MALAYAN CONSTITUTIONAL DOCUMENTS

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"It must be remembered that the freedom to which we aspire is the freedom to govern ourselves under a system in which parliamentary institutions shall be exclusively representative of the people's will"—*Tunku Abdul Rahman, subsequently the first Prime Minister of the Federation, moving the second reading of the Federal Constitution Bill, August 15, 1957.*

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PREFACE

It is the object of this collection of documents to provide in one volume all the principal constitutional instruments affecting the Federal Constitution. To this end both Federal and United Kingdom legislation, as well as reference to certain State legislation, has been included, so that the several sources of authority of the Constitution may be the more clearly appreciated.

The genesis of modern constitutional government in the Federation (in the sense of the consolidation in a written document of the most important principles defining the powers of a supreme governmental authority) is to be found in Johore, in the Law of the Constitution of 1895. This Constitution was granted by Sultan Abu Bakar with the advice and consent of the Council of Ministers, the Council of State and the other Chiefs and Elders of the State on April 14, 1895, and, as amended and enlarged by a series of Supplements promulgated from 1908 onwards, still remains in force. Indeed, the Constitution of the State has several features that make it significant in the constitutional history of Malaya. Article LVII thereof provides that "the Muslim Religion shall continuously and for ever be . . . . . the 'State Religion'" and provides, in terms similar to those used in Article 3 of the Federal Constitution, that "other religions are allowed . . . . to be practised in peace and harmony". Further, by a Supplement to the Constitution, promulgated in 1912, an Executive Council was established, in addition to the legislative Council of State. Each of these two Councils contained strong elements of unofficial representation which, to some extent, acted as political oppositions. In other States, however, no such distinction of executive and legislative functions was at first recognised, although in Negri Sembilan a bi-cameral type of legislature, consisting of a State Council as a lower chamber, and an upper chamber presided over by the Yang di-Pertuan, presented a feature which foreshadowed the creation of the Dewan Negara and Dewan Ra'ayat.

As for federal government, that "political contrivance" (to use Dicey's definition) "intended to reconcile national unity and power with the maintenance of State rights", this also may be said to date from 1895, with the conclusion on July 1 of that year of the Treaty of Federation,* under which the States of Perak, Selangor, Negri Sembilan and Pahang formed a Federation: although this treaty did not in fact define the powers of the Federal and State Governments. In spite of the Treaty of Federation the four Federated States retained their respective legislative functions

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* *Treaties and Engagements affecting the Malay States and Borneo*, edited by Sir William George Maxwell and William Sumner Gibson (London, 1924), p. 70.

until 1909, when a Federal Council of the Federated Malay States was established by an agreement of that year. Under that agreement the Federal Council was endowed with legislative powers (as well as the power to consider the draft estimates of revenue and expenditure of each State), and these powers resulted in a diminution of the legislative powers of the States. In 1927 the Council was reconstituted and the Rulers withdrew from active participation in the affairs of the Council, which was enlarged by the addition of a number of official and unofficial members; and again in 1933 the constitution of the Council was amended.

The situation in 1946 was, therefore, that of the territories now comprised in the Federation: Perak, Selangor, Negri Sembilan and Pahang constituted the Federated Malay States, with the Federal Council acting as a general legislature for the four States; Johore, Kedah, Kelantan, Trengganu and Perlis (together with the State of Brunei) were each Unfederated, but, like the other States, had their several constitutions, either written or unwritten, in general vesting supreme authority in the Ruler; and Penang and Malacca were part of the British Crown Colony of the Straits Settlements, which also consisted of Singapore, the Cocos-Keeling Islands, Christmas Island and Labuan, and the Governor of which was also High Commissioner for the Federated and Unfederated Malay States.

This situation was, from the constitutional viewpoint, clearly unsatisfactory. "Legislation in the Colony (of the Straits Settlements) was enacted by the Legislative Council of the Straits Settlements, legislation in the Federated Malay States by the Federal Council and each State Council, and legislation in each Unfederated Malay State by the State Council of each State. Uniformity of legislation in the Malay States, therefore, required separate action by at least six, and in certain cases ten, legislatures."* In consequence it was considered desirable to reorganise the then constitutional arrangements, and this reorganisation took the form of a severance of Penang and Malacca from the Straits Settlements; Singapore became a separate Crown Colony and Labuan part of the Crown Colony of North Borneo; and the Malay States (excluding Brunei), together with the two Settlements of Penang and Malacca, were on April 1, 1946, amalgamated in the Malayan Union, the Constitution of which (after each of the Rulers had agreed that the Crown should have "full power and jurisdiction" within his State) was contained in the Malayan Union Order in Council, 1946. This Constitution was, however, never fully implemented and led to representations that "fresh arrangements should be made for the government and administration of the Malay States in conjunction with the Settlements"; separate new agreements were negotiated between His late Majesty and the Rulers of

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* *Malayan Union and Singapore: Statement of Policy on Future Constitution,* Cmd. 6724 (1946), para. 1.

each of the Malay States, providing for the government of the State in accordance with a written constitution establishing a legislature (consisting of a Council of State) and a State Executive Council; and by the Federation of Malaya Agreement, 1948, a constitution, designed to form the Malay States and the Settlements of Malacca and Penang into "a Federation with a strong central government" was established, with effect from February 1, 1948. In so far as Malacca and Penang were concerned, the Federation of Malaya Order in Council, 1948, was promulgated in exercise of the same powers as those under which the Order in Council of 1946 (which it revoked) was made. This Order in Council conferred a written constitution upon each of the Settlements and thus, in 1948, federal government came into existence in Malaya. Each of the new State legislatures ratified both the new State Agreement and the Federation of Malaya Agreement, 1948, which was declared "to have the force of law throughout the State".

Under the Agreement of 1948 the legislative authority of the Federal legislature was alone defined, in the Second Schedule to the Agreement; this Schedule recited the matters with respect to which that legislature had power to make laws, and the extent to which executive authority in such matters should be conferred on the States and Settlements: such residual legislative power as existed, together with power to legislate on matters of "the Muslim religion or the Custom of the Malays", being left to the State legislatures.

The preamble to the Federation of Malaya Agreement, 1948, had expressed the desire of the United Kingdom Government and Their Highnesses the Rulers that "progress should be made towards eventual self-government". To this end elections for fifty-two seats on the new legislature, the Federal Legislative Council, were held in July, 1955, based on the principle of a universal adult franchise for all Federal citizens and conducted on the "simple majority with one ballot" system used in parliamentary elections in the United Kingdom.

This Legislative Council, which consists in all of ninety-eight members (fifty-two elected members, thirty-five members representing such matters as commerce, rubber, tin, trade unions, agriculture and husbandry, racial minorities and other similar interests, and the remaining eleven members being the Mentri Mentri Besar and Chief Ministers of the States) is in fact continued under the new Constitution, until its dissolution some time in 1959.

The elections having been held and a legislature with an elected majority constituted, consideration was then given to the next step towards self-government. A Constitutional Conference was held in London from January 18 to February 6, 1956, attended by a delegation from the Federation consisting of four

representatives of Their Highnesses the Rulers, the Chief Minister and three other Ministers, and also by His Excellency the High Commissioner and certain of his advisers. Proposals were made by that Conference for the appointment of an independent Commission to make recommendations for a form of constitution for a fully self-governing and independent Federation of Malaya within the Commonwealth; these proposals were approved by Her Majesty the Queen and Their Highnesses the Rulers; and in consequence a Constitutional Commission was appointed. This Commission consisted of the Rt. Hon. Lord Reid, LL.D., F.R.S.E., a Lord of Appeal in Ordinary, as Chairman, and members from the United Kingdom, Australia, India and Pakistan: all members being appointed in the name of Her Majesty the Queen and Their Highnesses the Rulers.

Since the terms of reference of the Constitutional Commission have had a profound effect upon the Constitution it is necessary to recite them here *in extenso*. They were as follows:

"To examine the present constitutional arrangements throughout the Federation of Malaya, taking into account the positions and dignities of Her Majesty the Queen and of Their Highnesses the Rulers: and

To make recommendations for a federal form of constitution for the whole country as a single, independent, self-governing unit within the Commonwealth based on Parliamentary democracy with a bicameral legislature, which would include provision for:

(i) the establishment of a strong central government with the States and Settlements enjoying a measure of autonomy (the question of the residual legislative power to be examined by, and to be the subject of recommendations by the Commission) and with machinery for consultation between the central Government and the States and Settlements on certain financial matters to be specified in the Constitution;

(ii) the safeguarding of the position and prestige of Their Highnesses as constitutional Rulers of their respective States;

(iii) a constitutional Yang di-Pertuan Besar for the Federation to be chosen from among Their Highnesses the Rulers;

(iv) a common nationality for the whole of the Federation;

(v) the safeguarding of the special position of the Malays and the legitimate interests of other communities."

Two understandings were reached at the London Conference in relation to these terms of reference. Firstly, it was understood

that nothing in the terms of reference proposed for the Constitutional Commission was to be taken as in any way prejudging the position of Her Majesty the Queen in relation to the Settlements of Penang and Malacca; and secondly, that paragraph (iv) of the terms of reference was not to be taken as precluding the Commission from making recommendations which would allow British subjects or subjects of Their Highnesses the Rulers to retain their status as such after they had acquired the proposed common nationality.

The Conference of Their Highnesses the Rulers agreed to these terms of reference and the two understandings referred to in the preceding paragraph, subject to the following rider:

> "Their Highnesses wish it to be understood that they do not wish the word 'nationality' in paragraph (iv) to be interpreted by the Commission in a strict legal sense but to be used widely enough to include both nationality and citizenship so that, if the Commission so wishes, it can preserve the combination of nationality and citizenship which is expressed in the Federation of Malaya Agreement, 1948, but naturally without any restriction on the expansion of citizenship so as to produce what in effect would be 'a common nationality' ".

The terms of this rider were accepted by Her Majesty's Government and conveyed to the Chairman of the Commission.

The Commission duly submitted its Report to Her Majesty the Queen and Their Highnesses the Rulers, and the Report itself, together with three draft constitutions for the Federation, Malacca and Penang, was published on February 21, 1957. Her Majesty's Government, the Conference of Rulers and the Government of the Federation then appointed a Working Party in the Federation to make a detailed examination of the Report, and to submit recommendations thereon: and upon the basis of these recommendations the new Federal Constitution, together with constitutions for Malacca and Penang, was promulgated upon Merdeka Day, August 31, 1957.

The constitutional machinery devised to bring the new Constitution into force consisted of—

(*a*) the Federation of Malaya Agreement, 1957;

(*b*) in the United Kingdom, the Federation of Malaya Independence Act, 1957, together with Orders in Council made thereunder;

(*c*) in the Federation, the Federal Constitution Ordinance, 1957, and (in each of the former Malay States) State Enactments approving, and giving the force of law to the Federal Constitution.

The documents collected are here printed in five sections. Section I contains the preliminary legislation necessary in order to promulgate the Constitution, together with the Proclamation of Independence; section II contains the Constitution itself, together with a reprint of certain provisions imported into the Constitution; section III contains ancillary legislation, enacted by the Yang di-Pertuan Agong and the Legislative Council and designed to provide legislative machinery necessary to the working of the Constitution, together with two Ordinances enacted prior to Merdeka Day but of continuing constitutional significance; section IV contains, primarily for ease of reference, certain provisions of the Federation of Malaya Agreement, 1948, relating to citizenship; and section V consists of a comparative table, designed to assist those interested in tracing the origin of the Constitution. Finally, in place of a general index, there is included an index to the Constitution.

Several footnotes have been added to certain of the documents printed here. These footnotes are inserted only by way of explanation, and if an occasional expression of opinion appears, it must not be accepted as in any sense beyond dispute.

This collection of documents has been produced in some haste in order to assist those concerned with the daily working of the Constitution. In consequence it should be emphasised that this reprint is in no sense authoritative, in the manner in which an Ordinance reprinted under section 48 of the Interpretation and General Clauses Ordinance, 1948, is authoritative, and that reference should be made to the appropriate *Gazette* for any definitive text required.

Further, this collection could not have been compiled and produced without the ready assistance of members of the Attorney-General's Department (and in particular of Mr. Santa Singh, who compiled the Index to the Constitution) and of the Government Printing Office.

R. H. HICKLING

KUALA LUMPUR,
17th June, 1958

CHAPTER 60

An Act to make provision for and in connection with the establishment of the Federation of Malaya as an independent sovereign country within the Commonwealth.

[31st July, 1957]

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

Provision for establishment of the Federation as an independent sovereign country.

1. (1) Subject to the provisions of this section, the approval of Parliament is hereby given to the conclusion between Her Majesty and the Rulers of the Malay States of such agreement as appears to Her Majesty to be expedient for the establishment of the Federation of Malaya as an independent sovereign country within the Commonwealth.

(2) Any such agreement as aforesaid may make provision—

(*a*) for the formation of the Malay States and of the Settlements of Penang and Malacca into a new independent Federation of States under a Federal Constitution specified in the agreement, and for the application to those Settlements, as States of the new Federation, of State Constitutions so specified;

(*b*) for the termination of Her Majesty's sovereignty and jurisdiction in respect of the said Settlements, and of all other Her power and jurisdiction in and in respect of the Malay States or the Federation as a whole, and the revocation or modification of all or any of the provisions of the Federation of Malaya Agreement, 1948, and of any other agreements in force between Her Majesty and the Rulers of the Malay States.

(3) Any such agreement shall be conditional upon the approval of the new Federal Constitution by enactments of the existing Federal Legislature and of each of the Malay States; and upon such approval being given Her Majesty by Order in Council* may direct that the said Federal and State Constitutions shall have the force of law within the said Settlements, and, so far as She has jurisdiction in that behalf, elsewhere within the Federation, and may make such other provision as appears to Her to be necessary for giving effect to the agreement.

(4) Any Order in Council under this section shall be laid before Parliament after being made.

(5) In this Act "the appointed day" means such day as may be specified by Order in Council under this section as the day from which the said Federal Constitution has the force of law as aforesaid.

Operation of existing laws.

2. (1) On and after the appointed day, all existing law to which this section applies shall, until otherwise provided by the authority having power to amend or repeal that law, continue to apply in relation to the Federation or any part thereof, and to persons and things in any way belonging thereto or connected therewith, in all respects as if no such agreement as is referred to in subsection (1) of section one of this Act had been concluded:

Provided that—

(*a*) the enactments referred to in the First Schedule to this Act shall have effect as from the appointed day subject to the amendments made by that Schedule (being amendments for applying in relation to the Federation certain statutory provisions applicable to Commonwealth countries having fully responsible status within Her Majesty's dominions);

(*b*) Her Majesty may by Order in Council make such further adaptations in any Act of the Parliament of the United Kingdom passed before the appointed day, or in any instrument having effect under any such Act, as appear to Her necessary or expedient in consequence of the agreement referred to in subsection (1) of section one of this Act;

(*c*) in relation to the Colonial Development and Welfare Acts, 1940 to 1955, this subsection shall have effect only so far as may be necessary for the making of payments on or after the appointed day in pursuance of schemes in force immediately before that day and in respect of periods falling before that day;

(*d*) nothing in this section shall be construed as continuing in force any enactment or rule of law limiting or restricting the legislative powers of the Federation or any part thereof.

(2) An Order in Council made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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* *See* the Federation of Malaya Independence Order in Council, 1957, *infra*.

(3) An Order in Council made under this section may be varied or revoked by a subsequent Order in Council so made and may, though made after the appointed day, be made so as to have effect from that day.

(4) In this section "existing law" means any Act of Parliament or other enactment or instrument whatsoever, and any rule of law, which is in force on the appointed day or, having been passed or made before the appointed day, comes into force after that day; and the existing law to which this section applies is law which operates as law of, or of any part of, the United Kingdom, Southern Rhodesia, or any colony, protectorate or United Kingdom trust territory except that this section:

(*a*) does not apply to any law passed by the Federal Legislature of Rhodesia and Nyasaland;

(*b*) applies to other law of, or of any part of, Southern Rhodesia so far only as concerns law which can be amended neither by a law passed by the Legislature thereof nor by a law passed by the said Federal Legislature; and

(*c*) applies to other law of, or of any part of, Northern Rhodesia or Nyasaland so far only as concerns law which cannot be amended by a law passed by the said Federal Legislature.

(5) References in subsection (4) of this section to a colony, a protectorate and a United Kingdom trust territory shall be construed as if they were references contained in the British Nationality Act, 1948.

Appeals from Supreme Court of Federation.

3. (1) Her Majesty may by Order in Council confer on the Judicial Committee of the Privy Council such jurisdiction in respect of appeals from the Supreme Court of the Federation as appears to Her to be appropriate for giving effect to any arrangements made after the appointed day between Her Majesty and the Head of the Federation for the reference of such appeals to that Committee.

(2) An Order in Council under this section may determine the classes of cases in which, and the conditions as to leave and otherwise subject to which, any such appeal may be entertained by the said Committee, and the practice and procedure to be followed on any such appeal, and may in particular make such provision with respect to the form of the report or recommendation to be made by the Committee in respect of any such appeal, and the transmission to the Head of the Federation of such reports or recommendations, as appears to Her Majesty to be appropriate having regard to the said arrangements.

(3) Except so far as otherwise provided by Order in Council under this section, and subject to such modifications as may be so provided, the Judicial Committee Act, 1833, shall apply in relation to appeals under this section as it applies in relation to appeals to Her Majesty in Council.

(4) Arrangements made in pursuance of this section may apply to any appeal to Her Majesty in Council, or any application for leave to bring such an appeal, which is pending on the appointed day; but except as aforesaid nothing in this Act shall

be construed as continuing in force any right of appeal to Her Majesty in Council from any court in the Federation.

(5) An Order in Council made under this section may be varied or revoked by a subsequent Order in Council so made.

Interpretation, repeal and short title.

4. (1) References in this Act to any other enactment are references thereto as amended or extended by any subsequent enactment.

(2) The enactments described in the Second Schedule to this Act are hereby repealed, as from the appointed day, to the extent specified in the third column of that Schedule.

(3) This Act may be cited as the Federation of Malaya Independence Act, 1957.

SCHEDULES

Section 2.

FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS OF ENACTMENTS

Nationality and Citizenship

*1. Subsection (3) of section one of the British Nationality Act, 1948 (which specifies the Commonwealth countries whose citizens are British subjects or Commonwealth citizens) shall have effect as if for the words "and Ghana" there were substituted the words "Ghana and the Federation of Malaya"; and the British Protectorates, Protected States and Protected Persons Order in Council, 1949, made in pursuance of sections thirty and thirty-two of that Act, shall have effect as if the references to the Malay States in section eight of that Order and in the Second Schedule thereto were omitted.

Armed forces

2. (1) References in the Army Act, 1955, the Air Force Act, 1955, and the Naval Discipline Act, 1957, to a colony or to territory under Her Majesty's protection shall not include any part of the Federation, and section two hundred and eighteen of the Army Act, 1955, section two hundred and sixteen of the Air Force Act, 1955, and subsection (3) of section one hundred and twenty-seven of the Naval Discipline Act, 1957, shall cease to have effect.

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* Section 1 of the United Kingdom British Nationality Act, 1948, provides for British nationality by virtue of citizenship, as follows:

"(1) Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in sub-section (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject.

(2) Any person having the status aforesaid may be known either as a British subject or as a Commonwealth citizen; and accordingly in this Act and in any other enactment or instrument whatever, whether passed or made before or after the commencement of this Act, the expression "British subject" and the expression "Commonwealth citizen" shall have the same meaning.

(3) The following are the countries hereinbefore referred to, that is to say, Canada, Australia, New Zealand, the Union of South Africa . . . India, Pakistan, Southern Rhodesia, Ceylon, Ghana, and the Federation of Malaya."

(2) In the definitions of "Commonwealth force" in subsection (1) of section two hundred and twenty-five of the Army Act, 1955, and in subsection (1) of section two hundred and twenty-three of the Air Force Act, 1955, and in the definition of "Commonwealth country" in subsection (1) of section one hundred and thirty-five of the Naval Discipline Act, 1957, for the words "or Ghana" there shall be substituted the words "Ghana or the Federation of Malaya".

(3) Until the coming into force of the Naval Discipline Act, 1957, sub-paragraph (2) of this paragraph shall have effect as if for the reference to the definition of "Commonwealth country" in subsection (1) of section one hundred and thirty-five of that Act there were substituted a reference to the definition of "Commonwealth force" in section eighty-six of the Naval Discipline Act, as amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955.

3. Section four of the Visiting Forces (British Commonwealth) Act, 1933 (which deals with attachment and mutual powers of command), and the definition of "visiting force" for the purposes of that Act which is contained in section eight of that Act, shall apply in relation to forces raised in the Federation as they apply in relation to forces raised in Dominions within the meaning of the Statute of Westminster, 1931.

4. (1) In subsection (1) of section one of the Visiting Forces Act, 1952 (which specifies the countries to which that Act applies), for the words "or Ghana" there shall be substituted the words "Ghana or the Federation of Malaya"; and in paragraph (*a*) of subsection (1) of section ten of that Act the expression "colony" shall not include any part of the Federation.

(2) Until express provision with respect to the Federation is made by Order in Council under section eight of the said Act of 1952 (which relates to the application to visiting forces of law relating to home forces), any such Order for the time being in force shall be deemed to apply to visiting forces of the Federation.

Diplomatic immunities

5. In section four hundred and sixty-one of the Income Tax Act, 1952 (which relates to exemption from income tax in the case of certain Commonwealth representatives and their staffs) for the words "or Ghana", in both places where those words occur, there shall be substituted the words "Ghana or the Federation of Malaya".

6. In subsection (6) of section one of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952, after the word "Ghana" there shall be inserted the words "the Federation of Malaya".

Financial

7. As respects goods imported after such date as Her Majesty may by Order in Council appoint, section four of the Import Duties Act, 1932, and section two of the Isle of Man (Customs) Act, 1932 (which relate to imperial preference other than colonial preference) shall apply to the Federation.

8. (1) The Colonial Stock Acts, 1877 to 1948, shall apply in relation to stock of the Federation as they apply in relation to stock of a Dominion within the meaning of the Colonial Stock Act, 1934, but as if in paragraph (*a*) of subsection (1) of section one of the said Act of 1934 for any reference to Her Majesty's Government in the Dominion, to the Parliament of the Dominion or to the Royal Assent, there were substituted a reference to the Government or the Legislature of the Federation or to the Assent of the Head of the Federation.

(2) During any period on and after the appointed day during which there is in force as part of the law of the Federation any instrument passed or made before that day which makes provision corresponding to the undertaking required by the said paragraph (*a*), paragraphs (*a*) and (*b*) of the said subsection (1) shall be deemed to have been complied with in the case of the Federation.

Ships and aircraft

9. The Merchant Shipping Acts, 1894 to 1954, shall apply in relation to the Federation as they apply in relation to the Commonwealth countries mentioned in subsection (3) of section one of the British Nationality Act, 1948.

10. Without prejudice to the generality of the last foregoing paragraph:

(*a*) in subsection (2) of section four hundred and twenty-seven of the Merchant Shipping Act, 1894, as substituted by section two of the Merchant Shipping (Safety Convention) Act, 1949, for the words "or Ghana" there shall be substituted the words "Ghana or the Federation of Malaya"; and

(*b*) in the proviso to subsection (2) of section six of the Merchant Shipping Act, 1948, for the words "or Ghana" there shall be substituted the words "Ghana or the Federation of Malaya".

11. In the definitions of "Dominion ship or aircraft" contained in subsection (2) of section three of the Emergency Powers (Defence) Act, 1939, and in Regulation one hundred of the Defence (General) Regulations, 1939, the expression "a Dominion" shall include the Federation.

12. The Ships and Aircraft (Transfer Restriction) Act, 1939, shall not apply to any ship by reason only of its being registered in, or licensed under the law of the Federation; and the penal provisions of that Act shall not apply to persons in the Federation (but without prejudice to the operation with respect to any ship to which that Act does apply of the provisions thereof relating to the forfeiture of ships.

13. In the Whaling Industry (Regulation) Act, 1934, the expression "British ship to which this Act applies" shall not include a British ship registered in the Federation.

Copyright

14. The references in section thirty-one of the Copyright Act, 1956, to a colony or to a country outside Her Majesty's dominions in which Her Majesty has jurisdiction shall not include any part of the Federation.

15. If the Copyright Act, 1911, so far as in force in the law of any part of the Federation, is repealed or amended by that law at a time when sub-paragraph (2) or paragraph 39 of the Seventh Schedule to the Copyright Act, 1956 (which applies certain provisions of that Act in relation to countries to which the said Act of 1911 extended) is in force in relation to that part of the Federation, the said sub-paragraph (2) shall thereupon cease to have effect in relation thereto.

SECOND SCHEDULE

Section 4.

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
9 & 10 Geo. 6. c. 37.	The Straits Settlements (Repeal) Act, 1946.	The whole Act so far as it relates to the Settlements of Penang and Malacca.
3 & 4 Eliz. 2. c. 18.	The Army Act, 1955.	Section two hundred and eighteen.
3 & 4 Eliz. 2. c. 19.	The Air Force Act, 1955.	Section two hundred and sixteen.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Judicial Committee Act, 1833	3 & 4 Will. 4 c. 41
Merchant Shipping Act, 1894	57 & 58 Vict. c. 60
Copyright Act, 1911	1 & 2 Geo. 5. c. 46
Statute of Westminster, 1931	22 & 23 Geo. 5. c. 4
Import Duties Act, 1932	22 & 23 Geo. 5. c. 8
Isle of Man (Customs) Act, 1932	22 & 23 Geo. 5. c. 16
Visiting Forces (British Commonwealth) Act, 1933	23 & 24 Geo. 5. c. 6
Colonial Stock Act, 1934	24 & 25 Geo. 5. c. 47
Whaling Industry (Regulation) Act, 1934 ...	24 & 25 Geo. 5. c. 49
Emergency Powers (Defence) Act, 1939 ...	2 & 3 Geo. 6. c. 62
Ships and Aircraft (Transfer Restriction) Act, 1939	2 & 3 Geo. 6. c. 70
Merchant Shipping Act, 1948	11 & 12 Geo. 6. c. 44
British Nationality Act, 1948	11 & 12 Geo. 6. c. 56
Merchant Shipping (Safety Convention) Act, 1949	12, 13 & 14 Geo. 6. c. 43
Income Tax Act, 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 10
Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 18

Short Title	Session and Chapter
Visiting Forces Act, 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 67
Army Act, 1955	3 & 4 Eliz. 2. c. 18
Air Force Act, 1955	3 & 4 Eliz. 2. c. 19
Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955 ...	3 & 4 Eliz. 2. c. 20
Copyright Act, 1956	4 & 5 Eliz. 2. c. 74
Naval Discipline Act, 1957	5 & 6 Eliz. 2. c. 53

THE FEDERATION OF MALAYA AGREEMENT, 1957*

AGREEMENT dated the 5th day of August, 1957, AND MADE BETWEEN SIR DONALD CHARLES MACGILLIVRAY, G.C.M.G., M.B.E., on behalf of HER MAJESTY of the one part and His Highness TUNKU ISMAIL ibni Sultan IBRAHIM, D.K., S.P.M.J., S.P.M.K., K.B.E., C.M.G., the Regent of Johore, on behalf of His Highness IBRAHIM ibni Almarhum Sultan ABU BAKAR, D.K., S.P.M.J., G.C.M.G., K.B.E. (Mil.), G.B.E., G.C.O.C. (I), Sultan of the State and Territory of JOHORE, His Highness ABU BAKAR RI'AYATU'D-DIN AL-MUADZAM SHAH ibni Almarhum ALMU'TASIM BI'LLAH Sultan ABDULLAH, G.C.M.G., Sultan of the State of PAHANG. His Highness TUANKU ABDUL RAHMAN ibni Almarhum TUANKU MUHAMMAD, G.C.M.G., the Yang di-Pertuan Besar of the State of NEGRI SEMBILAN, Dato' Klana Petra MOHAMED KASSIM bin Dato' Nika Haji Abdul Rashid, Undang of SUNGEI UJONG, Dato' Mendika Mentri Akhirzaman SHAHMARUDDIN bin Abdul-rahman, Undang of JELEBU, Dato' Johan Pahlawan Lela Perkasa Setiawan ABDUL MANAP bin Tolok, Undang of JOHOL, Dato' Lela Maharaja HAJI IPAP bin Abdullah, Undang of REMBAU, and Tengku SYED IDRUS bin Tengku Syed Mohammad, Tengku Besar of TAMPIN, the Ruling Chiefs of the State of NEGRI SEMBILAN, His Highness HISAMUDDIN ALAM SHAH ibni Almarhum Sultan ALA-IDDIN SULAIMAN SHAH, K.C.M.G., Sultan of the State of SELANGOR, His Highness TUNKU BADLISHAH ibni Almarhum Sultan ABDUL HAMID HALIMSHAH, K.C.M.G., K.B.E., Sultan of the State of KEDAH, His Highness SYED PUTRA ibni Almarhum SYED HASSAN JAMALULLAIL, K.C.M.G., the Raja of PERLIS, His Highness TENGKU IBRAHIM ibni Almarhum Sultan MOHAMED, IV, D.K., S.P.M.K., S.J.M.K., D.K. (Johore), K.C.M.G., Sultan of the State of KELANTAN, His Highness Sultan ISMAIL NASIRUDDIN SHAH ibni Al-Marhum Sultan ZAINAL ABIDIN, K.C.M.G., Sultan of the State of TRENGGANU and His Highness Paduka Sri Sultan YUSSUF 'IZZUDDIN SHAH ibni Almarhum Sultan ABDUL JALIL RADZIALLAH HU-'AN-HU, K.C.M.G., O.B.E., Sultan of the State of PERAK, of the other part, for Themselves and Their Successors:

WHEREAS by the Federation of Malaya Agreement, 1948, provision was made for the establishment of a Federation of

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* Under the Constitutions of the States of Johore, Pahang, Kedah, Perlis, Kelantan and Trengganu it was unlawful for the Ruler to enter into any negotiation relating to the cession or surrender of the State or any part thereof. In consequence it was necessary, in order to make it clear that the Ruler of each of these States had authority to enter into this Agreement, to amend the State Constitutions to that effect. These amendments came into force on August 5, 1957 (the Agreement itself being signed on that date) and in general provided that it should not be "unlawful for the Ruler to enter into an agreement with Her Majesty and Their Highnesses the Rulers of the Malay States revoking the Federation of Malaya Agreement and the State Agreement, of 1948, and providing for the constitution and government of a new and independent federation, within the British Commonwealth of Nations, of the Malay States and the Settlements of Malacca and Penang and such further territories as may from time to time be admitted to such federation".

The Agreement was published in a Supplement to the *Gazette* of December 11, 1957, as Notification No. (New Series) 888.

Malaya comprising the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and the Settlements of Penang and Malacca:

AND WHEREAS the Federation of Malaya Agreement, 1948, has the force of law in the territories of the said Federation:

AND WHEREAS there now subsist between Her Majesty and each of Their Highnesses the Rulers of the said Malay States (in the case of Negri Sembilan between Her Majesty and His Highness the Yang di-Pertuan Besar and the Ruling Chiefs) divers Agreements relating to the government of the several States of Their Highnesses:

AND WHEREAS it has been represented to Her Majesty and Their Highnesses and the Ruling Chiefs of Negri Sembilan that fresh arrangements should be made for the peace, order and good government of the territories within the said Federation; and Her Majesty and Their Highnesses and the said Ruling Chiefs have agreed that the said Federation should become an independent country within the Commonwealth with the Constitution hereinafter provided for:

AND WHEREAS by the Federation of Malaya Independence Act, 1957, the approval of the Parliament of the United Kingdom was given to the conclusion of such Agreement as is herein contained:

NOW, THEREFORE, it is agreed and declared as follows:

Citation.

1. This Agreement may be cited as the Federation of Malaya Agreement, 1957.

Construction.

2. In this Agreement, unless the context otherwise requires—

"the existing Federation" means the Federation of Malaya established by the Federation of Malaya Agreement, 1948;

"Federal Ordinance" means an Ordinance of the Legislature of the existing Federation;

"Their Highnesses the Rulers" means the persons who are for the time being the Sultan of the State and Territory of Johore, the Sultan of the State of Pahang, the Yang di-Pertuan Besar of the State of Negri Sembilan, the Sultan of the State of Selangor, the Sultan of the State of Kedah, the Raja of the State of Perlis, the Sultan of the State of Kelantan, the Sultan of the State of Trengganu, and the Sultan of the State of Perak;

"the Malay States" means the States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and all dependencies, islands and places which, immediately before the thirty-first day of August, nineteen hundred and fifty-seven, are administered as part thereof, and the territorial waters adjacent thereto;

"the Settlement of Penang" and "the Settlement of Malacca" include all islands and places which, immediately before the thirty-first day of August, nineteen hundred and fifty-seven, are administered as part of those Settlements, and the territorial waters adjacent thereto;

"the Settlements" means the Settlement of Penang and the Settlement of Malacca.

Establishment of new Federation: Federal Constitution.

3. As from the thirty-first day of August, nineteen hundred and fifty-seven, the Malay States and the Settlements shall be formed into a new Federation of States by the name of Persekutuan Tanah Melayu, or in English, the Federation of Malaya, under the Federal Constitution set out in the First Schedule to this Agreement; and thereupon the said Settlements shall cease to form part of Her Majesty's dominions and Her Majesty shall cease to exercise any sovereignty over them, and all power and jurisdiction of Her Majesty or of the Parliament of the United Kingdom in or in respect of the Settlements or the Malay States or the Federation as a whole shall come to an end.

Constitutions of Penang and Malacca.

4. The Constitutions set out in the Second and Third Schedules to this Agreement shall be the Constitutions of Penang and Malacca respectively as States of the new Federation.

Revocation of previous Agreements.

5. Subject to the provisions of the said Federal Constitution and to the Fourth Schedule to this Agreement, the Federation of Malaya Agreement, 1948, and all other agreements subsisting between Her Majesty and the other Parties to this Agreement or any of them immediately before the said thirty-first day of August shall be revoked as from that day, but nothing in this Clause shall affect any provision in any agreement by which provision any disposition of territory was made.

Approval of this Agreement by Legislatures.

6. The foregoing provisions of this Agreement are conditional upon the approval of the said Federal Constitution by Federal Ordinance and by an Enactment of each of the Malay States.

Languages of the Agreement.

7. This Agreement shall be expressed in both the English and the Malay languages; but, for purposes of interpretation, regard shall be had only to the English version.

IN WITNESS WHEREOF Sir Donald Charles MacGillivray, G.C.M.G., M.B.E., has hereunto set his hand and seal on behalf of Her Majesty; and Their Highnesses the Rulers of the States of Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the Ruling Chiefs of the State of Negri Sembilan and His Highness TUNKU ISMAIL ibni Sultan IBRAHIM, D.K., S.P.M.J., S.P.M.K., K.B.E., C.M.G., the Regent of Johore, on behalf of His Highness the Sultan of the State and Territory of Johore, have hereunto set their hands and seals.

DONE the 5th day of August, 1957, corresponding to the 9th day of Muharram, 1377.

FIRST SCHEDULE

[This consists of the Federal Constitution: *see* page 19, *infra*.]

SECOND SCHEDULE

[This consists of the Constitution of Penang: *see* page 163, *infra*.]

THIRD SCHEDULE

[This consists of the Constitution of Malacca: *see* page 187, *infra*.]

Fourth Schedule*

The following provisions shall apply in respect of the Treaty made on the sixth day of May, eighteen hundred and sixty-nine, between Her Majesty of the one part and The King of Siam of the other part relative to the State of Kedah:

(*a*) All obligations under Article II of the said Treaty shall, on and after the thirty-first day of August, nineteen hundred and fifty-seven, be discharged as is provided in Article 167 of the First Schedule to this Agreement, and accordingly no liability whatsoever under the said Article II shall attach to Her Majesty on or after the said thirty-first day of August.

(*b*) Article III of the said Treaty shall immediately before the said thirty-first day of August have the effect that the obligations of Her Majesty thereunder are obligations of Her Majesty in respect of Her Government of the Settlement of Penang, and all such obligations shall, on and after the said thirty-first day of August, be discharged as is provided in Article 167 of the First Schedule to this Agreement, and accordingly no liability whatsoever under the said Article III shall attach to Her Majesty on or after the said thirty-first day of August.

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* *See* the footnote to Article 167 of the Constitution of the Federation, *infra*, for details of the two Articles referred to in this Schedule.

[This Agreement was signed and sealed by Sir Donald MacGillivray, G.C.M.G., M.B.E., for and on behalf of Her Majesty, and by His Highness the Regent of Johore; His Highness the Sultan of Pahang; His Highness the Yang di-Pertuan Besar of Negri Sembilan; the Undang of the Luak of Sungei Ujong; the Undang of the Luak of Jelebu; the Undang of the Luak of Johol; the Undang of the Luak of Rembau; the Tengku Besar of Tampin; His Highness the Sultan of Selangor; His Highness the Sultan of Kedah; His Highness the Raja of Perlis; His Highness the Sultan of Kelantan; His Highness the Sultan of Trengganu; and His Highness the Sultan of Perak.]

THE FEDERAL CONSTITUTION ORDINANCE, 1957*

No. 55 OF 1957

An Ordinance to approve the Federal Constitution set out in the Federation of Malaya Agreement, 1957.

[*27th August, 1957.*]

WHEREAS by the Federation of Malaya Agreement, 1948, provision was made for the establishment of a Federation of Malaya comprising the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the Settlements of Penang and Malacca:

AND WHEREAS by an Agreement, hereinafter referred to as the Federation of Malaya Agreement, 1957, made the fifth day of August, 1957, between Her Majesty of the one part and Their Highnesses the Rulers of the States of Johore, Pahang, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and His Highness the Yang di-Pertuan Besar and the Ruling Chiefs of the State of Negri Sembilan of the other part fresh arrangements have been agreed upon for the peace, order and good government of the territories comprised in the Federation of Malaya:

AND WHEREAS by the Federation of Malaya Agreement, 1957, it is agreed by the parties thereto that as from the thirty-first day of August, 1957, the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the Settlements of Penang and Malacca shall be formed into a new Federation of States by the name of Persekutuan Tanah Melayu (in English the Federation of Malaya), under the Federal Constitution set out in the First Schedule to the said Agreement; and that thereupon the Settlements of Penang and Malacca shall cease to form part of Her Majesty's dominions and Her

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* Each of the former Malay States enacted legislation in similar terms to the above: the relevant references to such legislation are:
Johore *Gazette* No. 1A of 5th September, 1957;
Kedah *Gazette* No. 216 of 22nd August, 1957;
Kelantan *Gazette* No. 262 of 30th August, 1957;
Negri Sembilan *Gazette* No. 452 of 29th August, 1957;
Pahang *Gazette* No. 301 of 29th August, 1957;
Perak *Gazette* No. 1372 of 29th August, 1957;
Perlis *Gazette* No. 85 of 22nd August, 1957;
Selangor *Gazette* No. 431 of 29th August, 1957; and
Trengganu *Gazette* No. 242 of 22nd August, 1957.

Majesty shall cease to exercise any sovereignty over them and all power and jurisdiction of Her Majesty or of the Parliament of the United Kingdom in or in respect of the Settlements or the Malay States or the Federation as a whole shall come to an end; and that, subject to the provisions of the said Federal Constitution and to the Fourth Schedule to the said Agreement, the Federation of Malaya Agreement, 1948, and all other agreements subsisting between Her Majesty and Their Highnesses the Rulers or any of them immediately before the said thirty-first day of August shall be revoked as from that day; and that the provisions of the said Agreement are conditional upon the approval of the said Federal Constitution by Federal Ordinance and by an Enactment of each of the Malay States:

NOW IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council, as follows:

Short title.

1. This Ordinance may be cited as the Federal Constitution Ordinance, 1957.

Approval of Federal Constitution.

2. The Federal Constitution set out in the First Schedule to the Federation of Malaya Agreement, 1957, is hereby approved and shall on and after the thirty-first day of August, 1957, have the force of law throughout the Federation.

THE FEDERATION OF MALAYA INDEPENDENCE ORDER IN COUNCIL, 1957

(Statutory Instrument, 1957 No. 1533)

Made ... ... *23rd August, 1957*
Laid before Parliament ... *29th August, 1957*
Coming into Operation ... *Immediately before 31st August, 1957*

At the Court at Balmoral, the 23rd day of August, 1957

Present,

The Queen's Most Excellent Majesty in Council

WHEREAS by the Federation of Malaya Independence Act, 1957, the approval of Parliament was given to the conclusion between Her Majesty and the Rulers of the Malay States of such agreement as appears to Her Majesty to be expedient for the establishment of the Federation of Malaya as an independent sovereign country within the Commonwealth:

AND WHEREAS the said Act provides that any such agreement as aforesaid may make provision—

(*a*) for the formation of the Malay States and of the Settlements of Penang and Malacca into a new independent Federation of States under a Federal Constitution specified in the Agreement, and for the application to those Settlements, as States of the new Federation, of State Constitutions so specified;

(*b*) for the termination of Her Majesty's sovereignty and jurisdiction in respect of the said Settlements, and of all other Her power and jurisdiction in and in respect of the Malay States or the Federation as a whole, and the revocation or modification of all or any of the provisions of the Federation of Malaya Agreement, 1948, and of any other agreements in force between Her Majesty and the Rulers of the Malay States:

AND WHEREAS the said Act further provides that any such Agreement shall be conditional upon the approval of the new Federal Constitution by enactments of the existing Federal Legislature and of each of the Malay States; and that upon such approval being given Her Majesty by Order in Council may direct that the said Federal and State Constitutions shall have the force of law within the said Settlements, and, so far as She has jurisdiction in that behalf, elsewhere within the Federation, and may make such other provision as appears to Her to be necessary for giving effect to the Agreement:

AND WHEREAS the Agreement set out in the Annex to this Order (hereinafter called "the Agreement") was concluded on the 5th day of August, 1957, between Her Majesty and the Rulers of the Malay States:

AND WHEREAS the Federal Constitution which is set out in the First Schedule to the Agreement has been approved by enactments of the existing Federal Legislature and of each of the Malay States:

NOW, THEREFORE, Her Majesty, by virtue and in exercise of the powers by section 1 of the said Act or otherwise in Her vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement, application and construction.

1. (1) This Order may be cited as the Federation of Malaya Independence Order in Council, 1957, and shall come into operation immediately before the 31st day of August, 1957.

(2) This Order extends to the Settlements of Penang and Malacca and, so far as Her Majesty has jurisdiction therein, to the other territories of the Federation of Malaya.

(3) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Constitutions to have force of law.

2. The Federal Constitution set out in the First Schedule to the Agreement, and the State Constitutions set out in the Second and Third Schedules thereto, shall have the force of law—

(*a*) in the case of the said Federal Constitution, as from the 31st day of August, 1957;

(*b*) in the case of the said State Constitutions, as from the commencement of this Order.

Revocation.

3. (1) The Federation of Malaya Orders in Council, 1948 to 1956, are hereby revoked.

(2) Nothing in this section shall prejudice the continuance in operation of any provision of the said Orders in Council, to the extent provided for by the Federal and State Constitutions referred to in section 2 of this Order, as part of those Constitutions.

The above Order in Council was published in a Supplement to the *Gazette* of December 11, 1957, as Notification No. (New Series) 889.

PROCLAMATION OF INDEPENDENCE*

IN THE NAME OF GOD, the Compassionate, the merciful. Praise be to God, the Lord of the Universe and may the blessings and peace of God be upon his messengers.

AND WHEREAS the time has now arrived when the people of the Persekutuan Tanah Melayu will assume the status of a free independent and sovereign nation among the nations of the world;

AND WHEREAS by an agreement styled the Federation of Malaya Agreement, 1957, between Her Majesty the Queen and Their Highnesses the Rulers of the Malay States it was agreed that the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the former Settlements of Malacca and Penang should as from the 31st day of August, 1957, be formed into a new Federation of States by the name of Persekutuan Tanah Melayu;

AND WHEREAS it was further agreed between the parties to the said agreement that the Settlements of Malacca and Penang aforesaid should as from the said date cease to form part of Her Majesty's dominions and that Her Majesty should cease to exercise any sovereignty over them;

AND WHEREAS it was further agreed by the parties aforesaid that the Federation of Malaya Agreement, 1948, and all other agreements subsisting between Her Majesty the Queen and Their Highnesses the Rulers or any one of them immediately before the said date should be revoked as from that date and that all powers and jurisdiction of Her Majesty or of the Parliament of the United Kingdom in or in respect of the Settlements aforesaid or the Malay States or the Federation as a whole should come to an end;

AND WHEREAS effect has been given in the Federation of Malaya Agreement, 1957, by Her Majesty the Queen, Their Highnesses the Rulers, the Parliament of the United Kingdom and the Legislatures of the Federation and of the Malay States;

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* This Proclamation was read by Tunku Abdul Rahman at the celebrations held at the Stadium Merdeka, Kuala Lumpur, on August 31, 1957, at which H.R.H. the Duke of Gloucester, acting on behalf of Her Majesty the Queen, formally handed over to the Prime Minister the constitutional documents signifying the independence of the Federation of Malaya.

AND WHEREAS a constitution for the Government of the Persekutuan Tanah Melayu has been established as the supreme law thereof;

AND WHEREAS by the Federal Constitution aforesaid provision is made to safeguard the rights and prerogatives of Their Highnesses the Rulers and the fundamental rights and liberties of the people and to provide for the peaceful and orderly advancement of the Persekutuan Tanah Melayu as a constitutional monarchy based on Parliamentary democracy;

AND WHEREAS the Federal Constitution aforesaid having been approved by an Ordinance of the Federal Legislatures, by the Enactments of the Malay States and by resolutions of the Legislatures of Malacca and Penang has come into force on the 31st day of August, 1957, aforesaid;

Now in the name of God the Compassionate, the Merciful I, Tengku Abdul Rahman Putra ibni Al-Marhum Sultan Abdul Hamid Halimshah, Prime Minister of the Persekutuan Tanah Melayu, with the concurrence and approval of Their Highnesses the Rulers of the Malay States do hereby proclaim and declare on behalf of the people of the Persekutuan Tanah Melayu that as from the thirty first day of August, nineteen hundred and fifty-seven, the Persekutuan Tanah Melayu comprising the States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu, Perak, Malacca and Penang is and with God's blessing shall be for ever a sovereign democratic and independent State founded upon the principle of liberty and justice and ever seeking the welfare and happiness of its people and the maintenance of a just peace among all nations.

KUALA LUMPUR,
31st day of August, 1957.

T. ABDUL RAHMAN,
Prime Minister

SECTION II

THE FEDERAL CONSTITUTION*

ARRANGEMENT OF ARTICLES

PART I

THE STATES, RELIGION AND LAW OF THE FEDERATION

Article

1. The name, States and territories of the Federation.
2. Admission of new territories into the Federation.
3. Religion of the Federation.
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PART II

FUNDAMENTAL LIBERTIES

5. Liberty of the person.
6. Slavery and forced labour prohibited.
7. Protection against retrospective criminal laws and repeated trials.
8. Equality.
9. Prohibition of banishment and freedom of movement.
10. Freedom of speech, assembly and association.
11. Freedom of religion.
12. Rights in respect of education.
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Chapter 1—Acquisition of Citizenship

14. Citizenship by operation of law.
15. Citizenship by registration (wives and children of citizens).
16. Citizenship by registration (persons born in the Federation before Merdeka Day).
17. Citizenship by registration (persons resident in the Federation on Merdeka Day).
18. General provisions as to registration.

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* This Constitution may be classified as *federal*, in the sense that the powers conferred by it are divided between the Federal and State Governments, each government being legally independent within its own sphere; as *monarchical*, in the sense that it establishes the office of Supreme Head of the Federation, or Yang di-Pertuan Agong, as a constitutional monarch, parallel with the recognition and guarantee of the position of each of the Rulers; and *rigid*, in the sense that it requires special machinery for its amendment (*see* Article 159) and cannot be amended by the ordinary legislative process.

The Constitution was published in a Supplement to the *Gazette* of December 11, 1957, as Notification No. (New Series) 885.

Article

19. Citizenship by naturalisation.
20. Naturalisation of members of Federation forces.
21. General provisions as to naturalisation.
22. Citizenship by incorporation of territory.

Chapter 2—Termination of Citizenship

23. Renunciation of citizenship.
24. Deprivation of citizenship on acquisition or exercise of foreign citizenship, etc.
25. Deprivation of citizenship by registration under Article 17 or by naturalisation.
26. Other provisions for deprivation of citizenship by registration or naturalisation.
27. Procedure for deprivation.
28. Application of Chapter 2 to certain citizens by operation of law.

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29. Commonwealth citizenship.
30. Certificates of citizenship.
31. Application of Schedule 2.

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32. Supreme Head of the Federation, and his Consort.
33. Deputy Supreme Head of the Federation.
34. Disabilities of Yang di-Pertuan Agong, etc.
35. Civil List of the Yang di-Pertuan Agong and his Consort and remuneration of the Deputy Supreme Head.
36. Public Seal.
37. Oath of office of Yang di-Pertuan Agong.

Chapter 2—The Conference of Rulers

38. Conference of Rulers.

Chapter 3—The Executive

39. Executive authority of Federation.
40. Yang di-Pertuan Agong to act on advice.
41. Supreme command of armed forces.
42. Power of pardon, etc.
43. The Cabinet.

Chapter 4—Federal Legislature

Article

44. Constitution of Parliament.
45. Composition of Senate.
46. Composition of House of Representatives.
47. Qualifications for membership of Parliament.
48. Disqualification for membership of Parliament.
49. Provisions against double membership.
50. Effect of disqualification, and prohibition of nomination or appointment without consent.
51. Resignation of members.
52. Absence of a member.
53. Decisions as to disqualification.
54. Casual vacancies.
55. Summoning, prorogation and dissolution of Parliament.
56. President and Deputy President of Senate.
57. Speaker and Deputy Speaker of the House of Representatives.
58. Remuneration of President, Deputy President, Speaker and Deputy Speaker.
59. Oaths by members.
60. Address by the Yang di-Pertuan Agong.
61. Special provisions as to Cabinet and Attorney General.
62. Parliamentary procedure.
63. Privileges of Parliament.
64. Remuneration of members.
65. Clerks of Senate and House of Representatives.

Chapter 5—Legislative procedure

66. Exercise of legislative power.
67. Restriction on introduction of Bills and moving of amendments involving taxation, expenditure, etc.
68. Assent to Bills passed by House of Representatives only.

Chapter 6—Capacity as respects property, contracts and suits

69. Capacity of Federation as respects property, contracts and suits.

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70. Precedence of Rulers and Governors.
71. Federal guarantee of State Constitutions.
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74. Subject matter of federal and State laws.
75. Inconsistencies between federal and State laws.
76. Power of Parliament to legislate for States in certain cases.
77. Residual power of legislation.
78. Legislation restricting use of rivers.
79. Exercise of concurrent legislative powers.

Chapter 2—Distribution of executive powers

80. Distribution of executive powers.
81. Obligations of States towards Federation.

Chapter 3—Distribution of financial burdens

82. Financing of expenditure relating to matters on Concurrent List.

Chapter 4—Land

83. Acquisition of land for federal purposes.
84. Reversion to States of land held for federal purposes.
85. Release of land reserved for federal purposes.
86. Dispositions of land held for federal purposes.
87. Determination of disputes as to land values.
88. Modification of Articles 83 to 87 in their application to Malacca and Penang.
89. Malay reservations.
90. Special provisions relating to customary land in Negri Sembilan and Malacca, and Malay holdings in Trengganu.
91. The National Land Council.

Chapter 5—National development

92. National development plans.

Chapter 6—Federal surveys, advice to States and inspection of State activities

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CONSTITUTION OF THE FEDERATION OF MALAYA

PART I

THE STATES, RELIGION AND LAW OF THE FEDERATION

The name, States and territories of the Federation.

1. (1) The Federation shall be known by the name of Persekutuan Tanah Melayu (in English the Federation of Malaya).

(2) The States of the Federation are Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor and Trengganu (formerly known as the Malay States) and Malacca and Penang (formerly known as the Settlements of Malacca and Penang).

(3) The territories of each of the States mentioned in Clause (2) are the territories of that State immediately before Merdeka Day.

Admission of new territories into the Federation.

*__2.__ Parliament may by law—

(*a*) admit other States to the Federation;

(*b*) alter the boundaries of any State;

but a law altering the boundaries of a State shall not be passed without the consent of that State (expressed by a law made by the Legislature of that State) and of the Conference of Rulers.

