration. The prevention of this evasion is difficult, and the position is aggravated by the fact that in some cases the spirit, if not the letter, of the law, is being evaded by transport owners making use of circuitous routes, on which traffic is not prohibited, but which serve areas, the transport of goods to which it was intended, under this legislation, to secure to the Railway. In this connection there is another factor which must be borne in mind, namely, the amazing progress that has taken place in the last ten years in the development of the internal combustion engine, which progress may well continue and become an economic and social factor of the greatest importance in the development of this country.

The impossibility of leaving the problem to take care of itself under "free and unrestricted competition" is discussed in paragraphs 5 to 9 of the General Manager's memorandum, wherein is quoted an explanation by Brigadier-General Sir H. Osborne Mance, an international authority on the subject, of what such competition would really mean. We agree with General Mance's conclusions that, in the interests of the public generally, unrestricted and free competition is not a solution. Some form of regulation, designed to meet local conditions,

and retaining where possible the stimulating advantages of free competition while avoiding the danger of uncontrolled monopolies is, in our opinion, required.

19. The existing expedient of applying legislation of a prohibitory character to certain sections of the Colony's roads covered by the railway route as a protection to the Railway against motor transport competition represents no real solution of the problem, is vexatious, is being circumvented, and, should it be extended, would tend seriously to hamper the proper development of the transport needs of the country. Furthermore, the principle of prohibition, rightly or wrongly, raises the criticism that the Railway is being sheltered from the stimulus of competition. And we feel, therefore, that, while at this stage in the transport history of the Colony it would be unwise to suggest any far-reaching or revolutionary changes in existing transport policy, an early departure from the rigidity of the present restrictive legislation would allow of greater elasticity for the proper promotion and economic development of each form of transport in the sphere to which it is intrinsically more suited.

COMPETITION BETWEEN TRANSPORT OF THE SAME TYPE.

20. Apart from the question of competition between railway and road transport, we are impressed with the desirability of regulating competition between transport interests of the same type, as exemplified in conditions known to exist in other countries, and which is so strikingly described in the Report of the Road Accidents Committee in Uganda, referred to in paragraph 6 of this report.

Wasteful competition between road transport operators is known to exist. Such competition results in unreliable and inefficient services to the public, and deters sound transport concerns from investing money for the purpose of providing satisfactory and economic transport.

PUBLIC SAFETY.

21. A question quite distinct from the economic consequences of competition is that regarding the degree of control necessary to ensure public safety and sound development as exemplified by the facts disclosed in the Uganda Report, which deals with a situation not complicated in any way by the railway factor. While the Uganda inquiry was directed particularly to the question of road accidents in connection with passenger traffic, and while it is clear that much of the trouble

there is due to causes not in any way connected with the regulation or control of traffic, such as narrow, high-cambered roads with sharp blind curves, the Uganda Committee made several definite statements which bear closely on the problem being dealt with by this Committee.

22. A few of these may be quoted with propriety, namely:—

Page 6, paragraph 14:

"Further, it should be observed, in passing, that the evidence quoted above tends to show that the units of a disciplined transport service are not likely to cause accidents, since it is possible to exact some respect for the rules of the road from drivers in such a service. It has been made very clear to the Committee that the 'free lance' has no respect for these rules."

Page 9, paragraph 23:

"The least satisfactory feature of the omnibus industry at the present time appears to the Committee to be the excessive competition by which it is characterized, particularly in Buganda."

Page 10, paragraph 23:

"The Committee heard the representatives of the Uganda Bus Union and from other witnesses that the road passenger transport industry is on the verge of bankruptcy."

Page 10, paragraph 24:

"The Committee consider it immediately necessary, for the reduction of accidents and to minimize the danger of such as occur, that steps be taken to eliminate the conditions of unrestrained competition to which reference has been made above."

23. From these extracts it will be clear that, so far as passenger services are concerned, the Uganda Committee agrees that some degree of control and regulation is necessary. For similar and additional reasons we are of the opinion that some control and regulation is also necessary for goods services.

REGULATION OF TRANSPORT.

(a) Road.

24. So far as evidence given to the Committee is concerned, it was gathered that a large section of the transport industry itself, mostly of the small owner-carrier-trader type, would be quite happy if left to themselves.

and retaining where possible the stimulating advantages of free competition while avoiding the danger of uncontrolled monopolies is, in our opinion, required.

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REGULATION OF TRANSPORT.

(a) Road.

24. So far as evidence given to the Committee is concerned, it was gathered that a large section of the transport industry itself, mostly of the small owner-carrier-trader type, would be quite happy if left to themselves.

On the other hand, the few organized transport systems that exist gave evidence to show that it would be difficult, if not impossible, to raise money for purely transport purposes unless some measure of regulation could be introduced to safeguard such an enterprise from haphazard, irresponsible competition.

25. It was clear, too, from the evidence of the Commissioner of Police that the existence of properly organized and disciplined transport organizations would simplify his task of enforcing the law. We regard this as very important, inasmuch as the Commissioner gave evidence to the effect that owing to the inadequacy of his existing forces he could not enforce existing laws, far less any new laws.

We are convinced from his evidence that much could be done to improve the present position by the stricter application of the existing laws, and we strongly recommend that Government should place the Commissioner of Police in a position to do his duty in this respect. It was stated by the Commissioner that he could make suitable arrangements to control traffic effectively on roads throughout the Colony at an approximate initial cost of £1,124 for the necessary cars and equipment, and an annual recurrent charge of £2,332 for staff, running and repairs to cars, etc. This estimate is based on the assumption that it would be necessary to post officers permanently in several districts, but we anticipate that the estimated cost could be reduced by providing for such staff only as would be necessary to travel to and from various parts of the Colony for the purpose of making periodical checks on road transport vehicles.

26. On this point the evidence of the motor trade was generally against any further regulations, but one or two representatives were strongly in favour of compulsory third party insurance, which suggestion is dealt with later in this report.

27. In considering the evidence of interested road transport owners it became clear that many were under the impression that all regulations would be designed to give the Railway a monopoly. This, of course, is not our intention, nor is it the wish of the Railway Administration. Our aim is, as previously stated, to submit recommendations for the control and regulation of all kinds of transport in the interests of the general public and of the transport industry, and where monopolies, whether road, rail or air, are considered necessary, they should only be permitted under such conditions as would safeguard the general interests of the community.

28. So far as users of transport were concerned, the witnesses were emphatic that nothing should be done to interfere with the development of the country and the export of its bulk crops, which are often of a seasonal nature. With this point of view we are in agreement.

(b) Air Services.

29. The witnesses who gave evidence with regard to air services felt that there was no need at the present time to introduce regulation, either as regards competition with other forms of transport or as regards competition between themselves.

It is agreed that at the present time no one can inaugurate air services without considerable capital resources and a comprehensive technical organization. At the same time, having regard to the rapid development now taking place in aircraft design and construction, such conditions may not always apply. Furthermore, there appears to us to be no adequate reason why air transport should not be included in any legislation that may be decided upon for the control and regulation of transport, and we recommend accordingly.

(c) Inland Water-borne Services.

30. With regard to inland water-borne services, we are satisfied that there is no reason to restrict native canoes, boats or dhows on the inland waters so long as they provide services in the public interest, and any legislation therefore should, in our opinion, be so designed as to facilitate the granting of licences or permits to these craft in such circumstances.

We are aware, however, of the possibility of other craft of a more serious type plying on the Lake in competition with existing services and consider that such transport should, in the same way as other forms of transport, be subject to the test of public interest.

31. Some consideration was given to the inclusion of the Mombasa Island waters in any legislation that might be adopted, but we feel that such problems as may arise in these waters would be more appropriately dealt with under special legislation, such as the Local Government (Municipalities) (Amendment) Ordinance, 1935, and the recently enacted Ferries Ordinance.

TRAFFIC CONTROL LAWS.

32. We carefully examined the views of the Commissioner of Police, and other witnesses, in regard to the necessity of strengthening existing laws by suitable amendments, and the following recommendations are submitted for the consideration of Government:—

- (1) A Rule to be made under section 49 (p) of the Traffic Ordinance, 1928, prescribing the gross weight permissible for each class of lorry used for the conveyance of goods.

The evidence received by the Committee proves conclusively that the practice of overloading vehicles is common all over the Colony. Under existing laws, prevention of this dangerous and undesirable practice is almost impossible. It is considered that the introduction of the Rule recommended above, and the provision of the necessary wheel weighers (part of the equipment already referred to in paragraph 25), to permit the weight of vehicles with their loads being checked on the road, would enable the police to deal satisfactorily with the practice of overloading.

- (2) An amendment to provide that no owner of a commercial vehicle or public service vehicle shall be issued with a licence until the owner has obtained a certificate from a competent and duly recognized motor mechanic to the effect that the vehicle is in a fit condition for use on the road.

Although the Traffic Ordinance, 1928, contains a permissive provision for the examination of all motor vehicles, such examination is seldom undertaken as a preliminary to licensing, except in the case of public service vehicles. And, owing to the lack of officers with the necessary mechanical qualifications, a proper examination for the purpose of ascertaining if a vehicle is in a fit condition for use on a road cannot be made by the police. We consider it absolutely necessary that only mechanically sound lorries or buses should be permitted to ply on the roads.

We consider that there should be little difficulty in obtaining sufficient expert and reliable mechanical examiners to undertake the required examination for a fee of between ten and twenty shillings per vehicle, and we recommend that Government should negotiate with suitable persons who could be relied upon to make satisfactory examinations. In our opinion the owners of vehicles should pay these examination fees.

RECOMMENDATIONS.

33. Having reached this stage in our deliberations we were in a position to discuss main principles and our recommendations in connection therewith.

34. The first principle to be decided was whether some co-ordination and regulation of all forms of transport (i.e. rail, road, air and water-borne) was desirable in the interests of the community.

35. We are satisfied that unrestricted competition between all forms of transport is not in the best interests of the country or even of the transport owners themselves, and we are unanimously in favour of some form of co-ordination and regulation designed to assist the development of such transport in the public interest; and our conclusion is that the best way of attaining the desired end would be by a system of licensing based on the acid test of public advantage or necessity.

The system of licensing we recommend is clearly shown in the draft Bill, enclosed as Appendix H.

36. To administer this system, we recommend that a Central Transport Development Board should be constituted, with power to appoint, if necessary, agents or local committees.

Considerable discussion took place with regard to the constitution of this Board. It was felt that a small Board of three would be the most suitable for the purpose, but owing to the difficulty of always ensuring the attendance of a full Board owing to absence on leave, sickness, or other duties, it was felt in the circumstances that the Board should consist of five persons of whom three would form a quorum.

37. We recognize that such a Board would, under our proposals, possess very wide powers, almost sufficient, in fact, to render sterile Government policy with regard to transport. We feel, therefore, that the Board should be composed of individuals of the highest calibre and, if possible, entirely disinterested in any transport industry.

The members of the Board might appropriately receive fees for attendance at meetings, and a permanent paid secretary may be necessary.

38. The decisions of the Board would depend largely upon the definition of the term "public interest", and we consider that this should be defined in legislation in the widest possible way.

39. According to information obtained through the Press (the *East African Standard* of the 10th June) Your Excellency agreed at the Governors' Conference held recently at Dar es Salaam that consideration should be given to the advisability of obtaining an expert from England to advise in regard to regulation of transport. We therefore do not consider it necessary to make any recommendations in regard to this matter.

COMPULSORY INSURANCE.

40. With regard to the important question of insurance, the majority of the Committee consider that the owners of all mechanically propelled vehicles used on a road should be compelled to insure against third party risks. From information obtained from representative insurance companies, the cost of such insurance is, in our opinion, in no way prohibitive. We therefore recommend that compulsory third party insurance of all mechanically propelled vehicles should be insisted upon.

41. Provision has been made in the draft Bill (Appendix H) for compulsory insurance against third party risks in the case of goods vehicles, and both third party and passenger risks in the case of vehicles carrying passengers for reward. As already stated, the cost of third party insurance is not prohibitive, whilst in the case of insurance against injury, etc., to passengers, the provisions of the draft Bill do not impose any additional cost to passenger carrying transport in view of the fact that insurance to cover such risks is already effected by owners of vehicles employed for the conveyance of passengers for hire or reward.

We consider that there should be no limitation of liability of insured persons and the relevant clauses of the proposed Bill have been drafted accordingly.

A matter of considerable importance is the necessity of protecting the rights of third parties where the insured becomes bankrupt, and if our recommendation in regard to third party insurance is implemented, it will be necessary to introduce legislation on the lines of that enacted in England under the Third Parties (Rights against Insurers) Act, 1930, and legislation based on Part II section 10 *et seq.* of the Road Traffic Act, 1934, may also be required.

EXISTING LICENCE FEES.

42. We also had under review the existing licence fees and taxes paid in respect of road motor vehicles. There has been, and no doubt will continue to be, an increase in the use

of vehicles propelled by fuel-oil engines and, in order that taxation should be fairly applied between the various forms of mechanically propelled vehicles, we recommend that Government should review the fees and taxes applicable thereto. (Major Riddell dissents from this recommendation—his dissenting minute is attached).

LICENCES FOR ANCILLARY TRANSPORT.

43. Ancillary transport, that is, transport which is ancillary to any trade or business (other than the business of a transporter of goods for hire or reward) carried on by any person, is a matter which requires careful consideration since unconditional and unrestricted transport of this nature might easily undermine the intentions of regulation. A majority of the Committee consider that bona fide ancillary transport, while being made subject to licensing, should be as unrestricted as possible and that, in the case of owners of lorries who convey personal property on routes already served by other forms of transport, there should be no restriction provided this class of transport does not become of such importance as to be contrary to public interest. The importance of the ancillary user is realized, but, at the same time, unless properly defined and regulated, ancillary traffic of the type available in this country in large quantities is a potential source of danger and may effectively neutralize any scheme of regulation. The Director of Public Works felt that no attempt should be made to licence ancillary transport as it would be vexatious in nature and would add enormously to the work to be carried out by the Board. (His views are set out in his Minority Report, attached.)

Having regard, however, to the great importance of this type of transport and to the possibility, unless it is controlled, of it undermining any legislation that might be introduced to control other forms of transport the remainder of the Committee is of the opinion that ancillary transport should be included in the licensing scheme.

