

TANGANYIKA



No. 4 OF 1962

I ASSENT,

.....*P. W. W. Ram*.....
Chief Justice
28th
...TH FEBRUARY, 1962

An Act to amend the Local Government Ordinance and to repeal the African Chiefs (Special Powers) Ordinance

[2ND MARCH, 1962]

ENACTED by the Parliament of Tanganyika.

1. This Act may be cited as the Local Government Ordinance (Amendment) Act, 1962, and shall be read as one with the Local Government Ordinance (hereinafter called the Ordinance). Short title and construction Cap. 333

2. Section 2 of the Ordinance is hereby amended by inserting immediately after the definition of "area" contained therein the following new definition:— Section 2 of Cap. 333 amended

“ ‘auditor’ means such person as may be appointed by the Minister to audit the accounts of an authority in accordance with Part XI, and for the purposes of that Part and of section 127 includes any person duly authorized in that behalf by the auditor;”.

3. Section 5 of the Ordinance is hereby amended—

(a) by deleting the word “approved” in the sixth line of paragraph (a) of subsection (1) thereof and substituting therefor the words “laid before the National Assembly”; and Section 5 of Cap. 333 amended

(b) by deleting the fullstop at the end of subsection (2) thereof, substituting therefor a colon and adding immediately thereafter the following proviso:—

“Provided that nothing in this subsection shall be construed as requiring any amending Instrument to be approved by the National Assembly in accordance with section 4.”.

4. Section 10 of the Ordinance is hereby repealed and replaced by the following new section:— Section 10 of Cap. 333 repealed and replaced

“Amendment of Instrument” 10.—(1) The Minister may, subject to the provisions of this Ordinance and in particular to the provisions of section 5, at any time, after consultation with the authority, amend any Instrument by making an amending Instrument.

(2) Every amending Instrument made under subsection (1) shall be laid before the National Assembly.”.

Section 13 of
Cap. 333
amended

5. Section 13 of the Ordinance is hereby amended by deleting subsection (2) thereof and substituting therefor the following new subsection:—

“(2) Any member of an authority who—

(a) without leave of absence or the prior written permission of the chairman absents himself from three consecutive ordinary meetings of the authority; or

(b) without leave of absence or the prior written permission of the chairman of the committee absents himself from three consecutive meetings of any committee to which he has been appointed by the authority,

shall *ipso facto* become disqualified from continuing to be a member of the authority.”

Section 22 of
Cap. 333
amended

6. Section 22 of the Ordinance is hereby amended by deleting subsection (1) thereof and substituting therefor the following new subsection:—

“(1) Minutes of the proceedings of every meeting of an authority shall be regularly entered in books kept for that purpose and shall be confirmed or amended, as the case may require, at the same or next ensuing meeting of the authority and signed by the person presiding thereat, and any minutes purporting to be so signed shall, in the absence of proof of error, be deemed to be a correct record of the meeting and shall be received in evidence without further proof.”

Section 26 of
Cap. 333
repealed
and
replaced

7. Section 26 of the Ordinance is hereby repealed and replaced by the following new section:—

“Disability of members of authority for voting on account of interest in contracts, etc.

26.—(1) If a member of an authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the authority or any committee thereof at which the contract or other matter is the subject of consideration he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in or be present at the consideration or discussion of, or vote on any question with respect to, the contract or other matter:

Provided that this section shall not apply to an interest in a contract or other matter which a member of an authority may have as a ratepayer or inhabitant of the area of jurisdiction of the authority, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

(2) For the purposes of this section a person shall (subject as hereinafter provided) be treated as having indirectly a pecuniary interest in a contract or other matter, if—

(a) he or any nominee of his is a member of a company or other body, or the holder of debentures in a company, with which the contract is made or proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

- (b) if he is a partner or in the employment of a person with whom the contract is made or proposed to be made or who has a direct pecuniary interest in the other matter under consideration:

Provided that—

- (i) this subsection shall not apply to membership of, or employment under any other local authority or any association of persons who as a public body and not for their own profit provide any public utility; and
- (ii) a member of a company or other body shall not by reason only of his membership, and a person holding debentures shall not by reason only of his holding, be treated as being so interested if he has no beneficial interest in any shares or stock of that company or other body or in such debentures.
- (3) In this section a direct or indirect interest of a spouse or any member of the family of a member of an authority shall, if known to the member of the authority, be deemed to be a direct or indirect interest, as the case may be, of the member of the authority.