Religion of the Federation.

3. (1) Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.

(2) In every State other than Malacca and Penang the position of the Ruler as the Head of the Muslim religion in his State in the manner and to the extent acknowledged and declared by the Constitution of that State, and, subject to that Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired; but in any acts, observances or ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity of Head of the Muslim religion authorise the Yang di-Pertuan Agong to represent him.

(3) The Constitutions of the States of Malacca and Penang shall each make provision for conferring on

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* *See* Article 113 (3).

the Yang di-Pertuan Agong the position of Head of the Muslim religion in that State.

(4) Nothing in this Article derogates from any other provision of this Constitution.

Supreme law of Federation.

4. (1) This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

(2) The validity of any law shall not be questioned on the ground that—

(*a*) it imposes restrictions on the right mentioned in Article 9 (2) but does not relate to the matters mentioned therein; or

(*b*) it imposes such restrictions as are mentioned in Article 10 (2) but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that Article.

(3) The validity of any law made by Parliament or the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws, except—

(*a*) if the law was made by Parliament, in proceedings between the Federation and one or more States;

(*b*) if the law was made by the Legislature of a State, in proceedings between the Federation and that State.

PART II*

FUNDAMENTAL LIBERTIES

Liberty of the person.

†**5.** (1) No person shall be deprived of his life or personal liberty save in accordance with law.

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* This Part contains the so-called "fundamental liberties", or what the Report of the Constitutional Commission termed "constitutional guarantees": guarantees amounting in some cases to rights, and enjoyed sometimes only by citizens, sometimes by all persons within the Federation. These rights flow from a recommendation of the Constitutional Commission, which observed that the rights "are all firmly estabished in Malaya, and it may seem unnecessary to give them special protection in the Constitution. But we have found in certain quarters vague apprehensions about the future. We believe such apprehensions to be unfounded, but there can be no objection to guaranteeing these rights subject to limited exceptions in conditions of emergency and we recommend that this should be done. The guarantee afforded by the Constitution is the supremacy of the law and the power and duty of the Courts to enforce these rights and to annul any attempt to subvert any of them whether by legislative or administrative action or otherwise" (*Report*, para. 161).

† *See* Article 149 (1).

(2) Where complaint is made to the Supreme Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

(3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice*.

(4) Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority.

(5) Clauses (3) and (4) do not apply to an enemy alien.

Slavery and forced labour prohibited.

6. (1) No person shall be held in slavery.

(2) All forms of forced labour are prohibited, but Parliament may by law provide for compulsory service for national purposes.

(3) Work incidental to the serving of a sentence of imprisonment imposed by a court of law shall not be taken to be forced labour within the meaning of this Article.

Protection against retrospective criminal laws and repeated trials.

7. (1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

(2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted.

Equality.

8. (1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of

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* It has been held that this right to counsel pre-supposes a right to be heard, and therefore does not extend to an enquiry under the Restricted Residence Enactment (F.M.S. *Cap. 39*): *see Chia Khin Sze v. Mentri Besar, Selangor* (1958) 24 M.L.J. 105.

birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.

(4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.

(5) This Article does not invalidate or prohibit—

(*a*) any provision regulating personal law;

(*b*) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion;

(*c*) any provision for the protection, wellbeing or advancement of the aboriginal peoples of the Federation (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;

(*d*) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election;

(*e*) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day;

(*f*) any provision restricting enlistment in the Malay Regiment to Malays.

Prohibition of banishment, and freedom of movement.

*9. (1) No citizen shall be banished or excluded from the Federation.

†(2) Subject to any restriction imposed by any law relating to the security of the Federation, public order, public health, or the punishment of offenders, every citizen has the right to move freely throughout the Federation and to reside in any part thereof.

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* *See* Article 149 (1). † *See* Article 4.

Freedom of speech, assembly and association.

*10. (1) Subject to Clause (2),—

(*a*) every citizen has the right to freedom of speech and expression;

(*b*) all citizens have the right to assemble peaceably and without arms;

(*c*) all citizens have the right to form associations.

(2) Parliament may by law impose—

(*a*) on the rights conferred by paragraph (*a*) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;

(*b*) on the right conferred by paragraph (*b*) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or public order;

(*c*) on the right conferred by paragraph (*c*) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation, public order or morality.

Freedom of religion.

11. (1) Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.

(2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

(3) Every religious group has the right—

(*a*) to manage its own religious affairs;

(*b*) to establish and maintain institutions for religious or charitable purposes; and

(*c*) to acquire and own property and hold and administer it in accordance with law.

(4) State law may control or restrict the propagation of any religious doctrine or belief among persons professing the Muslim religion.

(5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.

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* *See* Article 149 (1).

Rights in respect of education.

12. (1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizens on the grounds only of religion, race, descent or place of birth—

(*a*) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or

(*b*) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).

(2) Every religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but federal law may provide for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion of persons professing that religion.

(3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.

(4) For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

Rights of property.

13. (1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

PART III

CITIZENSHIP*

Chapter 1—Acquisition of Citizenship

Citizenship by operation of law.

14. (1) Subject to Clause (2), the following persons are citizens by operation of law, that is to say:

(*a*) every person who, immediately before Merdeka Day, was a citizen of the Federation by virtue of any of the provisions of the

* The *registration authority* for the purposes of this Part and of the Second Schedule is the Election Commission constituted under Article 114; and the functions of the Federal Government (*see* section 1 of the Second Schedule) are at present exercised by the Minister of the Interior and Justice.

Federation of Malaya Agreement, 1948, whether by operation of law or otherwise;

(*b*) every person born within the Federation on or after Merdeka Day;

(*c*) every person born outside the Federation on or after Merdeka Day whose father is a citizen at the time of the birth and either was born within the Federation or is at the time of the birth in service under the Government of the Federation or of a State;

(*d*) every person born outside the Federation on or after Merdeka Day whose father is a citizen at the time of the birth, if the birth is registered at a Malayan Consulate within one year of its occurrence, or within such longer period as the Federal Government may in any particular case allow.

(2) A person is not a citizen by virtue of paragraph (*b*) of Clause (1) if, at the time of his birth, his father, not being a citizen of the Federation, possesses such immunity from suit and legal process as is accorded to an envoy of a sovereign power accredited to the Yang di-Pertuan Agong, or if his father is then an enemy alien and the birth occurs in a place under occupation by the enemy.

Citizenship by registration (wives and children of citizens).

15. (1) Subject to Article 18, any woman who is married to a citizen is entitled, upon making application to the registration authority, to be registered as a citizen.

(2) Subject to Article 18, any person under the age of twenty-one years whose father is a citizen or, if deceased, was a citizen at the time of his death, is entitled, upon application made to the registration authority by his parent or guardian, to be registered as a citizen if that authority is satisfied that he is ordinarily resident in the Federation and is of good character.

(3) The reference in this Article to a woman who is married is a reference to a woman whose marriage has been registered in accordance with any written law in force in the Federation, including any such law in force before Merdeka Day.

Citizenship by registration (persons born in the Federation before Merdeka Day).

16. Subject to Article 18, any person of or over the age of eighteen years who was born in the Federation before Merdeka Day is entitled, upon making application to the registration authority, to be registered as a citizen if he satisfies that authority—

(*a*) that he has resided in the Federation, during the seven years immediately preceding the date of the application, for periods amounting in the aggregate to not less than five years;

(*b*) that he intends to reside permanently therein;

(*c*) that he is of good character; and

(*d*) except where the application is made within one year after Merdeka Day, that he has an elementary knowledge of the Malay language.

Citizenship by registration (persons resident in the Federation on Merdeka Day).

17. Subject to Article 18, any person of or over the age of eighteen years who was resident in the Federation on Merdeka Day is eligible, subject to the provisions of the Second Schedule, to be registered as a citizen* upon making application to the registration authority if he satisfies that authority—

(*a*) that he has resided in the Federation, during the twelve years immediately preceding the date of the application, for periods amounting in the aggregate to not less than eight years;

(*b*) that he intends to reside permanently therein;

(*c*) that he is of good character; and

(*d*) except where the application is made within one year after Merdeka Day and the applicant has attained the age of forty-five years at the date of the application, that he has an elementary knowledge of the Malay language.

General provisions as to registration.

†**18.** (1) No person of or over the age of eighteen years shall be registered as a citizen under Article 15, 16 or 17 until he has taken the oath set out in the First Schedule.

(2) Except with the approval of the Federal Government, no person who has renounced or has been deprived of citizenship under this Constitution, or who has renounced or has been deprived of federal citizenship or citizenship of the Federation before Merdeka

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* But such a citizen cannot become a Governor of Penang or Malacca (Article 2 of each State Constitution), nor can he become Prime Minister (*see infra*, Article 47) or a Mentri Besar (Eighth Schedule, section 2) or a Chief Minister (Article 7 of each State Constitution).

† And *see* also Article 170.

Day under the Federation of Malaya Agreement, 1948, shall be registered as a citizen under any of the said Articles.

(3) A person registered as a citizen under any of the said Articles shall be a citizen by registration from the day on which he is so registered.

(4) For the purpose of any application for registration under any of the said Articles, a person shall be deemed to be of good character unless, within the period of three years immediately preceding the date of the application—

(*a*) he has been convicted by a competent court in any country of a criminal offence for which he was sentenced to death; or

(*b*) he has been detained under a sentence of imprisonment of twelve months or more imposed on him on his conviction of a criminal offence (whether during or before the said period) by such a court,

and in either case has not received a free pardon in respect of the offence.

Citizenship by naturalisation.

19. Subject to Article 21, the Federal Government may, upon application made by any person* of or over the age of twenty-one years, grant a certificate of naturalisation to that person if satisfied—

(*a*) that he has resided in the Federation, during the twelve years preceding the date of the application, for periods amounting in the aggregate to not less than ten years;

(*b*) that he intends, if the certificate is granted, to reside permanently therein;

(*c*) that he is of good character; and

(*d*) that he has an adequate knowledge of the Malay language.

Naturalisation of members of Federation forces.

20. (1) Subject to Article 21, the Federal Government shall, upon application made by any person in accordance with Clause (2), grant a certificate of naturalisation to that person if satisfied—

(*a*) that he has served satisfactorily for a period of not less than three years in full-time service, or for a period of not less than four years in part-time service, in such of the armed forces of the Federation as may be prescribed by

* *See* note to Article 17: a citizen by naturalisation cannot become a Governor, Prime Minister, Mentri Besar or Chief Minister.

the Federal Government for the purposes of this Article*; and

(*b*) that he intends, if the certificate is granted, to reside permanently in the Federation.

(2) An application under this Article may be made either while the applicant is serving in such service as aforesaid or within the period of five years, or such longer period as the Federal Government may in any particular case allow, after his discharge.

(3) References in this Article to service in the armed forces of the Federation include references to service before Merdeka Day; and in calculating for the purposes of this Article the period of full-time service in such forces of a person who has served both in full-time and in part-time service therein, any two months of part-time service shall be treated as one month of full-time service.

General provisions as to naturalisation.

21. (1) A certificate of naturalisation shall not be granted to any person under Article 19 or 20 until he has taken the oath set out in the First Schedule.

(2) A person to whom a certificate of naturalisation is granted under either of the said Articles shall be a citizen by naturalisation from the date on which the certificate is so granted.

Citizenship by incorporation of territory.

22. If any new territory is admitted to the Federation in pursuance of Article 2, Parliament may by law determine what persons are to be citizens by reason of their connection with that territory and the date or dates from which such persons are to be citizens.

Chapter 2—Termination of citizenship

Renunciation of citizenship.

23. (1) Any citizen of or over the age of twenty-one years and of sound mind who is also a citizen of another country may renounce his citizenship of the Federation by declaration registered by the registration authority, and shall thereupon cease to be a citizen.

(2) A declaration made under this Article during any war in which the Federation is engaged shall not be registered except with the approval of the Federal Government, but except as aforesaid the registration authority shall register any declaration duly made thereunder.

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* It is probable that the forces to be prescribed will be those under the jurisdiction of the Armed Forces Council (*see* Article 137, *infra*), that is to say, the Royal Malay Regiment; the Federation Regiment; forces raised under the Military Forces Ordinance, 1952; the Royal Malayan Air Force; the Royal Malayan Navy; the Volunteer Force; the Federation Division of the Malayan Royal Naval Volunteer Reserve; and the Federation section of the Malayan Auxiliary Air Force. *Cp.* the forces prescribed under Clause 131 of the Federation of Malaya Agreement, 1948, page 257, *infra*.

(3) This Article applies to a woman under the age of twenty-one years who has been married as it applies to a person of or over that age.

Deprivation of citizenship on acquisition or exercise of foreign citizenship, etc.

*24. (1) If the Federal Government is satisfied that any citizen has at any time after Merdeka Day acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country outside the Federation, the Federal Government may by order deprive that person of his citizenship.

(2) If the Federal Government is satisfied that any citizen has at any time after Merdeka Day voluntarily claimed and exercised in a foreign country any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Federal Government may by order deprive that person of his citizenship.

(3) Where provision is in force under the law of any Commonwealth country for conferring on citizens of that country rights not available to other Commonwealth citizens, Clause (2) shall apply, in relation to those rights, as if that country were a foreign country.

(4) If the Federal Government is satisfied that any woman who is a citizen by registration under Clause (1) of Article 15 has acquired the citizenship of any country outside the Federation by virtue of her marriage to a person who is not a citizen, the Federal Government may by order deprive her of her citizenship.

Deprivation of citizenship by registration under Article 17 or by naturalisation.

†25. (1) Subject to Clause (3), the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 17 or a citizen by naturalisation if satisfied—

(*a*) that he has shown himself by act or speech to be disloyal or disaffected towards the Federation;

(*b*) that he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or

(*c*) that he has, within the period of five years beginning with the date of the registration

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* *See* Article 27.

† *See* Articles 27 and 28 (2).

or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced.

(2) Subject to Clause (3), the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 17 or a citizen by naturalisation if satisfied that he has been ordinarily resident in foreign countries* for a continuous period of seven years and during that period has neither—

(*a*) been at any time in the service of the Federation or of an international organisation of which the Federal Government was a member; nor

(*b*) registered annually at a Malayan Consulate his intention to retain his citizenship.

(3) No person shall be deprived of citizenship under this Article unless the Federal Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under Clause (1) if, as the result of the deprivation, he would not be a citizen of any country outside the Federation.

Other provisions for deprivation of citizenship by registration or naturalisation.

†**26.** (1) Subject to Clause (3), the Federal Government may by order deprive of his citizenship any citizen by registration or by naturalisation if satisfied that the registration or certificate of naturalisation—

(*a*) was obtained by means of fraud, false representation or the concealment of any material fact; or

(*b*) was effected or granted by mistake.

(2) Subject to Clause (3), the Federal Government may by order deprive of her citizenship any woman who is a citizen by registration under Clause (1) of Article 15 if satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage.

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* "Foreign countries" is a term that does not include any part of the Commonwealth or the Republic of Ireland (*see* Article 160).

† *See* Article 27, and also Article 170.

(3) No person shall be deprived of citizenship under this Article unless the Federal Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under paragraph (*b*) of Clause (1) unless the notice required by Article 27 is given within the period of twelve months beginning with the date of the registration or of the grant of the certificate, as the case may be.

(4) Except as provided by this Article, the registration of a person as a citizen or the grant of a certificate of naturalisation to any person shall not be called in question on the ground of mistake.

Procedure for deprivation.

27. (1) Before making an order under Article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article.

(2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government shall, and in any other case the Federal Government may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that Government for the purpose.

(3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government may direct, and submit its report to that Government; and the Federal Government shall have regard to the report in determining whether to make the order.

Application of Chapter 2 to certain citizens by operation of law.

28. (1) For the purposes of the foregoing provisions of this Chapter—

(*a*) any person who before Merdeka Day became a federal citizen or a citizen of the Federation by registration as a citizen or in consequence of his registration as the subject of a Ruler, or by the grant of a certificate of citizenship, under any provision of the Federation of Malaya Agreement, 1948, or of any State law shall be treated as a citizen by registration and, if he was not born within the Federation, as a citizen by registration under Article 17;

(*b*) a woman who before that day became a federal citizen or a citizen of the Federation by registration as a citizen, or in consequence of her registration as the subject of a Ruler, under any provision of the said Agreement or of any State law authorising the registration of women married to citizens of the Federation or to subjects of the Ruler shall be treated as a citizen by registration under Clause (1) of Article 15;

(*c*) any person who before that day was naturalised as a federal citizen or a citizen of the Federation under the said Agreement or became a federal citizen or a citizen of the Federation in consequence of his naturalisation as the subject of a Ruler under any State law shall (subject to Clause (2)) be treated as a citizen by naturalisation,

and references in those provisions to the registration or naturalisation of a citizen shall be construed accordingly.

(2) No person born within the Federation shall be liable by virtue of this Article to be deprived of citizenship under Article 25.

Chapter 3—Supplemental

Commonwealth citizenship.

*__29.__ (1) In accordance with the position of the Federation within the Commonwealth, every person who is a citizen of the Federation enjoys by virtue of that citizenship the status of a Commonwealth citizen in common with the citizens of other Commonwealth countries.

(2) Any existing law shall, except so far as Parliament otherwise provides, apply in relation to a citizen of the Republic of Ireland who is not also a Commonwealth citizen as it applies in relation to a Commonwealth citizen.

Certificates of citizenship.

30. (1) The registration authority may, on the application of any person with respect to whose citizenship a doubt exists, whether of fact or of law, certify that that person is a citizen.

(2) A certificate issued under this Article shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that the person to whom it relates was a citizen on the date of the certificate,

* *See* also section 1 of the United Kingdom British Nationality Act, 1948, reprinted as a foot-note at page 4, *supra*, and Article 155, *infra*.

but without prejudice to any evidence that he was a citizen at an earlier date.

Application of Schedule 2.

31. Until Parliament otherwise provides, the supplementary provisions contained in the Second Schedule shall have effect for the purposes of this Part.

PART IV

THE FEDERATION

Chapter 1—The Supreme Head

Supreme Head of the Federation, and his Consort.

32. (1) There shall be a Supreme Head of the Federation, to be called the Yang di-Pertuan Agong, who shall take precedence over all persons in the Federation and shall not be liable to any proceedings whatsoever in any court.

(2) The Consort of the Yang di-Pertuan Agong (who shall be known as the Raja Permaisuri Agong) shall take precedence next after the Yang di-Pertuan Agong over all other persons in the Federation.

(3) The Yang di-Pertuan Agong shall be elected by the Conference of Rulers for a term of five years, but may at any time resign his office by writing under his hand addressed to the Conference of Rulers or be removed from office by the Conference of Rulers, and shall cease to hold office on ceasing to be a Ruler.

(4) The provisions of Parts I and III of the Third Schedule shall apply to the election and removal of the Yang di-Pertuan Agong.

Deputy Supreme Head of the Federation.

33. (1) There shall be a Deputy Supreme Head of the Federation (to be known as the Timbalan Yang di-Pertuan Agong) who shall exercise the functions and have the privileges of the Yang di-Pertuan Agong during any vacancy in the office of the Yang di-Pertuan Agong and during any period during which the Yang di-Pertuan Agong is unable to exercise the functions of his office owing to illness, absence from the Federation or for any other cause, but the Deputy Supreme Head shall not exercise those functions during any absence of the Yang di-Pertuan Agong which is expected to be less than fifteen days.

(2) The Deputy Supreme Head shall be elected by the Conference of Rulers for a term of five years, or if elected during the term for which the Yang di-Pertuan Agong was elected, for the remainder of that term, but may at any time resign his office by writing under his hand addressed to the Conference of Rulers and shall cease to hold office on ceasing to be a Ruler.

(3) If during the term for which the Deputy Supreme Head of the Federation was elected a vacancy occurs in the office of the Yang di-Pertuan Agong his term shall expire on the cessation of the vacancy.

(4) The provisions of Part II of the Third Schedule shall apply to the election of the Deputy Supreme Head of the Federation.

*(5) Parliament may by law provide for the exercise by a Ruler of the functions of the Yang di-Pertuan Agong in cases where those functions would under Clause (1) fall to be exercised by the Deputy Supreme Head but cannot be so exercised owing to a vacancy in the office of the Deputy Supreme Head or to his illness, absence from the Federation or to any other cause; but such a law shall not be passed without the consent of the Conference of Rulers.

Disabilities of Yang di-Pertuan Agong, etc

34. (1) The Yang di-Pertuan Agong shall not exercise his functions as Ruler of his State except those of Head of the Muslim religion.†

(2) The Yang di-Pertuan Agong shall not hold any office of profit.

(3) The Yang di-Pertuan Agong shall not actively engage in any commercial enterprise.

(4) The Yang di-Pertuan Agong shall not receive any emoluments of any kind whatever payable or accruing to him as the Ruler of his State under the provisions of the Constitution of that State or of any State law.

(5) The Yang di-Pertuan Agong shall not, without the consent of the Conference of Rulers, be absent from the Federation for more than fifteen days, except on a State visit to another country.

(6) The Raja Permaisuri Agong shall not hold any office under the Federation or any State.

(7) Where the Deputy Supreme Head of the Federation or any other person authorised by law exercises the functions of the Yang di-Pertuan Agong for a period exceeding fifteen days Clauses (1) to (5) shall apply to him during that period as they apply to the Yang di-Pertuan Agong.

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* *See* the Yang di-Pertuan Agong (Exercise of Functions) Ordinance, 1957, *infra*.

† As a result of possible difficulties arising out of the necessity to amend the several State Constitutions pursuant to Article 71 and the Eighth Schedule, it may become necessary to modify the prohibition imposed by Clause (1) of this Article, by means of an amendment made pursuant to Clause (2) of Article 159 of the Constitution.

*35. (1) Parliament shall by law provide a Civil List of the Yang di-Pertuan Agong and a Civil List of the Raja Permaisuri Agong and those Civil Lists shall be charged on the Consolidated Fund and shall not be diminished during the Yang di-Pertuan Agong's continuance in office. Civil List of the Yang di-Pertuan Agong and his Consort and remuneration of the Deputy Supreme Head.

(2) Parliament shall by law make provision for the remuneration of the Deputy Supreme Head of the Federation or any other person authorised by law to exercise the functions of the Yang di-Pertuan Agong during any period during which he exercises those functions.

36. The Yang di-Pertuan Agong shall keep and use the Public Seal of the Federation. Public Seal.

37. (1) The Yang di-Pertuan Agong shall before exercising his functions take and subscribe before the Conference of Rulers and in the presence of the Chief Justice of the Federation (or in his absence the next senior judge of the Supreme Court available) the oath of office set out in Part I of the Fourth Schedule; and the oath shall be attested by two persons appointed for the purpose by the Conference of Rulers. Oath of office of Yang di-Pertuan Agong.

(2) The Deputy Supreme Head of the Federation shall before exercising his functions, other than the functions exercisable for the purpose of convening the Conference of Rulers, take and subscribe before the Conference of Rulers and in the presence of the Chief Justice of the Federation (or in his absence the next senior judge of the Supreme Court available) the oath of office set out in Part II of the Fourth Schedule.

(3) The said oaths, translated into English, are set out in Part III of the Fourth Schedule.

(4) Any law made under Article 33 (5) shall make provision corresponding (with the necessary modifications) to Clause (2).

Chapter 2—The Conference of Rulers

†**38.** (1) There shall be a Majlis Raja-Raja (Conference of Rulers), which shall be constituted in accordance with the Fifth Schedule. Conference of Rulers.

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* *See* the Civil Lists Ordinance, 1957 (Ordinance No. 70 of 1957). The civil list of the Yang di-Pertuan Agong comprises yearly sums of $216,000 in respect of the Privy Purse and entertainment, $335,000 in respect of salaries and expenses of the Royal Household and Court; and $6,000 in respect of the Royal Bounty, Alms and special services. The Raja Permaisuri Agong receives an annual sum of $30,000.

† *See* Article 159 (5).

(2) The Conference of Rulers shall exercise its functions of—

(*a*) electing, in accordance with the provisions of the Third Schedule, the Yang di-Pertuan Agong and Deputy Supreme Head of the Federation,

(*b*) agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole,

(*c*) consenting or withholding consent to any law and making or giving advice on any appointment which under this Constitution requires the consent of the Conference or is to be made by or after consultation with the Conference,

and may deliberate on questions of national policy (for example changes in immigration policy) and any other matter that it thinks fit.

(3) When the Conference deliberates on matters of national policy the Yang di-Pertuan Agong shall be accompanied by the Prime Minister, and the other Rulers and the Governors by their Mentri Mentri Besar or Chief Ministers; and the deliberations shall be among the functions exercised, by the Yang di-Pertuan Agong in accordance with the advice of the Cabinet, and by the other Rulers and the Governors in accordance with the advice of their Executive Councils.

(4) No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

(5) The Conference of Rulers shall be consulted before any change in policy affecting administrative action under Article 153 is made.

(6) The members of the Conference of Rulers may act in their discretion in any proceedings relating to the following functions, that is to say—

(*a*) the election or removal from office of the Yang di-Pertuan Agong or the election of the Deputy Supreme Head of the Federation;

(*b*) the advising on any appointment;

(*c*) the giving or withholding of consent to any law altering the boundaries of a State or affecting the privileges, position, honours or dignities of the Rulers; or

(*d*) the agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole.

Chapter 3—The Executive

Executive authority of Federation.

39. The executive authority of the Federation shall be vested in the Yang di-Pertuan Agong, but Parliament may by law confer executive functions on other persons.

Yang di-Pertuan Agong to act on advice.

40. (1) In the exercise of his functions under this Constitution or federal law the Yang di-Pertuan Agong shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet, except as otherwise provided by this Constitution; but shall be entitled, at his request, to any information concerning the government of the Federation which is available to the Cabinet.

(2) The Yang di-Pertuan Agong may act in his discretion in the performance of the following functions, that is to say—

(*a*) the appointment of a Prime Minister,

(*b*) the withholding of consent to a request for the dissolution of Parliament,

(*c*) the requisition of a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Highnesses, and any action at such a meeting,

and in any other case mentioned in this Constitution.

*(3) Federal law may make provision for requiring the Yang di-Pertuan Agong to act after consultation with or on the recommendation of any person or body of persons other than the Cabinet in the exercise of any of his functions other than—

(*a*) functions exercisable in his discretion;

(*b*) functions with respect to the exercise of which provision is made in any other Article.

Supreme command of armed forces.

41. The Yang di-Pertuan Agong shall be the Supreme Commander of the armed forces of the Federation.

Power of pardon, etc.

42. (1) The Yang di-Pertuan Agong has power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial; and the Ruler or Governor of a State has power to grant pardons, reprieves and respites in respect of all other offences committed in his State.

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* *See* Article 42 (4) (*a*).

Subject to Clause 10

(2) Any power conferred by federal or State law to remit, suspend or commute sentences for any offence* shall be exercisable by the Yang di-Pertuan Agong if the sentence was passed by a court-martial and, in any other case, shall be exercisable by the Ruler or Governor of the State in which the offence was committed.

(3) Where an offence was committed wholly or partly outside the Federation or in more than one State or in circumstances which make it doubtful where it was committed, it shall be treated for the purposes of this Article as having been committed in the State in which it was tried.

(4) The powers mentioned in this Article—

(*a*) are, so far as they are exercisable by the Yang di-Pertuan Agong, among functions with respect to which federal law may make provision under Article 40 (3);

(*b*) shall, so far as they are exercisable by the Ruler or Governor of a State, be exercised on the advice of a Pardons Board constituted for that State in accordance with Clause (5).

(5) The Pardons Board constituted for each State shall consist of the Attorney-General of the Federation, the Chief Minister of the State and not more than three other members, who shall be appointed by the Ruler or Governor; but the Attorney-General may from time to time by instrument in writing delegate his functions as a member of the Board to any other person, and the Ruler or Governor may appoint any person to exercise temporarily the functions of any member of the Board appointed by him who is absent or unable to act.

(6) The members of a Pardons Board appointed by the Ruler or Governor shall be appointed for a term of three years and shall be eligible for re-appointment, but may at any time resign from the Board.

(7) A member of the Legislative Assembly of a State or of the House of Representatives shall not be appointed to be a member of a Pardons Board or to exercise temporarily the functions of such a member.

(8) The Pardons Board shall meet in the presence of the Ruler or Governor and he shall preside over it.

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* This power exists under the two Criminal Procedure Codes in force in the Federation, one in respect of Penang and Malacca and the other in respect of the rest of the Federation. *See* for example, Chapter XXVIII of the Criminal Procedure Code of the Federated Malay States (F.M.S. *Cap. 6*).

(9) Before tendering their advice on any matter a Pardons Board shall consider any written opinion which the Attorney-General may have delivered thereon.

The Cabinet.

43. (1) The Yang di-Pertuan Agong shall appoint a Juma'ah Mentri (Cabinet of Ministers) to advise him in the exercise of his functions.

(2) The Cabinet shall be appointed as follows, that is to say—

(*a*) the Yang di-Pertuan Agong shall first appoint as Perdana Mentri (Prime Minister) to preside over the Cabinet a member of the House of Representatives who in his judgment is likely to command the confidence of the majority of the members of that House; and

(*b*) he shall on the advice of the Prime Minister appoint other Mentri (Ministers) from among the members of either House of Parliament;

but if an appointment is made while Parliament is dissolved a person who was a member of the last House of Representatives may be appointed but shall not continue to hold office after the beginning of the next session of Parliament unless, if he has been appointed Prime Minister, he is a member of the new House of Representatives, and in any other case he is a member either of that House or of the Senate.

(3) The Cabinet shall be collectively responsible to Parliament.

(4) If the Prime Minister ceases to command the confidence of the majority of the members of the House of Representatives, then, unless at his request the Yang di-Pertuan Agong dissolves Parliament, the Prime Minister shall tender the resignation of the Cabinet.

(5) Subject to Clause (4), Ministers other than the Prime Minister shall hold office during the pleasure of the Yang di-Pertuan Agong, but any Minister may resign his office.

(6) Before a Minister exercises the functions of his office he shall take and subscribe in the presence of the Yang di-Pertuan Agong the oath of office and allegiance and the oath of secrecy set out in the Sixth Schedule.

(7) Notwithstanding anything in this Article, a person who is a citizen by naturalisation or by registration under Article 17 shall not be appointed Prime Minister.

(8) If a member of the Legislative Assembly of a State is appointed a Minister he shall resign from the Assembly before exercising the functions of his office.

(9) Parliament shall by law make provision for the remuneration of members of the Cabinet.*

Chapter 4—Federal Legislature†

Constitution of Parliament.

44. The legislative authority of the Federation shall be vested in a Parliament, which shall consist of the Yang di-Pertuan Agong and two Majlis (Houses of Parliament) to be known as the Dewan Negara (Senate) and the Dewan Ra'ayat (House of Representatives).

Composition of Senate.

45. (1) Subject to Clause (4), the Senate shall consist of elected and appointed members as follows,—

(*a*) two members for each State shall be elected in accordance with the Seventh Schedule; and

(*b*) sixteen members shall be appointed by the Yang di-Pertuan Agong.

(2) The members to be appointed by the Yang di-Pertuan Agong shall be persons who in his opinion have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of aborigines.

(3) The term of office of a member of the Senate shall, subject to the provisions of the Seventh Schedule, be six years and shall not be affected by a dissolution of Parliament.

‡(4) Parliament may by law—

(*a*) increase to three the number of members to be elected for each State;

(*b*) provide that the members to be elected for each State shall be so elected by the direct vote of the electors of that State;

(*c*) decrease the number of appointed members or abolish appointed members.

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* *See* the Ministers (Remuneration) Ordinance, 1957 (Ordinance No. 63 of 1957). This Ordinance fixes the salary of the Prime Minister at $48,000 a year, and that of each of the other Ministers at $36,000 a year. In addition to such salaries, certain allowances and privileges are conferred on the Prime Minister and other Ministers; these are in general similar to those granted to officers in the public service of the Federation. The Prime Minister also receives a monthly allowance of $1,000 as Leader of the House.

† This Chapter will only come into force upon the dissolution of the last Legislative Council: *see* Article 164 (3).

‡ *See* Article 120.

Composition of House of Representatives.

*46. (1) The House of Representatives shall consist of one hundred elected members except that the first House of Representatives shall consist of one hundred and four.

(2) After the completion of the first census to be taken after Merdeka Day Parliament may by law alter the number of members of the House of Representatives.

Qualifications for membership of Parliament.

47. Every citizen resident in the Federation is qualified to be a member—

(*a*) of the Senate, if he is not less than thirty years old,

(*b*) of the House of Representatives, if he is not less than twenty-one years old,

unless he is disqualified for being a member by this Constitution or by any law made in pursuance of Article 48.

Disqualification for membership of Parliament.

48. (1) Subject to the provisions of this Article, a person is disqualified for being a member of either House of Parliament if—

(*a*) he is and has been found or declared to be of unsound mind; or

(*b*) he is an undischarged bankrupt; or

(*c*) he holds an office of profit; or

(*d*) having been nominated for election to either House of Parliament, or having acted as election agent to a person so nominated, he has failed to lodge any return of election expenses required by law within the time and in the manner so required; or

(*e*) he has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than two years and has not received a free pardon; or

(*f*) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, a foreign country or has made a declaration of allegiance to a foreign country.

(2) Federal law may impose, for such periods as may be specified thereby, disqualification for membership of either House of Parliament on persons committing offences in connection with elections; and any person who has been convicted of such an offence or has in proceedings relating to an election been proved guilty of an act constituting such an offence, shall be disqualified accordingly for the period so specified.

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* *See* Article 113 (3).

(3) The disqualification of a person under paragraph (*d*) or paragraph (*e*) of Clause (1) may be removed by the Yang di-Pertuan Agong and shall, if not so removed, cease at the end of the period of five years beginning with the date on which the return mentioned in the said paragraph (*d*) was required to be lodged, or, as the case may be, the date on which the person convicted as mentioned in the said paragraph (*e*) was released from custody; and a person shall not be disqualified under paragraph (*f*) of Clause (1) by reason only of anything done by him before he became a citizen.

Provisions against double membership.

49. A person shall not at the same time be a member of both Houses of Parliament, nor be elected to the House of Representatives for more than one constituency or to the Senate for more than one State, nor be both an elected and an appointed member of the Senate.

Effect of disqualification, and prohibition of nomination or appointment without consent.

50. (1) If a member of either House of Parliament becomes disqualified for membership of that House his seat shall become vacant.

(2) If a person disqualified for being a member of the House of Representatives is elected to that House or if a person disqualified for being a member of the Senate is elected or appointed to the Senate, or if an election or appointment to either House is contrary to Article 49, the election or appointment shall be void.

(3) If the election of any person would or might be void under Clause (2) his nomination for the election shall be void.

(4) A person cannot be validly nominated for election to membership of either House or appointed to the Senate without his consent.

Resignation of members.

51. A member of either House of Parliament may resign his membership by writing under his hand addressed, if he is a member of the Senate, to the President of the Senate, and if a member of the House of Representatives, to the Speaker of that House.

Absence of a member.

52. If a member of either House of Parliament is without the leave of the House absent from every sitting of the House for a period of six months the House may declare his seat vacant.

Decisions as to disqualification.

53. If any question arises whether a member of a House of Parliament has become disqualified for membership, the decision of that House shall be taken and shall be final.

Casual vacancies.

54. Whenever there is a casual vacancy among the members of either House of Parliament it shall be filled within sixty days from the date on which it occurs, and an election shall be held or an appointment made accordingly.

Summoning, prorogation and dissolution of Parliament.

55. (1) The Yang di-Pertuan Agong shall from time to time summon Parliament and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first meeting in the next session.

(2) The Yang di-Pertuan Agong may prorogue or dissolve Parliament.

(3) Parliament unless sooner dissolved shall continue for five years from the date of its first meeting and shall then stand dissolved.

(4) Whenever Parliament is dissolved a general election shall be held within sixty days from the date of the dissolution and Parliament shall be summoned to meet on a date not later than ninety days from that date.

President and Deputy President of Senate.

56. (1) The Senate shall from time to time choose one of its members to be Yang di-Pertua Dewan Negara (President of the Senate) and one to be Deputy President of the Senate, and shall transact no business while the office of President is vacant other than the election of a President.

(2) A member holding office as President or Deputy President shall cease to hold his office on the expiry of the term for which he was elected or appointed a member or on otherwise ceasing to be a member of the Senate and may at any time resign his office.

(3) During any absence of the President from any sitting the Deputy President or, if he also is absent, such other member as may be determined by the rules of procedure of the Senate, shall act as President.

Speaker and Deputy Speaker of the House of Representatives.

57. (1) The House of Representatives shall from time to time choose one of its members to be Yang di-Pertua Dewan Ra'ayat (Speaker) and one to be Deputy Speaker, and shall transact no business while the office of Speaker is vacant other than the election of a Speaker.

(2) A member holding office as Speaker or Deputy Speaker shall vacate his office on ceasing to be a member of the House of Representatives and may at any time resign his office.

(3) During any absence of the Speaker from a sitting of the House of Representatives the Deputy Speaker or, if he also is absent, such other member as may be determined by the rules of procedure of the House, shall act as Speaker.

Remuneration of President, Deputy President, Speaker and Deputy Speaker.

58. Parliament shall by law provide for the remuneration of the President and Deputy President of the Senate and the Speaker and Deputy Speaker of the House of Representatives, and the remuneration so provided for the President of the Senate and the Speaker of the House of Representatives shall be charged on the Consolidated Fund.

Oaths by members.

59. (1) Every member of either House of Parliament shall before taking his seat take and subscribe before the person presiding in the House an oath in the form set out in the Sixth Schedule, but a member may before taking that oath take part in the election of a President of the Senate or Speaker of the House of Representatives.

(2) If a member has not taken his seat within three months from the date on which the House first sits after his election or such further time as the House may allow, his seat shall become vacant.

Address by the Yang di-Pertuan Agong.

60. The Yang di-Pertuan Agong may address either House of Parliament or both Houses jointly.

Special provisions as to Cabinet and Attorney General.

61. (1) In addition to his rights as a member of one of the Houses of Parliament every member of the Cabinet shall have the right to take part in the proceedings of the other House.

(2) Either House of Parliament may appoint as a member of any of its committees the Attorney General or any member of the Cabinet notwithstanding that he is not a member of that House.

(3) This Article does not authorise any person who is not a member of a House to vote in that House or any of its committees.

Parliamentary procedure.

62. (1) Subject to the provisions of this Constitution and of federal law, each House of Parliament shall regulate its own procedure.

(2) Each House may act notwithstanding any vacancy in its membership, and the presence or participation of any person not entitled thereto shall not invalidate any proceedings.

(3) Subject to Clause (4) and to Articles 89 (1) and 159 (3), each House shall, if not unanimous, take its decision by a simple majority of members voting; and the person presiding shall cast his vote whenever necessary to avoid an equality of votes, but shall not vote in any other case.

(4) In regulating its procedure each House may provide, as respects any decision relating to its proceedings, that it shall not be made except by a specified majority or by a specified number of votes.

(5) Members absent from a House shall not be allowed to vote.

*Privileges of Parliament.

63. (1) The validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court.

(2) No person shall be liable to any proceedings in any court in respect of anything said or any vote given by him when taking part in any proceedings of either House of Parliament or any committee thereof.

(3) No person shall be liable to any proceedings in any court in respect of anything published by or under the authority of either House of Parliament.

Remuneration of members.

64. Parliament shall by law provide for the remuneration of members of each House.

Clerks of Senate and House of Representatives.

65. (1) There shall be a Clerk to the Senate and a Clerk to the House of Representatives.

(2) The Clerk to the Senate and the Clerk to the House of Representatives shall be appointed by the Yang di-Pertuan Agong and, subject to Clause (3), each shall hold office until he attains the age of sixty years or such other age as Parliament may by law provide, unless he sooner resigns his office.

(3) The Clerk to the Senate and the Clerk to the House of Representatives may be removed from office on the like grounds and in the like manner as a judge of the Supreme Court, except that the representation mentioned in Article 125 (3) shall be a representation made by the President of the Senate or, as the case may be, the Speaker of the House of Representatives.

(4) Before appointing any member of his staff the Clerk to the Senate shall consult the President of the Senate, and the Clerk to the House of Representatives the Speaker of that House.

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* *See* the Legislative Council (Privileges and Powers) Ordinance, 1952 (Ordinance No. 15 of 1952) for existing provisions relating to the powers and privileges of the Federal Legislative Council.

(5) The Clerk to the Senate, the Clerk to the House of Representatives and members of their staffs are disqualified for being members of either House of Parliament or the Legislative Assembly of any State.

*Chapter 5—Legislative procedure**

Exercise of legislative power.

66. (1) The power of Parliament to make laws shall be exercised by Bills passed by both Houses (or, in the cases mentioned in Article 68, the House of Representatives) and assented to by the Yang di-Pertuan Agong.

(2) Subject to Article 67, a Bill may originate in either House.

(3) When a Bill has been passed by the House in which it originated it shall be sent to the other House; and it shall be presented to the Yang di-Pertuan Agong for his assent when it has been passed by the other House and agreement has been reached between the two Houses on any amendments made in it or when it is required to be so presented under Article 68.

(4) The Yang di-Pertuan Agong shall signify his assent to a Bill by causing the Public Seal to be affixed thereto, and after assenting to a Bill he shall cause it to be published as a law.

(5) A Bill shall become law on being assented to by the Yang di-Pertuan Agong, but no law shall come into force until it has been published, without prejudice, however, to the power of Parliament to postpone the operation of any law or to make laws with retrospective effect.

(6) Nothing in this Article or in Article 68 shall invalidate any law confirming an undertaking given by the Federal Government to the effect that a Bill to which the undertaking relates shall not be presented to the Yang di-Pertuan Agong for his assent except in accordance with the undertaking.

Restriction on introduction of Bills and moving of amendments involving taxation, expenditure, etc.

67. (1) A Bill or amendment making provision for—

(*a*) imposing or increasing any tax or abolishing, reducing or remitting any existing tax, or

(*b*) the borrowing of money, or the giving of any guarantee, by the Federation, or the amendment of the law relating to the financial obligations of the Federation;

(*c*) the custody of the Consolidated Fund, the charging of any money on the Consolidated

* This Chapter will only come into force upon the dissolution of the last Legislative Council: *see* Article 164 (3).

Fund or the abolition or alteration of any such charge;

(*d*) the payment of moneys into the Consolidated Fund or the payment, issue or withdrawal from the Consolidated Fund of any moneys not charged thereon, or any increase in the amount of such a payment, issue or withdrawal;

(*e*) the compounding or remission of any debt due to the Federation;

(*f*) the assignment of a tax or fee or the making of a grant to any State;

(*g*) the receipt of moneys on account of the Consolidated Fund or the custody or issue of such moneys or the audit of the accounts of the Federation or a State;

shall not be introduced or moved except by a Minister, and a Bill making provision for any such matter shall not be introduced in the Senate.

(2) A Bill or amendment shall not be deemed to make provision for any of the said matters by reason only that it provides—

(*a*) for the imposition or alteration of any fine or other pecuniary penalty or for the payment or demand of a licence fee or a fee or charge for any service rendered; or

(*b*) for the imposition, alteration or regulation of any tax or rate by any local authority or body for local purposes.

Assent to Bills passed by House of Representatives only.

68. (1) Where a money Bill is passed by the House of Representatives and, having been sent to the Senate at least one month before the end of the session, is not passed by the Senate without amendment within a month, it shall be presented to the Yang di-Pertuan Agong for his assent unless the House of Representatives otherwise directs.

(2) Where—

(*a*) a Bill which is not a money Bill is passed by the House of Representatives and, having been sent to the Senate at least one month before the end of the session, is not passed by the Senate or is passed by the Senate with amendments to which the House of Representatives does not agree; and

(*b*) in the following session (whether of the same Parliament or not) but not earlier than one year after it was first passed by the House of Representatives the same Bill, with no other alterations than those mentioned in Clause (3), is passed again by the House of Representatives and sent to the Senate at least one month before the end of the session and is not passed by the Senate or is passed by the Senate with amendments to which the House of Representatives does not agree,

the Bill shall, unless the House of Representatives otherwise directs, be presented to the Yang di-Pertuan Agong for his assent with such amendments, if any, as may have been agreed to by both Houses.

(3) The alterations referred to in Clause (2) are alterations certified by the Speaker of the House of Representatives to be necessary owing to the time which has elapsed since the Bill was passed in the earlier session or to represent amendments made in that session by the Senate.

(4) When a Bill is presented to the Yang di-Pertuan Agong in pursuance of this Article it shall bear a certificate of the Speaker of the House of Representatives that the provisions of this Article have been complied with, and that certificate shall be conclusive for all purposes and shall not be questioned in any court.

(5) This Article does not apply to any Bill for making any amendment to this Constitution, other than an amendment excepted from the provisions of Article 159 (3).

(6) In this Article "money Bill" means a Bill which, containing in the opinion of the Speaker of the House of Representatives only provisions dealing with all or any of the following matters, that is to say—

(*a*) the matters mentioned in Article 67 (1) or the regulation of any tax,

(*b*) the reduction of any such amount as is mentioned in paragraph (*d*) of Article 67 (1); and

(*c*) any matter incidental to those matters or any of them,

is certified by him as a money Bill.

Chapter 6—Capacity as respects property, contracts and suits

Capacity of Federation as respects property, contracts and suits.

69. (1) The Federation has power to acquire, hold and dispose of property of any kind and to make contracts.

(2) The Federation may sue and be sued.*

PART V

THE STATES

Precedence of Rulers and Governors.

†**70.** (1) Subject to the precedence of the Yang di-Pertuan Agong and his Consort, the Rulers and Governors of the States shall take precedence over all other persons and each Ruler or Governor shall in his own State take precedence over the other Rulers and Governors.

(2) Subject to Clause (1), the Rulers shall take precedence over the Governors and, among themselves, in accordance with the dates on which they acceded as Rulers, and the Governors shall take precedence among themselves in accordance with the dates on which they were appointed as Governors; and if Governors were appointed on the same day the older shall take precedence over the younger.

Federal guarantee of State Constitutions.

71. (1) The Federation shall guarantee the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State; but any dispute as to the title to the succession as Ruler of any State shall be determined solely by such authorities and in such manner as may be provided by the Constitution of that State.

(2) Clause (1) shall, with the necessary modifications apply in relation to a Ruling Chief of Negri Sembilan as it applies to the Ruler of a State.

(3) If it appears to Parliament that in any State any provision of this Constitution or of the Constitution of that State is being habitually disregarded Parliament may, notwithstanding anything in this Constitution, by law make provision for securing compliance with those provisions.

(4) If at any time after the thirtieth day of June, nineteen hundred and fifty-nine, it appears to

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* *See* the Government Proceedings Ordinance, 1956 (Ordinance No. 58 of 1956); this Ordinance had not, however, been brought into force upon Merdeka Day, and was not, therefore, "existing law" for the purpose of Article 162. The Ordinance was modified under the Pending Laws (Validation) Ordinance, 1957 (Ordinance No. 58 of 1957) and came into force on April 1, 1958.

† *See* Article 159 (5).

Parliament that the Constitution of any State does not contain the provisions set out in Part I of the Eighth Schedule, with or without the modifications allowed under Clause (5) (hereinafter referred to as "the essential provisions") or provisions substantially to the same effect, or contains provisions inconsistent with the essential provisions, Parliament may, notwithstanding anything in this Constitution, by law make provision for giving effect in that State to the essential provisions or for removing the inconsistent provisions.

(5) The provisions set out in Part I of the Eighth Schedule may be modified by substituting for section 2 or section 4 or both the provisions set out in Part II of that Schedule as an alternative thereto—

(*a*) in the case of every State, until the dissolution of the second Legislative Assembly constituted in accordance with those provisions or those provisions so modified;

(*b*) in the case of Perlis, until such further time as the Legislative Assembly of that State may resolve and, as respects the provision set out in section 2 of that Schedule, indefinitely.

(6) A law made for a State in pursuance of this Article shall, unless sooner repealed by Parliament, cease to have effect on such day as a new Legislative Assembly, constituted in that State after the passing of the law, may resolve.

Privileges of Legislative Assembly.

72. (1) The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court.

(2) No person shall be liable to any proceedings in any court in respect of anything said or any vote given by him when taking part in proceedings of the Legislative Assembly of any State or of any committee thereof.

(3) No person shall be liable to any proceedings in any court in respect of anything published by or under the authority of the Legislative Assembly of any State.

PART VI

RELATIONS BETWEEN THE FEDERATION AND THE STATES

Chapter 1—Distribution of legislative powers

Extent of federal and State laws.

73. In exercising the legislative powers conferred on it by this Constitution—

(*a*) Parliament may make laws for the whole or any part of the Federation and laws having

effect outside as well as within the Federation;

(*b*) the Legislature of a State may make laws for the whole or any part of that State.

Subject matter of federal and State laws.

***74.** (1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).

(2) The Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

(3) The power to make laws conferred by this Article is exercisable subject to any conditions or restrictions imposed with respect to any particular matter by this Constitution.

(4) Where general as well as specific expressions are used in describing any of the matters enumerated in the Lists set out in the Ninth Schedule the generality of the former shall not be taken to be limited by the latter.

Inconsistencies between federal and State laws.

75. If any State Law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void.

Power of Parliament to legislate for States in certain cases.

76. (1) Parliament may make laws with respect to any matter enumerated in the State List, but only as follows, that is to say—

(*a*) for the purpose of implementing any treaty, agreement or convention between the Federation and any other country, or any decision of an international organisation of which the Federation is a member;† or

(*b*) for the purpose of promoting uniformity of the laws of two or more States; or

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* This Article is derived from Article 68 of the draft Constitution prepared by the Constitutional Commission. That article included, however, a clause providing that nothing in the Article should "render invalid any provision of a federal law if in pith and substance it relates to any of the matters enumerated in the Federal List or the Concurrent List or render invalid any provision of a State law if in pith and substance it relates to any of the matters enumerated in the State List or the Concurrent List". This clause is not included in Article 74: but it expresses a principle of interpretation that may be adopted in the construction of Article 74: *see*, for example, *Russell* v. *The Queen* (1887) 7 A.C. 829; *Lahore* v. *Bennett* (1939) A.C. 468, and also Basu, *Commentary on the Constitution of India*, Sarkar and Sons, Calcutta (*Second edition, 1952*), p. 616.

† *See* Article 169.

(*c*) if so requested by the Legislative Assembly of any State.

(2) No law shall be made in pursuance of paragraph (*a*) of Clause (1) with respect to any matters of Muslim law or the custom of the Malays and no Bill for a law under that paragraph shall be introduced into either House of Parliament until the Government of any State concerned has been consulted.

(3) Subject to Clause (4), a law made in pursuance of paragraph (*b*) or paragraph (*c*) of Clause (1) shall not come into operation in any State until it has been adopted by a law made by the Legislature of that State, and shall then be deemed for the purposes of Article 75 to be a State law and not a federal law, and may accordingly be amended or repealed by a law made by that Legislature.

*(4) Parliament may, for the purpose only of ensuring uniformity of law and policy, make laws with respect to land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases other than mining leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land, and local government; and Clauses (1) (*b*) and (3) shall not apply to any law relating to any such matter.

Residual power of legislation.

77. The Legislature of a State shall have power to make laws with respect to any matter not enumerated in any of the Lists set out in the Ninth Schedule, not being a matter in respect of which Parliament has power to make laws.

Legislation restricting use of rivers.

78. In so far as any law made by Parliament or any regulation made in pursuance of such a law restricts the rights of a State or its residents to the use for navigation or irrigation of any river wholly within that State it shall not have effect in that State unless it has been approved by a resolution of the Legislative Assembly of that State supported by a majority of the total number of its members.

Exercise of concurrent legislative powers.

†**79.** (1) Where it appears to the presiding officer of either House of Parliament or of the Legislative Assembly of any State that a Bill or an amendment to a Bill proposes a change in the law relating to any of the matters enumerated in the Concurrent List, or to

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* *See* Article 80 (3).

† *See* Articles 92 (2), 149 (1) and 150 (6).

any of the matters enumerated in the State List with respect to which the Federation is exercising functions in accordance with Article 94, he shall certify the Bill or amendment for the purposes of this Article.

(2) A Bill or amendment certified under this Article shall not be proceeded with until four weeks have elapsed since its publication, unless the presiding officer, being satisfied that the State Governments, or as the case may be, the Federal Government, have been consulted, allows it to be proceeded with on the ground of urgency.

Chapter 2—Distribution of executive powers

Distribution of executive powers.

