

**UNREVISED**

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JOINT COMMITTEE  
ON INDIAN CONSTITUTIONAL REFORM

# **RECORDS**

of the Joint Committee on

## **INDIAN CONSTITUTIONAL REFORM**

*Die Lunae, 7<sup>o</sup> Augusti, 1933*

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## Scheme of Constitutional Reform in Burma if separated from India.

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MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA.

In accordance with the undertaking that I gave to the Joint Select Committee on the 21st July, I circulate herewith to my colleagues of the Committee and to Delegates a Memorandum setting out in some detail, on the model of the Indian White Paper, the nature of the proposals that would form the basis of the Bill that would be required if it were decided to separate Burma from India and give her a Constitution on the lines sketched by the Prime Minister in his statement of the 12th January 1932, at the close of the Burma Conference.\* Should the Committee take the view that Burma should be included in the Indian Federation the proposals of the Indian White Paper, subject to some consequential adjustments, would apply to Burma in the same way as to any other Province.

So far as the proposals in the Memorandum now circulated amplify or supplement the Prime Minister's statement, they either reproduce, *mutatis mutandis*, provisions to be found in the Indian White Paper, or they deal with matters in respect of which the separation of Burma would inevitably require modification of the White Paper proposals, or render additional provisions necessary. Provisions of this kind have been tentatively and provisionally inserted for the sake of completeness. Lastly, there are certain matters in respect of which the Indian White Paper contains definite proposals, but where it may be necessary to introduce modifications in the case of Burma which have not yet been worked out in detail. Such matters have been indicated in the Memorandum, but no alternative proposals have for the time being been made. In due course I will state my views on points of this kind.

I should like to make it plain that, unlike the Indian White Paper, this Memorandum does not contain recommendations which His Majesty's Government specifically advise should be adopted. As I have indicated above, it is a first sketch of the main lines of a possible Constitution if Burma is separated from India. I reserve to myself the right, when the time comes to discuss it, to suggest amendments on details which seem to me to be better suited to the conditions of Burma.

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\* See Command Paper 4004/32.

I may, perhaps, remind the Committee that it was not possible to make any provision for Burma in the Indian White Paper because at the time that document was framed we were still awaiting an expression of opinion from the Burma Legislative Council for or against the separation of Burma from India. The Committee will recollect that following the Prime Minister's statement at the conclusion of the Burma Conference the choice as between separation and federation was left to the Burma Legislative Council after an election at which this question was made the main issue. I would not propose now to go into details of the election campaign or of the proceedings of the Council in the session immediately following the election and in the special session summoned in April last at the request of the party leaders. I would simply say that, although registering emphatic opposition to federation with India on the same terms as any other Province—the only federation terms which could be offered to Burma—the Council has refused to choose separation on the basis of the Constitution outlined by the Prime Minister, which, I may remark, offered to Burmans control of almost the whole range of functions which it is proposed in the White Paper to transfer to popular control in the Indian Federal Government and in the Provinces.

The Committee, therefore, will apparently have to make their recommendation for or against the separation of Burma without any clear expression of opinion from the Burma Council: but I should hope that when the Committee reassembles after the recess an opportunity will be afforded to the Indian delegates to express their views, and that the Committee will also agree to invite to London a suitable number of representative Burmans for consultation.

S. H.

**Scheme of Constitutional Reform in Burma if separated from India, presented by the Secretary of State for India to the Joint Committee of Parliament on Indian Constitutional Reform.**

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## **Scheme of Constitutional Reform in Burma if separated from India, presented by the Secretary of State for India to the Joint Committee of Parliament on Indian Constitutional Reform.**

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### **INTRODUCTION.**

The object of this Introduction is to explain in the broadest outline the changes in the government of Burma which would be brought about by the adoption of the proposals which follow.

1. The principle underlying these proposals is that, in the event of Burma being separated from India, a unitary form of government would be set up there, under a Constitution composed, broadly speaking, on the same constitutional principles as have been embodied in the proposals made in regard to India. No attempt is made in this introduction to explain proposals common to both cases, as such proposals have been fully explained in the introduction to the Indian White Paper. The essential difference between the two cases is that the Constitution for Burma would not be complicated by the special considerations arising from the concept of an Indian Federation, and that the Government of Burma would accordingly combine in its own hands functions which, in the case of the proposals in the Indian White Paper, have necessarily been distributed between the Federation and the Provinces. Differing circumstances have made it necessary to depart from the Indian model in the case of a few matters, but the close correspondence of the two sets of proposals is shown by the number of proposals in this paper which are set out in plain type, a device which indicates that they are in substance identical with, although they necessarily differ in some respects in form from, corresponding provisions in the Indian proposals. References to the corresponding proposals in the Indian White Paper are indicated in the margin.

2. It has in the past been suggested\* that in view of the differences of race, history, culture and political development between India and Burma, the linking of Burma to India in the last century for reasons of administrative convenience should not of necessity tie Burma to the same path of political progress as India; and the view has been advanced that the Empire affords examples, such as are to be found in Ceylon and elsewhere, of other types of constitutional arrangement which might be more

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\* Paragraph 198, Montagu-Chelmsford Report.

suited to the genius of the Burman people. But since the Government of India Act of 1919 Burma has been steadily carried forward by the tide of Indian reform, so that she now stands at the same point of political development as the other Provinces of British India. It does not therefore seem possible, even if it were politically expedient, to contemplate either a different line of advance for Burma from that mapped out for India or a different rate of progress. This position was recognised by the Government of Burma in a Despatch of the 13th August 1930,\* in which they wrote :—

“ . . . It is of great importance that it should be made clear beyond all possibility of doubt or question that the separation of Burma will not involve for Burma any departure from the statement contained in the preamble to the Government of India Act, 1919, that the objective of British policy is the progressive realisation of responsible government in British India as an integral part of the Empire. As the Commission† say, that statement constitutes a pledge given by the British nation to British India. When the pledge was first announced in August 1917, Burma was a part of British India. The pledge, therefore, was given to Burma as well as to India, and even if Burma is separated from India the pledge still stands for Burma unimpaired and in all its force. The Government of Burma could not possibly agree to separation on any other terms, and they trust that His Majesty's Government will see fit to set at rest any doubts that may still exist on the subject. They attach importance to the point, for the allegation is frequently made in that section of the public press of Burma which is opposed to the recommendation of the Statutory Commission that the British Government will seize the opportunity of separation to reduce Burma to the status of a Crown Colony.”

3. The Burma Sub-Committee of the first Indian Round Table Conference included in its Report,§ as its first recommendation, a request to His Majesty's Government—

“ to make a public announcement that the principle of separation is accepted, and that the prospects of constitutional advance towards responsible government held out to Burma as part of British India will not be prejudiced by separation.”

The Indian Round Table Conference did not agree unanimously to the adoption of, and action on, this recommendation without further full consideration, but it was generally admitted that such further consideration was a matter between His Majesty's

\* Page 244, Cmd. 3712 of 1930.

† Simon Commission.

§ Page 50 of Cmd. 3772 of 1931.

Government and the Burmans themselves, and that Indians would abide by the issue.

4. The next step was taken by the Secretary of State for India in answer to a question in the House of Commons on 20th January 1931, when he made the following statement:—

“As my Right Hon. Friend the Prime Minister stated yesterday in the final plenary session of the Round Table Conference, the Government have decided to proceed with the separation of Burma. They wish it to be understood that the prospects of constitutional advance held out to Burma as part of British India will not be prejudiced by this decision, and that the constitutional objective after separation will remain the progressive realisation of responsible government in Burma as an integral part of the Empire. In pursuance of this decision they intend to take such steps towards the framing, in consultation with public opinion in Burma, of a new Constitution as may be found most convenient and expeditious, their object being that the new Constitutions for India and Burma shall come into force as near as may be simultaneously.”

5. In pursuance of this announcement the Burma Round Table Conference was convened “for the purpose of seeking the greatest possible measure of agreement regarding the future Constitution of Burma and the relations of Burma with India,” the primary task of the Conference being “to discuss the lines of a Constitution for a separated Burma.”

The Conference sat from the 27th November 1931 to the 12th January 1932, and its Report disclosed a considerable measure of agreement between the delegates from Burma and those from Parliament upon the type and details of a Constitution for a separated Burma. In the course of the Conference a statement was made on behalf of His Majesty's Government to the effect that the assurance given in the Prime Minister's statement on 19th January at the end of the first Indian Conference, and reiterated on 1st December 1931 at the close of the second Conference, defining His Majesty's Government's policy towards India and her advance through the new Constitution with its reservations and safeguards for a transitional period to full responsibility for her own government, applied in principle equally to Burma. The sketch of a Constitution for Burma outlined in some detail in the Prime Minister's statement at the end of the Burma Conference, and drawn up in the light of the Conference discussions, took therefore for its basic principle responsible government subject to certain “safeguards” in the field of administration which is now “provincial,” and subject to

certain "reservations" as well as "safeguards" in the field now administered by the Central Government of India.