GENERAL APPLICATION OF REGULATION.

44. The Director of Public Works also felt strongly that the proposed licensing scheme should only be applied to certain main scheduled roads, generally those parallel to the Railway. The remaining members, however, consider that such a scheme would be inadequate, difficult to enforce and would require extra police supervision. For these and other reasons the majority are of the opinion that the licensing scheme should apply to the whole Colony.

45. With regard to the grant of exclusive licences, in exceptional circumstances, we are not averse to this course being adopted provided that they are issued to sound transport organizations, particularly in areas where no services exist, and reasonable safeguards are insisted upon—i.e. reasonable period for the existence of the licence and suitable conditions of operation and charges. No provision has been made in the draft Bill for the issue of "exclusive" licences, but the Bill would enable the Board to restrict the issue of licences to a single operator so long as it was satisfied that the holder of a licence was adequately fulfilling his obligations to the community, and the issue of additional licences would not be in the public interest.

LICENCES FOR EXISTING TRANSPORTERS.

46. To avoid hardship, we consider it is essential that the transport industry, as it exists at the time the proposed Control Board commences operations, should for financial and contractual reasons, be free for a reasonable period from any limitations which a new Regulation Act might impose. We therefore recommend that all transport undertakings which have been carrying on the business of transport for reward for one year prior to the date on which the proposed Act comes into force, should at the outset be granted licences for vehicles without any restriction whatever.

UNECONOMIC ROADS.

47. Reference has already been made in this Report to uneconomic transport by hauliers, but a further uneconomic transport issue exists. The unsatisfactory alignment and condition of some of the roads in the Colony makes road transport, no matter how well organized by an operator, uneconomic when regarded in the light of the public interest. As an example, from the evidence presented to the Committee it would appear that, although there has been a considerable increase in road haulage in the Nyanza District, the improvement in the maintenance of existing roads lags far behind the requirements of the district. Again, should roads users desire to travel from the Coast to Nairobi they are compelled to travel via Moshi instead of by the direct route running parallel to the Kenya and Uganda Railway.

Provided suitable legislation, such as that now proposed, is enacted we urge Government to consider at an early date the possibility of allocating additional funds for the purpose of improving roads wherever the public interest justifies improved means of communication.

COST OF PROPOSED TRANSPORT DEVELOPMENT BOARD.

48. We have endeavoured to estimate the probable cost to Government of administering the proposed Act, and, from information obtained from Nyassaland, where transport conditions are somewhat similar to those in this Colony, we consider that the cost per annum should not be excessive. In our opinion the fees paid for the issue of licences should be as low as possible and we recommend that such additional revenue as may be found necessary to meet the cost of administering the Act should be obtained from other sources.

CO-OPERATION WITH NEIGHBOURING TERRITORIES.

49. From the evidence given before us we are satisfied that the problem should be approached from the point of view of the public interest not only of Kenya, but also, if at all possible, of East Africa. Transport problems are peculiarly independent of political boundaries and where similar conditions exist in neighbouring territories we hope that it will be found possible to deal with the problems that arise by similar legislation. We therefore welcome the suggestion contained in the Tanganyika Report that these problems should be discussed by representatives of all three territories, particularly with regard to common interests on Lake Victoria.

50. We are in agreement with the aim of the neighbouring territory to design, if possible, suitable legislation applicable to all three territories, and we recommend that after this Report has been published, steps should be taken to hold an Inter-territorial Conference with a view to obtaining agreement on all main points. Should, however, this prove unsuccessful, we feel that there should be no difficulty in proceeding with such legislation as may be considered most suitable for the needs of this Colony.

PROPOSED LEGISLATION.

51. The draft Bill, as finally approved by the Committee, is reproduced, together with a covering explanatory memorandum, as Appendix H. The Bill is designed to implement our recommendation for the introduction of a system of licensing based upon the public interests and necessity.

52. In examining this Bill, certain other matters, not already considered in detail, were discussed and the following notes represent the conclusions reached:—

(1) Duration of Licences.

Careful consideration was given to this important matter and we recommend that the duration of licences should not exceed one year.

It may be suggested that this period is too short and might adversely affect the growth of transport undertakings in view of the possibility of the Board refusing to renew licences for vehicles previously licensed or to grant licences for additional vehicles, but if the proposed Development Board carries out its duties on the lines laid down in the draft Bill, sound transport organizations should have nothing to fear from the Board's decisions. We are particularly anxious to impress on Government that our proposals for the regulation of transport should not be regarded as of a repressive character but rather as proposals to assist in the development of transport on economic lines.

(2) *Provision with regard to Construction of Railways.*

We had intended including in the Bill provisions dealing with the future construction of railways, but as any proposal to build a line must, under existing laws, receive the assent of the legislature of the Colony before the project can be carried out, we came to the conclusion that no useful purpose would be served by introducing further legislation in connection with railway construction. We recommend, however, that no additional railway line should be proceeded with until the project has been considered and reported upon by the proposed Transport Development Board.

We realize that, under the provisions of the proposed Act, the Railway Administration will be required to apply for licences to operate its inland-water services and such road services as that Administration may inaugurate.

53. We desire to record our appreciation of the efficient and painstaking manner in which Mr. C. H. Bloomfield has performed his secretarial duties.

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

W. HARRAGIN, *Chairman*,
G. D. RHODES,
CONWAY HARVEY,
C. B. ANDERSON,
G. H. RIDDELL,
ABDUL WAHID.

Nairobi,

20th July, 1936.

POSTSCRIPT.

We desire to place on record our grateful appreciation of the ability with which our Chairman has conducted the deliberations of the Committee, and of the tactful and helpful manner in which he guided discussion.

G. D. RHODES.
CONWAY HARVEY.
C. B. ANDERSON.
G. H. RIDDELL.
ABDUL WAHID.

MINORITY REPORT.

Ref No. A.822/15/9/1/1.

PUBLIC WORKS DEPARTMENT,
HEAD OFFICE,
NAIROBI.

19th June, 1936.

Secretary,

Co-ordination and Regulation of Transport Committee,
P.O. Box 121, Nairobi.

As I am leaving the Colony and shall not be attending any more meetings I desire to express my disagreement with the majority of the Committee regarding their proposed recommendations that a comprehensive Bill entitled "The Development of Transport Bill, 1936" should be enacted. The term "Development of Transport Bill" has, of course, been substituted for the previous title "The Control of Transport Bill".

2. I am of the opinion that there is no necessity in this Colony for a comprehensive Ordinance on these lines. It will be expensive to administer in spite of hopes to the contrary. The Colony is not in a position to afford an Ordinance of this kind pending the period when it may become really necessary. I consider that the essential requirements in respect of control and development of transport could be achieved by a short Bill on much less ambitious lines which would be inexpensive to administer.

3. In my view it is improper to endeavour to draw a comparison between the requirements for the licensing and control of public service and goods carrying vehicles in this Colony and those for advanced States such as England, South Africa, etc., nor does the argument apply that if transport is not controlled on comparable lines now it will be difficult to change later on account of vested interests.

4. The view has been put forward that competition between vehicles engaged in carrying goods or passengers for hire or reward may become undesirable. In my judgment this view is often exaggerated. As far as busses carrying passengers for hire or reward are concerned I recognize the desirability of control on the main routes of the Colony in the interests of the passengers. With regard to goods carrying vehicles, I know of no such necessity. It has been held that goods vehicles often carry goods at an uneconomical rate. The average rate last year in the Public Works Department,

inclusive of repairs, reconditioning and everything else which is appurtenant, works out at Cts. 48. In previous years the rate was about the same. Contract rates are very various, ranging up to Sh. 1/50 per ton mile in Suk, Turkana. This Department arranges a large number of contracts for transport purposes and is desirous of securing as much competition in tendering as possible. Such contracts are essential for road making and other purposes throughout the Colony. In my view the only object required to be achieved in this Colony at present, and for many years to come, is the control of vehicles carrying goods for hire or reward along routes where serious competition with the Railway occurs. That necessity is only of importance on account of the use of the Railway as a means for subsidizing the export of country produce. If that circumstance did not exist no control of vehicles carrying goods for hire or reward on those routes would be necessary at all.

5. As far as damage to road surfaces is concerned, I hold the view that the major damage during wet weather is on account of goods carrying vehicles. This can be adequately controlled by sufficient application of the Road Protection Ordinance. The major damage during dry weather is caused by excessive speed of all vehicles especially privately owned vehicles. The over-loading of lorries is only of importance during wet weather so long as the speed is not too high, but the chief requirement to reduce the damage to roads is better police supervision and control. It has, I understand, been contended by some that if the Bill proposed by the majority of the Committee were enacted, the requirements for police supervision would be reduced because if licence holders did not comply with the law they would be liable to lose their licences. I do not agree with this opinion.

6. The conditions pertaining to the transport of goods for hire or reward in this Colony cannot, without difficulty and expense, be met by the issuance of licences in such a way as to bring the use of such vehicles under a system of centralized control such as prevails and is required in advanced countries. In this Colony transport requirements are intense in particular districts or particular roads for short periods. Moreover, vehicles not infrequently break down in out of the way parts of the country. It is necessary under those circumstances to hire a vehicle immediately; that vehicle is quite possibly not a vehicle licensed by the Board for hire or reward, and consequently its use would be contrary to the law until it obtained such a licence.

7. As far as passenger services (busses) are concerned, my view is that such services should only be permitted on the main routes under licence. The list of roads to which this provision would apply could be extended or reduced in accordance with the requirements for the development of the Colony. I am not in favour of its application to minor roads in outlying districts because I consider that such application would serve no useful purpose and would, in fact, be a nuisance and expense. In my view the busses carrying natives on such outlying roads are adequate for present conditions.

8. As regards goods services I am entirely opposed to provision being made for "C" licences. Such a provision in my opinion is entirely unnecessary and would merely duplicate the work of the Licensing Officer under the Traffic Ordinance. I agree with provision being made for "A" and "B" licences, but only in so far as certain scheduled routes, which would ordinarily be those parallel to the Railway, are concerned. The schedule could be increased or reduced as requirements demanded. The use of such scheduled routes for goods carrying purposes for hire or reward by unlicensed vehicles would, under this method, be confined to travel between points of entry on to a scheduled road and the nearest Railway Station.

9. For the above reasons I am in disagreement with the majority of the Committee regarding the necessity for the Bill as drafted. At a time when the Colony cannot afford to provide adequate funds for many essential services it is, in my opinion, improper to enact an Ordinance which, as far as many of its provisions are concerned, is quite unnecessary, and would cause expense in administration.

H. L. SIKES,
Director of Public Works.

DISSENTING MINUTE.

NAIROBI,

18th July, 1936.

THE CHAIRMAN,

CO-ORDINATION AND REGULATION OF TRANSPORT
COMMITTEE.

Under paragraph 42 of our Report, I am not prepared to recommend to Government that they should review the fees and taxes on road motor vehicles, in view of the fact that an increase in the use of vehicles propelled by crude oil engines is anticipated.

I hold the view very strongly that the public, and especially the public who produce primary products, should reap the full benefit from the cheapening of the running costs of road transport which the new engines will assure them. The initial cost of these vehicles is very greatly in excess of petrol driven vehicles, and any raising of the fees on crude oil would militate against their introduction. The funds acquired by Government in respect of fees and taxes from the road transport industry are very largely in excess of the amount returned to the industry in road maintenance, etc., and I object to the recommendation contained in this paragraph 42 accordingly, which I should like to see deleted.

G. H. RIDDELL.

APPENDIX A.

INDIVIDUALS AND REPRESENTATIVES OF TRANSPORT ORGANIZATIONS, CHAMBERS OF COMMERCE AND DISTRICT COUNCILS INVITED TO SUBMIT MEMORANDA OR TO GIVE ORAL EVIDENCE.

Sir Godfrey D. Rhodes, C.B.E., D.S.O.—Railways and Harbours Administration.

Major K. A. Brown—Overseas Motor Transport Company.
The Express Transport Company—Nairobi.

Mr. J. L. Riddoch—Kisumu.

Major C. A. Hooper—Nairobi.

Mr. A. Vincent—Managing Director of Messrs. Motor Mart & Exchange, Ltd.

Mr. R. S. Wollen—Chairman, Coffee Board of Kenya.

The Kenya Farmers' Association.

Mr. Rahemtulla Kasim—Kisumu.

Mr. M. D. Puri—Machakos.

Mr. N. K. Oza—Nairobi.

Mr. J. W. S. Branker—Imperial Airways, Ltd.

East African Airways, Ltd.—Nairobi.

The Aero Club of East Africa—Nairobi.

The Mombasa Chamber of Commerce.

The Nairobi Chamber of Commerce.

The Eldoret Chamber of Commerce.

The Kisumu Chamber of Commerce.

The Nakuru Chamber of Commerce.

The Kitale Chamber of Commerce.

The Kakamega Chamber of Commerce.

The Indian Chamber of Commerce, Nairobi.

The Indian Chamber of Commerce, Kisumu.

Nairobi District Council.

Nyanza District Council.

Trans Nzoia District Council.

Uasin Gishu District Council.

Nakuru District Council.

Naivasha District Council.

The Commissioner of Police.

APPENDIX B.

INDIVIDUALS AND REPRESENTATIVES OF TRANSPORT ORGANIZATIONS, CHAMBERS OF COMMERCE AND DISTRICT COUNCILS WHO GAVE EVIDENCE EITHER WRITTEN, OR ORAL, OR BOTH.

Mr. B. G. Moulton—Representing the Motor Trades Committee, Nairobi.

Major K. A. Brown—Representing the Overseas Motor Transport Co.

Mr. J. W. S. Branker—Representing Imperial Airways (Africa) Ltd.

Mr. M. C. P. Mostert—Representing the Aero Club of East Africa.

Mr. A. Vincent—Managing Director of Messrs. Motor Mart & Exchange, Ltd.

The Commissioner of Police.

Sir Godfrey D. Rhodes, C.B.E., D.S.O.—Representing the Railways and Harbours Administration.

Mr. E. Ruben—Express Transport Co., Nairobi.

Mr. R. S. Wollen—Representing the Coffee Board of Kenya.

Mr. J. L. Riddoch—Kisumu.

