

# Government of Burma Act, 1935

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## GOVERNMENT OF BURMA ACT, 1935

An Act to make further provision for the government of Burma. [2<sup>nd</sup> August 1935.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

### **PART I. INTRODUCTORY**

1. This Act may be cited as the Government of Burma Act, 1935.
2. (1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in Burma for the time being vested in him and all rights, authority and jurisdiction exercisable by him by treaty, grant, usage, sufferance or otherwise in, or in relation to, any other territories in Burma, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty.  
(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in relation to any territories in Burma by the Secretary of State, the Secretary of State in Council, the Governor-General of India, the Governor-General of Indian in Council, the Governor of Burma or the Local Government of Burma, whether by delegation from His Majesty or otherwise.

### **PART II. THE EXECUTIVE.**

#### *The Governor*

3. (1) The Governor of Burma is appointed by His Majesty by a Commission under the Royal Sign Manual and has all such powers and duties as are conferred or imposed on him by or under this Act, and such other powers of His Majesty as His Majesty may be pleased to assign to him.  
(2) Any reference in this Act to the functions of the Governor shall be construed as not including a reference to powers exercisable by him by reason that they have been assigned to him by His Majesty under subsection (1) of this section.  
(3) The provision of the First Schedule to this Act shall have effect with respect to the salary and allowances of the Governor, and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office, and with respect to persons appointed to act temporarily as Governor.
4. (1) Subject to the provision of this Act, the executive authority of Burma shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Burma Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred on any court, judge or officer, or any local or other authority, by any existing Indian or Burman law.

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- (2) The executive authority of Burma extends-
- (a) to the raising in Burma on behalf of His Majesty of naval, military and air forces, and to the governance of His Majesty's forces borne on the Burma establishment;
  - (b) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in, and in relation to, any areas in Burma which are not part of the territories of His Majesty:

Provided that-

- (i) the said authority does not extend to the enlistment or enrolment in any forces raised in Burma of any person unless he is either a subject of His Majesty, or a native of Burma or India, or of territories adjacent to Burma or Indian; and
- (ii) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of subsection (1) of the last preceding section or otherwise.

### *Administration.*

5. (1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this subsection shall be construed as preventing the Governor from exercising his individual judgment in any case where he is by or under this Act required so to do.

(2) The Governor in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respect which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

6. (1) The Governor's ministers shall be chosen and summoned by the Governor, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of the Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Legislature may from time to time by Act determine, and, until the Legislature so determine, shall be determined by the Governor:

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.

(5) The functions of the Governor with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries shall be exercised by him in his discretion.

7. (1) The functions of the Governor with respect to defense, ecclesiastical affairs, the affairs of the areas specified in Part I of the Second Schedule to this Act, and the control of monetary policy, currency and coinage, and with respect to external affairs, except the relations between Burma and any part of His Majesty's dominions,

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- shall be exercised by him in his discretion, and his functions in or in relation to areas in Burma which are not part of the territories of His Majesty shall be similarly exercised.
- (2) To assist him in the exercise of those functions the Governor may appoint counselor, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.
8. (1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say,-
- (a) the prevention of any grave menace to the peace or tranquility of Burma or any part thereof;
  - (b) the safeguarding of the financial stability and credit of the Government of Burma;
  - (c) the safeguarding of the legitimate interest of minorities;
  - (d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;
  - (e) the securing in the sphere of executive action of the purposes which the provisions of Part V of this Act are designed to secure in relation to legislation;
  - (f) the prevention of action which would subject goods of United Kingdom or Indian origin imported into Burma to discriminatory or penal treatment;
  - (g) the securing of the peace and good government of the areas specified in Part II of the Second Schedule to this Act;
  - (h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.
- (2) If, and in so far as, any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.
9. (1) The Secretary of State shall lay before Parliament a draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.
- (2) The validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.
10. (1) In so far as the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Secretary of State, but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

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- (2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.
11. (1) The Governor may appoint a person to be his financial adviser.  
(2) It shall be the duty of the Governor's financial adviser to assist by his advice the Governor in the discharge of his special responsibility for safeguarding the financial stability and credit of the Government of Burma and of his functions in respect of monetary policy, currency and coinage, and also to give advice to the Government of Burma upon any matter relating to finance with respect to which he may be consulted.  
(3) The Governor's financial adviser shall hold office during the pleasure of the Governor and the salary and allowances of the financial officer, and the numbers of his staff and their conditions of service, shall be such as the Governor may determine.  
(4) The power of the Governor with respect to the appointment and dismissal of a financial adviser and with respect to the determination of his salary and allowances, and the number of his staff and their conditions of service, shall be exercised by him in his discretion: Provided that, if the Governor has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.
12. (1) The Governor shall appoint a person, being a person qualified to be appointed a judge of the High Court, to be Advocate General for Burma.  
(2) It shall be the duty of the Advocate General to give advice to the Government of Burma upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor.  
(3) The Advocate General shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine.  
(4) In exercising his powers with respect to the appointment and dismissal of the Advocate General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.
13. Where it is proposed that the Governor should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or effect the organization or discipline of that force.
14. (1) If it appears to the Governor that the peace or tranquility of Burma is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstance of the case require him so to do for the purpose of combating those operations, direct that his functions shall to such extent as may be specified in the direction be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.  
(2) The functions imposed on the Governor by this section shall be exercised by him in his discretion.

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- (3) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquility of Burma or any part thereof.
15. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given –
- (a) by any member of any police force in Burma to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or
  - (b) by any other person in the service of the Crown in Burma to any person except in accordance with directions of the Governor in his discretion.
16. (1) All executive action of the Government of Burma shall be expressed to be taken in the name of the Governor.
- (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by him, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
- (3) The Governor shall make rules for the more convenient transaction of the business of the Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.
- (4) The rule shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.
- (5) In the discharge of his functions under subsections (2), (2) and (4) of this section the Governor shall act in his discretion after consultation with his ministers.

## **PART III**

### **THE LEGISLATURE.**

#### ***General.***

17. (1) There shall be for Burma a Legislature which shall consist of His Majesty represented by the Governor, and two Chambers, to be known respectively as the Senate and the House of Representatives.
- (2) The Senate shall consist of thirty-six members, and the House of Representatives shall consist of one hundred and thirty-two members.
- (3) The said members shall be chosen in accordance with the provisions in that behalf contained in the Third Schedule to this Act.

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18. (1) The Chambers of the Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time—

- (a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;
- (b) prorogue the Chambers;
- (c) dissolve either Chamber or both Chambers simultaneously.

(3) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf of His Majesty in Council.

(4) Every Senate, unless sooner dissolved, shall continue for seven years from the date appointed for the first meeting thereof and no longer, and every House of Representatives, unless sooner dissolved, shall continue for five years from the date appointed for the first meeting thereof and no longer and the expiration of the said period of seven years or the said period of five years shall operate as a dissolution of the Senate or the House of Representatives, as the case may be.

19. (1) The Governor may in his discretion address either Chamber of the Legislature or both Chambers assembled together and for that purpose require the attendance of members.

(2) The Governor may in his discretion send messages to either Chamber of the Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and the Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

20. Every Minister, every counselor and the Advocate General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

21. (1) The Senate shall as soon as may be choose two members of the Senate to be respectively President and Deputy President thereof, and, so often as the office of President or Deputy President become vacant, the Senate shall choose another member to be President or Deputy President, as the case may be.

(2) A member holding office as President or Deputy President of the Senate shall vacate his office if he ceases to be a member of the Senate, may at any time resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Senate passed by a majority of all the then members of the Senate; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

(3) While the office of the President is vacant, the duties of the office shall be performed by the Deputy President, or, if the office of Deputy President is also vacant, by such member of the Senate as the Governor may appoint for the purpose, and during any absence of the President from any sitting of the Senate the Deputy President or, if he is also absent, such person as may be determined by the rules of procedure of the Senate, or, if no such person is present, such other person as may be determined by the Senate, shall act as President.

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(4) There shall be paid to the President and Deputy President of the Senate such salaries as may be respectively fixed by Act of the Legislature and, until provision in that behalf is so made, such salaries as the Governor may determine.

(5) The foregoing provisions of this section shall apply in relation to the House of Representatives as they apply in relation to the Senate with the substitution of the titles "Speaker" and "Deputy Speaker" for the titles "President" and "Deputy President" respectively, and with the substitution of references to the House of Representatives for references to the Senate.

22. (1) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.

The President or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of the Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of the Senate less than twelve members are present, or if at any time during a meeting of the House of Representatives less than one-sixth of the total number of members thereof are present, it shall be the duty of the President or Speaker or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least twelve members, or, as the case may be, at least one-sixth of the members, are present.

### *Provision as to Members of Legislature.*

23. Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor or some person appointed by him, an oath according to the form set out in the Fifth Schedule to this Act.

24. (1) No person shall be a member of both Chambers and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) If a member of either Chamber—

- (a) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or
- (b) by writing under his hand addressed to the Governor resign his seat, his seat shall thereupon become vacant.

(3) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant. Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued or is adjourned for more than four consecutive days.

25. (1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber—

- (a) if he holds any office of profit under the Crown in Burma, other than an office declared by Act of the Legislature not to disqualify its holder;
- (b) if he is of unsound mind and stand so declared by a competent court;

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- (c) if he is an un-discharged insolvent;
- (d) if, whether before or after the commencement of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, or an offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act;
- (e) if he has, whether before or after the commencement of this Act, been convicted in Burma or has, before the commencement of this Act, been convicted in British India, of any other offence, and has, in either case, been sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor may in his discretion allow in any particular case, has elapsed since his release;
- (f) if, having been nominated as a candidate for the Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expense within the time and in the manner required by any Order in Council made under this Act or by any Act of the Legislature, unless five years have elapsed from the date by which the return ought to have been lodge, or the Governor acting in his discretion has removed the disqualification:

Provided that a disqualification under paragraph (f) of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodge, or of such longer period as the Governor acting in his discretion may in any particular case below.

(2) A person shall not capable of being chosen a member of either Chamber while he is severing a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of subsection (1) of this section is at the date of the disqualification a member of a Chamber, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date therefore, or if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but, during any period during which his membership is preserved by this subsection, he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in Burma by reason only that he is a minister.

26. If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions liable in respect of each day on which he so sits or votes to penalty of five hundred rupees to be recovered as a debt due to the Government of Burma.

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27. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of the Legislature of any report, paper, votes or proceedings.

(2) In other respects the privileges of members of the Chambers of the Legislature shall be such as may from time to time be defined by Act of the Legislature and, until so defined, shall be such as were immediately before the commencement of this Act enjoyed by members of the Legislative Council of Burma.

(3) Notwithstanding anything in the foregoing provisions of this section, nothing in this Act shall be construed as conferring, or empowering the Legislature to confer, on either Chamber thereof or on both Chambers sitting together, or on any committee of officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee off chamber when duly required by the chairman of the committee so to do.

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India or Burma, and safeguarding confidential matter for disclosure, as may be made by the Governor exercising his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

28. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Legislature, and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Act applicable in the case of members of the Legislative Council of Burma.

### *Procedure Generally.*

29. (1) Each Chamber of the Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business:

Provided that as regards each Chamber the Governor shall in his discretion, after consultation with the President or the Speaker, as the case may be, made rules—

- (a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;
- (b) for securing the timely completion of financial business;
- (c) for prohibiting, save with the consent of the Governor in his discretion—

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- (i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor and any foreign State or Princes; or
- (ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters connected with territories in Burma not vested in His Majesty, or any matters arising out of or affecting the administration of any of the areas specified in Part I of the Second Schedule to this Act;

and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber,, the rule made by the Governor shall prevail.

(2) The Governor, after consultation with the President of the Senate and the Speaker of the House of Representatives, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers. The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the commencement of this Act with respect to the Legislative Council of Burma shall have effect in relation to the Legislature, subject to such modifications and adaptations as may be made therein by the Governor in his discretion.

(4) At a joint sitting of the two Chambers the President of the Senate, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

30. All proceedings in the Legislature shall be conducted in the English language.

Provided that the rules of procedure of the Chamber, and the rules with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficient acquainted, with the English language to use another language.

31. (1) No discussion shall take place in the Legislature with respect to the conduct of any judge of the High Court in the discharge of his duties.

(2) If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of Burma or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and affect shall be given to the direction.

32. (1) The validity of any proceedings in the Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

## PART IV.

### LEGISLATION.

#### *Powers of the Legislature as to Legislation.*

33. (1) Subject to the provisions of this Act, the Legislature may make laws for the territories in Burma vested in His Majesty or any part thereof.

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(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Act of the Legislature shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applies—

- (a) to British subjects and servants of the Crown in any part of Burma; or
- (b) to British subjects domiciled in Burma wherever they may be; or
- (c) to, or to persons on, ships or aircraft registered in Burma wherever they may be; or
- (d) in the case of a law for the regulation or discipline of any naval, military, or air force raised in Burma, to members of an persons attached to, employed with or following, that force, wherever they may be.

33A. (1) Without prejudice to the provisions of this Act with respect to the legislative powers of the Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act to any naval forces raised in Burma and, so long as such provision for that purpose is made, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to any naval forces raised or ships provided by the Governor, subject however—

- (a) in the application of the said Act to the forces and ships raised and provided by the Governor and to the trial by court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be made by the Act of the Legislature to adapt the said Act to the circumstances of Burma, including such adaptations as may be so made for the purpose of authorizing or requiring anything which, under the said Act, is to be done by or to the Admiralty or the Secretary of the Admiralty to be done by or to the Governor or some person authorized to act on his behalf; and
- (b) in the application of the said Act to the forces and ships of His Majesty's navy other than those raised and provided by the Governor, to such modifications and adaptations as may be made by His Majesty in Council for the purpose of regulating the relations of those forces and ships to the forces and ships raised and provided by the Governor.