*__80.__ (1) Subject to the following provisions of this Article the executive authority of the Federation extends to all matters with respect to which Parliament may make laws, and the executive authority of a State to all matters with respect to which the Legislature of that State may make laws.

(2) The executive authority of the Federation does not extend to any matter enumerated in the State List, except in so far as is provided in Articles 93 to 95, nor to any matter enumerated in the Concurrent List, except in so far as may be provided by federal or State law; and so far as federal or State law confers executive authority on the Federation with respect to any matter enumerated in the Concurrent List it may do so to the exclusion of the executive authority of the State.

(3) So far as a law made under Article 76 (4) makes provision for conferring executive authority on the Federation it shall not operate in any State unless approved by resolution of the Legislative Assembly of that State.

(4) Federal law may provide that the executive authority of a State shall extend to the administration of any specified provisions of federal law and may for that purpose confer powers and impose duties on any authority of the State.

(5) Subject to any provisions of federal or State law, arrangements may be made between the Federation and a State for the performance of any functions by the authorities of the one on behalf of the authorities of the other and such arrangements may provide for the making of payments in respect of any costs incurred under the arrangements.

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* But *see* Article 150 (4).

(6) Where, in pursuance of Clause (4), any functions are conferred by federal law on any authority of a State the Federation shall make such payments to the State as may be agreed between the Federation and the State or as may in default of agreement be determined by a tribunal appointed by the Chief Justice.

Obligations of States towards Federation.

*81. The executive authority of every State shall be so exercised—

(*a*) as to ensure compliance with any federal law applying to that State; and

(*b*) as not to impede or prejudice the exercise of the executive authority of the Federation.

Chapter 3—Distribution of financial burdens

Financing of expenditure relating to matters on Concurrent List.

82. Where any law or executive action relating to any of the matters enumerated in the Concurrent List involves expenditure, such action shall be taken under this Constitution as will ensure that, unless otherwise agreed, the burden of that expenditure is borne—

(*a*) by the Federation, if the expenditure results either from federal commitments or from State commitments undertaken in accordance with federal policy and with the specific approval of the Federal Government;

(*b*) by the State or States concerned, if the expenditure results from State commitments undertaken by the State or States on its or their own authority.

Chapter 4—Land†

Acquisition of land for federal purposes.

83. (1) If the Federal Government is satisfied that land in a State, not being alienated land, is needed for federal purposes, that Government may, after consultation with the State Government, require the State Government, and it shall then be the duty of that Government, to cause to be made to the Federation, or to such public authority as the Federal Government may direct, such grant of the land as the Federal Government may direct:

Provided that the Federal Government shall not require the grant of any land reserved for a State purpose unless it is satisfied that it is in the national interest so to do.

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* But *see* Articles 93 (2), 94 and 95.

† Parliament must by law provide for modifying Articles 83 to 87 in their application to Malacca and Penang: *see* Article 88.

(2) Where in accordance with Clause (1) the Federal Government requires the State Government to cause to be made a grant of land in perpetuity, the grant shall be made without restrictions as to the use of the land but shall be subject to the payment annually of an appropriate quit rent and the Federation shall pay to the State a premium equal to the market value for the grant; and where the Federal Government so requires the State Government to cause to be granted any other interest in land, the Federation shall pay to the State the just annual rent therefor and such premium, if any is required by the State Government, as may be just:

Provided that if the value of the land has been increased by means of any improvement made (otherwise than at the expense of the State) while the land was reserved for federal purposes, the increase shall not be taken into consideration in determining the market value, rent or premium for the purposes of this clause.

(3) Where a requirement is made under Clause (1) in respect of any land which, at the date of the requirement, was intended for any State purpose, then if—

(*a*) other land is acquired by the State for that purpose in substitution for the first-mentioned land; and

(*b*) the cost of the land so acquired exceeds the amount paid by the Federation (otherwise than as rent) in accordance with Clause (2) in respect of the interest granted to the Federation,

the Federation shall pay to the State such sum as may be just in respect of the excess.

(4) Where a further grant is made in pursuance of this Article in respect of land an interest in which is vested in the Federation or any public authority, any sums payable by way of premium under Clause (2) in respect of the further grant shall be reduced by an amount equal to the market value of any improvements made (otherwise than at the expense of the State) since that interest became vested as aforesaid.

(5) The foregoing provisions of this Article (except Clause (3)) shall apply in relation to alienated land as they apply in relation to land not being alienated land, but subject to the following modifications:

(*a*) in Clause (1), the words "after consultation with the State Government" shall be omitted;

(*b*) where a requirement is made under that clause, it shall be the duty of the State Government to cause to be acquired by agreement or compulsorily such interest in the land as may be necessary for complying with the requirement;

(*c*) any expenses incurred by the State in or in connection with the acquisition of land in accordance with paragraph (*b*) shall be repaid by the Federation, except that if the acquisition is by agreement the Federation shall not, unless it is party to the agreement, be liable to pay more than it would have paid on a compulsory acquisition;

(*d*) any sums paid by the Federation to the State in accordance with paragraph (*c*) shall be taken into consideration in determining for the purposes of Clause (2) the market value, the appropriate quit rent or the just annual rent, and shall be deducted from any premium to be paid by the Federation under that clause.

(6) Where a grant is made to the Federation in pursuance of Clause (1) in respect of land which, or an interest in which, was acquired by the State Government at the expense of the Government of the Federation of Malaya before Merdeka Day, paragraph (*d*) of Clause (5) shall apply to the sums paid in respect of the acquisition by the Government of the Federation of Malaya as if they were sums paid by the Federation in accordance with paragraph (*c*) of Clause (5); and Clause (3) shall not apply to any such land.

(7) Nothing in this Article shall prevent the reservation of land in a State for federal purposes on such terms and conditions as may be agreed between the Federal Government and the Government of the State, or affect the power of the appropriate authority in a State to acquire in accordance with any law for the time being in force any alienated land for federal purposes without a requirement by the Federal Government under this Article.

Reversion to States of land held for federal purposes.

84. (1) Where any interest in land in a State vested in the Federation or a public authority for federal purposes ceases to be required for federal purposes, it

shall revert to that State if the State Government agrees to pay to the Federation—

(*a*) in a case where the land, or an interest therein, was acquired by the State Government in pursuance of Clause (5) of Article 83, or was acquired by the State Government at the expense of the Government of the Federation of Malaya before Merdeka Day, an amount equal to the market value of the interest vested in the Federation or public authority;

(*b*) in any other case, at the option of the State Government, either—

(i) an amount equal to the market value of that interest; or

(ii) an amount equal to the sums paid (otherwise than as rent) by the Federation, or by the Government of the Federation of Malaya before Merdeka Day, in respect of the grant of that interest, together with the market value of any improvements made (otherwise than at the expense of the State) to the land after that grant.

(2) Where any interest in land to which Clause (1) applies does not revert to the State in accordance with that clause, the Federal Government or the public authority, as the case may be, may sell the interest on such terms and conditions as that Government or authority may think fit.

Release of land reserved for federal purposes.

85. (1) Where any land in a State which is reserved for any federal purposes ceases to be required for those purposes, the Federal Government shall offer to release the land to the State on condition that the State pays to the Federation—

(*a*) the market value of any improvements made (otherwise than at the expense of the State) while the land was in use for federal purposes; and

(*b*) the amount, if any, paid by the Federation, or paid before Merdeka Day by the Government of the Federation of Malaya, in respect of the cost of acquisition of any interest in the land by the State Government;

and if the State Government accepts the offer the reservation shall cease.

(2) Where the State Government does not accept an offer made in accordance with Clause (1), then, unless

by agreement between the Federal Government and the State Government the land is reserved for another federal purpose, the Federal Government may require the State Government, and it shall then be the duty of that Government, to cause to be made to the Federation a grant of the land in perpetuity without restrictions as to the use of the land, but subject to the payment of a premium equal to the market value of the land reduced by the amounts which would have been payable to the Federation under Clause (1) if the said offer had been accepted, and to the payment annually of an appropriate quit rent; and where such a grant is made to the Federation, the Federal Government may sell and transfer or lease the land on such terms and conditions as it may think fit.

(3) Except as provided by this Article, land in a State which is reserved for federal purposes shall not cease to be so reserved, and all land so reserved shall be controlled and managed by or on behalf of the Federal Government.

Dispositions of land held for federal purposes.

86. (1) Where any interest in land is vested in the Federation, the Federation may, subject to Article 84 and to Clause (2) of this Article, dispose of that interest or any smaller interest in the land.

(2) Every such disposition of an interest in land shall be made conditional on the land being used for a federal purpose specified therein, and no such disposition shall be made to a person other than a public authority except—

(*a*) under and in accordance with the provisions of federal law; or

(*b*) by an order of the Yang di-Pertuan Agong laid and approved in accordance with Clause (3):

Provided that nothing in this clause shall apply to a disposition authorised by Article 84 or Article 85, or to a disposition by the Federation to any person for the purposes of the implementation of any treaty, agreement or convention with any other country, or to any person in his capacity as consular or diplomatic representative of any other country.

(3) An order of the Yang di-Pertuan Agong under paragraph (*b*) of Clause (2) shall be laid before both Houses of Parliament and shall not take effect until it is approved by resolution of each House.

(4) Except as provided by Article 84, no interest in land vested for federal purposes in a public authority,

or vested in any other person by virtue of a disposition under this Article, shall be disposed of by that authority or person otherwise than to the Federation.

(5) Where any interest in land in a State is disposed of by or to the Federation or any public authority in pursuance of this Article or of Article 84 or 85, it shall be the duty of the Government of that State to register the transaction accordingly.

Determination of disputes as to land values.

87. (1) Where any dispute arises between the Federal Government and a State Government as to the making of any payment by or to the Federation under the foregoing Articles of this Chapter, or as to the amount of any such payment, the dispute shall be referred, at the instance either of the Federal Government or of the State Government, to the Lands Tribunal appointed in accordance with this Article.

(2) The Lands Tribunal shall consist of—

(*a*) a chairman, who shall be a person who is or has been or is qualified to be a judge of the Supreme Court, and who shall be appointed by the Chief Justice;

(*b*) a member who shall be appointed by the Federal Government; and

(*c*) a member who shall be appointed by the State Government.

(3) The practice and procedure of the Lands Tribunal shall be regulated by rules of court framed by the Rule Committee.

(4) An appeal shall lie from the Lands Tribunal to the Supreme Court on any question of law.

Modification of Articles 83 to 87 in their application to Malacca and Penang.

88. Parliament shall by law make provision for modifying Articles 83 to 87 in their application to Malacca and Penang in such manner as it may consider to be required.

Malay reservations.

89. (1) Any land in a State which immediately before Merdeka Day was a Malay reservation in accordance with the existing law may continue as a Malay reservation in accordance with that law until otherwise provided by an Enactment of the Legislature of that State, being an Enactment—

(*a*) passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting; and

(*b*) approved by resolution of each House of Parliament passed by a majority of the total number of members of that House and by the votes of not less than two-thirds of the members voting.

(2) Any land in a State which is not for the time being a Malay reservation in accordance with the existing law and has not been developed or cultivated may be declared as a Malay reservation in accordance with that law:

Provided that—

(*a*) where any land in a State is declared a Malay reservation under this clause, an equal area of land in that State which has not been developed or cultivated shall be made available for general alienation; and

(*b*) the total area of land in a State for the time being declared as a Malay reservation under this clause shall not at any time exceed the total area of land in that State which has been made available for general alienation in pursuance of paragraph (*a*).

(3) Subject to Clause (4), the Government of any State may, in accordance with the existing law, declare as a Malay reservation—

(*a*) any land acquired by that Government by agreement for that purpose;

(*b*) on the application of the proprietor, and with the consent of every person having a right or interest therein, any other land;

(*c*) in a case where any land ceases to be a Malay reservation, any land of a similar character and of an area not exceeding the area of that land.

(4) Nothing in this Article shall authorise the declaration as a Malay reservation of any land which at the time of the declaration is owned or occupied by a person who is not a Malay or in or over which such a person has then any right or interest.

(5) Without prejudice to Clause (3), the Government of any State may, in accordance with law, acquire land for the settlement of Malays or other communities, and establish trusts for that purpose.

(6) In this Article "Malay reservation" means land reserved for alienation to Malays or to natives of the State in which it lies; and "Malay" includes any person

who, under the law of the State in which he is resident, is treated as a Malay for the purposes of the reservation of land.

(7) This Article shall have effect notwithstanding any other provision of this Constitution; but (without prejudice to any such other provision) no land shall be retained or declared as a Malay reservation except as provided by this Article and Article 90.

Special provisions relating to customary land in Negri Sembilan and Malacca, and Malay holdings in Trengganu.

90. (1) Nothing in this Constitution shall affect the validity of any restrictions imposed by law on the transfer or lease of customary land in the State of Negri Sembilan or the State of Malacca, or of any interest in such land.

(2) Notwithstanding anything in this Constitution, the existing law in the State of Trengganu with respect to Malay holdings shall continue in force until otherwise provided by an Enactment of the Legislature of that State passed and approved as described in Clause (1) of Article 89.

(3) Any such Enactment of the Legislature of the State of Trengganu may make provision for Malay reservations corresponding with the existing law in force in any other State of a Ruler; and in that event the said Article 89 shall have effect in relation to Trengganu subject to the following modifications, that is to say—

(*a*) in Clause (1), for the reference to land which immediately before Merdeka Day was a Malay reservation in accordance with the existing law, there shall be substituted a reference to land which, immediately before the passing of the said Enactment, was a Malay holding; and

(*b*) subject as aforesaid, any reference to the existing law shall be construed as a reference to the said Enactment.

The National Land Council.

91. (1) There shall be a National Land Council consisting of a Minister as chairman, one representative from each of the States, who shall be appointed by the Ruler or Governor, and such number, not exceeding ten, of representatives of the Federal Government as that Government may appoint.

(2) The chairman may vote on any question before the National Land Council but shall not have a casting vote.

(3) The National Land Council shall be summoned to meet by the chairman as often as he considers necessary but there shall be at least one meeting in every year.

(4) If the chairman or a representative of a State or of the Federal Government is unable to attend a meeting, the authority by whom he was appointed may appoint another person to take his place at that meeting.

(5) It shall be the duty of the National Land Council to formulate from time to time in consultation with the Federal Government the State Governments and the National Finance Council a national policy for the promotion and control of the utilisation of land throughout the Federation for mining, agriculture, forestry or any other purpose, and for the administration of any laws relating thereto; and the Federal and State Governments shall follow the policy so formulated.

(6) The Federal Government or the Government of any State may consult the National Land Council in respect of any other matter relating to the utilisation of land or in respect of any proposed legislation dealing with land or of the administration of any such law, and it shall be the duty of the National Land Council to advise that Government on any such matters.

Chapter 5—National development

National development plan.

92. (1) If, after a recommendation from an expert committee and after consultation with the National Finance Council, the National Land Council and the Government of any State concerned, the Yang di-Pertuan Agong is satisfied that it is conducive to the national interest that a development plan be put into operation in any area or areas in one or more of the States, the Yang di-Pertuan Agong may, after publishing the plan, proclaim the area or areas as a development area; and thereupon Parliament shall have power to give effect to the development plan or any part thereof, notwithstanding that any of the matters to which the plan relates are matters with respect to which, apart from this Article, only States would have power to make laws.

(2) Any Act passed in pursuance of this Article shall recite that it has been so passed and that the provisions of Clause (1) have been complied with; and Article 79 shall not apply to any Bill for such an Act or any amendment to such a Bill.

(3) In this Article, "development plan" means a plan for the development, improvement, or conservation of the natural resources of a development area, the exploitation of such resources, or the increase of means of employment in the area.

(4) Without prejudice to their power under any other Article to require any interest in land to be acquired or granted for federal purposes, the Federal Government may from time to time require the reservation for the purposes of a development plan, to such extent as they may specify, of any land in a development area which is not occupied by private persons; but any diminution, in consequence of the reservation, of the annual revenue received by a State shall be made good to the State by the Federation.

(5) All income received by the Federation through the operation of a development plan shall, subject to Clause (6), be applied—

(*a*) in the first instance, for the provision of capital and the meeting of working expenses for the development plan;

(*b*) in the second instance, for the repayment to the Federation of any expenditure, including expenditure under Clause (4), incurred by the Federation in operating the plan; and

(*c*) as to the balance, for payments to the State in which the development area is situated or, if it is situated in two or more States, to those States in such proportions as the Federal Government may determine.

(6) If it is agreed between the Federal Government and the Government of any State which includes the whole or any part of the development area that any expenditure incurred in operating the development plan is to be met by the State, any expenditure so met shall be repaid to the State and the repayment shall rank *pari passu* with the repayment to the Federation of any expenditure incurred by the Federation.

(7) Parliament may repeal or amend any Act passed in pursuance of this Article, and for that purpose may make such incidental and consequential provisions as it may consider necessary.

(8) Nothing in this Article shall affect the power of Parliament or of the Legislature of any State—

(*a*) to impose such taxes or rates as it is authorised to impose under any other provision of this Constitution; or

(*b*) to make from the Federal Consolidated Fund or the State Consolidated Fund, as the case may be, grants not repayable under Clause (5) or (6);

except that where, in pursuance of Clause (1), a rate is imposed on any property by federal law which, but for this Article, might have been imposed by State law, no rate of the same kind shall be imposed by State law for any period for which the rate imposed by federal law is payable.

Chapter 6—Federal surveys, advice to States and inspection of State activities

Inquiries, surveys and statistics.

93. (1) The Federal Government may conduct such inquiries (whether by Commission or otherwise), authorise such surveys and collect and publish such statistics as it thinks fit, notwithstanding that such inquiries, surveys and collection and publication of statistics relate to a matter with regard to which the Legislature of a State may make laws.

(2) It shall be the duty of the Government of a State, and of all officers and authorities thereof, to assist the Federal Government in the execution of its powers under this Article; and for this purpose the Federal Government may give such directions as it may deem necessary.

Federal powers in respect of State subjects.

*__94.__ (1) The executive authority of the Federation extends to the conduct of research, the provision and maintenance of experimental and demonstration stations, the giving of advice and technical assistance to the Government of any State, and the provision of education, publicity, and demonstration for the inhabitants of any State, in respect of any of the matters with respect to which the Legislature of a State may make laws; and the agricultural and forestry officers of any State shall accept any professional advice given to the Government of that State under this clause.

(2) Notwithstanding anything in this Constitution, the existing Departments of Agriculture, Commissioner of Lands, Forestry and Social Welfare may continue to exercise the functions exercised by them immediately before Merdeka Day.

(3) Nothing in this Constitution shall prevent the Federal Government from establishing Ministries or Departments of Government to exercise the functions of the Federal Government under Article 93 and this

* *See* Article 79 (1).

Article in relation to matters within the legislative authority of a State, and such matters may include soil conservation, local government and town and country planning.

Inspection of State activities.

95. (1) Subject to Clause (3), in exercising the executive authority of the Federation any officer authorised by the Federal Government may inspect any department or work of a State Government with a view to making a report thereon to the Federal Government.

(2) A report made under this Article shall, if the Federal Government so direct, be communicated to the State Government and laid before the Legislative Assembly of the State.

(3) This Article does not authorise the inspection of any department or work dealing only with or carried on only with respect to matters within the exclusive legislative authority of a State.

PART VII*

FINANCIAL PROVISIONS

No taxation unless authorised by law.

96. No tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law.

Consolidated Funds.

97. (1) All revenues and moneys howsoever raised or received by the Federation shall, subject to the provisions of this Constitution and of federal law, be paid into and form one fund, to be known as the Federal Consolidated Fund.

(2) All revenues and moneys howsoever raised or received by a State shall, subject to Clause (3) and to any law, be paid into and form one fund, to be known as the Consolidated Fund of that State.

(3) If in accordance with State law any Zakat, Fitrah, Bait-ul-Mal or similar Muslim revenue is raised, it shall be paid into a separate fund and shall not be paid out except under the authority of State law.†

(4) Unless the context otherwise requires, any reference in this Constitution to the Consolidated Fund shall be construed as a reference to the Federal Consolidated Fund.

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* This Part came into force (with the exception of Articles 96, 105 to 107 and 111, which came into force on Merdeka Day) on January 1, 1958: *see* section 2 of the Financial Procedure Ordinance, 1957, *infra*, and Article 165.

† This fund must be audited by the Auditor-General: *see* sections 5 (2) and 9 (6) of the Audit Ordinance, 1957, *infra*.

Expenditure charged on Federal Consolidated Fund.

98. (1) There shall be charged on the Consolidated Fund, in addition to any grant, remuneration or other moneys so charged by any other Article or federal law,—

(*a*) all pensions, compensation for loss of office and gratuities for which the Federation is liable;

(*b*) all debt charges for which the Federation is liable; and

(*c*) any moneys required to satisfy any judgment, decision or award against the Federation by any court or tribunal.

(2) In making payment of any grant to a State in accordance with the provisions of this Part, the Federation may deduct the amount of any debt charges payable to the Federation by the State and charged on the Consolidated Fund of that State.

(3) For the purposes of this Article debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby.

Annual financial statement.

*__99.__ (1) The Yang di-Pertuan Agong shall, in respect of every financial year, cause to be laid before the House of Representatives a statement of the estimated receipts and expenditure of the Federation for that year, and, unless Parliament in respect of any year otherwise provides, that statement shall be so laid before the commencement of that year.

(2) The estimates of expenditure shall show separately—

(*a*) the total sums required to meet expenditure charged on the Consolidated Fund; and

(*b*) subject to Clause (3), the sums respectively required to meet the heads of other expenditure proposed to be met from the Consolidated Fund.

(3) The sums to be shown under paragraph (*b*) of Clause (2) do not include—

(*a*) sums representing the proceeds of any loan raised by the Federation for specific purposes and appropriated for those purposes by the Act authorising the raising of the loan;

(*b*) sums representing any money or interest on money received by the Federation subject to

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* *See* section 15 of the Financial Procedure Ordinance, 1957, *infra*.

a trust and to be applied in accordance with the terms of the trust.

(4) The said statement shall also show, so far as is practicable, the assets and liabilities of the Federation at the end of the last completed financial year, the manner in which those assets are invested or held, and the general heads in respect of which those liabilities are outstanding.

Supply Bills.

100. The heads of expenditure to be met from the Consolidated Fund but not charged thereon, other than expenditure to be met by such sums as are mentioned in Clause (3) of Article 99, shall be included in a Bill, to be known as a Supply Bill, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

Supplementary and excess expenditure.

101. If in respect of any financial year it is found—

(*a*) that the amount appropriated by the Supply Act for any purpose is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Supply Act; or

(*b*) that any moneys have been expended for any purpose in excess of the amount (if any) appropriated for that purpose by the Supply Act,

a supplementary estimate showing the sums required or spent shall be laid before the House of Representatives and the heads of any such expenditure shall be included in a Supply Bill.

Power to authorize expenditure on account or for unspecified purposes.

102. Parliament shall have power in respect of any financial year—

(*a*) before the passing of the Supply Bill, to authorise by law expenditure for part of the year;

(*b*) to authorise by law expenditure for the whole or part of the year otherwise than in accordance with Articles 99 to 101, if owing to the magnitude or indefinite character of any service or to circumstances of unusual urgency it appears to Parliament to be desirable to do so.*

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* For an example of such a law, *see* the Statutory Funds Appropriation (1958) Ordinance, 1957 (Ordinance No. 73 of 1957). This Ordinance appropriates money to certain funds specified therein; these funds do not represent expenditure in the common sense of the word, but finance running accounts of various kinds whose requirements are not capable of exact estimation and cannot in consequence be included in the Supply Bill.

Contingencies Fund.

*103. (1) Parliament may by law provide for the creation of a Contingencies Fund and for authorising the Minister charged with responsibility for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Contingencies Fund to meet that need.

(2) Where any advance is made in accordance with Clause (1), a supplementary estimate shall be presented and a Supply Bill introduced as soon as possible for the purpose of replacing the amount so advanced.

Withdrawals from Consolidated Fund.

104. (1) Subject to Clause (2), no moneys shall be withdrawn from the Consolidated Fund unless they are—

(*a*) charged on the Consolidated Fund; or
(*b*) authorised to be issued by a Supply Act; or
(*c*) authorised to be issued under Article 102.

(2) Clause (1) does not apply to any such sums as are mentioned in Clause (3) of Article 99.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner provided by federal law.

Auditor General.

†**105.** (1) There shall be an Auditor General, who shall be appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister and after consultation with the Conference of Rulers.

(2) A person who has held the office of Auditor General shall be eligible for re-appointment but shall not be eligible for any other appointment in the service of the Federation or for any appointment in the service of a State.

(3) The Auditor General may at any time resign his office but shall not be removed from office except on the like grounds and in the like manner as a judge of the Supreme Court.

(4) Parliament shall by law provide for the remuneration of the Auditor General, and the remuneration so provided shall be charged on the Consolidated Fund.

(5) The remuneration and other terms of office (including pension rights) of the Auditor General shall not be altered to his disadvantage after his appointment.

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* A Contingencies Fund is created by section 11 of the Financial Procedure Ordinance, 1957 (*see infra*); appropriation to the Fund was made under the Statutory Funds Appropriation (1958) Ordinance, 1957, for the year 1958. *See*, also, Article 109 (5).

† *See* the Audit Ordinance, 1957, *infra*.

(6) Subject to the provisions of this Article, the terms and conditions of service of the Auditor General shall be determined by federal law and, subject to the provisions of federal law, by the Yang di-Pertuan Agong.

Powers and duties of Auditor General.

*106. (1) The accounts of the Federation and of the States shall be audited and reported on by the Auditor General.

(2) The Auditor General shall perform such other duties and exercise such powers in relation to the accounts of the Federation and of the States and to the accounts of other public authorities and bodies administering public funds, as may be provided by federal law.

Reports of Auditor General.

107. (1) The Auditor General shall submit his reports to the Yang di-Pertuan Agong, who shall cause them to be laid before the House of Representatives.

(2) A copy of any such report relating to the accounts of a State, or to the accounts of any public authority exercising powers conferred by State law, shall be submitted to the Ruler or Governor of that State, who shall cause it to be laid before the Legislative Assembly.

National Finance Council.

108. (1) There shall be a National Finance Council consisting of the Prime Minister, such other Minister as the Prime Minister may designate, and one representative from each of the States, appointed by the Ruler or Governor.

(2) The National Finance Council shall be summoned to meet by the Prime Minister as often as he considers necessary and whenever the representatives of three or more States demand a meeting, but there shall be at least one meeting in every twelve months.

(3) At any meeting of the National Finance Council the Prime Minister may be represented by another Minister of the Federation, and the Prime Minister or, if he is not present, the Minister representing him, shall preside.

(4) It shall be the duty of the Federal Government to consult the National Finance Council in respect of—

(*a*) the making of grants by the Federation to the States;

(*b*) the assignment to the States of the whole or any portion of the proceeds of any federal tax or fee;

(*c*) the annual loan requirements of the Federation and the States and the exercise by the Federation and the States of their borrowing powers;

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* *See* the Audit Ordinance, 1957, *infra*.

(*d*) the making of loans to any of the States;

(*e*) the making of development plans in accordance with Article 92;

(*f*) the matters referred to in Item 7 (*f*) and (*g*) of the Federal List;

(*g*) any proposal to introduce a Bill for such a law as is mentioned in Article 109 (2) or Article 110 (3);

(*h*) any other matter in respect of which this Constitution or federal law makes provision for consultation with the National Finance Council.

(5) The Federal Government may consult the National Finance Council in respect of any other matter, whether or not it involves questions of finance, and the Government of a State may consult the said Council in respect of any matter which affects the financial position of that State.

Grants to States.

109. (1) The Federation shall make to each State in respect of each financial year—

(*a*) a grant, to be known as a capitation grant, which shall be calculated in accordance with the provisions of Part I of the Tenth Schedule;

(*b*) a grant for the maintenance of State roads, to be known as the State road grant, which shall be calculated in accordance with the provisions of Part II of that Schedule.

*(2) Parliament may from time to time by law vary the rates of the capitation grant; but if the effect of any such law is to reduce the grant, provision shall be made in that law for securing that the amount of grant received by any State in respect of any financial year is not less than ninety per cent. of the amount received by that State in the preceding financial year.

(3) Parliament may by law make grants for specific purposes to any of the States on such terms and conditions as may be provided by any such law.

(4) The amounts required for making the grants mentioned in the preceding provisions of this Article shall be charged on the Consolidated Fund.

(5) If, in accordance with Article 103, a Contingencies Fund is created, the power to make advances from that Fund for meeting an urgent and unforeseen need

* *See* Article 108 (4) (*g*).

for expenditure shall include power to make such advances to a State for meeting such a need.

*(6) The Federation shall pay into a fund, to be known as the State Reserve Fund,—

(*a*) in respect of the first financial year in which Part VII is in operation, the sum of four million dollars; and

(*b*) in respect of every succeeding financial year such sum as the Federal Government may, after consultation with the National Finance Council, determine to be necessary;

and the Federation may from time to time, after consultation with the National Finance Council, make grants out of the State Reserve Fund to any State for the purposes of development or generally to supplement its revenues.

Assignment of taxes and fees to the States.

110. (1) Subject to Clause (2), each of the States shall receive all proceeds from the taxes, fees and other sources of revenue specified in Part III of the Tenth Schedule so far as collected, levied or raised within the State.

(2) Parliament may from time to time by law substitute for any source of revenue specified in section 1, 3, 4, 5, 6, 7, 8, 12 or 14 of Part III of the Tenth Schedule or for any source of revenue so substituted, another source of revenue of substantially equal value.

†(3) Each State shall receive, on such terms and conditions as Parliament may by law provide, ten per cent. or such greater amount as Parliament may by law provide of the export duty on tin produced in the State.

(4) Without prejudice to the provisions of Clauses (1) to (3), Parliament may by law—

(*a*) assign to the States the whole or any portion of the proceeds of any tax or fee raised or levied by the Federation; and

(*b*) assign to the States the responsibility of collecting for State purposes any tax or fee authorised by federal law.

(5) The amounts receivable by the States under Clause (1), (2) or (4) shall not be paid into the Consolidated Fund; and the amounts receivable by the States under Clause (3) shall be charged on the Consolidated Fund.

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* *See* section 12 of the Financial Procedure Ordinance, 1957, *infra*.

† *See* Article 108 (4) (*g*).

Restriction on borrowing.

111. (1) The Federation shall not borrow except under the authority of federal law.

(2) A State shall not borrow except under the authority of State law, and State law shall not authorise a State to borrow except from the Federation or, for a period not exceeding twelve months, from a bank approved for that purpose by the Federal Government.*

Restriction on alterations in establishments of States.

112. (1) Subject to Clause (2), no State shall, without the approval of the Federation, make any addition to its establishment or the establishment of any of its departments, or alter the rates of established salaries and emoluments, if the effect of doing so would be to increase the liability of the Federation in respect of pensions, gratuities or other like allowances.

(2) This Article does not apply to—

(*a*) non-pensionable appointments the maximum salaries of which do not exceed four hundred dollars per month; or

(*b*) pensionable appointments the maximum salaries of which do not exceed one hundred dollars per month.

PART VIII

ELECTIONS

Conduct of Elections.

113. (1) There shall be an Election Commission, to be constituted in accordance with Article 114, which, subject to the provisions of federal law, shall conduct elections to the House of Representatives and the Legislative Assemblies of the States and delimit constituencies and prepare and revise electoral rolls for such elections.

(2) After the first delimitation of constituencies in accordance with Articles 116 and 117 the Election Commission shall, at intervals of not more than ten nor, subject to Clause (3), less than eight years, review the division of the Federation and the States into constituencies and make such changes therein as they may think necessary in order to comply with the provisions of those Articles; and the reviews of constituencies for the purpose of elections to the Legislative Assemblies shall be undertaken at the same time as the reviews of constituencies for the purpose of elections to the House of Representatives.

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* This would appear to extend to any guarantee involving a financial liability: *see* section 28 of the Financial Procedure Ordinance, 1957, *infra*.

(3) If the Election Commission are of opinion that in consequence of a law made under Article 2 or 46 it is necessary to undertake the reviews mentioned in Clause (2), they shall do so, whether or not eight years have elapsed since the last review under that clause.

(4) The Election Commission shall also conduct elections to the municipal council of the federal capital, and State law may authorise the Commission to conduct any other election.

(5) So far as may be necessary for the purposes of its functions under this Article the Election Commission may make rules, but any such rules shall have effect subject to the provisions of federal law.

Constitution of Election Commission.

114. (1) The Election Commission shall be appointed by the Yang di-Pertuan Agong after consultation with the Conference of Rulers, and shall consist of a chairman and two other members.

(2) In appointing members of the Election Commission the Yang di-Pertuan Agong shall have regard to the importance of securing an Election Commission which enjoys public confidence.

(3) A member of the Election Commission shall cease to hold office on attaining the age of sixty-five years or on becoming disqualified under Clause (4) and may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong, but shall not be removed from office except on the like grounds and in the like manner as a judge of the Supreme Court.

(4) A person is disqualified for appointment as a member of the Election Commission if he holds any other office of profit or is a member of either House of Parliament or of the Legislative Assembly of any State.

(5) Parliament shall by law provide for the remuneration of members of the Election Commission, and the remuneration so provided shall be charged on the Consolidated Fund.*

(6) The remuneration and other terms of office of a member of the Election Commission shall not be altered to his disadvantage after his appointment.

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* Such provision (*inter alia*) is made by the Election Commission Ordinance, 1957 (Ordinance No. 76 of 1957).

Assistance to Election Commission.

115. (1) The Election Commission may employ such number of persons, on such terms and subject to such conditions, as the Commission may with the approval of the Yang di-Pertuan Agong determine.

(2) All public authorities shall on the request of the Commission give the Commission such assistance in the discharge of its duties as may be practicable; and in exercising its functions of delimiting constituencies for the elections mentioned in Article 113 (1) the Commission shall seek the advice of two officers of the Federal Government with special knowledge of the topography of, and the distribution of the population in, the Federation, who shall be selected for that purpose by the Yang di-Pertuan Agong.

Federal constituencies.

*__116.__ (1) For the election of members to the House of Representatives the Federation shall be divided into constituencies in accordance with the following provisions of this Article.

(2) The total number of constituencies shall be equal to the number of members, so that one member shall be elected for each constituency, and of that total a number determined in accordance with Clause (3) shall be allocated to each State.

(3) Constituencies shall be allocated to the several States in such manner that the electoral quota of each State is as nearly equal to the electoral quota of the Federation as it can be without causing undue disparity between the population quota of that State and the population quota of the Federation.

(4) Each State shall be divided into constituencies in such manner that each constituency contains a number of electors as nearly equal to the electoral quota of the State as may be after making due allowance for the distribution of the different communities and for differences in density of population and the means of communication; but the allowance so made shall not increase or reduce the number of electors in any constituency to a number differing from the electoral quota by more than fifteen per cent.

(5) In this Article—

(*a*) "electoral quota" means the number obtained by dividing the number of electors in the Federation or a State by the total number of constituencies or, as the case may be, the number of constituencies in that State;

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* *See* Article 171.

(*b*) "population quota" means the number obtained by dividing the population of the Federation or of a State by the total number of constituencies or, as the case may be, the number of constituencies in that State;

and for the purposes of this Article the number of electors shall be taken to be as shown on the current electoral rolls and the population as counted at the most recent census.

State constituencies.

117. For the election of members to the Legislative Assembly of a State the State shall be divided into as many constituencies as there are elected members, so that one member shall be elected for each constituency; and the division shall be made in the manner provided by Clause (4) of Article 116.

Method of challenging election.

118. No election to either House of Parliament or to the Legislative Assembly of a State shall be called in question except by an election petition presented to a judge of the Supreme Court.*

Qualifications of electors.

119. (1) Every citizen who has attained the age of twenty-one years on the qualifying date and has been resident in a constituency for at least six months immediately preceding the qualifying date is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified under Clause (3) or under any law relating to offences committed in connection with elections, but no person shall in the same election vote in more than one constituency.

(2) If a person is in a constituency by reason only of being a patient in an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or of being detained in custody he shall for the purposes of Clause (1) be deemed not to be resident in that constituency.

(3) A person is disqualified for being an elector in any election to the House of Representatives or the Legislative Assembly if—

(*a*) on the qualifying date he is detained as a person of unsound mind or is serving a sentence of imprisonment; or

(*b*) having before the qualifying date been convicted in any part of the Commonwealth of

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* The present law relating to election petitions is to be found in Part VII of the Election Offences Ordinance, 1954 (Ordinance No. 9 of 1954).

an offence and sentenced to death or imprisonment for a term exceeding twelve months, he remains liable on the qualifying date to suffer any punishment for that offence.

(4) In this Article "qualifying date" means the date by reference to which the electoral rolls are prepared or revised.

Direct elections to the Senate.

120. Where in accordance with Article 45 (4) provision is made by Parliament for the election of Senators by the direct vote of electors—

(*a*) the whole of a State shall form a single constituency and each elector shall have as many votes at any election to the Senate as there are seats to be filled in that election; and

(*b*) the electoral rolls for elections to the House of Representatives shall also be the electoral rolls for elections to the Senate; and

(*c*) Articles 118 and 119 shall apply in relation to elections to the Senate as they apply in relation to elections to the House of Representatives.

PART IX

THE JUDICIARY

Judicial power of Federation.

121. The judicial power of the Federation shall be vested in a Supreme Court and such inferior courts as may be provided by federal law.

Supreme Court.

122. (1) The Supreme Court shall consist of a Chief Justice and other judges; but the number of the other judges shall not exceed fifteen until Parliament otherwise provides.

(2) The Chief Justice and the other judges of the Supreme Court shall be appointed by the Yang di-Pertuan Agong.

(3) In appointing the Chief Justice the Yang di-Pertuan Agong may act in his discretion, but after consulting the Conference of Rulers and considering the advice of the Prime Minister; and in appointing the other judges of the Supreme Court he shall, after consulting the Conference of Rulers, act on the recommendation of the Judicial and Legal Service Commission.

(4) Before acting, in accordance with Clause (3), on the recommendation of the Judicial and Legal Service

Commission the Yang di-Pertuan Agong shall consider the advice of the Prime Minister and may once refer the recommendation back to the Commission in order that it may be reconsidered.

Qualifications of Judges of Supreme Court.

123. A person is qualified for appointment as a judge of the Supreme Court if—

(*a*) he is a citizen; and

(*b*) he has been an advocate of the Supreme Court or a member of the judicial and legal service of the Federation for a period of not less than ten years, or has been the one for part and the other for the remainder of that period.

Oath of office of judges.

124. The Chief Justice and any other judge of the Supreme Court shall before exercising the functions of his office take and subscribe the oath of office and allegiance set out in the Sixth Schedule—

(*a*) the Chief Justice in the presence of the Yang di-Pertuan Agong, and

(*b*) any other judge in the presence of the Chief Justice or, in his absence, the next senior judge of the Supreme Court available.

Tenure of office and remuneration of judges of Supreme Court.

125. (1) Subject to the following provisions of this Article, a judge of the Supreme Court shall hold office until he attains the age of sixty-five years or such later time, not being later than six months after he attains that age, as the Yang di-Pertuan Agong may approve.

(2) A judge of the Supreme Court may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong but shall not be removed from office except in accordance with the following provisions of this Article.

(3) If the Prime Minister, or the Chief Justice after consulting the Prime Minister, represents to the Yang di-Pertuan Agong that a judge of the Supreme Court ought to be removed on the ground of misbehaviour or of inability, from infirmity of body or mind or any other cause, properly to discharge the functions of his office, the Yang di-Pertuan Agong shall appoint a tribunal in accordance with Clause (4) and refer the representation to it; and may on the recommendation of the tribunal remove the judge from office.

(4) The said tribunal shall consist of not less than five persons appointed on the recommendation of the Judicial and Legal Service Commission, being persons who

hold or have held office as judge of the Supreme Court or, if it appears to the Commission expedient so to recommend, persons who hold or have held equivalent office in any other part of the Commonwealth, and shall be presided over by the Chief Justice, if he is a member, and, in any other case, by the person first appointed to the said office.

(5) Pending any reference and report under Clause (3) the Yang di-Pertuan Agong may on the recommendation of the Judicial and Legal Service Commission suspend a judge of the Supreme Court from the exercise of his functions.

(6) Parliament shall by law provide for the remuneration of the judges of the Supreme Court, and the remuneration so provided shall be charged on the Consolidated Fund.*

(7) The remuneration and other terms of office (including pension rights) of a judge of the Supreme Court shall not be altered to his disadvantage after his appointment.

(8) Notwithstanding Clause (1), the validity of anything done by a judge of the Supreme Court shall not be questioned on the ground that he had attained the age at which he was required to retire.

Power of Supreme Court to punish for contempt.

126. The Supreme Court shall have power to punish any contempt of itself.

Restriction on Parliamentary discussion of conduct of judge.

127. The conduct of a judge of the Supreme Court shall not be discussed in either House of Parliament except on a substantive motion of which notice has been given by not less than one quarter of the total number of members of that House, and shall not be discussed in the Legislative Assembly of any State.

Jurisdiction of Supreme Court.

128. (1) The Supreme Court shall have such original, appellate and revisional jurisdiction as may be provided by federal law.

(2) The Supreme Court shall, to the exclusion of any other court, have jurisdiction in any dispute between States or between the Federation and any State.†

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* Such provision is made by the Judges of the Supreme Court (Remuneration) Ordinance, 1958 (Ordinance No. 17 of 1958).

† But certain disputes relating to land and arising under Article 83 to 87 must be referred to the Lands Tribunal: *see* Article 87.

Special jurisdiction of Supreme Court as to the interpretation of Constitution.

*129. Without prejudice to any appellate or revisional jurisdiction of the Supreme Court, where in any proceedings before another court a question arises as to the effect of any provision of this Constitution, the Supreme Court may, on the application of either party to the proceedings, determine that question and either dispose of the case or remit it to the other court to be disposed of in accordance with the determination.

Advisory jurisdiction of Supreme Court.

130. The Yang di-Pertuan Agong may refer to the Supreme Court for its opinion any question as to the effect of any provision of this Constitution which has arisen or appears to him likely to arise, and the Supreme Court shall pronounce in open court its opinion on any question so referred to it.

Appeals from Supreme Court.

131. (1) The Yang di-Pertuan Agong may make arrangements with Her Majesty for the reference to the Judicial Committee of Her Majesty's Privy Council of appeals from the Supreme Court; and, subject to the provisions of this Article, an appeal shall lie from that Court to the Yang di-Pertuan Agong in any case in which such an appeal is allowed by federal law or by Clause (2), and in respect of which provision for reference to the said Committee is made by or under the enactments regulating the proceedings of the said Committee.†

(2) Until Parliament otherwise provides, an appeal is allowed under this Article in the following cases, that is to say:

(*a*) in the case of any decision from which an appeal from the Supreme Court of the Federation would have been entertained by Her Majesty in Council (with or without special leave) immediately before Merdeka Day; and

(*b*) in the case of any decision as to the effect of any provision of this Constitution, including any opinion pronounced on a reference under Article 130.

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* This power of interpretation is a new one in the Federation, for under Clause 153 of the Federation of Malaya Agreement, 1948, such a power was (in relation to that Agreement) "exclusively exerciseable" by an Interpretation Tribunal appointed under that Clause, and of which the Chief Justice was Chairman. [For instances of decisions of the Interpretation Tribunal, *see* Gazette Notification 1123 of 1950 and Legal Notification 256 of 1956.]

† The arrangements referred to in this Article have already been made, and are set out in an Agreement between Her Majesty the Queen and His Majesty the Yang di-Pertuan Agong, concluded on March 4, 1958, the text of which appears in the Federal *Government Gazette* of April 10, 1958 (*Notification No. 1254*). *See* also the Appeals from the Supreme Court Ordinance, 1958 (*Ordinance No. 16 of 1958*).

(3) Any appeal under this Article shall be subject to such conditions as to leave or otherwise as may be prescribed by federal law or by or under the enactments regulating the proceedings of the Judicial Committee of Her Majesty's Privy Council.

(4) On receiving from Her Majesty's Government in the United Kingdom the report or recommendation of the said Committee in respect of an appeal under this Article, the Yang di-Pertuan Agong shall make such order as may be necessary to give effect thereto.

PART X

PUBLIC SERVICES

Public services.

132. (1) For the purposes of this Constitution, the public services are—

(*a*) the armed forces;

(*b*) the judicial and legal service;

(*c*) the general public service of the Federation;

(*d*) the police service;

(*e*) the railway service;

(*f*) the joint public services mentioned in Article 133; and

(*g*) the public service of each State.

(2) Except as otherwise expressly provided by this Constitution, the qualifications for appointment and conditions of service of persons in the public services other than those mentioned in paragraph (*g*) of Clause (1) may be regulated by federal law and, subject to the provisions of any such law, by the Yang di-Pertuan Agong; and the qualifications for appointment and conditions of service of persons in the public service of any State may be regulated by State law and, subject to the provisions of any such law, by the Ruler or Governor of that State.

(3) Subject to Clause (4), references in this Part to persons in the public service or to members of any of the public services do not include references to the following, that is to say,—

(*a*) any Minister of the Federation and the Chief Minister or any other member of the Executive Council of a State;

(*b*) a member of either House of Parliament or of the Legislative Assembly of a State;

(*c*) the Clerk to either House of Parliament and any member of his staff;

(*d*) unless he has been appointed from among the members of the judicial and legal service or of the public service of his State, the legal adviser of any State;

(*e*) a member of the personal staff of the Yang di-Pertuan Agong or of a Ruler or Governor;

nor to a member of any Commission or Council established by this Constitution, except that if he is a member of any of the public services in some other capacity, the said references include references to him in that capacity.

(4) Clause (3) does not restrict the application of Articles 136 and 147.

Joint services, etc.

133. (1) Joint services, common to the Federation and one or more of the States or, at the request of the States concerned, to two or more States, may be established by federal law.

(2) Where a member of any of the public services is employed—

(*a*) partly for federal purposes and partly for State purposes, or

(*b*) for the purposes of two or more States,

the proportion, if any, of his remuneration payable by the Federation and the State or States concerned or, as the case may be, by each of the States concerned, shall, subject to federal law, be determined by agreement or, in default of agreement, by the Commission whose jurisdiction extends to him.*

Secondment of officers.

134. (1) The Federation may, at the request of a State, second any member of any of the services mentioned in paragraph (*a*), (*b*), (*c*), (*d*) or (*f*) of Clause (1) of Article 132 to the service of that State; and a State may at the request of the Federation or of another State second any member of its own public service to the service of the Federation or, as the case may be, of that other State.

(2) A person seconded under this Article shall remain a member of the service to which he belongs, but his remuneration shall be paid by the State to whose service he is seconded or, if he is seconded to the service of the Federation, by the Federation.

Restriction on dismissal and reduction in rank.

135. (1) No member of any of the services mentioned in paragraphs (*b*) to (*g*) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority

* *See* also Article 179.

subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank.

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

(3) No member of any of the services mentioned in paragraph (*c*), (*f*) or (*g*) of Clause (1) of Article 132 shall, without the concurrence of the Judicial and Legal Service Commission, be dismissed or reduced in rank or suffer any other disciplinary measure for anything done or omitted by him in the exercise of a judicial function conferred on him by law.

Impartial treatment of federal employees.

136. All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially.

Armed Forces Council.

137. (1) There shall be an Armed Forces Council, which shall be responsible under the general authority of the Yang di-Pertuan Agong for the command, discipline and administration of, and all other matters relating to, the armed forces, other than matters relating to their operational use.

(2) Clause (1) has effect subject to the provisions of any federal law, and any such law may provide for the vesting in the Armed Forces Council of any functions with respect to the armed forces.

(3) The Armed Forces Council shall consist of the following members, that is to say,—

(*a*) the Minister for the time being charged with responsibility for defence, who shall be chairman;

(*b*) one member representing Their Highnesses, who shall be appointed by the Conference of Rulers;

(*c*) the General Officer Commanding the Federation Army, who shall be appointed by the Yang di-Pertuan Agong and shall be Chief of Staff of the Federation Armed Forces;

(*d*) the senior staff officer of the Federation Army responsible for personnel and the senior staff officer of the Federation Army responsible for stores, equipment and quarters;

(*e*) any officer appointed by the Yang di-Pertuan Agong to command the Federation Navy or the Federation Air Force;

(*f*) a civilian member, being the person performing the duties of the office of Secretary for Defence, who shall act as secretary to the Council;

(*g*) one, if any, additional member, whether military or civilian, appointed by the Yang di-Pertuan Agong.

(4) The Armed Forces Council may act notwithstanding a vacancy in its membership and may, subject to this Constitution and to federal law, provide for all or any of the following matters:

(*a*) the organisation of its work and the manner in which its functions are to be performed, and the keeping of records and minutes;

(*b*) the duties and responsibilities of the several members of the Council, including the delegation to any member of the Council of any of its powers or duties;

(*c*) the consultation by the Council with persons other than its members;

(*d*) the procedure to be followed by the Council in conducting its business (including the fixing of a quorum), the appointment, at its option, of a vice-chairman from among its members, and the functions of the vice-chairman;

(*e*) any other matters for which the Council considers it necessary or expedient to provide for the better performance of its functions.

Judicial and Legal Service Commission.

138. (1) There shall be a Judicial and Legal Service Commission.

(2) Without prejudice to the functions exercisable by the Judicial and Legal Service Commission under any other Article, the jurisdiction of the Commission shall extend to all members of the judicial and legal service other than the Chief Justice and the other judges of the Supreme Court and the Attorney General.

(3) The Judicial and Legal Service Commission shall consist of—

(*a*) the Chief Justice, who shall be Chairman;

(*b*) the Attorney General;

(*c*) the senior puisne judge;

(*d*) the deputy chairman of the Public Services Commission; and

(*e*) one or more other members, who shall be appointed by the Yang di-Pertuan Agong, after consultation with the Chief Justice, from among judges or former judges of the Supreme Court.

Public Services Commission.

139. (1) There shall be a Public Services Commission, whose jurisdiction shall, subject to Article 144, extend to all persons who are members of the services mentioned in paragraphs (*c*) and (*f*) of Clause (1) of Article 132, other than the Auditor General, or members of the public service of the State of Malacca or the State of Penang, and, to the extent provided by Clause (2), to members of the public service of any other State.

(2) The Legislature of any State other than Malacca and Penang may by law extend the jurisdiction of the Public Services Commission to all or any persons in the public service of that State, but no such law shall take effect earlier than twelve months from the date of its passing; and if at any time after the relevant date there is not, in any such State in which no such law is in force, established and exercising its functions a Commission corresponding in status and jurisdiction to the Public Services Commission, the jurisdiction of the Public Services Commission shall, if federal law so provides, extend to all members of the public service of that State.

(3) The relevant date referred to in Clause (2) is whichever of the following is the earlier—

(*a*) the thirty-first day of December, nineteen hundred and sixty-two; or

(*b*) the date on which there are first in operation as part of the Constitution of the State all the provisions set out in Part I of the Eighth Schedule or provisions substantially to the same effect.

(4) The Public Services Commission shall consist of the following members appointed by the Yang di-Pertuan Agong in his discretion but after considering the advice of the Prime Minister and after consultation with the Conference of Rulers, that is to say, a chairman, a deputy chairman and not less than four nor more than eight other members.

(5) Either the chairman or the deputy chairman shall be, and both may be, appointed from among persons who are, or have at any time within the period

of five years immediately preceding the date of their first appointment been, members of any of the public services.

(6) A member of any of the public services appointed to be chairman or deputy chairman shall not be eligible for any further appointment in the service of the Federation other than as a member of a Commission to which this Part applies.

Police Service Commission.

140. (1) There shall be a Police Service Commission, whose jurisdiction shall, subject to Article 144, extend to all persons who are members of the police service.

(2) The Police Service Commission shall consist of the following members, that is to say,—

(*a*) a chairman appointed by the Yang di-Pertuan Agong, who shall be either the chairman or the deputy chairman of the Public Services Commission;

(*b*) a member possessing legal qualifications, who shall be appointed by the Yang di-Pertuan Agong after consultation with the Chief Justice;

(*c*) not less than two nor more than four other members appointed by the Yang di-Pertuan Agong at his discretion but after considering the advice of the Minister for the time being charged with responsibility for the police.

Railway Service Commission.

141. (1) Subject to Clause (4), there shall be a Railway Service Commission, whose jurisdiction shall, subject to Article 144, extend to all persons who are members of the railway service.