The Hon. Mr. D. D. Puri—Representing Indian Motor Vehicle Transporters.

Nyali Ltd.—Mombasa.

Trans Nzoia District Council.

Nyanza District Council.

Nairobi District Council.

Mombasa Chamber of Commerce.

Nakuru Chamber of Commerce.

Major C. A. Hooper—Nairobi.

APPENDIX C.

SUMMARY OF INFORMATION OBTAINED FROM PROVINCIAL AND DISTRICT OFFICERS IN REGARD TO MOTOR TRANSPORT IN VARIOUS AREAS IN KENYA.

1 SERVICES	2 Approx. Number of Vehicles Employed	3 Conveying Passengers or Goods	4 General Remarks re Vehicles, i.e. Overloading, Efficiency of Service	5 Competition and Rate of Cutting	6 Over-burdening of Roads
1. Nairobi-Fort Hall	23	Passenger	Condition of vehicles variable. Passenger service fair. Goods lorries in good condition generally efficient.	Competition keen and rate-cutting exists.	Not on main roads, but local district roads suffer badly.
2. Nairobi-Nyeri	1	Passenger			
3. Nairobi-Thika	3	Goods	Very little overloading on main roads, due to constant Police checks overloading on local roads.		
4. Thika-Kitu	1 regular mail; numerous lorries.	Goods	Condition of lorries fair. Mostly overloaded. Service unsatisfactory—haphazard.	Competition keen.	No
5. Meru-Nanyuki	No regular services.	Passengers and Goods			
6. Meru-Lamu	Lorries				
7. Meru-Marsabit	run as occasion arises, approximately 19 vehicles. See Nos. 58 to 65.				
8. Meru-Wajir-Moyale					
9. Meru-Embu					
10. Eruha District—Kaso, Baricho, Keruwa, Michakuthi and Rumyenje's.	6	Passengers and Goods	Condition of vehicles generally good. No regular services. Overloading of vehicles general.	No competition. Demand for transport exceeds supply.	No

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APPENDIX C.—(Contd.)

SUMMARY OF INFORMATION OBTAINED FROM PROVINCIAL AND DISTRICT OFFICERS IN REGARD TO MOTOR TRANSPORT IN VARIOUS AREAS IN KENYA

1 SERVICES	2 Approx. Number of Vehicles Employed	3 Conveying Passengers or Goods	4 General Remarks re Vehicles, i.e. Overloading, Efficiency of Service	5 Competition and Rate of Cutting	6 Over-burdening of Roads
11. Kitui-Kibwezi	1 a day	Goods, but passengers	Condition of vehicles good with exceptions. Overloading general.	Competition keen. Competition with railway resumed, i.e. traffic from Lamu to Thika.	Kitui-Thika road heavily overburdened (see 4)
12. Kitui-Mwingi	2 a week				Overburdened
13. Kericho-Mithia	2 a week				Overburdened
14. Alering-Mu	1 a week	(times carried)			likely to become overburdened.
15. Machakos-Nairobi via Athi River.	7 each way daily	Passenger and Goods	Mail contract: Machakos-Athi River. Condition of vehicles and efficiency of service good. Police report occasional overloading.	None—common rates agreed upon.	No
16. Turkana District.	K.A.R. and Govt. privately owned lorries carrying their own trade goods.	Passenger and Goods	K.A.R. service most efficient. No overloading.	None.	No
17. Nairobi-Nakuru-Kisumu.	7	Passenger only	Condition of vehicles good. Efficiency good	Competition exists.	Road overburdened suffering severe damage.

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APPENDIX C.—(Contd.)

SUMMARY OF INFORMATION OBTAINED FROM PROVINCIAL AND DISTRICT OFFICERS IN REGARD TO MOTOR TRANSPORT IN VARIOUS AREAS IN KENYA

1 SERVICES	2 Approx. Number of Vehicles Employed	3 Conveying Passengers or Goods	4 General Remarks re Condition of Vehicles, Overloading, Efficiency of Service	5 Competition and Rate Cutting	6 Over-burdening of Roads
18. Nakuru-Sabukia	1	Goods	Contract service.	Very little competition.	Yes.
19. Naivasha-South	1	Goods	Contract service.	Very little competition.	Yes.
20. Thimungu Dairy Ramuruti Falls	4: mail lorry and occasionally others	Passenger and Goods	One vehicle under contract. Condition of vehicles good. Efficiency of services generally good. Overloading common.	Very little competition.	No
21. Rumuruti-Nyeri	5	Mainly Goods	ditto	Very little competition.	No
22. Isiolo-Maralal	1 with others occasionally	Passenger and Goods	Condition of regular lorry excellent. Efficient service. No overloading. Occasional vehicles in bad condition. Vehicle good; service efficient. No overloading.	Competition keen.	No
23. Kitimu-Eldoret	1 mail contract	ditto	ditto	No competition.	No
24. Eldoret-Kakamega	3 buses	Passengers and Luggage	ditto		
25. Eldoret-Kakamega and Kisumu	1 contract lorry	Goods	ditto		
26. Eldoret-Kitale	3 buses	ditto	ditto		
27. Eldoret-Tambach	1 contract lorry	Goods	ditto		

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APPENDIX C.—(Contd.)

SUMMARY OF INFORMATION OBTAINED FROM PROVINCIAL AND DISTRICT OFFICERS IN REGARD TO MOTOR TRANSPORT IN VARIOUS AREAS IN KENYA

1 SERVICES	2 Approx. Number of Vehicles Employed	3 Conveying Passengers or Goods	4 General Remarks re Condition of Vehicles, Overloading, Efficiency of Service	5 Competition and Rate Cutting	6 Over-burdening of Roads
28. Kabarnet-Nakuru	2	Passenger and Goods	Vehicle good; service efficient. No overloading.	No competition.	No
29. Nakuru-Mukutan and Lorik	Occasional	Goods	ditto	No competition.	No
30. Kitale-Kakamega	1 mail contract	Passenger and Goods	Vehicle good; service efficient. Occasional overloading.	None.	No
31. Kitale-Eldoret	2	Goods	Condition fair; service irregular. No overloading.	Not to any appreciable extent.	No
32. Kitale-Eldoret	8	Goods	Only employed regularly during maize season. Vehicles good.	Cut rates exist during season.	Elgon north feed-burdened during maize season
33. Kitale District generally.	96 lorries registered.	Goods	Mainly used for maize crop.		
34. Wundanyi-Voi	1	Passenger and Goods	Native Council lorry. Service good.	None.	No
35. Mombasa-Ramisi	6 daily	ditto	Condition poor; overloading universal	Rate cutting exists.	Yes, considerable damage to roads
36. Mombasa-Tanga	3	ditto	Vehicle in fair service fair. Overloading prevalent.	Rate cutting exists.	No

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SUMMARY OF INFORMATION OBTAINED FROM PROVINCIAL AND DISTRICT OFFICERS IN REGARD TO MOTOR TRANSPORT IN VARIOUS AREAS IN KENYA

1	2	3	4	5	6
Stavizes	Approx. Number of Vehicles Employed	Conveying Passengers or Goods	General Remarks re Condition of Vehicles Employed, Overloading, Efficiency of Service	Competition and Rate Cutting	Over-burdening of Roads
37. Mombasa-Takungu	3	Passenger and Goods	Vehicle condition fair; service fair; overloading prevalent.	Rate cutting exists.	No
38. Mombasa-Maria-	5	ditto	Good condition; mail service efficient.	Rate cutting exists.	No
39. Mombasa Kilifi and Malindi.	1 mail bus and 10 others.	ditto (Goods)	Other services haphazard; overloading frequent.	Competition keen, and rate cutting exists.	No Only during wet weather.
40. Malindi District.	15.	(Goods)	Vehicles kept in fair condition. Overloading frequent. Lorries in excess of requirements.	ditto	ditto
41. Mombasa Island.	137 lorries and 3 buses registered.	—	Condition of vehicles generally good. Service very efficient and in good condition of roads and tracks.	Keen competition, and rate cutting. Rates uneconomical.	No
42. Narok-Kijabe	1 regular mail lorry.	Passengers and Goods	—	Very little competition.	Roads only earth tracks and easily damaged by motor vehicles.
43. Uaso Nyero Trading Centre-Loigodien, Amala bridge Of/Pusamoro and Narosura.	3 lorries	ditto	—	—	—

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APPENDIX C—(Contd.).

SUMMARY OF INFORMATION OBTAINED FROM PROVINCIAL AND DISTRICT OFFICERS IN REGARD TO MOTOR TRANSPORT IN VARIOUS AREAS IN KENYA

1	2	3	4	5	6
Stavizes	Approx. Number of Vehicles Employed	Conveying Passengers or Goods	General Remarks re Condition of Vehicles Employed, Overloading, Efficiency of Service	Competition and Rate Cutting	Over-burdening of Roads
44. Kisumu-Yala, Busia and Tororo.	8 buses, 31 goods lorries daily as far as Mimus.	Passengers and Goods	Condition of vehicles generally not satisfactory. Considerable transport under contract. Overloading prevalent; unauthorised vehicles frequently convey passengers.	Little or no competition for heavy loads and fuel oil.	Roads much overburdened on account of type of construction not being sufficiently good to bear heavy traffic.
45. Kisumu-Ugenya.	4 goods lorries, 4 regular services.	ditto	Efficiency of service as a whole not high, but some are doing well.	Keen competition for native produce loads.	Reconstruction and improvement of roads most necessary to cope with traffic.
46. Kisumu-Usongo	1 bus—regular service.	ditto	Playing for time and definitely unsafe.	Rate cutting exists among passenger lorries.	—
47. Kisumu-Asembo.	3 buses, 4 goods lorries—daily service.	ditto	Certain kind transport concerns are able to maintain efficient service.	—	—
48. Kisumu-Port Southey.	irregular services.	ditto	—	—	—
49. Kisumu-Kakamega	5 buses, 71 goods lorries—daily services.	ditto	Condition of vehicles good.	—	—
50. Kisumu-Nairobi	12 to 18 buses—daily services.	Passengers only	Efficient service.	—	—
51. Kisumu-Eldoret.	See item No. 23.	—	—	—	—

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APPENDIX D.

LIST OF ACTS, REPORTS, ETC. PLACED AT DISPOSAL OF COMMITTEE

GREAT BRITAIN—

- Road and Rail Act, 1933.
 Report of Conference on Rail and Road Transport, (1932).
 Road Traffic Act, 1934.
 Royal Commission on Transport :
 First Report—Control of Traffic on Roads.
 Second Report—Licensing and Regulation of Public Service Vehicles.
 Final Report—Co-ordination and Development of Transport.
 Road Traffic Act, 1930, and Amendment, 1931.
 "Times" Articles—Road *versus* Rail.
 National Road Transport Conference, Southampton, 1935—Paper read by Brig.-General Sir H. O. Mance.

SOUTH AFRICA—

- Road Motor Competition Commission (1929).
 Road Motor Act of 1930.
 Report of Road Transportation Board (1932).
 Report of Road Transportation Board (1933).
 Report of Road Transportation Board (1934).
 Report of Road Transportation Board (1935).

NEW ZEALAND—

- Road Act 87 of 1926.
 Motor Omnibus (Licensing) Regulations, 1926.
 Motor Omnibus (Constructional) Regulations, 1928.
 Transport Department Annual Report, 1935.

NYASALAND—

- Report on Road and Rail Transport (1933).
 Motor Traffic Ordinance, 1934—Map of Scheduled Roads and Licence Schedules.

FEDERATED MALAY STATES—

- Committee Report on Co-ordination, 1932.
 Road and Rail Committee—Evidence—(1931).
 Transport Licensing Enactment, 1934.

AUSTRALIA—

- Victoria—Report of Transport Regulation Board (1933).
 Tasmania—Regulations under Traffic Act, 1925, and Motor Vehicles Tax Act, 1917.
 Tasmania—Traffic Act, 1925.
 South—Motor Vehicles (Special Licences) Act, 1928.
 New South Wales—State Transport (Co-ordination) Act, 1931.

CANADA—

- Report of Royal Commission into Railways and Transportation in Canada.

UNITED STATES OF AMERICA—

- Bill of 16/12/25 to Regulate Inter-state Commerce by Motor Vehicles Operating as Common Carriers.

TANGANYIKA—

- Carriage of Goods by Motor (Control) Ordinance, 1931.
 Carriage of Goods by Motor (Prohibition) Ordinance, 1934.
 Preliminary Investigation and Assembly of Material Relevant to an Enquiry into the Question of Competition between Road and Rail in Tanganyika Territory.
 Interim Report of a Committee Appointed to Enquire into the Question of Competition between Road Transport and Railways in the Tanganyika Territory.

KENYA—

- Report of Committee to Consider Motor Services Bill, May, 1931.
 Report of Legislative Council Committee to Report on Bill for Licensing and Regulation of Motor Vehicles, July, 1931.
 Ordinance, 1932 "Carriage of Goods by Motor (Prohibition).

SIERRA LEONE—

- Protectorate Highways Tolls Ordinance, 1932.

UGANDA—

- Report of the Road Accidents Committee, 12/12/35.

GENERAL—

- An Analysis of the Motor Traffic Legislation of the Colonies.

APPENDIX E.

KENYA AND UGANDA RAILWAYS AND HARBOURS.

GENERAL MANAGER'S OFFICE,
NAIROBI.

4th July, 1935.

No. A.7/1401.

The Hon. The Colonial Secretary,
The Secretariat, Nairobi.

TRANSPORT COMMITTEE.

Your No. S.C.R.D.S. 2/9/37 of 29th June.

I am hardly competent, nor would it be proper for me to try to point out to Government the difficulties which they have already had to face in endeavouring to reconcile in a statesmanlike way, for the benefit of the community as a whole, the various conflicting interests between the different forms of transport but you will recollect that the question of regulation of transport arose at a recent meeting of the Central Roads and Traffic Board, as a result of an application from a company for exclusive rights to run a bus service over certain roads between Nairobi, Lumuru and Kiambu.

2. In discussing that application I submitted the suggestion to the Board that this question could only be dealt with adequately if suitable legislation were introduced to control all forms of transport on some system of licences based on public convenience and necessity, as had been found so necessary in other countries. I understand, too, that Government has already received similar applications for services over other roads in the Colony.