(2) Notwithstanding anything in this Act or in any Act of the Legislature, where any forces and ships raised and provided by the Governor have been placed at the disposal of the Admiralty, the Naval Discipline Act shall apply without any such modifications and adaptations as aforesaid.

34. Nothing in this Act shall be taken—

- (a) to affect the power of Parliament to legislate for Burma; or
- (b) to empower the Legislature—
  - (i) to make any law affecting the Sovereignty, or the Royal Family, or the succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of Burma, or the law of British nationality, or the Army Act, the Air Force Act, the Naval Discipline Act, or any similar law enacted by a competent authority in India, or the law of Prize or Prize Courts; or
  - (ii) except in so far as expressly permitted by this Act, to make any law amending any provisions of this Act, or any Order in

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Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor in his discretion or in the exercise of his individual judgment.

35. (1) Subject to the provisions of Part VI of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature.

(2) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers thereof.

(3) A Bill pending in one Chamber which has not been passed by the other Chamber shall not lapse on a dissolution of that other Chamber, but save as aforesaid all Bills shall lapse on a dissolution of either Chamber.

36. (1) Unless the Governor in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Legislature, any Bill or any amendment which—

- (a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to Burma; or
- (b) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or
- (c) affects matters as respects which the Governor is by or under this Act required to act in his discretion;
- (d) repeals, amends or affects any Act relating to any police force; or
- (e) affects the procedure for criminal proceedings in which European British subjects are concerned; or
- (f) subjects persons not resident in Burma to greater taxation than persons resident in Burma, or subjects companies not wholly controlled and managed in Burma to greater taxation than companies wholly controlled and managed therein; or
- (g) affects the grant of relief from any Burma tax on income in respect of income taxed or taxable in the United Kingdom; or
- (h) affects immigration into Burma.

(2) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor to the introduction of any Bill or the moving of any amendment.

37. (1) Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers.

(2) If a Bill which has been passed by one Chamber and transmitted to the other is not, before the expiration of twelve months from its reception by that other Chamber, presented to the Governor for his assent, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill;

Provided that, if it appears to the Governor that the Bill related to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may in his discretion summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

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(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

- (a) unless the Bill, having been passed by one Chamber, has been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;
- (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.

38. (1) When a Bill has been passed by the Chambers it shall be presented to the Governor, and the Governor shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure.

Provided that the Governor may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof, and in particular will consider the desirability of introducing any such amendments as he may recommend in his message and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor may be disallowed by His Majesty within twelve months from the date of the Governor's assent, and, where any Act is so disallowed, the Governor shall forthwith make the disallowance known by public notification and as from the date of the notification the Act shall become void.

39. (1) Where under any provision of this Act the previous sanction or recommendation of the Governor is required to the introduction or passing a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills.

(2) No Act of the Legislature and no provision in any such Act shall be invalid by reason only that some previous sanction or recommendation was not given.

### *Legislative Power of Governor*

40. (1) Notwithstanding anything in this Part of this Act, no Act of the Legislature shall apply to any area specified in the Second Schedule to this Act unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to

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the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any such area, and any regulations so made may repeal or amend any Act, whether passed before or after the commencement of this Act, which is for the time being applicable to the area.

(3) The Provisions of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations as they apply in relation to Acts of the Legislature.

41. (1) If at any time when the Legislature is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that the Governor—

- (a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and
  - (b) shall not without instructions from His Majesty promulgate any such ordinance, if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure.
- (2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Legislature, but every such ordinance—
- (a) shall be laid before the Legislature, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the House of Representatives and agreed to by the Senate, upon the resolution being agreed to by the Senate;
  - (b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Legislature; and
  - (c) may be withdrawn at any time by the Governor.
- (3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Legislature, it shall be void.

42. (1) If at any time the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under his section shall have the same force and effect as an Act of the Legislature, but every such ordinance—

- (a) shall be subject to the provisions of this Act relating to the powers of His Majesty to disallow Acts as if it were an Act of the Legislature;
- (b) may be withdrawn at any time by the Governor; and

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- (c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.
- (4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Legislature, it shall be void.
- (5) The functions of the Governor under this section shall be exercised by him in his discretion.
43. (1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may be messages to both Chambers of the Legislature, explain the circumstances which in his opinion render legislation essential and either—
- (a) enact forthwith, as a Governor's Act, a Bill containing such provisions as he considers necessary; or
- (b) attach to his message a draft of the Bill which he considers necessary.
- (2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.
- (3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Legislature, and, if and so far as it makes any provision which would not be valid if enacted in an Act of the Legislature, it shall be void.
- (4) Every Governor's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.
- (5) The functions of the Governor under this section shall be exercised by him in his discretion.

### ***PART V.***

#### ***RESTRICTIONS ON DISCRIMINATION, &C.***

44. (1) Subject to the provisions of this Part of this Act, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Act of the Legislature as imposes any restriction on the right of entry into Burma: Provided that no person shall by virtue of this subsection be entitled to claim exemption from any such restriction, if and so long as British subjects domiciled in Burma re by or under the law of the United Kingdom subject in the United Kingdom to a like restriction.
- For the purposes of this subsection a provision, whether of the law of Burma or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to excluded or deport individuals wherever domiciled who appear to that authority to be undesirable persons, shall be deemed not to be a restriction on the right of entry.
- (2) Subject to the provisions of this Part of this Act, a British subject domiciled in the United Kingdom shall be except from the operation of so much of any Act of

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the Legislature as imposes by reference to place of birth, race, descent, language, religion, domicile, residence, or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposition or property, the holding of public office, or the carrying on of any occupation, trade, business or profession:

Provided that no such person as aforesaid shall by virtue of this subsection be entitled to exemption from any such disability, liability, restriction, or condition as aforesaid if and so long as British subjects domiciled in Burma are by or under the law of the United Kingdom subject in the United Kingdom to a like disability, liability, restriction or condition imposed in regard to the same subject matter by reference to the same principle of distinction.

(3) The provisions of subsection (2) of this section shall apply in relation to British subjects domiciled in India and subjects of any Indian State as they apply in relation to British subjects domiciled in the United Kingdom, but with the substitution in the proviso to the said subsection for references to the United Kingdom of references to British India or, as the case may be, that Indian State:

Provided that nothing in this subsection shall affect any restriction lawfully imposed on the right of entry into Burma of persons who are British subjects domiciled in India or subjects of any Indian State, or any restriction lawfully imposed as a condition of allowing any such person to enter Burma.

(4) Notwithstanding anything in this section, if the Governor by public notification certifies that for the prevention of any grave menace to the peace or tranquility of any part of Burma, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of this section should be wholly or partially suspended in relation to any Act, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor under this subsection shall be exercised by him in his discretion.

45. (1) No Act of the Legislature which impose any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or India or subjects of any Indian State, or against companies incorporated whether before or after the passing of this Act by or under the laws of the United Kingdom or British India, and any Act passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

(2) Without prejudice to the generality of the foregoing provisions, an Act shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would have been liable if they were domiciled in Burma or incorporated by or under the laws of Burma, as the case may be.

46. (1) Subject to the following provisions of this Part of this Act, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock, or bonds, and its officers, agents, and servants shall be deemed to comply with so much of any Act of the Legislature as imposes in regard to companies carrying on or proposing to carry on business in Burma requirements or conditions relating to or connected with—

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- (a) the place of incorporation of a company or the situation of its registered office or the currency in which its capital or loan capital is expressed; or
- (b) the place of birth, race descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of holders of its shares, stock, debentures, debenture stock, or bonds, or of its officers, agents or servants:

Provided that no company or person shall by virtue of this subsection be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the laws of the United Kingdom in regard to companies incorporated by or under the laws of Burma and carrying on or proposing to carry on business in the United Kingdom.

(2) If and in so far as any total or partial exception from, or preferential treatment in respect of, taxation imposed on companies by or under any Act of the Legislature depends on compliance with conditions as to any of the matters mentioned in the last preceding subsection, any company incorporated by or under the laws of the United Kingdom and carrying on business in Burma shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of Burma and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

(3) The provisions of the two last preceding subsections shall apply in relation to companies incorporated by or under the laws of British India as they apply in relation to companies incorporated by or under the laws of the United Kingdom, with the substitution for references to the United Kingdom of references to British India.

(4) Subject to the following provisions of this Part of this Act, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Act of the Legislature as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by or under the laws of Burma, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company or of holders of its shares, stock, debentures, debenture stock or bond, or of its officers, agents or servants:

Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciles in Burma.

(5) If and in so far as, in the case of any such companies as are mentioned in the last preceding subsection, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Act of the Legislature depends on compliance with conditions as to any of the matters so mentioned, then, as regards such of the members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents, or servants, as are British subjects domiciled in the United Kingdom, any such company

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shall be deemed to satisfy, those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debenture, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in Burma, depend on compliance with conditions as to any of the matters so mentioned.

(6) The provisions of the two last preceding subsections shall apply in relation to British subjects domiciled in British India and to subjects of any Indian State as they apply in relation to British subjects domiciled in the United Kingdom, with the substitution for references to the United Kingdom of references to British India or that Indian State, as the case may be.

47. (1) No ship registered in the United Kingdom shall be subjected by or under any Act of the Legislature to any treatment affecting either the ship herself, or her masters, officers, crew, passengers or cargo, which is discriminatory in favor of ship registered in Burma are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favor of ships registered in the United Kingdom.

(2) The provisions of this section shall apply in relation to ships registered in British India as they apply in relation to ships registered in the United Kingdom with the substitution for references to the United Kingdom of references to British India.

(3) This section shall apply in relation to aircraft as it applied in relation to ships.

(4) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this Part of this Act.

48. (1) Notwithstanding anything in any Act of the Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in Burma, shall be eligible for any grant, bounty or subsidy payable out of public moneys in Burma for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of Burma are eligible therefore:

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy payable out of public moneys for the encouragement of any trade or industry, it and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of Burma and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this Part of this Act, an Act of the Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in Burma in that branch of trade or industry which it is the purpose of the Act to encourage, that the company shall not be eligible for any grant, bounty, or subsidy under the Act unless—

- (a) the company is incorporated by or under the laws of Burma; and
- (b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe are British subjects domiciled in Burma; and

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(c) the company gives such reasonable facilities for the training of British subjects domiciled in Burma as may be so prescribed.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in Burma if it owns ships which habitually trade to and from ports in Burma.

(4) The foregoing provisions of this section shall apply in relation to companies incorporated by or under the laws of British India as they apply in relation to companies incorporated by or under the laws of the United Kingdom with the substitution for references to the United Kingdom of references to British India.

49. The foregoing provisions of this Part of this Act shall apply in relation to any ordinance, order, byelaw, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian or Burman law, or of any Act of Legislature, the force of law, as they apply in relation to Acts of the Legislature, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian or Burman law.

50. (1) If a convention is made between His Majesty's Government in the United Kingdom and the Government of Burma, whereby similarity of treatment is assured, in the United Kingdom to British subjects domiciled in Burma and to companies incorporated by or under the laws of Burma, and in Burma to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this Part of this Act, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in Burma for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and, while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) As from the establishment of the Federation of India, the provisions of subsection (1) of this section shall apply in relation to British subjects domiciled in British India and to companies incorporated by or under the laws of British India as they apply in relation to British subjects domiciled in the United Kingdom and companies incorporated by or under the laws of the United Kingdom, with the substitution for references to His Majesty's Government in the United Kingdom, and the United Kingdom, of references to the Federal Government and British India.

(3) Any Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

51. (1) No Bill or amendment which prescribes or empowers any authority to prescribe the professional or technical qualifications which are to be requisite for any purpose in Burma shall be introduced or move in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

(2) The Governor shall not give his sanction for the purposes of the preceding subsection unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was lawfully practicing any profession, carrying on any occupation, trade or business,

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or holding any office in Burma shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practice that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office, which he could lawfully have done if that disability, liability, restriction or condition had not come into operation.

(3) All regulations made under the provisions of any Act of the Legislature which prescribe the professional or technical qualifications which are to be requisite for any purpose in Burma, or impose by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practicing of any profession, the carrying on of any occupation, trade or business, or the holding of any office in Burma shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor, and, if within two months from the date of the publication complaint is made to him that the regulations or any of them will operate unfairly as against any class of persons affected thereby, then, if he is of opinion that the complaint is well founded, he may, at any time before the regulations are expressed to come into operation, by public notification disallow the regulations or any of them.

In this subsection the expression "regulations" includes rules, byelaw, orders and ordinances.

In the discharge of his functions under this subsection the Governor shall exercise his individual judgment.

(4) If the Governor exercising his individual judgment by public notification directs that the provisions of the last preceding subsection shall apply in relation to any existing Indian or Burman law, those provisions shall apply in relation to that law accordingly.

52. (1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or Burma who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law in force in Burma, be excluded from practicing medicine, surgery or midwifery in Burma, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless the law of Burma makes provision for securing—

- (a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor and to the University or other body granting that diploma; and
- (b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding subsection determine that the diploma in question ought to be recognized as furnishing such a sufficient guarantee as aforesaid.

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(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in Burma, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and person both in Burma and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

(3) The condition referred to in subsection (1) of this section is that British subjects domiciled in Burma who hold a medical diploma granted after examination in British Burma shall not be excluded from practicing medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to an decided by the Privy Council.

(4) A medical practitioner entitled to practice or be registered in Burma by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British Burma, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practice by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in India who, by virtue of medical diplomas granted to them in British India or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioner as they apply in relation to British subjects domiciled in the United Kingdom, who, by virtue of medical diplomas granted in the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners.

The said modifications are as follows, that is to say, —

(a) subsection (3) shall not apply and the reference in subsection (1) to the condition set out therein shall be deemed to be omitted;

(b) any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to British India.

(6) Nothing in this section shall be construed as affecting any power of any recognized authority in the United Kingdom or Burma to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) In this section the expression “diploma” includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

53. A person who holds a commission from His Majesty as a medical officer in any branch of His Majesty’s forces and is on the active list shall by virtue of that

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commission be deemed to be qualified to practice medicine, surgery and midwifery in Burma and be entitled to be registered in Burma as so qualified.

