

**SPEECH BY THE DEPUTY PRIME MINISTER
ON THE CONSTITUTION (AMENDMENT) BILL
AT DEWAN NEGARA ON 10TH MAY, 1960**

Mr President, Sir,

I am grateful to you, Sir, for the opportunity of speaking on this important Bill in this House. As I reminded the Lower House, the present Constitution which was promulgated on the day we achieved Merdeka is really a frame-work within which the aims of our society and the aspirations of our people may be achieved through a democratic process based on the principles of parliamentary democracy. This is the principle which is enshrined in our Constitution and which we all strongly believed in and which we are pledged to uphold and cherish. As our country progresses and as our society evolves we must inevitably be continually reviewing the shape of this frame-work of our country, this charter of our Nation. As conditions changed, as our young and newly independent country develops, and as we gain experience in the working of this Constitution, it will from time to time be seen to need amendments. Therefore, it must always be the duty of the Government in power to keep the working of the Constitution under constant review and to change it where necessary to meet the needs of our country.

The Constitution accordingly provides under Article 159 the machinery for its own amendments, designed in accordance with the principle laid down by the Constitutional Commission to the effect that "it is important that the method of amending the Constitution should be neither so difficult as to produce frustration nor so easy as to weaken seriously the safeguards which the Constitution provides." For this reason an amendment to the Constitution must obtain the support on second and third readings of two-thirds of total members in each House. The Government, in placing these amendments before this House, have given them the most careful consideration. It was only as result of experience so far gained and in considering the true interests of our country and the progress of our Nation that the Government have decided on these amendments.

This Bill, as the House is aware, contains a number of amendments but I hope to speak only on the more important provisions and shall refer the House to the explanatory statements for any elucidation that Members may require on the others.

The House will be aware that an important amendment to the Bill as originally published was made when the Bill came before the Lower House for its second reading. The original Clause 30, which sought to create a new Article 150A, has been deleted, and subsequent clauses require to be re-numbered accordingly. At the same time Clause 28 was amended in order to expand Article 149.

My honourable and learned friend the Minister of Justice has already spoken on the need for preventive detention to preserve the democratic ideals for which we stand. I would like to emphasise that the principle of preventive detention in the law of a country is not a new thing at all. In many other countries preventive detention has become a permanent feature of the law of those countries. The Constitution of our great neighbour India has accepted preventive detention as a normal and permanent feature. The object of having this provision of Preventive Detention is to prevent anti-social and subversive elements from imperilling the welfare and security of our country, particularly of a young nation like ours. We have had 12 years of the Emergency and although this Emergency is about to come to an end we know only too well how dangerous it is to allow such a situation to arise again. It is therefore the incumbent duty of the Government of the day to see that the Communists and their Agents are prevented from carrying out their object and their plan. The power of Preventive Detention is merely to prevent a person from acting in a particular way and from achieving his object. It is not punitive but merely preventive. Every country which lives under the direct threat of communism and wishes to remain free has to face the established fact—established in the writings of the communist themselves—that one of the policies of communism is to undermine democratic Government by every subtle weapon of subversion that can be contrived without an open breach of the law. Country after country has found that one weapon is essential in defence against such an attack, the detention of agents to prevent them proceeding with their plans.

The situation in this country demands that the Government assumes this weapon of defence and we would be failing utterly if we allowed ourselves to be deterred from doing so. As I said, every country which desires to be free from communist threat of domination has this provision in its permanent law and we here need not go further than across the Straits of Johore, to our neighbour in Singapore. It is the proposal of the Government to have similar provisions for preventive detention in our permanent law as they have in Singapore.

This provision in the law will be subject to safeguards, and Clause 31 of the Bill lays down the proposed safeguards. Every citizen detained has the right to have his case considered by an advisory board under the chairmanship of a person who is, has been, or is qualified to be, a judge. This is already in the Constitution. The amendment of the article provides that the final decision on continued detention shall in future rest with the Government, which alone is responsible for security and alone has access to the fullest information. Subversion is a threat against the security of the country and against constituted authority. It should, therefore, be the responsibility of the Government to deal with that threat.