3. Government will also recollect the difficulties with which they had to deal in connection with competition between road and railway between Mombasa and Nairobi and up-country. It will be remembered that the first attempt to deal with the latter problem took the form of a licensing Ordinance but owing to certain defects in that Ordinance it failed in its purpose and the present Ordinance had to be introduced in its place.

4. I have no doubt that following the experience of other countries problems of this nature will fall to be dealt with by Government in increasing numbers and in increasing complexity in the near future. In addition to questions of road transport and rail transport, the new factor of air transport also already requires serious consideration.

5. The old methods of allowing unrestricted competition in transport in all directions has been found, in practice, most

wasteful and most inefficient. In a small country such as this, under such conditions, efficient, economical transport services, so urgently needed, will never be introduced. Already there is some evidence of waste of money which must inevitably be paid for in full and which will react in other undesirable ways upon the general public, in allowing two companies to compete in local air feeder services. On the road, too, it is impossible to expect any company to invest money in providing reliable and efficient services if they are to be liable to competition from wasteful and haphazard enterprises of the type that so frequently and so easily spring up in this country. Experience in other countries goes to prove that so far as transport is concerned at any rate, some system of co-ordination and regulation is essential if the public are to get the best service the amount of traffic available can support, and if real waste of money is to be avoided. In my view, it would be wise for Government to benefit by such outside experience.

6. At the present time our difficulties in this connection are not great and large vested interests have not yet sprung up. There is, however, already evidence to show that unless something is done in the very near future, vested interests will be created in uneconomic directions and Government will, at a later date, have very great difficulty indeed in handling the situation that must then arise.

7. I have, as you will notice, approached this matter from the point of view of the co-ordination and regulation of all forms of transport and in this control I would also include the Railway. I feel, for example, that no more branch lines should be constructed unless the claims and possibilities of alternative forms of transport are fully considered.

8. A central board, properly constituted to deal with such matters, would be able to recommend, or otherwise, any transport proposals that came before them for consideration. To be really effective, such an organization should, of course be applicable to the whole of East Africa and it is hoped that if Kenya gives a lead in this matter, Tanganyika and Uganda will both follow suit. In fact, in Tanganyika a committee has already been appointed to investigate the position as between road and rail, as advised to you in my No. A.7/1401 dated the 10th June. The problem in Uganda is not yet acute but already difficulties are, I believe, being experienced owing to the large number of small, uncontrolled and unorganized vehicles using the roads. Under a proper system of licensing, it is much easier to ensure that control is exercised

and discipline enforced. I think the short experience of the 'bus company in Nairobi has proved what can be done under such conditions and how beneficial the results can be from the point of view of the general public.

9. Furthermore, provided some system of licensing such as that outlined by me is introduced, it will be possible for the Railway Administration itself to consider the investment of public funds in road and air enterprises. In this way the problem of wasteful competition between the different forms of transport will largely disappear.

10. In view of the importance of transport generally to East Africa as a whole, I cannot too strongly urge that the suggestions I have outlined herein should receive the earliest consideration of Government. The Central Roads and Traffic Board feel this can best be done by the appointment of a committee to inquire into the whole problem. It may appear that we are somewhat premature in making a suggestion of this sort in that the problem has not yet become an acute one. Government will, however, realize that the proper time to deal with a problem of this potential magnitude and importance is before trouble really arises. I trust, therefore, that Government will see its way to appoint the committee that has been recommended to it by the Central Roads and Traffic Board. I can think of no other statesmanlike way of meeting the various problems that Government will have to face if a step of this nature is not taken at an early date.

11. In the meantime, I may inform Government that I have been collecting information to place at the disposal of the committee for their consideration. There are many examples now of suitable and efficient legislation in force in other countries to meet problems of this type: Nyasaland notably, has recently introduced legislation which, I understand, is proving exceedingly effective.

12. It is true that an investigation of this nature will take a certain amount of time and must be carried out with care and at some cost, but the enormous benefit to the country in the future, in the avoidance of wasteful and uneconomic expenditure on a large scale, and the relief to Government due to the absence of otherwise insoluble problems, fully justifies the expenditure of a comparatively small amount of time and money at the present time.

13. If there is any further information I can give to Government, I shall be very glad to do so.

G. D. RHODES,
General Manager.

APPENDIX F.

KENYA AND UGANDA RAILWAYS AND HARBOURS.

GENERAL MANAGER'S OFFICE,
NAIROBI.

16th July, 1935.

No. A.9/318.

The Honourable the Acting General Manager,
Tanganyika Railways, Dar es Salaam.

You will have seen from the minutes of the last meeting of our Railway Advisory Council that it is proposed to introduce certain rates reductions, commencing on the 1st January, 1936. In carrying out our preliminary investigations with regard to this matter, it has become clear that a definite decision as regards policy cannot be taken unless we know what the Governments propose to do with regard to road competition. I enclose, therefore, for your information, a copy of a memorandum that I am circulating to members of Railway Advisory Council in this connection. I also attach a copy of my letter No. A.4/697, dated the 8th July, to the Governments of Kenya and Uganda, and of my letter No. A.7/1401 of the 4th July to the Government of Kenya. I should be very glad to have your views on this problem.

2. I myself have come to the conclusion that the time has arrived for drafting legislation on more modern lines, to deal with the regulation of transport: to be really effective such legislation should, of course, apply to the whole of East Africa. I am hopeful that the Government of Kenya will appoint a committee to go into this matter and that possibly the Governments of Uganda and Tanganyika may also decide to adopt this step. In the meantime, I am drafting model legislation for consideration. I shall be glad to send you a copy of this for your information as soon as it is ready. It seems to me that if we can get legislation of this type, we shall get the whole problem put on to a much sounder basis.

3. In connection with the rates reductions, I shall, of course, let you know in due course what our proposals will be. They are bound to affect, in some cases, the rates at Moshi and Mwanza and we shall either have to maintain our existing rates there or ask if you can agree to come down to our proposed rates. This matter cannot be dealt with in further detail until our definite proposals are ready.

G. D. RHODES,
General Manager.

MEMORANDUM FOR RAILWAY ADVISORY COUNCIL.

PROPOSED RATES REDUCTIONS, 1936.

Preliminary Investigations.

With reference to Minute 971 of the June meeting, preliminary investigations as to the best way in which reductions in rates can be introduced on 1st January, 1936, are now being carried out. In this connection the following principles are being borne in mind:—

- (1) Reductions must be equitable and fair to all sections of the community and must be consistent with the principles of prudent finance.
- (2) Reductions should wherever possible be framed with a view to creating additional traffic resulting in an eventual increase in net revenue.
- (3) Reductions should wherever possible assist the depressed industries.
- (4) Reductions should wherever possible tend to reduce the difficulties arising from an unbalanced tariff, particularly as regards road competition.

The problems raised in the last paragraph are of the utmost importance and must receive prior consideration before the general lines can be decided along which rates reductions should be granted.

2. Members are aware that protection against wasteful and uneconomic road competition is now provided by both Governments. The Kenya legislation, however, must be introduced each year and there is therefore a grave element of uncertainty as regards the future position of Railway revenue.

3. It has been suggested in some quarters that such legislation can only be maintained on the Statute Book until the Railway itself has had time to deal with the matter by rates reductions. It will be clear that if this point of view is taken by Governments and the general public, the Railway must bear this in mind in considering the proposed rates reductions.

4. Looking ahead for the next five to ten years, it seems probable that all rates above fifty cents per ton-mile will be vulnerable to road competition. In fact, in many areas road rates are already below this figure, and it is clear that modern developments, such as the road train with Diesel engines, may reduce this figure still further.

5. Taking the figure of fifty cents as being reasonable at the present time, it is clear from an examination of the table on page 19 of my annual report for 1934, that the top three classes are vulnerable and if the Railway Administration is to deal with this matter through the medium of rates alone, the highest rate of the future must be somewhat similar to our present class 4. To bring this about without a corresponding increase in the lower rates would involve a loss of revenue of from £250,000 to £300,000.

6. Members will doubtless agree that the suggestion that the lower rates should be put up to meet this loss will meet with strenuous opposition and this method of solving this problem should be avoided, if at all possible. It follows, therefore, that all rates reductions should be designed to meet this particular difficulty or, alternatively, the two Governments must satisfy the Administration that they are prepared to continue to safeguard the position by adequate legislation.

7. I have therefore written to both Governments in the terms of the attached letter. In order that the examination of possible rates reductions may not be delayed, it is essential that a suitable answer be forthcoming before the next meeting of Council in October.

8. It is probable that both Governments, while sympathetic with the Railway point of view, will have difficulty in binding themselves permanently to the present type of prohibitory legislation, but they may be prepared to agree to continue this legislation for another year and in the meantime undertake to enact legislation on more modern lines by introducing a system of licensing based on public advantage and convenience.

9. Legislation of this sort is now in force in many parts of the world and is of a type which can be maintained permanently.

10. Such legislation should be designed to ensure that where competition is considered wasteful and uneconomic, and not in the best interests of the country as a whole, licences would be refused, as at present, so that the Railway could depend upon complete protection wherever justified. Such legislation too is suitable for controlling and regulating all types of transport such as air, inland waterways and railways, and would be particularly effective and useful if applied to the whole of East Africa. It would also deal adequately

with such problems as over-crowding on the roads, reckless and dangerous driving, restricted or sole licences over certain routes, etc., all of which are now arising in these territories.

11. It is understood that the Government of Kenya is now examining the advisability of appointing a committee to consider legislation on these lines, to govern, regulate and control all forms of transport in the Colony and, in anticipation of such an inquiry, this Administration is drafting a model Bill based on the practice in other countries which might serve as a basis for discussion.

12. Provided such legislation is suitably drafted, Council may be prepared to accept it as an adequate safeguard in lieu of the present year to year prohibitory legislation, leaving the Administration free to allocate rates reductions where, apart from this factor, relief is more urgently needed at the present time.

13. This information is circulated to members of Council in order that they may be aware of the present position with regard to this matter.

GENERAL MANAGER'S OFFICE, NAIROBI.

Ref. No. A.4/697.

16th July, 1935.

GENERAL MANAGER'S OFFICE,
NAIROBI.

No. A.4/697.

8th July, 1935.

The Honourable the Acting Colonial Secretary,
Nairobi.

The Honourable the Chief Secretary,
Entebbe.

ESTIMATES, 1936.

In connection with the preparation of this Administration's Estimates for 1936, as Government is aware, it is intended to consider the possibility of making a substantial reduction in our existing railway rates to come into force on the 1st January next.

2. My proposals in this connection must be largely influenced by Government's policy in regard to the prohibition of road competition with the Railway, as, unless an assurance can be given that the present legislation will be continued for at least the next five years, it may be necessary for me to recommend that such amount as may be available for rates reductions be devoted mainly, if not entirely, to lowering our highest class rates.

3. On the other hand, if Government can give a definite undertaking that the existing legislation will be continued for the period in question, I shall be able to consider moulding my proposals so as to afford relief in other directions.

4. I would therefore much appreciate an early expression of Government's views on the question of continuing the present protection during the period 1936 to 1940.

5. I am addressing a similar letter to the Governments of Kenya and Uganda.

G. D. RHODES,
General Manager.

APPENDIX G.

CO-ORDINATION OF TRANSPORT—KENYA.
MEMORANDUM SUBMITTED BY THE GENERAL MANAGER,
K.U.R & H., TO THE COMMITTEE APPOINTED TO
INQUIRE INTO CO-ORDINATION OF TRANSPORT
IN KENYA.

In Kenya there are four main forms of transport :—

- (1) Rail.
- (2) Road.
- (3) Air.
- (4) Water borne.

Of these, *Rail Transport*, is State owned and has been in existence for over 35 years. In addition to passengers, parcels and live stock, the Kenya and Uganda Railways and Harbours have handled over 1,000,000 tons of public goods and have moved over 308,000,000 tons miles of paying traffic in one year.

Road Transport is a comparatively new form of transport, but one that is increasing in importance each year.

Air Transport is even more modern, but already there are indications of a very rapid growth in the near future, particularly as regards passenger traffic.

Water-borne Transport, apart from Railway steamer and tug and lighter services, has existed for many years on the Coast and also on Lake Victoria, where its chief form at the moment is dhows, providing a very cheap if somewhat slow and precarious transport in small quantities.

2. The problem to be considered by this country, as in older ones, is how to control the development of these four forms of transport along sound and economical lines in the best interests of the community as a whole, or, in other words, how best to bring about the most economic use of each form of transport. This ideal is most likely to be attained if circumstances can be so arranged as to lead to the automatic division of functions between each form on a truly economic basis with the minimum intervention by the State.

3. This problem of regulation and control of transport, particularly as regards rail and road, has received the close attention of Governments and other authorities in every

Forms of transport.

civilized country. In addition, the problem was also exhaustively examined in June, 1935, by the International Chamber of Commerce (to which body Sir Osborne Mance was reporter on this subject) representing thirty-nine nations. The full text of the resolution passed by this authoritative and representative body is attached as an appendix to this memorandum.

4. As this is still a new country, where vested interests of importance, apart from the very important Railways and Harbours investment of £22,000,000, have not yet had time to establish themselves, a unique opportunity exists to deal with the whole problem with the minimum of expense. The experience of older countries, all tending to prove that some form of control is desirable, should be of immense value in this connection.

5. The solution usually suggested is "free and unrestricted" competition; but is this a practical solution? What does unrestricted competition mean? Brigadier-General Sir H. Osborne Mance, an international authority on this subject, has explained what free and unrestricted competition would mean as between rail and road transport. He says :—

Unrestricted competition.

"It is necessary, however, to be perfectly clear what is meant by this. Let us take goods traffic. Railways, like the roads, would be free to accept or refuse traffic. They could charge what rates they liked; they could vary these rates from locality to locality and from day to day. No rates need be published, and the railways could grant special favours to any client. The railways, like the roads at present, would be governed in their actions entirely by their own interest in each case. As regards passenger traffic, the present tendency would have to be reversed, and unlimited omnibuses allowed on the road without any specific obligations to the public, subject only to the prescriptions as regards safety, police regulations and the conditions of labour.

