Legislative (1898) Department.

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G.O., No. 72

Dated 5. 11. 98.

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INDEXED.

[Despatch Abstract.]

Legislation in Local Councils

~~Recording proceedings~~

Comg to the Depts of the Secretari letter from the Govt of India forwg a copy of the revised instructions to Local Govts regarding ———, in supersession of those previously issued

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

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Government (1898) of Madras.
LEGISLATIVE.

Recd. } 1898. *Enclosures*
Regd. } *Spare copies*

G.O., No. 72, 5th November 1898.

NOVEMBER.

Legislation in Local Councils.

Communicating to the departments of the Secretariat letter from the Government of India nding a copy of the revised instructions to Local Governments regarding —, in supersession se previously issued.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

Read—the following paper:— N. 1481

From J. M. MACPHERSON, Esq., C.S.I., Secretary to the Government of India, Legislative Department, dated Simla, 6th October 1898.

The existing instructions regarding legislation in local Councils have recently been under the consideration of the Government of India and subjected to revision, and I am now directed to forward a copy of the revised instructions, and to request that, with the permission of the Governor in Council, they may henceforth be observed in supersession of those previously issued.

2. I am also to request that, in supersession of existing orders, the following number of copies of the Proceedings of Council, of Acts, and of Bills and connected papers may in future be sent to this Department for record and for transmission to the Secretary of State, namely:—

	Number of copies.
Of the Proceedings of Council for office files	12
Of Acts for office files	46
Of Bills and connected papers submitted to the Government of India in accordance with the revised instructions	25

3. In the case of Bills submitted for the assent of the Governor-General under section 40 of the Indian Councils Act, 1861 (24 and 25 Vict., c. 67), 25 copies of each of the papers specified on the margin* should in each instance be furnished.

* Bill as introduced.
Statement of Objects and Reasons.
Report of Select Committee (if any).
Amended Bill (if any).
Papers relative to the Bill.
Bill as passed.
Extracts from Proceedings of Council relating to the Bill in its several stages (the dates of the meetings being mentioned in the forwarding letter).

4. Spare copies of Bills and connected papers should be forwarded simultaneously with a Bill or the draft of a Bill, as the case may be, submitted under the revised instructions, but spare copies of Reports of Select Committees and of Bills as amended in Council should be supplied only when it is found necessary to proceed under rule 7.

5. Copies of communications to the Executive Departments of the Government of India of the kind referred to in rule 1 (2) of the revised instructions need not be sent to this Department.

6. It will be observed that these instructions leave to the Local Government more discretion than hitherto in connection with both the initiation of legislation and the conduct of legislative measures during their progress through the local Council. The Government of India have no doubt that this discretion will be exercised with care so as to obviate, as far as possible, all necessity for interference in the later stages by either the Governor-General or Her Majesty in exercise of the powers conferred by sections 40 and 41, respectively, of the Statute of 1861. The new rules will also limit the time within which any objections on the part of the Government of India to local legislation are to be intimated; and, finally, it is hoped that they will simplify matters by requiring correspondence which has had heretofore to be conducted with different departments of the Government of India, to be conducted with the Legislative Department alone.

ENCLOSURE.

INSTRUCTIONS TO LOCAL GOVERNMENTS REGARDING LEGISLATION IN LOCAL COUNCILS.

Legislative Department of Government of India to be addressed.

1. (1) Every communication made by a Local Government to the Government of India asking for leave to introduce a Bill, or regarding a Bill which has been introduced, in the local Council, or submitting a law for the assent of the Governor-General under section 40 of the Indian Councils Act, 1861, shall be addressed to the Secretary to the Government of India in the Legislative Department.

24 & 25 Vi c. 67.

(2) Nothing in this rule shall be construed to apply to any correspondence or communication regarding a proposal for legislation in a local Council, unless and until the stage is reached at which leave to introduce a Bill is asked for.[*] All correspondence before that stage shall be conducted with the Executive department of the Government of India to which the subject belongs.

Draft Bills to be ordinarily reported to Secretary of State and Government of India before introduction.

2. (1) Save as otherwise provided in these rules, every draft Bill, with all necessary papers connected therewith, shall, before introduction, be transmitted with a despatch to the Secretary of State.

(2) In the case of a Madras or Bombay draft Bill, the despatch shall be addressed by the Local Government to the Secretary of State direct, a copy thereof and of its enclosures being forwarded for information with a covering letter to the Legislative Department of the Government of India.[†]

(3) In the case of a draft Bill other than a Madras or Bombay draft, the Local Government shall forward the draft, with all necessary papers connected therewith, to the Legislative Department of the Government of India,[‡] and the requisite despatch shall forthwith[§] be addressed by the Government of India to the Secretary of State, a copy thereof being forwarded for information to the Local Government.

