

more than nine months after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

See s. 63D Act; for duration of Council of State and Legislative Assembly see M.C. R. 278; for power of dissolution see M.C. R. 283; see the *Indian Legislative Rules (Appendix G)*.

22.—(1) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and, if any non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant.

Membership of both chambers.

(2) If an elected member of either chamber of

the Indian legislature becomes a member of the other chamber, his seat in such first mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

See s. 63E Act; official defined s. 46 (s. 134 Act); proposal to make members of Governor-General's Executive Council to be members of both chambers see M.C. R. 282, see the *Non-official (Definition) Rules* under notes to s. 46 below.

23.—(1) Subject to the provisions of this Act, Supplementary provisions as to composition of Legislative Assembly and Council of State. provision may be made by rules under the principal Act as to—

(a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and

- (b) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and
- (c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matters incidental or ancillary thereto; and
- (d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and
- (e) the final decision of doubts or disputes as to the validity of an election; and
- (f) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any State in India may be nominated as a member of the Council of State or the Legislative Assembly.

See s. 64 Act; for analogous provisions *re* the Governor's Legislative Council see s. 7(4)—s. 72A(4) Act; for power to make rules see s. 44—s. 129A Act.

For nominated members M-C. R. 275; for qualification of member of Council of State M-C. R. 278, Fran. C. R. 41; and of the Legislative Assembly see M-C. R. 273 Fran. C. R. 36; for nomina-

tion of a ruling prince M-C. R. 278; see the *Council of State Electoral Rules* in the Gazette of India Extraordinary, July 29, 1920, pp. 729-55. See the *Legislative Assembly Electoral Rules*, *ibid* pp. 756-90.

24.—(1) Sub-sections (1) and (3) of section sixty-seven of the principal Act (which relate to the classes of business which may be transacted by the Indian legislative council) shall cease to have effect.

Business and proceedings in Indian legislature.

(2) Provision may be made by rules under the principal Act for regulating the course of business, and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

See s. 67(1) Act.

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers: Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose,

in order to discuss any difference of opinion which has arisen between the two chambers.

See s. 67(3) Act.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of the principal Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

See s. 67(4) Act; for return for reconsideration of Bill passed by Local Council see s. 12—s. 81A Act.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

See s. 67(5) Act.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under the principal Act. The first standing orders shall be made by the Governor-General in Council, but may, with the consent of the Governor-General, be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under the principal Act shall, to the extent of that repugnancy but not otherwise, be void.

See s. 67(6) Act.

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

See s. 67(7) Act; for analogous provisions in the case of Governor's Legislative Council see s. 11(7)—s. 72D (7) Act.

For rules regulating the course of business in the Indian Legislature see the *Indian Legislative Rules (Appendix G)*, M-C. R. 286; for procedure of standing committees see M-C. R. 285; for amendment by one chamber of Bills passed by the other see *Indian Legislative Rules (Appendix G)* Rules 32-36; for joint sitting and conference of both chambers see *ibid* Rules 37-42. See *Standing Orders (appendix I)*.

25.—(1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the legislative assembly, nor shall they be open to discussion by either chamber at the time when the annual state-

ment is under consideration, unless the Governor-General otherwise directs—

- (i) interest and sinking fund charges on loans;
and
- (ii) expenditure of which the amount is prescribed by or under any law; and
- (iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council;
and
- (iv) salaries of chief commissioners and judicial commissioners; and
- (v) expenditure classified by the order of the Governor-General in Council as—
 - (a) ecclesiastical;
 - (b) political;
 - (c) defence.

(4) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the legislative assembly in the form of demands for grants.

(6) The legislative assembly may assent or refuse its assent to any demand or may reduce the amount

referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the legislative assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the legislative assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, by the legislative assembly.

(8) Notwithstanding anything in this section the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

See s. 67A Act; for provisions *re* Budget in Governor's Legislative Council see s. 11 cf. s. 72D Act; for Governor-General's certificate that Bill is essential for safety, etc. of British India see s. 26 cf. s. 67B Act; for certificate that a Bill affect the safety or tranquillity of British India see s. 27(2) cf. s. 67(2A) Act.

"This is a new provision for the submission of the Indian Budget to the vote of the Legislative Assembly, on the understanding that this body is constituted as a chamber reasonably representative in character and elected directly by suitable constituencies. The Committee consider it necessary (as suggested to them by the consolidated fund charges in the Imperial Parliament) to exempt certain charges of a special or recurring nature, which have been set out in the Bill, *e.g.*, the cost of defence, the debt charges and certain fixed salaries, from the process of being voted. But otherwise they would leave the Assembly free to criticise and vote the estimates of expenditure of the Government of India. It is not, however, within

the scheme of the Bill to introduce at the present stage any measure of responsible government into the central administration, and a power must be reserved to the Governor-General in Council of treating as sanctioned any expenditure which the Assembly may have refused to vote if he considers the expenditure to be necessary for the fulfilment of his responsibilities for the good government of the country. It should be understood from the beginning that this power of the Governor-General in Council is real, and that it is meant to be used if and whenever necessary."—Jt. S. C. R. 1.

For Governor-General's power in case of measures essential to the discharge of his responsibility or to the safety or tranquillity of India see M.C. R. 279-80; for Budget Procedure see *Indian Legislative Rules* (Appendix G) Rules 43-50.