This is what unrestricted competition means, and it can hardly be expected that in these conditions responsible transport undertakings would continue to maintain a healthy existence. Consequently, the railways must substantially continue to carry out their present obligations. This being the case, the question arises how far public road transport undertakings should be brought into line with the regulation of railways.

Unrestricted competition being ruled out, the alternative has been proposed on the one hand of substantially continuing the present regulation of railways, including

The problem of co-ordination.

International consideration.

their obligation to carry, to publish tariffs and not to discriminate, but with considerable freedom as regards fixing tariffs, and on the other hand of granting complete freedom to road transport. Under this system the railways would ultimately carry only traffic which it does not pay road transport to carry on its own terms, with foreknowledge of the rates and conditions applicable to the railway for each particular journey or consignment. Such a solution is evidently not an economic one."

6. General Sir Osborne Mance makes it very clear in the above extract what free competition really would mean. It is, I think, a substantially different meaning to the one usually held by those who do not go into the matter deeply. Free competition must eventually mean the complete abandonment of the important principle incorporated in a normal railway tariff of charging only what a commodity can bear, a principle which is so valuable to every community, but especially to a country dependent upon low-valued agricultural crops and one which has already proved so helpful in developing East Africa.

7. It will, I think, now be clear to the Committee, after careful consideration of the part Railways are playing and still have to play, in the development of East Africa, that a solution depending upon free and unrestricted competition is as unsound, costly and impracticable here as in older countries.

8. In connection with this point, it will be interesting to mention the attempt made in the Federated Malay States to bring about "free and unrestricted" competition by relieving the Railways of three of their most important statutory obligations:—

- (a) The obligations of a common carrier.
- (b) The necessity of publishing rates.
- (c) The obligation to give no undue preference.

(Note also the reference to this matter on page 9 of the memorandum submitted to the Tanganyika Committee by the Acting General Manager, Tanganyika Railways, already circulated).

As these three obligations normally constitute a very important part of the claim that a railway system serves a territory more advantageously than any other system, I am in complete agreement with the Acting General Manager, Tanganyika Railways, when he says:—

"This legislation places great power in the hands of the Railways, and, in our opinion, is not an example

which, in the interests of the public, should be followed in this territory."

9. It will interest the Committee to know that the introduction of this unique legislation has not provided a solution of the problem. The Federated Malay States Railway, according to its last Report, largely because of unrestricted road competition, as in a very serious financial difficulty, which, presumably, has to be covered by State taxation. As a consequence, it has recently been decided to implement a Bill entitled: "The Transport Licensing Enactment, 1934," (a copy is available for circulation to the Committee) and the Ministry of Transport has been requested to send out a fully-qualified officer to administer the Ordinance. As this Ordinance follows closely the principles which I suggest should be followed in this territory, it will be of particular interest to the Committee.

10. The problems and principles referred to in the previous paragraphs apply generally to all forms of transport. I will now refer more particularly to the railway *vs.* road aspect of this problem as it exists in this territory. This has been very fully and very adequately dealt with by the Acting General Manager, Tanganyika Railways, in his memorandum to the Tanganyika Committee, a copy of which has already been circulated and which I hope will be carefully studied. It will, therefore, be unnecessary for me to set out the arguments again in full detail. The Committee is also recommended to study the comparison of freight charges set out by the Acting General Manager in a second memorandum to the Tanganyika Committee (also already circulated). While it is probable that some of the figures therein quoted are now somewhat out of date, the general picture which they portray remains accurate.

11. The following additional information, applicable more particularly to the K.U.R. & H., will serve to drive home the lesson to be learned. Reference to the table given on page 19 of my Annual Report for 1934 discloses the following facts:—

- (i) Rates per ton mile vary from over Sh. 1 to as low as 2.4 cents.

(NOTE.—This figure has been still further reduced as a result of recent rates reductions.)

- (ii) The tonnage carried in Classes 1, 2 and 3 was comparatively small, viz: 20,000 tons, or under 3 per cent of the total for the year.

flexibility, i.e. absolute prohibition, where necessary, monopolies or partial monopolies where advantageous, or even unlimited competition where desirable. This very flexibility, however, emphasizes the tremendous responsibility of the Board of Control and the need to have, as members, individuals of the highest calibre, judgment and disinterestedness, and, at the same time, adequate machinery for appeal.

14. To enable such a Board of Control to assess the economic claims of the various forms of transport, it will be necessary to know the full cost to the country of each. As regards Railways, this is already known, as separate accounts are kept and published annually. The cost of air and waterborne transport is also easily obtainable, if suitable statistics are called for, but the real cost of road transport is more difficult to arrive at. The Governors' Conference already collate certain information in this respect, copies of which have been circulated to the Committee. It is suggested that these statistics should be examined by the Committee, to see whether they adequately and correctly represent the true position.

15. The introduction of regulation and control of transport, as recommended, would bring into prominence the possible need of a suitable stimulus to maintain efficiency and to provide an urge to keep up to date and to make the utmost use of modern development and invention among all forms of transport which has hitherto been provided by unrestricted competition.

16. It is suggested that the licensing system contains adequate safeguards in this respect, as licences would at once be issued to other applicants if adequate service is not being given.

17. Further, the ancillary traffic carried by the private owner provides an additional and very important safeguard. In this connection, Sir Osborne Mance has the following to say :-

"There are a good many analogies for arguing that ancillary traffic, rigidly defined, should be as free as the use of the private motor car. Such freedom gives scope for the individuality and flexibility of road transport in many cases which could not adequately be met by a public transport undertaking, and it is, of course, essential for the many delivery and agricultural services which have always been carried out by private transport in the past. Moreover, the freedom of ancillary services is the best

automatic check on the failure of any scheme of road and rail co-ordination to produce the most efficient development of transport in the public interest.

It has been argued that it may be necessary to impose some restriction on ancillary traffic in order to preserve the amenities of the road for other users, but these ought to be adequately safeguarded by reasonable regulation, coupled with improvements to the roads where their capacity is proved to be inadequate. A more serious consideration is the claim that ancillary transport should not be permitted to develop to such an extent as to menace the continued existence of public transport undertakings. On these grounds, it has been suggested that it may be necessary to restrict the operation of ancillary services in cases where the conveyance of traffic is not an inherent part of the business. It would seem that this point will have to be left until the result of the co-ordination and subsequent re-organization of public transport services has been seen.

18. As pointed out by Sir Osborne Mance, reasonable regulation is necessary and, for the present at any rate, ancillary transport, i.e. transport not plying for hire or reward, should, therefore, be licensed, but application for licences should not be refused in bona fide cases, though they may be subject to conditions, such as length of haul, hours of duty, insurance, etc., etc.

19. It is necessary to point out clearly, however, that this question of ancillary transport is a very awkward one and one which may in time require further attention. It is obvious that if one firm can obtain an advantage by running its own transport, other firms must do likewise and the point is finally reached when the greater proportion of transport is carried out by private owners, a state of affairs which is certain to be equally disastrous to the main transport organization of the country called upon to carry the bulk low-rated commodities. For the moment, however, it is suggested that it will be sufficient if this problem is carefully watched through the machinery provided by the licensing system.

20. After a careful study of the whole problem, it will be clear that sooner or later this country must follow the lead of older countries. To avoid the heavy costs which other countries have had to meet, it is suggested that the time is

Maintenance
of efficiency.

Ancillary
traffic.

now ripe to introduce suitable legislation, covering all forms of transport, to meet the difficulties already arising. A draft Bill, based on similar legislation elsewhere, has, therefore, been drawn up for consideration, providing a system of licensing based on public necessity and advantage. If the principle is accepted, the details of the Bill will, of course, require careful examination, to see that it meets local requirements. It is suggested that such a Bill has the following advantages:—

- (1) It provides suitable machinery of control and regulation of all forms of transport.
- (2) It can be applied to meet the normal difficulties as between rail and road, and also the special difficulties existing in this country owing to the unbalanced nature of the Railway tariff.
- (3) It will permit monopolies or restricted services where such are considered desirable in the public interest.
- (4) It will enable suitable statistics to be collected, from which the progress and cost of the various forms of transport can be judged.
- (5) It will encourage the organization of efficient transport.
- (6) It will discourage indifferent, dangerous and irresponsible transport.
- (7) It can be implemented and enforced at reasonable cost, though, admittedly, not without some administrative difficulty.
- (8) Finally, it is suitable for application to the whole of East Africa.

The last point is particularly emphasized. It cannot be too strongly stated that the transport problem is an East African one, and every effort should be made to get agreement between the different territories. It is therefore satisfactory to note that both Tanganyika and Uganda have appointed Committees to examine this problem, and it is suggested that a definite attempt should be made in due course to co-operate with the neighbouring territories. It will be noted that Tanganyika has already submitted a suggestion to this effect.

21. It is suggested, therefore, that this Committee should reach agreement in an interim report, covering main principles, as was done in Tanganyika and that a sub-Committee should then be appointed to co-operate with the neighbouring territories in drafting legislation suitable for East Africa as a whole.

22. It is not possible in a short memorandum to deal with this subject exhaustively, but I hope sufficient information has been given herein to enable the Committee to appreciate the main problems involved. I shall, of course, be only too glad to amplify what I have written by verbal evidence, if required.

G. D. RHODES,

General Manager.

14th January, 1936.

APPENDIX.

Resolution of International Chamber of Commerce.

The International Chamber of Commerce, after carrying out a thorough investigation of the recent evolution of road and rail transport, has organized consultations on the widest possible basis between representatives of road and rail and of users. From the work which has been carried out, the results of which have been published, the public authorities can derive the principles which should govern the organization of land transport. The Chamber considers that these principles, the details of whose application may vary in the different countries, according to their geographic, economic and social structure, may be defined as follows:—

Co-ordination between road and rail will avoid excessive competition which involves disastrous consequences for both forms of transport. The public itself can only be the loser by such competition, for it is the public which eventually has to bear the brunt of loss of efficiency in operation or of State subsidies which may become indispensable.

The total means of transport offered to the public should not exceed the real needs of business. It is necessary that a division of traffic between rail and road transport should be arrived at suited to their respective technical characteristics and thus consistent with the services which can be expected of them from an economic point of view. A close collaboration should be set up between rail and road transport, with a view to dovetailing them, wherever it may be necessary, and to organizing combined transport on the cheapest and simplest basis possible.

Voluntary Adjustment.

The adjustment of transport capacity to requirements and the division of traffic should be carried out, whenever possible,

by means of agreements between the interested parties, or by means of arbitration voluntarily organized by the representatives of the two forms of transport. It is only when the possibility of such agreement does not exist that settlements should be imposed by outside authority.

"The International Chamber of Commerce does not consider that the levying of taxes on one of the forms of transport for the sole purpose of limiting its use can bring about a rational and fair division of traffic. As regards special taxation, public road transport should pay only its proper share in the cost of maintenance, renewal, police, improvement and construction (whether directly or through the service of loans) of roads, and the railways should only pay taxes covering the expenses incurred on their account by the State. Further, the Government should reimburse the public transport services, both road and rail, for the service which it requires of them.

Railway Rates and Obligations.

The International Chamber of Commerce, in view of the conditions which must be fulfilled by the organization of railway and road transport in order that the latter may meet the needs of business as effectively as possible, considers that:—

Certain regulations and obligations imposed on the railways should be relaxed, in order that the latter may enjoy greater freedom in their management and operation and may be in a better position to apply commercial principles.

The International Chamber of Commerce is of the opinion that it is not at present practicable to disturb the existing railway rates structure. The publication of railway rates and their universal application without discrimination are indispensable. To abandon these principle would deprive trade of an essential element of stability, for a merchant should be assured that his competitors are not given preferential rates for their shipments and especially that large firms are not accorded special favours. The rate structure should, nevertheless, be made more elastic, in particular by the adoption of contract rates guaranteeing equal treatment for all in equivalent conditions.

Closing of Branch Lines.

The railways should be allowed to abandon wholly or in part lines and services run at heavy loss, provided these lines are served or services assured by other means of transport.

The principle according to which each means of transport should enjoy as much liberty as is consistent with the safety and convenience of the public, should apply to automobile transport; its chief characteristic is its flexibility, and it is desirable to adopt a form of regulation permitting the public to obtain the maximum benefit from that flexibility.

Private automobile traffic should be free. Private transporters should not be allowed to carry freight for payment unless they satisfy the conditions to which public automobile transport undertakings are subjected.

Road Transport Control.

As to public automobile transporters, since they address themselves to users, it is natural that they should be required to offer the latter a certain number of guarantees. From this point of view, they should be subjected, like all public transport undertakings, to the regulations necessary for the organization of transport. They should also be subjected to certain regulations concerning the condition of vehicles (dimensions, weights, maintenance), insurance against third-party risks, working conditions and the driver's licence. These safety measures should be worked out after consultation with automatic circles and should apply equally to private transport.

In addition, automobile transport undertakings operating as public carriers, except for short distances, should publish their tariffs. The latter should not discriminate between users.

Through Bookings.

Collaboration between railways and road transport, especially on mixed routes which follow successively the railway and the road, is desirable for the organization, in the best interests of users, of such matters as the trans-shipment of passengers and goods, the issue of through tickets and the drawing up of transport documents.

The statistics required from railways and automobile transport should be limited to those necessary, in the first place to ensure that they are operated in accordance with the prescribed measures of co-ordination; and, in the second place, for the purpose of general economic statistics concerning traffic movement. The preparation of transport statistics should be carried out in a uniform manner in all countries, in view of the increasing importance of international traffic and in order to make possible comparisons between the different countries.

APPENDIX H.

EXPLANATORY MEMORANDUM ON DRAFT BILL.

The Bill is only suggestive and as it deals with all forms of transport will probably require further consideration. The main principles are, however, covered and so far as the provisions relate to passengers and goods vehicles the Imperial Road Traffic Acts 1930 to 1934 and the Road and Rail Traffic Act 1933 have been taken as a basis. These Acts were the outcome of the Royal Commission on Transport and what has become to be known as the "Salter Report".

The conditions in England are dissimilar in many ways to those in East Africa, but in making the English Acts the basis for this Bill, we have been swayed by the very important factor that any judgment on points arising under the Imperial Acts would be applicable under a local Ordinance if it is approximated to those Acts.