6. In his statement on 12th January 1932 the Prime Minister said, on behalf of His Majesty's Government, that if and when they were satisfied that the desire of the people of Burma was that the government of their country should be separated from that of India, they would take steps, subject to the approval of Parliament, to give effect to this desire.

In order to ascertain the desire of the people of Burma, advantage was to be taken of a general election to the Burma Legislative Council, which was due to be held in the following autumn. At this election the question of separation was inevitably the main issue before the electorate. But prior to the election a mass meeting of members of the various General Councils of Burmese Associations (who had hitherto refused to co-operate with the dyarchical Government in Burma, or even take part in elections), was held at the Jubilee Hall, Rangoon, in the first week of July. At this mass meeting it was resolved to form an Anti-Separation League. The policy of the League was laid down in five Resolutions, the effect of which was to reject the Constitution for a separated Burma outlined by the Prime Minister at the end of the Round Table Conference, and to declare the League's opposition to separation from India on the basis of this Constitution; to "protest emphatically" against the idea of permanent and unconditional inclusion in the Indian Federation, and to continue opposition to separation till a Constitution be granted "satisfactory and acceptable to the people of Burma." The meeting resolved also to take an active part in the impending election, with a view to combating separation on the conditions held out by the Prime Minister's statement. The election was held in November 1932, and the electorate returned a majority of candidates describing themselves as "Anti-Separationists" and as adherents to the policy adopted by the Anti-Separation League formed at the Jubilee Hall meeting.

7. In December 1932 the question of separation from India on the basis of the Constitution outlined by His Majesty's Government, or of inclusion, as a British Indian Province, in the Indian Federation, formed the subject of a protracted debate in the Burma Legislative Council. The Council, eventually, on 22nd December, adopted a Resolution which was identical in substance and almost in terms with those adopted at the Jubilee Hall meeting. It (1) opposed the separation of Burma from India on the basis of the Constitution outlined by the Prime Minister on 12th January 1932; (2) emphatically opposed the unconditional and permanent federation of Burma with India; (3) promised continued opposition to the separation of Burma from India except on certain



conditions; and (4) proposed that, in the event of these conditions not being fulfilled, Burma should be included in the Indian Federation on special conditions differentiating her from other Provinces and including the right to secede at will from the Federation.

8. Such a Resolution indicated no clear choice between the alternatives that had been placed before the Council. But it was hoped that, in the light of the Indian White Paper published in March 1933, and in the light also of the statement made by the Secretary of State for India on 20th March in answer to questions in the House of Commons, as to the nature of the two alternatives still open for choice by Burma, the Burma Legislative Council might yet give a less equivocal indication of the desire of the people of Burma in respect of the two courses offered. Accordingly, a special session of the Council was, at the request of the majority of the party leaders, summoned for 25th April 1933 and was held between that date and 6th May.

This special session proved entirely unfruitful. It was prorogued on 6th May without any resolution being adopted either for Burma's inclusion in the Indian Federation or for the separation of her government from that of India. As a result, there is available no other authoritative indication of the considered view of the representatives of the people of Burma as to the course which should be adopted than that contained in the negative and conditional Resolution of 22nd December 1932.

In the second paragraph of that Resolution the Burma Legislative Council expressed itself as emphatically opposed to unconditional and permanent federation with India, and such further evidence as has since accumulated regarding the attitude of the people and political parties of Burma, including statements by party leaders, points to the conclusion that, whatever division of opinion may exist in Burma as to the merits of the Constitution outlined in the Prime Minister's statement, there is an almost unanimous opinion in favour of ultimate separation from India and against federation on the same terms as the other Provinces of India.

#### GENERAL DESCRIPTION OF THE SCHEME.

9. Before examining the scheme in detail it is desirable in the first place to refer to a question affecting the position within the Empire of a Burma separated from India. Unless provision to the contrary is made, the moment Burma ceases to be part of British India she will, by virtue of the Interpretation Act, 1889, which defines a "Colony" as "any part of His Majesty's dominions exclusive of the British Islands and of British India,"

automatically become "a Colony" for all purposes of English law. Although there is no necessary connection between the status of a "Colony" and that of a "Crown Colony," it is clearly desirable that the position of Burma should be unambiguous, and it would be necessary to insert in the Constitution a provision to the effect that, notwithstanding anything in the Interpretation Act, the expression "Colony" in any Act of the Parliament of the United Kingdom should not include Burma. At the same time provision would be made to ensure that Acts of Parliament which have hitherto applied to Burma as part of British India should continue to do so.

10. The separation of Burma from India would also require on the financial side that arrangements should be made for an equitable distribution between India and Burma of assets and liabilities existing at the time of coming into force of the Act; and provision would have to be made in the Act to give statutory effect to such determination and to such agreements as might be made thereunder by the respective Governments of the two countries.

11. In view of the fact that, as already pointed out, the constitutional principles underlying this scheme are substantially the same as those which have been applied in relation to the Indian proposals, much that has been said in the Indian White Paper is applicable also to the present proposals. But it is believed that the nature of the present proposals will more readily be understood if a short description of their general purport is given at the outset.

12. The scheme proposed is for an Executive consisting of the Governor as representing the Crown, aided and advised by a Council of Ministers responsible (subject to the qualifications to be explained later) to a Legislature composed of two Houses and consisting as to the Upper Chamber of 36 members, of whom one-half would be elected by the Lower Chamber and one-half would be non-official persons nominated by the Governor in his discretion for the purpose of making the Chamber as fully representative as possible of the interests of all sections of the community. The Lower Chamber would consist of rather more than 130 members, of whom a proportion would represent minorities and special interests.

13. In the Government so composed would be concentrated all the functions which, in the case of India, are proposed to be divided between the Federal and Provincial Authorities. But, as in India, the transfer of responsibility would not be complete. Certain Departments, namely, those concerned with Defence, External Affairs, Ecclesiastical Affairs, and the Affairs of

Excluded Areas (to be called, in the case of Burma, "Schedule A areas"), to which, for reasons presently to be explained, would be added, in the case of Burma, the control of monetary policy, currency and coinage, would be entrusted to the Governor personally, and these matters he would control in responsibility to His Majesty's Government and Parliament. The Governor would also be given powers similar to those proposed to be conferred on the Governor-General and Governors in India in relation to dissolution of the Legislature, refusal of assent to Bills, the grant of previous sanction to the introduction of certain classes of legislation, &c. The administration of all other matters would be transferred to Ministers responsible to the Legislature, but the Governor, again following the proposals made in relation to India, would be declared to have a special responsibility for certain matters, namely:—

- (a) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof ;
- (b) the safeguarding of the financial stability and credit of Burma ;
- (c) the safeguarding of the legitimate interests of minorities ;
- (d) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests ;
- (e) the prevention of commercial discrimination ;
- (f) the administration of the areas named in Schedule B to the Constitution Act ;
- (g) any matter which affects the administration of any department of government under the direction and control of the Governor.

The effect of entrusting these responsibilities to the Governor and the manner in which it is anticipated they would be discharged are described in the Indian White Paper, and it has not been thought necessary to reproduce here what is said in that Paper.

14. It is now possible to draw attention to the points in regard to which it has been thought the special requirements of Burma would make some divergence from the Indian proposals desirable, and to indicate the effect of those divergences.

15. In the first place it will be observed that it is proposed that the control of monetary policy, currency and coinage should be treated as a reserved subject. The reasons for this proposal are two-fold. Burma would at the outset be within the currency system of India, and it is likely to be some time before conditions would render it possible for her to adopt a separate currency

system of her own ; the subject, moreover, is one in regard to which Burma possesses no expert knowledge. It is, therefore, proposed that these matters should be under the personal control of the Governor, who would be empowered to appoint a Financial Adviser directly responsible to him.

16. The different composition proposed for the Burma Legislature is, of course, mainly due to the absence of the detailed arrangements involved in the accession of the Indian States to the Indian Federation, but also in part to the fact that the communal difficulties which have necessitated special arrangements in India have, practically speaking, no counterpart in Burma.

17. The importance to Burma of the immigration problem might also render it necessary to make some special provision in this respect.

18. Again, in regard to the administration of what, in the case of India, have been described as Excluded or Partially Excluded areas, conditions in Burma may demand slightly different treatment. Detailed provisions for the treatment of such areas in Burma have therefore been excluded from the scope of this tentative scheme. It is proposed in the case of Burma that the areas falling within the two categories mentioned above should be enumerated in two separate Schedules, A and B, to the Constitution Act, and it will therefore be convenient to refer to them as Schedule A or Schedule B areas rather than Wholly or Partially Excluded areas. A provisional list of these areas will be found in Appendix II.

#### THE PUBLIC SERVICES.

19. As regards the All-India Services, Burma, like any other Indian Province, is at present served by the Indian Civil Service, the Indian Police, and the Indian Service of Engineers. But since the last instalment of reforms, when the administration of forests was made a transferred subject in Burma and Bombay, recruitment to the Indian Forest Service in Burma has ceased ; recruitment now being made instead by the Local Government to the Burma Forest Service (Class I). As in the case of India, it is proposed that under the new Constitution recruitment should cease in Burma for the Indian Service of Engineers. As regards the Indian Civil Service and the Police, the Services which would correspond to these in Burma in future would, of course, be differently named, but the Secretary of State would continue to recruit Europeans to them in the same proportion as at present pending a statutory enquiry into the recruitment question, which would take place after a period to be determined (see proposal 93).

