

FEDERATION OF MALAYA CONSTITUTION

PARTS FIVE TO THIRTEEN

This article is the fourth and last of a series designed to form as a whole an annotated version of the Federation of Malaya constitution. The first three parts appeared in the *University of Malaya Law Review*, vol. 1, pp. 137-144, 175-203, vol. 2, pp. 29-61.

PART V

THE STATES

70. (1) Subject to the precedence of the Yang di-Pertuan Agong¹ and his Consort,² the Rulers³ and Governors⁴ of the States⁵ shall take precedence over all other persons and each Ruler³ or Governor⁴ shall in his own State⁵ take precedence over the other Rulers³ and Governors.⁴

(2) Subject to Clause (1), the Rulers³ shall take precedence over the Governors⁴ and, among themselves, in accordance with the dates on which they acceded as Rulers,³ and the Governors⁴ shall take precedence among themselves in accordance with the dates on which they were appointed as Governors; and if Governors⁴ were appointed on the same day the older shall take precedence over the younger.⁶

Notes

1. See article 32(1).
2. See article 32(2).
3. The rulers are the Yang di-Pertuan Besar of Negri Sembilan, the Raja of Perlis, and the Sultans of the other seven Malay States.
4. The governors are the heads of State of Malacca and Penang.
5. *I.e.*, the component States of the federation: see article 1 (2).
6. It would appear that if all were in a procession together in Kuala Lumpur they would walk in the following order: the Yang di-Pertuan Agong, the Raja Permaisuri Agong, the Sultan of Selangor, the other seven rulers in order of accession, the governors in order of appointment or birth as appropriate, and other people in accordance with the bright ideas of the organisers of the procession. But *cf.* the federal table of precedence published in L.N. 115 of 1959.

Article 70 cannot be amended without the consent of the Conference of Rulers: see article 159(5).

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;¹ 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 Parliament² 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,³ 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 Parliament² that the Constitution of any State does not contain the provisions set out in Part I of the Eighth Schedule,⁴ 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,³ 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.⁶

Notes

1. Presumably the guarantee is directory and permissive. It enjoins and empowers Parliament to legislate if necessary in accordance with clause (3). It is to be supposed that armed force may be used by the federal government to implement the guarantee. But no form of litigious process seems to be contemplated against any federal authority.

Article 71(1) cannot be amended without the consent of the Conference of Rulers: see article 159 (5).

2. A law passed under this clause might be challenged on the ground that it did not so appear to Parliament. *Cf.* article 4(2)(b), of which there is no equivalent applying to this clause. However, the burden of proving collective bad faith is enormous.

3. A law made under this clause could not be challenged *solely* on the ground that it related to a State matter. On the other hand a challenge might be entertained on the ground that the law trespassed on the State sphere more than could conceivably be necessary for securing compliance with the federal or State constitution, or with the requirement as to essential provisions, as the case may be. *Cf.* clause (6).

4. The provisions of part I of the eighth schedule are as follows.

EIGHTH SCHEDULE

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 Menteri 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 Menteri 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 Menteri 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 Menteri Besar.

(4) In appointing a Menteri Besar the Ruler may, in his discretion, dispense with any provision in the Constitution of this State restricting his choice of a Menteri 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.

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.

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.

(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 or 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 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.

5. The provisions of part II of the eighth schedule are as follows.

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.

6. If Parliament passes a law under clause (3) or (4) of this article, and that law provides that, notwithstanding clause (6), it shall not cease to have effect in accordance with a resolution of the new State Legislative Assembly, an interesting conflict arises. By clauses (3) and (4), laws made thereunder are to operate "notwithstanding anything in this Constitution," including, perhaps, notwithstanding clause (6). On the other hand, it could be argued that "notwithstanding anything in this Constitution" refers to the validity of the enactment vis a vis the separation of powers, and not with respect to duration.

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

(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.²

(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.³

Notes

- 1 *Cf.* article 63(1).
2. *Cf.* article 63(2).
3. *Cf.* article 63(3).

PART VI

RELATIONS BETWEEN THE FEDERATION AND THE STATES

Chapter 1 — Distribution of legislative powers

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.

74. (1) Without prejudice to any power to make laws conferred on it by any other Article,¹ 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

(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)³ or the Concurrent List.⁴

(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.

Notes

1. Articles giving Parliament to make laws are: article 2 (to admit new States to the federation or to alter the boundaries of any State); article 22 (to determine citizenship rights consequential on the admission of a new State to the federation); article 29(2) (to amend existing laws in such manner as to discriminate between Commonwealth citizens and citizens of the Republic of Ireland); article 31 (to amend or repeal the supplementary provisions relating to citizenship set out in the second schedule to this constitution); article 35 (to provide civil lists for the Yang di-Pertuan Agong and the Raja Permaisuri Agong and remuneration

for the Deputy Supreme Head of the Federation or other acting Yang di-Pertuan Agong); article 39 (to confer executive functions on persons other than the Yang di-Pertuan Agong); articles 40(3) and 42(4)(a) (to specify persons or bodies whom the Yang di-Pertuan Agong must consult or on whose recommendation he must act); article 43(9) (to provide cabinet remuneration); article 45(4) (to change the composition of the Senate); article 46(2) (to alter the number of members of the House of Representatives); article 48(2) (to specify disqualifications for membership of either House of Parliament); article 58 (to remunerate the President and Deputy President of the Senate and the Speaker and Deputy Speaker of the House of Representatives); article 71(3), (4) (to ensure compliance by States with their constitutions and that the latter comply with the federal constitution); article 76 (for the purposes of implementing international agreements and decisions, promoting uniformity of the laws or law and policy with regard to land or for any purpose at the request of a State legislature); article 80(4) (to give a State executive authority respecting a federal law); article 88 (to modify articles 83-87 in their application to Malacca and Penang); article 92(1), (2), (7) (to give effect to a development plan); article 102 (to authorise expenditure on account or for unspecified purposes); article 103(1) (to create a contingencies fund); article 104(4) (to remunerate the Auditor-General); article 109(2), (3) (to vary the rates of the federal capitation grant to the States and to make grants to States for specific purposes); article 110(2), (3), (4) (to vary the revenue assigned to the States); article 114(5) (to remunerate the Election Commission); article 141(5) (to abolish the Railway Service Commission); article 143(2) (to remunerate members of Commissions governed by part X of the constitution); article 144(2) (to confer functions on such Commissions); article 149(1) (to legislate against subversion); article 150(5) (to pass emergency legislation); article 154(2) (to make laws with respect to the boundaries of the federal capital); article 155(1) (to give reciprocal privileges to Commonwealth citizens); article 159 (to amend the constitution); article 163(3) (to continue the Emergency Regulations Ordinance, 1948, and subsidiary legislation thereunder in force).

2. The relevant provisions of the ninth schedule are as follows.

NINTH SCHEDULE
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) Manoeuvres;
 - (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;
 - (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; [*Note: this item was omitted until early 1960 under article 154(3).*]
 - (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; [*Note: the second part of this item was omitted until early 1960 under article 154(3)*];
- (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;
- (e) Patents; designs; inventions; trade marks and mercantile marks; copyrights;
- (f) Establishment of standards of weights and measurers;
- (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.
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;
 - (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 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.

3. The relevant provisions of the ninth schedule are as follows.

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;
 - (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.

As the parliamentary powers to legislate on matters in the State list, see articles 71(3), (4), 76, 92(1), (2), (7), 149(1) (in legislating against subversion), 150(5) (emergency legislation).

4. See note 2, above.

General note : challenge to legislation. The validity of any law cannot be challenged on the ground that it infringes the separation of powers between Parliament and the State Legislative Assemblies except in inter-governmental suits : see article 4(3).

In any case the powers of Parliament, as set out in notes 1 and 2 above, are so extensive as to leave little likelihood of inter se suits except where it is alleged that a State has ventured on a federal matter.