(4) A general notice given in writing to the clerk of the authority by a member of the authority to the effect that he, his spouse, or a member of his family has a direct or indirect interest in a contract, proposed contract or other matter and specifying the nature of the interest, shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any matter relating thereto which may be the subject of consideration after the date of the notice.

(5) The clerk of the authority shall cause to be recorded, in a book to be kept for the purpose, particulars of any disclosure made under subsection (1) and of any notice given under subsection (4). The book shall be open at all reasonable times for the inspection of any member of the authority.

(6) If any person fails to comply with the provisions of subsection (1), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment, and shall thereupon be disqualified from continuing to be a member of the authority and shall be liable to account to the authority for any profit which may accrue to him from any such contract or matter:

Provided that a prosecution for an offence under this section shall not be instituted without the consent in writing of the Director of Public Prosecutions.

(7) The proper officer may, subject to such conditions as he may think fit to impose, remove any disability incurred under this section in any case where the number of members of an authority so disabled at any one time would be so great a proportion of the whole as to impede the transaction

of business, or in any other case in which it appears to the proper officer to be in the interests of the inhabitants of the area of jurisdiction of the authority that the disability should be so removed.

(8) In this section—

- (a) a member of the family of a member of an authority shall be deemed to include the father, mother, child, brother or sister of the member of the authority and any person married to his father, mother, child, brother or sister;
- (b) the expression “clerk of the authority” means in the case of a Town Council the Town Clerk, and in the case of any other authority the clerk or other person who is the chief executive officer of the authority.”.

Section 30 of
Cap. 333
amended

8. Section 30 of the Ordinance is hereby amended by deleting the words “appointed by a District Council” occurring in the second and third lines of subsection (4) thereof.

Section 31 of
Cap. 333
amended

9. Section 31 of the Ordinance is hereby amended—

- (a) by adding immediately after subsection (1) thereof the following new subsection to be numbered (1A):—

“(1A) A District Council shall, if the Minister so directs, establish a divisional committee to exercise authority within any area (being within the area of the District Council) which immediately prior to the establishment of the District Council was a township established under the Townships Ordinance or a minor settlement established under the Minor Settlements Ordinance.”; and

- (b) by inserting immediately after the word “and” in the third line of subsection (2) thereof the words and commas “, subject to the provisions of subsection (1A).”.

Section 42 of
Cap. 333
amended

10. Section 42 of the Ordinance is hereby amended by deleting subsection (1) thereof and substituting therefor the following new subsection:—

“(1) It shall be the duty of every authority to discharge the functions conferred upon it by this Ordinance or any other law and generally to assist within its area in the suppression of crime and in the maintenance of peace, order and good government; and for these purposes an authority may, within the limits of the functions so conferred, either by its own officers or by duly appointed agents, do all such things as are lawful and necessary for the performance of such duties.”.

New
sections
inserted in
Cap. 333

11. The Ordinance is hereby amended by inserting immediately after section 42 thereof the following new sections:—

“Duties of
clerks to
District
Councils
in respect
of offences

42A.—(1) Without prejudice to the generality of subsection (1) of section 42 but subject to the provisions of section 42D, the clerk to a District Council—

