



THE CEYLON GOVERNMENT GAZETTE

EXTRAORDINARY

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DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

L. D —O 1/38

An Ordinance to provide for the holding of Commissions of Inquiry.

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An Ordinance to provide for the holding of Commissions of Inquiry.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

1. This Ordinance may be cited as the Commissions of Inquiry Ordinance, No. of 1942.

Short title.

2. (1) Whenever it appears to the Governor that information is necessary concerning the management of any department of the public service or of any public or local authority or institution, or concerning any matter in respect of which, in his opinion, an inquiry would be for the public welfare, the Governor may, by warrant under the Public Seal of the Island, appoint a Commission of Inquiry consisting of one or more members to inquire into and report upon such management or matter.

Power to appoint commissions of inquiry.

(2) Every warrant issued under this Ordinance shall contain—

- (a) the names of the members of the Commission;
- (b) the appointment of the Chairman of the Commission where the Commission consists of more than one member;

- (c) the terms of reference to the Commission ;
 (d) a direction whether the inquiry or any part thereof shall or shall not be held in public.
3. (1) The Governor may add to the number of members of any Commission appointed under section 2, and where any member so appointed or added dies, or resigns, or desires to be discharged, or refuses or becomes unable to act, the Governor may appoint a new member in his place.
 (2) When a new member has been appointed under the provisions of sub-section (1) it shall not be necessary for any evidence which may have been taken before the Commission prior to such appointment to be retaken.
4. The Governor may, from time to time, by endorsement under his hand on a warrant issued under this Ordinance, enlarge the time for the rendering of the report of the Commission appointed by such warrant, whether the time for the rendering of such report has expired or not.
5. The Governor may at any time alter or revoke any warrant issued under this Ordinance.
6. No warrant issued under this Ordinance shall lapse by reason of, or be otherwise affected by, the death, absence, retirement or removal of the Governor who issues the warrant.
7. A Commission appointed under this Ordinance shall have the following powers :—
- (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses as the Commission may think it necessary or desirable to procure or examine ;
 (b) to require the evidence (whether written or oral) of any witness to be given on oath or affirmation, such oath or affirmation to be that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorised in that behalf by the Commission an oath or affirmation to every such witness ;
 (c) to summon any person residing in Ceylon to attend any meeting of the Commission to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession ;
 (d) notwithstanding any of the provisions of the Evidence Ordinance, to admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings ;
 (e) subject to any direction contained in the warrant—
 (i) to admit or exclude the public from the inquiry or any part thereof ;
 (ii) to admit or exclude the press from the inquiry or any part thereof ;
 (f) to recommend to the Governor that any person whose conduct is the subject of inquiry under this Ordinance or who is in any way implicated or concerned in the matter under inquiry be awarded such sum of money as, in the opinion of the Commission, may have been reasonably incurred by such person as costs and expenses in connexion with the inquiry. In this paragraph, " costs and expenses " includes the costs of representation by advocate or proctor, and travelling and other expenses incidental to the inquiry or consequential upon the attendance of such person at the inquiry.
8. The members of a Commission appointed under this Ordinance shall, so long as they are acting as such members, be deemed to be public servants within the meaning of the Penal Code, and every inquiry under this Ordinance shall be deemed to be a judicial proceeding within the meaning of that Code.
9. The provisions of section 47 of the Courts Ordinance shall apply to every offence of contempt committed against or in disrespect of the authority of a Commission appointed under this Ordinance in like manner as though such Commission were a court within the meaning of that Ordinance but without jurisdiction under section 57 thereof to take cognisance of and punish such offence.

Appointment of additional members.

Enlargement of time.

Alteration or revocation of warrant.

Change of Governor.

Powers of Commissioners.

Cap. 11.

Members of Commission to be public servants and inquiries to be " judicial proceedings " under the Penal Code.

Cap. 15.

Application of section 47 of the Courts Ordinance to Commissions of Inquiry.

Cap. 6.

10. (1) Every summons shall, in any case where a Commission consists of one member only, be under the hand of that member, and in any case where a Commission consists of more than one member, be under the hand of the Chairman of the Commission :

Summons

Provided that where a person has been appointed under section 17 to act as secretary, any such summons may, with the authority of the Commission, be issued under the hand of the secretary.

(2) Any summons may be served by delivering it to the person named therein, or if that is not practicable, by leaving it at the last known place of abode of that person.

(3) Every person on whom a summons is served shall attend before the Commission at the time and place mentioned therein, and shall give evidence or produce such documents or other things as are required of him and are in his possession or power, according to the tenor of the summons.

11. If any person upon whom a summons is served under this Ordinance—

Failure to obey summons, to give evidence, &c.

(a) fails without cause, which in the opinion of the Commission is reasonable, to appear before the Commission at the time and place mentioned in the summons, or

(b) refuses to be sworn or, having been duly sworn, refuses or fails without cause, which in the opinion of the Commission is reasonable, to answer any question put to him touching the matters directed to be inquired into by the Commission; or

(c) refuses or fails without cause, which in the opinion of the Commission is reasonable, to produce and show to the Commission any document or other thing which is in his possession or power and which is in the opinion of the Commission necessary for arriving at the truth of the matters to be inquired into,

such person shall be deemed to have committed the offence of contempt against or in disrespect of the authority of the Commission.