In determining what "matter" any law relates to, the court will presumably have regard to the pith and substance of the legislation and not to its incidental effects (if any). This approach has been applied to fields of legislation in *Russell v. R.* (1882) 7 App. Cas. 829; *Gallagher v. Lynn* [1937] A.C. 863; *Ladore v. Bennett* [1939] A.C. 468; *Northern Ireland Road Transport Board v. Benson* [1940] N.I. 133. See also Basu, *Commentary on the Constitution of India*, 3rd ed., vol. 2, pp. 221-228, and authorities there cited. See also Basu, *op. cit.*, pp. 199-234, for general consideration of unconstitutionally of legislation. It is possible that the pith and substance doctrine also applies to challenge to legislation on the ground that it produces a prohibited effect, e.g. infringement of a fundamental liberty. See *Ulster Transport Authority v. James Brown & Sons, Ltd.* [1953] N.I. 79; *Pillai v. Mundanayake* [1953] A.C. 514.

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.¹

Note

1. As to challenges to legislation in general, see general note to article 74.

In Australia, "inconsistency" has been held to include cases where there is no conflict in detail between Commonwealth and State provision, but the Commonwealth Act is designed to be the only legislation on the subject. As to this doctrine of "covering the field," see Wynes, *Executive, Legislative and Judicial Powers in Australia*, 2nd ed., pp. 131-136, and authorities there cited.

76. (1) Parliament may make laws with respect to any matter enumerated in the State List,¹ 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;² or (b) for the purpose of promoting uniformity of the laws of two or more States;³ or (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 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

(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.⁵

Notes

1. See note 3 to article 74.
2. See clause (2). See also article 169.
3. This is very wide. But see clause (3).
4. Clause (3) is reproduced as amended by the Constitution (Amendment) Act, 1960 (No. 10), section 11.
5. Parliamentary legislation on these State matters operates in the State or States designated in the Act without the consent of the State Legislative Assembly. But see article 80(3).

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.¹

Note

1. This gives the residue of legislative powers to the States. There is very little, if any, residue after the ninth schedule's enumeration.

As to the powers of Parliament other than those listed in the ninth schedule, see note 1 to article 74.

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.

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 any of the matters enumerated in the State List with respect to which the Federation is exercising functions in accordance with Article 94,¹ he shall certify the Bill or amendment for the purposes of this Article.²

(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.

Notes

1. Article 94 relates to the extension of federal executive authority to assist and augment the State executives on certain matters within State legislative competence.

2. Article 79 does not apply to development area legislation : see article 92(2); nor to legislation against subversion : see article 149(1); nor to emergency legislation : see article 150(6).

Chapter 2 — 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 95,¹ nor to any matter enumerated in the Concurrent List,² 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.³

(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.

(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.

Notes

1. Article 93 relates to inquiries, surveys and statistics; article 94 to research, experiment, general advice and technical assistance, education, etc.; and article 95 to inspection of state activities.

2. See note 2 to article 74.

3. See clause (6).

General note: distribution of executive powers. By article 150(4), while a proclamation of emergency is in force, the federal executive authority extends to all State matters and to giving directions to State governments, officers and authorities.

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

82. Where any law or executive action relating to any of the matters enumerated in the Concurrent List¹ 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.

Note

1. See note 2 to article 72.

Chapter 4 — Land

83. (1) If the Federal Government is satisfied¹ that land in a State, not being alienated land,² is needed for federal purposes,³ 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 authority⁴ 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 satisfied¹ that it is in the national interest so to do.

(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,³ 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,⁴ 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 purposes³ 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.

Notes

1. The court is restricted to investigating allegations of bad faith. See note 4 to article 15.
2. See clause (5).
3. By article 160(2): “‘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.”
4. As to the meaning of “public authority,” see note 1 to articles 84-86.

84. (1) Where any interest in land in a State vested in the Federation or a public authority¹ for federal purposes² 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;¹ (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,¹ as the case may be, may sell the interest on such terms and conditions as that Government of authority may think fit.

85. (1) Where any land in a State which is reserved for any federal purposes² 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;² 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,² 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 purposes² 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.

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 purpose² specified therein, and no such disposition shall be made to a person other than a public authority¹ except — (a) under and in accordance with the provisions of federal law;³ 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 purposes² in a public authority,¹ 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 authority¹ 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.

Note

1. By article 160(2) : “ ‘Publicity 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.”

2. “... federal purposes” — see note 3 to article 83.

3. By article 160(2): “‘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 VIII, and (6) any Act of Parliament.”

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,¹ 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.²

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

Notes

1. Qualification to be a judge of the Supreme Court is governed by article 123.

2. By article 160(2): “‘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.”

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.

89. (1) Any land in a State which immediately before Merdeka Day¹ was a Malay reservation² in accordance with the existing law³ may continue as a Malay reservation² 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 or not less than two-thirds of the members voting.

(2) Any land in a State which is not for the time being a Malay reservation² 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 reservation² 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,² 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 reservation² 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;⁴ 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.⁵

(7) This Article shall have effect notwithstanding any other provision of this Constitution;⁶ 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.

Notes

1. Merdeka Day was 31st August 1957.
2. See clause (6).
3. By article 160(2): “‘Existing Law’ means any law in operation in the Federation or any part thereof immediately before Merdeka Day.”
4. “... natives” — this presumably means persons born there.
5. The definition of “Malay” in this clause for the purposes of this article is different from that in article 160(2) for the purposes of this constitution generally.
6. *Cf.* article 8(2).

90. (1) Nothing in this Constitution¹ 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

(2) Notwithstanding anything in this Constitution,¹ the existing law in the State of Trengganu with respect to Malay holdings³ 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 reservations⁴ 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.

Notes

1. Cf. article 8(2).
2. This clause relates to adat perpatch — the custom of the Malays of these two States — as modified by legislation.
3. The adat temenggong — Malay customary law — of Trengganu is partly codified in the Administration of Islamic Law Enactment, 1955 (No. 4).
4. See article 89, especially clause (6).

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.¹

(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.

Note

1. It would appear that this clause is directory, not mandatory, for it is difficult to conceive of any person or authority having a right that the government should follow a particular policy.

Chapter 5 — National development

92. (1) If, after a recommendation from an expert committee and after consultation with the National Finance Council,¹ the National Land Council² and the Government of any State concerned, the Yang di-Pertuan Agong³ is satisfied⁴ 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 Agong³ 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.⁵

(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 Article⁶ 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 Federation 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.

Notes

1. Article 108 governs the National Finance Council.
2. See article 91.
3. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
4. This formula seems to leave challenge in the courts open only on the ground of bad faith. See note 4 to article 15.
5. The clause makes the parliamentary fields of legislation unrestricted, but does not validate any Act of Parliament which attempts something which, apart from this clause, neither Parliament nor a State Legislative Assembly could achieve, e.g. infringement of a fundamental liberty.
6. See articles 83-87.

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

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.

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;¹ 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,² 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

(3) Nothing in this Constitution⁴ 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 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.

Notes

1. See article 79(1).
2. See paragraphs 2-4 of the State List (list II of the ninth schedule), note 3 to article 74.
3. Merdeka Day was 31st August 1957.
4. See article 80.
5. See paragraphs 2, 4 and 6 of the State List (list II of the ninth schedule), note 3 to article 74.

95. (1) Subject to Clause (3), in exercising the executive authority of the Federation¹ 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.²

Notes

1. See article 80.
2. "... exclusive legislative authority of a State" — see list II of the ninth schedule, note 3 to article 74. *Cf.* articles 71(3), (4), 76, 80(4), 92, 149(1), 150(5), 159, all of which give Parliament power to legislate on State matters.

CHAPTER 7 — NATIONAL COUNCIL FOR LOCAL GOVERNMENT¹

95A. (1) There shall be a National Council for Local Government consisting of a Minister as Chairman, one representative from each of the States, who shall be appointed by the Ruler² or Governor,³ 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 Council for Local Government and shall have a casting vote.