- (a) on receiving information that any person, being a person who is a member of a class or description of persons in respect of which the functions of the Council are exercisable, who has committed an offence for which he may be arrested without a warrant or for whose arrest a warrant has been issued, is within the area of the Council, shall cause such person to be arrested and taken forthwith before a magistrate or local court having jurisdiction over him;
- (b) on receiving information that property of any description which has been stolen, whether within or without the area of the Council, is within such area, shall cause such property to be seized and detained pending the order of a magistrate or a local court having jurisdiction in the matter and shall forthwith report such seizure and detention to such magistrate or court.
- (2) In the exercise of any of the powers of arrest conferred by subsection (1), a clerk to a District Council shall have and may exercise all such powers and shall perform all such duties as are by law conferred or imposed upon police officers.
- (3) The powers conferred and the duties imposed by this section upon a clerk to a District Council may also, without prejudice to the provisions of section 144, be exercised and performed by any person employed by such Council as a messenger, so however that every such messenger shall in the exercise and performance of any such power or duty as aforesaid obey any instructions in that behalf issued by such clerk either generally or as regards any particular occasion or messenger:
- Provided that the exercise of any such power or the performance of any such duty shall not be regarded as being unlawful by reason only of non-compliance with any such instructions.
- (4) In this section and in section 42B the expression "clerk to a District Council" means the clerk or other person who is the chief executive officer of such Council.

Duty of
persons to
appear
before
clerks

- 42B.—**(1) Without prejudice to the generality of subsection (1) of section 42 but subject to the provisions of section 42D, the clerk to a District Council shall have power to require any person who is a member of a class or description of persons in respect of which the functions of the Council are exercisable to appear before him for any of the purposes laid down in this Ordinance, and it shall be the duty of every such person when so directed by the clerk to a District Council to attend before him.
- (2) Any person who, when lawfully directed to attend before any clerk to a District Council under the provisions of subsection (1), without reasonable excuse neglects or refuses to attend as and when directed, shall be guilty of an offence against this Ordinance and, without prejudice to any proceedings which may be instituted against him therefor, may be arrested by or under order of and taken before such clerk.

(3) Any person acting on and in accordance with instructions lawfully given by a clerk to a District Council pursuant to this section shall be deemed to be empowered to do all that may reasonably be necessary to give effect to such instructions.

Powers of
clerks to
divisional
committees

42C.—(1) The clerk to a divisional committee established under section 31 shall, within the area over which such committee exercises its authority, have all the powers and duties conferred and imposed upon the clerk to a District Council by sections 42A and 42B and in relation to the exercise by the clerk to such committee of such powers and duties references in the said sections to the District Council and to the area of the District Council shall be read and construed respectively as references to the divisional committee and to the area over which it exercises its authority.

(2) The provisions of subsection (1) shall not be construed as in any way derogating from the powers conferred and the duties imposed by sections 42A and 42B upon the clerk to a District Council.

(3) In this section the expression "clerk to a divisional committee" means the clerk or other person who is the chief executive officer of such committee.

Provisions
of sections
42A, 42B and
42C not
to apply
within a
chiefdom

42D. The provisions of sections 42A, 42B and 42C shall not apply within any chiefdom as defined in section 3 of the African Chiefs Ordinance and the powers and duties conferred and imposed by the said sections upon clerks to District Councils and divisional committees shall not be had or exercised in respect of any such chiefdom or any person within any such chiefdom."

Section 52 of
Cap. 333
amended

12. Section 52 of the Ordinance is hereby amended—

- (a) by renumbering the same as section 52 (1);
- (b) by deleting paragraph (124) of subsection (1) thereof as so renumbered and by substituting therefor the following new paragraph:—

"(124) take measures for the prevention or removal of damage to and for the prevention, removal and disposal of obstruction to roads, streets, thoroughfares and open spaces;" and

- (c) by adding thereto the following new subsection to be numbered (2)—

"(2) The function specified in paragraph (124) of subsection (1) shall in relation to the removal and disposal of obstructions—

- (a) include the power to—

- (i) recover from the owner of the thing causing the obstruction any expense incurred by the authority in such removal;

- (ii) sell or otherwise dispose of the thing causing the obstruction and thereby to extinguish any right or title thereto previously vested in any person, and
- (b) be exercised in accordance with regulations made under section 148."

13. The Ordinance is hereby amended by inserting immediately after section 53 thereof the following new section to be numbered 53A:—

New section 53A inserted in Cap. 333

"Declaration and modification of customary law

53A.—(1) A District Council may, and where the Minister so requires, shall record in writing a declaration of what in the opinion of the Council is the local customary law relating to any subject either as applying throughout the area of the Council or in any specified part thereof or as affecting specified Africans or classes or descriptions of Africans in such area or in such part thereof, and submit such declaration to the Minister.

