

GOVERNMENT OF BURMA ACT, 1935

DRAFT of INSTRUMENT OF INSTRUCTIONS which it is proposed
to recommend His Majesty to issue to the Governor of
Burma

INDIA OFFICE,
3rd November, 1936

S. F. STEWART,
Under Secretary of State for India

*Presented to Parliament pursuant to the Government of Burma Act, 1935,
Section 9*

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DRAFT INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR OF BURMA.

WHEREAS by Letters Patent bearing date the _____ day of
1937 We have made permanent provision for the
Office of Governor of Burma :

AND WHEREAS by those Letters Patent and by the Act of
Parliament passed on the Second day of August, Nineteen hundred
and thirty-five, and entitled the Government of Burma Act, 1935
(hereinafter called "the Act"), certain powers, functions and
authority for the government of Burma are declared to be vested
in the Governor as Our Representative :

AND WHEREAS, without prejudice to the provision in the Act
that in certain regards therein specified the Governor shall act
according to instructions received from time to time from Our
Secretary of State, and to the duty of Our Governor to give effect
to any instructions so received, We are minded to make general
provision regarding the manner in which Our said Governor shall
execute all things which, according to the Act and said Letters
Patent, belong to his office and to the trust which We have reposed
in him :

AND WHEREAS a draft of these Instructions has been laid before
Parliament in accordance with the provisions of subsection (1) of
section nine of the Act, and an Address has been presented to Us
by both Houses of Parliament praying that Instructions may be
issued in the terms of these Instructions :

NOW, THEREFORE, We do by these Our Instructions under
Our Sign Manual and Signet declare Our pleasure to be as
follows :—

A.—INTRODUCTORY.

I. Under these Our Instructions, unless the context otherwise
require, the term "Governor" shall include every person for the
time being acting as Governor according to the provisions of
the Act.

II. Our Governor for the time being shall, with all due
solemnity, cause Our Commission under Our Sign Manual,
appointing him, to be read and published in the presence of the
Chief Justice for the time being, or, in his absence, other Judge
of the High Court at Rangoon.

III. Our said Governor shall take the oath of allegiance and
the oath for the due execution of the Office of Our Governor of
Burma and for the due and impartial administration of justice, in
the form hereto appended, which oaths the Chief Justice for the

time being, or, in his absence, any Judge of the High Court, shall, and he is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service and to the security of Burma by the absence of Our Governor, he shall not quit Burma during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—IN REGARD TO THE EXECUTIVE AUTHORITY OF BURMA.

VII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, those persons who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

VIII. In all matters within the scope of the executive authority of Burma, save in relation to functions which he is required by or under the Act to exercise in his discretion, our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgment; in any of which cases our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of Burma Our Governor shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of Burma in the money markets of the world, or affect the capacity of the Government of Burma duly to discharge its financial obligations.

X. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial communities for the members of which special representation is accorded in the Legislature, and those classes who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure that the members of the several communities are afforded full opportunity to obtain the appointments in Our Services to which their qualifications and attainments entitle them, and also as requiring him, if it should appear to him that the members of any community are unfairly prejudiced in this regard and that there is no other means of redress, to reserve a due proportion of appointments for occupation by members of each community: Provided always that the proportions so reserved may be varied if a sufficient number of properly qualified candidates is not available in respect of any particular community. If the need for any such regulations should in the opinion of Our Governor arise he shall in framing them have due regard to the past association of the Anglo-Burman community with the customs, postal and telegraph services and the various branches of the Railway Service.

Nevertheless, in so far as there may be before the issue of these Our Instructions an accepted policy in respect of any Department having for its object the readjustment of the under-representation in that Department of a particular community, Our Governor shall continue to be guided thereby unless he is fully satisfied that modification is essential in the interests of the welfare of the public.

Further, it shall be the duty of Our Governor in his interpretation of the said responsibility in relation to matters affecting education, to secure that educational institutions maintained primarily for the benefit of the said communities receive from the revenues of Burma

or from local educational authorities as the case may be, such proportion of grants as in his opinion is equitable and appropriate to the types and grades of such institutions and to attendance thereat, and, in particular, but without prejudice to the generality of the foregoing interpretation, he shall, in relation to educational institutions maintained primarily for the European and Anglo-Burman communities, see to it that such institutions continue, while efficient, to receive grants not less in amount than the average of those received in the ten financial years ending on 31st March 1933: provided that such grants may be reduced proportionately to a reduction in the sums voted on behalf of educational institutions of corresponding grades generally in Burma, and that a grant to any particular institution may be reduced if, and in proportion as, the attendance at that institution declines.

