



Government of India Act 1935

1935 CHAPTER 2

PART XI

THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT.

278 Advisers to Secretary of State.

- (1) There shall be a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.
- (2) One-half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before the date of their respective appointments as advisers under this section.
- (3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment:

Provided that—

- (a) any person so appointed may by writing under his hand resign his office to the Secretary of State;
 - (b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.
- (4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.
 - (5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

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- (6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.
- (7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least one-half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter.

In this subsection " prescribed " means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of his advisers the concurrence of at least one-half of those present at the meeting.

- (8) The Council of India as existing immediately before the commencement of Part III of this Act shall be dissolved.
- (9) Notwithstanding anything in the foregoing provisions of this section, a person who immediately before the commencement of Part III of this Act was a member of the Council of India may be appointed under this section as an adviser to the Secretary of State to hold office as such for such period less than five years as the Secretary of State may think fit.

279 Existing accounts of Secretary of State in Council with Bank of England.

- (1) All stock or money standing to the credit of the Secretary of State in Council in the books of the Bank of England at the commencement of Part III of this Act shall, as from that date, be transferred to the credit of the Secretary of State, and any order or instrument with respect to that stock or money executed by the Secretary of State or by such person as may be authorised in writing by the Secretary of State for the purpose, either generally or specially, shall be a sufficient authority and discharge to the Bank in respect of anything done by the Bank in accordance therewith.
- (2) Any directions, authority or power of attorney given or executed by or on behalf of the Secretary of State in Council and in force at the commencement of Part III of this Act shall continue in force until countermanded or revoked by the Secretary of State.

280 Organisation and expenses of India Office.

- (1) As from the commencement of Part III of this Act the salary of the Secretary of State and the expenses of his department, including the salaries and remuneration of the staff thereof, shall be paid out of moneys provided by Parliament.
- (2) Subject to the provisions of the next succeeding section with respect to the transfer of certain existing officers and servants, the Secretary of State may appoint such officers and servants as he, subject to the consent of the Treasury as to numbers, may think fit and there shall be paid to persons so appointed such salaries or remuneration as the Treasury may from time to time determine.
- (3) There shall be charged on and paid out of the revenues of the Federation into the Exchequer such periodical or other sums as may from time to time be agreed between the Governor-General and the Treasury in respect of so much of the expenses of the

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department of the Secretary of State as is attributable to the performance on behalf of the Federation of such functions as it may be agreed between the Secretary of State and the Governor-General that that department should so perform.

281 Transfer of existing personnel.

- (1) All persons who immediately before the commencement of Part III of this Act were officers or servants on the permanent establishment of the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and shall be deemed to be permanent Civil Servants of the State.
- (2) Subject as hereinafter provided, the provisions of the Superannuation Acts, 1834 to 1935, and of any orders, rules and regulations made thereunder shall apply in relation to a person so transferred as aforesaid as they apply in relation to a person entering the Civil Service with a certificate from the Civil Service Commissioners, and for the purposes of those Acts, orders, rules and regulations his service shall be reckoned as if service on the permanent establishment of, and employment by, the Secretary of State hi Council had at all times been service or employment in a public department the expenses whereof were wholly defrayed out of moneys provided by Parliament:

Provided that neither the Superannuation Act, 1909, nor section four of the Superannuation Act, 1935, shall apply in relation to any person so transferred unless that Act, or, as the case may be, that section (as applicable to persons on the permanent establishment of the Secretary of State in Council) would have applied in relation to him if this Act had not been passed.

- (3) His Majesty may by Order in Council direct that in their application to any person so transferred the said Acts, orders, rules and regulations shall have effect subject to any such modifications as may appear to His Majesty to be necessary for securing that the case of any such person shall not be dealt with in any manner less favourable to him than it would have been dealt with if this Act had not been passed and he had continued to serve on the establishment of the Secretary of State in Council.
- (4) All persons who, not being on the permanent establishment of the Secretary of State in Council, were immediately before the commencement of Part III of this Act officers or servants employed in the United Kingdom by the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and, for the purposes of the Superannuation Acts, 1834 to 1935, and the orders, rules and regulations made thereunder, employment by the Secretary of State in Council shall be treated as if it had been employment by the Secretary of State.
- (5) If the conditions of service of any person to whom the last preceding subsection applies included a condition as to eligibility for a retiring allowance in consideration of meritorious service, the Treasury may, if they think fit, grant to him such an allowance on his retirement.
- (6) Notwithstanding anything in the Pensions Commutation Acts, 1877 to 1882, it shall be lawful for the Treasury to commute for a capital sum so much of any superannuation, compensation or retiring allowance as is payable out of moneys provided by Parliament to a person so transferred as aforesaid and for the Secretary of State so to commute so much of any such allowance as is payable to such a person out of the revenues of the Federation.

Any such commutation shall be made upon such conditions as His Majesty in Council may direct, not being more favourable than the conditions which would have applied

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to the person in question if he had retired from the establishment of the Secretary of State in Council.

282 Contributions from revenues of Federation.

- (1) So much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances or gratuities which may become payable to or in respect of officers and servants transferred by the last preceding section to the department of the Secretary of State as His Majesty in Council may determine to represent the proportion of such allowances or gratuities attributable to service before the date of transfer shall be paid out of the revenues of the Federation:

Provided that account shall not be taken of any service before the date of transfer in respect of which such an allowance or gratuity payable out of moneys provided by Parliament might, if this Act had not been passed, have been awarded under the Superannuation Acts, 1834 to 1935.

- (2) If any officer or servant so transferred to the department of the Secretary of State, or any person who, having been previously on the establishment of the Secretary of State in Council, was immediately before the commencement of Part III of this Act a member of the staff of the High Commissioner for India, or any person who immediately before the commencement of Part III of this Act was the Auditor of the Accounts of the Secretary of State in Council or a member of his staff, loses his employment by reason of the abolition of his office or post, or by reason of any reorganisation of the department or of his office, where such abolition or reorganisation results in the opinion of the Secretary of State from the operation of this Act or the Government of Burma Act, 1935, the Secretary of State shall award to that officer or servant out of the revenues of the Federation such compensation as he may think just and equitable in augmentation of any allowance or gratuity for which that officer or servant may be otherwise eligible.
- (3) Any payments directed by this section to be made out of the revenues of the Federation shall be charged upon those revenues.

283 Liability for pensions in respect of service before commencement of Part III.

- (1) The liability for payment of any superannuation allowances, compensation allowances, retiring allowances, additional allowances and gratuities which immediately before the commencement of Part III of this Act were payable to or in respect of persons in respect of service on the establishment of the Secretary of State in Council, or in respect of service as Auditor of the Accounts of the Secretary of State in Council, or in respect of service as a member of that Auditor's staff, or partly in respect of service on the establishment of the Secretary of State in Council or as a member of that Auditor's staff and partly in respect of service as a member of the staff of the High Commissioner for India shall be a liability of the Government of the Federation, and those allowances and gratuities shall be charged upon the revenues of the Federation.
- (2) The provisions of subsection (1) of this section shall also apply to so much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances, and gratuities awarded after the commencement of Part III of this Act to persons not transferred by the last but one preceding section as is attributable to such service before the commencement of Part III of this Act as is mentioned in the said subsection (1).

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284 Provision as to certain India Office provident funds.

Any sums which, if this Act had not been passed, would have been payable, whether as of right or not, by the Secretary of State in Council out of the revenues of India to or in respect of a person who was a subscriber to the Regular Widows' Fund, the Elders Widows' Fund, or the India Office Provident Fund, shall be paid out of the revenues of the Federation and charged on those revenues.