(2) A District Council may, if in the opinion of the Council it is expedient for the good government and welfare of the African inhabitants of the area, submit for the consideration of the Minister a recommendation for the modification of any local customary law, whether or not a declaration has been recorded and an order made under the provisions of this section in respect of such local customary law, relating to any subject either as applying throughout the area of the Council or in any specified part thereof or as affecting specified Africans or classes or descriptions of Africans in such area or in such part thereof.

(3) If the Minister is satisfied that a declaration recorded under subsection (1) accurately records the local customary law with respect to the subject to which it relates, or that a modification recommended under subsection (2) is expedient and that such local customary law or modification is not repugnant to justice and morality, nor incompatible in its terms or by necessary implication with any written law, he may by order direct such declaration or such modification to be the local customary law in respect of the subject and within the area to which it relates and to be binding upon the Africans to whom it relates and shall cause such declaration or modification to be published in such manner as he may deem expedient.

(4) In this section—

- (a) "African" means a person whose tribe is a tribe of Tanganyika, or of the Colony and Protectorate of Kenya, the Uganda Protectorate, Zanzibar, Portuguese East Africa, the Congo Republic, Southern Rhodesia, Northern Rhodesia, Nyasaland or Ruanda-Urundi and includes a Swahili but not a Somali;
- (b) "customary law" means a rule or a body of rules regulating rights and imposing correlative duties being a rule or body of rules which is not repugnant

to justice and morality and which is fortified by established local usage and which is appropriate and applicable to any particular cause, action, suit, matter, dispute, issue or question; and

- (c) "Minister" means the Minister for the time being responsible for legal affairs."

Section 64 of
Cap. 333
amended

14. Section 64 of the Ordinance is hereby amended by adding immediately after subsection (3) thereof the following new subsection:—

"(4) Any by-law or amendment thereof approved by the Minister under this section shall be published in the *Gazette* and a copy of the *Gazette* containing any such by-law or amendment of such by-law shall be due evidence of the making of such by-law or amendment and of the contents thereof."

Repeal of
section 65 of
Cap. 333
Section 76 of
Cap. 333
amended

15. Section 65 of the Ordinance is hereby repealed.

16. Section 76 of the Ordinance is hereby amended by deleting paragraph (ix) of subsection (3) thereof and substituting therefor the following new paragraph:—

"(ix) one-half of all fines imposed by any subordinate court or local court within the township in respect of—

- (a) any contravention of the provisions of this Ordinance or any by-laws or regulations made thereunder; and
(b) any contravention of the provisions of any other Act or Ordinance or any rule, regulation, order, notice or by-law made thereunder in any case where the proceedings were instituted by an officer of the Town Council acting in the discharge of his duties as such officer."

Section 77 of
Cap. 333
amended

17. Section 77 of the Ordinance is hereby amended—

- (a) by deleting the words "of this subsection" in the second line of subsection (2) thereof and substituting therefor the words "of subsection (1)"; and
(b) by inserting immediately after subsection (3) thereof the following new subsection:—

"(4) It shall be lawful for there to be paid to any District Council from the Consolidated Fund, for which payments there shall be no necessity for any authorization, other than that contained in this subsection, such sum as the Minister may from time to time direct in respect of expenditure incurred or to be incurred by the Council in connection with the development or maintenance of services within any area (being within the area of the District Council) which immediately prior to the establishment of the District Council was a township established under the Townships Ordinance or a minor settlement established under the Minor Settlements Ordinance."

Section 79 of
Cap. 333
amended

18. Section 79 of the Ordinance is hereby amended by inserting immediately after subsection (3) thereof the following new subsection to be numbered (3A):—

(3A) The Minister shall have and may exercise all "powers conferred upon him by subsection (3) in any case where a loan made to an authority has been guaranteed by the Government and where under the terms of such guarantee the Government has made to or to the order of the lender payment of capital or interest due on such loan."