20. Burma is also served by officers of the Central Services, e.g. the Railway Services, the Indian Audit and Accounts Service, the Indian Posts and Telegraphs, and the Imperial Customs Service. Members of these Services remaining in Burma would be absorbed in new Services administered by the Government of Burma independently of the Government of India.

21. As regards Central Service officers now serving in Burma, some were recruited by the Government of India for service in Burma alone, others were recruited either by the Secretary of State or the Government of India without special reference to service in Burma. Officers falling in the first category would be compulsorily transferred to the service of the Government of Burma. Transfer to the Government of Burma of officers falling in the second category would be subject to the consent of the officers themselves and of the authority which appointed them, and would be a matter for arrangement between the Governments of India and Burma.

22. In addition to the ordinary Provincial Service, which covers the whole of the civil administration in the middle and lower grades, Burma possesses the Burma Frontier Service. This Service is now controlled and recruited by the Local Government, but many of its members, in common with many members of the Provincial Services, have rights guaranteed by the Secretary of State. In view of the fact that if Burma were separated from India most of the officers of the Burma Frontier Service would serve in areas under the sole control of the Governor, it would seem proper that the Service should be recruited and controlled by the Governor acting in his discretion.

23. Existing service rights of present members of the above-mentioned Services would be preserved under the Constitution Act, subject to a few inevitable changes of which an example is that persons appointed by the Government of India would on transfer to service in Burma cease to be liable to dismissal by the Governor-General and become instead liable to dismissal by the Governor of Burma. The principal changes of this kind are indicated against notes in the Proposals. Persons appointed in future by the Secretary of State to the Services which would replace the Indian Civil Service and the Indian Police would enjoy the same rights as persons appointed by the Secretary of State to the Indian Civil Service and the Indian Police before the Constitution Act comes into force, except that in the first instance the right to retire under the regulations for premature retirement would, in the case of officers recruited after the inauguration of the new Constitution, extend only to

those appointed before the decision to be taken regarding future recruitment following upon the statutory enquiry referred to in paragraph 19 above. The right to retire under those regulations would not be enjoyed by officers serving permanently in Departments under the direct control of the Governor, but it would be extended to those officers of the present Central Services (Class I) who were appointed by the Secretary of State and who might be transferred permanently to Departments handed over to the control of Ministers in Burma.

24. As in the case of India, provision would be made for continued recruitment by the Secretary of State to the Ecclesiastical Department. The question of continued recruitment by the Secretary of State to the Superior Medical and Railway Services is under examination.

25. As regards Family Pension Funds, officers in Burma who, before the coming into force of the Constitution Act, were members of one of the All-India Family Pension Funds, would be permitted to retain their membership of such Fund.

**NOTE.**—*The use of italics in the following proposals indicates a divergence from the proposals of the Indian White Paper (Cmd. 4268 of 1933).*

## THE PROPOSALS.

### GENERAL.

Numbers of  
corresponding  
proposals in  
Indian White  
Paper.

1

1. The general principle underlying all these proposals is that all powers appertaining or incidental to the government of the territories for the time being belonging to His Majesty the King in Burma and all rights, authority and jurisdiction possessed in that country—whether flowing from His Majesty's sovereignty over the Province of Burma, or derived from treaty, grant, usage, sufferance or otherwise in relation to other territories—are vested in the Crown and are exercisable by and in the name of the King.

2. *The territories belonging to His Majesty the King in Burma will be declared to be those which at the date of coming into force of the Act constitute the Province of Burma in British India. The date of the coming into force of the Act will be fixed by Royal Proclamation.*

3. *Provision will be made to except Burma from the definition of "Colony" in the Interpretation Act.\**

4. *Provision will be made for the continuance in force, until repealed by competent authority, of all laws of the Parliament of the United Kingdom which at present apply to Burma as part of British India, of laws of the Indian Legislature which apply to Burma, and of laws passed by the existing Burma Legislature, together with the body of rules, notifications and instructions issued under these laws.*

5. *It will be declared that all rights and obligations under international treaties, conventions or agreements which before the commencement of the Constitution Act were binding upon Burma as part of British India shall continue to be binding upon her.†*

### THE EXECUTIVE.

6. The executive authority in Burma, including the supreme command of the Military, Naval and Air Forces in Burma, will be

\* The object of proposals 3 and 4 is to ensure that all legislation and regulations which at present apply to Burma as part of British India still continue to apply to her, and to prevent the separation of Burma from British India from bringing her within the ambit of Imperial laws passed with reference to "Colonies" as defined in the Interpretation Act, 1889, i.e. "any part of His Majesty's Dominions exclusive of the British Islands and of British India." See paragraph 9 of Introduction.

† A similar provision is to be found in section 148 (1) of the South Africa Act. Whether or not such a provision is necessary or desirable in the Indian Constitution Act, it seems clearly desirable in the case of a separated Burma, to make it clear beyond doubt, on the lines of proposal 4, that all obligations hitherto binding upon Burma as part of British India shall continue to apply to her unless and until abrogated by competent authority.

exercisable on the King's behalf by a Governor holding office during His Majesty's pleasure, *who will also be Commander-in-Chief.\**

All executive acts will run in the name of the Governor.

- 8 7. The Governor will exercise the powers conferred upon him by the Constitution Act as executive head in Burma and such powers of His Majesty (not being powers inconsistent with the provisions of the Constitution Act) as His Majesty may be pleased by Letters Patent constituting the office of Governor to assign to him. In exercising all these powers the Governor will act in accordance with an Instrument of Instructions to be issued to him by the King.
- 9 8. The draft of the Governor's Instrument of Instructions (including the drafts of any amendments thereto) will be laid before both Houses of Parliament, and opportunity will be provided for each House of Parliament to make to His Majesty representations for an amendment, or addition to, or omission from, the Instructions.
- 10 9. The Governor's salary will be fixed by the Constitution Act, and all other payments in respect of his personal allowances, or of salaries and allowances of his personal and secretarial staff, will be fixed by Order in Council; none of these payments will be subject to the vote of the Legislature.

#### THE WORKING OF THE EXECUTIVE.

- 11 and 107 10. The Governor will himself direct and control the administration of certain Departments of State—namely, Defence, External Affairs, Ecclesiastical Affairs—and also the affairs of the areas named in Schedule A to the Constitution Act, † *and monetary policy, currency and coinage.* §

\* The Indian White Paper proposes to continue the separate appointment of a Commander-in-Chief in India. No corresponding appointment seems either necessary or desirable in the case of Burma, in view of the smaller size of the military forces concerned. But it is thought desirable to invest the Governor with the title of Commander-in-Chief to emphasise the fact that the executive military power is vested in him.

† See paragraph 18 of the Introduction.

§ In the case of the Indian Federation it is proposed to transfer the whole subject of Finance to the charge of a responsible Minister, but subject to the prior establishment and successful operation of a Reserve Bank and subject to a special responsibility laid upon the Governor-General for the preservation of the financial stability and credit of the Federation. There is no proposal to set up a Reserve Bank in Burma. In the case of Burma it is proposed, subject to a special responsibility of the same kind as that it is proposed to impose upon the Governor-General in India, to transfer the general subject of Finance to Ministerial control, but to reserve "Monetary policy, currency and coinage" to the Governor as a department in his sole charge (assisted by a Financial Adviser). It is, however, proposed that, for some time to come, Burma should continue within the Indian currency system.



11. In the administration of these Reserved Departments, the Governor will be assisted by one or more Counsellors, not exceeding three in number, who will be appointed by the Governor, and whose salaries and conditions of service will be prescribed by Order in Council. *Of these Counsellors one may, at the discretion of the Governor, be appointed to be Financial Adviser.* 12

12. For the purpose of aiding and advising the Governor in the exercise of powers conferred upon him by the Constitution Act, other than powers connected with the matters mentioned in paragraph 10, and matters left by law to his discretion, there will be a Council of Ministers. The Ministers will be chosen and summoned by the Governor and sworn as Members of the Council and will hold office during his pleasure. The persons appointed Ministers must be, or become within a stated period, members of one or other Chamber of the Legislature. 13

13. In his Instrument of Instructions the Governor will be enjoined *inter alia* to use his best endeavours to select his Ministers in the following manner, that is, in consultation with the person who, in his judgment, is likely to command the largest following in the Legislature, to appoint those persons who will best be in a position collectively to command the confidence of the Legislature. 14

14. The number of Ministers and the amounts of their respective salaries will be regulated by Act of the Legislature, but, until the Legislature otherwise determines, their number and their salaries will be such as the Governor determines, subject to limits to be laid down in the Constitution Act. 15

The salary of a Minister will not be subject to variation during his term of office.