26.—(1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

Provision for case
of failure to pass
legislation.

- (a) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

- (b) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to :

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith and thereupon the Act shall have such

force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

See s. 67B Act; for analogous case when the Governor certifies about a Bill relating to a reserved subject see s. 13—s. 72E Act; for power of Governor-General to assent to such Bill see s. 13(2)—s. 72E(2) Act; for his power to authorise expenditure in emergency see s. 25(8); —s. 67A (8), Act.

“For reasons which prompted the rejection of the process of certification by a Governor to a grand committee in a province, the Committee are opposed to the proposals in the Bill which would have enabled the Governor-General to refer to the Council of State, and to obtain by virtue of his official majority in that body any legislation which the lower chamber refuse to accept, but which he regarded as essential to the discharge of his duties. The Committee have no hesitation in accepting the view that the Governor-General in Council should in all circumstances be fully empowered to secure legislation which is required for the discharge of his responsibilities; but they think it is unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. They believe that in such a case it would add strength to the Government of India to act before the world on its own responsibility. In order, however, that Parliament may be fully apprised of the position and of the considerations which led to this exceptional procedure, they advise that all Acts passed in this manner should be laid before Parliament, who would naturally consider the opinion of the standing committee already referred to.”—Jt. S. C. R. 1

For certificate by Governor-General see M-C. R. 279, 281; cf. *Indian Legislative Rules (Appendix G) Rule 21.*

27.—(1) In addition to the measures referred to in sub-section (2) of section sixty-seven of the principal Act, as requiring the previous sanction of the Governor-General, it shall not be

Supplemental provisions as to powers of Indian legislature.

lawful without such previous sanction to introduce at any meeting of either chamber of the Indian legislature any measure—

- (a) regulating any provincial subject, or any part of a provincial subject, which has not been declared by rules under the principal Act to be subject to legislation by the Indian legislature;
- (b) repealing or amending any Act of a local legislature;
- (c) repealing or amending any Act or ordinance made by the Governor-General.

See s. 67(2) Act, "Provincial subject" see s. 1(1)(a) Act.

(2) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction.

See s. 67(2A) Act; for certificate that the Bill is essential for safety, etc. of India see s. 26—s. 67B. Act.

For certificate by Governor-General see M.C. R. 279, 281; see *Indian Legislative Rules (Appendix G) Rule 21.*

28.—(1) The provision in section thirty-six of the principal Act, imposing a limit on the number of members of the Governor-General's executive council, shall cease to have effect.

Composition of
Governor-General's
executive council.

(2) The provision in section thirty-six of the principal Act as to the qualification of members of the council shall have effect as though the words " at the time of their appointment " were omitted, and as though after the word " Scotland " there were inserted the words " or a pleader of the High Court " and as though " ten years " were substituted for " five years."

See s. 36(3) Act.

(3) Provision may be made by rules under the principal Act as to the qualifications to be required in respect of members of the Governor-General's executive council, in any case where such provision is not made by section thirty-six of the principal Act as amended by this section.

See s. 36(5) Act.

(4) Sub-section (2) of section thirty-seven of the principal Act (which provides that when and so long as the Governor-General's executive council assembles in a province having a governor, the governor shall be an extraordinary member of the council) shall cease to have effect.

" The recommendation of the Committee is that the present limitation on the number of the members of the Governor-General's Executive Council should be removed, that three members of that

Council should continue to be public servants or ex-public servants who have had not less than ten years' experience in the service of the Crown in India; that one member of the Council should have definite legal qualifications, but that those qualifications may be gained in India as well as in the United Kingdom; and that not less than three members of the Council should be Indians. In the connection it must be borne in mind that the members of the Council drawn from the ranks of the public servants will, as time goes on, be more and more likely to be of Indian rather than of European extraction."—Jt. S. C. R. 1.

For removal of limit on the number of members of the Governor-General's Executive Council see M.-C. R. 271-72.

29.—(1) The Governor-General may at his discretion appoint, from among the members of the Legislative Assembly, council secretaries who shall hold office during his pleasure and discharge such duties in assisting members of his executive council as he may assign to them.

(2) There shall be paid to council secretaries so appointed such salary as may be provided by the Indian legislature.

(3) A council secretary shall cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly.

Sec. 43A Act; for Council Secretary in Provincial Council see s. 4(4) —s. 52(4) Act.

"The Committee have inserted this provision to allow of the selection of members of the Legislature who will be able to undertake duties similar to those of the Parliamentary Under-Secretaries in this country. It should be entirely at the discretion of the Governor-General to say to which departments these officers should be attached, and to define the scope of their duties."—Jt. S. C. R. 1.

See M-C. R. 275. Presumably a non-official Council Secretary cannot be said to accept office in the service of the Crown and so s. 22 will not apply to him. It is to be noted further, that this section says that the Council Secretary is to be a member of the Legislative Assembly.

PART III.

SECRETARY OF STATE IN COUNCIL.

30.—The salary of the Secretary of State, the salaries of his under-secretaries, and any other expenses of his department may, notwithstanding anything in the principal Act, instead of being paid out of the revenues of India, be paid out of moneys provided by Parliament, and the salary of the Secretary of State shall be so paid.

Payment of salary of Secretary of State, etc., out of moneys provided by Parliament.

See s. 2(3) Act.