19. Section 89 of the Ordinance is hereby amended by deleting paragraph (c) thereof and substituting therefor the following new paragraph:— Section 89 of
Cap. 333
amended

"(c) a rate based on the value of immovable property situated within the area of the council or in any part of such area:

Provided that no rate shall be made and levied under this paragraph in respect of any immovable property situated within any area in which, by virtue of paragraph (i) of subsection (1) of section 167 municipal house tax or urban house tax continues to be leviable;"

20. Section 93 of the Ordinance is hereby amended by deleting the words "the Townships Ordinance or" in the first and second lines of subsection (3) thereof. Section 93 of
Cap. 333
amended

21. Section 112 of the Ordinance is hereby amended— Section 112
of Cap. 333
amended

- (a) by deleting the last three lines of subsection (1) thereof and substituting therefor the word "auditor"; and
- (b) by deleting the words "Controller and Auditor-General" in the first line of subsection (2) thereof and substituting therefor the word "auditor".

22. Section 113 of the Ordinance is hereby amended— Section 113
of Cap. 333
amended

- (a) by deleting the words "Controller and Auditor-General" wherever they appear therein and substituting therefor the word "auditor"; and
- (b) by deleting the words "Accountant-General" where they appear in the third and fourth lines thereof and in the last line of the proviso thereto and substituting therefor in each case the word "auditor"; and
- (c) by deleting the fullstop at the end of the proviso thereto, substituting therefor a colon and adding immediately thereafter the following additional proviso:—

"And provided that where the auditor is not an officer of the Government the sum to be paid by the authority to the auditor in respect of his services shall be such sum as may be agreed between the authority and the auditor."

23. Section 114 of the Ordinance is hereby amended by deleting the words "Controller and Auditor-General" wherever they appear therein and substituting therefor the word "auditor". Section 114
of Cap. 333
amended

24. Section 115 of the Ordinance is hereby amended by deleting the words "Controller and Auditor-General" wherever they appear therein and substituting therefor the word "auditor". Section 115
of Cap. 333
amended

Section 116
of Cap. 333
amended

25. Section 116 of the Ordinance is hereby amended by deleting the words "Controller and Auditor-General" wherever they appear therein and substituting therefor the word "auditor".

Section 117
of Cap. 333
amended

26. Section 117 of the Ordinance is hereby amended—

(a) by deleting the words "Controller and Auditor-General" wherever they appear therein and substituting therefor the word "auditor";

(b) by deleting the first sentence of subsection (2) thereof and substituting therefor the following:—

"For the purposes of this section the pecuniary responsibility for the surcharge in respect of any unlawful payment, deficiency, loss or failure to bring to account shall lie upon the person making the payment or whose negligence or misconduct causes the deficiency, loss or failure to bring to account except when such payment has been made or such deficiency, loss or failure to bring to account has been occasioned pursuant to instructions (recorded in the minutes or in writing) from the Council or from any committee of the Council; and the pecuniary responsibility for a surcharge in respect of any payment made or any deficiency, loss or failure to bring to account occasioned pursuant to such instructions shall lie upon the person or persons giving or joining in giving such instructions."; and

(c) by inserting immediately after subsection (5) thereof the following new subsections to be numbered (5A) and (5B):—

"(5A) If the authority, within sixty days of the expiry of the period within which under the provisions of subsection (5) the sum surcharged shall be paid into the fund from which it was taken, has not instituted proceedings under that subsection for the recovery of such sum, the person who made the surcharge may himself institute such proceedings and may recover such sum from the person surcharged in any competent court and shall be entitled to be paid his reasonable costs and expenses in such proceedings.

(5B) Where as a result of proceedings under subsection (5A) any sum surcharged is recovered by the person who made the surcharge, the sum so recovered shall be paid by such person into the fund from which it was taken."

Section 127
of Cap. 333
amended

27. Section 127 of the Ordinance is hereby amended by deleting the words "Controller and Auditor-General" wherever they appear therein and substituting therefor the word "auditor".

Section 139
of Cap. 333
amended

28. Section 139 of the Ordinance is hereby amended—

(a) by deleting the word "The" in the first line of subsection (2) thereof and substituting therefor the words, symbols and comma "Subject to the provisions of subsections (2A) and (2B), the"; and

(b) by adding immediately after subsection (2) thereof the following new subsections to be numbered (2A) and (2B):—

"(2A) The scheme may provide for regulations to be made by the Local Government Service Commission for the maintenance and control of the Local Government Service and for

any of the matters specified in paragraphs (a) to (g) inclusive of subsection (2) and where the scheme so provides provision shall be deemed to have been made by and in the scheme in accordance with subsection (2) for such maintenance and control and for such matters.