Previous sanction when to be applied for in certain cases.

3. (1) Where a draft Bill contains penal clauses, the previous sanction of the Government of India thereto shall be expressly applied for when the draft is reported to the Legislative Department of the Government of India under sub-section (2) or sub-section (3) of rule 2, as the case may be.

(2) Where a draft Bill contains provisions which, under section 43 of the Indian Councils Act, 1861, or section 5 of the Indian Councils Act, 1892, require the previous sanction of the Governor-General, such previous sanction shall likewise be expressly applied for when the draft is forwarded to the Legislative Department of the Government of India as aforesaid.

24 & 25 Vict., c. 67.

Procedure after report of draft Bill to Secretary of State and Government of India.

4. When a draft Bill has been reported to the Secretary of State and the Government of India under rule 2, it shall not be introduced in the local Council until the receipt of a communication from the Legislative Department of the Government of India intimating that the penal or other clauses (if any) requiring previous sanction are sanctioned and that the Secretary of State[||] and the Government of India have no present intention of interfering with the measure:

Provided that, if no such communication and no orders to the contrary are received within two months from the date of the despatch transmitting the draft Bill to the Secretary of State and, if such previous sanction (if any) as is referred to in rule 3, sub-section (2), has been obtained,[¶] the Bill may be introduced and proceeded with on the assumption that the penal clauses (if any) are approved and that there is no present intention, on the part of either the Secretary of State or the Government of India, of objecting to the measure:

Provided, also, that the omission of either the Secretary of State or the Government of India to communicate any remarks regarding a measure dealt with under this and the foregoing rules shall not be taken to imply final approval of the measure, and shall not be regarded as in any way affecting the right of the Governor-General to withhold his assent therefrom under section 40, or that of Her Majesty to signify her disallowance thereof under section 41, of the Indian Councils Act, 1861.[**]

24 & c. 67.

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[*] Where the legislation proposed involves substantial questions of principle, leave to introduce a Bill should not be asked for under this rule until such questions have been settled in communication with the Executive Department of the Government of India to which the subject belongs.

[†] The usual number of spare copies of the draft Bill and the connected papers should accompany the despatch to the Secretary of State, and twenty-two spare copies should accompany the letter to the Legislative Department of the Government of India.

[‡] Twenty-five spare copies of the draft Bill and the connected papers should accompany the communication to the Legislative Department of the Government of India, twenty-two being required for the Government of India and three for the Secretary of State.

[§] It is not intended that the issue of the despatch here provided for should be delayed by the Legislative Department to admit of the examination of the draft Bill by the Government of India, but that such examination should be proceeded with after the issue of the despatch and during the two months' interval provided for by rule 4, *post*.

[||] Although the Governments of Madras and Bombay address the Secretary of State direct, the replies of the Secretary of State are, "to obviate all chance of concurrent or conflicting action", by arrangement addressed to the Government of India for communication to the Local Government concerned. See paragraph 3 of the Secretary of State's Despatch No. 35 (Legislative), dated the 15th October 1874.

[¶] The previous sanction here referred to is required by Act of Parliament and cannot, therefore, be dispensed with.

[**] The examination, by the Legislative Department of the Government of India, of the Bills of a local Council does not ordinarily extend to matters of form and details of drafting. For these the Local Government concerned is held responsible.

Exceptions from foregoing rules.

5. (1) The following shall be excepted from the operation of rules 2, 3 and 4, namely:—

(*a*) draft Consolidation Bills, pure and simple, consolidating Acts of the local Council concerned;

(*b*) cases in which the approval of the Secretary of State and the Government of India to the principle of the legislation proposed has already been obtained and a further reference is, in the opinion of the Local Government, unnecessary;

(*c*) cases in which the legislation proposed is, in the opinion of the Local Government, of a purely formal or unimportant character; and

(*d*) cases in which the legislation proposed cannot, in the opinion of the Local Government, be, without serious evil, delayed in order to admit of a prior report to the Secretary of State and the Government of India.

(2) In every such case as aforesaid, the draft Bill may be introduced forthwith:

Provided that, where such a draft Bill contains penal clauses, the Legislative Department of the Government of India shall be applied to for sanction thereto, and the Bill shall not be introduced until the receipt of such sanction or the expiration of one month from the date of the application therefor without the receipt of any reply from the Legislative Department of the Government of India:

& 25 Vict., 67. 5 & 56 Vict., 14.

Provided, also, that, where such a draft Bill contains provisions which, under section 43 of the Indian Councils Act, 1861, or section 5 of the Indian Councils Act, 1892, require the previous sanction of the Governor-General, such previous sanction shall be applied for to, and obtained from, the Legislative Department of the Government of India before the introduction of the Bill.[*]

Procedure in exceptional cases.