(2) The Railway Service Commission shall consist of the following members appointed by the Yang di-Pertuan Agong, that is to say, a chairman, a deputy chairman and not less than two nor more than six other members; and either the chairman or the deputy chairman shall be, and both may be, appointed from among persons who are, or have at any time within the period of five years immediately preceding the date of their first appointment been, members of any of the public services.

(3) One of the members of the Railway Service Commission shall be appointed from among the members of the Public Services Commission and two of the other members shall, if suitable persons having

experience in railway service or railway administration are available, be appointed from among such persons.

(4) A member of any of the public services appointed to be chairman or deputy chairman shall not be eligible for any further appointment in the service of the Federation other than as a member of a Commission to which this Part applies.

(5) If the railway service ceases to be a public service of the Federation Parliament may by law abolish the Railway Service Commission.

General provisions relating to Commissions.

142. (1) A member of either House of Parliament or of the Legislative Assembly of a State shall not be appointed to be a member of a Commission to which this Part applies.

(2) Subject to Clause (3), a person shall not be appointed to be a member of any of the Commissions to which this Part applies if he is, and shall not remain such a member if he becomes,—

(*a*) a member of any of the public services;

(*b*) an officer or employee of any local authority or of a body corporate or authority established by law for public purposes;

(*c*) a member of a trade union or of a body or association affiliated to a trade union.

(3) Clause (2) does not apply to ex officio members; and a member of any of the public services may be appointed to be and remain chairman or deputy chairman and, if he is on leave prior to retirement, he may be appointed to be another member, of any of the said Commissions.

(4) Where, during any period, a member of any of the said Commissions has been granted leave of absence by the Yang di-Pertuan Agong or is unable, owing to his absence from the Federation, illness or any other cause, to discharge his functions as a member, then—

(*a*) if he is an appointed member, the Yang di-Pertuan Agong may appoint to exercise his functions during that period any person who would be qualified to be appointed in his place, and the appointment of such a person shall be made in the same manner as that of the member whose functions he is to exercise;

(*b*) if he is an ex officio member, any person authorised under federal law to perform the

functions of his office may during that period perform also his functions as a member of the Commission.

(5) A Commission to which this Part applies may act notwithstanding a vacancy in its membership, and no proceedings of such a Commission shall be invalidated by reason only that some person not entitled thereto has taken part in them.

(6) Before exercising his functions as a member of any of the said Commissions or under Clause (4) any person other than an ex officio member shall take and subscribe before a judge of the Supreme Court the oath of office and allegiance set out in the Sixth Schedule.

Conditions of service of members of Commissions.

143. (1) A member of a Commission to which this Part applies, other than an ex officio member—

(*a*) shall be appointed for a term of five years or, if the Yang di-Pertuan Agong, acting in his discretion but after considering the advice of the Prime Minister, in a particular case so determines, for such shorter term as he may so determine;

(*b*) may, unless disqualified, be re-appointed from time to time; and

(*c*) may at any time resign his office but shall not be removed from office except on the like grounds and in the like manner as a judge of the Supreme Court.

(2) Parliament shall by law provide for the remuneration of any member of the said Commission other than a member for whose remuneration as holder of any other office provision is made by federal law; and the remuneration so provided shall be charged on the Consolidated Fund.*

(3) The remuneration and other terms of office of a member of a Commission to which this Part applies shall not be altered to his disadvantage after his appointment.

Functions of Service Commissions.

144. (1) Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends.

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* Such provision (*inter alia*) is made by the Service Commissions Ordinance, 1957 (Ordinance No. 74 of 1957).

(2) Federal law may provide for the exercise of other functions by any such Commission.

(3) The Yang di-Pertuan Agong may designate as special posts any post held by the head or deputy head of a department or by an officer who in his opinion is of similar status, other than posts in the judicial and legal service; and the appointment to any post so designated shall not be made in accordance with Clause (1) but shall be made by the Yang di-Pertuan Agong on the recommendation of the Commission whose jurisdiction extends to the service in which the post is held.

(4) The Ruler or Governor of a State may designate as special posts any posts in the public service of his State held by the head or deputy head of a department or by an officer who in his opinion is of similar status; and the appointment to any post so designated shall not be made in accordance with Clause (1) but shall be made by the Ruler or Governor on the recommendation of the Public Services Commission (or, if there is in the State of any Ruler a Commission of corresponding status and jurisdiction, on the recommendation of that Commission).

(5) Before acting, in accordance with Clause (3) or (4), on the recommendation of the Commission therein mentioned—

(*a*) the Yang di-Pertuan Agong shall consider the advice of the Prime Minister; and

(*b*) the Ruler or Governor shall consider the advice of the Chief Minister of his State,

and may once refer the recommendation back to the Commission in order that it may be reconsidered.

(6) A Commission to which this Part applies may delegate to any officer in a service to which its jurisdiction extends, or to any board of such officers appointed by it, any of its functions under Clause (1) in respect of any grade of service, and that officer or board shall exercise those functions under the direction and the control of the Commission.

(7) In this Article "transfer" does not include transfer without change of rank within a department of government.

(8) A Commission to which this Part applies may, subject to the provisions of this Constitution and of federal law, make rules regulating its procedure and

specifying the number of its members which are to constitute a quorum.

The Attorney General.

145. (1) The Yang di-Pertuan Agong shall, after consultation with the Judicial and Legal Service Commission, appoint from among the members of the judicial and legal service an Attorney General, who shall be a person qualified to be a judge of the Supreme Court.

(2) The Attorney General shall advise on legal matters referred to him by the Yang di-Pertuan Agong or the Cabinet, and shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Muslim court or a court-martial.

(3) The Attorney General shall have the right of audience in, and shall take precedence over any other person appearing before, any court or tribunal.

(4) Subject to Clause (5), the Attorney General shall hold office until he attains the age of sixty-five years or such later time, not later than six months after he attains that age, as the Yang di-Pertuan Agong may approve.

(5) The Attorney General may at any time resign his office but shall not be removed from office except on the like grounds and in the like manner as a judge of the Supreme Court.

Reports of Commissions.

146. (1) Each of the Commissions to which this Part applies shall make an annual report on its activities to the Yang di-Pertuan Agong and copies of those reports shall be laid before both Houses of Parliament.

(2) The Public Services Commission shall send a copy of every report made under this Article to the Ruler or Governor of each State to members of whose public service their jurisdiction extends, and the Ruler or Governor shall lay it before the Legislative Assembly.

Protection of pension rights.

147. (1) The law applicable to any pension, gratuity or other like allowance (in this Article referred to as an "award") granted to a member of any of the public services, or to his widow, children, dependant or personal representatives, shall be that in force on the relevant day or any later law not less favourable to the person to whom the award is made.

(2) For the purposes of this Article the relevant day is—

(*a*) in relation to an award made before Merdeka Day, the date on which the award was made;

(*b*) in relation to an award made after Merdeka Day to or in respect of any person who was a member of any of the public services before Merdeka Day, the thirtieth day of August, nineteen hundred and fifty-seven;

(*c*) in relation to an award made to or in respect of any person who first became a member of any of the public services on or after Merdeka Day, the date on which he first became such a member.

(3) For the purposes of this Article, where the law applicable to an award depends on the option of the person to whom it is made, the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted.

Interpretation of Part X.

148. (1) References in this Constitution to a Commission to which this Part applies are references to any of the Commissions established under Articles 138 to 141.

(2) In this Part "ex officio member" includes the Chief Justice and other judges of the Supreme Court, and the Attorney General.

PART XI

SPECIAL POWERS AGAINST SUBVERSION, AND EMERGENCY POWERS

Legislation against subversion.

149. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation, to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property, any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, or 10, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.

(2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, cease to have effect on the expiration of a period of one year from the date on which it comes into operation, without

prejudice to the power of Parliament to make a new law under this Article.

Proclamation of emergency.

150. (1) If the Yang di-Pertuan Agong is satisfied that a grave emergency exists whereby the security or economic life of the Federation or of any part thereof is threatened, whether by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency.

(2) If a Proclamation of Emergency is issued when Parliament is not sitting, the Yang di-Pertuan Agong shall summon Parliament as soon as may be practicable, and may, until both Houses of Parliament are sitting, promulgate ordinances having the force of law, if satisfied that immediate action is required.

(3) A Proclamation of Emergency and any ordinance promulgated under Clause (2) shall be laid before both Houses of Parliament and, if not sooner revoked, shall cease to be in force—

(*a*) a Proclamation at the expiration of a period of two months beginning with the date on which it was issued; and

(*b*) an ordinance at the expiration of a period of fifteen days beginning with the date on which both Houses are first sitting,

unless, before the expiration of that period, it has been approved by a resolution of each House of Parliament.

(4) While a Proclamation of Emergency is in force the executive authority of the Federation shall, notwithstanding anything in this Constitution, extend to any matter within the legislative authority of a State and to the giving of directions to the Government of a State or to any officer or authority thereof.

(5) While a Proclamation of Emergency is in force Parliament may, notwithstanding anything in this Constitution, make laws with respect to any matter enumerated in the State List (other than any matter of Muslim law or the custom of the Malays), extend the duration of Parliament or of a State Legislature, suspend any election, and make any provision consequential upon or incidental to any provision made in pursuance of this clause.

(6) No provision of any law or ordinance made or promulgated in pursuance of this Article shall be invalid on the ground of any inconsistency with the provisions of Part II, and Article 79 shall not apply to any Bill for such a law or any amendment to such a Bill.

(7) At the expiration of a period of six months beginning with the date on which a Proclamation of Emergency ceases to be in force, any ordinance promulgated in pursuance of the Proclamation and, to the extent that it could not have been validly made but for this Article, any law made while the Proclamation was in force, shall cease to have effect, except as to things done or omitted to be done before the expiration of that period.

Restrictions on preventive detention.

*151. (1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention—

(*a*) the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and, subject to Clause (3), the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be;

(*b*) no citizen shall be detained under that law or ordinance for a period exceeding three months unless an advisory board constituted as mentioned in Clause (2) has considered any representations made by him under paragraph (*a*) and has reported, before the expiration of that period, that there is in its opinion sufficient cause for the detention.

(2) An advisory board constituted for the purposes of this Article shall consist of a chairman, who shall be appointed by the Yang di-Pertuan Agong from among persons who are or have been judges of the Supreme Court or are qualified to be judges of the Supreme Court, and two other members, who shall be appointed by the Yang di-Pertuan Agong after consultation with the Chief Justice or, if at the time another judge of the Supreme Court is acting for the Chief Justice, after consultation with that judge.

(3) This Article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.

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* The Constitutional Commission recommended that "preventive detention should be illegal except in so far as it may be allowed by emergency legislation" (*Report*, page 93). In consequence it would appear (in view of the fact that this Part follows the provisions of the Constitution proposed by the Commission) that preventive detention can only be provided for by virtue of a law or ordinance made under this Part.

PART XII

GENERAL AND MISCELLANEOUS

National language.

152. (1) The national language shall be the Malay language and shall be in such script as Parliament may by law provide:

Provided that—

(*a*) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and

(*b*) nothing in this clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.

(2) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the English language may be used in both Houses of Parliament, in the Legislative Assembly of every State, and for all other official purposes.

(3) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the authoritative texts—

(*a*) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament, and

(*b*) of all Acts of Parliament and all subsidiary legislation issued by the Federal Government,

shall be in the English language.

(4) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Supreme Court shall be in the English language:

Provided that, if the Court and counsel on both sides agree, evidence taken in the language spoken by the witness need not be translated into or recorded in English.

(5) Notwithstanding the provisions of Clause (1), until Parliament otherwise provides, all proceedings in subordinate courts, other than the taking of evidence, shall be in the English language.

Reservation of quotas in respect of services, permits, etc., for Malays.

*153. (1) It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and the legitimate interests of other communities in accordance with the provisions of this Article.

(2) Notwithstanding anything in this Constitution, but subject to the provisions of Article 40 and of this Article, the Yang di-Pertuan Agong shall exercise his functions under this Constitution and federal law in such manner as may be necessary to safeguard the special position of the Malays and to ensure the reservation for Malays of such proportion as he may deem reasonable of positions in the public service (other than the public service of a State) and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and, when any permit or licence for the operation of any trade or business is required by federal law, then, subject to the provisions of that law and this Article, of such permits and licences.

(3) The Yang di-Pertuan Agong may, in order to ensure in accordance with Clause (2) the reservation to Malays of positions in the public service and of scholarships, exhibitions and other educational or training privileges or special facilities, give such general directions as may be required for that purpose to any Commission to which Part X applies or to any authority charged with responsibility for the grant of such scholarships, exhibitions or other educational or training privileges or special facilities; and the Commission or authority shall duly comply with the directions.

(4) In exercising his functions under this Constitution and federal law in accordance with Clauses (1) to (3) the Yang di-Pertuan Agong shall not deprive any person of any public office held by him or of the continuance of any scholarship, exhibition or other educational or training privileges or special facilities enjoyed by him.

(5) This Article does not derogate from the provisions of Article 136.

(6) Where by existing federal law a permit or licence is required for the operation of any trade or business the Yang di-Pertuan Agong may exercise his functions under that law in such manner, or give such general directions to any authority charged under that law with the grant of such permits or licences, as may be required

* *See* Article 38 (5).

to ensure the reservation of such proportion of such permits or licences for Malays as the Yang di-Pertuan Agong may deem reasonable; and the authority shall duly comply with the directions.

(7) Nothing in this Article shall operate to deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events.

(8) Notwithstanding anything in this Constitution, where by any federal law any permit or licence is required for the operation of any trade or business, that law may provide for the reservation of a proportion of such permits or licences for Malays; but no such law shall for the purpose of ensuring such a reservation—

(*a*) deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him; or

(*b*) authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of any person any permit or licence when the renewal or grant might in accordance with the other provisions of the law reasonably be expected in the ordinary course of events, or prevent any person from transferring together with his business any transferable licence to operate that business; or

(*c*) where no permit or licence was previously required for the operation of the trade or business, authorise a refusal to grant a permit or licence to any person for the operation of any trade or business which immediately before the coming into force of the law he had been *bona fide* carrying on, or authorise a refusal subsequently to renew to any such person any permit or licence, or a refusal to grant to the heirs, successors or assigns of any such person any such permit or licence when the renewal or grant might in accordance with the other provisions of that

law reasonably be expected in the ordinary course of events.

(9) Nothing in this Article shall empower Parliament to restrict business or trade solely for the purpose of reservations for Malays.

(10) The Constitution of the State of any Ruler may make provision corresponding (with the necessary modifications) to the provisions of this Article.*

The Federal capital.

154. (1) Until Parliament otherwise determines, the municipality of Kuala Lumpur shall be the federal capital.

(2) Notwithstanding anything in Part VI, but subject to Clause (3) Parliament shall have exclusive power to make laws with respect to the boundaries of the federal capital.

(3) In relation to the municipality of Kuala Lumpur, Clause (2) shall not apply until such date as may be appointed by the Yang di-Pertuan Agong with the concurrence of the Ruler of the State of Selangor in pursuance of arrangements made between the Federal Government and the Government of that State for the establishment elsewhere of the State capital; and until the date so appointed the Federal List shall have effect as if item (*e*) of section 6, and in item (*h*) of section 7 the words "rates in the federal capital", were omitted.

Commonwealth reciprocity.

155. (1) Where the law in force in any other part of the Commonwealth confers upon citizens of the Federation any right or privilege it shall be lawful, notwithstanding anything in this Constitution, for Parliament to confer a similar right or privilege upon citizens of that part of the Commonwealth who are not citizens of the Federation.

(2) In this Article "part of the Commonwealth" means any Commonwealth country, any colony, protectorate or protected state, and any other territory administered by the Government of any Commonwealth country; and in relation to the United Kingdom and any other part of the Commonwealth (not being a Commonwealth country or a territory administered by the Government of a Commonwealth country other than the United Kingdom) the reference to citizens of

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* Such provision has been made in all the State Constitutions concerned: *see Johore Gazette* Notification (New Series) 43A of 1957; *Kedah* Legal Notification 27 of 1957; *Kelantan Gazette* Notification 241 of 1957; *Negri Sembilan Gazette* Notification 453 of 1957; *Pahang Gazette* Notification 270 of 1957; *Perak Gazette* Notification 1413 of 1957; *Perlis* Legal Notification 5 of 1957; *Selangor Gazette* Notification 403 of 1957; and *Trengganu Gazette* Notification 227 of 1957.

that part shall be construed as a reference to citizens of the United Kingdom and colonies.

(3) This Article applies in relation to the Republic of Ireland as it applies in relation to a Commonwealth country.

Contributions in aid of rates in respect of federal and State property.

156. Where lands, buildings, or hereditaments are occupied for public purposes by or on behalf of the Federation, a State or a public authority, the Federation, State or public authority shall not be liable to pay local rates in respect thereof but shall in aid of those rates make such contributions in respect thereof as may be agreed between the Federation, State or public authority, as the case may be, and the authority levying the rates or as may in default of agreement be determined by a tribunal consisting of the chairman of the Lands Tribunal established under Article 87, who shall preside, and two other members of whom each of the parties concerned shall appoint one.

Delegation of State functions to another State.

157. Subject to any provisions of State law, arrangements may be made between any two States for the performance of any functions by the authorities of the one on behalf of the authorities of the other, and such arrangements may provide for the making of payments in respect of any costs incurred under the arrangements.

Pan-Malayan arrangements.

158. (1) Nothing in this Constitution shall be taken to prohibit the making or continuance of arrangements whereby—

(*a*) departments, authorities or services are maintained by the Federal Government in common with the Government of any territory to which this Article applies; or

(*b*) the Federal Government or any officer or authority thereof acts as agent for the Government of any territory to which this Article applies; or

(*c*) any part of the executive authority of the Federation is exercised, with the consent of the Federal Government, by any officer or authority of the Government of any territory to which this Article applies.

(2) This Article applies to Singapore, Sarawak, Brunei and North Borneo.

Amendment of the Constitution.

159. (1) Subject to the following provisions of this Article, the provisions of this Constitution may be amended by federal law.

(2) No amendments to this Constitution shall be made before Parliament is constituted in accordance with Part IV, except such as the Legislative Council may deem necessary to remove any difficulties in the transition from the constitutional arrangements in operation immediately before Merdeka Day to those provided for by this Constitution; but any law made in pursuance of this clause shall, unless sooner repealed, cease to have effect at the expiration of a period of twelve months beginning with the day on which Parliament first meets.

(3) A Bill for making any amendment to the Constitution (other than an amendment excepted from the provisions of this clause) shall not be passed in either House of Parliament unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of members of that House.

(4) The following amendments are excepted from the provisions of Clause (3), that is to say,—

(*a*) any amendment to the Second, Sixth or Seventh Schedule;

(*b*) any amendment incidental to or consequential on the exercise of any power to make law conferred on Parliament by any provision of this Constitution other than Articles 74 and 76; and

(*c*) any amendment incidental to or consequential on the repeal of a law made under Clause (2) or consequential on an amendment made under paragraph (*a*).

(5) A law making an amendment to Article 38, 70, 71 (1) or 153 shall not be passed without the consent of the Conference of Rulers.

(6) In this Article "amendment" includes addition and repeal.

Interpretation.

160. (1) The Interpretation and General Clauses Ordinance, 1948, as in force immediately before Merdeka Day shall, to the extent specified in the Eleventh Schedule, apply for the interpretation of this Constitution as it applies for the interpretation of any written law within the meaning of that Ordinance, but with the substitution of references to the Yang di-Pertuan Agong for references to the High Commissioner.

(2) In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

"Act of Parliament" means a law made by Parliament;

"Borrow" includes the raising of money by the grant of annuities, and "loan", shall be construed accordingly;

"Casual vacancy" means a vacancy arising in the Senate otherwise than by the expiry of the term of office of a member, or a vacancy arising in the House of Representatives or a Legislative Assembly otherwise than by a dissolution of Parliament or of the Assembly;

"Chief Minister" includes Mentri Besar;

"Citizen" means a citizen of the Federation;

"Civil List" means the provision made for the maintenance of the Yang di-Pertuan Agong, his Consort, a Ruler or Governor out of public funds;

"Commonwealth country" means the United Kingdom, Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon, Ghana and any other country declared by Act of Parliament to be a Commonwealth country and "part of the Commonwealth" has the meaning assigned to it by Article 155 (2);

"Concurrent List" means the Third List set out in the Ninth Schedule;

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

"Elector" means a person who is entitled to vote in an election to the House of Representatives or the Legislative Assembly of a State;

"Enactment", where the expression occurs in the Eighth Schedule, means a law made by the Legislature of a State;

"Existing law" means any law in operation in the Federation or any part thereof immediately before Merdeka Day;

"Federal law" means—

(*a*) any existing law relating to a matter with respect to which Parliament has power to make laws, being a law continued in operation under Part XIII, and

(*b*) any Act of Parliament;

"Federal List" means the First List set out in the Ninth Schedule;

"Federal purposes" includes all purposes in connection with matters with respect to which Parliament has power to make laws otherwise than by virtue of Article 76;

"Foreign country" does not include any part of the Commonwealth or the Republic of Ireland;

"Law" includes written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof;

"Legislative Assembly", except in the Seventh and Eighth Schedules, includes a Council of State;

"Legislative Council" means the Legislative Council continued under Article 164;

"Legislature", in relation to a State, means the authority having power under the Constitution of that State to make laws for the State;

"Malay" means a person who professes the Muslim religion, habitually speaks the Malay language, conforms to Malay custom and—

(*a*) was before Merdeka Day born in the Federation or born of parents one of whom was born in the Federation, or is on that day domiciled in the Federation; or

(*b*) is the issue of such a person;

"Merdeka Day" means the thirty-first day of August, nineteen hundred and fifty-seven;

"Office of profit" means any whole-time office in any of the public services, and includes the office of Chief Justice or other judge of the Supreme Court, Auditor General, Attorney General, member of the Election Commission or of any Commission to which Part X applies, and any other office declared by Act of Parliament to be an office of profit;

"Pension rights" includes superannuation rights and provident fund rights;

"Public authority" means the Yang di-Pertuan Agong, the Ruler or Governor of a State, the Federal Government, the Government of a State, a local authority, a statutory authority exercising powers vested in it by federal or State law, any court or tribunal other than the Supreme Court, or any officer or authority appointed

by or acting on behalf of any of those persons, courts, tribunals or authorities;

"Remuneration" includes salary or wages, allowances, pension rights, free or subsidised housing, free or subsidised transport, and other privileges capable of being valued in money;

"Rule Committee" means the Rule Committee or other authority having power under written law to make rules or orders regulating the practice and procedure of the Supreme Court;

"Ruler",—

(*a*) in relation to Negri Sembilan, means the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs in accordance with the Constitution of that State; and

(*b*) in the case of any State, includes, except in Article 181 (2) and the Third and Fifth Schedules, any person who in accordance with the Constitution of that State exercises the functions of the Ruler;

"State" means a State of the Federation;

"State law" means—

(*a*) any existing law relating to a matter with respect to which the Legislature of a State has power to make law, being a law continued in operation under Part XIII; and

(*b*) a law made by the Legislature of a State;

"State List" means the Second List set out in the Ninth Schedule;

"Tax" includes an impost or a duty but does not include a rate levied for local purposes or a fee for services rendered;

"The Federation" means the Federation established under the Federation of Malaya Agreement, 1957;

"Written law" includes this Constitution and the Constitution of any State.

(3) Unless the context otherwise requires, any reference in this Constitution to a specified Part, Article or Schedule is a reference to that Part or Article of, or that Schedule to, this Constitution, any reference to a specified chapter, clause, section or paragraph is a reference to that chapter of the Part, that clause of the Article, that section of the Schedule, or that paragraph of the clause or section, in which the reference occurs;

and any reference to a group of Articles, sections or divisions of Articles or sections shall be construed as including both the first and the last member of the group referred to.

(4) Where under this Constitution a person is required to take and subscribe an oath he shall be permitted, if he so desires, to comply with that requirement by making and subscribing an affirmation.

(5) References in this Constitution to the Federation and its States and to the territories of the Federation or any of its States, and to any officer holding office under the Federation or any authority or body in or for the Federation shall be construed—

(*a*) in relation to any time after the coming into operation of the Federation of Malaya Agreement, 1948, and before Merdeka Day, as references to the Federation established under that Agreement, and the States and Settlements comprising it and to the territories of that Federation or any of the States and Settlements comprising it, and to the corresponding officer holding office thereunder or the corresponding authority or body in or for that Federation;

(*b*) in relation to any time before the coming into operation of the said Agreement (so far as the context admits) as references to such of the countries, territories, offices, authorities or bodies for the construction of references to which provision was made by Clause 135 (2) of the said Agreement, as may be appropriate.

(6) References in this Constitution to any period shall be construed, so far as the context admits, as including references to a period beginning before Merdeka Day.

(7) References in this Constitution to the Federation of Malaya Agreement, 1948, shall be construed, except where the context otherwise requires, as references to that Agreement as in force immediately before Merdeka Day.

Commencement.

161. Except as otherwise expressly provided, this Constitution shall come into operation on Merdeka Day.

PART XIII

TEMPORARY AND TRANSITIONAL PROVISIONS

Existing laws.

***162.** (1) Subject to the following provisions of this Article and Article 163, the existing laws shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article and subject to any amendments made by federal or State law.

(2) Where any State law amends or repeals an existing law made by the Legislature of a State, nothing in Article 75 shall invalidate the amendment or repeal by reason only that the existing law, relating to a matter with regard to which Parliament as well as the Legislature of a State has power to make laws, is federal law as defined by Article 160.

(3) References in any existing law to the Federation established by the Federation of Malaya Agreement, 1948, and its territories, and of any officer holding office under that Federation or to any authority or body constituted in or for that Federation (including any references falling to be construed as such references by virtue of Clause 135 of the said Agreement) shall be construed, in relation to any time on and after Merdeka Day, as references to the Federation (that is to say, the Federation established under the Federation of Malaya Agreement, 1957) and its territories and to the corresponding officer, authority or body respectively; and the Yang di-Pertuan Agong may by order declare what officer, authority or body is to be taken for the purposes of this clause to correspond to any officer, authority or body referred to in any existing law.

(4) The Yang di-Pertuan Agong may, within a period of two years beginning with Merdeka Day, by order make such modifications in any existing law, other than the Constitution of any State, as appear to him necessary or expedient for the purpose of bringing the provisions of that law into accord with the provisions of this Constitution; but before making any such order

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* The above Article refers only to *existing laws*, that is to say, laws in operation in the Federation or any part thereof immediately before Merdeka Day [*see* Article 160 (1)]. In consequence it was necessary to make special provision for the bringing into operation of Ordinances and subsidiary legislation enacted or made before, but not brought into force by Merdeka Day: *see* the Pending Laws (Validation) Ordinance, 1957 (Ordinance No. 58 of 1957). Nothing in that Ordinance applied, however, to any Ordinance or subsidiary legislation which related to any matter with respect to which Parliament has under the Constitution no power to make laws.

in relation to a law made by the Legislature of a State he shall consult the Government of that State.*

(5) Any order made under Clause (4) may be amended or repealed by the authority having power to make laws with respect to the matter to which the order relates.

(6) Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution.†

(7) In this Article "modification" includes amendment, adaptation and repeal.

Temporary continuance of Emergency Regulations Ordinance, 1948.

163. (1) The Emergency Regulations Ordinance, 1948, and all subsidiary legislation made thereunder shall, if not sooner ended by a Proclamation under Clause (2), cease to have effect on the expiration of one year beginning with Merdeka Day or, if continued under this Article, on the expiration of a period of one year from the date on which it would have ceased to have effect but for the continuation or last continuation.

(2) The Yang di-Pertuan Agong may at any time repeal the said Ordinance and any subsidiary legislation made thereunder by a Proclamation declaring that the need for the Ordinance has ended.

(3) The said Ordinance and subsidiary legislation may be continued from time to time by a resolution of each House of Parliament.

(4) While the said Ordinance continues in force any subsidiary legislation which could have been made thereunder immediately before Merdeka Day may be validly made thereunder notwithstanding that it is inconsistent with any provision of this Constitution, and Parliament may, notwithstanding anything in this Constitution, by law amend or repeal any provision thereof.

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* The following orders have so far been made under this Clause: the Federal Constitution (Modification of Laws) Order, 1957; the Federal Constitution (Modification of Laws) (Interpretation and General Clauses Ordinance) Order, 1957; the Federal Constitution (Modification of Laws) [Public Officers (Conduct and Discipline) Regulations] Order, 1957; and the Federal Constitution (Modification of Laws) (No. 2) Order, 1957. [*See* Legal Notifications (New Series) 1, 2, 14 and 73 of 1957.]

† *See* also Article 4, *supra*.

Temporary functions of Legislative Council.

164. (1) The Legislative Council established under the Federation of Malaya Agreement, 1948, shall remain in being on and after Merdeka Day and shall not be dissolved before the first day of January, nineteen hundred and fifty-nine.

(2) If the Election Commission advises the Yang di-Pertuan Agong that it is not reasonably practicable to hold elections to Parliament in accordance with this Constitution before the first day of July, nineteen hundred and fifty-nine, the Yang di-Pertuan Agong may at any time after the first day of January, nineteen hundred and fifty-nine, by Proclamation continue the Legislative Council until such date, not being later than the end of that year, as may be specified in the Proclamation, and the Legislative Council shall continue accordingly and shall stand dissolved on that date.

(3) Until the dissolution of the Legislative Council Chapters 4 and 5 of Part IV shall not apply, and the powers of Parliament under this Constitution shall be exercisable by the Yang di-Pertuan Agong with the advice and consent of the Legislative Council; and accordingly, in relation to the period ending with the dissolution of the Legislative Council, references in this Constitution, other than references in Article 159, to Parliament, either or both Houses of Parliament and an Act of Parliament shall be construed respectively as references to the Yang di-Pertuan Agong with the advice and consent of the Legislative Council, the Legislative Council and an Ordinance enacted by the Yang di-Pertuan Agong with the advice and consent of that Council.

(4) Until the dissolution of the Legislative Council the provisions of the Federation of Malaya Agreement, 1948, set out in the first column of the Twelfth Schedule shall continue in force, subject to the modifications set out in the second column of that Schedule and to the following further modifications, that is to say,—

(*a*) for references to a Malay State or a Settlement there shall be substituted references to a State;

(*b*) for references to the High Commissioner there shall be substituted references to the Yang di-Pertuan Agong; and

(*c*) for references to the Federal Executive Council there shall be substituted references to the Cabinet,

and Article 61 shall apply with the necessary modifications.

Temporary financial provisions.

165. (1) Subject to Clause (4), Part VII shall not come into operation until the first day of January nineteen hundred and fifty-nine, or such earlier date as may be provided by or under federal law.

(2) Until the coming into operation of Part VII, the provisions of Part XI of and the Third, Fourth and Fifth Schedules to the Federation of Malaya Agreement, 1948, shall continue in force, but with the following modifications, that is to say,—

(*a*) references to a Malay State or a Settlement shall be construed as references to a State;

(*b*) references to the High Commissioner and to the High Commissioner in Council shall be construed as references to the Yang di-Pertuan Agong;

(*c*) references to the Government of a Settlement shall be deleted; and

(*d*) references to a Settlement Council shall be construed as references to a Council of State.

(3) Until the coming into operation of Part VII, any moneys which under this Constitution (including Part VII) are charged on the Consolidated Fund shall be charged on the revenues of the Federation, and payment thereof shall be made by virtue of this clause without further authority of federal law.

(4) Notwithstanding anything in Clause (1), the following provision of Part VII shall come into operation on Merdeka Day, that is to say, Articles 96, 105 to 107 and 111.

Succession to property.

166. (1) Subject to the provisions of this Article, all property and assets which immediately before Merdeka Day were vested in Her Majesty for the purposes of the Federation or of the colony or Settlement of Malacca or the colony or Settlement of Penang, shall on Merdeka Day vest in the Federation or the State of Malacca or the State of Penang, as the case may be.

(2) Any land in the State of Malacca or the State of Penang which immediately before Merdeka Day was vested in Her Majesty shall on that day vest in the State of Malacca or the State of Penang as the case may be.

(3) Any land vested in the State of Malacca or the State of Penang which immediately before Merdeka Day was occupied or used by the Federation Government or Her Majesty's Government or by any public authority for purposes which in accordance with the

provisions of this Constitution become federal purposes shall on and after that day be occupied, used, controlled and managed by the Federal Government or, as the case may be, the said public authority, so long as it is required for federal purposes, and—

(*a*) shall not be disposed of or used for any purposes other than federal purposes without the consent of the Federal Government, and

(*b*) shall not be used for federal purposes different from the purposes for which it was used immediately before Merdeka Day without the consent of the Government of the State.

(4) Any State land which, immediately before Merdeka Day, was occupied or used, without being reserved, by the Federation Government for purposes which become federal purposes on that day, shall on that day be reserved for those federal purposes.

(5) All property and assets which immediately before Merdeka Day were vested in the Federation Government or some other person on its behalf for purposes which on that day continue to be federal purposes, shall on that day vest in the Federation.

(6) Property and assets which immediately before Merdeka Day were vested in the Federation Government or some person on its behalf for purposes which on that day become purposes of any State shall on that day vest in that State.

(7) Property and assets other than land which immediately before Merdeka Day were used by a State for purposes which on that day become federal purposes shall on that day vest in the Federation.

(8) Any property which was, immediately before Merdeka Day, liable to escheat to Her Majesty in respect of the government of Malacca or the government of Penang shall on that day be liable to escheat to the State of Malacca or the State of Penang, as the case may be.

Rights, liabilities and obligations.

167. (1) Subject to the provisions of this Article, all rights, liabilities and obligations of—

(*a*) Her Majesty in respect of the government of the Federation, and

(*b*) the Government of the Federation or any public officer on behalf of the Government of the Federation,

shall on and after Merdeka Day be the rights, liabilities and obligations of the Federation.

(2) Subject to the provisions of this Article, all rights, liabilities and obligations of—

(*a*) Her Majesty in respect of the government of Malacca or the government of Penang,

(*b*) His Highness the Ruler in respect of the government of any State, and

(*c*) the Government of any State,

shall on and after Merdeka Day be the rights, liabilities and obligations of the respective States.

(3) All rights, liabilities and obligations relating to any matter which was immediately before Merdeka Day the responsibility of the Federation Government but which on that date becomes the responsibility of the Government of a State, shall on that day devolve upon that State.

(4) All rights, liabilities and obligations relating to any matter which was immediately before Merdeka Day the responsibility of the Government of a State but which on that day becomes the responsibility of the Federal Government, shall on that day devolve upon the Federation.

(5) In this Article, rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise, other than rights to which Article 166 applies.

(6) The Attorney General shall, on the application of any party interested in any legal proceedings, other than proceedings between the Federation and a State, certify whether any right, liability or obligation is by virtue of this Article a right, liability or obligation of the Federation or of a State named in the certificate, and any such certificate shall for the purposes of those proceedings be final and binding on all courts, but shall not operate to prejudice the rights and obligations of the Federation and any State as between themselves.

(7) The Federation shall make the like annual payments as fell to be made before Merdeka Day under Article II of the Treaty made on the sixth day of May, eighteen hundred and sixty-nine, between Her

Majesty of the one part and the King of Siam of the other part relative to the State of Kedah.*

Legal proceedings.

168. (1) Subject to the provisions of this Article, any legal proceedings pending in any court immediately before Merdeka Day in which Her Majesty or any servant of Her Majesty is a party in respect of the colony or Settlement of Malacca or the colony or Settlement of Penang shall continue on and after Merdeka Day with the State of Malacca or the State of Penang, as the case may be, substituted as a party.

(2) Subject to the provisions of this Article, any legal proceedings pending in any court immediately before Merdeka Day in which the Federation Government or a State Government or any officer of either Government is a party shall continue on and after Merdeka Day with the Federation or, as the case may be, the State substituted as a party.

(3) Any legal proceedings pending in any court immediately before Merdeka Day in which the Federation Government or any officer thereof is a party shall, if the subject matter falls within the executive authority of a State, be continued on and after that day with that State substituted as a party.

(4) Any legal proceedings pending in any court immediately before Merdeka Day in which a State or

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* *See* also the Fourth Schedule to the Federation of Malaya Agreement, 1957, at page 12, *supra*. The two Articles referred to in that Schedule are as follows:

"*Article II*

The Governor of the British Colony of the Straits Settlements shall pay annually to His Highness the Iang de per Tuan of Quedah, ten thousand dollars, as long as Her Britannic Majesty shall continue in possession of Pulo Penang and the country on the opposite coast hereafter mentioned.

Article III

His Highness the Iang de per Tuan of Quedah agrees that the Dominions of Her Britannic Majesty on the mainland, opposite the Island of Penang, shall comprize the Territories bounded as follows: that is to say, on the West by the Sea, on the North by the right bank of the River Mudah, on the South by the right bank of the River Kurreen (Kreean), and on the East by a line running South from a spot on the right bank of the River Mudah, opposite the existing Frontier pillar at Sematool, in a straight line to a point on the extreme eastern end of the Maratajam range of Hills. Thence along the top ridge of the Punchore Hill to the existing Frontier pillar on the right bank of the River Kurreean, about 400 English yards above and East of Bukit Tungal. A map showing the eastern Boundary above described, is annexed to the present Treaty, and signed by the respective Commissioners.

The British Authorities engage to respect the Royal burying grounds at Kotah Prye within the ceded Territory, and to consider them still the property of His Highness the Iang de per Tuan of Quedah, but subject nevertheless to British jurisdiction in other respects, provided always that the Mudah River shall at all times be free to the peaceful navigation of the subjects of His Majesty the King of Siam."

any officer thereof is a party shall, if the subject matter falls within the executive authority of the Federation, be continued on and after that day with the Federation substituted as a party.

(5) The Attorney General shall, on the application of any party to any proceedings referred to in this Article, certify whether the Federation or a State is in accordance with this Article to be substituted as a party in those proceedings, and any such certificate shall, for the purposes of those proceedings, be final and binding on all courts, but shall not operate to prejudice the rights and obligations of the Federation and any State as between themselves.

International agreements, etc., made before Merdeka Day.

*__169.__ For the purposes of Article 76 (1)—

(*a*) any treaty, agreement or convention entered into before Merdeka Day between Her Majesty or her predecessors or the Government of the United Kingdom on behalf of the Federation or any part thereof and another country shall be deemed to be a treaty, agreement or convention between the Federation and that other country;

(*b*) any decision taken by an international organisation and accepted before Merdeka Day by the Government of the United Kingdom on behalf of the Federation or any part thereof shall be deemed to be a decision of an international organisation of which the Federation is a member.

Temporary provisions for persons qualified for registration as citizens under Federation of Malaya Agreement, 1948, Clause 126.

170. (1) Subject to the provisions of this Article, any person who, immediately before Merdeka Day, was qualified to make application for registration as a citizen of the Federation under Clause 126 of the Federation of Malaya Agreement, 1948,† shall be entitled, upon making application to the registration

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* By an Exchange of Notes of September 12, 1957, the Governments of the Federation of Malaya and the United Kingdom agreed that:

(i) All obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument are, from 31st August, 1957, assumed by the Government of the Federation of Malaya in so far as such instruments may be held to have application to or in respect of the Federation of Malaya;

(ii) The rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to or in respect of the Federation of Malaya are from 31st August, 1957, enjoyed by the Government of the Federation of Malaya.

(*See Gazette* Notification No. 237 of January 22, 1958.)

† *See* page 249, *infra*.

authority within the period of one year beginning with that day, to be registered as a citizen.

(2) A person who has absented himself from the Federation for a continuous period of five years within the ten years immediately preceding his application under this Article shall not be entitled to be registered thereunder unless it is certified by the Federal Government that he has maintained substantial connection with the Federation during that period.

(3) This Article shall be construed as one with Part III; and Articles 18 and 26 shall apply in relation to registration under this Article, and to persons registered as citizens thereunder, as they apply in relation to registration under Article 16 and to persons registered under that Article.

Constituencies for first elections.

171. (1) Article 116 shall not apply to the first election to the House of Representatives, but for that election the Federation shall be divided into constituencies by dividing into two constituencies each of the constituencies delimited for the purpose of elections to the Legislative Council under the Federation of Malaya Agreement, 1948.

(2) The number of constituencies for the purpose of the first elections to be held after Merdeka Day to the Legislative Assemblies of the several States shall be as set out in the following Table, and those constituencies shall be delimited by dividing the constituencies delimited for the purpose of the first election to the House of Representatives.

Table

Johore	32	Penang	24
Kedah	24	Perak	40
Kelantan	30	Perlis	12
Malacca	20	Selangor	28
Negri Sembilan ...	24	Trengganu ...	24
Pahang	24		

Existing courts.

172. The Supreme Court in existence immediately before Merdeka Day shall be the Supreme Court for the purposes of this Constitution; and, without prejudice to the generality of Article 162, any other court then exercising jurisdiction and functions shall, until federal law otherwise provides, continue to exercise them.

Pending appeals to Privy Council.

173. Any appeal or application for leave to appeal from the Supreme Court to Her Majesty in Council which is pending immediately before Merdeka Day shall on and after Merdeka Day be treated as an appeal or application for leave to appeal under Article 131.

Judicial appointments and Attorney General.

174. (1) The Chief Justice and other judges of the Supreme Court holding office immediately before Merdeka Day shall, notwithstanding anything in Article 123, be the Chief Justice and the other judges of the Supreme Court on that day and shall hold office on terms and conditions not less favourable than those applicable to them immediately before that day.

(2) The person holding the office of Attorney General immediately before Merdeka Day shall continue to hold that office on terms and conditions not less favourable than those applicable to him immediately before Merdeka Day and shall, notwithstanding anything in Article 123, be qualified for appointment as a judge of the Supreme Court.

(3) A person who immediately before Merdeka Day was a member of the judicial and legal service of the Federation and would be qualified for appointment as a judge of the Supreme Court if he were a citizen shall be so qualified notwithstanding that he is not a citizen.

(4) A person may, within a period of five years beginning with Merdeka Day, be appointed to be a judge of the Supreme Court notwithstanding that he is not qualified for appointment under Article 123 if he is and has been for not less than five years qualified to practise as an advocate in a court in any Commonwealth country having unlimited jurisdiction in civil or criminal matters; and a person appointed by virtue of this clause may be appointed for a fixed period (whether expiring before or after he attains the age of sixty-five).

(5) Without prejudice to the generality of Article 162, nothing in Part IX shall be taken to affect the provisions of the existing law relating to the sitting in the Supreme Court of judges from countries outside the Federation.

Director of Audit to be first Auditor General.

175. The person holding office as Director of Audit immediately before Merdeka Day shall, as from that day, hold office as Auditor General on terms and

conditions not less favourable than those applicable to him immediately before Merdeka Day.

Transfer of officers.

176. (1) Subject to the provisions of this Constitution and any existing law, all persons serving in connection with the affairs of the Federation immediately before Merdeka Day shall continue to have the same powers and to exercise the same functions on Merdeka Day on the same terms and conditions as were applicable to them immediately before that day.

(2) This Article does not apply to the High Commissioner or the Chief Secretary.

Waiver or postponement of oath of office where appointment continues under this Part.

177. A person who, under any provisions of this Part, holds office under the Federation by virtue of having been the holder of a corresponding office immediately before Merdeka Day may, until Parliament otherwise provides, perform his functions without taking the oath required in the case of other holders of that office.

Remuneration after Merdeka Day.

178. Until Parliament otherwise provides, the remuneration payable to the persons holding the offices of Prime Minister and other Ministers shall be the same as was payable, immediately before Merdeka Day, to the Chief Minister and other Ministers of the Federation respectively.

Contributions in respect of joint services.

179. Any agreement in force immediately before Merdeka Day relating to the proportion of the remuneration payable by the Federation and any State in respect of any such employment as is mentioned in Article 133 (2) shall continue in force until superseded by a new agreement or federal law.

Preservation of pensions, etc.

180. (1) The Tenth Schedule to the Federation of Malaya Agreement, 1948, shall continue in force on and after Merdeka Day, but with the modification that any reference therein to the High Commissioner shall be construed as a reference to the Yang di-Pertuan Agong.

(2) The said Schedule shall for the purposes of this Constitution be deemed to be federal law and may, subject to the provisions of Article 147, be amended and repealed accordingly.

(3) In its application to any law made under Clause (2) Article 147 shall have effect as if references therein to an award included compensation.

PART XIV

SAVING FOR RULERS' SOVEREIGNTY, ETC.

Saving for Rulers' sovereignty, etc.

181. (1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of Negri Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.

(2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity.

Articles 18, 21.

SCHEDULES

FIRST SCHEDULE

OATH OF APPLICANTS FOR REGISTRATION OR NATURALISATION

I of

hereby declare on oath that I absolutely and entirely renounce and abjure all loyalty to any country or State outside the Federation, and I do swear that I will be a true, loyal and faithful citizen of the Federation, and will give due obedience to all lawfully constituted authorities in the Federation.

Article 31.

SECOND SCHEDULE*

SUPPLEMENTARY PROVISIONS RELATING TO CITIZENSHIP

The Minister

1. The functions of the Federal Government under Part III shall be exercised by such Minister of that Government as the Yang di-Pertuan Agong may from time to time direct, and references in this Schedule to the Minister shall be construed accordingly.†

2. A decision of the Federal Government under Part III shall not be subject to appeal or review in any court.

The registration authority

3. For the purposes of Part III and this Schedule the Election Commission shall be the registration authority.

4. The registration authority may delegate to any of its officers, or, with the consent of the Yang di-Pertuan Agong or of the Ruler or Governor of any State, to any officer of the Federal Government or of the Government of that State, any of its

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* *See* Article 159 (4).

† These functions are at present exercised by the Minister of the Interior and Justice: *see* the Ministers of the Federal Government (Minister of the Interior and Justice) Order, 1957 [Legal Notification (New Series) 33 of 1957].

functions under Part III or this Schedule; but any person aggrieved by the decision of a person to whom functions of the authority are so delegated may appeal to the authority.

5. Any person aggrieved by a decision of the registration authority may appeal to the Supreme Court on a point of law, but except as aforesaid a decision of the registration authority under Part III shall not be subject to appeal or review in any court.

Functions of Minister and registration authority

6. Subject to federal law, the Minister and the registration authority may make rules and prescribe forms for the purpose of the exercise of their respective functions under Part III and this Schedule.*

7. The power of the Federal Government under paragraph (*d*) of Clause (1) of Article 14 to allow a longer period for the registration of a birth may be exercised either before or after the registration has been effected.

8. Where a certificate of naturalisation is granted under Article 19 or Article 20, the Minister shall transmit a copy of the certificate to the registration authority.

9. Any notice to be given by the Minister to any person under Article 27 may be sent to that person at his last known address, or, in the case of a person under the age of twenty-one years (not being a married woman), to his parent or guardian at the last known address of the parent or guardian; and if an address at which notice may be sent to any person under this section is not known and cannot after reasonable inquiry be ascertained, the notice may be given by publication in the *Gazette*.

10. It shall be the duty of the registration authority to compile and maintain—

(*a*) a register of citizens by registration;

(*b*) a register of citizens by naturalisation; and

(*c*) a register of persons who have renounced or been deprived of citizenship under any provision of Part III;

and for the purposes of this section "citizen by registration" includes a citizen to whom paragraph (*a*) or paragraph (*b*) of Article 28 applies and a citizen by registration under Article 170, and "citizen by naturalisation" includes a citizen to whom paragraph (*c*) of Article 28 applies.

11. If the registration authority has reason to believe that an error appears in any register compiled under section 10, it shall, after giving notice to the person concerned and after considering such representations from him as he may choose to make, make such alteration on the register as appears to the authority to be necessary to correct the error.

12. Subject to section 11, the said register shall be conclusive evidence of the matters therein contained.

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* *See* the Citizenship (Registration Authority) Rules, 1957 [Legal Notification (New Series) 15 of 1957] and the Citizenship (Minister's) Rules, 1957 [Legal Notification (New Series) 20 of 1957].

13. For the purpose of determining any question of fact proof of which is needed for a claim by any person to be a citizen by operation of law, or for registration as a citizen, the registration authority shall be entitled to put such questions to that person, or any other person, as it may consider necessary; and unless the authority has reason to doubt the correctness of the answer to any such question, the answer shall be accepted as correct.

14. Without prejudice to section 13, where any person states that he has attained a specified age, that statement shall, unless the registration authority or the Minister, as the case may be, has reason to doubt its correctness, be accepted as correct notwithstanding that that person cannot specify the date of his birth; and any person who claims to be of legitimate birth shall be treated as of such birth unless the registration authority or the Minister, as the case may be, has reason to suppose that he is of illegitimate birth.

15. Where the registration authority is satisfied of all matters required by Article 17 for the purposes of an application for registration under that Article, they shall give notice to that effect to the Minister; and unless within such period as may be prescribed by rules made by the Minister for the purposes of this section the Minister otherwise directs, the authority shall register the applicant accordingly.

Offences

16. It shall be an offence punishable with imprisonment for two years or a fine of one thousand dollars or both for any person knowingly to make any false statement with a view to inducing the registration authority or the Minister to grant or refuse any application under Part III including any application to determine whether the applicant is a citizen by operation of law.

Interpretation

17. In relation to a person who is illegitimate, Articles 14 and 15 shall have effect as if for references to his father there were substituted references to his mother and as if section 19 of this Schedule were omitted; and references in Article 15 and this Schedule to his parent shall be construed accordingly.

18. In relation to an adopted child whose adoption has been registered under any written law in force in the Federation, including any such law in force before Merdeka Day, Article 15 shall have effect as if for the reference to his father there were substituted a reference to the adopter, and references in that Article and this Schedule to his parent shall be construed accordingly.

19. Any reference in Part III to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before and the birth occurs on or after Merdeka Day, the status or description which would have been applicable to the father had he died after Merdeka Day shall be deemed to be the status or description applicable to him at the time of his death.

20. In calculating for the purposes of Part III a period of residence in the Federation—

(*a*) a period of absence from the Federation of less than six months;

(*b*) a period of absence from the Federation for the purposes of education of such kind, in such country and for such time, as may from time to time be either generally or specially approved by the Minister; and

(*c*) a period of absence from the Federation for reasons of health or any other cause prescribed generally or specially by the Minister,

shall be treated as residence in the Federation; and for the purposes of Part III a person shall be deemed to be resident in the Federation on a particular day if he had been resident in the Federation before that day and that day is included in any such period of absence as aforesaid.

21. For the purposes of Part III "Malayan consulate" includes any office exercising consular functions on behalf of the Federation.

THIRD SCHEDULE

Articles 32 and 33.

ELECTION OF YANG DI-PERTUAN AGONG AND DEPUTY SUPREME HEAD

PART I

ELECTION OF YANG DI-PERTUAN AGONG

1. (1) A Ruler is qualified to be elected Yang di-Pertuan Agong unless—

(*a*) he is a minor, or

(*b*) he has notified the Keeper of the Rulers' Seal that he does not desire to be elected, or

(*c*) the Conference of Rulers by secret ballot resolves that he is unsuitable by reason of infirmity of mind or body or for any other cause to exercise the functions of Yang di-Pertuan Agong.

(2) A resolution under this section shall not be carried unless at least five members of the Conference have voted in favour of it.

2. The Conference of Rulers shall offer the office of Yang di-Pertuan Agong to the Ruler qualified for election whose State is first on the election list described in section 4 and, if he does not accept the office, to the Ruler whose State is next on the list, and so on until a Ruler accepts the office.

3. When a Ruler to whom the office of Yang di-Pertuan Agong has been offered in accordance with section 2 has accepted the office, the Conference of Rulers shall declare him elected and the Keeper of the Rulers' Seal shall notify the result of the election in writing to both Houses of Parliament.

4. (1) The election list—

(*a*) shall for the purposes of the first election be a list comprising the States of all the Rulers in the order

in which Their Highnesses then recognize precedence among themselves;

(*b*) shall for the purposes of subsequent elections be that list as varied in accordance with subsection (2) until it is reconstituted under subsection (3), and shall then be the list so reconstituted, but varied, for the purposes of further elections, in accordance with subsection (4).

(2) The list in force at the first election shall be varied as follows:

(*a*) after each election any States preceding on the list the State whose Ruler was elected shall be transferred (in the order in which they are then on the list) to the end of the list, and the State whose Ruler was elected shall be omitted;

(*b*) whenever there is a change in the Ruler of a State then on the list, that State shall be transferred to the end of the list (and if on the same day there is a change in the Rulers of more than one such State, those States shall be so transferred in the order in which they are then on the list).