(3) The National Council for Local Government 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 Council for Local Government to formulate from time to time in consultation with the Federal Government and the

State Governments a national policy for the promotion, development and control of local government throughout the Federation and for the administration of any laws relating thereto; and the Federal and State Governments shall follow the policy so formulated.

(6) It shall also be the duty of the Federal Government and the Government of any State to consult the National Council for Local Government in respect of any proposed legislation dealing with local government, and it shall be the duty of the National Council for Local Government to advise those Governments on any such matter.

(7) The Federal Government or the Government of any State may consult the National Council for Local Government in respect of any other matter relating to local government, and it shall be the duty of the National Council for Local Government to advise that Government on any such matter.

Notes

1. Chapter 7 was added by the Constitution (Amendment) Act, 1960 (No. 10), section 12.
2. See note 3 to article 70.
3. See note 4 to article 70.

Note : Transitional Provision Affecting Part VI.

PART XIII

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.

PART VII

FINANCIAL PROVISIONS

96.¹ No tax² or rate³ shall be levied by or for the purposes of the Federation except by or under the authority of federal law.⁴

Notes

1. This article came into force on 31st August 1957 : see article 165(4).
2. "Tax" appears to mean a sum of money exacted from an individual or body otherwise than as payment for goods or services supplied, and otherwise than by enforcement of a contract, trust, liability in tort or penal law sanction. See *A.-G. v. Wilts. United Dairies* (1922) 91 L.J.K.B. 897; *China Navigation Co. v. A.-G.* [1932] 2 KB. 197;

Glasbrook Bros. v. Glamorgan C.C. [1925] A.C. 270; *Triefus & Co. Ltd. v. Post Office* [1957] 2 Q.B. 352. By article 160(2): “‘Tax’ includes an impost or a duty but does not include a rate levied for local purposes or a fee for services rendered.”

3. “Rate” appears to mean an impost exacted by a public authority other than the federal or a State government, commonly a local government tax on the occupation of land calculated as a percentage of the annual value.

4. By article 160(2): “‘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.”

97.¹ (1) All revenues and moneys howsoever raised or received by the Federation shall, subject to the provisions of this Constitution² and of federal law,³ be paid into and form one fund, to be known as the Federal Consolidated Fund.⁴

(2) All revenues and moneys howsoever raised or received by a State shall, subject to Clause (3) and to any law,⁵ be paid into and form one fund, to be known as the Consolidated Fund of that State.⁶

(3) If in accordance with State law any Zakat, Fitrah, Bait-ul-Mal or similar Muslim revenue is raised,⁷ 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.

Notes

1. This article came into force on 1st January 1958 : see article 165(1), the Financial Procedure Ordinance, 1957 (No. 62), section 2, and L.N. No. 2 of 1958.

2. See articles 103 and 110(5).

3. As to the meaning of “federal law,” see note 4 to article 96. See also the Financial Procedure Ordinance, 1957 (No. 62), sections 9-12.

4. See articles 98-100, 104, 110(5), and the Financial Procedure Ordinance, 1957 (No. 62), sections 6-8.

5. By article 160(2): “‘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.” “‘Written law’ includes this Constitution and the Constitution of any State.”

6. See the Audit Ordinance, 1957 (No. 60), sections 5(2) and 9(6).

7. See article 11(2) and paragraph 1 of the State list of legislative matters, note 3 to article 74.

98.¹ (1) There shall be charged on the Consolidated Fund,² in addition to any grant, remuneration or other moneys so charged by any other Article³ or federal law⁴— (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 charges⁵ include interest, sinking fund charges, the repayment or amortisation of debt,⁵ and all expenditure in connection with the raising of loans on the security of the Consolidated Fund² and the service and redemption of debt created thereby.

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97.

2. See article 97.

3. Charges are made by the following articles : 35(1), civil lists; 105(4), the Auditor-General's remuneration; 109(4), federal grants to States; 114(5), remuneration of members of the Election Commission; 125(6) ; remuneration of Supreme Court judges; 143(2), remuneration of members of Commissions governed by part X.

4. As to the meaning of "federal law," see note 4 to article 96.

5. By article 160(2): "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."

99.¹ (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;² 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

(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 a trust and to be applied in accordance with the terms of the trust.³

(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.

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97. *Cf.* article 102(b).
2. See article 98(1).
3. See article 100. See also the Financial Procedure Ordinance, 1957 (No. 62), section 15.

100.¹ The heads of expenditure to be met from the Consolidated Fund but not charged thereon,² 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.

Notes

1. This article came into force on 1st January 1958: see note 1 to article 97. *Cf.* article 102(b).
2. See article 99(2)(b).

101.¹ If in respect of any financial year it is found — (a) that the amount appropriated by the Supply Act² 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 Act² 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,² 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.²

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97. *Cf.* article 102(b).
2. See article 100.

102.¹ 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.³

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97.
2. See article 100.
3. There can be no challenge in a court of law, for the very fact that Parliament does this is conclusive evidence that it appeared to Parliament to be desirable to do so.

103.¹ (1) Parliament may by law provide for the creation of a Contingencies Fund² 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.³

(2) Where any advance is made in accordance with Clause (1), a supplementary estimate shall be presented and a Supply Bill⁴ introduced as soon as possible for the purpose of replacing the amount so advanced.

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97.
2. Such a fund was created by the Financial Procedure Ordinance, 1957 (No. 62), section 11.
3. See article 109(5).
4. See article 100.

104.¹ (1) Subject to Clause (2), no moneys shall be withdrawn from the Consolidated Fund² unless they are—(a) charged on the Consolidated Fund;³ or (b) authorised to be issued by a Supply Act;⁴ 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 Fund² except in the manner provided by federal law.⁵

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97.
2. See article 97.
3. See article 98.
4. See articles 100, 101, 103.
5. As to the meaning of “federal law,” see note 4 to article 96.

105.¹ (1) There shall be an Auditor-General,² 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.³

(4) Parliament shall by law provide for the remuneration of the Auditor-General,² 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.

(6) Subject to the provisions of this Article, the terms and conditions of service of the Auditor-General shall be determined by federal law⁴ and, subject to the provisions of federal law,⁴ by the Yang di-Pertuan Agong.⁵

Notes

1. This article came into force on 31st August 1957: see article 165(4).
2. See the Audit Ordinance, 1957 (No. 60). See also article 175.
3. Removal of Supreme Court judges is governed by article 125.
4. As to the meaning of "federal law," see note 4 to article 96. See also note 2, above.
5. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).

106.¹ (1) The accounts of the Federation and of the States shall be audited and reported on by the Auditor-General.²

(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 public authorities³ and bodies administering public funds, as may be provided by federal law.²

Notes

1. This article came into force on 31st August 1957: see article 165(4).
2. See article 105. See also the Audit Ordinance, 1957 (No. 60).
3. By article 160(2): "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."

107.¹ (1) The Auditor-General² shall submit his reports³ 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,³ or to the accounts of any public authority exercising powers conferred by State law,⁵ shall be submitted to the Ruler or Governor of that State, who shall cause it to be laid before the Legislative Assembly.

Notes

1. This article came into force on 31st August 1957: see article 165(4).
2. See article 105.
3. See article 106.
4. See note 3 to article 106.
5. By article 160(2): “‘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.”

108.¹ (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;² (b) the assignment to the States of the whole or any portion of the proceeds of any federal tax or fee;³ (c) the annual loan requirements of the Federation and the States and the exercise by the Federation and the States of their borrowing powers;⁴ (d) the making of loans to any of the States;⁴ (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 Constitution⁵ or federal law⁶ 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.

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97.
2. See article 109.
3. See article 110.
4. See article 111.

5. See article 109(1) (b) and tenth schedule, part II, paragraph 2 (note 2 to article 109); article 109(6).

6. As to the meaning of “federal law,” see note 4 to article 96.

109.¹ (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; ² (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; ³ 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 ⁴ 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

(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 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.⁶

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97.

2. The provisions of parts I and II of the tenth schedule are as follows.

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.

See also article 108(4) (a).