It is to be presumed that the Acts were drafted in the light of experience gained from other countries, the legislation of which has been examined prior to and during the preparation of this Bill. The main principle of all Acts regulating road transport is control by a system of licensing when the grant of a licence would be in the public interest, which is the cardinal guide for any Licensing Authority.

The Nyasaland Ordinance (The Motor Traffic Ordinance, 1934) is one of the latest pieces of Colonial legislation on this subject, it also is partly based on the Imperial Acts previously referred to, and combines matters similar to those legislated for in the Traffic Ordinance, 1928 (Kenya).

This Bill attempts only to provide regulating legislation for all kinds of passenger and goods transport.

It may be found that the Bill is very detailed in some respects, but we think it better that it should be so if its intention is thus more easily ascertainable, especially is it better if the powers and duties of the Licensing Authority are clearly set forth rather than left to the vagaries of each Licensing Authority or the individual members thereof.

The following notes on the clauses of the Bill are inserted for guidance:—

Clause 1.—Title.

Clause 2.—The interpretations put upon the various words need little comment—they follow section 121 of the

Road Traffic Act, 1930, and section 36 of the Road and Rail Traffic Act, 1933. It has been thought necessary, however, to add a definition of "public interest". What may be to the interest of one body of the public in one area may perhaps not be to the interest of the inhabitants of the Colony at large, if, therefore, such a contention can be established to the satisfaction of the Licensing Authority, a licence should not be issued.

Clause 3.—In some countries the Licensing Authority consists of Traffic Commissioners for areas—these are full-time appointments. Such are not practicable in Kenya at present and we consider that the work can be performed by an appointed Board. This clause follows, with slight additions, section 3 of the Carriage of Goods by Motor (Control) Ordinance, 1931.

Clause 4.—Certain portions of this clause are necessarily original as an endeavour has been made to bring both aircraft and inland water transport within the ambit of transport regulation. In the main, the clause follows section 1 of the Road and Rail Traffic Act, 1933, clause 4 (1) B (i) and (ii) has, however, been taken from part of section 9 of the Motor Carrier Transportation Act, 1930, of South Africa.

It will be observed (*inter alia*) that no person shall except under a licence use vehicular transport for the carriage of goods (i) for hire or reward or (ii) for or in connection with any trade or business carried on by him.

The second limb of this particular part of this clause 4 (1) A, goes further than most Colonial legislation. The Committee is of the opinion that no hardship would be imposed thereby but that it would assist greatly in controlling road traffic. The form of licence for such vehicles is dealt with later—see clause 5.

Clause 5.—This clause follows English practice—see section 2 of the Road and Traffic Act, 1933. It will be observed that for goods vehicles three classes of licences are provided according to the use to be made of the vehicles. An "A" class licence permits the holder to carry goods for hire or reward or in connection with the holder's business as a carrier of goods and such licences will ordinarily be issued to persons or firms whose sole business is that of carrier of other persons' goods. A "B" class licence is for issue to persons who combine the carriage of their own with other persons' goods. A "C" class licence is for issue to persons who carry

goods for or in connection with any trade or business carried on by them: Under this licence the carriage of goods for hire or reward is prohibited. Should the holder of a "C" licence at any time wish to carry the goods of other persons he must apply for and obtain a "B" licence.

A licence of any particular class describes the work which may be performed by any vehicle.

The term for "hire or reward" has been limited in its meaning—see sub-clause (4) and the performance by a local public authority of its functions is deemed to be the carrying on of a business—sub-clause 5, but the provisions of the clause shall not apply to certain uses to which vehicles are put by a local or public authority—sub-clause 6.

Clause 6.—This clause is in part based on section 3 of the Road and Rail Traffic Act, 1933. The licence period in clause 1 (1) of one year follows the period for a licence laid down in section 9 of the Carriage of Goods by Motor (Control) Ordinance, 1931.

The grant of short-term licences in certain circumstances is provided for by sub-clause (2) and special provision is made in sub-clause (3) with regard to a licence remaining in force (beyond the licence period) where an application is made for a new licence—this is applicable to goods vehicle licences only—see also section 9 of the Carriage of Goods (Control) Ordinance, 1931.

Clause 7.—This clause requires no comment.

Clause 8.—This clause is in part based on section 20 of the Road and Rail Traffic Act, 1933.

Clause 9.—This clause is based on section 23 of the Road and Rail Traffic Act, 1933. It requires no comment.

Clause 10.—This clause is based on section 5 of the Road and Rail Traffic Act, 1933, compare also section 148 (1) of the Motor Traffic Ordinance, 1934 (Nyasaland).

What further and other particulars may be required would be the subject of Regulations.

Clause 11.—This follows to a certain extent section 6 of the Road and Rail Traffic Act, 1933. It confers an absolute discretion upon the Licensing Authority to grant or refuse an "A" or "B" licence or to grant a licence in a modified form.

It will be noticed that the public interest is to be the guide for the Licensing Authority.

In sub-clause (2) (b) reference will be found to the applicant's conduct as a carrier of goods. This was included in the Road and Rail Traffic Act, 1933, in the light of experience gained under the Road Traffic Act, 1930. The Committee is of opinion that it is a very necessary provision.

Clause 12.—This clause is based upon section 7 of the Road and Rail Traffic Act, 1933.

Clauses 13 and 14.—These clauses are based upon section 72 of the Road Traffic Act, 1930. The particulars to be provided and the matter to which the Licensing Authority must have regard generally will be found to be similar in any transport control legislation.

Clause 15.—This clause follows section 35 of the Road Traffic Act, 1930.

Clause 16.—This clause is based on section 36 of the Road Traffic Act, 1930.

Clauses 17, 18, and 19.—These clauses require no comment.

Clause 20.—This clause follows certain provisions of section 8 of the Road and Rail Traffic Act, 1933. It is designed to ensure that goods and passenger vehicles shall only be permitted to run in a safe and serviceable condition, and also as far as possible to prevent uneconomic competition.

Clause 21.—This clause follows section 10 of the Road and Rail Traffic Act, 1933.

Clause 22.—This clause is based upon section 13 of the Road and Rail Traffic Act, 1933. The power of suspension or revocation is carefully regulated; that such a power is necessary in the public interest is patent, and that the holder of a licence is entitled to some protection so that his interests may be safeguarded is equitable.

Clause 23.—This clause follows section 9 of the Road and Rail Traffic Act, 1933.

Clause 24.—This clause follows section 11 of the Road and Rail Traffic Act, 1933.

The general policy involved in this clause is that of the Road Traffic Act, 1930, to quote from one writer on the subject: "The majority of those who have experience . . . feel,

however, that objections and a formal hearing are necessary, once it is admitted that the individual must be restricted in certain ways for the good of the industry as a whole. To take but one example, no one but a rival operator objecting to an application can satisfactorily show that the applicant is not telling the truth, or that he is in fact asking for a licence to do one thing when he wishes and intends to do something different. On principle the Licensing Authority cannot have the requisite knowledge necessary to test the accuracy of the applicant's information, or the true position with regard to traffic—unless he hears both sides."

Clause 25.—This clause is based upon the previous clause.

Clause 26.—This clause is based partly upon section 15 of the Road and Rail Traffic Act, 1933. Provision for appeal is essential. Compare also section 148 (6) of the Motor Traffic Ordinance, 1934, Nyasaland.

Clauses 27 and 28.—These clauses are based upon sections 34 and 35 of the Road and Rail Traffic Act, 1933 (in the case of section 34, as amended by the Road Traffic Act, 1934).

Clauses 29, 30, and 31.—These clauses require no comment; they are based upon sections 24, 14, and 25 of the Road and Rail Traffic Act, 1933.

Clause 32.—This clause is based upon section 16 of the Road and Rail Traffic Act, 1933. The records which must be kept will be found extremely useful.

Clause 33.—This clause requires no comment.

A Bill to make Provision for the Co-ordinated Development in the General Economic Interests of the Colony and Protectorate of Kenya of the Road, Rail, Air and Inland Water Systems of Transport and for such Regulation of each System of Transport as pertains thereto and for purposes connected with the matters aforesaid.

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

PART I.
PRELIMINARY.

1. This Ordinance may be cited as the Development of Short title. Transport Ordinance, 193....., and shall come into force on such day as the Governor shall by proclamation in the Gazette appoint.

2. In this Ordinance, unless the context otherwise Interpretation. requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

"authorized vehicle" has the meaning assigned to it by section 5 of this Ordinance;

"carriage of goods" includes the haulage of goods;

"driver" in relation to a trailer means the driver of the vehicle by which the trailer is drawn, and where a separate person acts as steersman of a motor vehicle includes that person as well as any other person engaged in the driving of the vehicle, and the expression "drive" shall be construed accordingly;

"fares" includes sums payable in respect of a contract ticket or a season ticket;

"goods" includes goods or burden of any description;

"goods vehicle" means a motor vehicle constructed or adapted for use for the carriage of goods or a trailer so constructed or adapted;

"licence" means a licence granted under this Ordinance;

"motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads;

"owner" in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement means the person in possession of the vehicle under that agreement;

"prescribed" means prescribed by regulations;

"public interest" means the interests and convenience of the inhabitants of the Colony as a whole;

"Regulations" means regulations made by the Governor under this Ordinance;

"ship" means every description of vessel used in navigation not propelled by oars;

"trailer" means a vehicle drawn by a motor vehicle;

"public service vehicle" means a motor vehicle carrying passengers for hire or reward;

"road" means the carriageway or portion of any road to which the public has right of access for vehicular traffic being that portion commonly in use for vehicular traffic and includes the portion of any bridge used for that purpose;

"road authority" means the Director of Public Works or his duly authorized representative, except where the roads or any of them within any area or district have been vested in a local authority under any Ordinance, in which case the local authority or its duly authorized representative is the road authority for the purposes of this Ordinance for the roads vested in it.

PART II.

APPOINTMENT OF TRANSPORT DEVELOPMENT BOARD AND LICENSING OF FORMS OF TRANSPORT.

3. (1) There is hereby established a Transport Development Board (in this Ordinance referred to as "the Licensing Authority") which shall consist of such persons, not fewer than three or more than five in number, as the Governor in Council may from time to time nominate.

Licensing Authority.

Where the Governor in Council proposes to nominate a person to the Board 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) 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.

(3) There shall be paid to the Licensing Authority such salaries, remuneration and allowances, if any, as the Governor in Council may determine and to the officers and servants appointed under sub-section (2) of this section.

(4) The Licensing Authority may delegate to any Provincial Commissioner, District Commissioner or other person any of its functions under this Ordinance, provided that any act done by any such Provincial Commissioner, District Commissioner or other person while so acting shall be subject to the approval of the Licensing Authority.

4. (1) From and after the commencement of this Ordinance, no person shall, **except** under a licence—

Licensing of transport.

- A. Use a goods vehicle on a road for the carriage of goods—
 - (i) for hire or reward; or
 - (ii) for or in connection with any trade or business carried on by him.
- B. For hire or reward convey any person by means of any motor vehicle—
 - (i) designed to carry more than six persons, including the driver of such vehicle; or
 - (ii) not designed exclusively for the conveyance of persons and their personal effects.
- C. Within the Colony for hire or reward convey any goods or any person by means of any aircraft, provided that the Licensing Authority may exempt aircraft operating on a through international route.
- D. Upon the inland waters of the Colony for hire or reward convey any goods or any person by means of any ship.

(2) When a goods vehicle is being used on a road for the carriage of goods the driver of the vehicle, if it belongs to him or is in his possession under an agreement for hire, hire purchase or loan, and in any other case the person in whose ownership or possession the vehicle is, shall for the purposes of this Ordinance be deemed to be the person by whom the vehicle is being used.

(3) Where at any time goods are carried in a goods vehicle, being a vehicle which has been let on hire by the person who at the time of the carriage of the goods is within the meaning of this Ordinance the user of the vehicle, the goods shall be deemed to be carried by that person for hire or reward.

(4) For the purposes of this Ordinance—

- (a) the delivery or collection by a person of goods sold, used or let on hire or hire purchase in the course of a trade or business carried on by him;
- (b) the delivery or collection by a person of goods which have been, or are to be, subjected to a process or treatment in the course of a trade or business carried on by him;
- (c) the carriage by a person engaged in agriculture in any locality of goods for or in connection with the business of agriculture carried on by another person in that locality, so long as the goods are carried in a vehicle which the person carrying them is authorized by a licence to use for the carriage of goods for or in connection with his agricultural business;
- (d) the carriage of goods in a vehicle which is being used under, and in accordance with the regulations applicable to, a licence taken out by a manufacturer or dealer under section 11 of the Traffic Ordinance, 1928, or by a repairer of mechanically propelled vehicles;
- (e) the carriage of goods in a vehicle by a manufacturer, agent or dealer, whilst the vehicle is being used by him for demonstration purposes.

shall not be deemed to constitute a carrying of goods for hire or reward.

(5) It is hereby declared that, for the purposes of this Ordinance, the performance by a local or public authority of its functions shall be deemed to be the carrying on of a business.

(6) This section shall not apply—

- (a) to the use for any purpose other than the carriage of goods for hire or reward of a trailer when drawn by a vehicle constructed solely for the carriage of not more than six passengers, including the driver, and their effects;
- (b) to the use of a vehicle for the purposes of funerals;
- (c) to the use by a local authority, or a person acting in pursuance of a contract with a local authority, of a vehicle for road cleansing, road watering or the collection or disposal of refuse, night-soil, or the contents of cesspools, or for the purpose of the enactments relating to the weights and measures or the sale of food and drugs;
- (d) to the use of a vehicle for police, fire brigade or ambulance purposes;
- (e) to the use of a vehicle for towing a disabled motor vehicle or for removing goods from a disabled vehicle to a place of safety;
- (f) to the use of a vehicle for any purpose specified in the Regulations, or the use for any purpose of a vehicle of any class so specified.

(7) If any person uses a goods vehicle, motor vehicle, aircraft, or ship in contravention of this section he shall be guilty of an offence under this Ordinance.

5. (1) Licences shall be of the following classes —

Classes of
licences.

For goods vehicles:—

- (i) Public carriers' licences,
- (ii) Limited carriers' licences,
- (iii) Private carriers' licences.