12. Every person who gives evidence before a Commission appointed under this Ordinance shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such court.

Privileges of witnesses.

13. The presumptions which, under section 80 of the Evidence Ordinance, are applicable to the documents therein mentioned shall apply to every document produced before any court purporting to be a record or memorandum of the evidence or any part of the evidence given by a witness examined before a Commission appointed under this Ordinance and purporting to be signed by the members thereof.

Presumption on production of record of evidence given by witnesses
Cap 11

14. Every person whose conduct is the subject of inquiry under this Ordinance, or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be represented by one or more advocates or proctors at the whole of the inquiry; and any other person who may consider it desirable that he should be so represented may, by leave of the Commission, be represented in the manner aforesaid.

Representation of persons by advocates or proctors.

15. (1) On the conclusion of any inquiry under this Ordinance, and on the recommendation of the Commission, the Governor may, by Order under his hand, award to any person whose conduct has been the subject of such inquiry or who has been in any way implicated or concerned in the matter under inquiry such sum of money as the Governor may, in his discretion, specify in the Order as sufficient to meet the costs and expenses which may have been reasonably incurred by such person in connexion with the inquiry.

Costs and other expenses.

In this sub-section "costs and expenses" includes the cost of representation by advocate or proctor, and travelling and other expenses incidental to the inquiry or consequential upon the attendance of such person at the inquiry.

(2) All moneys awarded by Order of the Governor under sub-section (1) shall be charged upon the public revenue and other funds of the Island; and the payment of all such moneys is hereby declared to be authorised by law for the purpose of the application of the provisions of Article 61 of the Ceylon (State Council) Order in Council, 1931.

- Protection of members of Commission. 16. No civil or criminal proceedings shall be instituted against any member of a Commission in respect of any act *bona fide* done or omitted to be done by him as such member.
- Appointment of secretary and interpreters. 17. (1) The Governor may appoint any person to act as secretary to a Commission and such person shall perform such duties connected with the inquiry as the Commission may order subject to the directions, if any, of the Governor.
(2) A Commission may appoint any person to act as interpreter in any matter arising at the inquiry and to translate any book, document, or other writing produced at the inquiry.
- Process issued under Ordinance to be exempt from stamp duty. 18. No stamp duty shall attach to or be payable for any process issued by or by the authority of a Commission appointed under this Ordinance.
- Service of process. 19. Every process issued by a Commission appointed under this Ordinance shall be served and executed by the Fiscal.
- Vesting of members of Committees appointed to inquire into the conduct of public officers with powers of Commissioners. 20. The members of any Committee appointed by the Governor under the Public Service Regulations to investigate charges framed under those regulations against an officer in the public service, may, by Order under the hand of the Governor, be appointed to be a Commission of Inquiry under this Ordinance for the purposes of such investigation, and upon such appointment the provisions of this Ordinance shall apply as though a warrant under section 2 had been issued to such members for the purposes for which they were appointed members of the Committee.
- Repeal. Cap. 276 21. The Commissions of Inquiry Ordinance is hereby repealed:
Provided that every "commission" within the meaning of that Ordinance, issued heretofore and remaining unexecuted or unrevoked on the day immediately preceding the date on which this Ordinance comes into force, shall be deemed to be as valid for all purposes, and may be executed or completed, as if that Ordinance had not been repealed.

Objects and Reasons.

The powers vested in members of a Commission of Inquiry by the Commissions of Inquiry Ordinance (Chapter 276) have, in recent times, been found to be inadequate. The object of this Bill is to replace that Ordinance by a more comprehensive Ordinance. Clause 7 of this Bill will vest wider powers in a Commission of Inquiry.

2. Under the existing law a Commission has no power to deal with cases of insult, or contempt occurring in the course of the proceedings. Clause 8 of the Bill will therefore provide that every member of a Commission shall, so long as he is acting as such member, be deemed to be a public servant within the meaning of the Penal Code, and that every inquiry shall be deemed to be a judicial proceeding within the meaning of that Code. Clause 9 will vest in the Supreme Court the power to punish offences of contempt committed against or in disrespect of the authority of a Commission of Inquiry.

3. It is desirable to confer on witnesses giving evidence before a Commission of Inquiry the same privileges as are enjoyed by witnesses giving evidence before a Court. The necessary provision will be made by Clause 12.

4. There is no power in the existing Ordinance under which costs and other expenses may be awarded to any person whose conduct has been the subject of inquiry under the Ordinance or who has in any way been implicated or concerned in the matter under inquiry. Clause 15 will vest the power to make such an award in the Governor.

5. Clause 16 will confer protection on the members of a Commission of Inquiry for any act *bona fide* done or omitted to be done by them in their capacity as such members.

6. Provision for the appointment of secretaries and interpreters will be made by Clause 17.

7. The Public Service Regulations empower the Governor to appoint a Committee for the investigation of charges preferred against a public officer. The Governor will be given power by Clause 20 to vest such a Committee with the powers of a Commission of Inquiry.

Colombo, 18th December, 1942. J. H. B. NIHILL,
Legal Secretary.