54. In this Part of this Act—

- (a) reference to companies incorporated by or under the laws of Burma include references to companies incorporated by or under the laws of British India and registered in Burma, but do not include references to companies so incorporated which were registered elsewhere;
- (b) references to companies incorporated by or under the laws of British India do not include references to companies registered in Burma.

## **PART VI. FINANCE**

### *General*

55. Subject to the provisions of this Part of this Act with respect to the Federated Shan States and to the provisions of this Act with respect to the Burma Railway Board, that expression “revenues of Burma” includes all revenues and public moneys raised or received by the Government of Burma.

56. No burden shall imposed on the revenues of Burma except for the purposes of Burma or some part of Burma.

57. (1) Rules may be made by the Governor for the purpose of securing that all moneys received on account of the revenues of Burma shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Government of Burma, and the rules so made may prescribe or authorize some person to prescribe the procedure to be followed in respect of the payments of moneys into the said account, the withdrawal of moneys therefrom the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(2) In the exercise of his powers under this section the Governor shall exercise his individual judgment.

58. (1) The Government of Burma shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of Burma.

(2) Without prejudice to their obligations under the preceding subsection, the Government of Burma shall secure that there are from time to time in the hands of the Secretary of State, and any High Commissioner representing the Government of Burma in the United Kingdom, sufficient moneys to enable payment to be made of all pensions payable out of the revenues of Burma in the United Kingdom or through officers accounting to the Secretary of State or to any such High Commissioner as aforesaid.

### *Proceedings in the Legislature.*

59. (1) The Governor shall in respect of every financial year cause to be laid before both Chambers of the Legislature as statement of the estimated receipts and expenditure of the Government of Burma for that year, in this Part of this Act referred to as the “annual financial statement.”

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

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- (a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of Burma; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of Burma,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of Burma: —

- (a) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council;
- (b) debt charges for which the Government of Burma is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (c) the salaries and allowance of ministers, of counselors, of the financial adviser, of the Advocate General, and of the staff of the financial adviser;
- (d) the salaries, allowances, and pensions payable to and in respect of judges of the High Court;
- (e) expenditure for the purpose of the discharge by the Governor of his functions with respect to defense, ecclesiastical affairs, monetary policy, currency and coinage, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to areas in Burma which are not part of the territories of His Majesty and his functions in relation to the administration of any area specified in Part 1 of the Second Schedule to this Act: provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed two hundred and eighty-four thousand rupees, exclusive of pension charges;
- (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (g) any sums required to enable the Governor to pay such pensions and allowances as he in his discretion may deem suitable to members of the family or servants of any former Ruler of any territories in Burma;
- (h) any other expenditure declared by this Act or any Act of the Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of Burma shall be decided by Governor in his discretion.

60. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of Burma shall not be submitted to the vote of the House of Representatives, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of those estimates, other than estimates relating to expenditure referred to in sub-paragraph (a) of subsection (3) of the last preceding section.

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(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the House of Representatives, and the House of Representatives shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specific therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

61. (1) The Governor shall authenticate by his signature as schedule specifying—

(a) the grants made by the House of Representatives under the last preceding section;

(b) the several sums required to meet the expenditure charged on the revenues of Burma but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chambers:

Provided that, if the House of Representatives have refused to assent to any demand for a grant or have assented to such a demand subject to a reduction of the amount specific therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before the House of Representatives but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of Burma shall be deemed to be duly authorized unless it is specified in the schedule so authenticated.

62. If in respect of any financial year further expenditure from the revenues of Burma becomes necessary over and above the expenditure theretofore authorized for that year, the Governor shall cause to be laid before both Chambers of the Legislature as supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

63. (1) A Bill or amendment making provision—

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Government; or

(c) for declaring any expenditure to be expenditure charged on the revenues of Burma, or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in the Senate.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand and payment of fees for licenses, or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of Burma shall not be passed by either Chamber of the

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Legislature unless the Governor has recommended to that Chamber the consideration of the Bill.

64. (1) The executive authority of Burma extends to borrowing upon the security of the revenues of Burma within such limits, if any, as may from time to time be fixed by Act of the Legislature, and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) Any obligations of the Local Government of Burma which, immediately before the commencement of this Act, were secure upon its revenues, shall after the said date be secured upon the revenues of Burma.

65. (1) The Colonial Stock Acts, 1877 to 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the commencement of this Act and forming part of the public debt of Burma as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so, however, that nothing in section twenty of the Colonial Stock Act, 1877, shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines, any conditions prescribed by the Treasury under section two of the Colonial Stock Act, 1900, shall be deemed to have been complied with respect to all such stock so issued by the Government of Burma.

(2) The expression "colonial stock" in section eleven of the Trusts (Scotland) Act, 1921, shall include any stock in relation to which the said Acts apply by virtue of this section.

### *Audit and Accounts.*

66. (1) There shall be an Auditor-General of Burma who shall be appointed by His Majesty, and shall only be removed from office in like manner and on the like grounds as a judge of the High Court.

(2) The conditions of service of the Auditor-General shall be such as may be prescribed by His Majesty in Council, and he shall not be eligible for further office under the Crown in Burma after he has ceased to hold his office:

Provided that neither the salary of an Auditor-General, nor his rights in respect of leave of absence, pension or age of retirement, shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of Burma as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any subsequent Act of the Legislature varying or extending such an Order:

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor in his discretion.

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of Burma, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

67. (1) The accounts of the Government of Burma shall be kept in such form as the Auditor-General of Burma may with the approval of the Governor, prescribe.

(2) The reports of the Auditor-General relating to the accounts of the Government of Burma shall be submitted to the Governor who shall cause them to be laid before the Legislature.

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(3) If His Majesty in Council makes provision requiring the Auditor of Indian Home Accounts to perform in relation to Burma all or any of the functions which he performs in relation in India—

- (a) any payments required by the Order to be made in respect of his services from the revenues of Burma shall be so made and shall be charged on those revenues;
- (b) any reports submitted by the Auditor of Indian Home Accounts to the Auditor-General of Burma shall be included by the Auditor-General in the reports which under this Part of this Act he is required to submit to the Governor, or to the Secretary of State.

### *Federated Shan States.*

68. (1) Until His Majesty in Council makes other provision, there shall continue to be a Federal Fund of the Federated Shan States under the control of the Governor in his discretion.

(2) His Majesty may by order in Council—

- (a) require contributions to be made to the said Fund out of the revenue of, or accruing in, the States comprised within the Federated Shan States;
- (b) require payments (representing the share of the annual receipts of the Government of Burma on revenue account properly allocable to the said States) to be made from time to time out of the revenues of Burma to the said Fund;
- (c) require payments (representing the share of the annual general expenses of the Government of Burma properly allocable to the said States) to be made from time to time out of the said Fund to the revenues of Burma; and
- (d) make such other provision (including provision with respect to borrowing) as he thinks fit with respect to the manner in which the said Fund is to be dealt with.

(3) Any payments to be made under paragraph (b) of the last preceding subsection shall be charged on the revenues of Burma, and the amounts thereof and of any payments to be made under paragraph (c) of the said subsection shall be shown in the financial statements required by this Part of this Act to be laid before the Burma Legislature but, save as aforesaid, nothing in this Act shall be construed as requiring any statement of payments into or out of the Federal Fund to be laid before that Legislature.

(4) Such accounts shall be kept in respect of the receipts and expenditure of the said funds as the Auditor-General of Burma may, with the approval of the Governor in his discretion, prescribe, and the said accounts shall be audited by, or on behalf of, the Auditor-General of Burma, who shall make annual report thereon to the Secretary of State.

### **PART VII.**

#### **THE BURMA RAILWAY BOARD.**

69. (1) The executive authority of Burma in respect of the regulation and the construction, maintenance and operation of railways in Burma shall be exercised by a Railway Board (hereinafter referred to as “the Board”).

(2) The said executive authority extends to the carrying on in connection with any railways operated by the Board of such other undertakings as either were being

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carried on in connection therewith by or on behalf of the Governor-General in Council immediately before the commencement of this Act, or as the Board may be authorized to carry on after the commencement of this Act by or under any Act of the Legislature.

(3) Notwithstanding anything in this section, the Government and its officers shall perform in regard to the construction, equipment and operation of railways, such functions for securing the safety both of members of the public and of person operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of the Government should be performed by persons independent of the Board.

So much of Part IX of this Act as provides that powers in relation to the railway services of Burma shall be exercised by the Board shall not apply in relation to officers of the Government employed in the performance of any of the functions mentioned in this subsection.

70. (1) The Board shall consist of a President and eight other members.

(2) The person who for the time being is, or is acting as, the chief executive officer of the railways operated by the Board (who shall be called the chief railway commissioner) shall be President of the Board.

The said chief railway commissioner shall be a person with experience of railway administration, and shall be appointed, and may at any time be removed from office, by the Governor in his discretion.

(3) Of the eight other members of the Board two shall be—

- (a) a financial member, being a person with special experience of finance, who shall be appointed, and may at any time be removed from office, and may at any time be removed from office, by the Governor exercising his individual judgment;
- (b) the person who for the time being is, or is acting as, the secretary to the Government of Burma in the department which for the time being deals with the subject of railways.

The six other members of the Board are in this Act called the non-official members.

(4) Subject as aforesaid, the provisions of the Sixth Schedule to this Act, as supplemented or amended by any Act of the Legislature, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Board, and with respect to its proceedings and its liability to income tax:

Provided that no Bill or amendment for supplementing or amending the said Schedule shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

71. (1) The Board in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of its receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

(2) In the discharge of its said functions the Board shall be guided by such instructions on questions of policy as may be given to it by the Government.

If any dispute arises under this subsection between the Government and the Board as to whether a question is or is not a question of policy, the decision of the Governor in his discretion shall be final.

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(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Government of their functions with respect to railways as they apply in relation to the functions of the Board, but nothing in this subsection shall be construed as limiting the powers of the Governor under the next succeeding subsection.

(4) The provisions of this Act relating to the special responsibilities of the Governor, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Board as if the executive authority of Burma in regard to those matters were vested in him, and as if the functions of the Board as regards those matters were the functions of ministers, and the Governor may issue to the Board such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Board shall give effect to any direction so issued to it.

72. (1) The Governor exercising his individual judgment, but after consultation with the Board, may make rules for the more convenient transaction of business arising out of the relations between the Government and the Board.

(2) The rules shall include provisions requiring the Board to transmit to the Government and such information with respect to its business as may be specified in the rules, or as the Governor may otherwise require to be so transmitted and, in particular, provisions requiring the Board to bring to the notice of the Governor any matter under consideration by the Board which involves, or appears to it likely to involve, any special responsibility of the Governor.

73. (1) Except in such classes of case as may be specified in regulations to be made by the Government, the Board shall not acquire or dispose of any land and, when it is necessary for the Board to acquire compulsorily any land for the purposes of its functions, the Government shall cause that land to be acquired on its behalf and at its expense.

(2) Contracts made by or on behalf of the Board shall be enforceable by or against the Board and not by or against the Government, and, subject to any provision which may hereafter be made by the Legislature, the Board may sue and be sued in the like manner and in the like cases as a company operating a railway might sue and be sued.

74. (1) The Board shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received by the Board, whether on revenue account or on capital account in the discharge of its functions and all moneys provided, whether on revenue account or capital account, out of the revenues of Burma to enable it to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of its functions shall be defrayed out of that Fund:

Provided that nothing in this subsection shall prevent the Board from establishing and maintaining a separate provident fund for the benefit of persons who are or have been employed in connection with railways operated by the Board.

(2) The receipts of the Board on revenue account in any financial year shall be applied—

(a) defraying the working expenses of the railways operated by the Board;

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- (b) paying pensions and contributions to any provident fund;
  - (c) paying to the revenues of Burma an amount equal to so much of any pensions and contributions to provident funds charged by this Act on those revenues and so much of any pensions charged by the Government of India Act, 1935, on the revenues of the Federation of India, as is attributable to service on railways in Burma;
  - (d) making due provision for maintenance, renewals, improvements and depreciation of and on the railways operated by the Board;
  - (e) making to the revenues of Burma any payments by way of interest which it is required by this Part of this Act to make; and
  - (f) defraying other expenses properly chargeable against revenue in that year.
- (3) Any surpluses on revenue account shown in the accounts of the Board shall be apportioned between the Government and the Board in accordance with a scheme to be agreed between the Government and the Board, or, in default of agreement, determined by the Governor exercising his individual judgment, and any sum apportioned to the Government under this subsection shall be transferred accordingly and shall form part of the revenues of Burma.
- (4) The Government may provide any moneys, whether on revenue account or capital account, for the purposes of the Board, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before the chambers of the Legislature.

(5) The Board shall, on such conditions as may be agreed, entrust all its money which is not immediately needed to the bank to which the balances of the Government of Burma are entrusted, and employ that bank as its agents for all transactions in Burma relating to remittances, exchange and banking.

75. (1) There shall be deemed to be owing from the Board to the Government of Burma such sum as may be agreed between the Government of Burma and the Board, or, in default of agreement, determined by the Governor in his discretion, to be equivalent to the amount of the moneys provided out of the revenues of Burma, or, before the commencement of this Act, out of the revenues of India, for capital purposes in connection with railways in Burma, and the Board shall out of its receipts on revenue account pay to the Government interest on that amount at such rate as may be so agreed or determined, and also make payments in reduction of the principal of that amount in accordance with any repayment scheme so agreed or determined.

For the purpose of this subsection, where the Secretary of State in Council has assumed or incurred any obligation in connection with railways in Burma, he shall be deemed to have provided for the said purposes an amount equal to the capital value of that obligation as show in the accounts of the Government of India immediately before the commencement of this Act.