(3) When no State remains on the list as varied in accordance with subsection (2), or if at an election no Ruler of a State on that list is qualified for election or accepts office, the election list shall be reconstituted so as to comprise again the States of all the Rulers, but in the following order, that is to say, those whose Rulers have held the office of Yang di-Pertuan Agong in the order in which their Rulers have held that office, and the others (if any) following them in the order in which they were on the list before it was reconstituted.

(4) After each election held in accordance with the reconstituted list that list shall be varied as follows:

(*a*) any States preceding on the list the State whose Ruler was elected shall be transferred (in the order in which they are then on the list) to the end of the list; and

(*b*) the State whose Ruler was elected shall then be placed last.

PART II

ELECTION OF DEPUTY SUPREME HEAD

5. A Ruler is qualified to be elected Deputy Supreme Head unless—

(*a*) he would not be qualified to be elected Yang di-Pertuan Agong, or

(*b*) he has notified the Keeper of the Rulers' Seal that he does not desire to be elected.

6. The Conference of Rulers shall not elect a Deputy Supreme Head while the office of Yang di-Pertuan Agong is vacant.

7. The Conference of Rulers shall offer the office of Deputy Supreme Head to the Ruler qualified for election who, on the death of the Yang di-Pertuan Agong last elected, would be the

first entitled to be offered the office of Yang di-Pertuan Agong and, if he does not accept it, to the next and so on until a Ruler accepts the office.

PART III

REMOVAL OF YANG DI-PERTUAN AGONG

8. A resolution of the Conference of Rulers to remove the Yang di-Pertuan Agong from office shall not be carried unless at least five members of the Conference have voted in favour of it.

PART IV

GENERAL

9. An election held in accordance with this Schedule before Merdeka Day shall be valid and shall take effect on that day.

10. In section 4 (3) the expression "Ruler" includes a past Ruler.

FOURTH SCHEDULE

Article 37.

OATHS OF OFFICE OF YANG DI-PERTUAN AGONG AND TIMBALAN YANG DI-PERTUAN AGONG

PART I

OATH OF YANG DI-PERTUAN AGONG

Kami..... ibni.....

Yang di-Pertuan Agong bagi Persekutuan Tanah Melayu bersumpah dengan melafazkan:

Wallahi; Wabillahi; Watallahi;

maka dengan lafaz ini berikrar-lah kami dengan sa-sunggoh dan dengan sa-benar-nya mengaku akan ta'at setia pada menjalankan dengan 'adil-nya pemerentahan bagi Persekutuan Tanah Melayu dengan mengikut sa-bagaimana Undang-undang dan Perlembaga'an Negeri yang telah di-sah dan di-mashhorkan dan yang akan di-sah dan di-mashhorkan di-masa hadapan ini. Dan lagi kami berikrar mengaku dengan sa-sunggoh dan dengan sa-benar-nya memeliharakan pada setiap masa Ugama Islam dan berdiri tetap di-atas pemerentahan yang 'adil dan aman di-dalam negeri.

PART II

OATH OF TIMBALAN YANG DI-PERTUAN AGONG

Kami..... ibni.....

yang telah di-lantek menjadi Timbalan Yang di-Pertuan Agong bagi Persekutuan Tanah Melayu bersumpah dengan melafazkan:

Wallahi; Wabillahi; Watallahi;

dan dengan lafaz ini berikrar-lah kami dengan sa-sunggoh dan dengan sa-benar-nya mengaku akan ta'at setia pada menjalankan tanggongan kami yang telah di-tetapkan dan yang akan di-tetapkan pada suatu masa ka-suatu masa yang ka-hadapan ini oleh Undang-undang dan Perlembaga'an Negeri Persekutuan Tanah Melayu.

PART III

ENGLISH TRANSLATIONS

We..... ibni.....
Yang di-Pertuan Agong of the Federation of Malaya do hereby swear

Wallahi; Wabillahi; Watallahi;

and by virtue of that oath do solemnly and truly declare that We shall justly and faithfully perform (carry out) our duties in the administration of the Federation of Malaya in accordance with its laws and constitution which have been promulgated or which may be promulgated from time to time in the future. Further We do solemnly and truly declare that We shall at all time protect the Muslim Religion and uphold the rules of law and order in the Country.

We..... ibni.....
being elected to be the Deputy Yang di-Pertuan Agong of the Federation of Malaya do hereby swear:

Wallahi; Wabillahi; Watallahi;

and by virtue of that oath do solemnly and truly declare that We shall faithfully perform (carry out) our duties as Deputy Yang di-Pertuan Agong as laid down and as may from time to time be laid down by the laws and the Constitution of the Federation of Malaya.

Article 38.

FIFTH SCHEDULE

THE CONFERENCE OF RULERS

1. The Conference of Rulers shall, subject to the following provisions of this Schedule, consist of Their Highnesses the Rulers and the Governors of Malacca and Penang.

2. The place of His Highness the Ruler of any State or the Governor of any State as a member of the Conference of Rulers may in any case in which the Constitution of that State so provides be taken by such person as that Constitution may provide.

3. The Conference of Rulers shall have a Rulers' Seal, which shall be kept in the custody of a person appointed by the Conference.

4. The person appointed under section 3 shall be known as the Penyimpan Mohar Besar Raja-Raja (Keeper of the Rulers' Seal), shall act as secretary to the Conference of Rulers and shall hold his office at the pleasure of the Conference.

5. A majority of the members of the Conference of Rulers shall form a quorum and, subject to the provisions of this Constitution, the Conference may determine its own procedure.

6. The Keeper of the Rulers' Seal shall convene the Conference of Rulers whenever required to do so by the Yang di-Pertuan Agong or by not less than three members of the Conference and,

without being so required, not later than four weeks before the expiry of the term of office of the Yang di-Pertuan Agong and whenever a vacancy occurs in that office or in the office of the Deputy Supreme Head of the Federation.

7. The Governors of Malacca and Penang shall not be members of the Conference of Rulers for the purposes of any proceedings relating to the election or removal of the Yang di-Pertuan Agong or the election of the Deputy Supreme Head of the Federation or relating solely to the privileges, position, honours and dignities of Their Highnesses or to religious acts, observances or ceremonies.

8. In any case where the Conference of Rulers is not unanimous it shall take its decision by a majority of the members voting, subject however to the provisions of the Third Schedule.

9. Any consent, appointment or advice of the Conference of Rulers required under this Constitution shall be signified under the Rulers' Seal; and where, in the case of any proposed appointment, a majority of the members of the Conference have indicated, by writing addressed to the Keeper of the Rulers' Seal, that they are in favour of the appointment, he shall so signify the advice of the Conference without convening it.

SIXTH SCHEDULE*

Articles 43, 54, 124, 142.

FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Office and Allegiance*

"I, , having been elected (or appointed) to the office of do solemnly swear (or affirm) that I will faithfully discharge the duties of that office to the best of my ability, that I will bear true faith and allegiance to the Federation of Malaya, and will preserve, protect and defend its Constitution."

2. *Oath as Member of Parliament and of Allegiance*

"I, , having been elected (or appointed) as a member of the House of Representatives (or the Senate) do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to the Federation of Malaya, and will preserve, protect and defend its Constitution."

3. *Oath of Secrecy*

"I, , do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as except as may be required for the due discharge of my duties as such or as may be specially permitted by the Yang di-Pertuan Agong."

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* *See* Article 159 (4).

Article 45.

SEVENTH SCHEDULE*

ELECTION AND APPOINTMENT OF SENATORS

PART I

ELECTION OF SENATORS

1. (1) As soon as may be after the dissolution of the Legislative Council, the Yang di-Pertuan Agong shall give notice to the Ruler or Governor of each State that an election of Senators is required and the Ruler or Governor shall require the Legislative Assembly to elect Senators as soon as may be.

(2) As often as there is a vacancy among the members elected to the Senate by a State the Yang di-Pertuan Agong shall give notice to the Ruler or Governor of the State that an election of a Senator is required, and the Ruler or Governor shall require the Legislative Assembly to elect a Senator as soon as may be.

2. (1) The names of candidates for election shall be proposed and seconded by members of the Assembly and the member proposing or the member seconding shall submit a statement in writing, signed by the person nominated, that he is willing to serve as a Senator if elected.

(2) When all the nominations have been received, the presiding officer shall announce the names of the persons nominated in alphabetical order and shall then put their names to the vote in that order.

(3) Each member present shall be entitled to vote for as many candidates as there are vacancies to be filled, and the names of the members voting for each candidate shall be recorded; and if any member casts a vote in addition to those allowed by this subsection that vote shall be void.

(4) The presiding officer shall declare to be elected the candidate or candidates who receive the largest number of votes, but if two or more candidates have an equal number of votes and the number of those candidates is larger than the number of vacancies to be filled, the election of those candidates shall be determined by lot.

3. Notwithstanding anything in section 2, if a vacancy due to the expiry of the term of office of a Senator is to be filled at the same meeting as a vacancy arising in any other way there shall first be an election to fill the vacancy due to the expiry of the term and then a separate election to fill the other vacancy.

4. The presiding officer shall certify to the clerk to the Senate, by writing under his hand, the name of a person elected as Senator in accordance with the provisions of this Schedule.

5. If any question arises whether a member of the Senate has been duly elected in accordance with the provisions of this Schedule, the decision of the Senate shall be taken and shall be final.

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* *See* Article 159 (4).

PART II

RETIREMENT OF SENATORS

6. The term of office of one of the two Senators elected at the first election held in accordance with the provisions of this Schedule shall be three years, and the Senator whose term is six years shall, if both receive the same number of votes, be determined by lot and shall otherwise be the one who receives the greater number of votes.

7. Of the persons first appointed to be Senators eight shall be appointed for a term of three years.

8. The term of office of a person elected or appointed to replace a person who has died or ceased to be a Senator before the expiration of his term shall be the remainder of that term.

EIGHTH SCHEDULE

Article 71.

PROVISIONS TO BE INSERTED IN STATE CONSTITUTION

PART I

FINAL PROVISIONS

Ruler to act on advice

1. (1) In the exercise of his functions under the Constitution of this State or any law or as a member of the Conference of Rulers the Ruler shall act in accordance with the advice of the Executive Council or of a member thereof acting under the general authority of the Council, except as otherwise provided by the Federal Constitution or the State Constitution; but shall be entitled, at his request, to any information concerning the government of the State which is available to the Executive Council.

(2) The Ruler may act in his discretion in the performance of the following functions (in addition to those in the performance of which he may act in his discretion under the Federal Constitution) that is to say—

(*a*) the appointment of a Mentri Besar,

(*b*) the withholding of consent to a request for the dissolution of the Legislative Assembly,

(*c*) the making of a request for a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Highnesses or religious acts, observances or ceremonies,

(*d*) any function as Head of the Muslim religion or relating to the custom of the Malays,

(*e*) the appointment of an heir or heirs, consort, Regent or Council of Regency,

(*f*) the appointment of persons to Malay customary ranks, titles, honours and dignities and the designation of the functions appertaining thereto,

(*g*) the regulation of royal courts and palaces.

(3) State law may make provision for requiring the Ruler to act after consultation with or on the recommendation of any person or body of persons other than the Executive Council in the exercise of any of his functions other than—

(*a*) functions exercisable in his discretion,

(*b*) functions with respect to the exercise of which provision is made in the State Constitution or the Federal Constitution.

*The Executive Council**

2. (1) The Ruler shall appoint an Executive Council.

(2) The Executive Council shall be appointed as follows, that is to say,—

(*a*) the Ruler shall first appoint as Mentri Besar to preside over the Executive Council a member of the Legislative Assembly who in his judgment is likely to command the confidence of the majority of the members of the Assembly; and

(*b*) he shall on the advice of the Mentri Besar appoint not more than eight nor less than four other members from among the members of the Legislative Assembly;

but if an appointment is made while the Legislative Assembly is dissolved a person who was a member of the last Legislative Assembly may be appointed but shall not continue to hold office after the first sitting of the next Legislative Assembly unless he is a member thereof.

(3) Notwithstanding anything in this section, a person who is a citizen by naturalisation or by registration under Article 17 of the Federal Constitution shall not be appointed Mentri Besar.

(4) In appointing a Mentri Besar the Ruler may, in his discretion, dispense with any provision in the Constitution of this State restricting his choice of a Mentri Besar, if in his opinion it is necessary to do so in order to comply with the provisions of this section.

(5) The Executive Council shall be collectively responsible to the Legislative Assembly.

(6) If the Mentri Besar ceases to command the confidence of the majority of the members of the Legislative Assembly, then, unless at his request the Ruler dissolves the Legislative Assembly, he shall tender the resignation of the Executive Council.

(7) Subject to subsection (6), a member of the Executive Council other than the Mentri Besar shall hold office at the Ruler's pleasure, but any member of the Council may at any time resign his office.

(8) A member of the Executive Council shall not engage in any trade, business or profession connected with any subject or department for which he is responsible and shall not, so long as he is engaged in any trade, business or profession, take part in any decision of the Executive Council relating to that trade, business or profession or in any decision likely to affect his pecuniary interests therein.

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* *See* also section 20, *infra*, and Article 71 (5), *supra*.

Legislature of the State

3. The Legislature of the State shall consist of the Ruler and one House, to be known as the Dewan Negeri (Legislative Assembly).

*Composition of Legislative Assembly**

4. The Legislative Assembly shall consist of such number of elected members as the Legislature may by law provide and, until other provision is so made, the number of members shall be the number specified in Article 171 of the Federal constitution.

Qualifications of members

5. Every citizen of or over the age of twenty-one years who is resident in the State is qualified to be a member of the Legislative Assembly, unless he is disqualified for being a member by the Federal Constitution or this Constitution or by any such law as is mentioned in section 6 of the Eighth Schedule to the Federal Constitution.

Disqualification for membership of Legislative Assembly

6. (1) Subject to the provisions of this section, a person is disqualified for being a member of the Legislative Assembly if—

(*a*) he is and has been found or declared to be of unsound mind;

(*b*) he is an undischarged bankrupt;

(*c*) he holds an office of profit;

(*d*) having been nominated for election to either House of Parliament or to the Legislative Assembly, or having acted as election agent to a person so nominated, he has failed to lodge any return of election expenses required by law within the time and in the manner so required; or

(*e*) he has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than two years and has not received a free pardon;

(*f*) he is disqualified under any law relating to offences in connection with elections to either House of Parliament or to the Legislative Assembly by reason of having been convicted of such an offence or having in proceedings relating to such an election been proved guilty of an act constituting such an offence; or

(*g*) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, a foreign country or has made a declaration of allegiance to a foreign country.

(2) The disqualification of a person under paragraph (*d*) or paragraph (*e*) of subsection (1) may be removed by the Ruler and shall, if not so removed, cease at the end of the period of five years beginning with the date on which the return mentioned in the said paragraph (*d*) was required to be lodged or, as the case may be, the date on which the person convicted as mentioned in the said paragraph (*e*) was released from custody, and a person shall not be disqualified under paragraph (*g*) of subsection (1) by reason only of anything done by him before he became a citizen.

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* *See* also section 21, *infra*, and Article 71 (5), *supra*.

Provision against double membership

7. A person shall not at the same time be a member of the Legislative Assembly for more than one constituency.

Decision as to disqualification

8. If any question arises whether a member of the Legislative Assembly has become disqualified for membership, the decision of the Assembly shall be taken and shall be final.

Summoning, prorogation and dissolution of Legislative Assembly

9. (1) The Ruler shall from time to time summon the Legislative Assembly and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Ruler may prorogue or dissolve the Legislative Assembly.

(3) The Legislative Assembly unless sooner dissolved shall continue for five years from the date of its first sitting and shall then stand dissolved.

(4) Whenever the Legislative Assembly is dissolved a general election shall be held within sixty days from the date of the dissolution and the new Legislative Assembly shall be summoned to meet on a date not later than ninety days from that date.

(5) A casual vacancy shall be filled within sixty days from the date on which it occurs.

Speaker of the Legislative Assembly

10. (1) The Legislative Assembly shall from time to time choose one of its members to be Speaker and shall transact no business while the office of Speaker is vacant other than the election of a Speaker.

(2) A member holding office as Speaker shall vacate his office on ceasing to be a member of the Legislative Assembly and may at any time resign his office.

(3) During any absence of the Speaker from a sitting of the Legislative Assembly such other member as may be determined by the rules of procedure of the Assembly shall act as Speaker.

Exercise of legislative power

11. (1) The power of the Legislature to make laws shall be exercised by Bills passed by the Legislative Assembly and assented to by the Ruler.

(2) No Bill or amendment involving expenditure from the Consolidated Fund of the State may be introduced or moved in the Legislative Assembly except by a member of the Executive Council.

(3) A Bill shall become law on being assented to by the Ruler, but no law shall come into force until it has been published, without prejudice, however, to the power of the Legislature to postpone the operation of any law or to make laws with retrospective effect.

*FINANCIAL PROVISIONS**

No taxation unless authorised by law

12. No tax or rate shall be levied by or for the purposes of the State except by or under the authority of law.

Expenditure charged on Consolidated Fund

13. (1) There shall be charged on the Consolidated Fund of the State, in addition to any grant, remuneration or other moneys so charged by any other provision of the Constitution of the State or by State law—

(*a*) the Civil List of the Ruler and the remuneration of the Speaker of the Legislative Assembly;

(*b*) all debt charges for which the State is liable; and

(*c*) any moneys required to satisfy any judgment, decision or award against the State by any court or tribunal.

(2) For the purposes of this provision debt charges include interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby.

Annual financial statement

14. (1) Subject to subsection (3), the Ruler shall, in respect of every financial year, cause to be laid before the Legislative Assembly a statement of the estimated receipts and expenditure of the State for that year, and, unless the State Legislature in respect of any year otherwise provides, that statement shall be so laid before the commencement of that year.

(2) The estimates of expenditure shall show separately—

(*a*) the total sums required to meet expenditure charged on the Consolidated Fund; and

(*b*) subject to subsection (3), the sums respectively required to meet the heads of other expenditure proposed to be met from the Consolidated Fund.

(3) The estimated receipts to be shown in the said statement do not include any sums received by way of Zakat, Fitrah and Bait-ul-Mal or similar Muslim revenue; and the sums to be shown under paragraph (*b*) of subsection (2) do not include—

(*a*) sums representing the proceeds of any loan raised by the State for specific purposes and appropriated for those purposes by the law authorising the raising of the loan;

(*b*) sums representing any money or interest on money received by the State subject to a trust and to be applied in accordance with the terms of the trust.

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* These financial provisions (sections 12 to 17) have, with effect from January 1, 1958, been adopted by all States: see, in addition to Part III of each of the Constitutions of Penang and Malacca, *infra, Johore Gazette* Notification (New Series) 43A of 1957; *Kedah* Legal Notification 27 of 1957; *Kelantan Gazette* Notification 241 of 1957; *Negri Sembilan Gazette* Notification 453 of 1957; *Pahang Gazette* Notification 270 of 1957; *Perak Gazette* Notification 1413 of 1957; *Perlis* Legal Notification 5 of 1957; *Selangor Gazette* Notification 403 of 1957; and *Trengganu Gazette* Notification 227 of 1957.

(4) The said statement shall also show, so far as is practicable, the assets and liabilities of the State at the end of the last completed financial year, the manner in which those assets are invested or held, and the general heads in respect of which those liabilities are outstanding.

Supply Bills

15. The heads of expenditure to be met from the Consolidated Fund of the State but not charged thereon, other than the sums mentioned in paragraphs (*a*) and (*b*) of section 14 (3) of the Eighth Schedule to the Federal Constitution, shall be included in a Bill, to be known as a Supply Bill, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

Supplementary and excess expenditure

16. If in respect of any financial year it is found—

(*a*) that the amount appropriated by the Supply Enactment for that purpose is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Supply Enactment; or

(*b*) that any moneys have been expended for any purpose in excess of the amount (if any) appropriated for that purpose by the Supply Enactment,

a supplementary estimate showing the sums required or spent shall be laid before the Legislative Assembly and the heads of any such expenditure shall be included in a Supply Bill.

Withdrawals from the Consolidated Fund

17. (1) Subject to the following provisions of this section, no moneys shall be withdrawn from the Consolidated Fund unless they are—

(*a*) charged on the Consolidated Fund; or

(*b*) authorised to be issued by a Supply Enactment.

(2) No moneys shall be withdrawn from the Consolidated Fund except in the manner provided by federal law.

(3) Subsection (1) does not apply to any such sums as are mentioned in paragraphs (*a*) and (*b*) of section 14 (3) of the Eighth Schedule to the Federal Constitution.

(4) The State Legislature may in respect of any financial year authorise, before the passing of the Supply Enactment, expenditure for part of the year and the issue from the Consolidated Fund of any moneys required to meet that expenditure.

IMPARTIAL TREATMENT OF STATE EMPLOYEES

Impartial treatment of State employees

18. All persons of whatever race in the same grade of the service of the State, shall, subject to the terms and conditions of their employment, be treated impartially.

AMENDMENT OF THE CONSTITUTION

Amendment of the Constitution

19. (1) The following provisions of this section shall have effect with respect to the amendment of the Constitution of this State.

(2) The provisions affecting succession to the throne and the position of the Ruling Chiefs and similar Malay customary dignitaries may not be amended by the State Legislature.

(3) Any other provisions may, subject to the following provisions of this section, be amended by an Enactment of the State Legislature but may not be amended by any other means.

(4) A Bill for making an amendment to the said Constitution (other than an amendment excepted from the provisions of this subsection) shall not be passed by the Legislative Assembly unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of members thereof.

(5) The following amendments are excepted from the provisions of subsection (4), that is to say—

(*a*) any amendment consequential on such a law as is mentioned in section 4 or section 21 of the Eighth Schedule to the Federal Constitution; and

(*b*) any amendment the effect of which is to bring the Constitution of this State into accord with any of the provisions of the said Schedule, but only if it is made after the Legislative Assembly has been elected in accordance with section 4 of that Schedule.

(6) This section does not invalidate any provision of the Constitution of this State requiring the consent of any body of persons to any amendment affecting—

(*a*) the appointment and attributes of an heir or heirs to the throne, of the Ruler's Consort or of the Regent or Members of the Council of Regency of the State,

(*b*) the removal, withdrawal, or abdication of the Ruler or his heir or heirs,

(*c*) the appointment and attributes of the Ruling Chiefs or similar Malay customary dignitaries and of members of religious or customary Advisory Councils or similar bodies,

(*d*) the establishment, regulation, confirmation and deprivation of Malay customary ranks, titles, honours, dignities and awards and the attributes of the holders thereof and the regulation of the royal courts and palaces.

(7) In this section "amendment" includes addition and repeal.

PART II

TEMPORARY PROVISIONS ALTERNATIVE TO PROVISIONS IN PART I

The Executive Council (*alternative to section 2*)

20. (1) The Ruler shall appoint an Executive Council.

(2) The Executive Council shall be appointed as follows, that is to say—

(*a*) the Ruler shall first appoint as Mentri Besar to preside over the Executive Council a person who in his judgment is likely to command the confidence of the majority of the Assembly; and

(*b*) he shall on the advice of the Mentri Besar appoint not more than eight nor less than four other persons.

(3) Notwithstanding anything in this section, a person who is a citizen by naturalisation or by registration under Article 17 of the Federal Constitution shall not be appointed Mentri Besar.

(4) In appointing a Mentri Besar the Ruler may in his discretion dispense with any provision in the Constitution of this State restricting his choice of a Mentri Besar, if in his opinion it is necessary to do so in order to comply with the provisions of this section.

(5) The Executive Council shall be collectively responsible to the Legislative Assembly.

(6) The Mentri Besar shall cease to hold office at the expiration of a period of three months from the date of his appointment, unless before the expiration of that period a resolution of confidence in him has been passed by the Legislative Assembly; and if at any time he ceases to command the confidence of the majority of the members of the Legislative Assembly, then unless at his request the Ruler dissolves the Legislative Assembly, he shall tender the resignation of the Executive Council.

(7) Subject to subsection (6), a member of the Executive Council other than the Mentri Besar shall hold office at the Ruler's pleasure, but any member of the Council may at any time resign his office.

(8) A member of the Executive Council shall not engage in any trade, business or profession connected with any subject or department for which he is responsible and shall not, so long as he is engaged in any trade, business or profession, take part in any decision of the Executive Council relating to that trade, business or profession or in any decision likely to affect his pecuniary interests therein.

Composition of Legislative Assembly (*alternative to section 4*)

21. (1) The Legislative Assembly shall consist of—

(*a*) such number of elected members as the Legislature may by law provide, and

(*b*) such number of other members, being less than the number of elected members, as the Ruler may appoint;

and, until other provision is made as aforesaid, the number of elected members shall be the number specified in Article 171 of the Federal Constitution.

(2) Notwithstanding anything in section 6 of the Eighth Schedule to the Federal Constitution, a person shall not be disqualified for being an appointed member of the Legislative Assembly by reason only that he holds an office of profit.

PART III

MODIFICATIONS OF PARTS I AND II IN RELATION TO MALACCA AND PENANG

22. In the application of Parts I and II of this Schedule to the States of Malacca and Penang references to the Governor and

Chief Minister shall be substituted respectively for references to the Ruler and the Mentri Besar, and the following shall be omitted, that is to say, paragraphs (*c*) to (*g*) of section 1 (2), section 2 (4), subsections (2) and (6) of section 19, section 20 (4), in section 14 (3) the words preceding "the sums to be shown under paragraph (*b*)" and in subsection 19 (3) the word "other" in the first place where it occurs.

NINTH SCHEDULE

Article 74.

LEGISLATIVE LISTS

List I—Federal List

1. External affairs, including—
   (*a*) Treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with any other country;
   (*b*) Implementation of treaties, agreements and conventions with other countries;
   (*c*) Diplomatic, consular and trade representation;
   (*d*) International organizations; participation in international bodies and implementation of decisions taken thereat;
   (*e*) Extradition; fugitive offenders; admission into, and emigration and expulsion from, the Federation;
   (*f*) Passports; visas; permits of entry or other certificates; quarantine;
   (*g*) Foreign and extra-territorial jurisdiction; and
   (*h*) Pilgrimages to places outside Malaya.

2. Defence of the Federation or any part thereof, including—
   (*a*) Naval, military and air forces and other armed forces;
   (*b*) Any armed forces attached to or operating with any of the armed forces of the Federation; visiting forces;
   (*c*) Defence works; military and protected areas; naval, military and air force bases; barracks, aerodromes and other works;
   (*d*) Manœuvres;
   (*e*) War and peace; alien enemies and enemy aliens; enemy property; trading with an enemy; war damage; war risk insurance;
   (*f*) Arms, fire-arms, ammunition and explosives;
   (*g*) National service; and
   (*h*) Civil defence.

3. Internal security, including—
   (*a*) Police; criminal investigation; registration of criminals; public order;
   (*b*) Prisons; reformatories; remand homes; places of detention; probation of offenders; juvenile offenders;

(*c*) Preventive detention*; restriction of residence;

(*d*) Intelligence services; and

(*e*) National registration.

4. Civil and criminal law and procedure and the administration of justice, including—

(*a*) Constitution and organization of all courts other than Muslim Courts;

(*b*) Jurisdiction and powers of all such courts;

(*c*) Remuneration and other privileges of the judges and officers presiding over such courts;

(*d*) Persons entitled to practise before such courts;

(*e*) Subject to paragraph (ii), the following—

(i) Contract; partnership, agency and other special contracts; master and servant; inns and inn-keepers; actionable wrongs; property and its transfer and hypothecation, except land; bona vacantia; equity and trusts; marriage, divorce and legitimacy; married women's property and status; interpretation of federal law; negotiable instruments; statutory declarations; arbitration; mercantile law; registration of businesses and business names; age of majority; infants and minors; adoption; succession, testate and intestate; probate and letters of administration; bankruptcy and insolvency; oaths and affirmations; limitation; reciprocal enforcement of judgments and orders; the law of evidence;

(ii) the matters mentioned in paragraph (i) do not include Muslim personal law relating to marriage, divorce, guardianship, maintenance, adoption, family law, gifts or succession testate and intestate;

(*f*) Official secrets; corrupt practices;

(*g*) Use or exhibition of coats of arms, armorial bearings, flags, emblems, uniforms, orders and decorations other than those of a State;

(*h*) Creation of offences in respect of any of the matters included in the Federal List;

(*i*) Indemnity in respect of any of the matters in the Federal List;

(*j*) Admiralty Jurisdiction;

(*k*) Ascertainment of Muslim Law for purposes of federal law; and

(*l*) Betting and lotteries.

5. Federal citizenship and naturalization; aliens.

6. The machinery of government, subject to the State List, but including—

(*a*) Elections to both Houses of Parliament and the Legislative Assemblies of the States and all matters connected therewith;

(*b*) The Armed Forces Council and the Commissions to which Part X applies;

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* *See* Article 151.

(*c*) Federal services, including the establishment of services common to the Federation and the States; services common to two or more States;

(*d*) Pensions and compensation for loss of office; gratuities and conditions of service;

(*e*) *Local government and town planning in, and water supply to the federal capital**;

(*f*) Federal Government contracts;

(*g*) Federal public authorities; and

(*h*) Purchase, acquisition and holding of, and dealing with, property for federal purposes.

7. Finance, including—

(*a*) Currency, legal tender and coinage;

(*b*) National savings and savings banks;

(*c*) Borrowing on the security of the Federal Consolidated Fund;

(*d*) Loans to or borrowing by the States, public authorities and private enterprise;

(*e*) Public debt of the Federation;

†(*f*) Financial and accounting procedure, including procedure for the collection, custody and payment of the public moneys of the Federation and of the States, and the purchase, custody and disposal of public property other than land of the Federation and of the States;

†(*g*) Audit and accounts of the Federation and the States and other public authorities;

(*h*) Taxes; *rates in the federal capital**;

(*i*) Fees in respect of any of the matters in the Federal List;

(*j*) Banking; money-lending; pawnbrokers; control of credit;

(*k*) Bills of exchange, cheques, promissory notes and other similar instruments;

(*l*) Foreign exchange; and

(*m*) Capital issues; stock and commodity exchanges.

8. Trade, commerce and industry, including—

(*a*) Production, supply and distribution of goods; price control and food control; adulteration of foodstuffs and other goods;

(*b*) Imports into, and exports from, the Federation;

(*c*) Incorporation, regulation and winding up of corporations other than municipal corporations (but including the municipal corporation of the federal capital); regulation of foreign corporations; bounties and production in or export from the Federation;

(*d*) Insurance, including compulsory insurance;

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* *See* Article 154 (3). † *See* Article 108 (4) (*f*).

(*e*) Patents; designs; inventions; trade marks and mercantile marks; copyrights;

(*f*) Establishment of standards of weights and measures;

(*g*) Establishment of standards of quality of goods manufactured in or exported from the Federation;

(*h*) Auctions and auctioneers;

(*i*) Industries; regulation of industrial undertakings;

(*j*) Development of mineral resources; mines, mining, minerals and mineral ores; oils and oilfields; purchase, sale, import and export of minerals and mineral ores; petroleum products; regulation of labour and safety in mines and oilfields;

(*k*) Factories; boilers and machinery; dangerous trades; and

(*l*) Dangerous and inflammable substances.

9. Shipping, navigation and fisheries, including—

(*a*) Shipping and navigation on the high seas and in tidal and inland waters*;

(*b*) Ports and harbours; foreshores;

(*c*) Lighthouses and other provisions for the safety of navigation;

(*d*) Maritime and estuarine fishing and fisheries, excluding turtles;

(*e*) Light dues; and

(*f*) Wrecks and salvage.

10. Communications and transport, including—

(*a*) Roads, bridges, ferries and other means of communication if declared to be federal by or under federal law;

(*b*) Railways, excluding Penang Hill Railway;

(*c*) Airways, aircraft and air navigation; civil aerodromes; provisions for the safety of aircraft;

(*d*) Regulation of traffic by land, water and air other than on rivers outside harbour areas wholly within one State;

(*e*) Carriage of passengers and goods by land, water and air;

(*f*) Mechanically propelled vehicles;

(*g*) Posts and telecommunications; and

(*h*) Wireless, broadcasting and television.

11. Federal works and power, including—

(*a*) Public works for federal purposes;

(*b*) Inter-State water supplies and rivers* and canals so far as not regulated by an agreement between all the States concerned; production, distribution and supply of water power; and

(*c*) Electricity; gas and gas works; and other works for the production and distribution of power and energy.

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* *See* Article 78.

12. Surveys, inquiries and research, including—

(*a*) Census; registration of births and deaths; registration of marriages; registration of adoptions other than adoptions under Muslim law or Malay custom;

(*b*) Survey of the Federation; social, economic and scientific surveys; meteorological organizations;

(*c*) Scientific and technical research; and

(*d*) Commissions of inquiry.

13. Education, including—

(*a*) Elementary, secondary, and university education; vocational and technical education; training of teachers; registration and control of teachers, managers and schools; promotion of special studies and research; scientific and literary societies;

(*b*) Libraries; museums; ancient and historical monuments and records; archaeological sites and remains.

14. Medicine and health, including sanitation in the federal capital, and including—

(*a*) Hospitals, clinics and dispensaries; medical profession; maternity and child welfare; lepers and leper institutions;

(*b*) Lunacy and mental deficiency, including places for reception and treatment;

(*c*) Poisons and dangerous drugs; and

(*d*) Intoxicating drugs and liquors; manufacture and sale of drugs.

15. Labour and social security, including—

(*a*) Trade unions; industrial and labour disputes; welfare of labour including housing of labourers by employers; employer's liability and workmen's compensation;

(*b*) Unemployment insurance; health insurance; widows', orphans' and old age pensions; maternity benefits; provident and benevolent funds; superannuation; and

(*c*) Charities and charitable institutions; charitable trusts and trustees excluding Muslim Wakfs; Hindu endowments.

16. Welfare of the aborigines.

17. Professional occupations other than those specifically enumerated.

18. Holidays other than State holidays; standard of time.

19. Unincorporated societies.

20. Control of agricultural pests; protection against such pests; prevention of plant diseases.

21. Newspapers; publications; publishers; printing and printing presses.

22. Censorship.

23. Subject to item 5 (*f*) of the State List: theatres; cinemas; cinematograph films; places of public amusement.

24. Federal housing and improvement trusts.

25. Co-operative societies.

List II—State List

1. Muslim Law and personal and family law of persons professing the Muslim religion, including the Muslim Law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Muslim Wakfs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Muslim religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay custom; Zakat, Fitrah and Bait-ul-Mal or similar Muslim revenue; mosques or any Muslim public place of worship, creation and punishment of offences by persons professing the Muslim religion against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Muslim courts, which shall have jurisdiction only over persons professing the Muslim religion and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the Muslim religion; the determination of matters of Muslim Law and doctrine and Malay custom.

2. Land, including—

(*a*) *Land tenure; relation of landlord and tenant; registration of titles and deeds relating to land**; colonization, land improvement and soil conservation; rent restriction;

(*b*) Malay reservations†;

(*c*) Permits and licences for prospecting for mines; mining leases and certificates;

(*d*) *Compulsory acquisition of land**;

(*e*) *Transfer of land, mortgages, leases and charges in respect of land; easements**; and

(*f*) Escheat; treasure trove excluding antiquities.

3. Agriculture and forestry, including—

(*a*) Agriculture and agricultural loans; and

(*b*) Forests.

4. *Local government** outside the federal capital, including—

(*a*) Local administration; municipal corporations; local, town and rural board and other local authorities; local government services; local *rates**; local government elections;

(*b*) Obnoxious trades and public nuisances in local authority areas;

(*c*) Housing and provision for housing accommodation, improvement trusts.

5. Other services of a local character, that is to say—

(*a*) Fire brigades, except in the federal capital;

(*b*) Boarding houses and lodging houses;

(*c*) Burial and cremation grounds;

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* *See* Article 76 (4). † *See* Article 89.

(*d*) Pounds and cattle trespass;

(*e*) Markets and fairs; and

(*f*) Licensing of theatres, cinemas and places of public amusement.

6. State works and water, that is to say—

(*a*) Public works for State purposes;

(*b*) Roads, bridges and ferries other than those in the Federal List, regulation of weight and speed of vehicles on such roads; and

(*c*) Water, subject to the Federal List; water supplies and canals; control of silt; riparian rights.

7. Machinery of the State Government, subject to the Federal List, but including—

(*a*) Civil List and State pensions;

(*b*) Exclusive State services;

(*c*) Borrowing on the security of the State Consolidated Fund;

(*d*) Loans for State purposes;

(*e*) Public debt of the State; and

(*f*) Fees in respect of any of the matters included in the State List.

8. State holidays.

9. Creation of offences in respect of any of the matters included in the State List.

10. Inquiries for State purposes, including commissions of inquiry and collection of statistics with respect to any of the matters included in the State List.

11. Indemnity in respect of any of the matters in the State List.

12. Turtles and riverine fishing.

*List III—Concurrent List**

1. Social welfare; social services subject to Lists I and II; protection of women, children and young persons.

2. Scholarships.

3. Protection of wild animals and wild birds; National Parks;

4. Animal husbandry; prevention of cruelty to animals; veterinary services; animal quarantine.

5. Town and country planning, except in the federal capital.

6. Vagrancy and itinerant hawkers.

7. Public health, sanitation (excluding sanitation in the federal capital) and the prevention of diseases.

8. Drainage and irrigation†.

9. Rehabilitation of mining land and land which has suffered soil erosion.

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* *See* Article 79. † *See* Article 78.

Article 109.

TENTH SCHEDULE

GRANTS AND SOURCES OF REVENUE ASSIGNED TO STATES

PART I

CAPITATION GRANT*

1. (1) The capitation grant payable to each State in respect of a financial year shall be at the following rates—

(*a*) for the first 50,000 persons at the rate of $15 per person;

(*b*) for the next 200,000 persons at the rate of $10 per person;

(*c*) for the remainder at the rate of $4 per person,

and shall be based on the population of the State as determined at the last census taken before the beginning of the preceding financial year.

(2) Notwithstanding subsection (1), if a capitation grant falls to be made in respect of a financial year beginning before the first day of January, nineteen hundred and fifty-nine, it shall be based on the population of the State as determined at the census taken in the year nineteen hundred and fifty-seven.

PART II

STATE ROAD GRANT

2. The State road grant payable to each State in respect of a financial year shall be calculated by multiplying—

(*a*) the average cost of maintaining a mile of State road at the minimum standard determined for such roads by the Federal Government after consultation with the National Finance Council; by

(*b*) so much of the mileage of State roads in that State as qualifies for grant.

3. For the purposes of section 2 the mileage of State roads in a State shall be taken to be that mileage as on the thirty-first day of December of the basis year, and the average mentioned in paragraph (*a*) of that section shall be taken to be the average throughout the Federation in the basis year.

4. A length of State road qualifies for grant if it is actually maintained by the Public Works Department of the State at or above the minimum standard mentioned in section 2 (*a*); except that any length not qualifying for grant in the preceding financial year qualifies for grant only if the Federal Government has agreed to its so qualifying.

5. In this Part of this Schedule—

(*a*) "State road" means any road other than a federal road;

(*b*) "basis year" means the financial year beginning two years earlier than the financial year in respect of which the grant is made.

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* Compare with paragraphs 2 and 3 of Part III of the Fifth Schedule to the Federation of Malaya Agreement, 1948.

PART III†

SOURCES OF REVENUE ASSIGNED TO STATES

*1. Revenue from toddy shops.

2. Revenue from lands, mines and forests.

*3. Revenue from licences other than those connected with mechanically propelled vehicles, electrical installations and registration of businesses.

*4. Entertainments duty.

*5. Fees in courts other than federal courts.

*6. Fees and receipts in respect of specific services rendered by departments of State Governments.

*7. Revenues of town boards, town councils, rural boards, local councils and similar local authorities other than—

(*a*) municipalities established under any Municipal Ordinance;

(*b*) those town boards, town councils, rural boards, local councils and similar local authorities which have power under written law to retain their revenues and control the spending thereof.

*8. Receipts in respect of water supplies, including water rates.

9. Rents on State property.

10. Interest on State balances.

11. Receipts from land sales and sales of State property.

*12. Fines and forfeitures in courts other than federal courts.

13. Zakat, Fitrah and Bait-ul-Mal and similar Muslim revenue.

*14. Treasure trove.

ELEVENTH SCHEDULE

Article 160.

PROVISIONS OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE, 1948 (MALAYAN UNION ORDINANCE No. 7 OF 1948), APPLIED FOR INTERPRETATION OF THE CONSTITUTION

Section	Subject Matter
2 (56)	*Meaning of "month"*— "month" means calendar month according to the Gregorian calendar.
2 (61)	*Meaning of "person" and "party"*— "person" and "party" includes any body of persons, corporate or unincorporate.

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* *See* Article 110 (2).

† Compare with the Third Schedule to the Federation of Malaya Agreement, 1948.

Section	Subject Matter
2 (88)	*Definition of "subsidiary legislation"*— "subsidiary legislation" means any Order in Council, proclamation, rule, regulation, order, notification, by-law or other instrument made under any Ordinance, Enactment or other lawful authority and having legislative effect.
2 (94)	*Construction of masculine gender*— words importing the masculine gender include females.
2 (95)	*Construction of singular or plural*— words in the singular include the plural, and words in the plural include the singular.
2 (96)	*Meaning of "writing"*— "writing" and expressions referring to writing include printing, lithography, typewriting, photography, and other modes of representing or reproducing words or figures in visible form.
2 (98)	*Meaning of "year"*— "year" means a year reckoned according to the Gregorian calendar.
7	*Forms*— Save as is otherwise expressly provided, whenever forms are prescribed slight deviations therefrom, not affecting the substance or calculated to mislead, shall not invalidate them.
21	*Exercise of statutory powers between enactment and commencement of Act of Parliament, Ordinance or Enactment*— When an Ordinance or Enactment which is not to come into operation immediately on the passing thereof confers power to make any appointment or to make subsidiary legislation, or to issue notifications, or to prescribe forms or to do any other thing for the purposes of the Ordinance or Enactment, such power may, unless the contrary intention appears, be exercised at any time after the passing of the Ordinance or Enactment, subject to the restriction that any appointment, instrument, notification or thing made, granted, issued, given or done under such power shall not, unless the contrary intention appears in the Ordinance or Enactment, or the appointment, instrument, notification or thing is necessary for bringing the Ordinance or Enactment into operation, have any effect until the Ordinance or Enactment comes into operation.
28	*Construction of provisions as to exercise of powers and duties*— (1) Where a written law confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

Section | Subject Matter

(2) Where a written law confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder of the office for the time being or by a person duly appointed to act for him.

29 *Power to appoint includes power to dismiss—*

Where a written law confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to dismiss or suspend any person appointed and to appoint another person temporarily in the place of any person so suspended or in place of any sick or absent holder of such office or place:

Provided that where the power of such person or authority to make such appointment is only exercisable upon the recommendation or subject to the approval or consent of some other person or authority, such power of dismissal shall, unless the contrary intention appears, only be exercisable upon the recommendation or subject to the approval or consent of such other person or authority.

30 *Construction of enabling words—*

Where a written law confers power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

32 *Official designation to include officer executing duties—*

When reference is made in any written law, instrument, warrant or process of any kind made or issued by the *Yang di-Pertuan Agong,* or a Ruler or any body or person having authority under any written law to make or to issue the same to any public officer by the term designating his office, such officer shall include the officer for the time being executing the duties of such office or any portion of such duties.

33 *Power of Yang di-Pertuan Agong to provide for execution of duties of public officer during temporary absence or inability—*

(1) Where by or under any written law any powers are conferred or any duties are imposed upon a public officer, the *Yang di-Pertuan Agong* or, in the case of a public officer borne on the establishment of a State, the Ruler of that State, may direct that if, during any period, owing to absence or inability to act from illness or any other cause, such public officer is unable to exercise the powers or perform the duties of his office in any place under his jurisdiction or control, such powers shall be had and may be exercised and such duties shall be

Section | Subject Matter

performed in such place by a person named by, or by a public officer holding the office designated by the *Yang di-Pertuan Agong* or Ruler, as the case may be; and thereupon such person or public officer, during any period as aforesaid, shall have and may exercise the powers and shall perform the duties aforesaid subject to such conditions, exceptions and qualifications as the *Yang di-Pertuan Agong* or Ruler may direct.

(2) Without prejudice to the provisions of subsection (1), when a substantive holder of any office is on leave of absence pending relinquishment of his office, it shall be lawful for another person to be appointed substantively in his place.

35 *Time of commencement—*

Where any written law, or any part of a written law, or any instrument or notification made thereunder, is expressed to come into operation on a particular day, it shall, unless it be otherwise expressly provided, be construed as coming into operation immediately on the expiration of the day next preceding such day.

36 *Computation of time—*

In computing time for the purposes of any written law, unless the contrary intention appears—

(*a*) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

(*b*) if the last day of the period is a weekly holiday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day not being an excluded day;

(*c*) when any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(*d*) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

38 *Provision when no time prescribed—*

Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed and as often as the prescribed occasion arises.

Section	Subject Matter
40A	*Solicitor-General to exercise powers of Attorney-General*—

(1) Unless in any written law it is otherwise expressly provided, the Solicitor-General may perform any of the duties and may exercise any of the powers of the Attorney-General.

(2) Where the *Yang di-Pertuan Agong* or any other person has lawfully delegated his powers to the Attorney-General such delegation shall, unless otherwise expressly provided, be deemed to be delegation of powers to both the Attorney-General and the Solicitor-General.

42 *Public officers*—

A reference in any written law to any public officer by the usual or common title of his office shall, if there be such an office customarily in the Federation or any State and unless the contrary intention appears, be read and construed as referring to the person for the time being holding or carrying out the duties of that office in the Federation or State, as the case may be.

44 *Construction of references to laws*—

In any written law a description or citation of a portion of another written law shall, unless a contrary intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

46 *English text to prevail*—

In case of any conflict or discrepancy between the English text of a written law and any translation thereof, the English text shall prevail.

TWELFTH SCHEDULE

Article 164.

PROVISIONS OF THE FEDERATION OF MALAYA AGREEMENT, 1948 (F. OF M. *G*.N. No. 6 OF 1948), AS MODIFIED BY AND APPLIED TO THE LEGISLATIVE COUNCIL AFTER MERDEKA DAY*

Establishment of Legislative Council.

36. (1) There shall be established a Legislative Council in and for the Federation, constituted in accordance with the provisions of this Agreement.

(2) The Legislative Council shall consist of the Speaker, eleven State Members, thirty-five Appointed Members and fifty-two Elected Members.

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* These provisions only continue in force until the date of dissolution of the last Legislative Council, under Article 164 of the Constitution.

Speaker.

36A. (1) The Yang di-Pertuan Agong shall by Instrument under the Public Seal appoint to be Speaker of the Legislative Council such person as he may think fit:

Provided that the Yang di-Pertuan Agong shall not so appoint any person who is a Member of the Cabinet.

(2) The Speaker may by writing under his hand addressed to the Yang di-Pertuan Agong resign the office of Speaker.

(3) The Yang di-Pertuan Agong may at any time by Instrument under the Public Seal revoke any appointment made under sub-clause (1) of this Clause.

(4) The Speaker shall, unless he earlier vacates his office under the provisions of this Clause, hold office during the continuance of the Council of which he is appointed to be the Speaker.

(5) A person shall vacate the office of Speaker—

(*a*) in any case upon the next dissolution of the Council after he has been appointed; or

(*b*) upon receipt by the Yang di-Pertuan Agong of his resignation of the said office; or

(*c*) upon notification by the Yang di-Pertuan Agong to such person of the revocation of his appointment in accordance with the provisions of sub-clause (3) of this Clause; or

(*d*) if he shall become a Member of the Cabinet.

(6) A person shall, if qualified, be eligible for re-appointment to the office of Speaker from time to time.

State Members.

38. The State Members shall be the nine Mentri Mentri Besar for the time being and the two Chief Ministers of Malacca and Penang.

Appointed Members.

39. (1) The Appointed Members shall consist of—

(*a*) twenty-two Members to be known as "Members for Scheduled Interests;"

(*b*) three Members to be known as "Members for Racial Minorities; and

(*c*) ten Members to be known as "Nominated Members."

(2) For the purposes of paragraph (*a*) of sub-clause (1) of this Clause the following shall be deemed to be Scheduled Interests, namely, Commerce, Planting, Mining, Agriculture and Husbandry, and Trade Unions, and each such Scheduled Interest shall be represented in the manner shown in the Seventh Schedule to this Agreement.

(3) For the purposes of paragraph (*b*) of sub-clause (1) of this Clause the following shall be deemed to be the Racial Minorities, namely, the Aborigines, the Ceylonese community and the Eurasian community, and each of such Racial Minorities shall be represented by a Member chosen by the Yang di-Pertuan Agong.

(4) The Nominated Members shall be chosen by the Yang di-Pertuan Agong.

(5) Appointed Members shall be appointed by the Yang di-Pertuan Agong by Instrument under the Public Seal.

Qualification of Appointed Members.

40. (1) The Appointed Members (other than the Members for Racial Minorities appointed to represent the Ceylonese and the Eurasian communities) shall be citizens of the Federation of Malaya of the age of twenty-one years or upwards:

Provided that the Yang di-Pertuan Agong may appoint British subjects, not being citizens of the Federation of Malaya, to be such Appointed Members of the Council whenever he is satisfied that it is desirable so to do.

(2) The Members for Racial Minorities appointed to represent the Ceylonese and the Eurasian communities shall be citizens of the Federation of Malaya of the age of twenty-one years or upwards who are at the date of their appointment ordinarily resident in the Federation and have been so resident for a period of twelve months immediately prior thereto and shall be members of the communities which they are respectively chosen to represent.

Qualification of Elected Members.

40A. (1) The Elected Members shall be citizens of the Federation of Malaya of the age of twenty-one years or upwards at the date of their nomination as candidates who are at such date ordinarily resident in the Federation and have been so resident for a period of twelve months immediately prior thereto.

(2) Elected Members shall be elected in accordance with the provisions of law in force in the Federation immediately before Merdeka Day.

Disqualifications of Appointed and Elected Members.

41. No person shall be qualified to be appointed as an Appointed Member or to be elected as an Elected Member of the Legislative Council, or, having been appointed or elected, shall sit or vote therein, who at the time of his appointment or election—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a Power or State outside the Commonwealth; or

(*b*) is a person found or declared to be of unsound mind or is detained as a criminal lunatic under any law from time to time in force in the Federation or any part thereof; or

(*c*) has in any part of the Commonwealth been sentenced to death or to imprisonment (by whatever name called) for a term exceeding six months and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor or received a free pardon; or

(*d*) within the immediately preceding five years has in the Federation or the Colony been either convicted of or completed a term of imprisonment imposed in respect of a conviction for—

(i) any offence punishable with death; or

(ii) any offence punishable with imprisonment for life under any regulation made under the Emergency Regulations Ordinance, 1948, or the corresponding provisions of any law from time to time in force in the Colony; or

F. of M. No. 10 of 1948.

(iii) any offence mentioned in Chapter VI or any offence punishable with imprisonment for life mentioned in Chapter VII or Chapter XI (other than section 222) of the Penal Code of the Federated Malay States, as extended to have effect throughout the Federation by the Penal Code (Amendment and Extended Application) Ordinance, 1948, or the corresponding provisions of the Penal Code from time to time in force in the Colony; or

Cap. 45.

F. of M. No. 32 of 1948.

(iv) any offence punishable under Clause 133E of this Agreement or the corresponding provisions of the Nationality Enactment from time to time in force in any State; or

(v) any corrupt or illegal practice under any written law relating to elections,

and has not received a free pardon.

For the purposes of this paragraph any reference to conviction for an offence shall be deemed to include a reference to conviction for the abetment of or an attempt to commit such offence; or

(*e*) has within the immediately preceding five years been reported by an Election Judge under the provisions of any written law relating to elections to have been guilty of a corrupt or illegal practice and has not by such report been relieved of the consequences thereof; or

(*f*) is an undischarged bankrupt, having been adjudged or declared bankrupt under any law in force in any part of the Commonwealth; or

(*g*) holds the office of Speaker of the Legislative Council; or

(*h*) in the case of an Elected Member, is holding or discharging the functions of any office of emolument under any Government in the Federation or under the Crown:

Provided that nothing in this paragraph shall be construed as referring to the office of Minister; or

(*i*) in the case of an Elected Member is disqualified for election by virtue of any law for the time being in force in the Federation by reason of his holding or acting in any office the functions of which involve any responsibility for or any connection with the conduct of any election or any responsibility for the compilation or revision of any register of electors.

Constituencies.