“The Committee think that all charges of the India Office, not being “agency” charges should be paid out of moneys to be provided by Parliament.”—Jt. S. C. R. 1.

See M-C. R. 294; under s. 47(2) this section has come into force from the 1st April, 1920 (cf. Notification No. 298-G in the Calcutta Gazette, April 14, 1920, Part IA page 369).

31.—The following amendments shall be made in section three of the principal Act in relation to the composition of the Council of India, the qualification, term of office, and remuneration of its members :—

Council of India.

- (1) The provisions of sub-section (1) shall have effect as though “eight” and “twelve”

were substituted for "ten" and "fourteen" respectively, as the minimum and maximum number of members, provided that the council as constituted at the time of the passing of this Act shall not be affected by this provision, but no fresh appointment or re-appointment thereto shall be made in excess of the maximum prescribed by this provision.

See s. 3(1) Act.

- (2) The provisions of sub-section (3) shall have effect as if "one-half" were substituted for "nine," and "India" were substituted for "British India."

See s. 3(3) Act.

- (3) In sub-section (4) "five years" shall be substituted for "seven years" as the term of office of members of the council, provided that the tenure of office of any person who is a member of the council at the time of the passing of this Act shall not be affected by this provision.

See s. 3(4) Act.

- (4) The provisions of sub-section (8) shall cease to have effect and in lieu thereof the following provisions shall be inserted :
"There shall be paid to each member

of the Council of India the annual salary of twelve hundred pounds: provided that any member of the council who was at the time of his appointment domiciled in India shall receive, in addition to the salary hereby provided, an annual subsistence allowance of six hundred pounds.

Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament."

See s. 3(8) Act.

- (5) Notwithstanding anything in any Act or rules, where any person in the service of the Crown in India is appointed a member of the council before completion of the period of such service required to entitle him to a pension or annuity, his service as such member shall, for the purpose of any pension or annuity which would be payable to him on completion of such period, be reckoned as service under the Crown in India whilst resident in India.

See s. 3(9) Act.

"The Committee are not in favour of the abolition of the Council of India. They think that, at any rate for some time to come, it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they are convinced that, if no such Council existed, the Secretary of State would have

to form an informal one if not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority, although they would not debar the re-adjustment of its work so as to make it possible to introduce what is known as the portfolio system. They think, also, that its constitution may advantageously be modified by the introduction of more Indians into it and by shortening of the period of the service upon it, in order to ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending so long a period as seven years in England."—Jt. S. C. R. 1.

See M-C. R 293.

32.—(1) The provision in section six of the principal Act which prescribes the quorum for meetings of the Council of India shall cease to have effect, and the Secretary of State shall provide for a quorum by directions to be issued in this behalf.

(2) The provision in section eight of the principal Act relating to meetings of the Council of India shall have effect as though "month" were substituted for "week."

(3) Section ten of the principal Act shall have effect as though the words "all business of the council or committees thereof is to be transacted" were omitted, and the words "the business of the Secretary of State in Council or the Council of India shall be transacted, and any order made or act done in accordance with such direction shall, subject to the provisions of this Act, be treated as being an order of the Secretary of State in Council" were inserted in lieu thereof.

33.—The Secretary of State in Council may, notwithstanding anything in the principal Act, by rule regulate and restrict the exercise of the powers of superintendence, direction, and control, vested in the Secretary of State and the Secretary of State in Council, by the principal Act, or otherwise, in such manner as may appear necessary or expedient in order to give effect to the purposes of this Act.

*Relaxation of
control of Secre-
tary State.*

Before any rules are made under this section relating to subjects other than transferred subjects, the rules proposed to be made shall be laid in draft before both Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but upon such approval being given the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an Address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may

annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

See s. 19A Act: "Subjects other than transferred," i.e., Central subjects and Provincial subjects, which are reserved, see s. 1(1)(a) and (4)—s. 45A Act; for power to make rules, see s. 44—s. 129A Act.

"The Committee have given most careful consideration to the relations of the Secretary of State with the Government of India, and through it with the provincial governments. In the relations of the Secretary of State with the Governor-General in Council the Committee are not of opinion that any statutory change can be made, so long as the Governor-General remains responsible to Parliament, but in practice the conventions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large elected majority. In the exercise of his responsibility to Parliament, which he cannot delegate to any one else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.

This examination of the general proposition leads inevitably to the consideration of one special case of non-intervention. Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements, which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests in the Crown; and neither of

these limitations finds a place in any of the statutes in the British Empire. It can only therefore be assured by an acknowledgment of a convention. Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. In the opinion of the Committee, therefore, the Secretary of State should as far as possible avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.

The relations of the Secretary of State and of the Government of India with provincial governments should, in the Committee's judgment, be regulated by similar principles, so far as the reserved subjects are concerned. It follows, therefore, that in purely provincial matters, which are reserved, where the provincial government and legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the central government is closely concerned. Over transferred subjects, on the other hand, the control of the Governor-General in Council, and thus of the Secretary of State, should be restricted in future within the narrowest possible limits, which will be defined by rules under sub-clause 3 of Clause 1 of the Bill.