Nothing in this subsection shall be construed as preventing the Board from making payments to the Government of Burma in reduction of the principle of any such amount as aforesaid out of moneys other than receipts on revenue account.

(2) It shall be an obligation to the Board to repay to the Government any sums defrayed out of the revenues of Burma in respect of any debt, damages, costs or expenses in or in connection with any proceedings brought or continued by or

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against the Government of Burma or against the Secretary of State under Part X of this Act in respect of railways in Burma.

(3) It shall be an obligation of the Board to pay to the Government such sum as may be agreed, or, in default of agreement, determined by the Governor exercising his individual judgment, to be the equivalent of the expenses incurred by the Government in the provision of police required for the maintenance of order on the premises of railways operated by the Board.

76. Subject to such conditions, if any, as may be prescribed by the Government, the Board may from time to time invest any moneys in the railway fund or a provident fund which are not for the time being required to meet expenses properly defrayable out of that fund and may, subject as aforesaid, from time to time transfer and realize investments so made by it.

77. (1) There shall be deemed to be owing by the Government of Burma to the Board such sum as may be declared by His Majesty in Council to represent the amount of the existing railway funds attributable to the railways in Burma, but no sum shall be paid by the Government of Burma to the Board in respect of the money so deemed to be owing except in respect of expenses of the Board which could, if neither this Act nor the Government of India Act, 1935 had been passed, have properly been met out of the said funds respectively.

(2) The Government of Burma shall credit the Board with interest on the amount from time to time deemed to owing under subsection (1) of this section at such rate as may from time to time be agreed between the Government and the Board or as may, in default of agreement, be from time to time determined by the Governor in his discretion, and any interest so credited shall be treated as an addition to the sum deemed to be owing under the said subsection.

(3) In this section "the existing railway funds" means the funds known respectively as the railway provident fund, the railway reserve fund and the railway depreciation fund which immediately before the commencement of this Act were held by, or were shown in the accounts of the Government of India as held by, the Governor-General in Council.

78. (1) The accounts of the receipts and expenditure of the Board shall be audited and certified by, or on behalf of, the Auditor-General.

(2) The Board shall publish annually a report of its operations during the preceding year and a statement of account in a form approved by the Auditor-General.

79. The Governor may from time to time appoint a Railway Rates Committee to advise the Board in connection with any dispute between the Board and persons using, or desiring to use, the railways operated by the Board as to rates or traffic facilities which he may require the Board to refer to the Committee.

80. A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Legislature except on the recommendation of the Governor.

### PART VIII.

#### THE HIGH COURT.

81. (1) The High Court at Rangoon (in this Act called the High Court) shall continue, and shall be a court of record, and shall consist of a chief justice and such number of other judges as His Majesty may deem it necessary to appoint:

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Provided that the judges so appointed, together with any additional judges appointed by the Governor in accordance with the following provisions of the Part of this Act, shall at no time exceed in number such maximum number as His Majesty in Council may fix.

(2) Every judge of the High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years:

Provided that—

- (a) a judge may be resignation under his hand addressed to the Governor resign his office;
- (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehavior or of infirmity of mind of body, if the Judicial Committee of the Privy Council, on reference being made to him them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the High Court unless he—

- (a) is a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing; or
- (b) is a member of the Indian Civil Service or the Burma Civil Service (Class 1) of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge; or
- (c) has for at least five years held judicial office in Burma not inferior to that of a district judge or judge of the small cause court of Rangoon; or
- (d) has for at least ten years been an advocate of the High Court:

Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or an advocate of the High Court, be qualified for appointment as chief justice of the High Court until he has served for not less than three years as a judge of the High Court.

In computing for the purpose of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been an advocate, any period during which he has held judicial office after he became a barrister, a member of the Faculty of Advocates or an advocates, as the case may be, shall be included.

(4) Every person appointed to be a judge of the High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fifth Schedule to this Act.

82. The judges of the High Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and traveling upon appointment, and to such rights in respect of leave of absence and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

83. (1) If the office of chief justice of the High Court becomes vacant, or if the chief justice is by reason of absence, or for any other reason, unable to perform the duties

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of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the chief justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor may in his discretion think fit to appoint for the purpose.

(2) If the office of any other judge of the High Court becomes vacant, or if any such judge is appointed to act temporarily as chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of the court, and the person so appointed shall, unless the Governor in his discretion thinks fit to revoke his appointment, be deemed to be a judge of the court, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties.

(3) If, by reason of any temporary increase in the business of the High Court or by reason of arrears of work in that Court, it appears to the Governor that the number of the judges of the Court should be for the time being increased, the Governor in his discretion may, subject to the foregoing provisions of this Part of this Act with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the Court for such period not exceeding two years as he may specify.

84. Subject to the provisions of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the Legislature, the jurisdiction of, and the law administered in, the High Court and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court, and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of this Act.

85. (1) The High Court has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say: —

- (a) call for returns;
- (b) make an issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to the High Court any jurisdiction to question any judgment of any interior court which is not otherwise subject to appeal or revision.

86. (1) Until otherwise provided by Act of the Legislature, the High Court shall not have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage or practice of the country, or the law for the time being in force.

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(2) A Bill or amendment for making such provision as aforesaid shall not be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

87. (1) In addition to any other right of appeal, there shall, subject to the provisions of section twenty of the Judicial Committee Act, 1833 (which relates to the time for appealing), be a right of appeal to His Majesty in Council from any decision of the High Court on the ground that a question of law with respect to the interpretation of this Act, or any Order in Council made thereunder, has been wrongly decided.

(2) Nothing in this Act shall be construed as authorizing the Legislature to derogate from any prerogative right of His Majesty to grant special leave to appeal in any case.

88. All proceedings in the High Court shall be in the English language.

89. (1) The administrative expenses of the High Court, including all salaries, allowances and pensions payable to or in respect of judges, officers and servants of the Court, shall be charged upon the revenues of Burma, and any fees or other moneys taken by the Court shall form part of those revenues.

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

(3) Nothing in his Act shall render a pension payable to, or in respect of, a judge of the High Court who retired before the commencement of this Act chargeable upon the revenues of Burma.

90. Any judge appointed before the commencement of this Act to the High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act be required to relinquish his office at an earlier age than he would have been required so to do if neither this Act nor the Government of India Act, 1935, has been passed.

### **PART IX.**

#### **THE SERVICES OF THE CROWN IN BURMA.**

##### ***Defense Service.***

91. (1) His Majesty in Council may require that appointments to such offices connected with defense as he may specify shall be made by him, or in such manner as he may direct.

(2) Nothing in this section derogates from any power vested in His Majesty by virtue of any Act, or by virtue of his Royal Prerogative.

92. The power of His Majesty, and of any person authorized in that behalf by His Majesty, to grant commissions in any naval, military or air forces raised in Burma extends to the granting of a commission in any such force to any person who might be, or has been, lawfully enlisted or enrolled in that force.

93. Without prejudice to the generality of the powers conferred on him by this Act, the Secretary of State, acting with the concurrence of his advisers, may from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's forces in Burma shall be made only with his previous approval.

94. Nothing in this Act affects any right of appeal which members of His Majesty's forces in Burma enjoyed immediately before the passing in this Act, and the Secretary of State may entertain any such memorial from a member of those forces

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as the Secretary of State, or the Secretary of State in Council, might previously have entertained.

95. Any sums payable out of the revenues of Burma in respect of pay, allowances, pensions or other sums payable to or in respect of, person who are serving, or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Act charging on the said revenues expenditure with respect to defense.

96. The provisions of the three last preceding sections shall apply in relation to person who, not being members of His Majesty's forces, hold, or have held, posts in Burma connected with the equipment or administration of those forces or otherwise connected with defense, as they apply in relation to persons who are, or have been, members of those forces.

### *General Provisions as to Civil Services.*

97. (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in Burma, or holds any civil post under the Crown in Burma, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this subsection shall not apply—

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction or a criminal charge; or

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in Burma holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in Burma, is appointed under this Act to hold such a post may, if the Governor deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

98. (1) Except as expressly provided by this Act, appointments to the civil services of, the civil posts under, the Crown in Burma, shall, after the commencement of this Act, be made by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of person serving His Majesty in a civil capacity in Burma shall, subject to the provisions of this section, be such as may be prescribed by rules made by the Governor or some person authorized by him to make rules for the purpose:

Provided that it shall not be necessary to make rules regulating the conditions of service of persons appointed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this subsection shall be

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construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) The said rules shall be so framed as to secure—

- (a) that, in the case of a person who before the commencement of this Act was serving His Majesty in a civil capacity in India or Burma, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority in Burma which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect;
- (b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—
  - (i) punishes or formally censures him; or
  - (ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or
  - (iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,as he would have had immediately before the commencement of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State, or by some person empowered by the Secretary of State to give directions in that respect.
- (c) that every other person serving His Majesty in a civil capacity in Burma shall have at least one appeal against any such order as aforesaid, not being an order of the Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the Legislature may regulate the conditions of service of person serving His Majesty in a civil capacity in Burma, and any rules made under this section shall have effect subject to the provisions of any such Act:

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection.

(5) No rules made under this section and no Act of the Legislature shall be construed to limit or abridge the power of the Governor to deal with the case of any person serving His Majesty in a civil capacity in Burma in such manner as may appear to him to be just and equitable:

Provided that, where any such rule of Act is applicable to the case of any person, the case shall not be dealt with any manner less favorable to him than that provided by that rule or Act.

99. (1) In its application to appointments to, and to persons serving, in the railway services, the last preceding section shall have effect as if for any reference to the Governor in subsections (1), (2) and (5) there were substituted a reference to the Railway Board.

(2) In framing rules for the regulation of recruitment to superior railway posts, the Railway Board shall consult the Public Service Commission, but, save as aforesaid, it

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shall not be obligatory on the Board to consult with, or otherwise avail themselves of the services of the Commission.

(3) In its application to appointments to, and to persons serving on, the staff attached to the High Court, the said section shall have effect as if for any reference to the Governor in subsections (1), (2) and (5) there were substituted a reference to the chief justice:

Provided that—

- (a) the Governor may in his discretion require that in such case as he may in his discretion direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Public Service Commission;
- (b) rules made under the said subsection (2) by the chief justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor.

100. Notwithstanding anything in the foregoing provisions of this Part of this Act, the conditions of service of the subordinate ranks of the police forces shall be such as may be determined by or under the Acts relating to those forces respectively.

### ***Recruitment by Secretary of State and provisions as to certain civil posts.***

101. (1) There shall be civil services in Burma corresponding to the Indian Civil Service and the Indian Police Service, which shall be known respectively as the Burma Civil Service (Class 1) and the Burma Police (Class 1), and appointment to those services shall, until Parliament otherwise determines, be made by the Secretary of State.

(2) Until Parliament otherwise determines, the Secretary of State may also make appointments to any service or services which at any time he may deem it necessary to establish in Burma for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor which the Governor is by or under this Act required to exercise in his discretion.

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) it shall be the duty of the Governor to keep the Secretary of State informed as to the operation of this and the next succeeding section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof. In discharging his functions under this subsection the Governor shall act in his discretion.

102. Until Parliament otherwise determines, the Secretary of State may appoint person to any civil medical service of, or civil medical post under, the Crown in Burma.

103. Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation or the prevention of flooding, appoint person to any civil service of, or civil post under, the Crown in Burma concerned with those matters.

104. (1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor which the Governor is by or under this Act required to

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exercise in his discretion), which, subject to the provisions of this subsection, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in Burma, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—

- (a) be kept vacant for more than three months; or
- (b) be filled otherwise than by the appointment of such a person as aforesaid; or
- (c) be held jointly with any other such post.

(2) Appointments and postings to the said posts (hereafter in this Part of this Act referred as “reserved posts”) shall be made by the Governor, exercising his individual judgment.

(3) All rules made under this section shall, so soon as may be alter they are made, be laid before each House of Parliament, and if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such rule has been laid before it resolved that the rule has been laid before its revolves that the rule shall be annulled, the rule shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

105. (1) The conditions of service of all person appointed to a civil service or a civil post in Burma by the Secretary of State shall—

- (a) as respects pay, leave and pensions and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State;
- (b) as respects other matters with respect to which express provision is not made by this Part of this Act be such as may be prescribed by rules to be made by the Secretary of State, in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made by the Governor or some person authorized by the Governor to make rules for the purpose:

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favorable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post.

(2) Any promotion of any person appointed to a civil service or a civil post by the Secretary of State or any order relating to leave of not less than three months of any such person, or any order suspending any such person from office, shall be made by the Governor, exercising his individual judgment.

(3) If any such person as aforesaid is suspended from office, his remuneration shall not, during the period of his suspension, be reduced except to such extend, if any, as may be directed by the Governor, exercising his individual judgment.

(4) Any salary, allowances or pension payable to or in respect of any such person as aforesaid, and Government contributions in respect of any such person as aforesaid to any person fund or provident fund, shall be charged on the revenues of Burma:

Provided that, if any such person is serving in connection with the railways in Burma, so much only of his salary and allowances shall be charged on the revenues of Burma as is not paid our of the Railway Fund.

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(5) No award of a pension less than a maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(6) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any pension serving His Majesty in a civil capacity in Burma, in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor to deal with the case of any such person in such manner as may appear to him to be just and equitable:

Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favorable to him than that provided by the rule.

106. (1) If any person appointed to a civil service or civil post by the Secretary of State is aggrieved by an order made by any authority in Burma affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain to the Governor, and the Governor shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable.

(2) No order made by any authority in Burma which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except by the Governor, exercising his individual judgment.

(3) Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in Burma which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of Burma to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

107. (1) If by any reason of anything done under this Part of this Act the conditions of service of any person appointed to a civil service or a civil post in Burma by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of Burma such compensation as the Secretary of State may consider just and equitable.

(2) Any sum payable under this section from the revenues of Burma shall be charged on those revenues.