3. See article 108 (4) (g).

4. See article 108 (4) (a).

5. See article 98(1).

6. See the Financial Procedure Ordinance, 1957 (No. 62), section 12.

110¹ (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 Schedule² 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 sections 1, 3, 4, 5, 6, 7, 8, 12 or 14 of Part III of the Tenth Schedule² or for any source of revenue so substituted another source of revenue of substantially equal value.³

(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

(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;⁵ 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;⁵ and the amounts receivable by the States under Clause (3) shall be charged on the Consolidated Fund.⁶

Notes

1. This article came into force on 1st January 1958 : see note 1 to article 97.
2. Part III of the tenth schedule is as follows.

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.

3. See article 108 (4) (b).

4. See article 108(4) (g).

5. See article 97(1).

6. See article 98(1).

111.¹ (1) The Federation shall not borrow² except under the authority of federal law.³

(2) A State shall not borrow² except under the authority of State law,⁴ and State law⁴ shall not authorise a State to borrow except from the Federation⁵ or, for a period not exceeding twelve months, from a bank approved for that purpose by the Federal Government.

Notes

1. This article came into force on 31st August 1957: see article 165(4).
2. By article 160(2) : “‘Borrow’ includes the raising of money by the grant of annuities, and ‘loan’ shall be construed accordingly.”
3. As to the meaning of “federal law,” see note 4 to article 96. See also article 108(4) (c).
4. As to the meaning of “State law,” see note 5 to article 107. See also article 108(4) (c) ; Financial Procedure Ordinance, 1957 (No. 62), section 28.
5. See article 108(4) (d).

112¹ (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.

Note

1. This article came into force on 1st January 1958 : see note 1 to article 97.

Note: Temporary and Transitional Provisions affecting Part VII

PART XIII

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 provisions of Part VII shall come into operation on Merdeka Day, that is to say, Articles 96, 105 to 107 and 111.

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.

PART VIII ELECTIONS

113. (1) There shall be an Election Commission,¹ to be constituted in accordance with Article 114, which, subject to the provisions of federal law,² 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.

(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,³ and State law⁴ 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,⁵ but any such rules shall have effect subject to the provisions of federal law.²

Notes

1. See the Election Commission Ordinance, 1957 (No. 76).
2. As to the meaning of "federal law," see note 4 to article 96. As to provisions of federal law governing the conduct of elections, see the Elections Ordinance, 1958 (No. 33).
3. The federal capital is governed by article 154. Under the Federal Capital Act, 1960 (No. 35), there will be no such elections.
4. As to the meaning of "State law," see note 5 to article 107.
5. For the rules made, see L.N. 110/1960.

114. (1) The Election Commission¹ shall be appointed by the Yang di-Pertuan Agong² 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 Agong² 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.³

(4) Notwithstanding anything in Clause (3), the Yang di-Pertuan Agong may by order remove from office any member of the Election Commission if such member—
(a) is an undischarged bankrupt; or (b) engages in any paid office or employment outside the duties of his office; or (c) is a member of either House of Parliament or of the Legislative Assembly of a State.⁴

(5) Parliament shall by law provide for the remuneration of members of the Election Commission,⁵ and the remuneration so provided shall be charged on the Consolidated Fund.⁶

(6) The remuneration⁷ and other terms of office of a member of the Election Commission shall not be altered to his disadvantage after his appointment.

Notes

1. See article 113.
2. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
3. Removal of Supreme Court judges is governed by article 125. But *cf.* clause (4) of this article.
4. This is a new clause (4) substituted by the Constitution (Amendment) Act, 1960 (No. 10), section 13.

Presumably if grounds exist under this clause removal will take place.
5. Provision is made by the Election Commission Ordinance, 1957 (No. 76), sections 9 and 10.
6. See article 98(1); Election Commission Ordinance, 1957 (No. 76), section 11.
7. By article 160(2): “‘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.”

115. (1) The Election Commission¹ 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 Agong² determine.

(2) All public authorities³ 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.²

Notes

1. See articles 113 and 114.
2. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
3. As to the meaning of “public authorities,” see note 3 to article 106.

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.¹

(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 quota² of each State is as nearly equal to the electoral quota² of the Federation as it can be without causing undue disparity³ between the population quota² of that State and the population quota² 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 quota² of the State as may be after making due allowance³ 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 quota² 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; (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.

Notes

1. This article did apply to the first election to the House of Representatives, held in August 1959 : see article 171.
2. See clause (5).
3. “Undue disparity” is a matter for the discretion of the Election Commission : see article 113(1). This is a directory clause. *Cf. Harper v. Home Secretary* [1955] Ch. 238. Similar observations apply to considerations for which “due allowance” must be made under clause (4).

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.

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.¹

Note

1. As to the procedure, see the Election Offences Ordinance, 1954 (No. 9), part VII, as amended by the Election Offences (Amendment) Ordinance, 1959 (No. 10), sections 13 and 14.

119. (1) Every citizen¹ who — (a) has attained the age of twenty-one years on the qualifying date;² and (b) is resident³ in a constituency on such qualifying date² or, if not so resident,³ is an absent voter,⁴ 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;⁵ 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.⁷

(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 mind⁸ or is serving a sentence of imprisonment;⁹ or (b) having before the qualifying date² been convicted in any part of the Commonwealth of 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,¹⁰ and “absent voter” means in relation to any constituency any citizen who is registered as an absent voter in respect of that constituency under the provisions of any law¹¹ relating to elections.¹²

Notes

1. See articles 14-31, 170.

2. See clause (4).

3. As to the meaning of “resident,” *cf.* note 5 to article 5 and note 7 to article 20. See clause (2).

4. See clause (4).

5. See the Election Offences Ordinance, 1954 (No. 9), parts II-V, and the Election Offences (Amendment) Ordinances, 1955, (No. 10) and 1959 (No. 10).

6. This clause is reproduced as substituted by the Constitution (Amendment) Act, 1960 (No. 10), section 14(a).

7. Presumably he may be resident, or deemed to be resident, elsewhere. See note 3, above.

8. See the Mental Disorders Ordinance, 1952 (No. 31).

9. There is no restriction as to the country of conviction or length of sentence, or even, apparently, that there should be a conviction at all. *Cf.* article 18(4), article 25(1) (c), article 48(1) (e) and paragraph (b) of this clause.

10. See the Elections Ordinance, 1958 (No. 33), section 11.

11. Elections Ordinance, 1958 (No. 33).

12. This clause is reproduced as amended by the Constitution (Amendment) Act, 1960 (No. 10), section 14(b).

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.

Note: Constituencies for First Elections

171. (1) Article 116 shall not apply to the first election to the House of Representatives,¹ 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 States² 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		

Notes

1. This election was held in August 1959.

2. These elections were held shortly before the first election to the House of Representatives.

PART IX

THE JUDICIARY

121. The judicial power¹ of the Federation shall be vested in a Supreme Court and such inferior courts² as may be provided by federal law.³

Notes

1. "...the judicial power is concerned with the ascertainment, declaration and enforcement of the rights and liabilities of the parties as they exist, or are deemed to exist, at the moment the proceedings are instituted ..." (*per* Isaacs and Rich JJ. in *Waterside Workers' Federation of Australia v. Alexander (J.W.) Ltd.* (1918) 25 C.L.R. 434, 463, cited with approval by Viscount Simonds, giving the opinion of the Judicial Committee of the Privy Council in *A.-G. for Australia v. R. and Boilermakers' Society of Australia* [1957] A.C. 288, 310).

2. The provisions of the United States constitution, article 3, section 1, and the Australian constitution, section 71, are similar. See Nicholas, *Australian Constitution*, 2nd ed., pp. 360-2 and authorities there cited. In the *Boilermakers'* case [1957] A.C. 288, the Privy Council decided that the Australian constitution was based on the separation of powers, and that judicial functions could be conferred only on courts and courts could have only judicial functions and those which were incidental to judicial functions,

3. By article 160(2): "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."

The Supreme Court is governed by articles 122-131 and by federal law. Legislation governing courts consists of the Courts Ordinance, 1948 (No. 43), and the Courts (Amendment) Ordinances, 1950 (No. 2), 1951 (No. 29), 1953 (No. 49), and 1959 (No. 24). There are (from the bottom upwards) penghulu's courts, magistrate's courts, Sessions Courts, and the Supreme Court consisting of a High Court and Court of Appeal. All do civil and criminal business.