Rules under this clause will be subsidiary legislation of sufficient moment to justify their being brought especially to the notice of Parliament. The Secretary of State might conveniently discuss them with the Standing Committee whose creation has been recommended in this Report; and Parliament would not doubt consider the opinion of this body when the rules come, as it is proposed that they should do, for acceptance by positive resolution in both Houses. The same procedure is recommended by the Committee for adoption in the case of rules of special or novel importance under other clauses of the Bill. It must be for the Secretary of State to decide which of the many rules that will fall to be drafted by the Government of India

can be sufficiently dealt with by the ordinary process of laying on the table of Parliament for a certain number of days. In deciding this point, however, he may naturally have recourse to the advice of the Standing Committee, should it happen to be in session, and obtain their assistance in determining which rules deserved to be made the subject of the more formal procedure by positive resolution."

—Jt. S. C. R. 1.

See M-C. R. 260, 291-92.

The following Rule has been made by the Secretary of State under the provisions of section 33 of the Government of India Act, 1919.

The powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council under the Act or otherwise shall, in relation to transferred subjects, be exercised only for the following purposes, namely:—

- (1) to safeguard the administration of central subjects;
- (2) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement;
- (3) to safeguard Imperial interests;
- (4) to determine the position of the Government of India in respect of questions arising between Indian and other parts of the British Empire; and
- (5) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretary of State in Council, under or in connection with or for the purposes of the following provisions of the Act, namely, section 29A, section 30 (1A), Part VII A, or of any rules made by or with the sanction of the Secretary of State in Council. (*see Notification No. 835 G, in the Gazette of India, December, 18, 1920*).

"This rule [which as already stated is exactly parallel with the corresponding rule (49) under section 1] is confined to relaxation of the Secretary of State's control over transferred subjects, and the Committee consider that no statutory divestment of control, except over the transferred field, is either necessary or desirable. It is open to the Secretary of State to entrust large powers, administrative and

financial, to the Governor-General in Council and the provincial Governors in Council, and he will no doubt be largely influenced in deciding whether or not to require reference to himself in any given case, or whether to interpose his orders when reference has been made, by the attitude of provincial public opinion as expressed in the Legislative Council. But these matters cannot be regulated by statutory rules, and any authority which the Secretary of State may decide to pass on to the official governments in India will be a mere delegation of his own authority and responsibility, for the exercise of which in relation to central and reserved subjects he must remain accountable to Parliament."—Jt. S. C. R. 2.

34.—So much of section five of the principal Act as relates to orders and communications sent to India from the United Kingdom and to orders made in the United Kingdom, and sections eleven, twelve, thirteen and fourteen of the principal Act, shall cease to have effect, and the procedure for the sending of orders and communications to India and in general for correspondence between the Secretary of State and the Governor-General in Council or any local government shall be such as may be prescribed by order of the Secretary of State in Council.*

35.—His Majesty may by Order in Council make provision for the appointment of a High Commissioner for India. High Commissioner for India in the United Kingdom, and for the pay, pension, powers, duties, and conditions of employment of the High Commissioner and of his assistants; and the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of

State in Council whether under the principal Act or otherwise in relation to making contracts, and may prescribe the conditions under which he shall act on behalf of the Governor-General in Council or any local government.

See s. 29A Act.

"This clause carries out the recommendation of Lord Crewe's Committee to appoint a High Commissioner for India, to be paid out of Indian revenues, who will perform for India functions of agency, as distinguished from political functions, analogous to those now performed in the offices of the High Commissioners of the Dominions."—Jt. S. C. R. 1.

See the *Order in Council*, dated the 13th August, 1920 (printed in the *Gazette of India*, October 2, 1920), making provisions for the appointment of a High Commissioner for India.

PART IV.

THE CIVIL SERVICES IN INDIA.

36.—(1) Subject to the provisions of the principal Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may

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in India.

provide by rules to the contrary) reinstate any person in that service who has been dismissed.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services :

• Provided that every person appointed before the commencement of this Act by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any

of them as the Secretary of State in Council may consider just and equitable.

(3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of this Act. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874. (37 & 38 *Vict.*, c. 12.)

(4) For the removal of doubts it is hereby declared that all rules or other provisions in operation at the time of the passing of this Act, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied, or added to by rules or laws made under this section.

See s. 96B. Act.

"The Committee do not conceal from themselves that the position of the public services in working the new constitutions in the

provinces will, in certain circumstances, be difficult. They are of opinion that these services have deserved the admiration and gratitude of the whole Empire. They know that some members of the services regard the wisdom of the proposed changes with grave misgiving, and that some fear that those changes will not tend to the welfare of the Indian masses. They are convinced, however, that the services will accept the changing conditions and the inevitable alteration in their own position, and devote themselves in all loyalty to making a success, so far as in them lies, of the new constitution.

In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.

The Committee think that every precaution should be taken to secure to the public servants the career in life to which they looked forward when they were recruited, and they have introduced fresh provisions into this clause to that end. If friction occurs, a readjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his ministers and the officers through whom they will have to work. But if there are members of the service whose doubts as to the changes to be made are so deeply-rooted that they feel they cannot usefully endeavour to take part in them, then the Committee think it would only be fair to those officers that they should be offered an equivalent career elsewhere, if it is in the power of His Majesty's Government to do so, or, in the last resort, that they should be allowed to retire on such pension as the Secretary of State in Council may consider suitable to their period of service."—Jt. S. C. R. 1.