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor from the revenues of Burma by way of compensation to person who are serving or have served His Majesty in Burma in cases to which those provisions do not apply

***Provisions as to person appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.***

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108. (1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made thereunder shall apply in relation to any person who was appointed before the commencement of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in Burma as they apply in relation to persons appointed to a civil service or civil post by the Secretary of State

(2) Subject to the provisions of this section, the said sections and rules shall, in such cases and with such exceptions and modifications as the Secretary of State may decide, also apply to any person who—

- (a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post; or
- (b) holds or has held any civil post under the Crowns in Burma and is, or was when he was first appointed to such a post or to a civil post under the Crown in India, an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of this Act to a civil service of, or to a civil post under, the Crown in Burma, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favorable terms as regards remuneration of pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post, shall be construed as a provision that no such rule shall have effects so as to give to any person less favorable terms as respects the said matters than were given to him by the rules in force immediately before the coming into operation of the rule.

(4) In its application by virtue of this section to person serving in the railway services of Burma, the second of the four last preceding sections (which relates to the conditions of service, pensions, &c., of persons recruited by the Secretary of State) shall have effects as if for any reference to the Governor in paragraph (b) of subsection (1) thereof and in subsection (2), (3) and (6) thereof there were substituted as reference to the Railway Board.

(5) Any liability of the Government of Burma to or in respect of any person appointed before the commencement of this Act to a civil service of, or a civil post under, the Crown in Burma, being a liability to pay a pension granted to or in respect of any such person as aforesaid, or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if neither this Act nor the Government of India Act, 1935, had been passed, shall, notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part X of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of this Act.

(6) Nothing in this section shall be construed as charging on the revenues of Burma any pensions payable to or in respect of any person to whom this section applies who retired from the service of His Majesty before the commencement of this Act.

### ***Special Provisions as to Judicial Officers.***

109. (1) The foregoing provisions of this Part of this Act shall not apply to the judges of the High Court:

Provided that—

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- (a) for the purposes of this section a member of any of the civil services of the Crown of Burma who is acting temporarily as a judge of the High Court shall not be deemed to be a judge of that court;
- (b) nothing in this section shall be construed as preventing the Orders in Council relating to the salaries, leave and pensions of judges of the High Court from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in Burma or India, such of the rules relating to that service or the corresponding service in Burma as may appear to His Majesty to be properly applicable in relation to them.

(2) Any liability of the Government of Burma to or in respect of any person who is at the commencement of this Act a judge of the High Court, being a liability to pay a pension granted to or in respect of any such person as aforesaid, or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if neither this Act nor the Government of India Act, 1935, had been passed, shall, notwithstanding any thing in this Act, be deemed, for the purpose of the provisions of Part X of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of this Act.

110. (1) Appointments of persons to be, and the posting and promotion of, district judges in Burma shall be made by the Governor, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates, or an advocate and is recommended by the High Court for appointment.

(3) In this and the next succeeding section the expression "district judge" includes district and sessions judge, sessions judge, chief judge of the small cause court, Rangoon, additional district and session judge, additional district judge and additional sessions judge.

111. (1) The Governor shall, after consultation with the Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering a subordinate civil judicial service.

In this section the expression "subordinate civil judicial service" means a service consisting of persons intended to fill civil judicial posts in Burma subordinate to that of district judge.

(2) The Public Service Commission, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to a subordinate civil judicial service make a list or lists of the persons whom they consider fit for appointment, and the appointments shall be made by the Governor from the persons included in the list or lists.

(3) The posting and promotion of, and the grant of leave to, persons belonging to subordinate civil judicial service and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this Part of this Act, or as authorizing

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the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder.

In this subsection the expression "promotion" does not include promotion from one service to another.

112. No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working.

### *Special provisions as to Burman Frontier Service.*

113. (1) Appointments to the Burma Frontier Service shall be made by the Governor in his discretion, and in relation to person who are or have been members of that service the powers of the Governor under this Part of this Act shall be exercised by him in his discretion.

(2) Except so far as the Governor in his discretion otherwise directs, no Act of the Legislature for regulating the conditions of service of persons serving His Majesty in a civil capacity in Burma shall apply in relation to person who are members of the Burma Frontier Service.

(3) Any salaries, allowances or pensions payable to or in respect of any persons who are or have been members of the Burma Frontier Service, and any Government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of Burma.

### *Provisions for the protection of certain existing officers.*

114. (1) No civil post in Burma which, immediately before the commencement of this Act, was a post in, a Central post required to be held by some member of, a Central Service I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished, except by the Governor, exercising his individual judgment.

(2) No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the commencement of this Act to a Central Service Class I, a Railway Service Class I or a Provincial Service, and no order upon a memorial submitted by any such person, shall be made except by the Governor, exercising his individual judgment.

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in Burma by the Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor there was substituted as reference to the Secretary of State.

115. (1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the commencement of this Act was classified as a superiors service or post shall be charged on the revenues of Burma:

Provided that, if any such pension as aforesaid is serving in connection with the railways in Burma, so much only of his salary and allowances shall be charged on the revenues of Burma as is not paid out of the Railway Fund.

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(2) Any pension payable to or in respect of any such pension as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of Burma.

(3) Nothing in this section shall be construed as charging on the revenues of Burma any pension payable to or in respect of any person who retired from the service of His Majesty before the commencement of this Act.

116. (1) Any pension payable to or in respect of any person who, having been appointed to a civil service of, or a civil post under, the Crown in Burma, retired from the service of His Majesty before the commencement of this Act shall be paid out of the revenues of Burma, if it would have been payable by the Local Government of Burma if neither this Act nor the Government of India Act, 1935, had been passed:

Provided that nothing in this subsection shall apply to any pension which is charged on or payable out of the revenues of the Federation of India.

(2) There shall be paid to the Federation out of the revenues of Burma and charged on those revenues such sums as may be required to make good to the revenues of the Federation any liability in respect of any pension charged on or payable out of the revenues of the Federation which would, if neither this Act nor the Government of India Act, 1935, had been passed, have been a liability of the Local Government of Burma.

### *Miscellaneous Provisions as to civil services.*

117. In this Part of this Act references to persons appointed to a civil service of the Crown in Burma include references to persons appointed before the commencement of this Act to a civil service of the Crown in India who were before that date serving in Burma and continue so to serve, and the requirement that no person shall be dismissed from the service of his Majesty by any authority subordinate to that by which he was appointed shall, in relation to any such person appointed by any authority in India, be construed as a requirement that he shall not be so dismissed by any authority subordinate to such authority in Burma as the Governor may, in his discretion, decide to correspond to the authority by which he was appointed.

118. The powers conferred by the provisions of this Part of this Act on the Secretary of State (other than powers in relation to defense services) shall not be exercisable by him except with the concurrence of his advisers and the advisers of the Secretary of State appointed under the Government of India Act, 1935.

### *Public Service Commission.*

119. (1) There shall be a Public Service Commission, the chairman and other members whereof shall be appointed by the Governor in his discretion:

Provided that at least one-half of the members of the Public Service Commission shall be persons who, at the dates of their respective appointments, have held office for at least ten years under the Crown in Burma or India.

(2) The Governor in his discretion may by regulations—

- (a) determine the number of members of the Commission, their tenure of office, and their conditions of service;
- (b) make provision with respect to the number of staff of the Commission and their conditions of service.

(3) On ceasing to hold office—

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- (a) the Chairman of the Commission shall be ineligible for further employment under the Crown in Burma;
- (b) no other member of the Commission shall be eligible for any other appointment under the Crown in Burma without the approval of the Governor in his discretion.

(4) The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the members of staff of the Commission, shall be charged on the revenues of Burma.

120. (1) It shall be the duty of the Public Service Commission to conduct examinations for appointments to civil services.

(2) The Secretary of State, as respects services and posts to which appointments are made by him, and the Governor in his discretion as respects other services and posts, may make regulations specifying the matters on which either generally, or in any particular class or case, or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted, but, subject to regulations so made, the Commission shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another, and on the suitability of candidates for such appointments, promotions or transfers;
- (c) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in Burma, including memorials or petitions relating to such matters;
- (d) on any claims by or in respect of a person who is serving or has served His Majesty in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of Burma;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in Burma, and any questions as to the amount of any such award;
- (f) on any claim by a person serving His Majesty in a civil capacity in Burma that his conditions of service have been adversely affected by the separation of Burma from India,

and it shall be the duty of the Commission to advise on any matter so referred to them and on any other matter which the Governor in his discretion may refer to them.

(3) Nothing in this section shall require the Public Service Commission to be consulted, in the case of the subordinate ranks of the various police forces in Burma, as respects any of the matters mentioned in paragraphs (a), (b) and (c) of subsection (2) of this section.

121. Subject to the provisions of this section, an Act of the Legislature may provide for the exercise of additional functions by the Public Service Commission:

Provided that—

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- (a) no Bill or amendment for the purpose aforesaid shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion; and
- (b) it shall be a term of every such Act that the functions conferred by it shall not, except with the consent of the Secretary of State, be exercisable in relation to any person appointed to a service or a post by the Secretary of State or by the Secretary of State in Council, any officer in His Majesty's forces, or any holder of reserved post.

### *Chaplains.*

122. The Secretary of State may appoint chaplains to minister in Burma, and the foregoing provisions of this Part of this Act shall, with any necessary modifications, apply in relation to the chaplains in Burma appointed by him or by the Secretary of State in Council as they apply in relation to members of the civil services in Burma to which appointments are made by the Secretary of State.

### *General.*

123. Subject to any express provision of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in Burma:

Provided that—

- (a) a person who at the commencement of this Act is in the permanent service of the Crown in Burma shall not be ineligible to hold any office under the Crown in Burma by reason that he is not a British subject;
- (b) the Governor exercising his individual judgment, may declare—
  - (i) that any named native of an area in Burma (not being part of British Burma), or any Indian State, or of any territory adjacent to India or Burma, or
  - (ii) that the natives of any such area, State or territory as aforesaid, being an area, State or territory specified in the declaration, shall be eligible to hold any such offices or classes of offices under the Crown in Burma as may be specified in the declaration;
- (d) the Governor, exercising his individual judgment, may authorize the temporary employment for any purpose of a person who is not a British subject.

124. (1) No proceedings civil or criminal shall be instituted in Burma against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the commencement of this Act, except with the consent of the Governor in his discretion.

(2) Any civil or criminal proceedings instituted in Burma, whether before or after the commencement of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the said date shall be dismissed unless the court if satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed, the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged on the revenues of Burma.

125. (1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in Burma by section one hundred and ninety-seven of

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the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

(2) The powers conferred upon the Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and the determination of the court before which, the person by whom and the manner in which a public servant is to be tried, shall be exercisable only by the Governor exercising his individual judgment:

Provided that nothing in this subsection shall be construed as restricting the power of the Legislature to amend the said section by a Bill or amendment introduced or move with such previous sanction as is mentioned in subsection (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor, exercising his individual judgment, so directs, be defrayed out of and charged on the revenues of Burma.

126. Any pension payable to or in respect of a person who—

- (a) before the commencement of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or
- (b) after the commencement of this Act—
  - (i) serves in Burma as an officer of His Majesty's forces; or
  - 1. is appointed to a civil service of, or to an office or post under, the Crown in Burma by His Majesty or the Secretary of State; or
  - 2. holds a reserved post; shall, if the person to whom the pension is payable is residing permanently outside Burma, be paid on behalf of the Government of Burma by, or in accordance with arrangements made with, the Secretary of State and be exempt from all taxation imposed by or under any existing Indian or Burman law or any law of the Legislature.

127. A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in Burma other than such a service or post as may be specified by any general or special order made by the Secretary of State in relation to appointments made by him, or by the Governor in relation to other appointments.

128. Until other provision is made under the appropriate provisions of this Act, any rules made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India which were in force immediately before the commencement of this Act, shall, notwithstanding the repeal of that Act, continue in force in Burma so far as consistent with this Act and the Government of India Act, 1935, and shall be deemed to be rules made under the appropriate provisions of this Act.

129. (1) In this Part of this Act—

the expressions "Central Service Class I," "Central Service Class II," "Railway Service Class II" and "Provincial Service" Means respectively the services which were, immediately before the passing of this Act, so described respectively in the classification rules then in force under section ninety-six B

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of the Government of India Act; references to dismissal from His Majesty's service include reference to removal from His Majesty's service.

(2) The inclusion in this Part of this Act of provisions expressly requiring the Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from his special responsibility for the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests.

### PART X

#### PROPERTY, CONTRACTS, LIABILITIES AND SUITE

130. (1) Lands and buildings in Burma which immediately before the commencement of this Act were vested in His Majesty for the purposes of the government of India shall, as from that date, vest in His Majesty for the purposes of the government of Burma.

(2) Any property which immediately before the commencement of this Act was vested in His Majesty for the purpose of the government of India and either was then situate in Burma or, by virtue of any delegation from the Secretary of State in Council or otherwise, was then in the possession or under the control of, or held on account of, the Local Government of Burma, shall, as from the commencement of this Act, vest in His Majesty for the purposes of the government of Burma:

Provided that this subsection does not apply in relation to any military equipment, stores, money, bank balances or other property held in connection with His Majesty's Indian forces stationed in Burma (not being forces raised in Burma).

(3) All credits and debits of the Local Government of Burma in account with the Governor-General of India and in Council shall be deemed to be credits and debits of the government of Burma.

(4) Arrears of any taxes outstanding in Burma immediately before the commencement of this Act shall be deemed to be due to and may be recovered by the government of Burma.

(5) In this section "property" does not include any land or buildings, but includes moneys, securities, bank balances, and movable property of any description.

131. (1) The executive authority of Burma shall extend, subject to any Act of the Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purposes of the government of Burma and to the purchase or acquisition or property on behalf of His Majesty for those purposes, and to the making of contracts:

Provided that an official residence of the Governor shall not be sold or diverted to other use, except with the concurrence of the Governor in his discretion.