As to appeals to the Privy Council, see article 131.

122. (1) The Supreme Court shall consist of a Chief Justice and other judges; ¹ 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. ²

(3) In appointing the Chief Justice the Yang di-Pertuan Agong shall act on the advice of the Prime Minister, after consulting the Conference of Rulers; and in appointing the other judges of the Supreme Court he shall act on the advice of the Prime Minister, after consulting the Conference of Rulers and considering the advice of the Chief Justice. ³

(4)⁴

Notes

1. See articles 123-125.
2. See clause (3).
3. This clause is reproduced as substituted by the Constitution (Amendment) Act 1960 (No. 10), section 15(a).
4. Clause (4) was repealed by the Constitution (Amendment) Act, 1960, section 15(b).

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 Court² or a member of the judicial and legal service³ 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.⁴

Notes

1. See articles 14-31. *Cf.* article 174(3).
2. Under the Advocates and Solicitors Ordinance, 1947 (No. 4), as amended by the Advocates and Solicitors (Amendment) Ordinances, 1950 (No. 34), 1951 (No. 44), 1952 (No. 38), 1955 (No. 11), and 1956 (No. 3).
3. See articles 132(1) (b), 138.
4. *Cf.* article 174(2), (4).

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 Schedule¹ — (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.

Note

1. The oath is as follows.

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.”

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 Agong¹ 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 of 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 who hold or have held office as judge of the Supreme Court or, if it appears to the Yang di-Pertuan Agong expedient to make such appointment, 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.²

(5) Pending any reference and report under Clause (3) the Yang di-Pertuan Agong may on the recommendation of the Prime Minister, or the Prime Minister after consulting the Chief Justice, suspend a judge of the Supreme Court from the exercise of his functions.²

(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.³

(7) The remuneration⁴ 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.⁵

(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.

Notes

1. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).

2. Clauses 4 and 5 are reproduced as amended by the Constitution (Amendment) Act, 1960 (No. 10), section 16.

3. See article 98(1). Provision is made by the Judges of the Supreme Court (Remuneration) Ordinance, 1958 (No. 17).

4. By article 160(2): “‘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.”

5. See *O’Byrne v. Minister for Finance* [1959] I.R. 1.

126. The Supreme Court shall have power to punish any contempt of itself.

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.

128. (1) The Supreme Court shall have such original, appellate and revisional jurisdiction as may be provided by federal law.¹

(2) The Supreme Court shall, to the exclusion of any other court,² have jurisdiction in any dispute between States or between the Federation and any State.

Notes

1. See note 3 to article 121.
2. But see article 87.

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.¹

Note

1. Before this constitution came into force on 31st August 1957, under the Federation of Malaya Agreement, 1948, clause 66, the validity of Ordinances could not be questioned in any court. Clause 153 established an Interpretation Tribunal, with the Chief Justice as chairman, whose opinions were binding and unchallengeable.

130. The Yang di-Pertuan Agong¹ 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.

131. (1) The Yang di-Pertuan Agong¹ 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;² 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 law³ 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.

(3) Any appeal under this Article shall be subject to such conditions as to leave or otherwise as may be prescribed by federal law³ 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.⁴

Notes

1. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).

2. The arrangements have been made : see Federal Government Gazette Notification No. 1254 of 1958. Procedure is governed by the Appeals from the Supreme Court Ordinance, 1958 (No. 16).
3. As to the meaning of “federal law,” see note 3 to article 121. As to the cases in which an appeal lies under federal law, see the Appeals from the Supreme Court Ordinance, 1958 (No. 16), section 3. Application for leave to appeal is governed by sections 4 and 8.
4. See the Appeals from the Supreme Court Ordinance, 1958 (No. 16), sections 5-7.

Note: Transitional Provisions affecting Part IX

PART XIII

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 162,¹ any other court then exercising jurisdiction and functions shall, until federal law² otherwise provides, continue to exercise them.

Notes

1. Article 162 continues existing law.
2. As to the meaning of “federal law,” see note 3 to article 121.

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.

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.

PART X

PUBLIC SERVICES

132. (1) For the purposes of this Constitution, the public services are — (a) the armed forces;¹ (b) the judicial and legal service;² (c) the general public service of the Federation;³ (d) the police force;⁴ (e) the railway service;⁵ (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,⁶ 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 law⁷ and, subject to the provisions of any such law, by the Yang di-Pertuan Agong;⁸ and the qualifications for appointment and conditions of service of persons in the public service of any State may be regulated by State law⁷ and, subject to the provisions of any such law, by the Ruler or Governor of that State.

(2A) Except as expressly provided by this Constitution,⁹ every person who is a member of any of the services mentioned in paragraphs (a), (b), (c), (d), (e) and (f) of Clause (1) holds office during the pleasure of the Yang di-Pertuan Agong, and, except as expressly provided by the Constitution of the State, every person who is a member of the public service of a State holds office during the pleasure of the Ruler or Governor.¹⁰

(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 or Assistant Minister¹¹ 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; (f) persons holding such diplomatic posts in the general public service of the Federation as the Yang di-Pertuan Agong may by order prescribe;¹² 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.

Notes

1. See article 137.
2. See article 138.
3. See article 139.
4. See article 140. The word “force” was substituted for the word “service” by the Constitution (Amendment) Act, 1960 (No. 10), section 17(a).
5. See article 141.

6. See articles 105 (Auditor-General), 125 (Supreme Court judges), 135 (general restrictions on dismissal or reduction in rank); 136 (no discrimination on racial grounds); 145(6) (present Attorney-General), 147 (pensions, gratuities, etc.), 176 (pre-Merdeka officials), 180 (rights under the tenth schedule to the Federation of Malaya Agreement, 1948).

7. As to the meaning of “federal law” and “State law,” see article 160(2).

8. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).

9. See articles 105(3) (Auditor-General), 125 (Supreme Court judges), 135, 145 (Attorney-General), 176 and 180.

10. Clause 2A was added by the Constitution (Amendment) Act, 1960, section 17(b).

11. The reference to assistant ministers was added by the Constitution (Amendment) Act, 1960, section 17(c).

12. Paragraph (f) was added by the Constitution (Amendment) Act, 1960, section 17(d).

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.¹

(2) Where a member of any of the public services² is employed— (a) partly for federal purposes¹ and partly for State purposes, or (b) for the purposes of two or more States, the proportion, if any, of his remuneration¹ 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,¹ be determined by agreement or, in default of agreement, by the Commission whose jurisdiction extends to him.³

Notes

1. As to the meaning of “federal law,” “federal purposes,” and “remuneration,” see article 160(2).

2. See article 132(1).

3. See article 179.

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 remuneration¹ 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.

Note

1. As to the meaning of “remuneration,” see article 160(2).

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 rank¹ by an authority 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 rank¹ without being given a reasonable opportunity of being heard.²

(3)³

Notes

1 Reverting a probationer to his former substantive post is not reduction in rank: *Munusamy v. Public Services Commission* (1960) 26 M.L.J. 220.

2. What is reasonable is for the court to decide. See *Surinder Singh Kanda v. The Government of the Federation of Malaya* (1960) 26 M.L.J. 115. It seems that certiorari will lie to quash an order infringing clause (2): *Munusamy v. Public Services Commission* (1960) 26 M.L.J. 220.