(2B) Regulations made by the Local Government Service Commission pursuant to provision contained in a scheme in accordance with subsection (2A) shall be published in the *Gazette*.

Provided that it shall not be necessary to publish in the *Gazette* any such regulations which make provision for all or any of the following matters:—

- (a) the grant of leave;
- (b) the payment of allowances, the payment of gratuities and the grant of advances;
- (c) the qualifications for and grading of posts and the application of salary scales to posts; and
- (d) matters relating to departmental procedure and the duties and responsibilities of officers and employees.”

29. Section 148 of the Ordinance is hereby amended by adding immediately after subsection (2) thereof the following new subsection:—

Section 148
of Cap. 333
amended

“(3) Without prejudice to the generality of subsection (1), any such regulations may provide for the expenses recoverable by an authority upon the removal of any obstruction from any road, street, thoroughfare or open space and for the procedure to be followed in relation to the disposal of any obstruction so removed.”

30. Section 167 of the Ordinance is hereby amended—

Section 167
of Cap. 333
amended

(a) by deleting the words and symbols “paragraphs (f), (g) and (h)” in the third line of paragraph (a) of subsection (1) thereof and substituting therefor the words and symbols “paragraphs (ee), (f), (g), (h) and (i)”;

(b) by deleting paragraph (ee) of subsection (1) thereof and substituting therefor the following new paragraph:—

“(ee) every notice, order, rule or by-law made under the Township Ordinance, the Minor Settlements Ordinance, or the Markets Ordinance which applies to any township or minor settlement at the time when that township or minor settlement becomes part of the area of a District Council shall, unless it is expressly or by necessary intendment in this Ordinance otherwise provided and notwithstanding the provisions of paragraph (a) of this subsection, remain effective and in force in the area of the former township or minor settlement until such time as it is amended, revoked or replaced by a by-law or notice made or issued under the provisions of this Ordinance by a District Council which has power within such area to make or issue such by-law or notice and may be enforced to such District Council as though it were a by-law or notice made by such District Council;” and

(c) by deleting the fullstop at the end of paragraph (h) of subsection (1) thereof, substituting therefor a semi-colon and adding immediately thereafter the following new paragraph (i): —

Cap. 185
Ord. 1961
No. 62

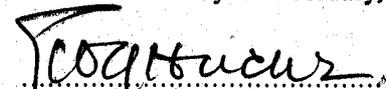
“(i) where, under the provisions of the Municipal House Tax Ordinance or the Urban House Tax Ordinance municipal house tax or urban house tax was, immediately prior to the establishment of the District Council, leviable in any area within the area of the District Council which immediately prior to the establishment of the District Council was a minor settlement established under the Minor Settlements Ordinance or a township established under the Townships Ordinance such municipal house tax or urban house tax shall continue to be leviable within such area and may be raised, levied and collected in such area in the same manner as if such area continued to be a minor settlement or a township and all the provisions of the Municipal House Tax Ordinance or the Urban House Tax Ordinance as the case may be shall continue to apply within such area as if such area continued to be a minor settlement or a township.”.

Repeal of
Cap. 393
and
saving

31.—(1) The African Chiefs (Special Powers) Ordinance is hereby repealed.

(2) Notwithstanding the provisions of subsection (1), any order or rule issued or made pursuant to powers contained in an Instrument made under section 3 of the African Chiefs (Special Powers) Ordinance and in force immediately prior to the commencement of this Act shall remain in force within the area specified in such Instrument and shall be binding upon the person or persons by whom it is under the provisions of that Ordinance to be obeyed until it is amended, replaced or revoked by a by-law or notice made or issued by a District Council having power within such area to make or issue such by-law or notice and may be enforced by such District Council as though made by such District Council.

Passed in the National Assembly on the sixteenth day of February, 1962.


Clerk of the National Assembly