41A. (2) Except as hereinafter provided, every person who is registered as an elector in a constituency shall while so registered be entitled to vote at the election of a Member or Members for that constituency and no person shall vote at an election for any constituency who is not registered as an elector in that constituency:

Provided that nothing in this sub-clause shall entitle any person to vote at any election if he is prohibited from so voting by any law for the time being in force in the Federation.

(3) No person shall be registered as an elector in any constituency who is disqualified from being so registered under the provisions of Clause 41C of this Agreement.

Disqualification of electors.

41C. No person shall be entitled to be registered as an elector in any constituency or having been so registered, to remain so registered who is—

(*a*) subject to any of the disqualifications specified in paragraphs (*a*), (*b*), (*c*), (*d*) and (*e*) of Clause 41 of this Agreement; or

(*b*) is prohibited from being so registered under the provisions of any law for the time being in force in the Federation.

Tenure of office.

42. (1) Every Member of the Legislative Council shall in any case cease to be a Member upon a dissolution of the Council or at any time if his seat shall become vacant under the provisions of this Agreement.

(2) The seat of an Appointed or Elected Member of the Legislative Council shall become vacant—

(*a*) upon his death; or

(*b*) if he shall, without the leave of the Yang di-Pertuan Agong in the case of an Appointed Member or of the Speaker in the case of an Elected Member, be absent from four consecutive meetings of the Council; or

(*c*) if—

(i) he shall cease to be a citizen of the Federation of Malaya; or

(ii) being appointed under the proviso to sub-clause (1) of Clause 40 of this Agreement, he shall cease to be a British subject; or

(iii) being a citizen of the Federation of Malaya he shall do any voluntary act which shall be declared by the Yang di-Pertuan Agong to be incompatible with his loyalty to the Federation; or

(iv) being a British subject or a citizen of the Federation of Malaya he shall take any oath or make any declaration of allegiance, obedience or adherence to any Power or State outside the Commonwealth, or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any such Power or State; or

(*d*) if being an Appointed Member he shall be nominated as a candidate in any election of an Elected Member, or being an Elected Member he shall be appointed as an Appointed Member, and shall have consented to such nomination or appointment; or

(*e*) if he shall be found or declared to be of unsound mind or shall be detained as a criminal lunatic under any law in force in the Federation or any part thereof; or

(*f*) if he shall be sentenced in any part of the Commonwealth to death or imprisonment (by whatever name called) for a term exceeding six months or convicted in the Federation or the Colony of any offence or practice referred to in paragraph (*d*) of Clause 41 of this Agreement; or

(*g*) if he shall be reported by an Election Judge under any written law relating to elections to have been guilty of any corrupt or illegal practice and shall not by such report have been relieved of the consequences thereof; or

(*h*) if he shall be declared bankrupt under any law in force in any part of the Commonwealth; or

(*i*) if he shall become a party to any contract with the Federal Government for or on account of the public service, or if any firm in which he is a partner or any company of which he is a director or manager shall become a party to any such contract, or if he shall become a partner in a firm or a director or manager of any company which is a party to any subsisting contract as aforesaid, or if he shall become otherwise to his knowledge interested in any such contract:

Provided that—

(*a*) a person shall not be deemed to be interested in any such contract by reason only of his being a shareholder in a company which is a party to such contract unless he has a controlling interest in such company; and

(*b*) nothing in this paragraph shall be construed as referring to—

(i) any contract to subscribe to or any subscription to a loan to be issued to the public on advertised terms; or

(ii) any contract the consideration for which is less than one thousand dollars:

Provided further that the Yang di-Pertuan Agong may, if in the circumstances it shall appear to him to be just so to do, exempt any Member from vacating his seat under the provisions of this paragraph, if such Member shall, before becoming a party to such contract or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm, or director, manager, or shareholder of a company or otherwise) disclose to the Yang di-Pertuan Agong the nature of such contract and his interest or the interest of any such firm or company therein; or

(*j*) if he shall be appointed Speaker of the Legislative Council; or

(*k*) if being an Elected Member he shall be appointed to any office of emolument under any Government in the Federation or under the Crown:

Provided that nothing in this paragraph shall be construed as referring to the office of Minister; or

(*l*) if being an Elected Member, he shall become disqualified for election by virtue of any law for the time being in force in the Federation by reason of his holding or acting in any office the functions of which involve any responsibility for or any connection with the conduct of any election or any responsibility for compilation or revision of any register of electors; or

(*m*) if he shall by writing under his hand, addressed in the case of an Appointed Member to the Yang di-Pertuan Agong and in the case of an Elected Member to the Speaker, resign his seat in the Council.

(4) Any person vacating a seat as a Member of the Legislative Council may, if qualified, be subsequently appointed or elected as a Member from time to time.

(5) The Yang di-Pertuan Agong may, by Instrument under the Public Seal, declare any Appointed Member to be by reason of illness temporarily incapable of discharging his functions as a Member of the Council, and thereupon such Member shall not sit or vote in the Council until he is declared, in manner aforesaid, to be again capable of discharging his said functions.

(6) All questions which may arise as to the right of a person to be or to remain a Member shall—

(*a*) in the case of an Appointed Member be referred to and decided by the Yang di-Pertuan Agong whose decision shall be final and shall not be called in question in any Court in the Federation; and

(*b*) in the case of an Elected Member shall be referred to and determined by the Supreme Court or a Judge thereof in accordance with the provisions of law from time to time in force in the Federation.

Temporary Members.

43. (1) Whenever there shall be a vacancy in the number of persons sitting in the Legislative Council as Appointed Members by reason of the fact that—

(*d*) the seat of an Appointed Member is vacant for any cause; or

(*e*) an Appointed Member is unable to sit or vote in the Council in consequence of a declaration by the Yang di-Pertuan Agong under sub-clause (5) of Clause 42 of this Agreement, that he is incapable of discharging his functions as a Member; or

(*f*) a Member is absent from the Federation,

the Yang di-Pertuan Agong may, by Instrument under the Public Seal, appoint a person to be a Temporary Member for the period of such vacancy:

Provided that no person shall be so appointed in place of a Member for Scheduled Interests chosen by any association, chamber or other body specified in the Seventh Schedule to this Agreement without prior consultation with such association, chamber or other body.

(2) Every person appointed to be a Temporary Member under this Clause shall, if appointed in place of a Member for Racial Minorities appointed to represent the Ceylonese or the Eurasian community, be a person qualified for appointment as such Member, and in any other case shall be a person qualified for appointment as any other Appointed Member, and shall, as long as his appointment shall subsist, be to all intents and purposes an Appointed Member and subject to the provisions of this Clause, the provisions of Clause 42 of this Agreement shall apply accordingly:

Provided that the person so appointed shall not be regarded as an Appointed Member in computing the number of such Members for the purposes of sub-clause (2) of Clause 36 of this Agreement.

(3) Such temporary appointment may (without prejudice to anything done by virtue thereof) be revoked by the Yang di-Pertuan Agong by Instrument under the Public Seal.

(4) A temporary appointment under this Clause shall cease to have effect on notification by the Yang di-Pertuan Agong to the person appointed of the revocation of his appointment, or on supersession of the appointment by the definitive appointment of a person to fill the vacancy, or when the vacancy shall otherwise cease to exist.

(5) If the Mentri Besar or Chief Minister of a State shall be prevented through illness or other sufficient cause from attending any meeting of the Legislative Council, the Yang di-Pertuan Agong may appoint in his place, for the purpose of attending that meeting, such other person as the Mentri Besar or Chief Minister may nominate.

Vacancies.

43A. (1) Whenever the seat of an Appointed Member of the Legislative Council becomes vacant for any reason other than a dissolution of the Council, the Yang di-Pertuan Agong shall, as soon as is convenient, appoint another person to fill such vacancy in accordance with the provisions of this Agreement.

(2) Whenever the seat of an Elected Member of the Legislative Council becomes vacant for any reason other than a dissolution of the Council, an election shall be held to fill such vacancy in accordance with the provisions of this Agreement and any law for the time being in force in the Federation.

Presiding in Legislative Council.

45A. The Speaker, if present, shall preside at meetings of the Legislative Council and in his absence or if no Speaker has been appointed or the post of Speaker is vacant for any other cause such Member as the Yang di-Pertuan Agong may in writing appoint and in the absence of such Member or if no Member be so appointed the senior Member of the Council actually present shall preside.

Quorum.

46. No business except that of adjournment shall be transacted by the Legislative Council if objection is taken by any Member present that there are less than one quarter of the Members present besides the Speaker or other Member presiding.

Words of enactment of Ordinances.

51. All laws passed by the Legislative Council shall be styled "Ordinances" and the words of enactment shall be "Enacted by the Yang di-Pertuan Agong of the Federation of Malaya with the advice and consent of the Legislative Council".

Publication of Bills.

53. Every Bill, other than a private Bill, shall, save in case of urgency to be certified in writing by the Yang di-Pertuan Agong, be published for general information in the *Gazette* at least fourteen days prior to its introduction into the Legislative Council.

Assent to Bills.

54. (1) No Bill shall become a law until it has received the assent of the Yang di-Pertuan Agong.

(3) When a Bill is presented to the Yang di-Pertuan Agong for his assent, he shall declare that he assents or refuses to assent thereto.

(4) When the Yang di-Pertuan Agong assents to any Bill his assent shall be expressed by his causing the Public Seal to be affixed thereto and by signing his name upon such Bill in token of his assent.

(5) A law assented to by the Yang di-Pertuan Agong shall be published in the *Gazette* and shall come into operation on the date of such publication, or, if it shall be enacted either in the law or in some other enactment (including any enactment in force at the commencement of this Agreement) that it shall come into operation on some other date, on that date.

Private Bills.

56. Except as otherwise therein provided, a Federal Ordinance, not being a Federal Government measure, intended to affect or benefit some particular person, association, or corporate body, shall not affect the rights of Their Highnesses the Rulers, and Their Successors, or the rights of any body politic or corporate, or of any other person.

Standing Rules and Orders.

57. Subject to the provisions of this Agreement, the Legislative Council may, from time to time, make, amend and revoke Standing Rules and Orders for the regulation and orderly conduct of its own proceedings and the conduct of business and for the passing, intituling and numbering of Bills, and for the presentation thereof to the Yang di-Pertuan Agong for his assent.

Voting.

58. (1) Save as otherwise provided in this Agreement, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the Members present and voting.

(2) The Speaker shall not have an original vote, but, if upon any question the votes shall be equally divided, he shall have and exercise a casting vote.

(3) In the absence of the Speaker, the Member presiding shall have an original vote and shall also, if upon any question the votes shall be equally divided, have and exercise a casting vote.

Introduction of Bills.

59. Subject to the provisions of this Agreement and of the Standing Rules and Orders of the Legislative Council, any Member of the Council may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the same shall be debated and disposed of according to the Standing Rules and Orders:

Provided that—

(*a*) except with the recommendation or consent of the Yang di-Pertuan Agong signified thereto, the Council shall not proceed upon any Bill, amendment, motion or

petition, which, in the opinion of the Speaker or other Member presiding, would dispose of, or charge any public revenue or public funds of the Federation, or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty; and

(*b*) except with the consent of the Speaker or other Member presiding, the Council shall not proceed upon any motion or petition which in the opinion of the Speaker or the presiding Member, would suspend the Standing Rules and Orders of the Council or any of them.

Sessions of Legislative Council.

60. (1) The sessions of the Legislative Council shall be held at such times and places as the Yang di-Pertuan Agong shall from time to time by Proclamation in the *Gazette* appoint.

(2) There shall be a Session of the Council once at least in every year, so that a period of twelve months shall not intervene between the last sitting in one Session and the first sitting in the next Session.

Prorogation and dissolution.

61. (1) The Yang di-Pertuan Agong may at any time, by proclamation in the *Gazette*, prorogue the Legislative Council.

(2) The Yang di-Pertuan Agong may at any time after the first day of January, 1959, by Proclamation in the *Gazette* dissolve the Legislative Council.

(3) Unless it is sooner dissolved a Legislative Council shall continue for four years from the date of its first sitting and no longer, and the expiry of the said period of four years shall operate as a dissolution of the Council.

Right of Yang di-Pertuan Agong to Legislative Council.

61A. The Yang di-Pertuan Agong shall have the right to address the Legislative Council at any time when he shall think fit.

Minutes.

62. (1) Minutes shall be kept of all the proceedings of the Legislative Council.

Legislative Councillor's Oath.

64. Except for the purpose of enabling this clause to be complied with, no Member shall sit or vote in the Legislative Council until he shall have taken and subscribed before the Speaker, or some person authorised by the Yang di-Pertuan Agong, the Legislative Councillor's Oath in the form set out in the First Schedule to this Agreement.

FIRST SCHEDULE

FORM IV

LEGISLATIVE COUNCILLOR'S OATH

(Clause 64)

I,....., do swear that I will well and truly serve in the Office of Member of the Legislative Council of the Federation of Malaya. *So help me God.

* These words may be varied according to the religious beliefs of the person concerned.

SEVENTH SCHEDULE

[Clause 39 (2)]

The Scheduled Interests referred to in sub-clause (2) of Clause 39 of this Agreement shall be represented as follows, namely—

(*a*) Commerce, by six Members, of whom:

(i) two shall be chosen by the Federated Malay States Chamber of Commerce in association with the Penang Chamber of Commerce;

(ii) two shall be chosen by the Associated Chinese Chambers of Commerce;

(iii) one shall be chosen by the Associated Indian Chambers of Commerce; and

(iv) one shall be chosen by the Yang di-Pertuan Agong to represent the commercial interests of the Malays;

(*b*) Planting by six Members to be chosen by the Rubber Producers' Council;

(*c*) Mining, by four Members, of whom:

(i) two shall be chosen by the Federated Malay States Chamber of Mines; and

(ii) two shall be chosen by the All Malaya Chinese Mining Association;

(*d*) Agriculture and Husbandry, by two Members to be chosen by the Yang di-Pertuan Agong; and

(*e*) Trade Unions by four Members to be chosen by the Malayan Trade Union Council:

Provided that—

(i) where any such Members are to be chosen by any association, chamber or other body specified in this Schedule (hereinafter referred to as "a selecting body"), the selection shall be made in accordance with rules made by such selecting body and approved by the Yang di-Pertuan Agong, or in default of any rules so approved, in accordance with the directions of the Yang di-Pertuan Agong;

(ii) if at any time it shall appear to the Yang di-Pertuan Agong that any such selecting body has for any reason ceased to be sufficiently representative for the purpose of choosing Members in accordance with the provisions of this Schedule, he may with the consent of Their Highnesses the Rulers by Proclamation published in the *Gazette* substitute for such selecting body such other selecting body as he may deem suitable;

(iii) if at any time the Yang di-Pertuan Agong shall be satisfied that any such selecting body while retaining its identity has assumed a different name, he may by order to be published in the *Gazette* direct that such selecting body, by whatever name called, shall continue to choose Members in accordance with the provisions of this sub-clause as if no such change of name had occurred.

CONSTITUTION OF THE STATE OF PENANG*

ARRANGEMENT OF ARTICLES

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Article

1. Governor of the State.
2. Qualifications and disabilities of Governor.
3. Civil List of Governor.
4. Oath of office of Governor.

Chapter 2—Muslim Religion

5. Muslim religion.

Chapter 3—The Executive

6. Executive authority.
7. The Executive Council.
8. Governor to act on advice.

Chapter 4—Capacity as respects property, contracts and suits

9. Capacity of State as respects property, contracts and suits.

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19. Summoning, prorogation and dissolution of Legislative Assembly.
20. Speaker of Legislative Assembly.

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* The Constitution was published in a Supplement to the *Gazette* of December 11, 1957, as Notification No. (New Series) 886.

Article

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CONSTITUTION OF THE STATE OF PENANG

PART I

THE STATE GOVERNMENT

Chapter 1—The Governor

Governor of the State.

1. (1) There shall be a Governor of the State, who shall be appointed by the Yang di-Pertuan Agong acting in his discretion but after consultation with the Chief Minister.

(2) The Governor shall be appointed for a term of four years but may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong and may be removed from office by the Yang di-Pertuan Agong in pursuance of an address by the Legislative Assembly supported by the votes of not less than two-thirds of the total number of its members.

(3) The Legislature may by law make provision for enabling the Yang di-Pertuan Agong, acting in his discretion but after consultation with the Chief Minister, to appoint a person to exercise the functions of the Governor during any period during which the Governor is unable to do so himself owing to illness, absence or any other cause; but no person shall be so appointed unless he would be qualified to be appointed Governor.

(4) A person appointed under Clause (3) may take the place of the Governor as a member of the Conference of Rulers during any period during which under that clause he may exercise the functions of the Governor.

Qualifications and disabilities of Governor.

2. (1) A person who is not a citizen or is a citizen by naturalisation or by registration under Article 17 of the Federal Constitution shall not be appointed Governor.

(2) The Governor shall not hold any office of profit and shall not actively engage in any commercial enterprise.

Civil List of Governor.

3. The Legislature shall by law provide a Civil List of the Governor, which shall be charged on the Consolidated Fund and shall not be diminished during his continuance in office.*

Oath of office of Governor.

4. (1) The Governor shall before exercising his functions take and subscribe in the presence of the Chief Justice of the Federation or of another judge of the

* *See* the Civil List (Penang) Enactment, 1957 (Enactment No. 4 of 1957).

Supreme Court an oath in the form set out in the First Schedule.

(2) Any law made under Article 1 (3) shall make provision corresponding (with the necessary modifications) to Clause (1).

Chapter 2—Muslim Religion

Muslim religion.

5. (1) The Yang di-Pertuan Agong shall be the Head of the Muslim religion in the State.

(2) The Legislature shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the Muslim religion.

Chapter 3—The Executive

Executive authority.

6. The executive authority of the State shall be vested in the Governor but executive functions may by law be conferred on other persons.

The Executive Council.

7. (1) The Governor shall appoint an Executive Council to advise him in the exercise of his functions.

(2) The Executive Council shall be appointed as follows, that is to say,—

(*a*) the Governor shall first appoint as Chief Minister to preside over the Executive Council a member of the Legislative Assembly who in his judgment is likely to command the confidence of a majority of the members of the Assembly; and

(*b*) he shall on the advice of the Chief Minister appoint not more than eight nor less than four other members from among the members of the Legislative Assembly;

but if an appointment is made while the Legislative Assembly is dissolved a person who was a member of the last Legislative Assembly may be appointed but shall not continue to hold office after the first sitting of the next Legislative Assembly unless he is a member thereof.

(3) The Executive Council shall be collectively responsible to the Legislative Assembly.

(4) If the Chief Minister ceases to command the confidence of the majority of the members of the Legislative Assembly, then, unless at his request the Governor dissolves the Legislative Assembly, the Chief Minister shall tender the resignation of the Executive Council.

(5) Whenever a vacancy arises in the office of Chief Minister then, unless the vacancy arises while the Legislative Assembly is dissolved, the other members of the Executive Council shall cease to hold office.

(6) Subject to Clauses (4) and (5), a member of the Executive Council other than the Chief Minister shall hold office at the Governor's pleasure, but may at any time resign his office.

(7) Before a member of the Executive Council exercises the functions of his office he shall take and subscribe in the presence of the Governor the oath of office and allegiance and the oath of secrecy set out in the First Schedule.

(8) Notwithstanding anything in this Article, a person who is a citizen by naturalisation or by registration under Article 17 of the Federal Constitution shall not be appointed Chief Minister.

(9) The Chief Minister shall not hold any office of profit and shall not actively engage in any commercial enterprise.

(10) A member of the Executive Council shall not engage in any trade, business or profession connected with any subject or department for which he is responsible and shall not, so long as he is engaged in any trade, business or profession, take part in any decision of the Executive Council relating to that trade, business or profession or in any decision likely to affect his pecuniary interests therein.

(11) The Legislature shall by law make provision for the remuneration of the members of the Executive Council.

Governor to act on advice.

8. (1) In the exercise of his functions under this Constitution or any law or as a member of the Conference of Rulers the Governor shall act in accordance with the advice of the Executive Council or of a member thereof acting under the general authority of the Council, except as otherwise provided by the Federal Constitution or this Constitution; but shall be entitled, at his request, to any information concerning the government of the State which is available to the Executive Council.

(2) The Governor may act in his discretion in the performance of the following functions, that is to say,—

(*a*) the appointment of a Chief Minister, and

(*b*) the withholding of consent to a request for the dissolution of the Legislative Assembly.

(3) State law may make provision for requiring the Governor to act after consultation with or on the recommendation of any person or body of persons other than the Executive Council in the exercise of any of his functions other than—

(*a*) functions exercisable in his discretion, and

(*b*) functions with respect to the exercise of which provision is made in the Federal Constitution.

Chapter 4—Capacity as respects property, contracts and suits

Capacity of State as respects property, contracts and suits.

9. (1) The State has power to acquire, hold and dispose of property of any kind and to make contracts.

(2) The State may sue and be sued.

PART II

THE LEGISLATURE

Constitution of Legislature.

10. The Legislature shall consist of the Governor and one House, to be known as the Legislative Assembly.

Composition of Legislative Assembly.

11. The Legislative Assembly shall consist of members elected in accordance with the provisions of the Federal Constitution and, until an Enactment otherwise provides, the number of members shall be twenty-four.

Qualifications of members.

12. Every citizen of or over the age of twenty-one years who is resident in the State is qualified to be a member of the Legislative Assembly, unless he is disqualified for being a member by the Federal Constitution or this Constitution or by any such law as is mentioned in Article 13.

Disqualification for membership of Legislative Assembly.

13. (1) Subject to the provisions of this Article, a person is disqualified for being a member of the Legislative Assembly if—

(*a*) he is and has been found or declared to be of unsound mind;

(*b*) he is an undischarged bankrupt;

(*c*) he holds an office of profit;

(*d*) having been nominated for election to either House of Parliament or to the Legislative Assembly, or having acted as election agent to a person so nominated, he has failed to lodge any return of election expenses required by law within the time and in the manner so required;

(*e*) he has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than two years and has not received a free pardon;

(*f*) he is disqualified under any law relating to offences in connection with elections to either House of Parliament or to the Legislative Assembly by being convicted of such an offence or having in proceedings relating to such an election been proved guilty of an act constituting such an offence; or

(*g*) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, a foreign country or has made a declaration of allegiance to a foreign country.

(2) The disqualification of a person under paragraph (*d*) or paragraph (*e*) of Clause (1) may be removed by the Governor and shall, if not so removed, cease at the end of the period of five years beginning with the date on which the return mentioned in the said paragraph (*d*) was required to be lodged or, as the case may be, the date on which the person convicted as mentioned in the said paragraph (*e*) was released from custody; and a person shall not be disqualified under paragraph (*g*) of Clause (1) by reason only of anything done by him before he became a citizen.

Provision against double membership.

14. A person shall not at the same time be a member of the Legislative Assembly for more than one constituency.

Effect of disqualification, and prohibition of nomination without consent.

15. (1) If a member of the Legislative Assembly becomes disqualified for membership of the Assembly his seat shall become vacant.

(2) If a person disqualified for being a member of the Legislative Assembly is elected to the Assembly, or if an election is contrary to Article 14, the election shall be void.

(3) If the election of any person would or might be void under Clause (2) his nomination for the election shall be void.

(4) A person cannot be validly nominated for election to the Legislative Assembly without his consent.

Resignation of members.

16. A member of the Legislative Assembly may resign his membership by writing under his hand addressed to the Speaker.

Absence of a member.

17. If a member of the Legislative Assembly is without the leave of the Assembly absent from every sitting thereof for a period of six months the Assembly may declare his seat vacant.

Decision as to disqualification.

18. If any question arises whether a member of the Legislative Assembly has become disqualified for membership, the decision of the Assembly shall be taken and shall be final.

Summoning, prorogation and dissolution of Legislative Assembly.

19. (1) The Governor shall from time to time summon the Legislative Assembly and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may prorogue or dissolve the Legislative Assembly.

(3) The Legislative Assembly unless sooner dissolved shall continue for five years from the date of its first sitting and shall then stand dissolved.

(4) Whenever the Legislative Assembly is dissolved a general election shall be held within sixty days from the date of the dissolution and the new Legislative Assembly shall be summoned to meet on a date not later than ninety days from that date.

(5) A casual vacancy shall be filled within sixty days from the date on which it occurs, and an election shall be held accordingly.

Speaker of Legislative Assembly.

20. (1) The Legislative Assembly shall from time to time choose one of its members to be Speaker and shall transact no business while the office of Speaker is vacant other than the election of a Speaker.

(2) A member holding office as Speaker shall vacate his office on ceasing to be a member of the Legislative Assembly and may at any time resign his office.

(3) During any absence of the Speaker from a sitting of the Legislative Assembly such other member as may be determined by the rules of procedure of the Assembly shall act as Speaker.

(4) The Legislature shall by law provide for the remuneration of the Speaker and the remuneration so provided shall be charged on the Consolidated Fund.

Oath by members.

21. (1) Every member of the Legislative Assembly shall before taking his seat take and subscribe before the person presiding in the Assembly an oath in the

form set out in the First Schedule, but a member may before taking that oath take part in the election of the Speaker.

(2) If a member has not taken his seat within three months from the date on which the Legislative Assembly first sits after his election or such further time as the Assembly may allow, his seat shall become vacant.

Address by Governor.

22. The Governor may address the Legislative Assembly and may send messages thereto.

Right of Legal Adviser to address Legislative Assembly.

23. (1) The Legal Adviser for the State shall have the right to take part in the proceedings of the Legislative Assembly.

(2) The Legislative Assembly may appoint the Legal Adviser for the State to be a member of any of its committees.

(3) This Article does not authorise the Legal Adviser to vote in the Legislative Assembly or any of its committees.

Procedure of Legislative Assembly.

24. (1) Subject to the provisions of the Federal Constitution and this Constitution the Legislative Assembly shall regulate its own procedure.

(2) The Legislative Assembly may act notwithstanding any vacancy in its membership, and the presence or participation of any person not entitled thereto shall not invalidate any proceedings.

(3) Subject to Clause (4) and Article 35 (3), the Assembly shall, if not unanimous, take its decision by a simple majority of members voting; and the person presiding shall cast his vote whenever necessary to avoid an equality of votes, but shall not vote in any other case.

(4) In regulating its procedure the Assembly may provide, as respects any decision relating to its proceedings, that it shall not be made except by a specified majority or by a specified number of votes.

(5) Members absent from the Assembly shall not be allowed to vote.

Remuneration of members.

25. The Legislature shall by law make provision for the remuneration of the members of the Legislative Assembly.

Exercise of legislative power.

26. (1) The power of the Legislature to make laws shall be exercised by Bills passed by the Legislative Assembly and assented to by the Governor.

(2) No Bill or amendment involving expenditure from the Consolidated Fund may be introduced or moved in the Legislative Assembly except by a member of the Executive Council.

(3) After assenting to a Bill the Governor shall cause it to be published as a law, and any such law shall be known as an Enactment.

(4) A Bill shall become law on being assented to by the Governor, but no law shall come into force until it has been published, without prejudice, however, to the power of the Legislature to postpone the operation of any law or to make laws with retrospective effect.

Supremacy of Constitution.

27. Any Enactment passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

PART III

FINANCIAL PROVISIONS

No taxation unless authorised by law.

28. No tax or rate shall be levied by or for the purposes of the State except by or under the authority of law.

Expenditure charged on Consolidated Fund.

29. (1) There shall be charged on the Consolidated Fund, in addition to any grant, remuneration or other moneys so charged by any other provision of this Constitution or by State law,—

(*a*) all debt charges for which the State is liable; and

(*b*) any moneys required to satisfy any judgment, decision or award against the State by any court or tribunal.

(2) For the purposes of this Article debt charges include interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby.

Annual financial statement.

30. (1) The Governor shall, in respect of every financial year, cause to be laid before the Legislative Assembly a statement of the estimated receipts and expenditure of the State for that year, and, unless the Legislature in respect of any year otherwise provides, that statement shall be so laid before the commencement of that year.

(2) The estimates of expenditure shall show separately—

(*a*) the total sums required to meet expenditure charged on the Consolidated Fund; and

(*b*) subject to Clause (3), the sums respectively required to meet the heads of other expenditure proposed to be met from the Consolidated Fund.

(3) The sums to be shown under paragraph (*b*) of Clause (2) do not include—

(*a*) sums representing the proceeds of any loan raised by the State for specific purposes and appropriated for those purposes by the law authorising the raising of the loan; and

(*b*) sums representing any money or interest on money received by the State subject to a trust and to be applied in accordance with the terms of the trust.

(4) The said statement shall also show, so far as is practicable, the assets and liabilities of the State at the end of the last completed financial year, the manner in which those assets are invested or held, and the general heads in respect of which those liabilities are outstanding.

Supply Bills.

31. The heads of expenditure to be met from the Consolidated Fund but not charged thereon, other than expenditure to be met by such sums as are mentioned in Clause (3) of Article 30, shall be included in a Bill, to be known as a Supply Bill, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

Supplementary and excess expenditure.

32. If in respect of any financial year it is found—

(*a*) that the amount appropriated by the Supply Enactment for that purpose is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Supply Enactment; or

(*b*) that any moneys have been expended for any purpose in excess of the amount (if any) appropriated for that purpose by the Supply Enactment,

a supplementary estimate showing the sums required or spent shall be laid before the Legislative Assembly, and the heads of any such expenditure shall be included in a Supply Bill.

Withdrawals from Consolidated Fund.

33. (1) Subject to the following provisions of this Article, no moneys shall be withdrawn from the Consolidated Fund unless they are—

(*a*) charged on the Consolidated Fund; or

(*b*) authorised to be issued by a Supply Enactment.

(2) No moneys shall be withdrawn from the Consolidated Fund except in the manner provided by federal law.

(3) Clause (1) does not apply to any such sums as are mentioned in Clause (3) of Article 30.

(4) The Legislature may in respect of any financial year by law authorise, before the passing of the Supply Enactment, expenditure for part of the year and the issue from the Consolidated Fund of any moneys required to meet that expenditure.

PART IV

GENERAL PROVISIONS

Impartial treatment of State employees.

34. All persons of whatever race in the same grade of the service of the State, shall, subject to the terms and conditions of their employment, be treated impartially.

Amendment of Constitution.

35. (1) Subject to the following provisions of this Article, the provisions of this Constitution may be amended by an Enactment.

(2) No amendments to this Constitution shall be made before the Legislative Assembly is constituted in accordance with Article 11, except such as the Council of State may deem necessary to remove any difficulties in the transition from the constitutional arrangements in operation immediately before Merdeka Day to those provided for by the Federal Constitution and this Constitution; but any law made in pursuance of this clause shall, unless sooner repealed, cease to have effect at the expiration of a period of twelve months beginning on the day on which the Legislative Assembly first meets.

(3) A Bill for making an amendment to this Constitution (other than an amendment excepted from the provisions of this clause) shall not be passed by the Legislative Assembly unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of members thereof.

(4) An amendment made for the purpose of bringing this Constitution into accord with the provisions of the Eighth Schedule to the Federal Constitution as for the time being in force or consequential on such an Enactment as is mentioned in Article 11 is excepted from the provisions of Clause (3).

(5) In this Article "amendment" includes addition and repeal.

Interpretation.

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

"Consolidated Fund" means the Consolidated Fund of the State;

"Federal Constitution" means the Constitution of the Federation of Malaya;

"Governor" means the Governor of the State;

"Legislative Assembly" means the Legislative Assembly of the State;

"the State" means the State of Penang.

(2) Unless the context otherwise requires, any reference in this Constitution to a specified Article, Part or Schedule is a reference to that Article or Part of, or that Schedule to, this Constitution; and any reference to a specified clause is a reference to that clause of the Article in which the reference occurs.

(3) References in this Constitution to the Federation of Malaya Order in Council, 1948, are references to that Order as in force immediately before Merdeka Day.

(4) Subject to the foregoing provisions of this Article, Article 160 of the Federal Constitution shall apply for the interpretation of this Constitution as it applies for the interpretation of the Federal Constitution, but with the modification that in the application to this Constitution of the said Article 160, Clause (1) thereof shall have effect as if it directed references to the Governor instead of references to the Yang di-Pertuan Agong to be substituted for references to the High Commissioner in the Interpretation and General Clauses Ordinance, 1948, as applied by that Article.

Commencement.

37. Subject to the provisions of Part V this Constitution shall come into operation immediately before Merdeka Day.

PART V

TRANSITIONAL PROVISIONS

First Governor of State.

38. The first Governor shall be a person nominated before Merdeka Day by Her Majesty and the Conference of Rulers after consultation with the Chief Minister of the Federation, and shall be appointed by the Yang di-Pertuan Agong for a term expiring at the end of a period of two years beginning with Merdeka Day.

Temporary continuance of Settlement Council as Council of State.

39. (1) The Settlement Council of Penang established under the Federation of Malaya Order in Council, 1948, shall remain in being on and after Merdeka Day and shall be known as the Council of State for Penang and shall not be dissolved before the first day of January, nineteen hundred and fifty-nine.

(2) If the Election Commission advises the Governor that it is not reasonably practicable before the first day of July, nineteen hundred and fifty-nine, to hold, in accordance with the Federal Constitution, elections to the Legislative Assembly to be constituted under Part II, the Governor may at any time after the first day of January, nineteen hundred and fifty-nine, by Proclamation continue the Council of State until such date, not being later than the end of June of that year, as may be specified in the Proclamation, and the Council of State shall continue accordingly and shall stand dissolved on that date.

(3) The Governor shall appoint a Speaker of the Council of State, and subject to the provisions of any Enactment he may authorise the payment of remuneration to him.

(4) Where a casual vacancy occurs among the nominated members, the Governor may appoint a person to fill the vacancy whether or not he holds office under the Federal Government or the Government of the State.

(5) Where a casual vacancy occurs among the elected members, the vacancy shall be filled as nearly as may be in accordance with the provisions of the Settlement Council of Penang (Elections) Enactment, 1954.

(6) Until the dissolution of the Council of State Part II shall not apply, and the powers of the Legislature under the Federal Constitution and this Constitution, other than the powers under Article 35, shall be exercisable by the Governor with the advice and consent of the Council of State; and accordingly, in

relation to the period ending with the dissolution of the Council of State, references in this Constitution, other than the references in Article 35 and this Part, to the Legislative Assembly shall be construed as references to the Council of State.

(7) Until the dissolution of the Council of State the provisions of the Federation of Malaya Order in Council, 1948, set out in the first column of the Second Schedule to this Constitution shall continue in force, subject to the modifications set out in the second column of that Schedule and to the following further modifications, that is to say—

(*a*) for references to the High Commissioner there shall be substituted references to the Governor;

(*b*) for references to the Settlement Executive Council there shall be substituted references to the Executive Council;

(*c*) for references to the Settlement Council there shall be substituted references to the Council of State;

(*d*) for references to a Settlement there shall be substituted references to the State; and

(*e*) references to an office of emolument under any Government in the Federation shall not be construed as references to the office of Chief Minister or to the office of any member of the Executive Council.*

Temporary provisions as to composition of Executive Council.

40. (1) Until the date of the first election for the Legislative Assembly constituted in accordance with Article 11 the Executive Council shall be composed of the Chief Minister, the three ex officio members of the Council of State and such other members of the Council of State, not being more than six, as the Governor may on the advice of the Chief Minister appoint.

(2) In relation to the period beginning with the dissolution of the Council of State and ending with the date mentioned in Clause (1) the references in Clause (1) to members of the Council of State shall be construed as references to persons who were members at the time of the dissolution.

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* Paragraph (*e*) was added, with effect from Merdeka Day, by the Constitution (Amendment) Enactment, 1957 (Enactment No. 3 of 1957), enacted in exercise of the powers conferred by Article 35 (2) of the Constitution of the State. The consequence of the amendment is that the offices of Chief Minister or of member of the State Executive Council will not be offices of emolument, although they attract remuneration by reason of any law made under Article 7 (11).

Temporary financial provisions.

41. (1) Subject to Clause (3), Part III shall not come into operation until the coming into operation of Part VII of the Federal Constitution.*

(2) Until the coming into operation of Part III, any moneys which under this Constitution (including Part III) are charged on the Consolidated Fund shall be charged on the revenues of the State and payment shall be made by virtue of this Clause without further authority of any law.

(3) Notwithstanding Clause (1), Article 28 shall come into operation immediately before Merdeka Day.

Transfer of officers.

42. (1) Subject to the provisions of the Federal Constitution and any existing law, all persons serving as servants of the Crown in connection with the affairs of the Settlement of Penang immediately before Merdeka Day shall on that day cease to be servants of the Crown but shall continue as servants of the State to have the same powers and to exercise the same functions on Merdeka Day on the same terms and conditions as were applicable to them immediately before that day.

(2) This Article does not apply to the Resident Commissioner of Penang.

Articles 4, 7, 21.

SCHEDULES

First Schedule

FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Office of Governor*

I, , having been appointed Governor of the State of Penang, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to the State of Penang and to the Federation of Malaya, and that I will preserve, protect and defend the Constitution of the State of Penang.

2. *Oath of Office and Allegiance*

I, , having been appointed to the office of , do solemnly swear (or affirm) that I will faithfully discharge the duties of that office to the best of my ability, that I will bear true faith and allegiance to the State of Penang and to the Federation of Malaya, and that I will preserve, protect and defend the Constitution of the State of Penang.

3. *Oath as Member of the Legislative Assembly*

I, , having been elected as a member of the Legislative Assembly of the State of Penang, do solemnly swear (or affirm) that I will faithfully

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* January 1, 1958.

discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to the State of Penang and to the Federation of Malaya, and that I will preserve, protect and defend the Constitution of the State of Penang.

4. *Oath of Secrecy*

I, , do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as a member of the Executive Council of the State of Penang except as may be required for the due discharge of my duties as such or may be specially permitted by the Governor.

SECOND SCHEDULE

Article 39.

PROVISIONS OF THE FEDERATION OF MALAYA ORDER IN COUNCIL, 1948, CONTINUED IN OPERATION

COUNCILS OF STATE

Establishment of Councils of State.

17. There shall be in and for each of the States a Council of State.

Membership.

18. Each Council of State shall consist of—

(*b*) three *ex officio* Members, namely the State Secretary, the Legal Adviser and the State Financial Officer; and

(*c*) such Nominated Official Members, Nominated Unofficial Members and Elected Members as may be prescribed by any law made under Part VI of this Order:

Nominated Members.

19. (1) The Nominated Official Members of a Council of State may be persons holding office of emolument under the Government of the Federation or of the State, and the Nominated Unofficial Members shall be persons not holding any office of emolument under the Crown or under any Government in the Federation.

(2) Nominated Members shall be appointed by the Governor by Instrument under his hand, to which Instrument the Seal of the State shall be affixed.

Elected Members.

20. The Elected Members shall be persons not holding office of emolument under the Crown or under any Government in the Federation and shall be elected in the manner prescribed by any law made under Part VI of this Order.

Qualifications of Nominated Unofficial and Elected Members. Sub. by L.N. 535/54

21. Subject to the provisions of this Order any person who at the date of his appointment as a Nominated Unofficial Member or nomination as a candidate for election as an Elected Member—

(*a*) is of the age of twenty-one years or upwards; and

(*b*) is either a British subject or a citizen of the Federation of Malaya; and

(*c*) (i) if he is a British subject born in the State has been ordinarily resident in the State for a period of six months immediately preceding such date; or

(ii) if he is a British subject born elsewhere than in the State (not being a citizen of the Federation of Malaya), has been ordinarily resident in the State for a period of one year immediately preceding such date and has during the five years immediately preceding such date been resident in the Federation for periods amounting in the aggregate to not less than three years; or

(iii) if he is a citizen of the Federation of Malaya (not being a British subject born in the State) has been ordinarily resident in the State for a period of one year immediately preceding such date; and

(*d*) (i) in the case of a Nominated Unofficial Member, is to the satisfaction of the Governor able to speak and (unless incapacitated by blindness or other physical cause) to read and write the English or Malay language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Council; or

(ii) in the case of an Elected Member, is able to speak and (unless incapacitated by blindness or other physical cause) to read and write the English or Malay language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Council; and

(*e*) in the case of an Elected Member is registered as a voter in any constituency in the State in accordance with any law providing for the registration of voters made under Part VI of this Order,

shall be qualified to be appointed as a Nominated Unofficial Member or elected as an Elected Member of a Council of State, as the case may be, and no other person shall be qualified to be so appointed or elected or having been so appointed or elected shall sit or vote in such Council:

Provided that the Governor, whenever he is satisfied that it is desirable so to do, may appoint as a Nominated Unofficial Member of a Council of State a British subject who has not been resident in the State in accordance with the requirements of this section if he has been resident in the Federation for periods amounting in the aggregate to not less than one year out of the two years immediately preceding his appointment.

Disqualification for Membership.

22. No person shall be qualified to be appointed as a Nominated Member or elected as an Elected Member of a Council of State or, having been so appointed or elected, shall sit or vote therein, who, at the time of his appointment or election—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a Power or State outside the Commonwealth; or

(*b*) is a person found or declared to be of unsound mind or is detained as a criminal lunatic under any law for the time being in force in the Federation or any part thereof; or

(*c*) has in any part of the Commonwealth been sentenced to death or to imprisonment (by whatever name called) for a term exceeding six months and has not either suffered the punishment to which he was

sentenced or such other punishment as may by competent authority have been substituted therefor or received a free pardon; or

(*d*) within the immediately preceding five years has in the Federation or the Colony been convicted of or released from prison after serving a sentence of imprisonment imposed in respect of a conviction for—

(i) any offence punishable with death; or

(ii) any offence punishable with imprisonment for life under any regulation made under the Emergency Regulations Ordinance, 1948, or the corresponding provisions of any law from time to time in force in the Colony; or

(iii) any offence mentioned in Chapter VI or any offence punishable with imprisonment for life mentioned in Chapter VII or Chapter XI (other than section 222) of the Penal Code of the Federated Malay States, as extended to have effect throughout the Federation by the Penal Code (Amendment and Extended Application) Ordinance, 1948, or the corresponding provisions of the Penal Code from time to time in force in the Colony; or

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(iv) any offence committed by virtue of the making of any false statement in connection with the acquisition by any person of the status of British subject or citizen of the Federation of Malaya,

and has not received a free pardon.

For the purposes of this paragraph any reference to conviction for an offence shall be deemed to include a reference to conviction for the abetment of or an attempt to commit such offence; or

(*e*) is an undischarged bankrupt, having been adjudged or declared bankrupt under any law in force in any part of the Commonwealth; or

(*f*) (i) in the case of a Nominated Unofficial Member, is a party to, or a partner in a firm, or a director or manager of a company, which is a party to, any subsisting contract with the Government of the Federation or of the State for or on account of the public service, or is otherwise to his knowledge interested in any such contract, and has not disclosed to the Governor the nature of such contract and his interest, or the interest of any such firm or company, therein; or

(ii) in the case of an Elected Member, is a party to, or a partner in a firm, or a director or manager of a company, which is a party to, any subsisting contract with the Government of the Federation or of the State for or on account of the public service, or is otherwise to his knowledge interested in any such contract, and has not published, within one month before the day of election, in the English language in the *Gazette* and in a newspaper circulating in the State, a notice setting out

the nature of such contract and his interest, or the interest of any such firm or company, therein:

Provided that—

(*a*) a person shall not be deemed to be interested in any such contract by reason only of his being a shareholder in a company which is a party to such contract unless he has a controlling interest in such company; and

(*b*) nothing in this paragraph shall be construed as referring to—

(i) any contract to subscribe to or any subscription to a loan to be issued to the public on advertised terms; or

(ii) any contract the consideration for which is less than one thousand dollars; or

(*g*) in the case of an Elected Member, is disqualified for election by any law for the time being in force in the State by reason of his holding, or acting in, any office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election, or

(ii) any responsibility for the compilation or revision of any register of voters; or

(*h*) is disqualified for Membership of the Council by any law for the time being in force in the State relating to offences connected with elections (whether of Members of the Council of State or otherwise).

Tenure of Office of Nominated and Elected Members.

23. (1) Subject to the provisions of this Order, every Nominated Member of a Council of State shall hold his seat in the Council during the pleasure of the Governor.

(2) Every Nominated and Elected Member shall in any case cease to be a Member at the next dissolution of the Council after his appointment or election, or previously thereto if his seat shall become vacant under the provisions of this Order.

(3) The seat of a Member (other than an *ex officio* Member) shall become vacant—

(*a*) upon his death; or

(*b*) if, being a Nominated Unofficial or Elected Member, he shall cease to be qualified for appointment or election in accordance with paragraph (*b*) of section 21 of this Order; or

(*d*) if, being a Nominated Unofficial Member, he shall be appointed permanently to, or, being an Elected Member he shall be appointed to, or to act in, any office of emolument under the Crown or under any Government in the Federation; or

(*e*) if he shall, by writing under his hand addressed to the Governor, resign his seat in the Council; or

(*f*) if he shall be absent from two consecutive meetings of the Council and neither of such absences has been

excused by the Governor within a period of fourteen days from the end of the meeting; or

(*g*) if, being a British subject or a citizen of the Federation of Malaya, he shall take any oath, or make any declaration or acknowledgment of allegiance, obedience or adherence to any Power or State outside the Commonwealth or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any such Power or State; or

(*h*) if, being a citizen of the Federation of Malaya, he shall do any voluntary act which shall be declared by the Governor to be incompatible with his loyalty to the Federation or to the State; or

(*i*) if he shall be found or declared to be of unsound mind or determined as a criminal lunatic under any law in force in the Federation or any part thereof; or

(*j*) if in any part of the Commonwealth he shall be sentenced to death or to imprisonment (by whatever name called) for a term exceeding six months, or convicted in the Federation or the Colony of any offence referred to in paragraph (*d*) of section 22 of this Order; or

(*k*) if he shall be declared a bankrupt under any law in force in any part of the Commonwealth; or

(*l*) in the case of a Nominated Unofficial or Elected Member, if he shall become a party to any contract with the Government of the Federation or of the State for, or on account of, the public service or if any firm in which he is a partner, or any company of which he is a director or manager, shall become a party to any such contract or if he shall become a partner in a firm or a director or manager of any company which is a party to any subsisting contract as aforesaid, or if he shall otherwise to his knowledge become interested in, any such contract:

Provided that—

(*a*) a person shall not be deemed to be interested in any such contract by reason only of his being a shareholder in a company which is a party to such contract unless he has a controlling interest in such company; and

(*b*) nothing in this paragraph shall be construed as referring to—

(i) any contract to subscribe to or any subscription to a loan to be issued to the public on advertised terms; or

(ii) any contract the consideration for which is less than one thousand dollars:

Provided further that the Governor may, if in the circumstances it shall appear to him to be just so to do, exempt any Member from vacating his seat under the provisions of this paragraph, if such Member

shall, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm or director or manager of a company or otherwise), disclose to the Governor the nature of such contract and his interest or the interest of any such firm or company therein; or

(*m*) if, being an Elected Member, he shall become disqualified for election in the manner mentioned in paragraph (*f*) of section 22 of this Order; or

(*n*) if he shall become disqualified for Membership of the Council in the manner mentioned in paragraph (*g*) of section 22 of this Order.

(4) If a Nominated Unofficial Member shall be appointed temporarily to, or to act in, any office of emolument under the Crown or under any Government in the Federation, he shall not sit or vote in the Council so long as he continues to hold, or act in, that office.

(5) Any person vacating a seat as a Nominated or Elected Member of a Council of State may, if qualified, be again appointed or elected as a Member from time to time.

(8) Whenever the seat of a Member of a Council of State becomes vacant otherwise than by reason of a dissolution of the Council or a Member is by virtue of sub-section (4) of this section unable to sit or vote in the Council, the matter shall forthwith be reported to the Governor in writing by the Clerk of the Council concerned.

Decisions of questions as to Membership.

24. (1) All questions which may arise as to the right of any person to be or remain a Nominated Member of a Council of State shall be referred to and decided by the Governor whose decision shall be final and shall not be called in question in any Court.

(2) All questions which may arise as to the right of any person to be or remain an Elected Member shall be determined in accordance with any law for the time being in force in the State.

Attendance of persons other than Members.

26. (1) The Speaker may invite to any meeting of a Council of State any person, notwithstanding that such person may not be a Member of the Council, when, in the opinion of the Speaker, the business before the Council renders the presence of such person desirable.

(2) Any person so invited shall be entitled to take part in the proceedings of the Council relating to the business in respect of which he is invited as if he were a Member of the Council, except that he shall not have the right to vote in the Council.

President of Council of State.

27. The Speaker, if present, shall preside at meetings of a Council of State and, in his absence, such Member of the Council as he may, in writing, appoint, or, in the absence of that Member, or, if no Member be so appointed, the senior Member present shall preside.

Voting.

32. (1) Save as otherwise provided in this Order, all questions proposed for decision in a Council of State shall be determined by a majority of the votes of the Members present and voting.

(2) The Speaker shall not have an original vote; but, if upon any question the votes shall be equally divided, he shall have a casting vote.

(3) In the absence of the Speaker the Member presiding shall have an original vote and also, if upon any question the votes shall be equally divided, a casting vote.

Publication of Bills.

34. (1) Every Bill, other than a Private Bill, shall be published for general information in the *Gazette*.

Words of enactment.

35. All laws passed by a Council of State shall be styled "Enactments" and the words of enactment shall be "Enacted by the Governor with the advice and consent of the Council of State":

Assent to Bills.

36. (1) No Bill passed by a Council of State shall become a law until the Governor shall have assented thereto.

(3) A law passed by a Council of State and assented to by the Governor shall be published in the *Gazette* and shall come into operation on the date of such publication, or, if it shall be enacted either in the law or in some other enactment (including any enactment in force on the appointed day) that it shall come into operation on some other date, on that date.

Standing Rules and Orders.

39. Subject to the provisions of this Order, each Council of State may, from time to time, make, amend and revoke Standing Rules and Orders for the regulation and orderly conduct of its own proceedings and the conduct of business and for the passing, intituling and numbering of Bills, and for the presentation thereof to the Governor for his assent, but no such Rules or Orders shall have effect unless and until they shall have been approved by the Governor.

Council may transact business notwithstanding vacancies.

41. A Council of State shall not be disqualified for the transaction of business by reason of any vacancy among the Members thereof and any proceedings therein shall be valid notwithstanding that some person, who was not entitled so to do, sat or voted in the Council or otherwise took part in the proceedings.

Quorum.

42. No business except that of adjournment shall be transacted by a Council of State if objection is taken by any Member present that there are less than one-quarter of the Members present besides the Speaker or Member presiding.

Introduction of Bills.

43. Subject to the provisions of this Order and of the Standing Rules and Orders of the Council, any Member of a Council of State may introduce any Bill or propose any motion for debate in, or may present a petition to, the Council, and the same shall be debated and disposed of according to Standing Rules and Orders:

Provided that, except with the recommendation or consent of the Governor signified thereto, the Council shall not proceed upon any Bill, amendment, motion or petition, which, in the opinion of the Speaker, or of the presiding Member, would

(*a*) dispose of or charge any public revenue or public funds of the State, or revoke or alter any disposition thereof or charge thereon, or impose, alter, or repeal any rate, tax or duty; or

(*b*) suspend the Standing Rules and Orders of the Council or any of them.

Oath.

44. Except for the purpose of enabling this section to be complied with, no Member shall sit or vote in any Council of State until he shall have taken and subscribed before the Speaker or presiding Member the oath of office and allegiance set out in the First Schedule to the State Constitution and the said Oath, when taken by an elected member, shall be modified by substituting for the word "appointed" the word "elected":

Provided that every person authorized by law to make an affirmation instead of taking an oath in legal proceedings may make such affirmation in like terms instead of the said Oath.

Sessions of Council.

45. (1) The sittings of a Council of State shall be held at such times and in such places as the Governor shall from time to time appoint.

(2) There shall be a session of the Council once at least in every year, so that a period of twelve months shall not intervene between the last sitting in one session and the first sitting in the next session.

Prorogation and dissolution.

46. (1) The Governor may at any time, by Proclamation, prorogue a Council of State.

Privileges of Councils of State.

46A. It shall be lawful by laws enacted under this Order to determine and regulate the privileges, immunities and powers of a Council of State and the members thereof:

Provided that such privileges, immunities or powers shall in no case exceed those held, enjoyed and exercised by the Commons' House of Parliament of the United Kingdom of Great Britain and Northern Ireland and by the members thereof.

Unqualified persons sitting or voting.