3. Clause (3) was repealed by the Constitution (Amendment) Act, 1960 (No. 10), section 18.

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.¹

Note

1. See article 132(4). See also article 8. Cf. article 153(5).

137. (1) There shall be an Armed Forces Council, which shall be responsible under the general authority of the Yang di-Pertuan Agong¹ 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,² 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 Chief of the Armed Forces Staff who shall be appointed by the Yang di-Pertuan Agong;³ (d) a civilian member, being the person performing the duties of the office of Secretary for Defence, who shall act as Secretary to the Council; (e) two senior staff officers of the Federation Armed Forces, appointed by the Yang di-Pertuan Agong;³ (f) a senior officer of the Royal Malayan Navy, appointed by the Yang di-Pertuan Agong;³ (g) a senior officer of the Royal Malayan Air Force, appointed by the Yang di-Pertuan Agong;³ (h) two, if any, additional members, whether military or civilian, appointed by the Yang di-Pertuan Agong.⁴

(4) The Armed Forces Council may act notwithstanding a vacancy in its membership and may, subject to this Constitution and to federal law,² 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 matter for which the Council considers it necessary or expedient to provide for the better performance of its functions.

Notes

1. *Cf.* article 41.
2. As to the meaning of “federal law,” see article 160(2).
3. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
4. Clause 3 is reproduced as substituted by the Constitution (Amendment) Act, 1960 (No. 10), section 19. See also note 3.

[Article 138 was repealed by the Constitution (Amendment) Act, 1960 (No. 10), section 20.]

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 (b), (c) and (f) of Clause (1) of Article 132, other than the Auditor-General, to members of the public services of the State of Malacca and the State of Penang, and, to the extent provided by Clause (2), to members of the public service of any other State.¹

(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 law² 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 Schedule³ 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.⁴

(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.

Notes

1. Clause 1 is reproduced as amended by the Constitution (Amendment) Act, 1960 (No. 10), section 21,
2. As to the meaning of “federal law,” see article 160(2).
3. See note 4 to article 71.
4. See article 132(1).

140. (1) There shall be a Police Force Commission whose jurisdiction shall extend to all persons who are members of the police force and which, subject to the provisions of any existing law,¹ shall be responsible for the appointment, confirmation, emplacement on the permanent or pensionable establishment, promotion, transfer and exercise of disciplinary control over members of the police force.

(2) Federal law² may provide for the exercise of other functions by the Police Force Commission.

(3) The Police Force Commission shall consist of the following members, that is to say, — (a) the Minister for the time being charged with responsibility for the police, who shall be Chairman; (b) the Commissioner of Police; (c) the person performing the duties of the office of Secretary to the Ministry under the Minister for the time being charged with responsibility for the police; (d) a member of the Public Services Commission,³ appointed by the Yang di-Pertuan Agong;⁴ (e) two other members, appointed by the Yang di-Pertuan Agong.⁴

(4) The Yang di-Pertuan Agong⁴ may designate as special posts the posts of Commissioner of Police, Deputy Commissioner of Police and any other posts in the police force which in his opinion are 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 Yang di-Pertuan Agong on the recommendation of the Police Force Commission.

(5) Before acting in accordance with Clause (4) on the recommendation of the Police Force 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.

(6) The Police Force Commission may 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 Commission, including the delegation to any member of the Commission or the police force or board of officers of such force of its powers or duties; (c) the consultation by the Commission with persons other than its members; (d) the procedure to be followed by the Commission 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 Commission considers it necessary or expedient to provide for the better performance of its functions.

(7) In this Article “transfer” does not include transfer without change of rank within the police force.⁵

Notes

1. As to the meaning of “existing law,” see article 160(2).
2. As to the meaning of “federal law,” see article 160(2).
3. See article 139.
4. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
5. Article 140 is reproduced as substituted by the Constitution (Amendment) Act, 1960 (No. 10), section 22.

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 in his discretion but after considering the advice of the Prime Minister and after consultation with the Conference of Rulers,¹ 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.²

(3) One of the members of the Railway Service Commission shall be appointed from among the members of the Public Services Commission³ 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 services² 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.

Notes

1. The words “in his discretion . . . Conference of Rulers” were added by the Constitution (Amendment) Act, 1960 (No. 10), section 23.
2. See article 132(1).
3. See article 139.

142. (1) Subject to paragraph (a) of Clause (3) of Article 140, a¹ 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;² (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 services² 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 Agong³ 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 law⁴ 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.⁵

Notes

1. The preceding words were substituted by the Constitution (Amendment) Act, 1960 (No. 10), section 24.

2. See article 132(1).

3. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).

4. As to the meaning of “federal law,” see article 160(2).

5. The oath is as follows.

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.”

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.¹

(2) Parliament shall by law provide for the remuneration of any member of the said Commission² other than a member for whose remuneration as holder of any other office provision is made by federal law;³ and the remuneration so provided shall be charged on the Consolidated Fund.⁴

(3) The remuneration³ 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.

Notes

1. See article 125.
2. Provision is made by the Service Commissions Ordinance, 1957 (No. 75), sections 10-12 and schedule.
3. As to the meaning of “federal law” and “remuneration,” see article 160(2).
4. See article 98(1); Service Commissions Ordinance, 1957 (No. 74), section 12(1).

144. (1) Subject to the provisions of any existing law¹ and to the provisions of this Constitution,² 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.³

(2) Federal law¹ may provide for the exercise of other functions by any such Commission.

(3) The Yang di-Pertuan Agong⁴ 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; 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.⁵

(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.

(5A) Federal law¹ and, subject to the provisions of any such law, regulations made by the Yang di-Pertuan Agong³ may, notwithstanding the provisions of Clause (1) of Article 135, provide for the exercise by any officer in a service to which the jurisdiction of a Commission to which this Part applies extends, or by any board of such officers, of any of the functions of the Commission under Clause (1): Provided that— (a) no such law or regulation may provide for the exercise by any such officer

or board of officers of any power of first appointment to the permanent or pensionable establishment, or to any power of promotion (other than promotion to an acting appointment); and (b) any person aggrieved by the exercise by any such officer or board of officers of any power of disciplinary control may appeal to the Commission within such time and in such manner as may be prescribed by any such law or regulations, and the Commission may make such order thereon as it may consider just.⁶

(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,¹ make rules regulating its procedure and specifying the number of its members which are to constitute a quorum.

Notes

1. As to the meaning of "existing law" and "federal law," see article 160(2).

2. See note 6 to article 132.

3. See *Surinder Singh Kanda v. The Government of the Federation of Malaya* (1960) 26 M.L.J. 115.

4. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).

5. This clause is reproduced as amended by the Constitution (Amendment) Act, 1960 (No. 10), section 25(a).

6. Clause 5A was added by the Constitution (Amendment) Act, 1960, section 25(b).

145. (1) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint a person who is qualified to be a judge of the Supreme Court¹ to be the Attorney-General for the Federation.

(2) It shall be the duty of the Attorney-General to advise the Yang di-Pertuan Agong or the Cabinet or any Minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Yang di-Pertuan Agong² or the Cabinet, and to discharge the functions conferred on him by or under this Constitution or any other written law.³

(3) The Attorney-General 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.

(4) In the performance of his duties the Attorney-General shall have the right of audience in, and shall take precedence over any other person appearing before, any court or tribunal in the Federation.

(5) Subject to Clause (6), the Attorney-General shall hold office during the pleasure of the Yang di-Pertuan Agong and may at any time resign his office and, unless he is a member of the Cabinet, shall receive such remuneration as the Yang di-Pertuan Agong may determine.

(6) The person holding the office of Attorney-General immediately prior to the coming into operation of this Article shall continue to hold the office on terms and conditions not less favourable than those applicable to him immediately before such coming into operation and shall not be removed from office except on the like grounds and in the like manner as a judge of the Supreme Court.⁴

Notes

1. See article 123.
2. The Yang di-Pertuan Agong must act on ministerial advice: see article 40(1).
3. As to the meaning of “written law,” see article 160(2).
4. See article 125.

Article 145 is reproduced as substituted by the Constitution (Amendment) Act, 1960 (No. 10), section 25.

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.