XI. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XII. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Part to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XIII. In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom or Indian origin imported into Burma to discriminatory or penal treatment, Our Governor shall avoid action which would affect the competence of his Government and of the Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements, whether with the United Kingdom or India or with other countries for the securing of mutual tariff concessions; and so far as concerns this special responsibility he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the interests of the United Kingdom or India rather than to further the economic interests of Burma. And We require and charge Our Governor to regard the discriminatory or penal treatment covered by this special responsibility as including both

direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products; and Our Governor's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measures which, though not discriminatory or penal in form, would be so in fact.

Our Governor shall, furthermore, bear always in mind the partnership between Burma, India and the United Kingdom within Our Empire which has so long subsisted and the mutual obligations which arise therefrom.

XIV. In the framing of rules for the regulation of the business of the Government of Burma Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of Burma: and further that no reappropriation within a Grant shall be made by any Department, other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any minority.

XV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our Service if, in his opinion, circumstances arise which render it necessary for him so to do, in order to secure efficiency in irrigation or the prevention of flooding, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of these matters in order that he may, if need be, place this information at the disposal of Our Secretary of State.

XVI. Although it is provided in the Act that the Governor shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the defence of Burma must to an increasing extent be the concern of the people of Burma it is Our will in especial that Our Governor should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the

general policy of appointing persons of Burmese domicile as officers in Our Burma forces or the employment of Our Burma forces on service outside Burma.

XVII. And We desire that, although the financial control of Defence administration must be exercised by the Governor in his discretion, nevertheless the Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Legislature.

C.—MATTERS AFFECTING THE LEGISLATURE.

XVIII. In determining whether he shall in Our name give his assent to, or withhold his assent from, any Bill Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act.

XIX. Without prejudice to the generality of his powers as to the reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say:—

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to Burma;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which the Court is by the Act designed to fill;

(c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Part V or section one hundred and forty five of the Act.

XX. Our Governor shall not, before he has consulted Our Governor-General of India, give his sanction to the introduction in either Chamber of the Legislature of any measure which, in his judgment, is likely to restrict the right of entry into Burma of subjects of His Majesty domiciled in British India or of the subjects of any Indian State; and it is Our desire that Our Governor of Burma shall, as soon as may be found expedient, confer with Our Governor-General of India with a view to the regulation of the emigration from India and immigration into Burma of unskilled Indian labour.

XXI. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill clause or amendment in the Legislature in the discharge of his special responsibility for

the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XXII. It is Our will and pleasure that the seats in the Senate which are to be filled by Our Governor by nominations made in his discretion shall be so apportioned as to redress so far as may be inequalities of representation which may have resulted from election.

D.—GENERAL.

XXIII. And generally Our Governor shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of Burma; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments; he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XXIV. And finally, it is Our will and pleasure that Our Governor should so exercise the trust which we have reposed in him that the partnership between Burma and the United Kingdom within our Empire may be furthered, to the end that Burma may attain its due place among Our Dominions.

XXV. And We do hereby charge Our Governor to communicate these Our instructions to his Ministers and to publish the same in Burma in such manner as he may think fit.

APPENDIX.

FORM OF OATH OF ALLEGIANCE.

I, _____, do swear that I will be faithful and bear true allegiance to His Majesty, King Edward the Eighth, His Heirs and Successors, according to law.

So help me God.

FORM OF OATH OF OFFICE.

I, _____, do swear that I will well and truly serve Our Sovereign, King Edward the Eighth, in the Office of _____, and that I will do right to all manner of people after the laws and usages of Burma, without fear or favour, affection or ill-will.

So help me God.

FORM OF OATH OF SECRECY FOR MINISTERS.

I, _____, do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a Minister in Burma, except as may be required for the due discharge of my duties as such Minister, or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion.

So help me God.