6. (1) Where a draft Bill is dealt with under rule 5 and introduced without a prior report to the Secretary of State and the Government of India, a copy of it and of all necessary papers connected therewith shall forthwith be transmitted to the Secretary of State with a full explanatory despatch.

(2) The instructions contained in sub-sections (2) and (3) of rule 2 shall apply, *mutatis mutandis*, in the case of every despatch issued under sub-section (1) of this rule.

(3) Where a draft Bill is dealt with under rule 5, no reply to the explanatory despatch referred to in sub-section (1) of this rule need be awaited before the Bill is further proceeded with.

Amendments in Council.

7. (1) Where, after a Bill has been introduced in a local Council, whether as an exceptional measure dealt with under rule 5 or otherwise, an amendment is proposed in it which the Local Government is prepared to accept, but which, owing to its being outside the principle of the Bill as introduced or for any other reason, it considers that it cannot accept without a reference to the Government of India, the requisite steps should be taken to delay the progress of the Bill through Council pending the result of a reference to the Legislative Department of the Government of India.

(2) Where a reference is made to the Legislative Department of the Government of India under this rule, the amendment so referred should not be accepted until the receipt of a favourable reply, or until the expiration of one month from the date of the reference without the receipt of any such reply.

(3) Where a reference is made under this rule, and the Government of India consider that the amendment so referred is one which ought not to be accepted without a further reference to the Secretary of State, an intimation to that effect will be sent to the Local Government by the Legislative Department of the Government of India. The Secretary of State shall then be addressed by the Government of India, and the amendment shall not be accepted until intimation of the arrival of a favourable reply from the Secretary of State is received by the Local Government from the Legislative Department of the Government of India, or until the expiration of two months from the date of the reference made by the Local Government without the receipt of any further communication on the subject from the Legislative Department of the Government of India.

(4) Where in the course of a Bill through Council an amendment is proposed which requires any such previous sanction as is referred to in rule 3, such previous sanction shall be applied for to, and obtained from, the Legislative Department of the Government of India before the Bill so amended is passed.

Marginal references to clauses.

8. In every draft Bill a reference shall be added on the margin of each clause to show whether it is based on any, and, if so, on what, provision of the existing law. Such marginal references may be retained during the progress of the Bill through the local Council, but shall be removed from the copy submitted, in the event of the passing of the measure, for the assent of the Governor or Lieutenant-Governor, as the case may be, and also from that submitted to the Legislative Department of the Government of India for the assent of the Governor-General.

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[*] See second foot-note to rule 4, *ante*.

Order—No. 72, Legislative, dated 5th November 1898.

Communicated to the departments of the Secretariat.

(True Extract.)

H. TREMENHEERE,
Secretary to Government.

To the departments of the Secretariat.
,, Hon'ble Members of the Legislative Council.

Exd. C. M. Thambhuswamy.

Edl.
5
L. 20-4-98.

Legislative C 27/10/98 P. 5/11/98

~~Educational~~ (1898) Department.

CURRENT No. 346

From The Secretary to the Govt. of India, Legislative Dept., Simla

Spare copies sent to Hon'ble [illegible] [illegible]

Order H. E.'s Circ.
~~Press~~ no 72 Legve d/ 5 ~~Nov~~ 1898

Communicated to the Departments of the Secretariat for information & guidance.

21 10 98

20/10/98

4/11/98

to of the Secretariat.

No. 1481

Dated 6-10-98

Received 14-10-98

Registered 17-10-98

Enclosures one

Spare copies. [illegible]

This materially alters the [illegible] at the end of the [illegible] the pamphlet, & the necessary [illegible] should be issued here. ~~Spare copies of the Letter & Instructions will be sent up to [illegible] & [illegible] for [illegible]~~

[illegible] the old rules are [illegible]

SUBJECT

Forwarding a copy of Revised Instructions, re. legislation in Local Councils, & requesting they may be observed in supersession of those previously issued.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

C 25/10/98

Legislative Dep.

Letter from the Govt of India re procedure in legislation by Local Governments.

Submitted to the Hon'ble Sir Henry Collins. K.C.I.E. for perusal

A.G. 20/10/98

H.L. 25/10/98

C 25/10/98

Legislative Dep.

Letter from the Government of Indi re procedure &c in Legislat of Local Governments.

Submitted to the Hon'ble Mr Arundel for perusal

ag 22/10/98

I should like a copy of these rules pasted into my copy of the Councils' Act & Rules.

A.A. 25-10-98

Noted
CRV
26/10/98

First copy sent to Press.

Returned for signature.

Despatched [illegible] print

NUMBER OF COPIES REQUIRED.
- Order complete. 100 copies
- Letter only.
- Order complete with Letter.

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