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,¹ 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,² the date on which the award was made; (b) in relation to an award made after Merdeka Day² to or in respect of any person who was a member of any of the public services¹ before Merdeka Day,² 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 services¹ on or after Merdeka Day,² 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.³

Notes

1. See article 132(1).
2. Merdeka Day was 31st August 1957.
3. See articles 132(4), 180(3).

148. (1) References in this Constitution to a Commission to which this Part applies are, unless the context otherwise requires, references to any of the Commissions established under Articles 139 to 141.¹

(2) In this Part “ex officio member” includes a Minister, the Chief Justice and other judges of the Supreme Court, and the Attorney-General.²

Notes

1. Clause 1 is reproduced as amended by the Constitution (Amendment) Act, 1960 (No. 10), section 27(a), (b).

2. Clause 2 is reproduced as amended by the Constitution (Amendment) Act, 1960, section 27(c).

PART XI

SPECIAL POWERS AGAINST SUBVERSION, AND EMERGENCY POWERS

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 — (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or (e) which is prejudicial to the security of the Federation or any part thereof, 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 10,¹ or would apart from this Article be outside the legislative power of Parliament;² and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.³

(2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, cease to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this Article.⁴

Notes

1. These are fundamental liberties provisions.

2. This makes Parliament sovereign, i.e. Parliament has unlimited legislative powers when using the recital. The only law so far passed under this article is the Internal Security Act, 1960 (No. 18).

3. Clause 1 is reproduced as substituted by the Constitution (Amendment) Act, 1960 (No. 10), section 28(a).

4. Clause 2 is reproduced as substituted by the Constitution (Amendment) Act, 1960, section 28(b).

150. (1) If the Yang di-Pertuan Agong¹ is satisfied² 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 satisfied² 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 have effect if resolutions are passed by both Houses annulling such Proclamation or ordinance, but without prejudice to anything previously done by virtue thereof or to the power of the Yang di-Pertuan Agong to issue a new Proclamation under Clause (1) or promulgate any ordinance under Clause (2).³

(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),⁴ 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,⁵ 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.

Notes

1. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
2. Presumably the court can investigate questions of bad faith but nothing else.
3. Clause 3 is reproduced as substituted by the Constitution (Amendment) Act, 1960, (No. 10), section 29.
4. This makes the fields of parliamentary legislation unlimited, and Clause (6) gives Parliament power to infringe the fundamental liberties.
5. Part II deals with fundamental liberties.

151. (1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention¹ — (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 citizen² 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 made recommendations thereon to the Yang di-Pertuan Agong.³

(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 Agong⁴ from among persons who are or have been judges of the Supreme Court or are qualified to be judges of the Supreme Court,⁵ and two other members, who shall be appointed by the Yang di-Pertuan Agong⁴ 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.

Notes

1. “Preventive detention” here apparently means detention without trial, which, apart from articles 149, 150 and 163, would be illegal as contrary to article 5(4).
2. See articles 14-31. Apparently a non-citizen is more vulnerable.
3. The words “made... Agong” were substituted by the Constitution (Amendment) Act, 1960 (No. 10), section 30.
4. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
5. See article 123.

PART XII

GENERAL AND MISCELLANEOUS

152. (1) The national language¹ 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,² 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,² 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.

Notes

1. There is no definition of “national language” in the constitution. Presumably it refers to the language which, subject to the exceptions in this article, is to be used in business transacted by federal authorities.

2. Merdeka Day was 31st August 1957.

153. (1) It shall be the responsibility of the Yang di-Pertuan Agong¹ to safeguard the special position of the Malays² and the legitimate interests of other communities in accordance with the provisions of this Article.³

(2) Notwithstanding anything in this Constitution,⁴ but subject to the provisions of Article 40 and of this Article, the Yang di-Pertuan Agong¹ shall exercise his functions under this Constitution⁵ and federal law⁶ in such manner as may be necessary to safeguard the special position of the Malays² and to ensure the reservation for Malays² of such proportion as he may deem reasonable of positions in the public service⁷ (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,⁶ then, subject to the provisions of that law and this Article, of such permits and licences.

(3) The Yang di-Pertuan Agong¹ may, in order to ensure in accordance with Clause (2) the reservation to Malays² of positions in the public service⁷ 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 Constitution⁵ and federal law⁶ 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 law⁶ a permit or licence is required for the operation of any trade or business the Yang di-Pertuan Agong¹ 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 to ensure the reservation of such proportion of such permits or licences for Malays² as the Yang di-Pertuan Agong¹ 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,⁴ 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;² 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, 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.

Notes

1. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
2. As to the meaning of “Malay,” see article 160(2).
3. See article 38(5). See also article 159(5).
4. See article 8.
5. See note 1 to article 40.
6. As to the meaning of “federal law,” and “existing law,” see article 160(2).
7. See article 132(1).

154. (1) Until Parliament otherwise determines, the municipality of Kuala Lumpur shall be the federal capital.

(2) Notwithstanding anything in Part VI, Parliament shall have exclusive power to make laws with respect to the boundaries of the federal capital.¹

(3)²

Notes

1. Clause (2) is reproduced as amended by the Constitution (Amendment) Act, 1960 (No. 10), section 31(a). See the Federal Capital Act, 1960 (No. 35).

2. Clause (3) was repealed by the Constitution (Amendment) Act, 1960, section 31(b).

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 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.

156. Where lands, buildings, or hereditaments are occupied for public purposes by or on behalf of the Federation, a State or a 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.

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.

158. (1) Nothing in this Constitution shall be taken to prohibit the making or continuance or 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.

159. (1) Subject to the following provisions of this Article, the provisions of this Constitution may be amended by federal law.¹

(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.²

(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,³ Sixth,⁴ or Seventh Schedule;⁵ (b) any amendment incidental to or consequential on the exercise of any power to make law conferred on Parliament by any provision of this Constitution⁶ 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.

Notes

1. “... federal law” here means any Act of Parliament.
2. The only law passed under this clause is the Constitution (Temporary Amendment) Ordinance, 1958 (No. 42), which amended article 34.
3. See note 2 to article 31.
4. See note 6 to article 43 and note 1 to article 59.
5. See note 1 to article 45.
6. See note 1 to article 74.

160. (1) The Interpretation and General Clauses Ordinance, 1948, as in force immediately before Merdeka Day¹ shall, to the extent specified in the Eleventh Schedule,² 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 Menteri 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;³

“ 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, ⁴ 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; ¹

“ Federal law ” means — (a) any existing law⁶ relating to a matter with respect to which Parliament has power to make laws, being a law continued in operation under Part XIII, (b) any Act of Parliament;

“ Federal List ” means the First List set out in the Ninth Schedule;³

“ 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,⁷ 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 ¹ 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, ⁸ 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 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 law⁸ 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 (6) in the case of any State, includes, except in Article 181 (2) and the Third⁹ and Fifth¹⁰ 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 law⁶ 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;¹¹

“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,¹ 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 of 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.

Notes

1. Merdeka Day was 31st August 1957.
2. The provisions of the eleventh schedule are as follows.

ELEVENTH SCHEDULE

PROVISIONS OF INTERPRETATION AND GENERAL CLAUSES ORDINANCE, 1948 APPLIED FOR INTERPRETATION OF CONSTITUTION

Section	Subject Matter
2 (56)	Meaning of "month".
2 (61)	Meaning of "person" and "party".
2 (88)	Definition of "subsidiary legislation".
2 (94)	Construction of masculine gender.
2 (95)	Construction of singular or plural.
2 (96)	Meaning of "writing".
2 (98)	Meaning of "year".
7	Forms.
21	Exercise of powers between enactment and coming into operation.
28	Construction of provisions as to exercise of powers and duties.
29	Power to appoint includes power to dismiss.
30	Construction of enabling words.
32	Construction of references to officer by official designation.
33	Power to provide for temporary exercise of functions of absent or disabled officer.
35	Time of commencement.
36	Computation of time.
38	Provision when no time prescribed.
40A	Solicitor-General to act for Attorney-General.
42	Public officers.
44	Construction of references to laws.
46	English text to prevail.