48. (1) Any person who—

(*a*) having been appointed or elected as a Member of a Council of State but not having been, at the time of such appointment or election, qualified to be so appointed or elected, shall sit or vote in such Council, or

(*b*) shall sit or vote in such Council after his seat therein has become vacant or he has become disqualified from sitting or voting therein,

knowing, or having reasonable grounds for knowing, that he was disqualified, or that his seat has become vacant, as the case may be, shall be liable to a penalty not exceeding two hundred dollars for every day upon which he so sits or votes.

(2) The said penalty shall be recoverable by action in the Supreme Court of the Federation, at the suit of the Attorney-General for the Federation or the Legal Adviser in the State.

CONSTITUTION OF THE STATE OF MALACCA*

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* The Constitution was published in a Supplement to the *Gazette* of December 11, 1957, as Notification No. (New Series) 887.

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CONSTITUTION OF THE STATE OF MALACCA

PART I

THE STATE GOVERNMENT

Chapter 1—The Governor

Governor of the State.

1. (1) There shall be a Governor of the State, who shall be appointed by the Yang di-Pertuan Agong acting in his discretion but after consultation with the Chief Minister.

(2) The Governor shall be appointed for a term of four years but may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong and may be removed from office by the Yang di-Pertuan Agong in pursuance of an address by the Legislative Assembly supported by the votes of not less than two-thirds of the total number of its members.

(3) The Legislature may by law make provision for enabling the Yang di-Pertuan Agong, acting in his discretion but after consultation with the Chief Minister, to appoint a person to exercise the functions of the Governor during any period during which the Governor is unable to do so himself owing to illness, absence or any other cause; but no person shall be so appointed unless he would be qualified to be appointed Governor.*

(4) A person appointed under Clause (3) may take the place of the Governor as a member of the Conference of Rulers during any period during which under that clause he may exercise the functions of the Governor.

Qualifications and disabilities of Governor.

2. (1) A person who is not a citizen or is a citizen by naturalisation or by registration under Article 17 of the Federal Constitution shall not be appointed Governor.

(2) The Governor shall not hold any office of profit and shall not actively engage in any commercial enterprise.

Civil List of Governor.

3. The Legislature shall by law provide a Civil List of the Governor, which shall be charged on the

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* Such provision has been made: *see* the Officer Administering the Government (Malacca) Enactment, 1957 (Enactment No. 6 of 1957).

Consolidated Fund and shall not be diminished during his continuance in office.*

Oath of office of Governor.

4. (1) The Governor shall before exercising his functions take and subscribe in the presence of the Chief Justice of the Federation or of another judge of the Supreme Court an oath in the form set out in the First Schedule.

(2) Any law made under Article 1 (3) shall make provision corresponding (with the necessary modifications) to Clause (1).

Chapter 2—Muslim Religion

Muslim religion.

5. (1) The Yang di-Pertuan Agong shall be the Head of the Muslim religion in the State.

(2) The Legislature shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the Muslim religion.

Chapter 3—The Executive

Executive authority.

6. The executive authority of the State shall be vested in the Governor but executive functions may by law be conferred on other persons.

The Executive Council.

7. (1) The Governor shall appoint an Executive Council to advise him in the exercise of his functions.

(2) The Executive Council shall be appointed as follows, that is to say,—

(*a*) the Governor shall first appoint as Chief Minister to preside over the Executive Council a member of the Legislative Assembly who in his judgment is likely to command the confidence of a majority of the members of the Assembly; and

(*b*) he shall on the advice of the Chief Minister appoint not more than eight nor less than four other members from among the members of the Legislative Assembly;

but if an appointment is made while the Legislative Assembly is dissolved a person who was a member of the last Legislative Assembly may be appointed but shall not continue to hold office after the first sitting of the next Legislative Assembly unless he is a member thereof.

(3) The Executive Council shall be collectively responsible to the Legislative Assembly.

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* *See* the Civil List (Malacca) Enactment, 1957 (Enactment No. 7 of 1957).

(4) If the Chief Minister ceases to command the confidence of the majority of the members of the Legislative Assembly, then, unless at his request the Governor dissolves the Legislative Assembly, the Chief Minister shall tender the resignation of the Executive Council.

(5) Whenever a vacancy arises in the office of Chief Minister then, unless the vacancy arises while the Legislative Assembly is dissolved, the other members of the Executive Council shall cease to hold office.

(6) Subject to Clauses (4) and (5), a member of the Executive Council other than the Chief Minister shall hold office at the Governor's pleasure, but may at any time resign his office.

(7) Before a member of the Executive Council exercises the functions of his office he shall take and subscribe in the presence of the Governor the oath of office and allegiance and the oath of secrecy set out in the First Schedule.

(8) Notwithstanding anything in this Article, a person who is a citizen by naturalisation or by registration under Article 17 of the Federal Constitution shall not be appointed Chief Minister.

(9) The Chief Minister shall not hold any office of profit and shall not actively engage in any commercial enterprise.

(10) A member of the Executive Council shall not engage in any trade, business or profession connected with any subject or department for which he is responsible and shall not, so long as he is engaged in any trade, business or profession, take part in any decision of the Executive Council relating to that trade, business or profession or in any decision likely to affect his pecuniary interests therein.

(11) The Legislature shall by law make provision for the remuneration of the members of the Executive Council.

Governor to act on advice.

8. (1) In the exercise of his functions under this Constitution or any law or as a member of the Conference of Rulers the Governor shall act in accordance with the advice of the Executive Council or of a member thereof acting under the general authority of the Council, except as otherwise provided by the Federal Constitution or this Constitution; but shall be entitled, at his request, to any information concerning the government of the State which is available to the Executive Council.

(2) The Governor may act in his discretion in the performance of the following functions, that is to say—

(*a*) the appointment of a Chief Minister, and

(*b*) the withholding of consent to a request for the dissolution of the Legislative Assembly.

(3) State law may make provision for requiring the Governor to act after consultation with or on the recommendation of any person or body of persons other than the Executive Council in the exercise of any of his functions other than—

(*a*) functions exercisable in his discretion, and

(*b*) functions with respect to the exercise of which provision is made in the Federal Constitution or this Constitution.

Chapter 4—Capacity as respects property, contracts and suits

Capacity of State as respects property, contracts and suits.

9. (1) The State has power to acquire, hold and dispose of property of any kind and to make contracts.

(2) The State may sue and be sued.

PART II

THE LEGISLATURE

Constitution of Legislature.

10. The Legislature shall consist of the Governor and one House, to be known as the Legislative Assembly.

Composition of Legislative Assembly.

11. The Legislative Assembly shall consist of members elected in accordance with the provisions of the Federal Constitution and, until an Enactment otherwise provides, the number of members shall be twenty.

Qualifications of members.

12. Every citizen of or over the age of twenty-one years who is resident in the State is qualified to be a member of the Legislative Assembly, unless he is disqualified for being a member by the Federal Constitution or this Constitution or by any such law as is mentioned in Article 13.

Disqualification for membership of Legislative Assembly.

13. (1) Subject to the provisions of this Article, a person is disqualified for being a member of the Legislative Assembly if—

(*a*) he is and has been found or declared to be of unsound mind;

(*b*) he is an undischarged bankrupt;

(*c*) he holds an office of profit;

(*d*) having been nominated for election to either House of Parliament or to the Legislative

Assembly, or having acted as election agent to a person so nominated, he has failed to lodge any return of election expenses required by law within the time and in the manner so required;

(*e*) he has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than two years and has not received a free pardon;

(*f*) he is disqualified under any law relating to offences in connection with elections to either House of Parliament or to the Legislative Assembly by being convicted of such an offence or having in proceedings relating to such an election been proved guilty of an act constituting such an offence; or

(*g*) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, a foreign country or has made a declaration of allegiance to a foreign country.

(2) The disqualification of a person under paragraph (*d*) or paragraph (*e*) of Clause (1) may be removed by the Governor and shall, if not so removed, cease at the end of the period of five years beginning with the date on which the return mentioned in the said paragraph (*d*) was required to be lodged or, as the case may be, the date on which the person convicted as mentioned in the said paragraph (*e*) was released from custody; and a person shall not be disqualified under paragraph (*g*) of Clause (1) by reason only of anything done by him before he became a citizen.

Provision against double membership.

14. A person shall not at the same time be a member of the Legislative Assembly for more than one constituency.

Effect of disqualification, and prohibition of nomination without consent.

15. (1) If a member of the Legislative Assembly becomes disqualified for membership of the Assembly his seat shall become vacant.

(2) If a person disqualified for being a member of the Legislative Assembly is elected to the Assembly, or if an election is contrary to Article 14, the election shall be void.

(3) If the election of any person would or might be void under Clause (2) his nomination for the election shall be void.

(4) A person cannot be validly nominated for election to the Legislative Assembly without his consent.

Resignation of members.

16. A member of the Legislative Assembly may resign his membership by writing under his hand addressed to the Speaker.

Absence of a member.

17. If a member of the Legislative Assembly is without the leave of the Assembly absent from every sitting thereof for a period of six months the Assembly may declare his seat vacant.

Decision as to disqualification.

18. If any question arises whether a member of the Legislative Assembly has become disqualified for membership, the decision of the Assembly shall be taken and shall be final.

Summoning, prorogation and dissolution of Legislative Assembly.

19. (1) The Governor shall from time to time summon the Legislative Assembly and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may prorogue or dissolve the Legislative Assembly.

(3) The Legislative Assembly unless sooner dissolved shall continue for five years from the date of its first sitting and shall then stand dissolved.

(4) Whenever the Legislative Assembly is dissolved a general election shall be held within sixty days from the date of the dissolution and the new Legislative Assembly shall be summoned to meet on a date not later than ninety days from that date.

(5) A casual vacancy shall be filled within sixty days from the date on which it occurs, and an election shall be held accordingly.

Speaker of Legislative Assembly.

20. (1) The Legislative Assembly shall from time to time choose one of its members to be Speaker and shall transact no business while the office of Speaker is vacant other than the election of a Speaker.

(2) A member holding office as Speaker shall vacate his office on ceasing to be a member of the Legislative Assembly and may at any time resign his office.

(3) During any absence of the Speaker from a sitting of the Legislative Assembly such other member as may be determined by the rules of procedure of the Assembly shall act as Speaker.

(4) The Legislature shall by law provide for the remuneration of the Speaker and the remuneration so provided shall be charged on the Consolidated Fund.

21. (1) Every member of the Legislative Assembly shall before taking his seat take and subscribe before the person presiding in the Assembly an oath in the form set out in the First Schedule, but a member may before taking that oath take part in the election of the Speaker. Oath by members.

(2) If a member has not taken his seat within three months from the date on which the Legislative Assembly first sits after his election or such further time as the Assembly may allow, his seat shall become vacant.

22. The Governor may address the Legislative Assembly and may send messages thereto. Address by Governor.

23. (1) The Legal Adviser for the State shall have the right to take part in the proceedings of the Legislative Assembly. Right of Legal Adviser to address.

(2) The Legislative Assembly may appoint the Legal Adviser for the State to be a member of any of its committees. Legislative Assembly.

(3) This Article does not authorise the Legal Adviser to vote in the Legislative Assembly or any of its committees.

24. (1) Subject to the provisions of the Federal Constitution and this Constitution the Legislative Assembly shall regulate its own procedure. Procedure of Legislative Assembly.

(2) The Legislative Assembly may act notwithstanding any vacancy in its membership, and the presence or participation of any person not entitled thereto shall not invalidate any proceedings.

(3) Subject to Clause (4) and Article 36 (3), the Assembly shall, if not unanimous, take its decision by a simple majority of members voting; and the person presiding shall cast his vote whenever necessary to avoid an equality of votes, but shall not vote in any other case.

(4) In regulating its procedure the Assembly may provide, as respects any decision relating to its proceedings, that it shall not be made except by a specified majority or by a specified number of votes.

(5) Members absent from the Assembly shall not be allowed to vote.

25. The Legislature shall by law make provision for the remuneration of the members of the Legislative Assembly. Remuneration of members.

Exercise of legislative power.

26. (1) The power of the Legislature to make laws shall be exercised by Bills passed by the Legislative Assembly and assented to by the Governor.

(2) No Bill or amendment involving expenditure from the Consolidated Fund may be introduced or moved in the Legislative Assembly except by a member of the Executive Council.

(3) After assenting to a Bill the Governor shall cause it to be published as a law, and any such law shall be known as an Enactment.

(4) A Bill shall become law on being assented to by the Governor, but no law shall come into force until it has been published, without prejudice, however, to the power of the Legislature to postpone the operation of any law or to make laws with retrospective effect.

Supremacy of Constitution.

27. Any Enactment passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

PART III

FINANCIAL PROVISIONS

No taxation unless authorised by law.

28. No tax or rate shall be levied by or for the purposes of the State except by or under the authority of law.

Expenditure charged on Consolidated Fund.

29. (1) There shall be charged on the Consolidated Fund, in addition to any grant, remuneration or other moneys so charged by any other provision of this Constitution or by State law,—

(*a*) all debt charges for which the State is liable; and

(*b*) any moneys required to satisfy any judgment, decision or award against the State by any court or tribunal.

(2) For the purposes of this Article debt charges include interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby.

Annual financial statement.

30. (1) The Governor shall, in respect of every financial year, cause to be laid before the Legislative Assembly a statement of the estimated receipts and expenditure of the State for that year, and, unless the Legislature in respect of any year otherwise provides, that statement shall be so laid before the commencement of that year.

(2) The estimates of expenditure shall show separately—

(*a*) the total sums required to meet expenditure charged on the Consolidated Fund; and

(*b*) subject to Clause (3), the sums respectively required to meet the heads of other expenditure proposed to be met from the Consolidated Fund.

(3) The sums to be shown under paragraph (*b*) of Clause (2) do not include—

(*a*) sums representing the proceeds of any loan raised by the State for specific purposes and appropriated for those purposes by the law authorising the raising of the loan; and

(*b*) sums representing any money or interest on money received by the State subject to a trust and to be applied in accordance with the terms of the trust.

(4) The said statement shall also show, so far as is practicable, the assets and liabilities of the State at the end of the last completed financial year, the manner in which those assets are invested or held, and the general heads in respect of which those liabilities are outstanding.

Supply Bills.

31. The heads of expenditure to be met from the Consolidated Fund but not charged thereon, other than expenditure to be met by such sums as are mentioned in Clause (3) of Article 30, shall be included in a Bill, to be known as a Supply Bill, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

Supplementary and excess expenditure.

32. If in respect of any financial year it is found—

(*a*) that the amount appropriated by the Supply Enactment for that purpose is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Supply Enactment; or

(*b*) that any moneys have been expended for any purpose in excess of the amount (if any) appropriated for that purpose by the Supply Enactment,

a supplementary estimate showing the sums required or spent shall be laid before the Legislative Assembly, and the heads of any such expenditure shall be included in a Supply Bill.

Withdrawals from Consolidated Fund.

33. (1) Subject to the following provisions of this Article, no moneys shall be withdrawn from the Consolidated Fund unless they are—

(*a*) charged on the Consolidated Fund; or

(*b*) authorised to be issued by a Supply Enactment.

(2) No moneys shall be withdrawn from the Consolidated Fund except in the manner provided by federal law.

(3) Clause (1) does not apply to any such sums as are mentioned in Clause (3) of Article 30.

(4) The Legislature may in respect of any financial year by law authorise, before the passing of the Supply Enactment, expenditure for part of the year and the issue from the Consolidated Fund of any moneys required to meet that expenditure.

PART IV

ADAT PERPATEH NANING (NANING CUSTOM)

Dato' Penghulu of Naning.

34. (1) The Governor shall appoint a person to the office of Dato' Penghulu of Naning in accordance with Adat Perpateh Naning and the person so appointed shall hold office in accordance with the Adat Perpateh as followed by the people in the areas specified in the Second Schedule and which are referred to for the purposes of this Article as the Wilayah of Adat Perpateh Naning.

(2) Subject to the provisions of the Federal Constitution, the Dato' Penghulu of Naning shall be entitled to precedence after the Governor within the Wilayah of Adat Perpateh Naning.

(3) The Governor may consult the Dato' Penghulu of Naning, and the Dato' Penghulu shall be entitled to submit his advice direct to the Governor, on any matter which in the opinion of the Governor or of the Dato' Penghulu of Naning, as the case may be, is one relating to the Adat Perpateh Naning within the Wilayah of Adat Perpateh Naning.

(4) Subject to the Federal Constitution and this Constitution, the Legislature may by law confer on the Dato' Penghulu of Naning other functions relating to the Adat Perpateh Naning.

(5) In this Article "Adat Perpateh Naning" means the Adat as practised and accepted by the people of the Wilayah of Adat Perpateh Naning (which is a custom having no connection whatever with religion).

PART V

GENERAL PROVISIONS

Impartial treatment of State employees.

35. All persons of whatever race in the same grade of the service of the State, shall, subject to the terms and conditions of their employment, be treated impartially.

Amendment of Constitution.

36. (1) Subject to the following provisions of this Article, the provisions of this Constitution may be amended by an Enactment.

(2) No amendments to this Constitution shall be made before the Legislative Assembly is constituted in accordance with Article 11, except such as the Council of State may deem necessary to remove any difficulties in the transition from the constitutional arrangements in operation immediately before Merdeka Day to those provided for by the Federal Constitution and this Constitution; but any law made in pursuance of this clause shall, unless sooner repealed, cease to have effect at the expiration of a period of twelve months beginning on the day on which the Legislative Assembly first meets.

(3) A Bill for making an amendment to this Constitution (other than an amendment excepted from the provisions of this clause) shall not be passed by the Legislative Assembly unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of members thereof.

(4) An amendment made for the purpose of bringing this Constitution into accord with the provisions of the Eighth Schedule to the Federal Constitution as for the time being in force or consequential on such an Enactment as is mentioned in Article 11 is excepted from the provisions of Clause (3).

(5) In this Article "amendment" includes addition and repeal.

Interpretation.

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

"Consolidated Fund" means the Consolidated Fund of the State;

"Federal Constitution" means the Constitution of the Federation of Malaya;

"Governor" means the Governor of the State;

"Legislative Assembly" means the Legislative Assembly of the State;

"the State" means the State of Malacca.

(2) Unless the context otherwise requires, any reference in this Constitution to a specified Article, Part or Schedule is a reference to that Article or Part of or that Schedule to, this Constitution; and any reference to a specified clause is a reference to that clause of the Article in which the reference occurs.

(3) References in this Constitution to the Federation of Malaya Order in Council, 1948, are references to that Order as in force immediately before Merdeka Day.

(4) Subject to the foregoing provisions of this Article, Article 160 of the Federal Constitution shall apply for the interpretation of this Constitution as it applies for the interpretation of the Federal Constitution, but with the modification that in the application to this Constitution of the said Article 160, Clause (1) thereof shall have effect as if it directed references to the Governor instead of references to the Yang di-Pertuan Agong to be substituted for references to the High Commissioner in the Interpretation and General Clauses Ordinance, 1948, as applied by that Article.

Commencement.

38. Subject to the provisions of Part VI this Constitution shall come into operation immediately before Merdeka Day.

PART VI

TRANSITIONAL PROVISIONS

First Governor of State.

39. The first Governor shall be a person nominated before Merdeka Day by Her Majesty and the Conference of Rulers after consultation with the Chief Minister of the Federation, and shall be appointed by the Yang di-Pertuan Agong for a term expiring at the end of a period of two years beginning with Merdeka Day.

Temporary continuance of Settlement Council as Council of State.

40. (1) The Settlement Council of Malacca established under the Federation of Malaya Order in Council, 1948, shall remain in being on and after Merdeka Day and shall be known as the Council of State for Malacca and shall not be dissolved before the first day of January, nineteen hundred and fifty-nine.

(2) If the Election Commission advises the Governor that it is not reasonably practicable before the first day of July, nineteen hundred and fifty-nine, to hold, in accordance with the Federal Constitution, elections to the Legislative Assembly to be constituted under Part II, the Governor may at any time after the first day of January, nineteen hundred and fifty-nine, by Proclamation continue the Council of State until such date, not being later than the end of June of that year, as may be specified in the Proclamation, and the Council of State shall continue accordingly and shall stand dissolved on that date.

(3) The Governor shall appoint a Speaker of the Council of State, and subject to the provisions of any Enactment he may authorise the payment of remuneration to him.

(4) Where a casual vacancy occurs among the nominated members, the Governor may appoint a person to fill the vacancy whether or not he holds office under the Federal Government or the Government of the State.

(5) Where a casual vacancy occurs among the elected members, the vacancy shall be filled as nearly as may be in accordance with the provisions of the Settlement Council of Malacca (Elections) Enactment, 1954.

(6) Until the dissolution of the Council of State Part II shall not apply, and the powers of the Legislature under the Federal Constitution and this Constitution, other than the powers under Article 36, shall be exercisable by the Governor with the advice and consent of the Council of State; and accordingly, in relation to the period ending with the dissolution of the Council of State, references in this Constitution, other than the references in Article 36 and this Part, to the Legislative Assembly shall be construed as references to the Council of State.

(7) Until the dissolution of the Council of State the provisions of the Federation of Malaya Order in Council, 1948, set out in the first column of the Third Schedule shall continue in force, subject to the modifications set out in the second column of that Schedule and to the following further modifications, that is to say—

(*a*) for references to the High Commissioner there shall be substituted references to the Governor;

(*b*) for references to the Settlement Executive Council there shall be substituted references to the Executive Council;

(*c*) for references to the Settlement Council there shall be substituted references to the Council of State;

(*d*) for references to a Settlement there shall be substituted references to the State; and

(*e*) references to an office of emolument under any Government in the Federation shall not be construed as references to the office of Chief Minister or to the office of any member of the Executive Council.*

Temporary provisions as to composition of Executive Council.

41. (1) Until the date of the first election for the Legislative Assembly constituted in accordance with Article 11 the Executive Council shall be composed of the Chief Minister, the three ex officio members of the Council of State and such other members of the Council of State, not being more than six, as the Governor may on the advice of the Chief Minister appoint.

(2) In relation to the period beginning with the dissolution of the Council of State and ending with the date mentioned in Clause (1) the references in Clause (1) to members of the Council of State shall be construed as references to persons who were members at the time of the dissolution.

Temporary financial provisions.

42. (1) Subject to Clause (3), Part III shall not come into operation until the coming into operation of Part VII of the Federal Constitution.†

(2) Until the coming into operation of Part III, any moneys which under this Constitution (including Part III) are charged on the Consolidated Fund shall be charged on the revenues of the State and payment shall be made by virtue of this clause without further authority of any law.

(3) Notwithstanding Clause (1), Article 28 shall come into operation immediately before Merdeka Day.

Transfer of officers.

43. (1) Subject to the provisions of the Federal Constitution and any existing law, all persons serving

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* Paragraph (*e*) was added, with effect from Merdeka Day, by the Constitution (Amendment) Enactment, 1957 (Enactment No. 5 of 1957) enacted in exercise of the powers conferred by Article 36 (2) of the Constitution of the State: *see* the footnote to Article 39 of the Constitution of Penang, *supra*.

† January 1, 1958.

as servants of the Crown in connection with the affairs of the Settlement of Malacca immediately before Merdeka Day shall on that day cease to be servants of the Crown but shall continue as servants of the State to have the same powers and to exercise the same functions on Merdeka Day on the same terms and conditions as were applicable to them immediately before that day.

(2) This Article does not apply to the Resident Commissioner of Malacca.

SCHEDULES

First Schedule

Articles 4, 7, 21.

FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Office of Governor*

I, , having been appointed Governor of the State of Malacca, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to the State of Malacca and to the Federation of Malaya, and that I will preserve, protect and defend the Constitution of the State of Malacca.

2. *Oath of Office and Allegiance*

I, , having been appointed to the office of , do solemnly swear (or affirm) that I will faithfully discharge the duties of that office to the best of my ability, that I will bear true faith and allegiance to the State of Malacca and to the Federation of Malaya, and that I will preserve, protect and defend the Constitution of the State of Malacca.

3. *Oath as Member of the Legislative Assembly*

I, , having been elected as a member of the Legislative Assembly of the State of Malacca, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to the State of Malacca and to the Federation of Malaya, and that I will preserve, protect and defend the Constitution of the State of Malacca.

4. *Oath of Secrecy*

I, , do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as a member of the Executive Council of the State of Malacca except as may be required for the due discharge of my duties as such or as may be specially permitted by the Governor.

Article 34.

SECOND SCHEDULE

MUKIMS TO WHICH THE INFLUENCE OF THE DATO' PENGHULU OF NANING EXTENDS

Ramuan China Besar
Ramuan China Kechil
Sungei Baharu Ulu
Masjid Tanah
Sungei Siput
Berisu
Ayer Pa'abas
Lendu
Sungei Buloh
Melekek
Taboh Naning
Pegoh
Kelemak
Pulau Sebang
Tanjong Rimau
Padang Sebang
Gadek
Malaka Pindah
Rembia
Sungei Patai
Kemuning
Tebong
Batang Malaka
Jus
Nyalas

Article 40.

THIRD SCHEDULE

PROVISIONS OF THE FEDERATION OF MALAYA ORDER IN COUNCIL, 1948, CONTINUED IN OPERATION

[These are the same as those continued in the case of Penang: *see* the *Second* Schedule to the Constitution of Penang, *supra*, page 179.]

SECTION III

THE YANG DI-PERTUAN AGONG (EXERCISE OF FUNCTIONS) ORDINANCE, 1957

(No. 72 OF 1957)

An Ordinance to provide for the exercise by a Ruler of the functions of the Yang di-Pertuan Agong whenever those functions fall to be performed by the Deputy Supreme Head of the Federation but cannot be so exercised.

[*30th December, 1957.*]

WHEREAS by Clause (5) of Article 33 of the Federal Constitution Parliament may by law provide for the exercise by a Ruler of the functions of the Yang di-Pertuan Agong in cases where those functions would under Clause (1) of that Article fall to be exercised by the Deputy Supreme Head but cannot be so exercised owing to a vacancy in the office of the Deputy Supreme Head or to his illness, absence from the Federation or to any other cause:

AND WHEREAS by Clause (5) of that Article such a law shall not be passed without the consent of the Conference of Rulers:

AND WHEREAS by Clause (3) of Article 164 of the Federal Constitution the powers of Parliament under that Constitution are until the dissolution of the Legislative Council exercisable by the Yang di-Pertuan Agong with the advice and consent of the Legislative Council:

AND WHEREAS the Conference of Rulers has consented to the passing of the following law:

NOW, THEREFORE, IT IS HEREBY ENACTED by the Yang di-Pertuan Agong with the advice and consent of the Legislative Council as follows:

1. This Ordinance may be cited as the Yang di-Pertuan Agong (Exercise of Functions) Ordinance, 1957. **Short title.**

Interpretation.

2. In this Ordinance—

"sovereign functions" means the functions of the Yang di-Pertuan Agong.

Exercise by a Ruler of the sovereign functions.

3. Whenever owing to a vacancy in the office of Deputy Supreme Head or to the illness or absence from the Federation for a period expected to exceed fifteen days of the Deputy Supreme Head, or to any other cause, the Deputy Supreme Head cannot exercise the sovereign functions in cases where under Clause (1) of Article 33 of the Federal Constitution those functions would fall to be exercised by him, then such functions shall fall to be exercised by the Ruler whose State is first on the list maintained under section 4 of the Third Schedule to the Federal Constitution if he is able and willing to exercise such functions or, if such Ruler is not so able and willing, then by the first of the Rulers next after him (according to the order in which their States appear on such list) who is so able and willing.

Oath of office.

4. As soon as the Ruler entitled under section 3 has signified to the Keeper of the Rulers' Seal his willingness to exercise the sovereign functions he shall, after taking and subscribing in the presence of the Chief Justice of the Federation (or in his absence the next senior judge of the Supreme Court available) the oath of office set out in the Schedule, be entitled to exercise and shall, subject to section 7 exercise such functions until the appointment under section 5 by the Conference of Rulers of a Ruler to exercise such functions.

Powers of the Conference of Rulers.

5. At the next meeting of the Conference of Rulers following the taking of the oath by the Ruler under section 4 the Conference of Rulers shall, unless at that date the Yang di-Pertuan Agong or the Deputy Supreme Head is exercising such functions (and without prejudice to the validity of anything previously done under the provisions of this Ordinance) by resolution appoint a Ruler (being a Ruler qualified to be elected Yang di-Pertuan Agong) to exercise the sovereign functions; and such Ruler shall upon taking the oath of office prescribed by section 4 be entitled to exercise and shall, subject to section 7, exercise such functions.

Parliament to be notified of exercise of sovereign functions.

6. When a Ruler has taken the oath of office prescribed by section 4 the Keeper of the Rulers' Seal shall thereupon notify the fact that such Ruler is exercising the functions of the Yang di-Pertuan Agong in writing to both Houses of Parliament.

Cesser of exercise of sovereign functions.

7. A Ruler who is exercising the sovereign functions under this Ordinance shall cease to exercise such functions as soon as the Yang di-Pertuan Agong or the Deputy Supreme Head resumes or assumes such functions.

Illness, etc., of Ruler exercising sovereign functions.

8. When a Ruler who is exercising the sovereign functions under this Ordinance cannot owing to illness or absence from the Federation for a period not expected to exceed fifteen days or any other cause exercise such functions the sovereign functions shall fall to be exercised by the Ruler who would under the provisions of section 3 have been entitled to exercise such functions if at the date on which the Ruler first referred to ceased to exercise such functions any of the events described in section 3 had first occurred; and the provisions of this Ordinance shall apply as if references therein to the Deputy Supreme Head included references to the Ruler first referred to in this section.

Saving.

9. Subject to the provisions of Article 34 of the Federal Constitution, nothing in this Ordinance contained shall affect the exercise by a Ruler of his functions as Ruler of his State.

SCHEDULE

(Section 4)

OATH OF OFFICE OF A RULER EXERCISING THE FUNCTIONS OF THE YANG DI-PERTUAN AGONG

(*English translation*)

We.....ibni.....
being nominated to exercise the functions of the Yang di-Pertuan

Agong of the Federation of Malaya under the Yang di-Pertuan Agong (Exercise of Functions) Ordinance, 1957, do hereby swear:

Wallahi; Wabillahi; Watallahi;

and by virtue of that oath do solemnly and sincerely declare that we shall faithfully exercise the functions of the Yang di-Pertuan Agong as laid down and may from time to time be laid down by the laws and the Constitution of the Federation of Malaya.

THE MINISTERS OF THE FEDERAL GOVERNMENT (TRANSFER OF FUNCTIONS) ORDINANCE, 1951*

No. 15 OF 1951

An Ordinance relating to the appointment of Ministers of the Government of the Federation of Malaya and providing for the style and title of each such Minister and the vesting transfer and distribution of certain functions in to and between such Ministers.

[*31st May, 1951.*]

Short title. L.N. (N.S.) 1/57.

1. This Ordinance may be cited as the Ministers of the Federal Government (Transfer of Functions) Ordinance, 1951.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"function" includes any powers or duties conferred or imposed by law on any Minister or other public officer.

Subs: L.N. (N.S.) 1/57. Power of Yang di-Pertuan Agong to declare the style and title of offices to be held by Ministers.

3. (1) Where the Yang di-Pertuan Agong has appointed a Minister under Article 43 of the Federal Constitution he may by Order published in the *Gazette* declare the style and title of the office to which such Minister is appointed and charge such Minister with the responsibility for any department or subject.

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* This Ordinance is reprinted as modified by the Federal Constitution (Modification of Laws) Order, 1957, an order promulgated under Article 162 (4) of the Federal Constitution. Originally entitled the Members of the Federal Government (Transfer of Functions) Ordinance, 1951, the Ordinance is modelled upon the Ministers of the Crown (Transfer of Functions) Act, 1946 (9 and 10 Geo. 6 c. 31) of the United Kingdom. No provision was made in the Ordinance as originally enacted for the conferring of responsibility for any department or subject, since such power was conferred by Clause 26A of the Federation of Malaya Agreement, 1948: this power (which is allied to the power to confer functions upon a Minister) being now conferred by section 3 of the Ordinance upon His Majesty the Yang di-Pertuan Agong. The principal change effected by the Order of 1957 is, therefore, that a division of the responsibility for departments, etc., put upon Ministers is notified by Order in the *Gazette*, and not effected by a private administrative direction, as was the case before Merdeka Day.

Orders have been made under section 3 of the Ordinance, with effect from Merdeka Day, in relation to the offices of Prime Minister, Minister of External Affairs (an office in fact first filled by the Prime Minister), Minister of Defence, Minister of Finance, Minister of Health, Minister of the Interior and Justice, Minister of Agriculture, Minister of Works, Posts and Telecommunications, Minister of Commerce and Industry, Minister of Education, Minister of Natural Resources and Minister of Transport [*see Gazette* of October 17, 1957, Legal Notifications (New Series) 28 to 40, inclusive].

(2) Any reference in any written law or in any instrument contract or legal proceeding to any Minister as such by the style or title of his office shall be construed, unless the context otherwise requires, as including a reference to the person for the time being exercising the functions conferred by law on the holder of such office.

L.N. (N.S.) 1/57.

L.N. (N.S.) 1/57.

(3) The Yang di-Pertuan Agong may at any time by Order published in the *Gazette* direct that a change be made in the style or title of the office of any Minister and thereupon any reference to the former style or title in any written law or in any instrument contract or legal proceeding made or commenced before the date when the Order was made shall unless the context or circumstances otherwise require be deemed to be replaced by a reference to the new style or title.

Power of the Yang di-Pertuan Agong to define confer transfer and distribute functions.

4. (1) The Yang di-Pertuan Agong may by Order published in the *Gazette*

(*a*) confer any functions on any Minister;

(*b*) transfer to the Yang di-Pertuan Agong or to any Minister any function theretofore exercisable by a public officer;

(*c*) transfer to any other Minister or public officer any functions theretofore exercisable by any Minister.

(2) Where the office of any Minister ceases to exist the Yang di-Pertuan Agong may by Order provide for the transfer to or distribution among such other Ministers or public officers as may be specified in the Order of any functions theretofore exercised by the holder of the office so ceasing to exist.

(3) Any Order made under this section may contain such incidential consequential and supplementary provisions as may be necessary or expedient for the purpose of giving effect to the Order, including provisions

(*a*) for making such amendments modifications and adaptations of any written laws, whether existing at the date of the commencement of this Ordinance or coming into force after that date, which relate to any functions so conferred transferred or distributed as may be necessary to enable them to be exercised by the Minister or other public officer by whom they are to be exercisable under the Order;

(*b*) for the transfer of any property rights or liabilities held enjoyed or incurred by any Minister or other public officer in connection with any functions conferred transferred or distributed;

(*c*) for the carrying on and completion by or under the authority of the Minister or other public officer on whom any functions are conferred or to whom any functions are transferred of anything commenced by or under the authority of any public officer or Minister before the date when the Order takes effect;

(*d*) for the substitution of the Minister or other public officer by whom any functions are to be exercisable under the Order for any other Minister or public officer in any instrument, contract or legal proceedings.

THE DELEGATION OF POWERS ORDINANCE, 1956*

No. 56 OF 1956

An Ordinance to amend and re-enact the law relating to the delegation of certain statutory powers and duties and the signing of certain documents.

[*20th December, 1956.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

PART I

INTRODUCTORY

Short title.

1. This Ordinance may be cited as the Delegation of Powers Ordinance, 1956, and shall have effect throughout the Federation:

Provided that, in so far as it affects any matter not included in the first column of the Second Schedule to the Federation of Malaya Agreement, 1948, this Ordinance shall not extend to any State or Settlement except by virtue of a resolution in that behalf passed in accordance with the provisions of Clause 49 of the said Agreement.

Interpretation.

L.N. (N.S.) 1/57.

2. (1) For the purposes of Part II of this Ordinance the expression "written law" does not include the Federal Constitution.

PART II

DELEGATION

Power of Yang di-Pertuan Agong to delegate powers and duties.

3. Where by any written law the Yang di-Pertuan Agong is empowered to exercise any powers or perform any duties, he may, subject to the provisions of section 11 of this Ordinance, by notification in the *Gazette*, delegate subject to such conditions and restrictions as may be prescribed in such notification the exercise of such powers or the performance of such duties to any person described by name or office.

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* This Ordinance is reprinted as modified by the Federal Constitution (Modification of Laws) Order, 1957, an order promulgated under Article 162 (4) of the Federal Constitution.

Power of Minister to delegate powers and duties by notification in the *Gazette*.

5. Where by any written law a Minister is empowered to exercise any powers or perform any duties, he may, subject to the provisions of section 11 of this Ordinance, by notification in the *Gazette* delegate subject to such conditions and restrictions as may be prescribed in such notification the exercise of such powers or the performance of such duties to any person described by name or office.

Exercise of powers by subordinates of Ministers or Chief Ministers.

L.N. (N.S.) 1/57.

6. (1) Subject to the provisions of section 11 of this Ordinance and of any provision of any written law expressly to the contrary all acts, orders or directions which could lawfully be done or given, in the exercise of any power or in the performance of any duty conferred or imposed by any written law, by a Minister or the Chief Minister of a State may, subject to any directions given by him be validly and effectually done or given on his behalf and in his name by any officer under his administrative control and expressly or impliedly authorised by him generally or specially thereto or in the case of a Minister be done or given on his behalf and in his name by an Assistant Minister.

L.N. (N.S.) 1/57.

(2) A certificate in writing purporting to be under the hand of a Minister or Chief Minister personally that any person was at the material date an officer under his administrative control or that any such officer was expressly or impliedly authorised by him to do or give a certain act, order or direction shall be conclusive evidence of the facts stated in such certificate.

Ratification of acts, orders and directions done by subordinates in the name and on behalf of a Minister or Chief Minister.

L.N. (N.S.) 1/57.

7. Where any act, order or direction has been done or given by any officer in good faith and purporting to act in the name and on behalf of a Minister or the Chief Minister of a State but without being authorised thereto and such act, order or direction could have lawfully been done or given by such officer by virtue of section 6 of this Ordinance if he had been so authorised, the Minister or Chief Minister, as the case may be, may ratify the doing or giving of such act, order or direction and thereupon the same shall have effect as if at the date on which such act, order or direction was so done or given such officer had been duly authorised thereto:

Provided that such ratification shall not have effect to expose any person to any claim for damages or to any penalty, forfeiture or punishment to which he

would not have been otherwise exposed in respect of any matter which occurred before the date on which such ratification was brought to his notice or on which written notice of such ratification was first published in the *Gazette,* whichever was the earlier.

Power of Ruler and Ruler in Council or Governor or Governor in Council to delegate powers and duties.

L.N. (N.S.) 1/57.

8. Where by any written law the Ruler or Ruler in Council or Governor or Governor in Council of any State is empowered to exercise any powers or perform any duties, he may, subject to the provisions of section 11 of this Ordinance, by notification in the *Gazette* delegate subject to such conditions and restrictions as may be prescribed in such notification the exercise of such powers or the performance of such duties to any person described by name or office.

Power of Chief Minister to delegate powers and duties by notification in the *Gazette.*

L.N. (N.S.) 1/57.

9. Where by any written law the Chief Minister of any State is empowered to exercise any powers or perform any duties, he may subject to the provisions of section 11 of this Ordinance, with the approval of the Ruler or Governor of such State by notification in the *Gazette*, delegate subject to such conditions and restrictions as may be prescribed in such notification the exercise of such powers or the performance of such duties to any person described by name or office.

No delegation of power to make regulations.

11. Nothing in this Part shall apply to any power to make regulations conferred upon any person by any written law.

Exercise of powers notwithstanding delegation.

L.N. (N.S.) 1/57.

12. No delegation under this Ordinance of any power or duty shall affect the exercise of such power or the performance of such duty by the Yang di-Pertuan Agong, the Ruler, the Ruler in Council, the Governor, the Governor in Council, a Minister or Chief Minister.

Part III

SIGNIFICATION OF ACTS

Subs. L.N. (N.S.) 1/57.

Signification of discretionary acts of the Yang di-Pertuan Agong.

13. Where by any written law power is given to the Yang di-Pertuan Agong to act in his discretion, then it shall be sufficient, unless it is otherwise expressed, for such act to be signified under the hand of the Private Secretary to His Majesty, the Keeper of the Rulers' Seal or of such other person as may by notification in the *Gazette* be designated in that behalf either generally or specially by the Yang di-Pertuan Agong.

Signification of orders, etc., of, and signing of documents by, the Yang di-Pertuan Agong.

L.N. (N.S.) 1/57.

14. Where by any written law other than the written law referred to in section 13 power is given to the Yang di-Pertuan Agong to make any regulation or order or give any direction, approval, permission or consent, or where any document is required to be under the hand of, or signed or countersigned by, the Yang di-Pertuan Agong, it shall be sufficient, unless it is otherwise expressed, for such regulation, order, direction, approval, permission, consent or document to be signified under the hand of, or signed or countersigned by, a Minister or the Secretary to the Cabinet or such other officer as may by notification in the *Gazette* be designated in that behalf, either generally or specially, by the Yang di-Pertuan Agong.

L.N. (N.S.) 1/57.

Signification of orders, etc., of Ruler in Council or Governor in Council.

L.N. (N.S.) 1/57.

15. Where by any written law power is given to the Ruler in Council or Governor in Council of any State to make any regulation or order or give any direction, approval, permission or consent it shall be sufficient, unless it is otherwise expressed, for such regulation, direction, approval, permission or consent to be signified under the hand of the Clerk of the State Executive Council or such other person as may by notification in the *Gazette* be designated in that behalf either generally or specially by the Ruler in Council or Governor in Council of such State.

L.N. (N.S.) 1/57.

Signification of orders, etc., of, and signing of documents by, a Ruler or Governor.

16. Where by any written law any power is given to the Ruler or Governor of any State to make any regulation or order or give any direction, approval, permission or consent or where any document is required by any such law to be under the hand of, or signed or countersigned by, the Ruler of any State, it shall be sufficient, unless it is otherwise expressed, for such regulation, order, direction, approval, permission, consent or document to be signified under the hand of, or signed or countersigned by, the Chief Minister of such State.

Signification of orders, etc., of and signing of documents by a Minister or Chief Minister.

L.N. (N.S.) 1/57.

17. (1) Where by any written law power is given to a Minister or the Chief Minister of a State to make any regulation or order or give any direction, approval, permission or consent, or where any document is required to be under the hand of, or signed or countersigned by, such Minister, Chief Minister it shall be sufficient, unless it is otherwise expressed, for such regulation, order, direction, approval, permission consent or document to be

signified under the hand of, or signed or countersigned by, any officer under the administrative control or direction of such Minister or Chief Minister as the case may be and expressly or impliedly authorised by him by name or office in that behalf or in the case of a Minister under the hand of or signed or countersigned by an Assistant Minister.

(2) A certificate in writing purporting to be under the hand of the Minister or Chief Minister personally that any person was at the material date an officer under his administrative control or that any such officer was expressly or impliedly authorised by him to signify, sign or countersign a certain regulation, order, direction, approval, permission, consent or document shall be conclusive evidence of the facts stated in such certificate.

(3) Where any such regulation, order, direction, approval, permission, consent or document has been signified, signed or countersigned by any officer not authorised in that behalf the Minister or Chief Minister concerned as the case may be may ratify such signification, signature or counter signature and thereupon the same shall have effect as if at the date on which such signification, signature or countersignature was effected or affixed by such officer he had been duly authorised thereto. L.N. (N.S.) 1/57.

Signification of orders, etc., and signing of documents by other persons.

18. (1) Without prejudice to the generality of section 17 of this Ordinance, where, by any written law, power is given to any of the persons mentioned in the first column of the Schedule to this Ordinance to make any regulation or order or give any direction, approval, permission or consent, or where any document is required to be under the hand of, or signed by such person it shall be sufficient, unless it is otherwise expressed, for such regulation, order, direction, approval, permission, consent or document to be signified under the hand of, or signed or countersigned by, the person mentioned in the second column of the said Schedule or such officer as may be designated in that behalf, either generally or specially, by the person mentioned in the first column of the said Schedule by notification in the *Gazette*.

(2) The Yang di-Pertuan Agong may, after reference to the Ruler in Council or Governor in Council of any State concerned, by order, delete from, vary, or add to the said Schedule.

Proclamation and warrant to be under hand of Yang di-Pertuan Agong, Ruler or Governor.

19. Nothing in this Ordinance contained shall authorise the issue of any proclamation or warrant except under the hand of the Yang di-Pertuan Agong or of the Ruler or Governor of any State himself.

Existing delegations. L.N. (N.S.) 1/57 and 56/57.

19A. Any delegation made by the High Commissioner or Chief Secretary under the provisions of this Ordinance, including any delegation made by the High Commissioner or Chief Secretary and continued in force by this Ordinance, shall have effect as if the same had been made on the thirty-first day of August, 1957, to the person described therein by name or office: provided that any delegation so made to the Chief Secretary shall have effect as if the same had been made by the Yang di-Pertuan Agong to the Minister charged with responsibility for the matters to which the delegated power relates.

PART IV

REPEAL AND VALIDATION

Repeal and validations. No. 75 of 1952.

20. (1) The Delegation of Powers Ordinance, 1952, is hereby repealed:

Provided that any delegation made or continued in force under the Delegation of Powers Ordinance, 1952, shall be deemed to have been made under this Ordinance and shall continue in force until revoked or superseded by notification under this Ordinance.

(2) Any regulation, order, direction, approval, permission, consent or document made by the High Commissioner in Council or the Ruler in Council of any State before the coming into force of this Ordinance, signified under the hand of, or signed or countersigned by, the person for the time being performing the duties of clerk of the Federal Executive Council, a State Executive Council or the Settlement Executive Council of a Settlement, as the case may be, shall be deemed to have been validly signified, signed or countersigned.

SCHEDULE

(Section 18)

(1)	(2)
Chief Secretary	... Deputy Chief Secretary
Minister	... Secretary to Minister
Mentri Besar	... Deputy Mentri Besar
	State Secretary
Resident Commissioner...	... Settlement Secretary

THE FINANCIAL PROCEDURE ORDINANCE, 1957

No. 62 OF 1957

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THE FINANCIAL PROCEDURE ORDINANCE, 1957

No. 62 OF 1957

An Ordinance to provide for the control and management of the public finances of the Federation, and for financial and accounting procedure, including procedure for the collection, custody and payment of the public moneys of the Federation and of the States, and the purchase, custody and disposal of public property, other than land, of the Federation and of the States and for matters connected therewith.

[*1st January, 1958.*]

IT IS HEREBY ENACTED by the Yang di-Pertuan Agong with the advice and consent of the Legislative Council as follows:

PART I

PRELIMINARY

Short title, commencement and application.

1. (1) This Ordinance may be cited as the Financial Procedure Ordinance, 1957, and shall come into force on such date as the Yang di-Pertuan Agong shall, by notification in the *Gazette,* appoint and the Yang di-Pertuan Agong may appoint different dates for the coming into force of different provisions of this Ordinance in different parts of the Federation.*

M.U. No. 8 of 1948.

(2) This Ordinance shall not apply to the Railway Administration established under the provisions of the Railway Ordinance, 1948, nor to any person in the service of that Administration.

Commencement of Part VII of the Constitution.

2. Subject to the provisions of Clause (4) of Article 165 of the Constitution, the Yang di-Pertuan Agong may by notification in the *Gazette,* appoint a date, not later than the date specified in Clause (1) of that Article, for the coming into operation of Part VII of the Constitution.†

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* The appointed day for the coming into force of the date of the above Ordinance throughout the Federation was January 1, 1958 (*See* Legal Notification No. 1 of 1958 in the *Gazette* of January 9, 1958).

† The appointed day for the coming into force of the provisions of Part VII of the Constitution (except for those referred to in Article 165 (4) of the Constitution, which came into force upon Merdeka Day) was January 1, 1958 (*see* Legal Notification No. 2 of 1958 in the *Gazette* of January 9, 1958).

Interpretation.

3. In this Ordinance, unless the context otherwise requires—

"accounting officer" includes every public officer who is charged with the duty of collecting, receiving, or accounting for, or who in fact collects, receives or accounts for, any public moneys, or who is charged with the duty of disbursing, or who does in fact disburse, any public moneys, and every public officer who is charged with the receipt, custody or disposal of, or the accounting for, public stores or who in fact receives, holds or disposes of public stores;

"Consolidated Fund" except in Part IV means the Federal Consolidated Fund;

"financial year" means a period of twelve months ending on the thirty-first day of December in any year;

"public moneys" means all revenue, loan, trust and other moneys and all bonds, debentures, and other securities whatsoever raised or received by or on account of the Federation or by or on account of a State but does not include Zakat, Fitrah, Bait-ul-Mal or similar Muslim revenues;

"public services of the Federation" means the services specified in paragraphs (*a*), (*b*), (*c*), (*d*) and (*f*) of Clause (1) of Article 132 of the Constitution;

"public stores" means chattels the property of or in the possession or under the control of the Federation or of a State;

"State accounting officer" means an accounting officer in the service of and engaged in handling the public moneys of a State;

"State financial authority" means the principal officer or person in charge of the financial affairs of a State;

"the Minister" means the Minister charged with responsibility for finance;

"the Treasury" means the Minister and includes any officer under the administrative control or direction of the Minister to whom the Minister has delegated or who, in accordance with the provisions of section 6 or section 7 of the Delegation of Powers Ordinance, 1956, is authorised to exercise powers under this Ordinance.

No. 56 of 1956.

Part II

ACCOUNTING OFFICERS

Duties of accounting officers.

4. Every accounting officer shall be subject to the provisions of this Ordinance and any regulations made thereunder and shall perform such duties, keep such

books and render such accounts as may be prescribed by or under this Ordinance or by instructions issued by the Treasury in matters of financial and accounting procedure not inconsistent therewith:

Provided that a State accounting officer shall in addition be subject to any instructions of the State financial authority not inconsistent with the foregoing.

Bank accounts.

5. No accounting officer shall open any public or official account in any bank without the authority in writing of the Treasury in respect of public moneys of the Federation, or of the State financial authority in respect of public moneys of a State, and no bank shall permit an overdraft on any public or official account unless the same be authorised by the Treasury, in respect of an account of public moneys of the Federation, or under the authority of a law made in accordance with the provisions of Article 111 of the Constitution.

PART III

CONTROL AND MANAGEMENT OF PUBLIC FINANCES OF THE FEDERATION

Powers of the Minister.

6. The Minister shall, subject to the provisions of the Constitution and of this Ordinance, have the management of the Consolidated Fund and the supervision, control and direction of all matters relating to the financial affairs of the Federation which are not assigned to any other Minister by any other law.

The Consolidated Fund accounts.

7. There shall be maintained by the Treasury in respect of the Consolidated Fund three separate accounts—

(*a*) an account to be called the Consolidated Revenue Account in which account shall be kept of all moneys in the Fund other than such moneys as are mentioned in paragraphs (*b*) and (*c*);

(*b*) an account to be called the Consolidated Loan Account in which account shall be kept of all moneys received by way of loan upon the public credit of the Federation; and

(*c*) an account to be called the Consolidated Trust Account in which account shall be kept of all moneys received subject to a trust and to be applied in accordance with the terms of the trust.

Custody and investment of moneys.

8. (1) Moneys paid to the Consolidated Fund may be kept with such bank or banks as the Treasury shall from time to time direct.

(2) All such moneys paid into a bank shall be deemed to be public moneys, the property of the Federation lent by the Federation to the bank.

(3) Moneys standing to the credit of the Federation with any bank, or otherwise held by the Federation may be invested by the Minister—

(*a*) on deposit in any bank; or

(*b*) in any of the investments authorised by the Trustee Ordinance, 1949, for the investment of trust funds; or

No. 66 of 1949.

(*c*) in any joint fund maintained by the Crown Agents for such investment; or

(*d*) as otherwise authorised by Federal law or by resolution of the House of Representatives;

and such investments together with any interest received therefrom shall form part of the Consolidated Fund.

(4) Interest received from the investment of any moneys in accordance with the provisions of sub-section (3) shall be accounted in the Consolidated Revenue Account except that where it is so provided in any law or under the terms of any trust the interest received from the investment of any moneys standing to the credit of any trust account in the Consolidated Trust Account shall be paid to the credit of that trust account.

(5) The investments specified in the First Schedule shall be authorised for the purposes of paragraph (*d*) of sub-section (3).

Trust accounts.

9. (1) The Treasury may establish such trust accounts as may be deemed necessary for the proper accounting of moneys in the Consolidated Trust Account.

(2) The following moneys shall be paid to the credit of the trust account to which they relate—

(*a*) all moneys appropriated for the purposes of any trust account;

(*b*) all moneys received from the sale to any person or department of any articles purchased or produced, or for work paid for, with moneys standing to the credit of a trust account;

(*c*) all moneys paid by any person for the purpose of any trust account; and

(*d*) interest as provided in sub-section (4) of section 8 of this Ordinance.