(2) All property acquired for the purposes of the government of Burma shall vest in His Majesty for those purposes.

(3) Subject to the provisions of this Act with respect to the Railway Board, all contracts made in the exercise of the executive authority of Burma shall be expressed to be made by the Governor, and all such contracts and assurances of property made in the exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorize.

(4) Neither the Governor nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act,

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or for the purposed of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of either of them be personally liable in respect thereof.

132. (1) The Government of Burma may sue and be sued by the name of the Government of Burma, and, without prejudice to the provisions of the next succeeding section, may, subject to any provisions which may be made by Act of the Legislature, sue or be sued in relation to their affairs in the like cases as the Secretary of State in Council might have sued or been sued if neither this Act nor the Government of India Act, 1935, has been passed.

(2) Rules of Court may provide that, where the Government of Burma or the Railway Board sue or are sued in the United Kingdom, service of all proceedings may be effected upon such person in the United Kingdom as may be designated in the rules as the person on whom service of such proceedings is to be effected.

133. (1) Any contract made before the commencement of this Act by, or on behalf, of the Secretary of State in Council shall as from that date, if it was made solely in connection with the affairs of Burma, have effect as if it had been made on behalf of the Government of Burma, and references in any such contract to the Secretary of State in Council shall be construed accordingly.

(2) Any proceedings relating to contracts or liabilities solely in connection with the affairs of Burma which, if neither this Act nor the Government of India Act, 1935, had been passed, might have been brought against the Secretary of State in Council may, in the case of any liability arising before the commencement of this Act or arising under any contract or statute made or passed before that date, be brought against the Government of Burma, or, at the option of the person by whom the proceedings are brought, against the Secretary of State.

The provisions of this subsection shall apply with respect to proceedings arising under any contract declared by the terms thereof to be supplemental to any such contract as is mentioned therein as they apply in relation to the contracts so mentioned.

(3) If at the commencement of this Act any legal proceedings are pending in the United Kingdom or Burma to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council.

(4) Any contract made in respect of the affairs of Burma by or on behalf of the Secretary of State after the commencement of this Act may provide that any proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State, and any such proceedings may be brought accordingly.

(5) Any sum ordered to be paid by way of debt, damages or costs, and any costs or expenses incurred in, or in connection with, any proceedings mentioned in this section by the Secretary of State, the Secretary of State in Council or the Government of Burma shall be paid out of the revenues of the Burma.

(6) Nothing in this section shall be construed as imposing any liability upon the Exchequer of the United Kingdom in respect of any debt, damages, costs or expenses in or in connection with any proceedings, brought or continued by or against the Secretary of State by virtue of this section, or as applying in relation to any liabilities which are by the Government of India Act, 1935, made liabilities of the revenues of the Federation.

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## PART XI.

### MISCELLANEOUS PROVISIONS AS TO RELATIONS WITH INDIA.

134. Whereas it may appear that the distribution of property, rights and liabilities effected by an under this Act and the Government of India Act, 1935, as between India and Burma may result in an undue burden on the revenues of the Federation, His Majesty in Council may, if he thinks of just so to do, make provision for the payment to the revenues of the Federation out of the revenues of Burma, and for the charging on the revenues of Burma, of such periodical or other sums as may appear to him to be proper.

135. With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma, and with respect to ancillary and related matters.

136. His Majesty in Council may make provision for the grant of relief from any Burman tax on income in respect of income taxed or taxable by or under the law of the Federation of India.

137. His Majesty in Council may make such provision with respect to the monetary system of Burma and matters connected therewith or ancillary thereto as he thinks fit and in particular, but without prejudice to the generality of this section, such provision as may appear to him to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of this Act with the approval of the Secretary of State by the Governor of Burma in Council.

128. His Majesty may by Order in Council direct that, during such period as may be specified in the Order, immigration into Burma from India shall be subject to such restrictions as may be specified in the Order (being such restrictions as may have been mutually agreed before the commencement of this Act between the Governor of Burma in Council and the Governor-General of India in Council and approved by the Secretary of State, or in default of agreement as may have been prescribed by the Secretary of State), and no other restrictions:

Provided that any such Order may be varied by a subsequent Order in Council in such manner as appears to His Majesty necessary to give effect to any agreement in that behalf made after the commencement of this Act by the Governor with the Governor-General of India or the Governor-General of India in Council.

## PART XII.

### PROVISIONS IN EVENT OF FAILURE TO CONSTITUTIONAL MACHINERY.

1. (1) If at any time the Governor is satisfied that a situation has arisen in which the government of Burma cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—
  - (a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;
  - (b) assume to himself all or any of the powers vested in or exercisable by any body or authority in Burma;

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and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable to give effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any body or authority in Burma:

Provided that nothing in this subsection shall authorize the Governor to assume to himself any of the powers vested in or exercisable by the High Court, or to suspend, either in whole or in part, the operation of any provisions of this Act relating to the High Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if an so often as a resolution approving the continuance in force of such a Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the Legislature, and any reference in this Act to Acts of the Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion.

### PART VIII.

#### PROVISIONS AS TO SECRETARY OF STATE

140. (1) There shall be not more than three persons to be appointed from time to time by the Secretary of State, whose duty it shall be to advise the Secretary of State on any matter relating to Burma on which he may desire their advice.

(2) One at least of the person for the time being holding office under this section as advisers of the Secretary of State shall be a person who has held office for at least ten years under the Crown in Burma and has not last ceased to perform in Burma official duties under the Crown more than two years before the date of his appointment as an adviser under this section.

(3) Any person appointed as an advisor to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment:

Provided that—

(a) any person so appointed may be writing under his hand resign his office to the Secretary of State;

(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

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(4) A person for the time being holding office as adviser of the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year and also to any of them who at the date of his appointment was domiciled in Burma a subsistence allowance of six hundred pounds a year.

(6) Subject to the provisions of this Act relating to the functions of the Secretary of State with respect to the public services in Burma, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provisions of this Act which requires that the Secretary of State shall obtain the concurrence of any body of advisers shall be deemed to be satisfied if at a meeting of those advisers he obtains the concurrence of at least one-half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion on the matter.

In this subsection "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of the advisers the concurrence of at least one-half of those present at the meeting.

2. (1) There shall be charged on and paid out of the revenues of Burma into the Exchequer such periodical or other sums as may from time to time be agreed between the Governor and the Treasury in respect of so much of the expenses of the Department of the Secretary of State as is attributable to the performance on behalf of the Government of Burma of such functions as it may be agreed between the Secretary of State and the Governor that that department should so perform.

(2) Nothing in this Act shall be construed as imposing upon the revenues of Burma any liability in respect of the salary of the Secretary of State or, subject to the provisions of subsection (1) of this section, any liability in respect of the expenses of his department

(3) Any expenses incurred with the consent of the Treasury by the Secretary of State for the purposes of this Act shall be defrayed out of moneys provided by Parliament.

### PART XIV.

#### MISCELLANEOUS.

142. His Majesty in Council may from time to time declare any territory to be within or without Burma.

143. Nothing in this Act shall derogate from the right of His Majesty to grant pardons, reprieves, respites or remission of punishment.

144. (1) No subject of His Majesty domiciled in Burma shall on grounds only of religion, place of birth, descent, color or any of them be ineligible for office under the Crown of Burma, or be prohibited by any law of Burma on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in Burma.

(2) Nothing in this section shall affect the operation of any law which—

(a) prohibits either absolutely or subject to exceptions, the sale or mortgage of agricultural land situate in any particular area, and owned by a person

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belonging to some class recognized by the law as being a class of person engaged in or connected with agriculture in that area, to any person not belonging to any such class; or

(b) recognizes the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor for the safeguarding of the legitimate interests of minorities.

145. (1) No person shall be deprived of his property in Burma save by authority of law.

(2) The Legislature shall not have power to make any law authorizing the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

146. (1) The executive authority of Burma shall not be exercised, save on an order of the Governor in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect of land or land revenue, being a grant or confirmation made for services rendered.

(2) No pension granted or customarily payable in Burma before the commencement of this Act by the Governor-General in Council or the Local Government of Burma on political considerations or compassionate grounds shall be discontinued or reduced, otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor, exercising his individual judgment, and any sum required for the payment of any such pension shall be charged on the revenues of Burma.

(3) Nothing in this section affects any remedy for a breach of any conditions on which a grant was made.

147. No member of the Legislature shall be a member of any tribunal having jurisdiction to entertain appeals or revise decisions in revenue cases.

148. Notwithstanding the repeal of the Government of India Act, but subject to the provisions of this Act, all the law in force in Burma immediately before the commencement of this Act shall continue in force in Burma until altered or repealed or amended by the Legislature or other competent authority.

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149. His Majesty may by Order in Council to be made at any time after the passing of this Act provide that as from such date as may be specified in the Order any law in force in Burma shall, until repealed or amended by the Legislature or other competent authority, have effect subject to such adaptations and modifications as appears to His Majesty to be consequential on the separation of India and Burma.

In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, byelaw, rule or regulation having in Burma the force of law.

150. (1) If the Governor in his discretion thinks fit to direct that there shall be a High Commissioner for Burma in the United Kingdom, the Governor, exercising his individual judgment, may appoint a person to be High Commissioner and prescribe his salary and conditions of service.

(2) The High Commissioner shall perform on behalf of the Government of Burma and the Railway Board such functions in connection with the business of that Government and Board, and, in particular, such functions in relation to the making of contracts, as the Governor may from time to time direct.

(3) The provisions of Part IX of this Act (which relates to the services in Burma) shall apply in relation to appointments and to persons serving on the staff of the High Commissioner for Burma as if the service of the members of his staff were service rendered in Burma.

151. (1) The Governor shall have his own secretarial staff to be appointed by him in his discretion.

(2) The salaries and allowances of person so appointed and the office accommodation and other facilities to be provided for them shall be such as the Governor may in his discretion determine, and the said salaries and allowances and the expenses incurred in providing the said accommodation and facilities shall be charged on the revenues of Burma.

151A. (1) Where a civil servant, as defined by section twelve of the Superannuation Act, 1887, is appointed by His Majesty or by the Governor in his discretion to any office under the Crown in Burma, the Secretary of State may direct that his service in that office shall qualify for the grant of a pension or gratuity as if it were service rendered in the office held by him as a civil servant immediately before his appointment to service in Burma, and there shall be paid to, or in respect, him out of the revenues of Burma, and shall be charged on those revenues, in respect of his service in that office in Burma a pension or gratuity calculated in accordance with the Superannuation Act, 1834 to 1935, and the orders, rules and regulations made thereunder, but on the basis of the salary of the office last held by him as a civil servant before his appointment so service in Burma:

Provided that nothing in the said Acts, orders, rules or regulations shall operate to prevent the grant of a pension to him with effect from the date on which he may relinquish office in Burma, notwithstanding that at that date he may not have attained the age of sixty.

(2) No such direction as aforesaid shall be given in relation to service in any office if the service of the person in question in that office would qualify for the grant of a pension without any such direction.

152. No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in Burma against the Governor or against the Secretary of State,

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whether in a personal capacity or otherwise, and, except with the sanction of His Majesty in Council no proceedings whatsoever shall lie in any court in Burma against any person who has been the Governor or the Secretary of State, in respect of any thing done or omitted to be done by either of them during his term of office in performance or purported performance of the duties thereof:

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Government of Burma or the Secretary of State such proceedings as are mentioned in Part X of this Act.

153. For the purpose of the first elections of persons to serve as member of the Legislature, no person shall be subject to any disqualification by reason only of the fact that he holds—

- (a) an office of profit as a non-official member of the Executive Council of the Governor of Burma or as a Minister in the Province of Burma;
- (b) an office which is not a whole-time office remunerated either by salary or by fees.

154. (1) If at any time after the expiration of ten years from the commencement of this Act the Legislature, on motions proposed in each Chamber by a minister on behalf of the council of minister, pass a resolution recommending any such amendment of this Act or of an Order in Council made thereunder as is hereinafter mentioned, and on motions proposed in like manner present to the Governor and address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament, the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament, a statement of any action which it may be proposed to take thereon.

The Governor when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the proposed amendment and, in particular, as to the effect which it would have on the interest of any minority likely to be affected by the proposed amendment and so to whether a majority of the representatives of that minority in the Legislature support the proposal, and the Secretary of State shall cause such statement and report to be laid before Parliament.

In performing his duties under this subsection, the Governor shall act in his discretion.

(2) The amendments referred to in the proceeding subsection are—

- (a) any amendment of the provisions relating to the composition of the Legislature or the method of choosing or the qualifications of the members thereof;
- (b) any amendment of the provisions relating to the qualifications entitling persons to vote at election.

(3) His Majesty in Council may at any time before or after the commencement of this Act, whether or not ten years have elapsed from the commencement of this Act, and whether or not any such address as is mentioned in this section has been submitted to His Majesty, make in the provisions of this Act any such amendment as is referred to in subsection (2) of this section:

Provided that, if no such address has been submitted to His Majesty, then, before the draft of any order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed

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amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Government and the Legislature and of any minority likely to be affected by the proposed amendment, and whether a majority of the representatives of that minority in the Legislature support the proposal.

155. His Majesty may, by Order in Council—

- (a) direct that the whole or any specified part of any of the areas specified in Part I of the Second Schedule to this Act shall be deemed to be, or be part of, an area specified in Part II of that Schedule;
- (b) direct that the whole or any specified part of an areas specified in Part II of the said Schedule shall be deemed not to be, or not to be part of, an area specified in that Schedule;
- (c) alter, but only by way of rectification of boundaries, any of the areas specified in that Schedule;
- (d) on any alteration of the boundaries of Burma or of His Majesty's territories therein, declare any territory not previously included in that Schedule to be, or to be part of, an area specified in Part I or in Part II of that Schedule;

and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary or proper.