Clause 28 seeks to amend Article 149 of the Constitution. The special powers of Parliament to make laws in this article are confined to conditions of organised violence, but we know from experience that a very serious threat could develop to public safety without actual threat of organised violence and the wording has therefore been expanded to include attempts to stir up communal hostility and to upset the established order by unlawful means and by the latest amendment to include any act which is prejudicial to the security of Malaya or any part thereof. The Constitution at present provides for such a law to lapse after one year; this country is likely to have to deal with the remnants of the communist terrorist organisation operating on the border for some time to come and we consider it a sufficient safeguard that Parliament should be able to annul the special legislation by resolution at any time.

Clause 29 seeks to amend Article 150 of the Constitution. Similarly we feel that it is a sufficient safeguard if Parliament may annul by resolution an Emergency Proclamation and

Ordinances made thereunder. The present requirement for positive approval by Parliament could hamper the Government of the day in dealing with a national crisis in time of war or a grave national emergency. There is no question of by-passing Parliament which must, in accordance with Article 150(2) be summoned as soon as possible.

Clause 14 seeks to amend Article 119 of the Constitution. The present qualification of six months residence in a constituency has been found unsatisfactory in various ways. One is that it is very difficult to establish, when revising the rolls, exactly how long a person has resided in a constituency. Another difficulty is that a move of a few miles may disqualify a person from voting, with the further complication that such a move may disqualify him as a State voter while leaving him eligible as a Federal voter thus producing anomalies between the Federal and State rolls. Another complication is that persons serving the Federation abroad cannot qualify as voters. The amendment will substitute residence on a given date as the qualification and will permit legislation for the registration of absent voters.

Now Clause 12 of the Bill seeks to amend the Constitution by adding a new Article 95A. It has been felt for sometime that in the field of Local Government, which at present is the responsibility of the State Governments, there should be a fair degree of uniformity as in Land Administration. In the case of land administration there is provided under the Constitution the establishment of the National Land Council and it has been found in practice that by means of this National Land Council it has been possible to achieve considerable degree of co-ordination in Land Administration. The Federal Government, therefore, on the initiative of my Friend and Colleague the Minister of Interior, has had this matter of co-ordination in Local Government affairs discussed with the Menteri-menteri Besar and Chief Ministers of the States. As a result of that discussion it has been agreed with the State Governments that there should be established a National Council for Local Government on the same lines as the National Land Council. It is hoped that with the establishment of this National Council for Local Government there will be continuous consultation between Federal and State Governments on matters of policy and legislation affecting local Government. By this mean

it is hoped that it will be possible to achieve a fair degree of uniformity in Local Government affairs which the Government considers would be in the interests of good administration and stability of our country.

Clause 32 seeks to amend Article 154 by deleting sub-clause 3 thereof. The intention of the present Constitution as stated in the sub-clause is that the Federal Parliament should have power to legislate on Local Government in the Federal Capital, but this power can only be exercised on the removal of the State Capital elsewhere. But, as the House is aware, removal of the State Capital from Kuala Lumpur is an immense task and is likely to take many years. However, as Kuala Lumpur is to all intents and purposes the Federal Capital, it is considered desirable that the Federal Government should have the power to legislate on Local Government matters in the Federal Capital. After all, the ultimate responsibility for the good Government of our National Capital should lie with Parliament. Therefore, both the Federal Government and the Selangor Government have agreed that the operation of sub-clause 1 and 2 of this Article should not be delayed any longer, and it has therefore been decided that sub-clause 3, which is really the suspending clause, should be deleted. This is the purpose of this amendment.

My Honourable and learned friend the Minister of Justice has already spoken about Clause 15 which amends Article 122 dealing with the Judiciary, and I have little to add except to remind the House that the method of appointment of judges which we are now proposing to adopt is one originally recommended by the Reid Commission¹ based on practice elsewhere. The Commission's recommendation was not accepted at the time, but we have now after further thought come to the conclusion that they were right. I would also make the point that the appointment of an official on the advice of the Prime Minister is perfectly compatible with independence. The Auditor-General who is appointed on the advice of the Prime Minister is a good example. No one can say that the Accountant-General is under political interest. Further-

1 Constitutional Commission under the Chairmanship of the Right Honourable Lord Reid to make recommendation for a Federal form of Constitution for a full self-governing and independent Federation of Malaya within the Commonwealth. 1956

more, the House will have noted that no change is proposed in the safeguard whereby a judge can be removed only on the recommendation of a judicial tribunal.