(2) A public carriers' licence (in this Ordinance referred to as an A Licence) shall entitle the holder thereof to use the authorized vehicles for the carriage of goods for hire or reward, or for the carriage of goods for or in connection with his business as a carrier of goods, whether by road transport or any other kind of transport, but it shall be a condition of the licence that no vehicle which is for the time being an authorized vehicle shall be used for the carriage of goods for or in connection with any other trade or business carried on by him except such storage or warehousing of goods as may be incidental to his business as a carrier.

(3) A limited carriers' licence (in this Ordinance referred to as a B Licence) shall entitle the holder thereof to use the authorized vehicles, as he thinks fit from time to time, either for the carriage of goods for or in connection with any trade or business carried on by him, or, subject to any conditions which the Licensing Authority in the exercise of its discretion to attach conditions to a B Licence may attach to the licence, for the carriage of goods for hire or reward.

(4) A private carriers' licence (in this Ordinance referred to as a C Licence) shall entitle the holder thereof to use the authorized vehicles for the carriage of goods for or in connection with any trade or business carried on by him, subject to the condition that no vehicle which is for the time being an authorized vehicle shall be used for the carriage of goods for hire or reward.

Notwithstanding anything in this Ordinance contained, the Licensing Authority may, in case of emergency and subject to such conditions as it thinks fit to impose, authorize the holder of a C Licence to use an authorized vehicle for the carriage of goods for any person to whom he lets the vehicle, if the authority is satisfied that the needs of that person cannot conveniently be met from other sources.

(5) In this Ordinance the expression "authorized vehicle" means in relation to any licence a vehicle authorized to be used thereunder.

(6) The vehicles authorized to be used under a licence shall be—

- (a) such motor vehicles, being vehicles belonging to the holder of the licence or in his possession under a hire purchase agreement, as are specified in the licence;
- (b) motor vehicles from time to time in the possession of the holders of the licence under an agreement for hire or loan, not exceeding at any time such maximum number as is specified in the licence;
- (c) trailers from time to time belonging to the holder of the licence or in his possession under an agreement for hire purchase, hire or loan, not exceeding at any time such maximum number as is specified in the licence;
- (d) in the case of a C Licence, subject to the provisions of the next succeeding sub-section, any motor vehicle belonging to the holder of the licence or in his

possession under a hire purchase agreement, but acquired by him, or coming into his possession under such an agreement, only after the grant of the licence.

For the purposes of paragraph (b) or paragraph (c) of this section, different types of motor vehicles or different types of trailers, as the case may be, may be distinguished in a licence and a maximum number may be specified in the licence for vehicles or trailers of each type.

(7) A motor vehicle which is acquired by, or under a hire purchase agreement comes into the possession of, the holder of a C Licence after the grant thereof shall cease to be an authorized vehicle on the expiration of one month from the date on which it was acquired by him or came into his possession, unless before the expiration of that period the holder delivers to the Licensing Authority a notice in the prescribed form of the vehicle having been acquired by him or having come into his possession.

(8) A motor vehicle specified in the licence shall not, while it remains so specified, be capable of being effectively specified in any other licence.

(9) A person may be the holder of two or more licences whether of the same class or of different classes.

(10) For passenger carrying vehicles :—

Road Service Licences.

(11) For aircraft :—

Aircraft Transport Licences.

(12) For ships :—

Inland Water Transport Licences.

6. (1) Every licence shall, unless previously revoked, continue in force for one year from the date on which it is expressed to take effect: Provided that if on the date of the expiration of a licence proceedings are pending before the Licensing Authority on an application for the grant of a new licence in substitution for an existing licence held by the applicant, the existing licence shall continue in force until such application is disposed of.

(2) With a view to enabling goods vehicles, passenger-carrying vehicles, aircraft or any ship to be used temporarily—

- (a) for the purpose of a seasonal business;
- (b) for the purpose of the execution of a particular piece of work; or
- (c) for any other purpose of limited duration,

a licence of any class may be granted for a period less than one year, but not exceeding three months, and any licence granted under this or the next following sub-section is in this Ordinance referred to as a short-term licence.

(3) If on the date of the expiration of a goods vehicle licence, other than a short-term licence, proceedings are pending before the Licensing Authority on an application by the holder of that licence for the grant to him of a new licence, the existing licence shall continue in force until the application is disposed of, without prejudice, however, to the exercise in the meantime of the powers of suspension and revocation conferred by this Ordinance.

Licence not transferable.

7. (1) No goods vehicle or road service licence shall be issued by the Licensing Authority until it is satisfied that the owner of the vehicle in respect to which a licence has been granted has effected a policy of insurance on such vehicle in accordance with the provisions of section 16 of this Ordinance.

(2) No licence of any class shall be transferable except with the Licensing Authority's written consent endorsed on such licence.

Protection of public interest.

8. (1) It is hereby declared that nothing in this Ordinance is to be treated as conferring on the holder of a licence of any description any right to the continuance of any benefits arising from the provisions of this Ordinance, or from a licence, or from any conditions attached to a licence.

(2) The grant of a licence of any description under this Ordinance shall not relieve the holder from complying with the provisions of any law in force in respect to motor vehicles, aircraft, or ships.

Licensing Authority to keep accounts.

9. (1) The Licensing Authority shall cause proper accounts and other records to be kept, and shall prepare an annual statement of accounts in such form and containing such particulars as may be required by the Governor.

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

PART III.

PROCEDURE ON APPLICATION FOR LICENCES.

A.—GOODS LICENCES.

10. (1) In the case of goods vehicles, a person applying for a licence shall submit to the Licensing Authority a statement in the prescribed form—

Procedure on application for goods vehicles licences.

(a) containing, as respects motor vehicles proposed to be used under the licence which belong to the applicant or are in his possession under a hire purchase agreement or which if the application is granted he intends to acquire or obtain possession of under such an agreement, such particulars as may be prescribed, so, however, that the particulars shall not require vehicles subject to hire purchase agreements to be distinguished from vehicles belonging to the applicant;

(b) stating the number and type of hired motor vehicles and of trailers proposed to be so used; and

(c) specifying, in the case of an application for an A Licence or a B Licence, the facilities for the transport of goods intended to be provided by him under the licence for other persons, including particulars of the district within which, or the places between which, it is intended that the authorized vehicles will normally be used for the purpose of carrying goods for hire or reward, and the rates proposed to be charged therefor.

(2) A person applying for a licence shall give to the Licensing Authority any information which it may reasonably require for the discharge of its duties in relation to the application.

11. (1) Subject to the provisions of the next succeeding section, the Licensing Authority—

Discretion of Licensing Authority to grant or refuse goods vehicle licences.

(a) on an application for an A Licence or for a B Licence, shall have full power in its discretion either to grant or to refuse the application, or to grant a licence subject to such conditions as it may impose or to grant a licence in respect of motor vehicles other than those of which particulars were contained in the application, or in respect of motor vehicles or trailers less in number than, or differing in type from, those for the use of which authorization was applied for; and

- (b) on an application for a C Licence, shall grant the application, subject to such conditions as may be necessary in the public interest, unless the applicant is the holder of a licence which is suspended, or unless a licence previously held by him has been revoked, in either of which cases the Licensing Authority shall have full power in its discretion either to grant or to refuse the application.
- (2) The Licensing Authority in exercising its discretion shall have regard primarily to the public interest, including the interest or interests of persons requiring, as well as those of persons providing, facilities for transport, and, in particular, shall have regard in the case of an application for an A Licence or for a B Licence—
- where the applicant is the holder of an existing licence of the same class, to the extent to which he is authorized to use goods vehicles thereunder for the carriage of goods for hire or reward;
 - to the previous conduct of the applicant in the capacity of a carrier of goods;
 - to the number and type of vehicles proposed to be used under the licence;
 - in determining the number of vehicles to be authorized, to the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair.

and, in the case of an application for a B Licence, also to the extent to which the applicant intends that the vehicles proposed to be used under the licence shall be used for the carriage of goods for hire or reward.

(3) In any case in which the Licensing Authority refuses to grant a licence, or grants a licence which differs from the licence applied for, or imposes conditions to which the applicant does not agree, the Licensing Authority shall, if requested by the applicant, state in writing the reasons for its decision.

12. (1) If, on an application for an A Licence, the applicant satisfies the Licensing Authority that any of the authorized vehicles will be used exclusively for the purposes of a contract entered into by the applicant with a person carrying on a trade or business (not being the business of carrying or arranging for the carrying of goods) for the carriage of goods

Special provision with respect to an application for an A Licence.

for or in connection with that trade or business during any continuous period of not less than one year, the Licensing Authority shall, unless it is satisfied that, having regard to the previous conduct of the applicant in the capacity of a carrier of goods, he is not a fit person to receive a licence, grant the application so far as regards those vehicles, subject to conditions for securing that those vehicles shall be used exclusively for the purposes of the contract and shall at the termination of the contract cease to be authorized vehicles unless the Licensing Authority on an application made to it with respect thereto otherwise directs.

(2) If, on an application for an A or B Licence made not later than the or such later date as the Governor in Council may appoint, the applicant shows to the satisfaction of the Licensing Authority that during the year beginning on the 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 belonging to the applicant or in his possession under a hire purchase agreement on the said day of 19.....: Provided that the Licensing Authority may if it thinks fit permit the applicant to substitute for the said vehicles belonging to him or in his possession as aforesaid vehicles of a similar type or of an aggregate weight unladen not greater than the aggregate weight unladen of the said vehicles.

B.—PASSENGER-CARRYING VEHICLES.

13. In the case of passenger-carrying vehicles, every person applying for a Road Service Licence shall submit to the Licensing Authority—

- particulars of the type or types of vehicles to be used; and
- in the case of regular services, the time-tables and fare-tables of the services which it is proposed to provide under the licence; and
- in any other case, such particulars as to the frequency of the services and the times expected to be taken on the journeys included in those services as the Licensing Authority may require.

Procedure on application for a Road Service Licence.

Discretion of Licensing Authority to grant or refuse a Road Service Licence.

14. (1) On an application for a Road Service Licence, the Licensing Authority shall not grant such licence if it appears to it from the particulars furnished in pursuance of section 13 that the provisions of the Traffic Ordinance, 1928, relating to the speed of motor vehicles are likely to be contravened, and in exercising its discretion to grant or refuse a Road Service Licence in respect of any routes and its discretion to attach conditions to any such licence shall have regard to the following matters—

- (a) the suitability of the routes on which a service may be provided under the licence;
- (b) the extent, if any, to which the needs of the proposed routes or any of them are already adequately served;
- (c) the extent to which the proposed service is necessary or desirable in the public interest;
- (d) the needs of the areas through which the proposed routes or any of them pass as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services and the provision of unremunerative services) and the co-ordination of all forms of passenger transport, including transport by rail,

and take into consideration any representations or objections which may be made in the prescribed manner by persons who are already providing transport facilities along or near to the routes or any part thereof or by any local authority in whose areas any of the routes is situated.

(2) Subject to the provisions of this section and to any regulations made by the Governor in Council, the Licensing Authority may attach to a Road Service Licence such conditions as it may think fit with regard to the matters to which it is required to have regard under the preceding sub-section, and in particular for securing that—

- (a) the fares shall not be unreasonable;
- (b) where desirable in the public interest the fares shall be so fixed as to prevent wasteful competition with alternative forms of transport, if any, along the routes or any part thereof, or in proximity thereto;
- (c) copies of the time-table and fare-table shall be carried and be available for inspection in vehicles used on the service;
- (d) passengers shall not be taken up or shall not be set down except at specified points or shall not be set down between specified points.

and generally for securing the safety and convenience of the public; and the Licensing Authority may from time to time vary in such manner as it thinks fit the conditions attached to a Road Service Licence.

15. (1) Subject to the provisions of this section and section 16 of this Ordinance, it shall not be lawful for any person to use or cause or permit any other person to use a goods or passenger-carrying vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third party risks as complies with the requirements of this Ordinance. Provisions as to insurance.

(2) If a person acts in contravention of this section he shall be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

(3) This section shall not apply to a vehicle owned by a Government or by the High Commissioner for Transport.

16. (1) In order to comply with the requirements of this Ordinance, a policy of insurance must be a policy which—

- (a) is effected with an insurance company approved by the Licensing Authority; and
- (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person, loss of or damage to property caused by or arising out of the use of the vehicle on a road;

Provided that such a policy shall not be required to cover—

- (i) liability in respect of the death arising out of and in the course of his employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or
- (ii) except in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering

or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arise; or

(iii) any contractual liability.

(2) Any condition in a policy issued for the purposes of the preceding sub-section providing no liability shall arise under the policy, or that any liability arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall be of no effect in connection with such claims as are mentioned in the preceding sub-section: Provided further that nothing in this section shall be taken to render void any provision in a policy requiring the person insured to repay to the insurer any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

(3) If any person for the purpose of obtaining a policy of insurance required by this section makes any false statement in consequence whereof the policy is likely to be avoided, or if the person insured commits any act which disentitled him to claim under the policy, he shall be guilty of an offence under this Ordinance.

(4) If a policy of insurance required by this section lapses or otherwise becomes invalid any licence issued under this Ordinance in respect of the vehicle to which the policy relates shall thereupon become void.

(5) If a policy of insurance required by this section lapses or otherwise becomes invalid, the holder of such policy shall forthwith notify the Licensing Authority, and failure to do so shall be an offence under this Ordinance.

C.—AIRCRAFT TRANSPORT LICENCES.

17. In the case of aircraft 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 aircraft to be used;
- (b) the places between which it is intended the aircraft shall ply;
- (c) such other particulars as the Licensing Authority may reasonably require for the discharge of its duty in relation to the application, including particulars of fares and rates proposed to be charged.

Procedure on application for Aircraft Licence.

D.—INLAND WATER TRANSPORT LICENCES.

18. 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;
- (f) such other particulars as the Licensing Authority may reasonably require for the discharge of its duty in relation to the application.

Procedure on application for Inland Water Transport Licence.

19. The Licensing Authority, on an application either for an Aircraft Transport Licence or 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 public interest and also to the extent to which existing transport serves the routes proposed to be served in the application, including particulars of fares and rates proposed to be charged.

Discretion of Licensing Authority to grant or refuse Aircraft or Inland Water Transport Licence.

PART IV.