15. The Governor will, whenever he thinks fit, preside at meetings of his Council of Ministers. He will also be authorised, after consultation with his Ministers, to make at his discretion any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself and to his Counsellors in the Reserved Departments, and to the Financial Adviser, of all such information as he may direct. 16

16. The Governor will be empowered, at his discretion, after consultation with Ministers, to appoint a Financial Adviser to assist him, and also to advise Ministers on matters regarding which they may seek his advice. The Financial Adviser will be 17

responsible to the Governor and will hold office during pleasure; his salary and conditions of service will be fixed by the Governor in his discretion, and will not be subject to the vote of the Legislature.

18 and 70 17. Apart from his exclusive responsibility for the Reserved Departments (proposal 10), the Governor will be declared to have a "special responsibility"\* in respect of—

- (a) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof;
- (b) the safeguarding of the financial stability and credit of Burma;
- (c) the safeguarding of the legitimate interests of minorities;
- (d) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests;
- (e) the prevention of commercial discrimination;
- (f) the administration of the areas named in Schedule B to the Constitution Act.‡
- (g) any matter which affects the administration of any department of government under the direction and control of the Governor.

It will be for the Governor to determine in his discretion whether any of the "special responsibilities" here described are involved by any given circumstances.

19 18. If in any case in which, in the opinion of the Governor, a special responsibility is imposed upon him it appears to him, after considering such advice as has been given him by his Ministers, that the due discharge of his responsibility so requires, he will have full discretion to act as he thinks fit, but in so acting he will be guided by any directions which may be contained in his Instrument of Instructions.

20 19. The Governor in administering the Departments under his own direction and control, in taking action for the discharge of any special responsibility, and in exercising any discretion vested in him by the Constitution Act, will act in accordance with such directions, if any, not being directions inconsistent with anything in his Instructions, as may be given to him by a principal Secretary of State.

21 20. The Governor's Instrument of Instructions will accordingly contain *inter alia* provision on the following lines:—

"In matters arising in the Departments which you direct and control on your own responsibility, or in matters the

\* See paragraphs 25 and 47 of the Introduction in the Indian White Paper.

‡ See paragraph 18 of Introduction.

determination of which is by law committed to your discretion, it is Our will and pleasure that you should act in exercise of the powers by law conferred upon you in such a manner as you may judge right and expedient for the good government of Burma, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State.

“In matters arising out of the exercise of powers conferred upon you for the purposes of the government of Burma other than those specified in the preceding paragraph it is Our will and pleasure that you should, in the exercise of the powers by law conferred upon you, be guided by the advice of your Ministers, unless so to be guided would, in your judgment, be inconsistent with the fulfilment of your special responsibility for any of the matters in respect of which a special responsibility is by law committed to you; in which case it is Our will and pleasure that you should, notwithstanding your Ministers' advice, act in exercise of the powers by law conferred upon you in such manner as you judge requisite for the fulfilment of your special responsibilities, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State.”

#### THE LEGISLATURE.\*

##### *General.*

21. The Legislature will consist of the King, represented by the Governor, and two Chambers, to be styled the Senate and the House of Representatives, and will be summoned to meet for

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\* The proposals for the constitution of the Legislature are modelled closely on those for the Indian Federal Legislature, but it is not possible for them to correspond exactly. Such minor differences as are suggested rest on the conclusions of the Burma Round Table Conference or upon the advice of the Government of Burma. The reason for these differences is that the circumstances in Burma differ from those which exist in India. In the first place, the communal problem in the Indian sense does not exist in Burma, and apart from special provision for the reasonable representation of certain well-defined minority communities such as the Indian and European, it is proposed that members of the Lower Chamber in Burma should be elected by general constituencies on a common franchise. Secondly, there are no States to which special representation in the Legislature requires to be given. It is proposed that the Upper Chamber in Burma should be constituted as to half of its 36 members by election by the Lower Chamber and that the remaining half should consist of non-officials nominated by the Governor in his discretion, with the object of making the Upper Chamber as far as possible fully representative of the interests of different sections of the population (proposal 25). The Government of Burma advocate a minimum age limit of 35 for membership of the Burma Senate, but as a limit of 30 has been proposed for Second Chambers in the Indian Provinces proposal 26 makes no specific

[Continued on next page.]

the first time not later than a date to be specified in the Proclamation which fixes a date for the coming into force of the Act.

Every Act of the Legislature will be expressed as having been enacted by the Governor, by and with the consent of both Chambers.

- 23 22. Power to summon, and appoint places for the meeting of, the Chambers, to prorogue them and to dissolve them, either separately or simultaneously, will be vested in the Governor at his discretion, subject to the requirement that they shall meet at least once in every year, and that not more than 12 months shall intervene between the end of one session and the commencement of the next.

The Governor will also be empowered to summon the Chambers for the purpose of addressing them.

- 24 23. Each House of Representatives will continue for five years unless sooner dissolved. *No term will be fixed to the life of the Senate.*

- 25 24. A Member of the Council of Ministers will have the right to speak, but not to vote, in the Chamber of which he is not a Member. A Counsellor will be *ex-officio* an additional member of both Chambers for all purposes except the right of voting.

#### *The Composition of the Chambers.*

- 26 25. The Senate will consist, apart from the Governor's Counsellors, *of not more than 36 members of whom 18 will be elected by the House of Representatives and 18 (who shall not be officials) will be nominated by the Governor in his discretion.*

- 27 26. A member of the Senate will be required to be *not less than (30 or 35) years of age* and a British subject, and to possess certain prescribed property qualifications, or to possess qualifications to

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*Continued from previous page.]*

suggestion. It is also proposed that, subject to the Governor's power of dissolution in exceptional circumstances, the life of the Upper Chamber should not be subject to termination (proposal 23). Some device is, however, required to ensure that it remains in touch with public opinion. It is therefore proposed (proposal 28) that one-quarter of the members should retire every two years.

The only other point of difference in this connection from the Indian proposals is that in the case of Burma it is proposed (proposal 37) that the powers of the two Chambers should be entirely equal except for the vesting of Supply in the Lower Chamber alone, while in the case of the Indian Federal Legislature not only Supply, but also the initiation of Money Bills, rests with the Lower House alone, subject, as regards Supply, to a power in the Upper Chamber, if a motion to that effect is moved on behalf of Government, of requiring a Joint Session to be called if it disapproves of a reduction or rejection of any Demand by the Lower Chamber.

be prescribed by the Governor with a view to conferring qualification upon persons who have rendered distinguished public service.

27. If the seat of a Senator becomes vacant, his place will be filled either by election by the House of Representatives or by nomination by the Governor, according to the method by which he had himself obtained his seat. 28

28. *One-quarter of the Senators will retire at the expiration of every period of two years, this quarter being composed alternately of one-half of the nominated members and one-half of the elected members; the first quarter to retire to consist of nominated members. The selection of those Senators who are to retire at the expiration of the first two periods of two years after the first summoning of the Senate to be determined by lot. (Subject to the above arrangements the tenure of seats to be for eight years).*

\*29. The House of Representatives will consist, apart from the Governor's Counsellors, of [132] members, of whom will be elected to represent general constituencies and elected to represent special constituencies. 29

30. A member of the House of Representatives will be required to be not less than 25 years of age and a British subject. 30

31. Casual vacancies in the House of Representatives will be filled by the same method as that followed in the case of the election of the vacating member. 31

32. Every member of either Chamber will be required to make and subscribe an oath or affirmation in the following form before taking his seat:— 33

"I, A. B., having been elected a member of this nominated Senate, 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 discharge the duty upon which I am about to enter."

33. The following disqualifications will be prescribed for membership of either Chamber:— 34

(a) in the case of elected members or of members nominated by the Governor, the holding of any office of profit under the Crown other than that of Minister;

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\* It is not at present possible to put forward a definite franchise scheme, or propose what should be the exact size of the House and in what proportions seats should be allotted to general constituencies and to minorities and special interests. These matters would have to be further discussed.

- (b) a declaration of unsoundness of mind by a competent Court ;
- (c) being an undischarged bankrupt ;
- (d) conviction of the offence of corrupt practices or other election offences ;
- (e) in the case of a legal practitioner, suspension from practice by order of a competent Court ;

but provision will be made that the last two disqualifications may be removed by order of the Governor at his discretion ;

- (f) having an undisclosed interest in any contract with the Government ; provided that the mere holding of shares in a company will not by itself involve this disqualification.

**35**     **34.** A person sitting or voting as a member of either Chamber when he is not qualified for, or is disqualified from, membership will be made liable to a penalty of                   in respect of each day on which he so sits or votes, to be recovered in the High Court by suit instituted with the consent of a Principal Law Officer of the Government.

**36**     **35.** Subject to the Rules and Standing Orders affecting the Chamber there will be freedom of speech in both Chambers of the Legislature. No person will be liable to any proceedings in any Court by reason of his speech or vote in either Chamber, or by reason of anything contained in any official report of the proceedings in either Chamber.