156. (1) Whereas difficulties may arise in relation to the transition in Burma from the provisions of the Government of India Act to the provision of this Act:

And whereas the nature of those difficulties and of the provision which should be made for meeting them cannot at the date of the passing of this Act be fully foreseen:

Now therefore, for the purpose of facilitating the said transition, His Majesty may by Order in Council-

- (a) direct that this Act and any provisions of the Government of India Act still in force shall in Burma, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified;
- (b) make, with respect to a limited period so specified, such temporary provisions as he thinks fit for ensuring that, while the said transition is being effected and during the period immediately following it, where are available to the Government of Burma sufficient revenues to enable its business to be carried on; and
- (c) make such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.

(2) No Order in Council shall be made under this section after the expiration of six months from the commencement of this Act.

157. (1) Any power conferred by his Act on His Majesty in Council shall be exercisable only by Order in Council, and subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make in Council under any provision of this Act, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such

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amendments as both Houses of Parliament may have agreed to recommend to His Majesty:

provided that, if at any time when Parliament is dissolved or prorogued or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency and Order in Council should be made under this Act forthwith, it shall not be necessary for a draft of the Order to be laid before Parliament, but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

(2) His Majesty in Council may by subsequent Order, made in accordance with the provisions of the preceding subsection, revoke or vary any Order previously made by him in Council under this Act.

(3) Nothing in this section applies to any Order of His Majesty in Council made in connection with any appeal to His Majesty in Council, or to any Order of His Majesty in Council sanctioning the taking of proceedings against a person who has been the Governor or the Secretary of State.

158. (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“**Burma**” includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of this Act comprised in India, being territories laying to the east of Bengal, the State of Manipur, Assam, and any tribal areas connected with Assam;

“**British Burma**” means so much of Burma as belongs to His Majesty;

“Secretary of State in Council” means Secretary of State in Council of India;

“borrow” includes the raising of money by the grant of annuities and “loan” shall be construed accordingly;

“debt” includes any liability in respect of any obligation to repay capital sums by way of annuities, and any liabilities under any guarantee, and “debt charges” shall be construed accordingly;

“existing Indian or Burman law” means any law, ordinances, order, byelaw, rule or regulation (as in force in Burma) passed or made before the commencement of this Act by any legislature, authority or person in any territories for the time being comprised in India, being a legislature, authority of person having power to make such a law;

“good” includes all material, commodities and article;

“Governor-General in Council” means Governor-General of India and Executive Council;

“Local Government” means the local government of Burma within the meaning of the Government of India Act or any Act repealed by that Act in force at the relevant time;

“pension” in relation to persons in, or formerly in, the service of the Crown in India or Burma means a pension whether contributory or not, of any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way

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of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

“public notification” means a notification in the official Gazette of Burma;

“railway” includes a tramway not wholly within a municipal areas;

“securities” include stock;

“taxation” includes the imposition of any tax or impost whether general or local or special, and “tax” shall be construed accordingly.

(2) Any reference in this Act to Acts of the Legislature shall be construed as including a reference to an Ordinance made by the Governor or a Governor’s Act.

(3) Any reference in this Act to Acts of Parliament shall be construed as including a reference to any Order in Council made under Part XII of the Government of India Act, 1935, for making in any such Act adaptations and modifications appearing to be necessary or expedient in consequence of the provisions of that Act and this Act, and any power of the Legislature to amend or repeal an Act of Parliament shall extend to the amendment or repeal of any such Order.

(4) References in this Act to the taking of an oath include references to the making of an affirmation.

(5) As respects the period elapsing between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, any reference in this Act to the Federation shall be construed as a reference to British India, the Governor-General in Council or the Governor-General as the context and the circumstance may require, and any reference to the Governor-General shall, if the circumstances so require, be construed as including a reference to the Governor-General in Council.

(6) While any such agreement as is mentioned in section forty-seven of the Government of India Act, 1935, is in force, any reference in this Act to subjects of His Majesty shall be deemed to include a reference to Berari subjects of the His Exalted Highness the Nizam of Hyderabad.

140. This Act shall, subject to any express provision to the contrary, come into force on such date as His Majesty in Council may appoint under the Government of India Act, 1935, as the date of the commencement of Part III of that Act:

Provided that if it appears to His Majesty in Council that it will not be practicable or convenient that all the provisions of this Act shall come into operation simultaneously on that date, His Majesty in Council may fix an earlier or a later date for the coming into operation, either generally or for particular purpose, of any particular provisions of this Act.

## **SCHEDULES.**

### **FIRST SCHEDULE**

#### **PROVISIONS AS TO GOVERNOR OF BURMA.**

1. There shall be paid to the Governor such annual salary, such allowances for his expenses in respect of equipment and traveling upon appointment and such allowance during his term of office as may from time to time be fixed by His Majesty in Council.

2. Such provision shall be made for enabling the Governor to discharge conveniently and with dignity the duties of his office as may be determined by His Majesty in Council.

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3. While the Governor is absent on leave, he shall, in lieu of his salary, be entitled to such leave allowance as may be fixed by His Majesty in Council.
4. There shall be granted to and in respect of the Governor such customs privileges as may be specified by Order in Council.
5. Any person appointed by His Majesty to act as Governor during the absence of the Governor from Burma or during any period during which the Governor is for any reason unable to perform the duties of his office shall, during and in respect of, the period while he is acting as Governor, have all the powers and immunities, and be subject to all the duties, of the Governor, and shall be entitled to the same salary and, save as may be otherwise provided by His Majesty in Council, the same allowances and privileges, as the Governor, and, if he holds any other office, shall not act therein or be entitled to the salary and allowances appertaining thereto while he is acting as Governor.
6. Any sums required to give effect to the provisions of this Schedule shall be paid out of, and charged on, the revenues of Burma.

## SECOND SCHEDULE.

### AREAS IN BURMA TO WHICH SPECIAL PROVISIONS APPLY.

#### PART I.

- (1) The Federated Shan States as specified in Notification No. 31 dated 27<sup>th</sup> September, 1922, of the Political Department of the Government of Burma as amended by any subsequent notification made before the commencement of this Act.
- (2) The Shan States specified in Notification No. 41 dated 5<sup>th</sup> October, 1922, of the Political Department of the Government of Burma, as amended by any subsequent notification made before the commencement of this Act, other than the Federated Shan States.
- (3) The Arakan Hill Tracts.
- (4) The Chin Hills District.
- (5) The Kachin Hill Tracts of the Myitkyina, Bhamo and Katha Districts.
- (6) The Somra Tract.
- (7) The area known as the Triangle.
- (8) The area known as the Hukawng Valley laying to the north of the Upper Chindwin District.
- (9) The Salween District.
- (10) All tribal territories which at the date of coming into operation of this Act are unadministered.

#### PART II.

- (1) Such parts of the Myitkyina and Bhamo Districts as are not included in Part I of this Schedule.
- (2) Such parts of the Upper Chindwin District as constitute the Homalin sub-division together with the village tracts which were included in the former Tamu township of the Mawlaik sub-division on the date preceding its abolition.
- (3) The Kyain township, the Myawaddy Circle of the Kawkareik township, and so much of the Karen Hill tracks situate in the eastern half of the Toungoo District and in the Thaton District as may be prescribed by His Majesty in Council.

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## THIRD SCHEDULE. COMPOSITION OF THE BURMA LEGISLATURE.

### *General qualification for Membership.*

1. A person shall not qualified to be chosen to fill a seat in the Legislature unless he--
  - (a) is a British subject; and
  - (b) is, in the case of a seat in the House of Representatives, not less than twenty-five years of age, and in the case of a seat in the Senate, not less than thirty-five years of age; and
  - (c) possesses such, if any, of the other qualification specified in, or prescribed under, this Schedule as may be appropriate in his case.
2. Upon the expiration of the term for which he is chosen to serve as a member of the Burma Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

### *The House of Representatives.*

3. Of the seats in the House of Representatives—
  - (a) ninety-one seats shall be general non-communal seats;
  - (b) twelve seats shall be filled by representatives of Karens;
  - (c) eight seats shall be filled by representatives of Indians;
  - (d) two seats shall be filled by representatives of Anglo-Burmans;
  - (e) three seats shall be filled by representatives of Europeans;
  - (f) eleven seats shall be filled by representatives of Commerce and Industry;
  - (g) one seat shall be filled by a representative of Rangoon University;
  - (h) two seats shall be filled by representatives of Indian Labor;
  - (i) two seats shall be filled by representatives of non-Indian Labor.

References in this Schedule to representatives of Indians do not include references to representatives of Indian Labor.

4. So much of Burma as His Majesty may deem suitable for inclusion in any constituency, or in any constituency of a particular class, shall be divided into territorial constituencies—

- (i) for the election of persons to fill general non-communal seats;
- (ii) for the election of person as representatives of Karens;
- (iii) for the election of persons as representatives of Indians;
- (iv) for the election of persons as representatives of Indian Labor;
- (v) for the election of persons as representatives of non-Indian Labor,

and in the case of each class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

5. In the case of the seats to be filled by representatives of Anglo-Burmans and the seats to be filled by representatives of Europeans, the whole of Burma shall be the constituency.

6. The provisions of the Fourth Schedule to this Act shall have effect with respect to the election of person to hold the seats in the House of Representatives mentioned in the two last preceding paragraphs.

7. Persons shall be chosen in such manner as may be prescribed to hold the seats to be filled by representatives of Commerce and Industry and Rangoon University.

8. Of the seats to be filled by representatives of Commerce and Industry, one shall be filled by a representative of the Burmese Chamber of Commerce, two shall be

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filled representatives of the Burma Indian Chamber of Commerce, one shall be filled by a representatives of the Tattukottai Chettiars' Association, five shall be filled by representatives of the Burma Chamber of Commerce, one shall be filled by a representatives of the Rangoon Trades Association and one shall be filled by a representative of the Chinese Chamber of Commerce.

9. A person shall not be qualified to be chosen to fill a seat in the House of Representative unless—

- (a) in the case of a seat to be filled by representatives of Commerce and Industry, of a representative of Rangoon University or of representatives of India Labor or non-Indian Labor he possesses such qualifications as may be prescribed;
- (b) in the case of any other seat, he is entitled to vote at an election to fill some seat in the House of Representatives.

### *The Senate.*

10. Of the thirty-six seats in the Senate, eighteen shall be filled by persons elected by the members of the House of Representatives in accordance with the system of proportional representation by means of the single transferable vote, and eighteen shall be filled by person chosen by the Governor in his discretion.

11. In the event of a casual vacancy occurring in a seat held by an elected Senator who was a Karen, an Indian, an Anglo-Burman, or a European, no person shall be eligible to fill the vacancy who is not, as the case may be, a Karen, an Indian, an Anglo-Burman, or a European.

12. (1) A person shall not be qualified to be chosen to hold a seat in the Senate unless he—

- (i) was, for the financial year preceding that in which the election is held, assessed to income tax in Burma, and had in the year in respect of the income, profits and gains of which the assessment was made a total income of not less than twelve thousand rupees; or
- (ii) paid, during and in respect of the year of assessment preceding that in which the election is held, land revenue of a thousand rupees or over in Lower Burma or five hundreds rupees or over in Upper Burma; or
- (iii) has previous official service in Burma as a member of the Governor's Executive Council under the Acts repealed by the Government of India Act, 1935, or as a minister or as a judge of the High Court, or as a permanent Deputy Commissioner, or as a permanent district and sessions judge; or
- (iv) has rendered other public service recognized by the conferment of a title equal to, or higher than, the Burma title of Taing Kyo Pyi Kyo Suang; or
- (v) possesses such qualifications in respect of the rendering of distinguished public service as the Governor in his discretion may prescribe.

(2) For the purpose of this paragraph:

- (a) "total income" means total incomes as computed for the purposes of the enactments relating to income tax for the time being inforce in Burma, and where a firm has been assessed to income tax in Burma in any year, every partner in that firm shall be deemed to have been assessed to that

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tax in that year to an amount, to be certified in the prescribed manner, equal to his share in the firm's income on which the tax was assessed;

(b) where water rate is levied in addition to land revenue, payment thereof shall be treated as payment of land revenue.

(3) Nothing in any enactment relating to income tax shall prevent the appropriate income tax officer from disclosing to any person charged by law with the duty of inquiring into the qualifications of candidates for election to the Senate such information with respect to the total income of any such candidate as is necessary to enable him to discharge that duty.

(4) In this paragraph "minister" means a minister under this Act or the Acts repealed by the Government of Indian Act, 1935.

### *General.*

13. (1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say: —

"a European" means a person whose father or any of whose other male progenitors in the male line is or was of European descent, and who is not a native of India or Burma;

"an Agol-Burma" means a person whose father or any of whose other male progenitors in the male line is or was of European descent, but who is a native of India or Burma;

"a Karen" includes a Taughtthu and means a person belonging to any race which the Governor exercising his individual judgment may, by notification in the Gazette, declare to be a Karen or Taungthu race for the purpose of this Schedule;

"an India" means a person of Indian descent in the male line, being a British subject and resident in Burma, who either was born in or has a domicile in India, or whose father or grandfather was so born, or had at the birth of the person in question or of the father of the person in question, as the case may be, such a domicile; and

"prescribed" means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Legislature or the Governor of Burma is competent to regulate, prescribed by an Act of the Legislature or by a rule made under the next but one succeeding paragraph.

(2) In determining any question as to whether a person was born in or had, at any past date, a domicile in India, regard shall be had to the boundaries of India at the date when the question falls to be determined and not at the date of the birth of that person or, as the case may be, the said past date.

(3) In this paragraph the expression "native of India or Burma" has the same meaning as the expression "native of India" has for the purposes of section six of the Government of India Act, 1870, and accordingly it includes any person born and domiciled within the dominions of His Majesty in India or Burma parents habitually resident in India or Burma and not established there for temporary purposes only.