(3) Subject to the provisions of any law and the terms of any trust, the Treasury shall in respect of any such account or class of accounts specify the persons by whom and the manner in which such account or class of accounts shall be controlled.

(4) Subject to the provisions of any law and the terms of any trust, the Treasury may direct that any trust account shall be closed and thereupon after all liabilities of the account have been met the account shall be closed accordingly.

(5) Subject to the provisions of any law and the terms of any trust, the Treasury may direct that any moneys standing to the credit of any trust account which are not required for the purposes of that account and the balance of moneys standing to the credit of a trust account closed under the last preceding sub-section shall be paid as provided in the next succeeding sub-section.

(6) Where any moneys are required in accordance with the last preceding sub-section to be paid, such moneys shall, to such extent as they were appropriated out of moneys standing to the credit of the Consolidated Loan Account, be paid to the Consolidated Loan Account and the balance shall be paid to the Consolidated Revenue Account.

Government trust funds.

10. (1) There shall be paid from the Consolidated Fund into each of the funds specified in the Second Schedule such sums as may from time to time be appropriated for the purposes of the fund by Federal law.

(2) The Minister may apply the fund for the general purposes thereof or, subject to the provisions of any written law, for such particular purposes as may from time to time be specified by resolution of the House of Representatives.

(3) All moneys not applied in accordance with the provisions of sub-section (2) shall be paid by the Minister into the Consolidated Fund and shall be accounted in a separate account in the Consolidated Trust Account to be applied in the manner provided in sub-section (2).

(4) The House of Representatives may from time to time by resolution amend, delete from or add to the Second Schedule.

Contingencies Fund.

11. (1) A Contingencies Fund is hereby created consisting of moneys from time to time appropriated thereto.

(2) All moneys appropriated to the Contingencies Fund shall be paid from the Consolidated Fund into the Contingencies Fund and shall be applied by the Minister in accordance with the provisions of sub-section (3), and all moneys not so applied shall be paid by the Minister into the Consolidated Fund and shall be accounted in a separate account in the Consolidated Trust Account.

(3) The Minister may, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists and for which funds cannot be provided under the provisions of sub-section (4) of section 15, make advances from the Contingencies Fund to meet that need.

State Reserve Fund.

12. All moneys appropriated to the State Reserve Fund created by Clause (6) of Article 109 of the Constitution shall be paid from the Consolidated Fund into the State Reserve Fund and shall be applied by the Minister in accordance with the provisions of that Clause and all moneys not so applied shall be paid by the Minister into the Consolidated Fund and shall be accounted in a separate account in the Consolidated Trust Account.

Payment of moneys.

13. (1) No moneys shall be withdrawn from the Consolidated Fund except in the manner provided by this section.

(2) The Minister shall by warrant under his hand authorise the issue from the Consolidated Fund of sums to meet the due cost of any service charged upon the Consolidated Fund, and such sums shall be accounted in the Consolidated Revenue Account.

(3) (*a*) The Minister may by warrant under his hand authorise the issue from the Consolidated Fund of sums to meet the expenditure appropriated by a Supply Ordinance or authorised by law in accordance with the provisions of Article 102 of the Constitution and such sums shall be accounted in the Consolidated Revenue Account:

Provided that the aggregate of such sums under each head of expenditure shall not exceed the total sum so appropriated or authorised in respect of such head.

(*b*) Notwithstanding any general or specific authority which may have been given by him, it shall be within the discretion of the Minister to limit or suspend any expenditure so authorised.

(4) The Minister may by warrant under his hand authorise the issue from the Consolidated Fund of sums to be applied for the purposes for which funds shall have been appropriated by or in accordance with the provisions of an Ordinance authorising the raising of a loan and such sums shall be accounted in the Consolidated Loan Account.

(5) (*a*) No moneys accounted in the Consolidated Trust Account shall be withdrawn from the Consolidated Fund except for the purposes of a trust or under the authority of a law.

(*b*) The Minister or any person authorised under the provisions of sub-section (3) of section 9 of this Ordinance in respect of any trust account or class of trust accounts may withdraw moneys accounted in the Consolidated Trust Account.

(6) Every warrant issued under this section for the service of any financial year shall lapse and cease to have any effect at the close of that year.

Guarantees.

14. No guarantee involving a financial liability shall be binding upon the Federation, unless entered into with the written authority of the Treasury or in accordance with Federal law.

Estimates and virement.

15. (1) The estimates of expenditure laid before the House of Representatives in accordance with the provisions of Clause (1) of Article 99 of the Constitution in respect of any financial year shall show subheads under each head of expenditure.

(2) The first subhead under each head of expenditure in the estimates shall show the public offices in that head and the personal emoluments estimated to be paid in respect of them.

(3) Except in accordance with Federal law, no addition to the public offices provided under any head of estimates may be made nor may the appropriation of the established salaries under any head be altered either

as regards the number of appointments or the rates of personal emoluments, unless the approval of the Treasury shall first have been obtained.

(4) If the exigencies of the public service render it necessary to alter the proportions assigned to the subheads under a head of expenditure shown in the estimates referred to in sub-section (1) or to create a new subhead, the Treasury may direct that there shall be applied in aid of any subhead which may be deficient or any new subhead a further sum out of any surplus arising on any other subhead of the same head provided that the amount appropriated under any head of expenditure by a Supply Ordinance is not thereby exceeded.

Yearly statement of accounts. No. 60 of 1957.

16. The Minister shall for the purposes of section 9 of the Audit Ordinance, 1957, as soon as practicable after the end of every financial year prepare in respect of that year—

(*a*) a full and particular statement of the Consolidated Revenue Account showing under the heads and subheads of the estimates laid in accordance with the provisions of Article 99 of the Constitution in respect of that year the amounts estimated to be received and spent in that year and the amounts actually received and spent together with amounts actually received and spent under any heads and subheads not included in the estimates so laid;

(*b*) a full and particular statement of the Consolidated Loan Account showing receipts and expenditure of loan moneys;

(*c*) a statement of receipts and expenditure of moneys accounted in the Consolidated Trust Account;

(*d*) a statement of the accounts of any fund created by the Constitution or by section 10 of this Ordinance and not accounted in the Consolidated Trust Account;

(*e*) so far as is practicable, a statement of the assets and liabilities of the Federation at the end of the financial year, the manner in which those assets are invested or held, and the general heads in respect of which those liabilities are outstanding; and

(*f*) such other statements as the Minister may think fit.

17. The Minister shall in respect of public moneys, revenue and stores of the Federation have power— Write-off.

(*a*) to write off losses or deficiencies of public moneys and the value of lost, deficient, condemned, unserviceable or obsolete stores;

(*b*) to abandon irrecoverable amounts of revenue, debts and overpayments.

18. If it appears to the appropriate Service Commission, after consultation with the Treasury, that any person who is or was in the employment of the Government of the Federation or of a State— Surcharge.

(*a*) has failed to collect any moneys owing to the Federal Government for the collection of which he is or was responsible; or

(*b*) is or was responsible for any improper payment of public moneys of the Federation or for any payment of such moneys which is not duly vouched; or

(*c*) is or was responsible for any deficiency in, or for the destruction of, any public moneys, stamps, securities, stores, or other property of the Government of the Federation;

and if a satisfactory explanation is not, within a period specified by the Commission, furnished to the Commission with regard to such failure to collect, improper payment, payment not duly vouched, deficiency or destruction, the Commission may surcharge against the said person the amount of any such amount not collected, payment, deficiency, or loss or the value of the property destroyed, as the case may be.

19. The Chairman of the appropriate Service Commission shall cause the head of the department of the person surcharged to be notified of any surcharge made under section 18 and such head of department shall thereupon notify the person surcharged. Notification of surcharge.

20. The appropriate Service Commission may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made, and the Chairman of the Commission shall at once cause the head of department to be notified of such withdrawal. Withdrawal of surcharge.

Recovery of surcharge.

21. The amount of any surcharge made under section 18 and not withdrawn under section 20 shall be a debt due to the Government from the person against whom the surcharge is made and may be sued for and recovered in any court of competent jurisdiction at the suit of the Government and the Minister may direct that the amount of any surcharge shall be recovered by equal monthly instalments by deductions from the salary or pension of such officer in amounts not exceeding one-fourth of the total monthly salary or pension, as the case may be, of such officer.

PART IV

STATE FINANCIAL AND ACCOUNTING PROCEDURE

Interpretation.

22. In this Part—

"Consolidated Fund" means the Consolidated Fund of a State and references to the Consolidated Revenue Account, Consolidated Loan Account and Consolidated Trust Account are references to the accounts of such fund.

Accounts of the Consolidated Fund.

23. There shall be maintained by every State financial authority in respect of the Consolidated Fund three separate accounts—

(*a*) an account to be called the Consolidated Revenue Account in which account shall be kept of all moneys in the fund other than such moneys as are mentioned in paragraphs (*b*) and (*c*);

(*b*) an account to be called the Consolidated Loan Account in which account shall be kept of all moneys received by way of loan upon the public credit of the State; and

(*c*) an account to be called the Consolidated Trust Account in which account shall be kept of all moneys received subject to a trust and to be applied in accordance with the terms of the trust.

Custody and investment of moneys.

24. (1) Moneys paid to the Consolidated Fund may be kept with such bank or banks as the State financial authority shall from time to time direct.

(2) All such moneys paid into a bank shall be deemed to be public moneys, the property of the State lent by the State to the bank.

(3) Moneys standing to the credit of the State with any bank, or otherwise held by the State may be invested by the State financial authority—

(*a*) on deposit in any bank; or

(*b*) in any of the investments authorised by the Trustee Ordinance, 1949, for the investment of trust funds; or No. 66 of 1949.

(*c*) in any joint fund maintained by the Crown Agents for such investment; or

(*d*) as otherwise authorised by law or by resolution of the State Legislature;

and such investments together with any interest received therefrom shall form part of the Consolidated Fund.

(4) Interest received from the investment of any moneys in accordance with the provisions of sub-section (3) shall be accounted in the Consolidated Revenue Account except that where it is so provided in any law or under the terms of any trust the interest received from the investment of any moneys standing to the credit of any trust account in the Consolidated Trust Account shall be paid to the credit of that trust account.

25. (1) The State financial authority may establish such trust accounts as may be deemed necessary for the proper accounting of moneys in the Consolidated Trust Account. Trust accounts.

(2) The following moneys shall be paid to the credit of the trust account to which they relate—

(*a*) all moneys appropriated for the purposes of any trust account;

(*b*) all moneys received from the sale to any person or department of any articles purchased or produced, or for work paid for, with moneys standing to the credit of a trust account;

(*c*) all moneys paid by any person for the purpose of any trust account; and

(*d*) interest as provided in sub-section (4) of section 24 of this Ordinance.

(3) Subject to the provisions of any law and the terms of any trust, the State financial authority shall in respect of any such account or class of accounts specify

the persons by whom and the manner in which such account or class of accounts shall be controlled.

(4) Subject to the provisions of any law and the terms of any trust, the State financial authority may direct that any trust account shall be closed and thereupon after all liabilities of the account have been met the account shall be closed accordingly.

(5) Subject to the provisions of any law and the terms of any trust, the State financial authority may direct that any moneys standing to the credit of any trust account which are not required for the purposes of that account and the balance of moneys standing to the credit of a trust account closed under the last preceding sub-section shall be paid as provided in the next succeeding sub-section.

(6) Where any moneys are required in accordance with the last preceding sub-section to be paid, such moneys shall, to such extent as they were appropriated out of moneys standing to the credit of the Consolidated Loan Account, be paid to the Consolidated Loan Account and the balance shall be paid to the Consolidated Revenue Account.

State Government trust funds.

26. (1) There shall be paid from the Consolidated Fund into each of the funds specified in the Third Schedule or in accordance with sub-section (4) such sums as may from time to time be appropriated for the purposes of the fund by State law.

(2) The State financial authority may apply the fund for the general purposes thereof or, subject to the provisions of any written law, for such particular purposes as may from time to time be specified by resolution of the State Legislature.

(3) All moneys not applied in accordance with the provisions of sub-section (2) shall be paid by the State financial authority into the Consolidated Fund and shall be accounted in a separate account in the Consolidated Trust Account to be applied in the manner provided in sub-section (2).

(4) The State Legislature may from time to time by resolution specify funds for the purposes of this section and the provisions of sub-sections (1), (2) and (3) shall apply to such funds as they apply to the funds specified in the Third Schedule.

Payment of moneys.

27. (1) No moneys shall be withdrawn from the Consolidated Fund except in the manner provided by this section.

(2) The Mentri Besar or Chief Minister of a State shall by warrant under his hand authorise the issue from the Consolidated Fund of sums to meet the due cost of any service charged upon the Consolidated Fund, and such sums shall be accounted in the Consolidated Revenue Account.

(3) (*a*) The Mentri Besar or Chief Minister of a State may by warrant under his hand authorise the issue from the Consolidated Fund of sums to meet the expenditure appropriated by a Supply Enactment or authorised by law for part of a year before the passing of the Supply Enactment, and such sums shall be accounted in the Consolidated Revenue Account:

Provided that the aggregate of such sums under each head of expenditure shall not exceed the total sum so appropriated or authorised in respect of such head.

(*b*) Notwithstanding any general or specific authority which may have been given by him, it shall be within the discretion of the Mentri Besar or Chief Minister of a State to limit or suspend any expenditure so authorised.

(4) The Mentri Besar or Chief Minister of a State may by warrant under his hand authorise the issue from the Consolidated Fund of sums to be applied for the purposes for which funds shall have been appropriated by or in accordance with the provisions of an Enactment authorising the raising of a loan and such sums shall be accounted in the Consolidated Loan Account.

(5) (*a*) No moneys accounted in the Consolidated Trust Account shall be withdrawn from the Consolidated Fund except for the purposes of a trust or under the authority of a law.

(*b*) The State financial authority or any person authorised under the provisions of sub-section (3) of section 25 of this Ordinance in respect of any trust account or class of trust accounts may withdraw moneys accounted in the Consolidated Trust Account.

(6) Every warrant issued in accordance with the provisions of this section for the service of any financial year shall lapse and cease to have any effect at the close of that year.

Guarantees.

28. No guarantee involving a financial liability shall be binding upon a State unless entered into under a State law passed in accordance with Clause (2) of Article 111 of the Constitution.

Estimates.

29. (1) The estimates of expenditure laid before the State Legislature in respect of any financial year shall show subheads under each head of expenditure.

(2) The first subhead under each head of expenditure in the estimates shall show the public offices in that head and the personal emoluments estimated to be paid in respect of them.

Yearly statement of accounts. No. 60 of 1957.

30. The State financial authority shall for the purposes of section 9 of the Audit Ordinance, 1957, as soon as practicable after the end of every financial year prepare in respect of that year—

(*a*) a full and particular statement of the Consolidated Revenue Account showing under the heads and subheads of the estimates of revenue and expenditure laid before the State Legislature in respect of that year the amounts estimated to be received and spent in that year and the amounts actually received and spent together with amounts actually received and spent under any heads and subheads not included in the estimates so laid;

(*b*) a full and particular statement of the Consolidated Loan Account showing receipts and expenditure of loan moneys;

(*c*) a statement of receipts and expenditure of moneys accounted in the Consolidated Trust Account;

(*d*) a statement of the accounts of any fund created by or under section 26 of this Ordinance and not accounted in the Consolidated Trust Account;

(*e*) so far as is practicable the assets and liabilities of the State at the end of the financial year, the manner in which those assets are invested or held, and the general heads in respect of which those liabilities are outstanding; and

(*f*) such other statements as the State financial authority may think fit.

Write-off.

31. The Mentri Besar or Chief Minister of a State shall in respect of public moneys, revenue and stores of that State have power—

(*a*) to write off losses or deficiencies of public moneys and the value of lost, deficient, condemned, unserviceable or obsolete stores;

(*b*) to abandon irrecoverable amounts of revenue, debts and overpayments.

Surcharge.

32. If it appears to the appropriate Service Commission, after consulting with the State financial authority, that any person who is or was in the employment of the Government of the Federation or of a State—

(*a*) has failed to collect any moneys owing to the Government of that State for the collection of which he is or was responsible; or

(*b*) is or was responsible for any improper payment of public moneys of that State or for any payment of such moneys which is not duly vouched; or

(*c*) is or was responsible for any deficiency in, or for the destruction of, any public moneys, stamps, securities, stores or other property of the Government of the State;

and if a satisfactory explanation is not, within a period specified by the Commission, furnished to the Commission with regard to such failure to collect, improper payment, payment not duly vouched, deficiency or destruction, the Commission may surcharge against the said person the amount of any such amount not collected, payment, deficiency, or loss or the value of the property destroyed, as the case may be.

Notification of surcharge.

33. The Chairman of the appropriate Service Commission shall cause the head of the department of the person surcharged to be notified of any surcharge made under section 32 of this Ordinance and such head of department shall thereupon notify the person surcharged.

Withdrawal of surcharge.

34. The appropriate Service Commission may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made and the Chairman of the Commission shall at once cause the head of department to be notified of such withdrawal.

Recovery of surcharge.

35. The amount of any surcharge made under section 32 and not withdrawn under section 34 shall be a debt due to the Government of the State from the person against whom the surcharge is made and may be sued for and recovered in any court of competent jurisdiction at the suit of the Government of the State and may

also be recovered by equal monthly instalments by deduction, if the Mentri Besar or Chief Minister so directs, from the salary of the person surcharged or, if the Minister so directs, from his pension, of amounts not exceeding one-fourth of the total monthly salary or pension, as the case may be, of such officer.

PART V

REGULATIONS

Regulations.

36. (1) The Yang di-Pertuan Agong may after consulting the National Finance Council, make regulations to be called Financial Regulations not inconsistent with the provisions of this Ordinance for carrying out the provisions of this Ordinance and without prejudice to the generality of this provision these regulations may provide for—

(*a*) the collection, receipt, custody, issue, expenditure, due accounting for, care and management of all public moneys and the guidance of all persons concerned therein;

(*b*) the more effectual record, examination, inspection and departmental check of all receipts and expenditure and the keeping of all necessary books and accounts;

(*c*) the forms for all books and documents whatever required under the provisions of this Ordinance or the regulations made thereunder;

(*d*) the purchase, safe custody, issue, sale or other disposal or writing off of stores and other property of the Federation and of the States, and the proper accounting for, and stock-taking of, such stores and property;

(*e*) the preparation of estimates of revenue and expenditure in the Federation and in the States;

(*f*) the authorisation of rates of payment of public funds for specific purposes where such rates of payment are not provided by law;

(*g*) the making of advances to public officers and other persons and the rates and limits of such advances and the rates of interest thereon.

(2) Regulations made pursuant to the foregoing provisions of this Ordinance shall when made have full force and effect and shall be laid before the House of Representatives as soon as possible after they are made.

First Schedule

[Section 8 (5)]

Central Electricity Board, Ordinary Stock.

Perak River Hydro Electric Power Company Limited, Ordinary Shares.

Perak River Hydro Electric Power Company Limited, Cumulative Preference Shares.

Malaya Borneo Building Society, Ordinary Shares.

Malayan Airways Limited, Ordinary Shares.

Second Schedule

[Section 10 (1)]

Inter-administration of Current Account.
Treasury Main Clearance Account Fund.
Telecommunications Renewals Fund.
Compensation Advance Fund.
Conveyance Advance Fund.
Supplies Department Trading Account.
Forest Department Trading Account.
Agricultural Short-term Credit Account.
Unallocated Stores and Works Account.
Federation Air Service Fund.
Pineapple Industry Fund.
Self-accounting Departments Clearance Account.
Housing Loans Fund.
Personal Advances (Public Officers) Fund.
Loans to Statutory and other Bodies Fund.
Development Fund.
Sinking Funds Account.
Tin Buffer Stock Contributors Advance.
The Miscellaneous Advances Account.*
The Malaya Borneo Building Society Advance Account.*
Central Bank Establishment Expenses Fund.†

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* These two items were added by a resolution of the Legislative Council on December 4, 1957 (*see* Legal Notification 123 of 1958).

† This item was added by a resolution of the Legislative Council on July 31, 1957.

THIRD SCHEDULE

[Section 26 (1)]

Inter-administration Current Account.
Treasury Main Clearance Account Fund.
Conveyance Advance Fund.
Agricultural Short-term Credit Account.
Unallocated Stores and Works Account.
Self-accounting Departments' Clearance Account.
Housing Loans Fund.
Personal Advances (Public Officers) Fund.
Loans to Statutory and other Bodies Fund.
Sinking Funds Account.
Contingencies Fund.

THE AUDIT ORDINANCE, 1957

No. 60 OF 1957

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THE AUDIT ORDINANCE, 1957

No. 60 OF 1957

An Ordinance to make provision for the audit of the accounts of the Federation, of the States and of certain other public authorities and bodies administering public funds.

[*Except Sections 9 & 10—31st August, 1957.*]

IT IS HEREBY ENACTED by the Yang di-Pertuan Agong with the advice and consent of the Legislative Council as follows:

PART I

PRELIMINARY

Short title, commencement and application.

1. (1) (*a*) This Ordinance may be cited as the Audit Ordinance, 1957, and shall, with the exceptions of sections 9 and 10, be deemed to have come into force on the thirty-first day of August, 1957.

(*b*) Section 9 of this Ordinance shall come into force in respect of the accounts of the Federation simultaneously with section 16 of the Financial Procedure Ordinance, 1957, and, in respect of the accounts of any State, simultaneously with the coming into force in that State of section 30 of the Financial Procedure Ordinance, 1957. No. 62 of 1957.

(*c*) Section 10 shall come into force simultaneously with the coming into operation of Part VII of the Constitution.

(2) This Ordinance shall apply to the Railway Administration established under the provisions of the Railway Ordinance, 1948, and to officers employed by the Railway Administration. M.U. No. 8 of 1948.

Interpretation.

2. (1) Words and expressions used in this Ordinance shall, unless the context otherwise requires or it is herein otherwise expressly provided, have the meaning assigned to them in the Financial Procedure Ordinance, 1957. No. 62 of 1957.

(2) In its application to this Ordinance, the expression "public moneys" shall include moneys received by or on account of the Railway Administration.

PART II

THE AUDITOR-GENERAL

Terms and conditions of service of Auditor-General.

3. The Auditor-General shall be deemed to be an officer of the general public service of the Federation and, save as is otherwise provided in the Constitution and in this Ordinance, the law for the time being in force relating to the public service of the Federation and to members thereof shall apply to him.

Remuneration of Auditor-General.

4. (1) The remuneration of the Auditor-General shall consist of a basic pensionable salary of one thousand nine hundred and seventy dollars per mensem together with such pensionable and non-pensionable allowances and privileges as are payable or granted to members of the general public service of the Federation receiving the same basic pensionable salary.

(2) The salary and allowances payable under subsection (1) shall—

(*a*) commence from the date of appointment or, in the case of the first Auditor-General, from the date of the coming into force of this section;

(*b*) be charged on and paid out of the Federal Consolidated Fund:

Provided that, until the coming into operation of Part VII of the Constitution such salary and allowances shall be charged on and paid out of the revenues of the Federation;

(*c*) accrue from day to day; and

(*d*) be payable monthly on the last day of each month or on such other day as the Treasury may from time to time determine.

Duties of Auditor-General.

5. (1) The Auditor-General shall examine, enquire into and audit the accounts of accounting officers.

(2) Notwithstanding the provisions of any law to the contrary, the Auditor-General shall audit the accounts of any separate fund established in a State under the provisions of Clause (3) of Article 97 of the Constitution and the fee for such audit shall be a charge on the fund concerned.

(3) The Auditor-General shall, if it is so provided by law in any case, audit the accounts of any local authority or statutory authority exercising powers vested in it by Federal or State law and, if it is not so

provided by law, may with the consent of the Minister, if so requested, audit the accounts of other authorities and bodies administering public funds, the fee for such audit in every case being a charge upon the funds of the authority or body concerned.

(4) For the purposes of sub-sections (2) and (3) of this section, the fees shall be determined by the Treasury.

(5) Notwithstanding the provisions of any law relating to the accounts and audit of any local authority or statutory authority exercising powers vested in it by Federal or State law, the Minister may, if he is satisfied that the public interest so requires, direct that the accounts of such authority shall be audited by the Auditor-General:

Provided that the Minister shall not direct that the accounts of any such authority exercising powers vested in it by a State law be so audited unless he shall first have consulted the Mentri Besar or Chief Minister of that State.

(6) No fee shall be payable for an audit directed in accordance with the provisions of sub-section (5).

Nature of audit.

6. The Auditor-General shall in his audit make such examination as he may deem necessary to ascertain—

(*a*) whether all reasonable precautions have been taken to safeguard the collection and custody of public moneys or other moneys subject to his audit;

(*b*) whether issues and payments of moneys subject to his audit were made in accordance with proper authority and payments were properly chargeable and are supported by sufficient vouchers or proof of payment; and

(*c*) whether the provisions of the Constitution and of the Financial Procedure Ordinance, 1957, and any other written law relating to moneys or stores subject to his audit have been in all respects complied with.

No. 62 of 1957.

Powers of the Auditor-General.

7. (1) In the performance of his functions under the Constitution or this Ordinance the Auditor-General—

(*a*) may call upon any person for any explanations and information which the Auditor-General may require in order to enable him to discharge his duties;

(*b*) may, without payment of any fee, cause search to be made in and extracts to be taken from any book, document or record in any public office;

(*c*) shall have access to all records, books, vouchers, documents, cash, stamps, securities, stores or other property subject to his audit;

(*d*) may examine upon oath or affirmation (which oath or affirmation the Auditor-General is hereby empowered to administer) any person whom he may think fit to examine respecting all matters and things whatever necessary for the due performance of such functions;

(*e*) may authorise any public officer on his behalf to conduct any inquiry, examination or audit and to report thereon to him; and

(*f*) may obtain the advice of a law officer upon any question of law.

(2) Any of the powers conferred by this section upon the Auditor-General may be exercised by a public officer authorised by the Auditor-General in writing to exercise such power on his behalf.

(3) Every person called upon for any explanations or information pursuant to the provisions of paragraph (*d*) of sub-section (1) shall be legally bound to furnish such explanations or information, as the case may be.

Secrecy.

8. (1) The operation of section 7 shall not be limited by any provision (including a provision relating to secrecy) contained in any other law except to the extent to which any such other law expressly excludes the operation of that section.

(2) Notwithstanding anything contained in any other law and notwithstanding the making of an oath or declaration of secrecy a person shall not be guilty of an offence by reason of anything done by him for the purposes of section 7.

(3) The Auditor-General or any other person shall not divulge or communicate, except in the course of duty to another person performing duties under this Ordinance, any information which has come to his knowledge directly or indirectly in accordance with the provisions of section 7 in any case in which the person from whom such information has been obtained or from whose custody accounts, books, documents or

papers from which such information was derived were produced could not, but for the provisions of this Ordinance, lawfully have divulged that information to the Auditor-General or such other person.

(4) The last preceding sub-section shall not prevent the making, divulging or communicating in any report of the Auditor-General of conclusions, observations or recommendations which are based on information obtained in accordance with the provisions of section 7.

Audit reports.

9. (1) The Minister or the Mentri Besar or Chief Minister of a State as the case may be shall, as soon as a statement required under the provisions of sections 16 and 30 respectively of the Financial Procedure Ordinance, 1957, has been prepared, transmit such statement to the Auditor-General who shall forthwith cause such statement to be examined and audited and prepare his report thereon.

No. 62 of 1957.

(2) In the event of any such statement not being received within a period of seven months after the close of the financial year to which it relates, the Auditor-General shall submit a report to that effect to the Yang di-Pertuan Agong who shall cause it to be laid before the Legislative Council at its next meeting, and in the case of a report relating to a statement due from the Mentri Besar or Chief Minister of a State, the Auditor-General shall, before submitting such report to the Yang di-Pertuan Agong, submit a copy thereof to the Ruler or Governor of that State who shall cause it to be laid before the Legislative Assembly at its next meeting.

(3) A copy of every report relating to the accounts of the Federation prepared in accordance with the provisions of sub-section (1) shall be transmitted by the Auditor-General to the Minister who, if the Legislative Council be not then sitting, shall cause the statement and report to be published.

(4) If at any time it appears to the Auditor-General that any serious irregularities have occurred in the accounting or custody of public moneys or public stores he shall immediately bring the matter to the notice of the Secretary to the Treasury and, in the case of State or Railway moneys or stores, to the notice also of the State financial authority or the Railway Administration as the case may be.

(5) The Auditor-General may in any report submitted in accordance with the provisions of Clause (1)

of Article 107 of the Constitution or otherwise make recommendations and may generally comment upon all matters relating to public accounts, public moneys and stores.

(6) The Auditor-General shall submit a certificate and observations on the accounts of any separate fund established in a State under the provisions of Clause (3) of Article 97 of the Constitution to the Ruler or Governor of the State or to such other authority as may be provided by State law.

(7) Unless it is otherwise required by law or by direction of the Minister, where the Auditor-General audits the accounts of any other authority or body he shall present his certificate and observations upon such accounts to the head of that authority or body.

(8) Notwithstanding the provisions of this section, the Auditor-General may at any time submit a report to the Yang di-Pertuan Agong upon any matters arising out of the performance of any of his duties or the exercise of any of his powers under this Ordinance or under any written law, and may submit a copy of any such report to the Ruler or Governor of a State or to a Minister.

Regulations.

10. (1) The Minister may, after consulting the National Finance Council, make such regulations not inconsistent with the provisions of this Ordinance as are necessary for the purposes of the Ordinance.

(2) All regulations made under this section shall be laid before the Legislative Council at the next meeting after their making.

SECTION IV

CITIZENSHIP PROVISIONS OF THE FEDERATION OF MALAYA AGREEMENT, 1948, IN FORCE IMMEDIATELY BEFORE MERDEKA DAY

PART XII

CITIZENSHIP OF THE FEDERATION OF MALAYA

PRELIMINARY

Interpretation.

124. For the purpose of this Part, unless the context otherwise requires—

(*a*) 'child' includes any child whose adoption has been registered in accordance with any written law in force in the Federation;

(*b*) 'citizen of the United Kingdom and Colonies' means a person who is a citizen of the United Kingdom and Colonies under the British Nationality Act, 1948; 11 & 12 Geo. VI. c. 56.

(*c*) 'the Federation,' in respect of any period prior to the appointed day, means any of the territories now comprised in the Federation;

(*d*) 'minor' means a person who has not attained the age of eighteen years reckoned according to the Gregorian calendar;

(*e*) 'prescribed date' means such date as may be prescribed by the High Commissioner for the purposes of this Part;*

(*f*) 'subject of His Highness the Ruler of any State' means any person who under the written law in force in a State is a subject of His Highness the Ruler of that State;

(*g*) 'written law' includes all Orders of His Majesty in Council or other Orders in Council in force in the Federation or any part thereof, and all Ordinances, Enactments and subsidiary legislation;

(*h*) a person shall be of full capacity if he has attained the age of eighteen years reckoned according to the Gregorian calendar and is of sound mind;

(*i*) any reference in this Part to a woman who is, or has been, married shall be deemed to refer to a woman whose marriage has been registered in accordance with any written law in force in the Federation;

(*j*) there shall be one or more Language Boards each of which shall consist of three members, one of whom shall be Chairman, appointed by the High Commissioner in Council; one member shall be a Malay, one member shall, where possible, be of the same

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* The prescribed date was September 15, 1952 (*see* Legal Notification No. 514 of 1952).

community as the applicant and the Chairman shall be of a community different from the other two members. Any such Board may act by a majority of the members thereof;

(*k*) a person shall be deemed to be able to speak the Malay or English language with reasonable proficiency if in the opinion of a Language Board he is able to say and understand what a person of his standing is likely to wish to say or understand in Malay or English in normal intercourse with a person of a different community;

(*l*) any reference in this Part to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before, and the birth occurs after the prescribed date, the status or description which would have been applicable to the father had he died after the prescribed date shall be deemed to be the status or description applicable to him at the time of his death.

Citizenship by Operation of Law

Citizens by operation of law.

125. On and after the prescribed date,* the following persons shall be citizens of the Federation of Malaya by operation of law:

(*a*) any subject of His Highness the Ruler of any State;

(*b*) any citizen of the United Kingdom and Colonies born before on or after the prescribed date in either of the Settlements;

(*c*) any citizen of the United Kingdom and Colonies born in the Federation before, on or after the prescribed date, one of whose parents was born in the Federation;

(*d*) any person who is a citizen of the United Kingdom and Colonies, wherever born, and—

(i) if he was born before the appointed day,† whose father was born in either of the Settlements and had at the time of such person's birth, completed a continuous period of fifteen years residence in the Federation; and

(ii) if he was born on or after the appointed day whose father was born in either of the Settlements and was, at the time of such person's birth a Federal citizen under the provisions of this Agreement at any time in force before the prescribed date or a citizen of the Federation of Malaya;

(*e*) any citizen of the United Kingdom and Colonies, wherever born, whose father was, at the time of such person's birth, a Federal citizen, or a citizen of the Federation of Malaya, by the grant of a Certificate of Citizenship or a certificate of naturalisation under

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* September 15, 1952.

† February 1, 1948 (*see Gazette* Notification No. 5 of 1948).

the provisions of this Agreement at any time in force, or a citizen of the Federation of Malaya by registration under Clause 126 of this Agreement;

(*f*) any other person who, immediately before the prescribed date, was by operation of law or otherwise a Federal citizen under the provisions of this Agreement at any time in force before the prescribed date;

(*g*) any person to whom a certificate of naturalisation as a citizen of the United Kingdom and Colonies has been granted under the British Nationality Act, 1948, and who has— 11 & 12 Geo. VI c. 56.

(i) within the preceding twelve years resided in the Settlements for periods amounting in the aggregate to not less than ten years;

(ii) resided in the Settlements throughout the two years immediately preceding the date of his application for naturalisation as a citizen of the United Kingdom and Colonies; and

(iii) taken within the Settlements the oath prescribed by section 10 of the said Act.

Citizenship by Registration

Citizenship by registration of citizens of the United Kingdom and Colonies born in the Federation.

126. Subject as hereinafter provided, a person of full capacity, born in the Federation who—

(*a*) is not a citizen of the Federation of Malaya; and

(*b*) is a citizen of the United Kingdom and Colonies,

shall, on making application therefor to the High Commissioner *in the prescribed manner*,* be entitled, on taking the oath set out in Form VIII in the First Schedule to this Agreement, to be registered as a citizen of the Federation of Malaya:

Provided that a person who has absented himself from the Federation for a continuous period of five years within the ten years immediately preceding his application shall not be entitled to be registered under this section unless he is certified by the High Commissioner to have maintained substantial connection with the Federation during that period.

Registration of women possessing certain qualifications as citizens.

127. Subject as hereinafter provided a woman who—

(*a*) is not a citizen of the Federation of Malaya; and

(*b*) is a citizen of the United Kingdom and Colonies; and

(*c*) has been married to a person who is a citizen of the Federation of Malaya,

shall, on making application therefor to the High Commissioner in the prescribed manner, be entitled to be registered as a citizen of the Federation of Malaya, whether or not she is of full capacity:

Provided that no woman shall be entitled to be registered under this clause—

(A) unless she

(i) satisfies the High Commissioner that she is of good character; and

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* *See* the Citizenship of the Federation of Malaya Regulations, 1952 (Legal Notification 534 of 1952). References in these Clauses to applications "in the prescribed manner" are in general references to applications under these Regulations.

(ii) has taken the oath set out in Form VIII in the First Schedule to this Agreement; or

(B) if at the time of her application she has ceased to be married to a citizen of the Federation of Malaya and has married a man who is not a citizen of the Federation of Malaya.

Restriction on the right to registration as a citizen.

128. A person who has renounced, or has been deprived of citizenship of the Federation of Malaya or the status of a subject of His Highness the Ruler of any Malay State, or who, before the prescribed date, renounced, or was deprived of Federal citizenship under the provisions of this Agreement at any time in force before such date, shall not be entitled to be registered as a citizen of the Federation of Malaya under Clause 126 or Clause 127 of this Agreement but may be so registered with the approval of the High Commissioner.

Registration of minor children as citizens.

129. (1) The High Commissioner may cause the minor child of a citizen of the Federation of Malaya who is also a citizen of the United Kingdom and Colonies, such child being himself a citizen of the United Kingdom and Colonies, to be registered as a citizen of the Federation of Malaya upon application made in the prescribed manner by a parent or guardian of the child.

(2) The High Commissioner may, in such special circumstances as he thinks fit, cause any minor who is a citizen of the United Kingdom and Colonies to be registered as a citizen of the Federation of Malaya.

(3) For the purposes of this Clause "parent" in relation to an adopted child means the adopter.

Effect of registration.

130. A person registered under Clause 126, 127, 129, or sub-clause (5) of Clause 132 of this Agreement shall be a citizen of the Federation of Malaya as from the date on which he is registered.

Citizenship by Naturalisation

Citizenship by naturalisation.

131. (1) The High Commissioner may, if application therefor is made to him in the prescribed manner by any person who is a citizen of the United Kingdom and Colonies and who is of full capacity, grant to such person a certificate of naturalisation if he satisfies the High Commissioner that he—

(*a*) has within the preceding twelve years resided in the Federation for periods amounting in the aggregate to not less than ten years; and

(*b*) has resided in the Federation throughout the two years immediately preceding the date of his application; and

(*c*) is of good character; and

(*d*) is not likely to become chargeable to the Federation; and

(*e*) is able to speak the Malay or English language with reasonable proficiency or if he is unable to do so that such inability is due to the physical impediment of deafness or dumbness; and

(*f*) has made a declaration that he intends, in the event of a certificate being granted to him, to settle permanently in the Federation.

(2) In calculating the period of twelve years mentioned in sub-clause (1) of this clause no account shall be taken of:

(*a*) periods of absence from the Federation—

(i) for purposes of education of such kinds, in such countries and during such periods, as may from time to time be either generally or specially approved by the High Commissioner for the purposes of this clause; or

(ii) while on duty in the service of the Government of the Federation or of any State or Settlement or of any of the territories now comprised in the Federation or of the Colony of Singapore or while on duty in the service of the Crown,

where such periods are not consistent with essential continuity of residence and therefore not reckoned as periods of residence;

(*b*) periods of absence from the Federation between the 1st July, 1941, and the 31st December, 1946, in the case of a person who was resident in the Federation for a period of five years immediately preceding such period of absence.

(3) The High Commissioner shall, if application therefor is made to him in the prescribed manner, grant a certificate of naturalisation to a person who satisfies the High Commissioner that he:

(*a*) is not a citizen of the Federation of Malaya; and

(*b*) has served for a period of not less than three years in full-time service or four years in part-time service in any of the Forces set out in the Sixth Schedule to this Agreement, or such other Forces as the High Commissioner may prescribe, and has been honourably discharged therefrom:

Provided that where such service has consisted partly of whole-time and partly of part-time service, any two months of part-time service shall be deemed for the purposes of this paragraph to be equivalent to one month of whole-time service; and

(*c*) has made a declaration that he intends, in the event of a certificate being granted to him, to settle permanently in the Federation:

Provided that a certificate shall be granted under the provisions of this sub-clause only when application therefor is made within five years of the date of the aforesaid discharge or such longer period as the High Commissioner in Council may in any particular case direct.

(4) The person to whom a certificate of naturalisation is granted under this clause shall, on taking the oath set out in Form VIII in the First Schedule to this Agreement, be a citizen of the Federation of Malaya by naturalisation as from the date on which that certificate is granted.

LOSS OF CITIZENSHIP OF THE FEDERATION OF MALAYA

Loss of citizenship by operation of law.

132. (1) Any person who being a citizen of the Federation of Malaya would not, under the provisions of this Agreement, be

such a citizen unless he were at the same time either a subject of His Highness the Ruler of any State or a citizen of the United Kingdom and Colonies shall cease to be a citizen of the Federation of Malaya if he ceases to be a subject of His Highness the Ruler of any State or a citizen of the United Kingdom and Colonies, as the case may be.

(2) Subject as hereinafter provided, where a person, who is a citizen of the Federation of Malaya, has absented himself from the Federation of Malaya for a continuous period of five years and is not certified by the High Commissioner to have maintained substantial connection with the Federation of Malaya during that period, such person shall cease to be a citizen of the Federation of Malaya.

(3) A person who has absented himself from the Federation for the aforesaid period of five years but who, before the expiration thereof, has made application in the prescribed manner to the High Commissioner for a certificate that such person is maintaining substantial connection with the Federation of Malaya shall not, because of his absence during that period, cease to be a citizen of the Federation of Malaya unless and until he has been notified that such application has been refused. The grant of any such certificate shall be at the absolute discretion of the High Commissioner.

(4) A person shall not cease to be a citizen of the Federation of Malaya under this clause if, on such cesser, he would have no national status.

(5) If any person who has ceased to be a citizen of the Federation of Malaya under this clause, resumes residence within the Federation of Malaya, he may apply to the High Commissioner, in the prescribed manner and subject to any conditions that may be prescribed, for registration as a citizen of the Federation of Malaya and the High Commissioner may, in his discretion, cause him to be registered as such.

(6) A person who is a citizen of the Federation of Malaya shall cease to be a citizen thereof if he voluntarily acquires the nationality or citizenship of any State or country outside the Federation other than citizenship of the United Kingdom and Colonies.

(7) A woman who is a citizen of the Federation of Malaya by registration under the provisions of Clause 127 of this Agreement shall cease to be such a citizen if, on marrying a man who is not a citizen of the Federation of Malaya, she thereby acquires his national status, not being citizenship of the United Kingdom and Colonies.

Renunciation of citizenship.

132A. If any person of full capacity, who is a citizen of the Federation of Malaya, makes a declaration in the prescribed manner of renunciation of citizenship of the Federation of Malaya, the High Commissioner shall cause the declaration to be registered; and upon such registration, that person shall cease to be a citizen of the Federation of Malaya:

Provided that the High Commissioner may withhold registration of any such declaration if it is made during a period of emergency declared as such, at or after its commencement, by the High Commissioner in Council for the purposes of this clause.

133. (1) A citizen of the Federation of Malaya shall cease to be a citizen of the Federation of Malaya if he is deprived of that citizenship by an order of the High Commissioner in Council made under this clause: Deprivation of citizenship.

Provided that if such citizen is also a subject of His Highness the Ruler of any State such order shall only be made by the High Commissioner after consultation with such Ruler.

(2) Subject to the provisions of this clause, the High Commissioner in Council may by order deprive a citizen of the Federation of Malaya of that citizenship if he is satisfied that that citizen— Am. O. 27/54.

(*a*) (i) having been registered or granted a certificate of naturalisation as a citizen of the Federation of Malaya; or

(ii) having been granted a Certificate of Citizenship under the provisions of this Agreement at any time in force before the prescribed date and having become a citizen of the Federation of Malaya as a consequence of such grant and by virtue of the provisions of Clause 125 of this Agreement

has obtained such registration or certificate by fraud, false representation or concealment of a material fact, or has been so registered or granted such certificate by mistake:

Provided that no citizen shall be deprived of his citizenship under this sub-clause by reason of mistake unless notice of the intention so to do has been served on him or published in the *Gazette* within twelve months from the prescribed date or the date of registration or the grant of a certificate, whichever is the later, and where no notice has been served or published as hereinbefore provided before the expiration of the said period, no registration or certificate or conferment of citizenship of the Federation of Malaya shall be deemed to be invalid on the grounds of mistake and such registration or certificate or conferment shall be deemed to be as valid as it would have been had such mistake not been made; or

(*b*) has shown himself by act or speech to be disloyal or disaffected towards the Federation; or

(*c*) has, during any war in which His Majesty is engaged after the appointed day, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*d*) has within five years after registration or the granting of a certificate of naturalisation or Citizenship been sentenced in any part of His Majesty's dominions or in any territory under His Majesty's protection to death or to imprisonment, by whatever name called, for a term exceeding twelve months and has not received a free pardon; or

(*e*) has done any voluntary act which is incompatible with his loyalty to the Federation:

Provided that no order shall be made under this sub-clause—

(i) on any of the grounds specified in paragraphs (*b*), (*c*), (*d*) and (*e*), in the case of a citizen of the Federation of Malaya who, as a result of such order would have no national status; or

(ii) on any of the grounds specified in paragraphs (*b*) and (*e*) thereof in respect of any person who is a citizen of the Federation of Malaya under Clause 125 unless he has by an overt act advocated or manifested his belief in the overthrow by force or violence of any Government in Malaya or of His Majesty's Government in the United Kingdom or of the government of any territory within the British Commonwealth or of constituted law or authority or the assassination of public officials or the unlawful destruction of property or his disbelief in or opposition to organised government.

(3) For the purposes of the first proviso to the last preceding sub-clause a person shall be deemed not to have retained the nationality of another State unless the High Commissioner in Council is, in the exercise of his discretion, satisfied that such person is in a position effectively to enjoy the protection of such other State and to proceed thereto if he so wishes without thereby endangering his personal safety.

(4) Before making an order under the provisions of sub-clause (2) of this clause the High Commissioner in Council shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this clause.

(5) If the person against whom the order is proposed, to be made applies in the prescribed manner for an inquiry, the High Commissioner shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the High Commissioner, and of such other members appointed by the High Commissioner as he thinks proper.*

(6) The High Commissioner in Council shall not deprive a person of citizenship under this clause unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of the Federation of Malaya.

Saving of obligations incurred before loss of citizenship.

133A. Where any citizen of the Federation of Malaya ceases to be a citizen of the Federation of Malaya, he shall not thereby be discharged from any obligations, duty or liability in respect of any act done before he ceased to be a citizen of the Federation of Malaya.

SUPPLEMENTARY PROVISIONS

Discretion of High Commissioner.

133B. The High Commissioner shall not be required to assign any reason for the grant or refusal of any application under this Part, the decision on which is at his discretion; and the decision

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* *See* the Deprivation of Citizenship of the Federation of Malaya (Committee of Inquiry) Regulations, 1952 (Legal Notification 2 of 1953).

of the High Commissioner on any such application shall not be called in question in any Court whether by writ or otherwise or be subject to appeal to or review in any Court.

133C. (1) Birth on board a ship registered in any territory comprised in the Federation shall be deemed to be birth in that territory. Birth on ship.

(2) A person born on a foreign ship shall not be deemed to have been born in the Federation or in any territory comprised therein by reason only of the fact that the ship was in the territorial waters of the Federation or of such territory at the time of his birth.

133D. (1) Every document purporting to be a notice, certificate, order or declaration, or an entry in a register, or a subscription of an oath, given granted or made under this Part on or after the prescribed date, or under the corresponding provisions of this Agreement at any time in force before the prescribed date shall be received in evidence and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made. Evidence.

(2) *Prima facie* evidence of any such document as aforesaid may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed.

133E. Any person who for the purpose of procuring anything to be done or not to be done under this Part makes any statement which he knows to be false in any material particular, or recklessly makes any statement which is false in any material particular, shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine. Offences.

133F. The High Commissioner in Council may by regulations make provisions generally for carrying into effect the purposes of this Part, and in particular— Power of High Commissioner in Council to make regulations.

(*a*) for prescribing anything which under this Part may be prescribed;

(*b*) for the registration of anything required or authorised under this Part to be registered;

(*c*) for prescribing forms of declarations;

(*d*) for the administration and taking of oaths for the time within which such oaths shall be taken and for the registration of such oaths;

(*e*) for the giving of any notice required or authorised to be given to any person under this Part;

(*f*) for the declaration of a period of emergency under Clause 132A of this Agreement;

(*g*) for the procedure to be followed by persons applying for registration under this Part, the evidence to be required from such persons as to their qualifications for citizenship, including evidence of possession of a sufficient knowledge of the Malay or English language and for imposing penalties for requiring

any consideration for supplying any reference that may be required by any prescribed form;

(*h*) for the issue of certified copies of documents made, and extracts from registers kept, under this Part, for the cancellation and amendment of entries in a register and of certificates and of certified copies of entries in a register and of certificates prepared under this Part and relating to persons who lose citizenship under this Part, and for requiring such documents to be delivered up for those purposes;

(*i*) for the issue of certificates that a person has produced *prima facie* proof that he is a citizen of the Federation of Malaya by operation of law;

(*j*) for the issue of certificates of particulars concerning certificates of citizenship issued under this Part at any time in force;

(*k*) for the imposition and recovery of fees in respect of any application made to the High Commissioner under this Part or in respect of any registration, or the making of any declaration, or the grant of any certificate, or the taking of any oath, authorised to be made, granted or taken by or under this Part, and in respect of supplying a certified or other copy of any notice, certificate, order, declaration or entry, given, granted or made as aforesaid; and for the application of any such fees;

(*l*) for the practice and procedure to be followed in connection with references under this Part to a committee of inquiry; and, in particular for conferring on any such committee any powers, rights or privileges of any Court, and for enabling any powers so conferred to be exercised by one or more members of the committee;

(*m*) for the delegation of any of the powers conferred by this Part; or

(*n*) for prescribing penalties not exceeding one thousand dollars for the breach of any of the provisions of such regulations.

THE FIRST SCHEDULE

FORM VIII

[*Clauses 126, 127 and 131*]

I.....of.....hereby declare on oath that I will not exercise the rights, powers and privileges to which I may be entitled by reason of any nationality or citizenship, other than the rights, powers and privileges of a citizen of the Federation of Malaya or a citizen of the United Kingdom and Colonies or a subject of His Highness the Ruler of any Malay State, and that I absolutely and entirely renounce and abjure all loyalty to any country, state or sovereign other than loyalty to the

Federation of Malaya, His Majesty and the Ruler of any Malay State, and I.....do swear that I will be a true, loyal and faithful Citizen of the Federation of Malaya and will give due obedience to all lawful authorities constituted in the Federation of Malaya.

* So help me God.

---

* These words may be varied according to the religious beliefs of the person concerned.

THE SIXTH SCHEDULE

[*Clause 131* (*3*)]

1. The Malay Regiment.
2. The Federation Division of the Malayan Royal Naval Volunteer Reserve.
3. The Volunteer Force.
4. The Federation Section of the Malayan Auxiliary Air Force.
5. The Federation of Malaya Police Force.

In addition, the following Forces were also prescribed under Clause 131 (3) (*b*) (*see* Legal Notification 30 of 1957):

(i) The Federation Regiment.

(ii) Forces raised under the provisions of the Military Forces Ordinance, 1952.

(iii) The Police Volunteer Reserve.

(iv) The Special Constabulary.

(v) The permanent staff of the Home Guard.

(vi) The Kinta Valley Home Guard.

(vii) The members of Home Guard Operational Sections.

SECTION V

COMPARATIVE TABLE

This Table shows in the second column the parallel provisions of the draft Constitution for the Federation appearing as Appendix II to the *Report of the Federation of Malaya Constitutional Commission* (The Government Press, Kuala Lumpur, 1957), hereinafter called "the Reid Report". It will be observed that the Commission's proposed Constitution was largely influenced by the provisions of the Constitution of India, promulgated on November 26, 1949, and it is that Constitution which is referred to in the third column of this Table. It should be emphasised, however, that a number of Articles of the Federal Constitution have only a slender connection with the Indian provisions cited here.

Article of the Federal Constitution	Article of the Constitution proposed by the Reid Report	Article of the Constitution of India
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21	19	—
22	20	—
23	21	—
24	22	—
25	23	—
26	23	—
27	23	—
28	23	—
29	24	—
30	25	—

Article of the Federal Constitution		Article of the Constitution proposed by the Reid Report		Article of the Constitution of India
31	...	26	...	—
32	...	27	...	—
33	...	28	...	—
34	...	29	...	—
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* Compare Part VI of the Federation of Malaya Agreement, 1948.

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88	...	83	...	—
89	...	82	...	—
90	...	82	...	—
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* Compare Clause 152 of the Federation of Malaya Agreement, 1948.
† Compare Clause 14A of the Federation of Malaya Agreement, 1948.

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* Compare section 92 of the Malayan Union Order in Council, 1946, and Clauses 140 to 145 of the Federation of Malaya Agreement, 1948.

† Compare section 93 of the Malayan Union Order in Council, 1946, and Clause 146 of the Federation of Malaya Agreement, 1948.

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[References in arabic numerals are to Articles of the Constitution except where such numerals follow roman numerals, in which case the roman numerals refer to a Schedule to the Constitution and to the List or Part thereof and the arabic numerals to the section thereof, e.g., IX-I-16 is a reference to the Ninth Schedule, List I (the Federal List), section 16.]

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