Now, with the introduction of these new arrangements for the appointment of Judges it is considered no longer necessary to retain a separate Commission for the remaining members of the judiciary and legal services. They can in the future be dealt with by the Public Services Commission along with other members of the public service. This proposal is intended to simplify the administrative structure and working of the Service Commissions which will mean economy and efficiency.

Now, Clause 26, seeks to amend Article 145 of the Constitution. Under the present arrangement the Attorney-General, who is the Government's chief legal adviser, must be a permanent official in the judicial and legal service. It is not possible to have as an Attorney-General a political man as is the practice in several other countries including the United Kingdom. The Government is of the view that with the progress of our country and of our democratic institutions, it may prove desirable at some future date to have an Attorney-General as a member of the Government and a member of this House. It may be convenient, and even desirable, for the chief legal adviser to the Government to sit in this House to explain and answer legal matters. Now, this amendment makes it possible, should it prove desirable in the future to appoint an Attorney-General from outside the judicial and legal service.

Now, Clause 24 seeks to amend Article 144 of the Constitution. As the House is aware, under Part X of the Constitution there are various Service Commissions. Although the various responsibilities of these Commissions are similar, the actual duties vary considerably and, the amount of work they have to undertake also varies considerably. The Public Services Commission, since it was established, has been carrying out a very heavy burden of work in connection with the administration of the services under its jurisdiction and in carrying out the functions entrusted to it under the Constitution. Indeed, the Public Services Commission has been so over-burdened with work that there have been, from time to time, complaints of delay in carrying out certain of its functions. Therefore, in the light of experience gained over the

last two years, the Government has reached the conclusion that it will be more satisfactory and, indeed, it will be in the interests of efficiency if some of the work now entrusted to the Public Services Commission could be delegated to officials under the jurisdiction of the Commission and the Commission itself were left with more time to concentrate on those major functions of permanent appointment, substantive promotion and disciplinary appeal which really constitute the safeguards of an independent public service. It is proposed that such delegation should be made by law and that the more important functions so delegated shall be exercised by a public service board of very senior permanent officials, possibly under the chairmanship of the Head of the Civil Service himself. It is considered these arrangements would have the double benefit of retaining the necessary safeguards of an independent public service as well as lessening the burden of the Public Services Commission so that various matters affecting administration of the public service could be carried out more expeditiously.

I would like to reiterate that there is no suggestion whatsoever in this amendment that there will be any political influence in the administration of, or appointments to, the public service as the power to be delegated from the Public Services Commission will be given to permanent officials who will exercise them without being subject to any political influence.

Honourable Members will have seen from the newspapers that the Staff Side of the Whitley Council for Divisions I to IV have shown considerable concern, particularly over the new clause (5) of Article 144, which permits the delegation of certain powers of the Service Commissions to a board of officials, and have gone to the length of suspending ordinary meetings of the Whitley Council until a special meeting can be held. I have already said in the Lower House that the Government regards this action as somewhat hasty. It has already been pointed out that Clause (5) of Article 154 is merely an enabling provision, and the Staff Side have been assured that they will be consulted on the law or regulations to be made under this clause. I repeat that assurance here, and I hope that they will reconsider their attitude so that discussion of this important issue can be conducted in a normal atmosphere.

Clause 22 seeks to amend Article 140. This amendment proposes to create a new Police Force Commission in place of the Police Service Commission. As a result of experience of the working of the Armed Forces Council which administers the affairs of the Armed Forces, it has been found that this Council provides a very successful machinery for dealing with a disciplined force. Indeed, the Armed Forces Council has been working very well to the satisfaction of all concerned. Now, the Police Force is a disciplined force, and it is therefore thought that it would add to efficiency and economy of administration if matters pertaining to the Police Force are administered by a Commission similar to the Armed Forces Council. This is the purpose of the amendment and the composition of the new Police Force Commission is broadly similar to that of the Armed Forces Council. It should be noted, however, that this Commission, unlike the Armed Forces Council, will not be responsible for the administration of the Police Force, which will continue to be administered as a Department in the normal way.