For the Governor's duty to protect members of public services see M-C. R. 240, 325; Fn. Com. R. 64, 67, 70; *Instructions to Governors* (Appendix K) 7(4); for the case for increasing the Indian element in the public services and institution of recruitment in India, see M-C. R. 313, 316; for pay and pensions see M-C. R. 319-20.

37.—(1) Notwithstanding anything in section ninety-seven of the principal Act the Secretary of State may make appointments to the Indian Civil Service of persons domiciled in India, in accordance with such rules as may be prescribed by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of the Council of India.

Any rules made under this section shall not have force until they have been laid for thirty days before both Houses of Parliament.

See s. 97(6) Act; for appointment in India to the I. C. S. of persons domiciled in British India see s. 99 Act.

(2) The Indian Civil Service (Temporary Provisions) Act, 1915 (*5 & 6 Geo. 5, c. 87*), (which confers power during the war and for a period of two years thereafter to make appointments to the Indian Civil Service without examination), shall have effect as though “three years” were substituted for “two years.”

For recruitment in India and percentage of appointments to be made in India see M.C. R. 316-17. Rules have recently been made by the Secretary of State regarding appointments to the Indian Civil Service. These may be summarised as follows:—

The open competitive examination in London will be the main but not the only channel of entry. It will be open to all, subject to the reservation that Indians successful in the examinations will not be allotted to Burma nor successful Burmans to India. The age limit is reduced to 21 from 23, but the probationary period of study for the final examination is extended to two years. The course of probation will include Law, Jurisprudence, the study of Indian languages, History and Economics.

The recommendation in the Montagu-Chelmsford report that the percentage of Indian recruitment should be one-third, rising by one-and-half per cent. annually for ten years to a maximum of forty-eight per cent. is adopted as an all round figure to cover the total Indian recruitment, which will be obtained chiefly in India by four methods; namely, separate competitive examination, nomination, promotion from the Provincial Civil Service, and appointment from the bar. The first of these will be the main source of Indian recruitment and will always exceed the nominations by over two-thirds. The age limit for the examination will be from 19 to 23. Successful candidates as well as nominated ones will come to Britain for two years' probation. The number of Indians to be recruited in India will be fixed yearly after taking account of the number recruited otherwise.

38.—(1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Secretary of State in Council. Each member shall hold office for five years, and may be re-appointed. No member shall be removed before the expiry of his term of office, except by order of the Secretary of State in Council. The qualifications for appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Secretary of State in Council.

(2) The public service commission shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council.

See s. 96C Act. First Despatch from the Government of India para 55.

39.—(1) An auditor-general in India shall be appointed by the Secretary of State in Council, and shall hold office during His Majesty's pleasure. The Secretary of State in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

(2) Subject to any rules made by the Secretary of State in Council, no office may be added to or withdrawn from the public service, and the emoluments of no post may be varied, except after consultation with such finance authority as may be designated in the rules, being an authority of the province or of the Government of India, according as the post is or is not under the control of a local government.

See s. 96D. Act; As to Auditor-General see Fn. Com. R. 73.

40.—Rules made under this Part of this Act shall not be made except with the concurrence of the majority of votes at a meeting of the Council of India.

Rules under
Part IV.

See s. 96E. Act; for other cases where a majority of votes is required see s. 9(1) Act, s. 21 Proviso, Act, s. 28(1) Act, s. 29(1) Act, s. 30(1) Act, s. 97(6) Act, and s. 99(2) Act.

PART V.

STATUTORY COMMISSION.

41.—(1) At the expiration of ten years after the passing of this Act the Secretary of State, with the concurrence of both Houses of Parliament, shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

See s. 84A Act.

“The Committee are of opinion that the Statutory Commission should not be appointed until the expiration of ten years, and that no

changes of substance in the constitution whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended, or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the provincial governments."—Jt. S. C. R. 1.

See M-C. R. 288.

PART VI.

GENERAL.

42.—Notwithstanding anything in section one hundred and twenty-four of the principal Act, if any member of the Governor-General's executive Council or any member of any local government was at the time of his appointment concerned or engaged in any trade or business, he may, during the term of his office, with the sanction in writing of the Governor-General, or, in the case of ministers, of the governor of the province, and in any case subject to such general conditions and restrictions as the Governor-General in Council may prescribe, retain his concern or interest in that trade or business, but shall not, during that term, take part in the direction or management of that trade or business.

Modification of s.
124 of principal
Act.

See s. 124 Proviso Act.

43.—Any assent or disallowance by His Majesty, which under the principal Act is required to be signified through the Secretary of State in Council, shall as from the passing of this Act be signified by His Majesty in Council.

Signification of
Royal Assent.

See s. 69 Act; cf. s. 12(3)—s. 81A. Act; cf. s. 13(2)—s. 72E(2) Act.

44.—(1) Where any matter is required to be prescribed or regulated by rules under the principal Act and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State in Council, and shall not be subject to repeal or alteration by the Indian legislature or by any local legislature.

Power to make
rules.

(2) Any rules made under this Act or under the principal Act may be so framed as to make different provision for different provinces.

(3) Any rules to which sub-section (1) of this section applies shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an Address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be

void, but without prejudice to the validity of anything previously done thereunder :

Provided that the Secretary of State may direct that any rules to which this section applies shall be laid in draft before both Houses of Parliament, and in such case the rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but, upon such approval being given, the rules may be made in the form in which they have been approved, and such rules on being so made shall be of full force and effect, and shall not require to be further laid before Parliament.