3. See note 2 to article 74.
4. See note 4 to article 71.
5. "Law" is defined in this Clause.
6. "Existing law" is defined in this clause.
7. "Written law" is defined in this clause.
8. See article 132(1).
9. See note 4 to article 32 and note 4 to article 33.
10. See note 1 to article 38.
11. See note 3 to article 74.

161. Except as otherwise expressly provided,¹ this Constitution shall come into operation on Merdeka Day.

Note

1. See articles 165(1), 171(1).

PART XIII

TEMPORARY AND TRANSITIONAL PROVISIONS

162. (1) Subject to the following provisions of this Article and Article 163, the existing laws¹ shall, until repealed by the authority having power to do so under this Constitution,² continue in force on and after Merdeka Day,³ with such modifications as may be made therein under this Article and subject to any amendments made by federal¹ or State law.¹

(2) Where any State law¹ amends or repeals an existing law¹ made by the Legislature of a State, nothing in Article 75 shall invalidate the amendment or repeal by reason only that the existing law,¹ 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 160.⁴

(3) References in any existing law¹ to the Federation established by the Federation of Malaya Agreement, 1948, and its territories, and of⁵ 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,³ 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 Agong⁶ 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.¹

(4) The Yang di-Pertuan Agong⁶ may, within a period of two years beginning with Merdeka Day,³ by order make such modifications⁷ in any existing law,¹ 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 in relation to a law made by the Legislature of a State he shall consult the Government of that State,³

(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 law¹ which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications⁷ as may be necessary to bring it into accord with the provisions of this Constitution.⁹

(7) In this Article “modification” includes amendment, adaptation and repeal.

Notes

1. As to the meaning of “existing law,” “federal law” and “State law,” see article 160(2).

2. See article 74.

3. Merdeka Day was 31st August 1957. As this clause continues only “existing laws,” i.e., according to article 160(2), laws in operation immediately before Merdeka Day, other provision had to be made for laws passed but not in force before that day. Such provision was made by the Pending Laws (Validation) Ordinance, 1957 (No. 58).

4. The effect of this clause is that, despite the general rule that a federal law prevails over an inconsistent State law, State law may amend a federal law in force before Merdeka Day where that federal law was originally enacted by the State legislature and where it relates to a matter on which, on and after Merdeka Day, State legislatures may legislate.

5. “... to ... ”?

6. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).

7. See clause (7).

8. Many orders have been made under this clause. For an example, see the Federation Constitution (Modification of Laws) Order, 1959 (L.N. 233). The power of modification is not limited to what appears “necessary” to bring the law into accord with the constitution, but extends to what appears “expedient” for that purpose. This is very difficult to understand. If a law is not in accord with the constitution, any modification making it do so is necessary for that purpose. If the law is in accord with the constitution, it cannot be modified, expediently or otherwise, so as to make it accord. Possibly the formula “necessary or expedient” is to give latitude as to the manner in which the law is made to accord with the constitution.

9. One would expect that, were clause (6) not present, an existing law inconsistent with the constitution would be held void to the extent of

the inconsistency. However, clause (1), which continues existing laws in force, does not limit itself to existing laws consistent with the constitution; and article 4(1), which states that the constitution is the supreme law of the Federation, continues: “and any law *passed after Merdeka Day* which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.” (My italics). These considerations, coupled with the use of the word “may” in clause (6), render it difficult to decide whether a court or tribunal must make such modifications or has a discretion to apply the law in its inconsistent form. The idea of some laws being modified and some not is peculiar, and even more so is the idea of some courts modifying a law and other courts applying the same law unmodified. *Cf. Chia Khin Sze v. Menteri Besar, State of Selangor* (1958) 24 M.L.J. 105.

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 Day¹ 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 Agong² 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.³

(4) While the said Ordinance continues in force any subsidiary legislation which could have been made thereunder immediately before Merdeka Day¹ may be validly made thereunder notwithstanding that it is inconsistent with any provision of this Constitution,⁴ and Parliament may, notwithstanding anything in this Constitution,⁴ by law amend or repeal any provision thereof.

Notes

1. Merdeka Day was 31st August 1957.
2. The Yang di-Pertuan Agong must act on ministerial advice : see article 40(1).
3. The Ordinance and subsidiary legislation were replaced by the Internal Security Act, 1960 (No. 18).
4. See, in particular, part II (fundamental liberties). *Cf.* articles 149-151.

164. [See pp. 56-58]

165. [See pp. 286-287]

166. [See pp. 58-59]

167. [See pp. 59-60]

168. [See p. 60]

169. [See p. 276]

170. [See vol. 1, pp. 202-203]
171. [See p. 291]
172. [See p. 296]
173. [See p. 296]
174. [See pp. 296-297]
175. [See p. 287]

176. (1) Subject to the provisions of this Constitution and any existing law,¹ all persons serving in connection with the affairs of the Federation immediately before Merdeka Day² shall continue to have the same powers and to exercise the same functions on Merdeka Day² 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.

Notes

1. As to the meaning of “existing law,” see article 160(2).
2. Merdeka Day was 31st August 1957.
 177. [See p. 60]
 178. [See p. 60]

179. Any agreement in force immediately before Merdeka Day¹ relating to the proportion of the remuneration² 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.²

Notes

1. Merdeka Day was 31st August 1957.
2. As to the meaning of “remuneration” and “federal law,” see article 160(2).

180. (1) The Tenth Schedule to the Federation of Malaya Agreement, 1948, shall continue in force on and after Merdeka Day,¹ 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 law² 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.

Notes

1. Merdeka Day was 31st August 1957.
2. As to the meaning of “federal law,” see article 160(2).

PART XIV

(See p. 60)

SCHEDULES

FIRST SCHEDULE

[The first schedule consists of the oath of applicants for registration or naturalisation as citizens. It is set out in note 1 to article 18.]

SECOND SCHEDULE

[The second schedule contains supplementary provisions relating to citizenship. It is set out in note 2 to article 31 and in various other notes indicated in that note.]

THIRD SCHEDULE

[The third schedule consists of four parts. Part I contains provisions relating to the election of the Yang di-Pertuan Agong, part III relates to his removal, and part IV contains general provisions relating to parts I-III; these are set out in note 4 to article 32. Part II provides for the election of the Deputy Supreme Head, and is set out in note 4 to article 33.]

FOURTH SCHEDULE

[The fourth schedule gives the oaths of office of the Yang di-Pertuan Agong and the Deputy Supreme Head, and is set out in note 2 to article 37.]

FIFTH SCHEDULE

[The fifth schedule governs the Conference of Rulers, and is set out in note 1 to article 38.]

SIXTH SCHEDULE

[The sixth schedule gives the oath of office and allegiance, set out in note 6 to article 43, the oath as a member of Parliament and of allegiance, set out in note 1 to article 59, and the oath of secrecy, set out in note 6 to article 43.]

SEVENTH SCHEDULE

[The seventh schedule governs election, appointment and retirement of senators, and is set out in note 1 to article 45.]

EIGHTH SCHEDULE

[The eighth schedule contains the provisions which must be inserted in all State constitutions. It is set out in notes 4 and 5 to article 71.]

NINTH SCHEDULE

[The ninth schedule consists of the legislative lists. The federal and concurrent lists are set out in note 2 and the State list in note 3 to article 74.]

TENTH SCHEDULE

[The tenth schedule deals with federal grants and sources of revenue assigned to the States. It is set out in note 2 to article 109 and note 2 to article 110.]

ELEVENTH SCHEDULE

[The eleventh schedule lists the provisions of the Interpretation and General Clauses Ordinance, 1948, applied for the interpretation of this constitution. It is set out in note 2 to article 160.]

TWELFTH SCHEDULE

[The twelfth schedule lists the provisions of the Federation of Malaya Agreement, 1948, which were continued in application to the Legislative Council from 31st August 1957 until Parliament was elected in August 1959, together with a list of the modifications made to those provisions. It is set out after article 164 on pp. 57-58.]

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