Now, under Clause 17 opportunity is taken to insert an express statement that members of the public service hold office at pleasure. This does not affect disciplinary procedure under the Constitution. Also, opportunity is taken to exclude the key diplomatic posts abroad from the scope of the Service Commission and to provide for their appointments to be made by Government. This follows an existing practice which has already been adopted with the agreement of the Public Services Commission.

Clauses 2 and 34 seek to amend Part III of the Second Schedule. At present the responsibility for registration of citizens is divided between the Government and the Election Commission. As the House is aware, in all other countries citizenship is entirely a matter for Government. However, at the time of the framing of our present Constitution it was thought it would be an advantage for an independent authority to be responsible for registering the very large numbers of persons who were expected to apply for citizenship by registration in the first year after Merdeka. A large number of such persons have acquired citizenship in this way. Now that the flow has fallen to a trickle the Government feels that it is time to assume responsibility for registration of citizens as is the practice everywhere else. It is proposed, at the same time, to repeal Sections 13, 14 and 15 and the Second Schedule

so that applicants for citizenship shall not be exempted from the obligation to furnish full proof in support of their claims. Since the Registration Authority will in future be the Government itself the provision in Section 5 for an appeal to the Supreme Court on a point of law is to be repealed.

Clause 7 seeks to amend Article 48 of the Constitution. The Government regards the present disqualification for Parliament as unduly narrow in one respect, in that a person who has been sentenced to prison for any period up to two years or a fine of any size can still become a member. The Government believes this to be undesirable and proposes to make the disqualification one year's imprisonment and a fine of \$2,000, the disqualification to last for 5 years from the date of release from prison, as at present, or from the date of imposition of the fine.

Clause 13 seeks to amend Article 144 of the Constitution. The Government always holds the view that the Election Commission should be absolutely independent and it should not only be so in law but must appear to be so. Therefore, the Government proposes to tighten up the qualifications for members of the Election Commission. It is considered not quite compatible with the independence of the Commission if members are allowed to hold any paid employment outside the duties of his office. Provision has therefore been included for a member to be removed if he engages in any paid employment outside the duties of his office.

Now, the other amendments which are of interest to the House are those in Clauses 8, 9 and 10. Clause 8 and 9 provide that the President and Speaker shall not be members of a State Legislative Assembly since this will conflict with the independence of their position. The Amendment under clause 10 seeks to permit Assistant Ministers to take part, like Ministers, in the proceedings of both Houses so that they can share Parliamentary duties as Government spokesmen with the Ministers.

These are briefly the important amendments which I have endeavoured to explain to the House. There are, of course, other amendments in the Bill which are of lesser importance and are non-controversial and I do not wish to take the time of this House by explaining them as they are adequately explained in the explanatory statement attached to the Bill.

Sir, as I have explained these amendments are put forward as a result of very careful consideration by Government. It is, as I said, the duty of Government to make a continual review of the provisions of our Constitution in the light of experience. Our constitution was promulgated on the day of Merdeka as the Constitution of an independent country. We have had experience of the operation of such a Constitution during the last 21/2 years. Therefore, it is in the light of this experience that the Government has considered these amendments to be necessary, and the Government sincerely believes them to be desirable in the interests of good and orderly government of the people of this country and in the interests of the peace and prosperity of our Nation. An amendment to the Constitution of a country is indeed a very important matter and I do not expect this amendment to be passed without close scrutiny by this House, but I do ask this House to consider these amendments most carefully in the light of circumstances pertaining to our country and, above all, if there is any criticism let it be constructive and realistic in the circumstances in which this country is situated. It is, as I said, necessary that we should have a Constitution which enshrines all the ideals on which we stand, but at the same time we should also have a Constitution which can work smoothly and efficiently and for the good and orderly government of this country and for the peace and prosperity of our people.