See s. 129A. Act; *e.g.*, regarding election and nomination to the Provincial Council under s. 7(4) *cf.* s. 72A. Act; rules regulating course of business there s. 11(5) [s. 72D.(5) Act]; rules *re* election and nomination to the Legislative Assembly and the Council of State s. 23 (s. 64 Act); rules regulating business and procedure in Indian legislature s. 24(2) [s. 67(1) Act].

45.—(1) The amendments set out in Parts I and II of the Second Schedule to this Act, being amendments to incorporate the provisions of this Act in the principal Act, and further amendments consequential on or arising out of those provisions, shall be made in the principal Act, and any question of interpretation shall be settled by reference to the principal Act as so amended. The provisions of the principal Act specified in Part III of

Amendments of principal Act to carry Act into effect, &c.

that schedule, being provisions which are obsolete or unnecessary, or which require amendment in detail, are hereby repealed or modified, and shall be dealt with, in the manner shown in the second column of that schedule.

((2) Every enactment and word which is directed by the Government of India (Amendment) Act, 1916, or by this section and the Second Schedule to this Act, to be substituted for or added to any portion of the Government of India Act, 1915, shall form part of the Government of India Act, 1915, in the place assigned to it by the Government of India (Amendment) Act, 1916, or that schedule; and the Government of India Act, 1915, and all Acts, including this Act, which refer thereto, shall, after the commencement of this Act, be construed as if the said enactment or word had been enacted in the Government of India Act, 1915, in the place so assigned, and, where it is substituted for another enactment or word, had been so enacted in lieu of that enactment or word.

A copy of the Government of India Act, 1915, with the amendments, whether by way of substitution, addition or omission, required by the Government of India (Amendment) Act, 1916, and by this section and the Second Schedule to this Act, shall be prepared and certified by the Clerk of the Parliaments, and deposited with the Rolls of Parliament, and His Majesty's printer shall print, in accordance with the

copy so certified, all copies of the Government of India Act, 1915, which are printed after the passing of this Act, and the Government of India Act, 1915, as so amended, may be cited as "The Government of India Act."

Sub-section (3) of section eight of the Government of India (Amendment) Act, 1916, is hereby repealed.

46.—In this Act the expressions "official" and "non-official," where used in relation to any person, mean respectively a person who is or is not in the civil or military service of the Crown in India :

Definition of
official.

Provided that rules under the principal Act may provide for the holders of such offices as may be specified in the rules not being treated for the purposes of the principal Act or this Act, or any of them, as officials.

See s. 134 Act; cf. s. 14 above (Act 1919); see Notification No. 614-G., dated the 9th September, 1920.

No. 614-G.—In exercise of the powers conferred by section 134 and 129-A of the Government of India Act, the Governor-General in Council, with the sanction of the Secretary of State in Council, is pleased to make the following rules :—

1. (1) These rules may be called the Non-official (Definition) Rules.
- (2) They shall come into force on a date to be appointed by the Governor-General in Council with the approval of the Secretary of State in Council and different dates may be appointed for different parts of India.
2. The holder of any office in the Civil or Military service of

the Crown, if the office is one which does not involve both of the following incidents, namely, that the incumbent

(a) is a whole-time servant of Government and

(b) is remunerated either by salary or fees,

shall not be treated as an official for any of the purposes of the Government of India Act.

3. If any question arises, whether any officer is or is not a whole-time servant of Government for the purposes of Rule 2, the decision of the Governor-General in Council shall be final.

“ These rules have been forwarded by the Government of India since the original drafts were provisionally presented to Parliament, and the Committee consider them the most appropriate solution of the problem they are intended to solve—namely, the settlement of the somewhat complicated question whether the large class of persons such as village officials, government pleaders, law lecturers, etc., who though in receipt of fees or small allowances from the Government are not whole-time Government servants, are to be regarded as officials for the purposes of the Act.”—Jt. S. C. R. 2.

47.—(1) This Act may be cited as the Government of India Act, 1919, and the principal Act, as amended by any Act for the time being in force, may be cited as the Government of India Act.

Short title, commencement, interpretation, and transitory provisions.

(2) This Act shall come into operation on such date or dates as the Governor-General in Council, with the approval of the Secretary of State in Council, may appoint, and different dates may be appointed for different provisions of this Act, and for different parts of India.

On the dates appointed for coming into operation of the provisions of this Act as respects any executive or legislative council all the members of the

council then in office shall go out of office, but may, if otherwise qualified, be re-appointed, re-nominated or re-elected, as the case may be, in accordance with the provisions of the principal Act as amended by this Act.

By Notification No. 828-G, (*see the Gazette of India Extraordinary, December, 17, 1920.*), under Sec. 47 (2), Government of India Act 1919, it is declared that all the provisions of the said Act which have not previously come into operation shall come into operation in the parts of India specified in the first column, on the date specified in the second column, and that the whole of said Act not in operation before the 3rd January, 1921, shall come into operation on that date.

Column I.	Column II.
The Presidency of Madras and the Central Provinces.	17th December, 1920.
The Province of Behar and Orissa.	29th December, 1920.

(3) Any reference in any enactment, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations or orders made under any such enactment, or in any letters patent or other document, to any enactment repealed by the principal Act, shall for all purposes be construed as references to the principal Act as amended by this Act, or the corresponding provision thereof.