14. In so far as provision with respect to the matters hereinafter mentioned is not made by this Act His Majesty in Council may from time to time make provision with respect to those matters or any of them, that is to say: —

(a) the delimitation of the territorial constituencies;

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- (b) the qualifications entitling person to vote at the elections and the preparation of electoral rolls;
- (c) the conduct of the elections and the methods of voting thereat;
- (d) the filling of casual vacancies in the House of Representatives and the Senate;
- (e) the expenses of candidates at the elections;
- (f) corrupt practices and other offences at or in connection with the elections;
- (g) the decision of doubt and disputes arising out of or in connection with the elections;
- (h) matters ancillary to any such matters as aforesaid.

15. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Burma Legislature, by Act that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this Schedule and the provisions of the Fourth Schedule and securing the due constitution of the Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to—

- (i) the notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies;
- (ii) the nomination of candidates;
- (iii) the conduct of elections, including the application to elections to the Senate of the principle of proportional representation by means of the single transferable vote;
- (iv) the expenses of candidates at elections;
- (v) corrupt practices of doubts and disputes arising out of or in connection with elections; and
- (vi) the manner in which the rules are to be carried into effect.

### **FOURTH SCHEDULE. PROVISIONS AS TO FRANCHISE IN BURMA.**

#### ***General Constituencies.***

1. There shall be an electoral roll for every general constituency and no person who is not, and, except as expressly provided by this Schedule, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.

In this Schedule “general constituency” means a constituency other than a constituency for the election of representatives of commerce and industry, the representative of Rangoon University or representatives of labor.

2. The electoral rolls for the general constituencies shall be made up, and from time to time in whole or in part revised, by reference to such date, in this Schedule referred to as “the prescribed date,” as may be directed in each case by the Governor exercising his individual judgment.

3. No person shall be included in the electoral roll for any general constituency unless he has attained the age of eighteen years and is either a British subject or a subject of any Indian State.

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4. No person shall be included in the electoral roll for, or vote at any election in, any general constituency if he is of unsound mind and stands so declared by a competent court.
5. No person shall be included in the electoral roll for a Karen constituency, an Indian general constituency, the Anglo-Burman constituency or the European constituency unless he is a Karen, an Indian, and Anglo-Burman or a European, as the case may be.
6. No person who is included in the electoral roll for any Karen constituency, any Indian general constituency, the Anglo-Burman constituency or the European constituency shall be included in the electoral roll for a general non-communal constituency or vote at any election to fill a general non-communal seat.
7. No person shall at a general election vote in more than one general constituency and such provisions, if any, as may be prescribed shall have effect for the purpose of preventing persons being included in the electoral roll for more than one general constituency.
8. No person shall be included in the electoral roll for, or vote at any election in, a general constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Legislature or rules made by the Governor as may be made or passed under this Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for general constituencies in which it may be included.
9. No person shall vote at any election in a general constituency if he is for the time being undergoing a sentence of transportation, penal servitude or imprisonment.
10. Subject to the provisions of paragraphs three to eight of this Schedule, a person shall be qualified to be included in the electoral roll for a general constituency if he is ordinarily resident in the constituency and either—
  - (a) was in the previous financial year assessed to income tax in Burma; or
  - (b) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces, or is a retired, pensioned, or discharged officer or man of any police force in Burma, not being a person dismissed or discharged for disciplinary reasons; or
  - (c) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the Auxiliary Force (India), the Indian Territorial Forces, or any prescribed Burman auxiliary or territorial Force, not being a person who has been dismissed or discharged from the force for disciplinary reasons or has served in the force for less than four years; or
  - (d) was in the previous agricultural year and any other two agricultural years entered in the capitation tax assessment roll as liable to pay capitation tax, or entered in the thathameda tax assessment roll as head of the household and liable to pay thathameda tax and was not exempted from payment of capitation tax or thathameda tax, as the case may be, on the ground of poverty or of being an immigrant from a country outside Burma; or
  - (e) has attained the age of sixty years and was at any time in his sixtieth year entered in the capitation tax assessment rolls as liable to pay capitation

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tax and was not exempted from payment thereof on the ground of poverty or of being an immigrant from a country outside Burma; or

- (f) paid, during and in respect of the previous agricultural year or the previous financial year and any other two agricultural or financial years, a tax levied under the Burma Rural Self-Government Act, 1921; or
- (g) paid in Burma, during and in respect of the previous agricultural year, and any other two agricultural years, land revenue of not less than five rupees per year.

11. Without prejudice to the provisions of the last preceding paragraph, but subject to the provisions of paragraphs three to eight of this Schedule, a person shall be qualified to be included in the electoral roll for an urban general constituency if he is ordinarily resident in the constituency and either—

- (a) owns immovable property in the constituency of one hundred rupees or more in value; or
- (b) paid municipal taxes or cantonment taxes in Burma in respect of the previous financial year and any other two financial years; or
- (c) for not less than three months in the previous financial year, and for not less than three months in each of any other two financial years, occupied, in consideration of the payment of rent or the rendering of services, a building, a part of a building or a piece of land in the constituency, the monthly rental of which alone, or when added to the monthly rental value of any other building, part of a building or piece of land in the constituency which was throughout the three months in question owned or occupied by him, was not less than four rupees.

For the purpose of sub-paragraph (c) of this paragraph, —

- (i) where a person lodges in a building or part of a building and makes payments in respect of his lodging or his board and lodging, he shall be deemed to occupy it at a rent, and the rental value thereof shall in relation to him be deemed to be the monthly charge made to him for his lodging or, as the case may be, one-fifth of the monthly charge made to him for his board and lodging;
- (ii) where two or more persons (not being lodgers) jointly occupy a building or part of a building as a dwelling or for the purposes of their business or their respective business, the rental value of the building or part of a building shall, in relation to each of those person, be deemed to be the rental value thereof divided by the number of those persons;
- (iii) subject as aforesaid, where the assessment of municipal taxes is based on the rental value of the assessed property, the rental value of any property adopted for the purpose of any such assessment shall be treated as the rental value of that property.

12. The provisions of the last preceding paragraph shall apply in relation to any rural constituency which includes the municipality of Toungoo, the municipality of Kyahkpyu or the municipality of Thayetmyo as if that constituency were an urban constituency, except that for any reference to the constituency (other than that contained in the reference to the electoral roll for the constituency) there shall be substituted a reference to that one of the said municipalities which is included in the constituency.

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13. Any requirement specified in paragraph ten or paragraph eleven of this Schedule as a requirement to be satisfied in relation to the previous financial year and any other two financial years, or in relation to the previous agricultural year and any other two agricultural years shall be deemed to be satisfied in the case of any person if that requirement is satisfied in his case in relation to the previous financial or, as the case may be, agricultural year, and either—

- (a) he has previously been included in the electoral roll of a general constituency in Burma (either under this Act, or, before the commencement of this Act, under the Government of India Act); or
- (b) he was assessed to income tax in Burma in any earlier financial year, or at any time in any earlier financial year owned immovable property of the value of not less than one hundred rupees in an urban constituency in Burma or in the municipality of Toungoo, the municipality of Kyauhpypu or the municipality of Thayetmyo; or
- (c) he satisfied in relation to any two earlier agricultural years or in relation to two earlier financial years any of the requirements specified in the said paragraphs as requirements to be satisfied in relation to three agricultural years or three financial years, as the case may be.

In determining for the purpose of sub-paragraph (c) of this paragraph whether a person has fulfilled in relation to any year the requirement specified in sub-paragraph (c) of paragraph eleven of this Schedule, any reference in sub-paragraph (c) of the said paragraph eleven to the constituency shall be construed as a reference to any one of the following areas, that is to say, the urban-constituencies in Burma and the municipalities of Toungoo, Kyaukphyu and Thayetmyo.

14. Subject to the provisions of paragraphs three to eight of this Schedule, but without prejudice to any of the other provisions of this Schedule, a woman who has attained the age of twenty-one years and is ordinarily resident in any general constituency shall be qualified to be included in the electoral roll therefore if it is shown in the prescribed manner that she has attained any of the following educational standards, that is to say, the Vernacular Standard IV, the Anglo-vernacular Standard IV or the English Standard IV, or is able to read and write a letter in some language or dialect to be selected by her, being a language or dialect in common use in some part of Burma or India.

15. The foregoing provisions of this Schedule shall have effect in relation to the European and Anglo-Burman constituencies as they have effect in relation to urban general constituencies:

Provided that any reference in sub-paragraph (a) or sub-paragraph (c) of paragraph eleven of this Schedule to the constituency shall, in relation to the European and the Anglo-Burman constituencies, be construed as a reference to the area comprised in all the urban constituencies in Burma and the municipalities of Toungoo, Kyaukpyu and Thayetmyo.

16. For the purposes of the foregoing provisions of this Schedule any property owned or occupied or payment made by, and any assessment made on, a person as a trustee, administrator, receiver or guardian or in any other fiduciary capacity shall be left out of account.

### *Labor Constituencies.*

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17. No Indian shall be entitled to vote at any election of representatives of non-Indian labor and no person who is not an Indian shall be entitled to vote at any election of representatives of Indian Labor.

18. Subject as aforesaid, the qualifications entitling person to vote at elections in labor constituencies shall be such as may be prescribed.

## *Interpretation, &c.*

19. (1) In this Schedule the following expressions have the meanings assigned to them, that is to say—

“a European,” “an Anglo-Burman,” “a Karen,” an Indian” and, except in the phrase “the prescribed date,” “prescribed,” have the same meanings as in the Third Schedule to this Act;

“previous financial year” and “previous agricultural year” mean respectively the financial year and the agricultural year immediately preceding that in which the prescribed date falls;

“urban constituencies” and “rural constituencies” mean such general constituencies as may be classified as urban and rural constituencies respectively by an Order in Council delimiting territorial constituencies;

“agricultural year” means a year ending on the thirtieth day of June;

“His Majesty’s regular military forces” includes such military police forces, if any, as may be prescribed.

(2) Any reference in this Schedule to person ordinarily resident in any area includes a reference to any person who maintains a dwelling in the area ready for occupation, in which he occasionally resides.

(3) Any reference in this Schedule to immovable property of a specified value shall be construed as including a reference to a share of that value in immovable property.

(4) Any reference in this Schedule to person assessed to income tax in any financial year shall be deemed to include a reference to any partner in a firm assessed to income tax in that year if his share of the firm’s income on which income tax was so assessed is certified in the prescribed manner to have been not less than the minimum on which the tax is leviable.

(5) For the purpose of this Schedule—

(a) a person shall be deemed to be the owner of property notwithstanding that he has mortgaged it, unless possession thereof has been taken by or on behalf of the mortgagee;

(b) a financial year shall not be deemed to be earlier than an agricultural year unless it ended before that agricultural year began.

(6) Any reference in this Schedule to any Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re-enacted, with or without modification, to the provisions so re-enacted.

(7) If the boundaries of any municipality mentioned in this Schedule are altered, any reference in this Schedule to that municipality shall thereafter be taken as a reference to the municipality as altered.

## **FIFTH SCHEDULE. FORMS OF OATHS OR AFFIRMATIONS.**

### **1.**

“I, A.B., having been chosen a member of the Senate [*or* House of Representatives] of Burma, do solemnly swear [*or* affirm] that I will be faithfully and bear true allegiance to His

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Majesty the King, His Heirs and Successors, and that I will faithfully discharge the duty upon which I am about to enter.”

2.

“I, A.B., having been appointed Chief Justice [*or* a judge] of the High Court at Rangoon, do solemnly swear [*or* affirm] that i will be faithful and bear true allegiance to His Majesty the King, His Heirs and Successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment.”

## SIXTH SCHEDULE.

### THE BURMA RAILWAY BOARD

1. The Burma Railway Board shall be a body corporate by, and may sue, and be sued, in that name.

2. The Burma Chamber of Commerce, the Burma Indian Chamber of Commerce, the Burmese Chamber of Commerce, and the Chinese Chamber of Commerce shall each nominate one of the non-official members, and two non-official members shall be appointed by the Governor exercising his individual judgment.

The non-official members shall be appointed for five years and shall be eligible for re-appointment, but any non-official member may at any time be removed from office by the Governor exercising his individual judgment, if he is satisfied that the member is for any reason unable or unfit to continue to perform the duties of his office.

3. A person shall not be qualified to be appointed or to be a non-official member of the Board--

(a) unless he has had experience in commerce, industry, agriculture, finance, or administration; or

(b) if he is, or within the twelve months last preceding has been—

i. a member of the Legislature; or

ii. in the service of the Crown in Burma; or

iii. a railway official in Burma.

4. The Governor, exercising his individual judgment, may make rules providing for the appointment of temporary members to act in place of any members temporarily unable to perform the duties of their office.

5. The President and members of the Board shall be entitled to receive such salary and allowances as the Governor, exercising his individual judgment, may from time to time determine:

Provided that the emoluments of a member shall not be reduced during his term of office.

6. If a member of the Board is or becomes the holder of or tenders for any contract for the supply of materials to, or the execution of works for, any railway in Burma, or is or becomes concerned in the management of any company holding or tendering for such a contract as aforesaid, he shall forthwith make full disclosure of the contract as aforesaid, he shall forthwith make full disclosure of the fact to the Board and shall not take part in the consideration or discussion or, or vote on, any question with respect to the contract.

7. All acts of the Board and all questions before it shall be done and decided by a majority of the members present and voting at a meeting of the Board.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote.

8. Subject to the provisions of this Act, the Board may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

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9. The proceedings of the Board shall not be invalidated by any vacancy among its number, or by any defect in the appointment or qualification of any member.

10. The Board shall not be liable to pay Burma income tax or supertax on any of its income, profits or gains.

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Printed by Sir NORMAN GIBB SCORGIE, C.V.O., C.E.B.,  
Controller of His Majesty's Stationery Office  
and  
King's Printer of Acts of Parliament

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(p.3365)

April 6, 2002  
6:05 PM