**37**     **36.** The following matters connected with elections and electoral procedure, in so far as provision is not made by the Act, will be regulated by Order in Council :—

- (a) The qualifications of electors ;
- (b) The delimitation of constituencies ;
- (c) The method of election of representatives of minorities and other interests ;
- (d) the filling of casual vacancies ; and
- (e) Other matters ancillary to the above ;

with provision that Orders in Council framed for these purposes shall be laid in draft for a stated period before each House of Parliament.

For matters other than the above connected with the conduct of elections the Legislature will be empowered to make provision by Act. But until the Legislature otherwise determines, existing laws or rules, including the law or rules providing for the prohibition and punishment of corrupt practices or election offences and for determining the decision of disputed elections, will remain in force, subject, however, to such modifications or

adaptations to be made by Order in Council as may be required in order to adapt their provisions to the requirements of the new Constitution.

*Legislative Procedure.*

**37.** Bills may be introduced in either Chamber. 38

**38.** The Governor will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by both Chambers, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure. But before taking any of these courses it will be open to the Governor to remit a Bill to the Chambers with a Message requesting its reconsideration in whole or in part, together with such amendments, if any, as he may recommend. 39

Without prejudice to the provisions of proposal 40 no Bill will become law until it has been agreed to by both Chambers either without amendment or with such amendments only as are agreed to by both Chambers, and has been assented to by the Governor, or, in the case of a reserved Bill, until His Majesty in Council has signified his assent.

**39.** Any Act assented to by the Governor will within twelve months be subject to disallowance by His Majesty in Council. 40

**40.** In the case of disagreement between the Chambers, the Governor will be empowered, in any case in which a Bill passed by one Chamber has not, within three months thereafter, been passed by the other, either without amendments or with agreed amendments, to summon the two Chambers to meet in a joint sitting for the purpose of reaching a decision on the Bill. The members present at a Joint Session will deliberate and vote together upon the Bill in the form in which it finally left the Chamber in which it was introduced and upon amendments, if any, made therein by one Chamber and not agreed to by the other. Any such amendments which are affirmed by a majority of the total number of members voting at the Joint Session will be deemed to have been carried, and if the Bill, with the amendments, if any, so carried, is affirmed by a majority of the members voting at the Joint Session, it shall be taken to have been duly passed by both Chambers. 41

In the case of a Money Bill, or in cases where, in the Governor's opinion, a decision on the Bill cannot, consistently with the fulfilment of his responsibilities for a Reserved Department\* or of any of his "special responsibilities," be deferred, the Governor will be empowered in his discretion to summon a Joint Session forthwith.

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\* These responsibilities cover all matters specified in proposal 10.

42 41. In order to enable the Governor to fulfil the responsibilities imposed upon him personally for the administration of the Reserved Departments and his "special responsibilities," he will be empowered at his discretion—

- (a) to present, or cause to be presented, a Bill to either Chamber, and to declare by Message to both Chambers that it is essential, having regard to his responsibilities for a Reserved Department or, as the case may be, to any of his "special responsibilities," that the Bill so presented should become law before a date specified in the Message; and
- (b) to declare by Message in respect of any Bill already introduced in either Chamber that it should for similar reasons become law before a stated date in a form specified in the Message.

A Bill which is the subject of such a Message will then be considered or reconsidered by the Chambers, as the case may require, and if, before the date specified, it is not passed by the two Chambers, or is not passed by the two Chambers in the form specified, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by either Chamber after receipt of his Message.

A Governor's Act so enacted will have the same force and effect as an Act of the Legislature, and will be subject to disallowance in the same manner, but the Governor's competence to legislate under this provision will not extend beyond the competence of the Legislature as defined by the Constitution.

43 42. It will be made clear by means of the enacting words of a Governor's Act, which will be distinguished from the enacting words of an ordinary Act (see proposal 21), that Acts of the former description are enacted on the Governor's own responsibility.

44 43. Provision will also be made empowering the Governor in his discretion, in any case in which he considers that a Bill introduced, or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of Burma, to direct that the Bill, clause or amendment shall not be further proceeded with.

*Procedure with regard to Financial Proposals.*

45 44. A recommendation of the Governor will be required for any proposal in either Chamber of the Legislature for the imposition



of taxation, for the appropriation of public revenues, or any proposal affecting the public debt, or affecting, or imposing any charge upon, public revenues.\*

45. The Governor will cause a statement of the estimated revenue and expenditure, together with a statement of all proposals for the appropriation of those revenues, to be laid, in respect of every financial year, before both Chambers of the Legislature. 46

The statement of proposals for appropriation will be so arranged as—

(a) to distinguish between those proposals which will and those which will not (see proposal 47) be submitted to the vote of the Legislature, and amongst the latter to distinguish those which are in the nature of standing charges (for example, the items marked † in the list in proposal 47); and

(b) to specify separately those additional proposals (if any), whether under the Votable or non-Votable Heads, which the Governor regards as necessary for the discharge of any of his "special responsibilities."

46. The proposals for the appropriation of revenues, other than proposals relating to the Heads of Expenditure enumerated in paragraph 47, and proposals (if any) made by the Governor in discharge of his special responsibilities, will be submitted in the form of Demands for Grants to the vote of the House of Representatives. The House of Representatives will be empowered to assent or refuse assent to any Demand or to reduce the amount specified therein, whether by way of a general reduction of the total amount of the Demand or of the reduction or omission of any specific item or items included in it. 47

47. Proposals for appropriations of revenues, if they relate to the Heads of Expenditure enumerated in this paragraph, will not be submitted to the vote of either Chamber of the Legislature, but will be open to discussion in both Chambers, except in the case of the salary and allowances of the Governor. 49

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\* This paragraph represents the constitutional principle embodied in Standing Order 66 of the House of Commons, which finds a place in practically every Constitution Act throughout the British Empire:—

"This House will receive no petition for any sum relating to public service or proceed upon any motion for any grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by Parliament, unless recommended from the Crown."

The Heads of Expenditure referred to above are :—

- (i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service and management of loans†; expenditure fixed by or under the Constitution Act†; expenditure required to satisfy a decree of any Court or an arbitral award.
- (ii) The salary and allowances of the Governor†; of Ministers†; of the Governor's Counsellors†; of the Financial Adviser†; of the Governor's personal and secretarial staff and of the staff of the Financial Adviser.
- (iii) Expenditure required for the Reserved Departments\* ; or for the discharge of the duties imposed by the Constitution Act on a principal Secretary of State.
- (iv) The salaries and pensions (including pensions payable to their dependants) of Judges of the High Court†; and expenditure certified by the Governor after consultation with his Ministers as required for the expenses of that Court.
- (v) Salaries and pensions payable to, or to the dependants of, certain members of the Public Services and certain other sums payable to such persons.‡

The Governor will be empowered to decide finally and conclusively, for all purposes, any question whether a particular item of expenditure does or does not fall under any of the Heads of Expenditure referred to in this paragraph.

50 48. At the conclusion of the budget proceedings the Governor will authenticate by his signature all appropriations, whether voted or those relating to matters enumerated in proposal 47; the appropriations so authenticated will be laid before both Chambers of the Legislature, but will not be open to discussion.

In the appropriations so authenticated the Governor will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his special responsibilities, so, however, that the total amount authenticated under any head is not in excess of the amount originally laid before the Legislature under that Head in the Statement of proposals for appropriation.

The authentication of the Governor will be sufficient authority for the due application of the sums involved.

51 49. The provisions of proposals 44 to 48 inclusive will apply with the necessary modifications to proposals for the appropriation of revenues to meet expenditure not included in the Annual

\* i.e. all the matters specified in proposal 10.

‡ See Appendix I, Part III.

Estimates which it may become necessary to incur during the course of the financial year.

*Procedure in the Legislature.*

50. The procedure and conduct of business in each Chamber of the Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by each Chamber ; but the Governor will be empowered at his discretion, after consultation with the President, or Speaker, as the case may be, to make rules—

52

(a) regulating the procedure of, and the conduct of business in, the Chamber in relation to matters arising out of, or affecting, the administration of the Reserved Departments, or any other special responsibilities with which he is charged ; and

\*(b) prohibiting, save with the prior consent of the Governor given at his discretion, the discussion of or the asking of questions on any matter affecting relations between His Majesty or the Governor and any foreign Prince or State.

In the event of conflict between a rule so made by the Governor and any rule made by the Chamber, the former will prevail and the latter will, to the extent of the inconsistency, be void.

*Emergency Powers of the Governor in relation to Legislation.*

51. The Governor will be empowered at his discretion, if at any time he is satisfied that the requirements of the Reserved Departments, or any of the "special responsibilities" with which he is charged by the Constitution Act render it necessary, to make and promulgate such Ordinances as, in his opinion, the circumstances of the case require, containing such provisions as it would have been competent, under the provisions of the Constitution Act, for the Legislature to enact.

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An Ordinance promulgated under the proposals contained in this paragraph will continue in operation for such period, not exceeding six months, as may be specified therein ; the Governor will, however, have power to renew any Ordinance for a second period not exceeding six months, but in that event it will be laid before both Houses of Parliament.

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\* Some provision will also be required on the lines of proposal 109 of the Indian White Paper, having due regard to the fact that the areas in Burma which will correspond to Excluded and Partially Excluded Areas in India may require slightly different treatment.