(4) Any reference in any enactment in force in India, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations, or orders made under any such enactment, or in any letters patent or other document, to any Indian legislative authority, shall for all purposes be

construed as references to the corresponding authority constituted by the principal Act as amended by this Act.

Cls. (3) & (4), Sec. s. 130 New para Act.

(5) If any difficulty arises as to the first establishment of the Indian legislature or any legislative council after the commencement of this Act or otherwise in first giving effect to the provisions of this Act, the Secretary of State in Council or the Governor-General in Council, as occasion may require, may by order do anything which appears to them necessary for the purpose of removing the difficulty.

Section 7.—First Schedule (not printed here.)

Section 45.—Second Schedule (not printed here.)

Section of Act.	Amendment.
Third Schedule.	<p>The following Schedule shall be substituted for the Third Schedule (Section 98.) :—</p> <p style="text-align: center;">THIRD SCHEDULE.</p> <p style="text-align: center;">OFFICES RESERVED TO THE INDIAN CIVIL SERVICE.</p> <p>A.—<i>Offices under the Governor-General in Council.</i></p> <p>1. The offices of secretary, joint secretary, and deputy secretary in every department except the Army, Marine Education, Foreign, Political and Public Works Departments: Provided that if the office of secretary or deputy secretary in the Legislative Department is filled from among the members of the Indian Civil Service, then the office of deputy secretary or secretary in that department, as the case may be, need not be so filled.</p> <p>2. Three offices of Accountants-General.</p> <p>B.—<i>Offices in the provinces which were known in the year 1861 as "Regulation Provinces."</i></p> <p>The following offices, namely :—</p> <ol style="list-style-type: none"> 1. Member of the Board of Revenue. 2. Financial Commissioner. 3. Commissioner of Revenue. 4. Commissioner of Customs. 5. Opium Agent. 6. Secretary in every department except the Public Works or Marine Departments. 7. Secretary to the Board of Revenue. 8. District or sessions judge. 9. Additional district or sessions judge. 10. District Magistrate. 11. Collector of Revenue or Chief Revenue Officer of a District.

GOVERNMENT OF INDIA ACT.

(5 & 6 Geo. 5, Ch. 61; 6 & 7 Geo. 5, Ch 37; and 9 & 10
Geo 5, Ch 101)

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11. Correspondence between Secretary of State and India.
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17. Establishment of Secretary of State.
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- 19A. Relaxation of control of Secretary of State.

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- 134. Definitions.
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FIRST SCHEDULE.—NUMBER OF MEMBERS OF LEGISLATIVE COUNCILS.

SECOND SCHEDULE.—OFFICIAL SALARIES, &c.

THIRD SCHEDULE.—OFFICES RESERVED TO THE INDIAN CIVIL SERVICE.

FOURTH SCHEDULE.—ACTS REPEALED.

FIFTH SCHEDULE.—PROVISIONS OF THIS ACT WHICH MAY BE REPEALED OR ALTERED BY THE INDIAN LEGISLATURE.

GOVERNMENT OF INDIA ACT.

(5 & 6 Geo. 5, Ch. 61; 6 & 7 Geo. 5, Ch. 37; and 9 & 10 Geo. 5, Ch. 101.)

An Act to consolidate enactments relating to the Government of India.

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

PART I.

HOME GOVERNMENT.

The Crown.

1. The territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King Emperor of India, and all rights which, if the Government of India Act, 1858, (21 & 22 Vict., c. 106.) had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the government of India.

The Secretary of State.

2.—(1) Subject to the provisions of this Act, the Secretary of State has and performs all such or the like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as if the Government of India Act, 1858, (21 & 22 Vict., c. 106.) had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone.

(2) In particular, the Secretary of State may, subject to the provisions of this Act ¹[or rules made thereunder], superintend, direct and control all acts, operations and concerns which relate to the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India.

²[(3) The salary of the Secretary of State shall be

¹ These words were inserted by Part II of Sch. II of the Government of India Act, 1919.

² This sub-section was substituted by *ibid.*

paid out of moneys provided by Parliament, and the salaries of his under-secretaries and any other expenses of his department may be paid out of the revenues of India or out of moneys provided by Parliament.]

See notes under s. 30 Act (1919).

The Council of India.

3.—(1) The Council of India shall consist of such number of members, not less than ^{The Council of} 1[eight] and not more than India. 1[twelve], as the Secretary of State may determine :

²[Provided that the Council as constituted at the time of the passing of the Government of India Act, 1919, shall not be affected by this provision, but no fresh appointment or re-appointment thereto shall be made in excess of the maximum prescribed by this provision.]

(2) The right of filling any vacancy in the Council shall be vested in the Secretary of State.

(3) Unless at the time of an appointment to fill a vacancy in the Council ³[one half] of the then existing members of the Council are persons who have served or resided in [*] ⁴India for at least ten years,

¹ The words "eight" and "twelve" were substituted for the words "ten" and "fourteen" respectively by *ibid.*

² This proviso was added by *ibid.*

³ The word "one-half" was substituted for the word "nine" by Part II of Sch. II of the Government of India Act, 1919.