CONDITIONS, VARIATION, REVOCATION AND SUSPENSION OF LICENCES. PENALTY FOR NON-COMPLIANCE WITH CONDITIONS OF LICENCES AND OBJECTIONS TO APPLICATIONS AND APPEALS IN CONNECTION WITH LICENCES.

20. (1) It shall be a condition of every goods vehicle or road service vehicle licence—

- (a) that any authorized vehicles are maintained in a fit and serviceable condition;
- (b) that any provision (whether contained in any Ordinance or in Rules or Orders made thereunder) with respect to limits of speed and weight, laden and unladen, the loading of goods vehicles, and the number of passengers to be carried, are complied with in relation to the authorized vehicles;
- (c) that the provisions of this Ordinance relating to the keeping of records are complied with.

Conditions of goods vehicle and Road Service Licences.

(2) The Licensing Authority may in its discretion attach to an A or B Licence as respects the user of the authorized vehicle, or any of them for the carriage of goods for hire or reward all or any of the following conditions, that is to say—

- (a) a condition that certain classes or descriptions of goods only shall be carried;
- (b) a condition that the rates to be charged shall not be lower than such amount for the goods authorized to be carried as the Licensing Authority may consider reasonable;

and in the case of a B Licence the Licensing Authority may attach, in addition to the foregoing—

- (c) a condition that they shall be so used only in a specified district or between specified places;
- (d) a condition that goods shall be so carried only for specified persons;
- (e) such other conditions as the Licensing Authority may think fit to impose in the public interest.

(3) The Licensing Authority may, from time to time, on the application of the holder of the licence, cancel or vary any conditions attached to an A or B Licence in pursuance of sub-section (2) of this section.

21. (1) On the application of the holder of a goods vehicle licence of any class the Licensing Authority by whom the licence was granted may at any time during its currency vary the licence by directing that additional vehicles shall be specified therein, or that vehicles specified therein shall be removed therefrom, or that the maximum number of motor vehicles or of trailers specified in the licence in pursuance of paragraphs (b) and (c) respectively of sub-section (6) of section 5 of this Ordinance shall be increased or reduced.

(2) The foregoing provisions of this Ordinance as to applications for goods vehicle licences of any class, as to the grant or refusal of licences of any class (except the provisions of sub-section (2) of section 12), and as to the attaching of conditions to goods vehicle licences, shall apply in relation to the variation of any such licence: Provided that the Licensing Authority shall be bound to grant an application for a variation consisting only of the removal of a specified vehicle from the licence, or of a reduction in the maximum number specified as aforesaid, or of the specification in the licence in substitution for a specified vehicle of a vehicle of the same or of a less weight unladen.

Variation of goods vehicle licences.

(3) Where it comes to the knowledge of the Licensing Authority that a vehicle specified in a licence has ceased to be used under the licence for any reason other than a fluctuation in business, or is specified in another licence, it may vary the licence by directing that the vehicle shall be removed therefrom.

(4) When the Licensing Authority by whom a C Licence was granted received notice under sub-section (7) of section 5 of this Ordinance that the holder of the licence has acquired, or come into possession of, a vehicle as therein mentioned, it shall vary the licence by directing that the vehicle shall be specified therein.

22. (1) A licence of any description may be revoked or suspended by the Licensing Authority on the ground that any of the conditions of the licence have not been complied with:

Power to revoke or suspend licences.

Provided that the Licensing Authority shall not revoke or suspend a licence unless it is satisfied, after holding a public inquiry, if the holder of the licence requests it so to do, that owing to the frequency of the breach of conditions of the licence, or to the breach having been committed wilfully, or to the danger to the public involved in the breach, the licence should be revoked or suspended.

(2) In any case where a licence is revoked or suspended the Licensing Authority shall, if requested by the licence holder, state in writing the grounds for the revocation or suspension.

(3) The Licensing Authority may, in lieu of revoking or suspending a goods vehicle licence, direct that any one or more of the vehicles specified therein shall be removed therefrom, or that the maximum number of motor vehicles or of trailers specified in the licence in pursuance of paragraphs (b) and (c) respectively of sub-section (6) of section 5 of this Ordinance shall be reduced, and references in this or any other section of this Ordinance to the revocation or suspension of a licence shall be construed as including a reference to the giving of a direction under this sub-section.

23. (1) Subject to the provisions of this section, any person who fails to comply with any condition of a licence of any class held by him shall be guilty of an offence against this Ordinance.

Penalty for non-compliance with and exceptions from conditions of licences.

(2) In the case of a goods vehicle licence, and notwithstanding that a vehicle is an authorized vehicle, the conditions

of the licence shall not apply while the vehicle is being used for any purpose for which it might lawfully be used without the authority of a licence.

24. (1) The Licensing Authority shall, subject as in this section hereinafter contained, publish in the prescribed manner notice of an application for a goods vehicle or Road Service Licence specifying the time within which and the manner in which objections may be made to the grant of the application.

(2) It shall be the duty of the Licensing Authority, on an application to which this section applies, to take into consideration any objections to the application which may be made by persons who are already providing facilities, whether by means of road transport or any other kind of transport, for the carriage of goods or passengers for hire or reward in the district, or between the places, which the applicant intends to serve, on the ground that suitable transport facilities in that district, or between those places, 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 contrary to public interest, or on the ground that any of the conditions of a licence held by the applicant have not been complied with: Provided that, on an application for the grant or variation of an A Licence, the Licensing Authority shall not be bound to take into consideration objections made by a person who holds a B Licence and does not hold an A Licence.

(3) This section shall apply to every application for the grant for one year of an A Licence or of a B Licence, or for the variation of such a licence by a direction that additional vehicles shall be specified therein or that the maximum number of motor vehicles or of trailers specified in the licence in pursuance of paragraphs (b) and (c) respectively of sub-section (6) of section 5 of this Ordinance shall be increased, or, in the case of a B Licence, that the district specified in the licence within which, or the places so specified between which, the vehicles can be used for the carriage of goods for hire or reward shall be varied or extended, not being—

- (a) an application which the Licensing Authority is bound to grant; or
- (b) an application for a licence to expire not later than an existing licence under which the vehicles to which the application relates are authorized to be used for the purposes of a business which the applicant has acquired or intends to acquire; or

(c) an application as respects which the Licensing Authority is of opinion that, having regard to its trivial character, it is not necessary that any opportunity should be given for objection.

(4) This section shall apply to every application under sub-section (2) of section 6 of this Ordinance for a short-term licence unless the Licensing Authority is of opinion either—

- (a) that, having regard to the trivial nature of the application, it is not necessary that any opportunity should be given for objection; or
- (b) that the application has been made with reasonable expedition and that the demand for the use of the vehicles to be authorized under the licence is so urgent as to render compliance with the requirements of this section impracticable.

(5) The Licensing Authority may hold such inquiries as it thinks necessary for the proper exercise of its functions under this Ordinance, including inquiries into the applicant's reliability, financial stability, and the facilities at his disposal for carrying out mechanical repairs.

(6) Where, on an application for the grant of an A Licence or a B Licence, the Licensing Authority proposes to grant the application in respect of vehicles other than those of which particulars were contained in the application, it shall publish notice of its proposal as if that proposal were an application to which this section applies, and thereupon the provisions of this section with respect to the making and consideration of objections shall apply accordingly:

Provided that it shall not be necessary for the Licensing Authority to publish such a notice if it is satisfied that the variation, subject to which it proposes to grant the application, will not materially increase the total carrying capacity of the authorized vehicles.

25. (1) The Licensing Authority shall publish in the prescribed manner notice of an application for an Air or Inland Water Transport Licence specifying the time within which, and the manner in which, objections may be made to the grant of the application.

(2) It shall be the duty of the Licensing Authority on an application to take into consideration any objections to the application which may be made by persons who are already

Objections to certain applications or variations of goods vehicle or Road Service Licences.

Objection to applications for Air or Inland Water Transport Licence.

providing transport facilities for the carriage of goods or passengers for hire or reward between the same places which the applicant intends to serve.

Provision for appeals in connection with licences.

26. (1) Any person who—

- (a) being an applicant for the grant or variation of a licence, is aggrieved by the decision of the Licensing Authority on the application; or
- (b) having duly made an objection to any such application as aforesaid, being an objection which the Licensing Authority is bound to take into consideration, is aggrieved by the decision of the Licensing Authority thereon; or
- (c) being the holder of a licence, is aggrieved by the revocation or suspension thereof.

may within the prescribed time and in the prescribed manner appeal to the Supreme Court.

(2) The case shall be heard by a judge of the Supreme Court to be assigned by the Chief Justice for the purpose.

(3) In hearing any such appeal such judge shall have all the powers which may be exercised by a judge in the hearing of an ordinary civil suit, and may permit any party to appear before him either personally or by advocate.

PART V.

OFFENCES AND PROSECUTIONS.

Forgery, etc., of licences

27. (1) If, with intent to deceive, any person—

- (a) forges within the meaning of Chapter XXXIV of the Penal Code, 1930, or alters or uses or lends to or allows to be used by any other person a licence, or any document, plate or mark by which the subject of the licence is to be identified as being licensed under this Ordinance; or
- (b) makes or has in his possession any document, plate or mark so closely resembling a licence, or any such document, plate or mark as aforesaid, as to be calculated to deceive; or
- (c) alters an entry in a record under section 32 of this Ordinance.

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) If any person, for the purpose of obtaining the grant of a licence to himself or any other person, or the variation

of a licence, or for the purpose of preventing the grant or variation of any licence or of procuring the importation of any condition or limitation in relation to a licence, knowingly makes any false statement, he shall be guilty of an offence under this Ordinance and be liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) If a police officer has reasonable cause to believe that a document carried on a motor vehicle, aircraft or ship or by the driver, pilot or master thereof is a document in relation to which an offence under this section has been committed, he may seize the document and, when any document is seized under this section, either the driver, pilot, master or the owner of the vehicle, aircraft or ship shall, if the document is still detained and none of them has previously been charged with an offence under this section, be summoned before a magistrate of the first or second class to account for his possession of the said document, and the magistrate shall make such order respecting the disposal of the said document and award such costs as the justice of the case may require.

For the purpose of this sub-section the expression "document" shall include a plate, and the power to seize shall include power to detach from the vehicle, aircraft or ship.

28. (1) A person guilty of an offence under this Ordinance for which no special penalty is provided shall be liable, in the case of a first offence, to a fine not exceeding twenty pounds, and in the case of a second and subsequent conviction to a fine not exceeding fifty pounds.

Prosecutions and penalties for offences

(2) If any person acts in contravention of, or fails to comply with, any regulation made under this Ordinance, and contravention of or failure to comply with that regulation is not made an offence under any other provision of this Ordinance, he shall, for each offence, be liable on conviction before a magistrate of the first or second class to such maximum penalty, not exceeding a fine of twenty pounds, as may be prescribed by the regulations.

PART VI.

MISCELLANEOUS PROVISIONS.

29. All fees payable under this Ordinance and all fines imposed in respect of offences under this Ordinance or the Regulations made thereunder shall be paid into the general revenue of the Colony.

Financial provisions.

Fees in respect of licences.

30. Such fees, payable at such times and in such manner as the Governor in Council may prescribe, shall be charged by the Licensing Authority in respect of the grant or variation of licences.

General power of making Regulations.

31. The Governor in Council may make Regulations for any purpose for which Regulations may be made under this Ordinance and for prescribing anything which may be prescribed under this Ordinance and generally for the purpose of carrying this Ordinance into effect, and in particular, but without prejudice to the generality of the foregoing provisions, may make Regulations with respect to any of the following matters—

- (a) the forms to be used and the particulars to be furnished for any of the purposes of this Ordinance;
- (b) the procedure on applications for, and the determination of question in connection with, the grant, variation, suspension and revocation of licences;
- (c) the issue of licences, and the issue of copies of licences in the case of licences lost or destroyed;
- (d) the means by which vehicles, aircraft or ships are to be identified, whether by plates, marks or otherwise, as being authorized for use under this Ordinance;
- (e) the custody of licences, the production, return and cancellation of licences on expiration, suspension or revocation, and the custody, production and return of documents and plates; and
- (f) the notification to the Licensing Authority of vehicles, aircraft or ships which have ceased to be used under a licence.

and in the case of vehicles different regulations may be made as respects different classes or descriptions thereof and as respects the same class or description of vehicles in different circumstances.

Records as to hours of work, journeys, loads, etc.

32. (1) Subject to the provisions of Regulations made under this section, the holder of a licence shall keep or cause to be kept, in accordance with the Regulations, current records showing—

- (a) as respects every person employed by him as a driver or statutory attendant of an authorized vehicle, or pilot or master of an aircraft or ship, the times at

which that person commenced and ceased work and particulars of his intervals of rest and the like in information as respects himself when acting as such a driver or attendant, pilot or master;

- (b) as respects every journey of a vehicle, aircraft or ship on which goods are carried under the licence, particulars of the journey, of the rates charged and of the greatest weight of goods carried by the vehicle, aircraft or ship at any time during the period to which the record relates and the description and destination of the goods carried.

and the Regulations may make provision for requiring drivers of authorized vehicles, pilots and masters of aircraft or ships, to carry the prescribed documents and to make any prescribed entries therein.

(2) Subject to the provisions of the Regulations made under this section, the Licensing Authority may dispense with the observance, as respects the carriage of goods under a licence granted by it, of any requirements of those Regulations, and may grant such a dispensation either generally or as respects any particular vehicle, aircraft or ship or as respects the use of vehicles, aircraft or ships for any particular purpose.

(3) The holder of a licence shall preserve every record kept under Regulations made under this section for a period of six months, commencing on the date on which the record is made, and for such further period, not exceeding six months, as may be required by the Licensing Authority or a police officer not below the rank of superintendent, and during the period for which he is required by or under this sub-section to preserve a record shall, if required so to do at any time by the Licensing Authority or by any person authorized in that behalf by the Licensing Authority or by any person authorized in that behalf by a police officer not below the rank of superintendent, produce the record for the inspection of the Licensing Authority or of the person so authorized.

(4) If any person fails to comply with the provisions of this section, or of any Regulations made thereunder, he shall be guilty of an offence under this Ordinance.

33. All offences under this Ordinance shall be cognizable to the police.

Offences to be cognizable to the police.