An Ordinance will have the same force and effect, whilst in operation, as an Act of the Legislature; but every such Ordinance will be subject to the provisions of the Constitution Act relating to disallowance of Acts and will be subject to withdrawal at any time by the Governor.

- 54     52. In addition to the powers to be conferred upon the Governor at his discretion in the preceding paragraph, the Governor will further be empowered if his Ministers are satisfied, at a time when the Legislature is not in session, that an emergency exists which renders such a course necessary, to make and promulgate any such Ordinances for the good government of Burma, or any part thereof, as the circumstances of the case require, containing such provisions as, under the Constitution Act, it would have been competent for the Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will have, while in operation, the same force and effect as an Act of the Legislature, but every such Ordinance—

- (a) will be required to be laid before the Legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the Legislature, unless both Chambers have in the meantime disapproved it by Resolution, in which case it will cease to operate forthwith; and
- (b) will be subject to the provisions of the Constitution Act relating to disallowance as if it were an Act of the Legislature; it will also be subject to withdrawal at any time by the Governor.

*Provisions in the event of a Breakdown in the Constitution.*

- 55     53. The Governor will be empowered at his discretion, if at any time he is satisfied that a situation has arisen which renders it for the time being impossible for the Government to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested by law in any authority in Burma, as appear to him to be necessary for the purpose of securing that the Government shall be carried on effectively.

A Proclamation so issued will have the same force and effect as an Act of Parliament; will be communicated forthwith to a Secretary of State and laid before Parliament; will cease to operate at the expiry of six months unless, before the expiry of that period, it has been approved by Resolutions of both Houses of Parliament; and may at any time be revoked by Resolutions by both Houses of Parliament.

*Powers of the Legislature.*

54. Subject to any special provisions that may be made in respect of the areas to be named in Schedules to the Constitution Act, the Legislature will have power to make laws—

Replaces proposals 111 to 118 of the Indian White Paper.

- (a) for all persons, courts, places and things within the territories for the time being belonging to His Majesty in Burma; and
- (b) for all subjects of His Majesty and servants of the Crown in Burma but without and beyond the territories for the time being belonging to His Majesty;
- (c) for all subjects of His Majesty being of Burman domicile without and beyond the confines of Burma; and
- (d) for the raising, maintaining, disciplining and regulating of officers, sailors, marines, soldiers, airmen and followers in his Majesty's Burman forces, wherever they are serving, in so far as they are not subject to the Naval Discipline Act or the Army Act or the Air Force Act or to any similar law enacted by the competent authority in India.

The power to make laws as above will include the power to repeal or amend laws enacted, before the separation of Burma from India, by the Indian Legislature or the Provincial Legislature of Burma.

55. It will be outside the competence of the Legislature to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of Burma or the law of British nationality. It will similarly not be competent to make any law affecting the Naval Discipline Act, the Army Act and the Air Force Act, or any similar laws enacted by the competent authority in India. It will also be provided that all authorities in Burma shall give full effect to such Indian laws in respect of persons in Burma to whom they apply. Neither will the Legislature be able to amend the Constitution Act except in so far as the Act itself provides.

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56. Subject as above, the consent of the Governor, given at his discretion, will be required to the introduction in the Legislature of legislation which repeals or amends or is repugnant to any Act of Parliament extending to Burma, or any Governor's Act or Ordinance\* or which affects any Department or matter reserved for the control of the Governor, or religion or religious rites and usages, or the procedure regulating criminal proceedings against European British subjects.

119

57. The giving of consent by the Governor to the introduction of a Bill will be without prejudice to his power of withholding his assent to, or of reserving, the Bill when passed; but an Act will not be invalid by reason only that prior consent to its introduction

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\* A Governor's Ordinance for the purpose of this proposal means an Ordinance as described in proposals 51 and 52.

was not given, provided that it was duly assented to by the Governor, or by His Majesty in the case of Bills reserved for His Majesty's pleasure.

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58. The Legislature will have no power to make laws subjecting in Burma any British subject (including companies, partnerships or associations incorporated by or under any law in force in Burma), in respect of taxation, the holding of property, the carrying on of any profession, trade, business or occupation, or the employment of any servant or agent or in respect of residence or travel within the boundaries of Burma, to any disability or discrimination based upon his religion, descent, caste, colour or place of birth ; but no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the sale or mortgage of agricultural land in any area to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to the members of a community by virtue of some privilege, law or custom having the force of law.

A law, however, which might otherwise be void on the ground of its discriminatory character will be valid if previously declared by the Governor, at his discretion, to be necessary in the interests of the peace and tranquillity of Burma or any part thereof.

123

59. The Legislature will have no power to make laws subjecting any British subject domiciled in the United Kingdom (including companies and partnerships incorporated or constituted by or under the laws of the United Kingdom) to any disability or discrimination in the exercise of certain specified rights, if a Burman subject of His Majesty or a company, &c., constituted by or under the law in force in Burma, as the case may be, would not, in the exercise in the United Kingdom of the corresponding right, be subject in the United Kingdom to any disability or discrimination of the same or a similar character. The rights in question are the right to enter, travel and reside in any part of Burma ; to hold property of any kind ; to carry on any trade or business in, or with the inhabitants of, Burma ; and to appoint and employ at discretion, agents and servants for any of the above purposes.

Provision will be made on the same lines for equal treatment on a reciprocal basis of ships registered respectively in Burma and the United Kingdom.

60. *It will be necessary to consider whether the principles underlying proposal 59 should be adopted as between Burma and India.*

61. An Act of the Legislature, however, which, with a view to the encouragement of trade or industry, authorises the payment of grants, bounties or subsidies out of public funds, will not be held to fall within the terms of paragraphs 58 and 59 by reason only of the fact that it is limited to persons or companies resident or incorporated in Burma, or that it imposes on persons or companies not trading in Burma before such Act was passed as a condition of eligibility for any such grant, bounty or subsidy, that a company shall be incorporated by or under the laws of Burma, or conditions as to the composition of the Board of Directors or as to the facilities to be given for training Burmans. 124

62. Provision will require to be made in regard to the registration in Burma of medical practitioners registered in the United Kingdom and in India. (See footnote to proposal 123 of the Indian White Paper.)

#### FINANCIAL POWERS AND RELATIONS.

##### *Property, Contracts and Suits.*

63. All legal proceedings which may be at present instituted by or against the Secretary of State in Council in respect of matters in or concerning Burma, will, subject to the reservations specified below, be instituted by or against the Government of Burma. 130

64. *Arrangements will be made for the determination of an equitable distribution between India and Burma of assets and liabilities existing at the time of coming into force of the Act; and provision will be made in the Act to give statutory effect to such determination and to such agreements as may be made thereunder by the respective Governments of the two countries.*

*The proposals contained in paragraphs 133 and 134 of the Indian White Paper will, if adopted, have the effect of maintaining as against the Secretary of State for India remedies which before the Act might have been enforced against the Secretary of State in Council, both as regards matters arising in India and matters arising in Burma. Provision will, therefore, be made in the distribution of assets and liabilities referred to above for the determination, as between the revenues of India and of Burma, of the ultimate liability in respect of such matters; and the Secretary of State will be given power to secure the implementing of any judgment or award against him in respect of a matter arising in Burma.*

65. *Subject to the agreed distribution provided for in the preceding paragraph, all property in Burma which immediately before the date of the coming into force of the Constitution Act was vested in His Majes for the purposes of the government of India will be vested in His Majesty for the purposes of the government of Burma.* 131

132 66. Existing powers of the Secretary of State in Council in relation to property allocated under paragraph 64 and in relation to the acquisition of property and the making of contracts will be transferred to and become powers of the Governor. All contracts, &c., made under the powers so transferred will be expressed to be made by the Governor and may be executed and made in such manner and by such person as he may direct, but no personal liability will be incurred by any person making or executing such a contract.

133 67. The Secretary of State will be substituted for the Secretary of State in Council in any proceedings instituted before the commencement of the Act by or against the Secretary of State in Council.

*Statutory Railway Board.*

68. Provision will be made for vesting the management of the railways in Burma in a Statutory Railway Board constituted on lines analogous to those of the corresponding body to be set up in India.

*Borrowing Powers.*

146 69. The Government of Burma will have power to borrow for any of the purposes of the government of Burma upon the security of the revenues of Burma within such limits as may from time to time be fixed by law.

147 70. Arrangements will require to be made to secure that Burma sterling loans shall be eligible for Trustee status on appropriate conditions.

*General.*

150 71. Provision will be made securing that the revenues of Burma shall be applied for the purposes of the government of Burma alone.

**THE HIGH COURT.**

168 72. The existing High Court established by Letters Patent will be maintained.

169 73. The Judges of the High Court will continue to be appointed by His Majesty and will hold office during good behaviour. The tenure of office of any Judge will cease on his attaining the age of 62 years, and any Judge may resign his office to the Governor.