⁴ The word "British" was omitted by *ibid.*

and have not last left [*] ¹India more than five years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the Council shall hold office except as by this section provided, for a term of ²[five] years :

³[Provided that the tenure of office of any person who is a member of the Council at the time of the passing of the Government of India Act, 1919, shall be the same as though that Act had not been passed.]

(5) The Secretary of State may, for special reasons of public advantage, re-appoint for a further term of five years any member of the Council whose term of office has expired. In any such case the reasons for the re-appointment shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as afore-said, a member of the Council shall not be capable of re-appointment.

(6) Any member of the Council may, by writing signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the Council.

(7) Any member of the Council may be removed

¹ The word "British" was omitted by Sch. I of the Government of India (Amendment) Act 1916.

² The word "five" was substituted for "seven" by Part II of Sch. II of the Government of India Act, 1919.

³ This proviso was inserted by *ibid.*

by His Majesty from his office on an address of both Houses of Parliament.

¹[(8) There shall be paid to each member of the Council of India the annual salary of twelve hundred pounds :

Provided that any member of the Council who was at the time of his appointment domiciled in India shall receive, in addition to the salary hereby provided, an annual subsistence allowance of six hundred pounds.

Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament.

(9) Notwithstanding anything in any Act or rule, where any person in the service of the Crown in India is appointed a member of the Council before the completion of the period of such service required to entitle him to a pension or annuity, his service as such member shall, for the purpose of any pension or annuity which would have been payable to him on completion of such period, be reckoned as service under the Crown in India whilst resident in India.]

See notes under s. 31 Act. (1919).

4.—No member of the Council of India shall be capable of sitting or voting in Parliament.

Seat in Council
disqualification for
Parliament.

¹ Sub-section (8) & (9) of section 3 were substituted for old sub-section (8) by Part II of Sch. II of the Government of India Act, 1919.

5.—The Council of India shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. * * * *¹

6.—(1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, shall be exercised at meetings of the Council at which ²[such number of members are present as may be prescribed by general directions of the Secretary of State.]

(2) The Council may act notwithstanding any vacancy in their number.

7.—(1) The Secretary of State shall be the President and vice-president of the Council of India, with power to vote.

(2) The Secretary of State in Council may appoint any member of the Council to be vice-president thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the Council the Secretary of State, or, in his absence, the vice-president, if present, or, in the absence of both of them, one of

* The remaining words were omitted by *ibid.*

² These words were substituted for "not less than five members are present" by *ibid.*

the members of the Council, chosen by the members present at the meeting, shall preside.

8.—Meetings of the Council of India shall be convened and held as and when the Secretary of State directs, but one such meeting at least shall be held in every
Meetings of Council.
 1[month.)]

9.—(1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to which a majority of votes at a meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.
Procedure at meetings.

(2) In case of an equality of votes at any meeting of the Council, the person presiding at the meeting shall have a second or casting vote.

(3) All acts done at a meeting of the Council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the Council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the Council, who has been present at the meeting, may require that his opinion,

* The word "month" was substituted for the word "week" by Part II of Sch. II of the Government of India Act, 1919.

and any reasons for it that he has stated at the meeting, be also entered in like manner.

10.—The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which ¹[the business of the Secretary of State in Council or the Council of India shall be transacted, and any order made or act done in accordance with such direction shall, subject to the provisions of this Act, be treated as being an order of the Secretary of State in Council.]

Orders and Communications.

²[11.—Subject to the provisions of this Act, the procedure for the sending of orders and communications to India and in general for correspondence between the Secretary of State and the Governor-General in Council or any local government shall be such as may be prescribed by order of the Secretary of State in Council.]

Correspondence
between Secretary
of State and India.

12. }
13. } —²Omitted.
14. }

¹ These words were substituted for "all business of the Council or Committees thereof is to be transacted" by Part II of Schedule II of the Government of India Act, 1919.

² Section 11 was substituted for old Sections 11 to 14 by Part I of Schedule II of *ibid.*

15.—When any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent shall, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of these three months, then within one month after the next meeting of Parliament.

Communication to Parliament as to orders for commencing hostilities.

16.—[*Correspondence by Governor-General with Secretary of State.*] Omitted by Part III of Sch. II of 9 and 10 Geo. 5, Ch. 101. (*Government of India Act, 1919.*)

Establishment of Secretary of State.

17.—(1) No addition may be made to the establishment of the Secretary of State in Council, nor to the salaries of the persons on that establishment, except by an Order of His Majesty in Council, to be laid before both Houses of Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

Establishment of Secretary of State.

(2) The rules made by His Majesty for examinations, certificates, probation or other tests of fitness, in relation to appointments to junior situations in

the civil service, shall apply to such appointments on the said establishment.

(3) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to and promotions in the said establishment, and may remove any officer or servant belonging to the establishment.

18.—His Majesty may, by warrant under the Royal Sign Manual, countersigned
 Pension and by the Chancellor of the Exchequer,
 gratuities. grant to any secretary, officer or servant appointed on the establishment of the Secretary of State in Council, such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted to persons on the establishment of a Secretary of State, or to the personal representatives of such persons, under the laws for the time being in force concerning superannuations and other allowances to persons having held civil offices in the public service or to personal representatives of such persons.

Military Appointments.

19.¹ * * * * In the appointment of officers to His Majesty's army the same provision
 Military appointments. as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the

¹ Certain words were omitted by Part II of Sch. II of the Government of India Act, 1919.