74. The qualifications for appointment as Chief Justice or Judge will remain as at present, except that any person qualified to be a Judge will be eligible for appointment as Chief Justice, and that the existing provision, which requires that one-third of the Judges must be barristers or members of the Faculty of Advocates in Scotland and that one-third must be members of the Indian Civil Service, will be abrogated. 170

75. The salaries, pensions, leave and other allowances of Judges of the High Court will be regulated by Order in Council. But neither the salary of a Judge nor his rights in respect of leave of absence or pension will be liable to be varied to his disadvantage during his tenure of office. 171

76. The power to appoint temporary additional Judges and to fill temporary vacancies in the High Court will be vested in the Governor in his discretion. 172

77. Subject to any provision which may be made by the Legislature the High Court will have the jurisdiction, powers and authority vested in it at the time of the commencement of the Constitution Act. 173

78. The Legislature will have power to regulate the powers of superintendence exercised by the High Court over subordinate Courts. 175

79. *As regards appeals to the King in Council, subject always to the right of His Majesty to grant special leave, existing rights of appeal will be preserved, and in addition an appeal will lie without leave from the High Court to the Privy Council in any matter involving the interpretation of the Constitution Act.*

#### THE SECRETARY OF STATE'S ADVISERS.

80. The Secretary of State will be empowered to appoint *two persons (of whom one must have held office for at least 10 years under the Crown in Burma)* for the purpose of advising him. 176

81. Any person so appointed will hold office for a term of five years, will not be eligible for reappointment, and will not be capable, while holding his appointment, of sitting or voting in Parliament. 177

82. The salary of the Secretary of State's advisers will be £        a year, to be defrayed from monies provided by Parliament. 178

83. The Secretary of State will determine the matters upon which he will consult his advisers, and will be at liberty to seek their advice, either individually or together, on any matter. But so long as a Secretary of State remains the authority charged 179

by the Constitution Act with the control of any members of the Public Services in Burma he will be required to lay before his advisers *sitting jointly with the advisers, provision for whose appointment is made in proposal 176 of the Indian White Paper*, and to obtain the concurrence of the majority of the body so formed to any draft of rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service, and any order which he proposes to make upon an appeal admissible to him under the Constitution Act from any such member.

## THE PUBLIC SERVICES.

### *General.*

180 84. Every person employed under the Crown in Burma will be given a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of his duty.

181 85. Every person employed in a civil capacity under the Crown in Burma will hold office during His Majesty's pleasure, but he will not be liable to dismissal by any authority subordinate to the authority by whom he was appointed\* ; or to dismissal or reduction without being given formal notice of any charge made against him and an opportunity of defending himself, unless he has been convicted in a criminal Court or has absconded.

(a) *Persons appointed by the Secretary of State in Council before the commencement of the Constitution Act, and persons to be appointed by the Secretary of State thereafter.*

182 86. Every person appointed by the Secretary of State in Council before the commencement of the Constitution Act will continue to enjoy all service rights possessed by him at that date or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded.

A summary of the principal existing service rights of persons appointed by the Secretary of State in Council is set out in Appendix I (Part I). These rights will be in part embodied in the Constitution Act and in part provided for by rules made by the Secretary of State.

NOTE.—*An appeal lying previously to the Governor-General of India will in future lie direct to the Secretary of State.*

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\* Persons appointed by the Governor-General or by the Governor-General in Council and transferred permanently for service in Burma will be liable to dismissal by the Governor of Burma, and persons appointed by subordinate authorities in India and similarly transferred will be liable to dismissal by authorities in Burma of corresponding status.

87. The Secretary of State will after the commencement of the Act make appointments to the Services which will replace the Indian Civil Service and the Indian Police in Burma\* and the Ecclesiastical Department. The conditions of service of all persons so appointed, including conditions as to pay and allowances, pensions and discipline and conduct, will be regulated by rules made by the Secretary of State. It is intended that these rules shall in substance be the same as those now applicable in the case of persons appointed by the Secretary of State in Council before the commencement of the Act. 183
88. Every person appointed by the Secretary of State will continue to enjoy all service rights existing as at the date of his appointment, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation to any such person in any other case in which he considers it to be just and equitable that compensation should be awarded. 184
89. The Secretary of State will be required to make rules regulating the number and character of posts to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State, and prohibiting the filling of any post declared to be a reserved post otherwise than by the appointment of one of those persons, or the keeping vacant of any reserved post for a period longer than three months without the previous sanction of the Secretary of State or save under conditions prescribed by him. 185
90. Conditions in regard to pensions and analogous rights will be regulated in accordance with the rules in force at the date of the Constitution Act, and the Secretary of State will have no power to make any amending rules varying any of these conditions so as to affect adversely the pension, &c., of any person appointed before the variation is made. An award of pension less than the maximum pension admissible will require the consent of the Secretary of State. The pensions of all persons appointed before the commencement of the Constitution Act will be exempt from Burma taxation if the pensioner is residing permanently outside Burma. The pensions of persons appointed by the Secretary of State or by the Crown after that date will also be exempt from Burma taxation if the pensioner is residing permanently outside Burma. 186
91. The existing rule-making powers of the Secretary of State in Council will continue to be exercised by the Secretary of State in respect of persons appointed by the Secretary of State in Council or to be appointed by the Secretary of State until His Majesty by Order in Council made on an Address of both Houses 187

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\* See Introduction, paragraph 19.

of Parliament designates another authority for the purpose. Any rule made by the Secretary of State will require approval as specified in proposal, 83, unless and until both Houses of Parliament by Resolution otherwise determine.

188 92. Provision will be made whereby any person appointed by the Crown who is or has been serving in Burma in a civil capacity and any person who, though not appointed by the Secretary of State in Council before the commencement of the Constitution Act or by the Secretary of State after its commencement, holds or has held a post borne on the cadre of the Indian Civil Service may be given such of the rights and conditions of service and employment of persons appointed by the Secretary of State in Council or by the Secretary of State, as the Secretary of State may decide to be applicable to his case.

189 93. A statement of the vacancies in, and the recruitment made to, the Services and Departments to which the Secretary of State will appoint after the commencement of the Constitution Act will be laid annually before both Houses of Parliament.

A statutory enquiry will be held into the question of future recruitment to the Services which will replace the Indian Civil Service and the Indian Police after a period to be determined.\* The decision on the results of this enquiry, with which the Government of Burma will be associated, will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament.

(b) *Persons appointed or to be appointed otherwise than by the Secretary of State in Council or the Secretary of State.*

190 94. The Government of Burma will appoint and, subject to the following paragraphs, determine the conditions of service of all persons in the service of Government other than persons appointed by the Crown, by the Secretary of State in Council, by the Secretary of State, or by the Governor in discharge of the responsibility imposed upon him under the proposals contained in paragraph 10.

95. *Provision will be made for the compulsory transfer to the service of the Government of Burma of persons recruited by the Government of India,† before the commencement of the Constitution Act for service in Burma alone.*

191 96. Every person in the service of the Government of Burma at the commencement of the Constitution Act, and all persons in the service of the Government of India at the date of the commencement of the Burma Constitution Act and transferred thereafter to that of the Government of Burma, will continue to enjoy all service rights they enjoyed at the date of such transfer. A summary of the principal existing rights is set out in Appendix I (Part II).

\* See paragraph 19 of Introduction.

† See paragraph 21 of Introduction.

NOTE.—*In the case of persons transferred from the service of the Government of India to that of the Government of Burma, appeals will in future lie only to the appropriate authority in Burma.*

97. No person appointed by an authority other than the Secretary of State in Council who was serving in Burma in a civil capacity before the commencement of the Constitution Act, and no person in the service of the Government of India at the date of the commencement of that Act and transferred thereafter to service in Burma, will have his conditions of service in respect of pay, allowances, pension or any other matter adversely affected, save by an authority in Burma competent to pass such an order on the 8th March 1926 or with the sanction of such authority as the Secretary of State may direct. 192

98. No rule or order of the Government of Burma affecting emoluments, pensions, provident funds, or gratuities, and no order upon a memorial will be made or passed to the disadvantage of an officer appointed to a Central Service, Class I or Class II, or to a Burma Provincial Service, before the commencement of the Act, without the personal concurrence of the Governor. No post in a Service which replaces a Central Service, Class I or Class II, or in any Service replacing a Provincial Service shall be brought under reduction if such reduction would adversely affect any person who, at the commencement of the Constitution Act, was a member of those Services, without the sanction of the Governor or, in the case of any person appointed by the Crown or by the Secretary of State in Council, of the Secretary of State. 193

99. Every person, whether appointed before or after the commencement of the Constitution Act, who is serving in a civil capacity in a whole-time permanent appointment, will be entitled to one appeal against any order of censure or punishment, or against any order affecting adversely any condition of service, pay, allowances, or pension, or any contract of service, other than an Order made by the Government in the case of officers serving under its control. 194

(c) *Public Service Commission.*

100. There will be a Public Service Commission for Burma. The members of the Public Service Commission will be appointed by the Governor, who will also determine at his discretion their number, tenure of office, and conditions of service, including pay, allowances, and pensions, if any. The Chairman at the expiration of his term of office will be ineligible for further office under the Crown in Burma. The eligibility of the other members for further employment under the Crown in Burma will be subject to regulations made by the Governor. 197

- 198      101. The emoluments of the members of the Public Service Commission will not be subject to the vote of the Legislature.
- 199      102. The Public Service Commission will conduct all competitive examinations held in Burma for appointments to the Government service. The Government will be required to consult it on all matters relating to methods of recruitment, on appointments by selection, on promotions, and on transfers from one service to another, and the Commission will advise as to the suitability of candidates for such appointments, promotions or transfers.
- 200      103. The Government will also be required, subject to such exceptions (if any) as may be specified in regulations to be made by the Secretary of State or Governor, as the case may be, to consult the Public Service Commission in connection with all disciplinary orders (other than an order for suspension) affecting persons in the public services in cases which are submitted to the Government for orders in the exercise of its original or appellate powers; in connection with any claim by an officer that Government should bear the costs of his defence in legal proceedings against him in respect of acts done in his official capacity; *in connection with any claim by an officer that he has suffered loss of rights existing at the date of his transfer to service under the Burma Government;* and in connection with any other class of case specified by regulations made from time to time by the Secretary of State or Governor, as the case may be. But no regulations made by the Governor will be able to confer powers on the Commission in relation to any person appointed by the Secretary of State without the assent of the Secretary of State.
- 201      104. The Government will be empowered to refer to the Commission for advice any case, petition, or memorial if they think fit to do so; and the Secretary of State will be empowered to refer to the Commission any matter relating to persons appointed by him on which he may desire to have the opinion of the Commission.

## APPENDIX I

## (PART I.)

*List of principal existing Rights of Officers appointed by the Secretary of State in Council.*

NOTE.—In the case of sections the reference is to the Government of India Act, and in the case of rules to rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96<sup>n</sup> (1)).
2. Right to be heard in defence before an order of dismissal, removal or reduction is passed (Classification Rule 55).
3. Guarantee to persons appointed before the commencement of the Government of India Act, 1919, of existing and accruing rights or compensation in lieu thereof (Section 96<sup>b</sup> (2)).
4. Regulation of conditions of service, pay and allowances, including Burma allowance, and discipline and conduct, by the Secretary of State in Council (Section 96<sup>b</sup> (2)).
5. Power of the Secretary of State in Council to deal with any case in such manner as may appear to him to be just and equitable notwithstanding any rules made under Section 96<sup>a</sup> (Section 96<sup>b</sup> (5)).
6. Non-votability of salaries, pensions and payments on appeal (Sections 67A (3) (iii) and (iv) and 72D (3) (iv) and (v)).
7. The requirement that rules under Part VII-A of the Act shall only be made with the concurrence of the majority of votes of the Council of India (Section 96<sup>e</sup>).
8. Regulation of the right to pensions and scale and conditions of pensions in accordance with the rules in force at the time of the passing of the Government of India Act, 1919 (Section 96<sup>b</sup> (3)).
- 9.—(i) Reservation of certain posts to members of the Indian Civil Service (Section 98).  
(ii) Appointment of persons who are not members of the Indian Civil Service to offices reserved for members of that service only to be made subject to rules made by the Governor-General in Council with the approval of the Secretary of State in Council (Section 99), or in cases not covered by these rules to be provisional until approved by the Secretary of State in Council (Section 100).
10. Determination of strength (including number and character of posts) of All-India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or Local Government (Classification Rules 24 and 10).
11. Provision that posts borne on the cadre of All-India Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council (Classification Rule 25).
12. Appointment of anyone who is not a member of an All-India Service to posts borne on the cadre of such a Service only to be made with the sanction of the Secretary of State in Council, save as provided by any law or by rule or orders made by the Secretary of State in Council (Classification Rule 27).

13. Sanction of the Secretary of State in Council to the modification of the cadre of a Central Service, Class I, which would adversely affect any officer appointed by the Secretary of State in Council, to any increase in the number of posts in a Provincial Service which would adversely affect any person who was a member of a corresponding All-India Service on 9th March 1926, or to the creation of any Specialist Post which would adversely affect any member of an All-India Service, the Indian Ecclesiastical Establishment, and the Indian Political Department. (Provisos to Classification Rules 32, 40 and 42.)
14. Personal concurrence of the Governor required to any order affecting emoluments, or pension, any order of formal censure, or any order on a memorial to the disadvantage of an officer of an All-India Service (Devolution Rule 10).
15. Personal concurrence of the Governor required to an order of posting of an officer of an All-India Service (Devolution Rule 10).
16. Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint and to take such action on it as may appear to him just and equitable (Section 96B (1)).
17. Right of appeal to the Secretary of State in Council, (i) from any order passed by any authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service, pay, allowances or pension made by the Secretary of State in Council, and (iii) from any order terminating employment otherwise than on reaching the age of superannuation (Classification Rules 56, 57 and 58).
18. Right of certain officers to retire under the regulations for premature retirement.

(PART II.)

*List of principal existing Rights of Persons appointed by Authority other than the Secretary of State in Council.*

NOTE.—In the case of sections the reference is to the Government of India Act, and in the case of rules to rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96B (1)).
2. Right to be heard in defence before an order of dismissal, removal or reduction is passed, subject to certain exceptions (Classification Rule 55).
3. Regulation of the strength and conditions of service of the Central Services, class I and class II, by the Governor-General in Council and of Provincial Services by Local Government subject, in the case of the latter, to the provision that no reduction which adversely affects a person who was a member of the Service on the 9th March 1926 should be made without the previous sanction of the Governor-General in Council (Classification Rules 32, 33, 36, 37, 40 and 41).



4. Personal concurrence of the Governor required to any order affecting emoluments or pension, an order of formal censure, or an order on a memorial to the disadvantage of an officer of a Provincial Service (Devolution Rule 10).
5. Right of appeal from any order of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, and any order altering or interpreting to his disadvantage a rule or contract regulating conditions of service, pay, allowances or pension, and in the case of subordinate services the right of one appeal against an order imposing a penalty (Classification Rules 56, 57, 58 and 54).

(PART III.)

NON-VOTABLE SALARIES, &C. (CIVIL).

The salaries and pensions of the following classes of persons are non-votable:—

- (a) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council before the commencement of the Constitution Act or by a Secretary of State thereafter;
- (b) persons appointed before the first day of April 1924, by the Governor-General in Council or by a Local Government to Services and posts classified as superior;
- (c) holders in a substantive capacity of posts borne on the cadre of the Indian Civil Service;
- (d) members of the Public Service Commission;
- (e) holders in a substantive capacity before the commencement of the Constitution Act of posts in an Indian Central Service.

The following sums payable to such persons fall also under item (v) of paragraph 47, namely:—

Sums payable to, or to the dependants of, a person who is, or has been, in the service of the Crown in Burma under any Order made by the Secretary of State in Council, by a Secretary of State, by the Governor-General in Council, or by the Governor of Burma upon an appeal preferred to him in pursuance of Rules made under the Constitution Act.

For the purposes of the proposals in this Appendix the expression "salaries and pensions" will be defined as including remuneration, allowances, gratuities, contributions, whether by way of interest or otherwise, out of the revenues of Burma to any Provident Fund or Family Pension Fund, and any other payments or emoluments payable to, or on account of, a person in respect of his office.

## APPENDIX II.

(See paragraph 18 of Introduction.)

PROVISIONAL LIST OF AREAS TO BE INCLUDED IN SCHEDULE A AND  
SCHEDULE B TO THE CONSTITUTION ACT.

<u>District</u>	•	<u>Area</u>
<i>Schedule A.</i>		
1. Federated Shan States ...	...	Northern Shan States. Southern Shan States.
2. Arakan Hill Tracts ...	...	Arakan Hill Tracts (late Hill District of Arakan).
3. Chin Hills... ..	...	Chin Hills (including the Pakòkku Hill Tracts).
4. Myitkyina ... ..	...	Myitkyina Kachin Hill Tracts. Mogaung Kachin Hill Tracts. Kamaing Kachin Hill Tracts. Sadôn Kachin Hill Tracts. Htawgaw Kachin Hill Tracts. Putao Sub-Division (late Putao District).
5. Bhamo ... ..	...	Sinlum Kachin Hill Tracts. Shwegu Kachin Hill Tracts.
6. Upper Chindwin ... ..	...	Somra Tract. Kanti State. Thaungdut State.
7. Katha ... ..	...	Katha Kachin Hill Tracts.
<i>Schedule B.</i>		
1. Myitkyina ... ..	...	Other than the Hill Tracts specified in item 4 of Schedule A.
2. Bhamo ... ..	...	Exclusive of the Hill Tracts specified in item 5 of Schedule A.
3. Upper Chindwin ... ..	...	Homalin Sub-division and the Tamu Township of the Mawlaik.
4. Salween ... ..	...	

RECORDS OF THE JOINT  
COMMITTEE ON INDIAN  
CONSTITUTIONAL REFORM

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*Die Lunae, 7<sup>o</sup> Augusti, 1933*

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