

LEGISLATIVE LISTS, ADMINISTRATIVE ARRANGEMENTS AND ASSURANCES

General

It is accepted that in the early years after the establishment of Malaysia as few changes as possible should be made in the administrative arrangements in the Borneo States affecting the day to day lives of the people. During this period certain Federal powers should be delegated to the State Governments.

Some administrative details have been included. Others remain to be worked out.

LEGISLATIVE LISTS as in the Ninth Schedule to the Federation of Malaya Constitution

LIST I. FEDERAL LIST

1. External Affairs, etc.*	Federal	This is subject to the undertaking on Immigration set out in paragraph 16 of the Report.
2. Defence, etc.	Federal	Subject to internal security considerations, licensing powers in respect of shot guns and their ammunition and in respect of a waiver or reduction of licensing fees, should be delegated to the Borneo State Governments. The function of licensing should be exercised by the State Governments in consultation with the Police.
3. Internal Security, etc.	Federal	
4. Civil and Criminal Law and procedure and the administration of Justice, including		In the early years there should be as few changes as possible in respect of the law relating to the practice and procedure of the Courts of the Borneo States.
(a) Constitution and organisation of all Courts other than Muslim Courts and Native Courts;	Federal	<i>Subordinate Courts</i> It should be the aim eventually to establish a uniform system of magistrates courts throughout Malaysia, but no change should be made in the organisation of Subordinate Courts in the Borneo States for a period of five years without the agreement of the State Government concerned. Thereafter any changes would be made by the Federal Government in consultation with State Governments. The integration of the professional magistracy in Borneo should take place at an early date.
(b) Jurisdiction and powers of all such Courts;	Federal	
(c) Remuneration and other privileges of the judges and officers presiding over such Courts;	Federal	
(d) Persons entitled to practise before such Courts;	Federal	Restrictions on the lines of the existing Borneo legislation should be continued, so that practice at the local Bar would, subject to certain exceptions provided for in that legislation, be restricted to resident advocates, until otherwise agreed by the Borneo State Legislatures.
(e) Subject to paragraphs (ii) and (iii), the following—		
(i) Contract: partnership, etc.	Federal	
(ii) Muslim and Native personal law relating to marriage, divorce, guardianship, maintenance, adoption, family law, gifts or succession testate and intestate;	State	
(iii) Personal law of persons who are neither Muslims nor Natives relating to matters mentioned in paragraph (ii) above;	Concurrent	
(f) Official secrets; corrupt practices;	Federal	
(g) Use or exhibition of coats of arms, etc.;	Federal	
(h) Creation of offences in respect of any of the matters included in the Federal List;	Federal	
(i) Indemnity in respect of any of the matters in the Federal List;	Federal	
(j) Admiralty Jurisdiction;	Federal	

* "Etc" at the end of an item indicates that the remainder of the item is intended to follow the existing item in the Ninth Schedule.

LEGISLATIVE LISTS—(Contd.)

LIST I. FEDERAL LIST—(Contd.)

(k) Ascertainment of Muslim and Native law for purposes of federal law; and	Federal	
(l) Betting and lotteries.	Federal	
5. Federal citizenship and naturalization; aliens.	Federal	This is subject to the recommendations on citizenship in paragraph 18 of the Report.
6. Machinery of Government, etc.	Federal	Subject to paragraph 25 (3) of the Report. The use of the Information Department by the State would be allowed to continue.
7. (i) Finance, etc., except State Sales Taxes.	Federal	This is subject to the arrangements set out in detail in paragraph 24 of the Report.
(ii) State Sales Taxes.	State	
8. Trade, commerce and industry including—		
(a) (i) Production, supply and distribution of goods; price control and food control;	Federal	This should be subject to delegation of legislative authority over the North Borneo and Sarawak Rubber Funds to the extent to which they are subject to the Federal List. The Government of North Borneo should not without the concurrence of the Federal Government amend the Rubber Industry Replanting Fund Ordinance, 1954, to alter the minimum or maximum rates of cess, nor should the Government of Sarawak alter the rate of rubber cess without the concurrence of the Federal Government.
(ii) Adulteration of food-stuffs and other goods;	Concurrent	
(b) Imports into, and exports from, the Federation;	Federal	The present practice of exporting timber as logs from the Borneo States should not be interfered with.
(c) (i) Subject to (ii) and (iii) below Incorporation, etc.	Federal	
(ii) Incorporation of local charities and regulation and winding up of such corporations;	Concurrent	
(iii) Incorporation directly by State law of authorities and other bodies set up by State law for State purposes and regulation and winding up of such corporations;	State	
(d) Insurance, including compulsory insurance;	Federal	
(e) Patents, designs, etc.;	Federal	
(f) Establishment of standards of weights and measures;	Federal	The local authorities in the Borneo States should continue to exercise those functions in this respect which they now exercise under local legislation.
(g) Establishment of standards of quality of goods manufactured in or exported from the Federation;	Federal	
(h) Auctions and auctioneers;	Federal	
(i) Industries, regulation of industrial undertakings;	Federal	
(j) Subject to Item 2 (c) on the State List: development of mineral resources; mines; mining; minerals and mineral ores; etc.;	Federal	
(k) Factories; boilers and machinery; and	Federal	
(l) Dangerous and inflammable substances.	Federal	The local authorities in the Borneo States should continue to exercise those functions in this respect which they now exercise under local legislation.
9. Shipping and Navigation, including—		
(a) (i) Shipping and navigation on the high seas and in tidal and inland waters, other than shipping under fifteen registered tons;	Federal	
(ii) Shipping under fifteen registered tons;	Concurrent	
(b) (i) Ports and harbours if declared to be Federal by or under federal law;	Federal	

LIST I. FEDERAL LIST—(Contd.)

(ii) Ports and harbours not so declared;	State	The Federal Government will not interfere with the present policy which aims at administration of ports by port authorities. In respect of port fees and dues, discrimination should not be introduced designed to divert shipping from current trade routes.
(iii) Foreshores;	State	
(iv) Lighthouses and other provisions for the safety of navigation;	Federal	This is subject to the overriding requirements of defence. The Borneo Governments undertook that their legislation should provide that foreshores are either alienated or State land.
(v) Maritime and estuarine fishing, etc.	Concurrent	
(vi) Light dues; and	Federal	The Federal Government would not interfere unnecessarily with native fishing rights in traditional fishing grounds.
(vii) Wrecks and salvage.	Federal	
(vi) Communications and transport, including—		
(a) Roads, bridges, ferries and other means of communication if declared to be Federal by or under federal law;	Federal	
(b) (i) Railways, etc., excluding North Borneo Railway;	Federal	
(ii) North Borneo Railway;	State	The position of the North Borneo Railway should be reviewed after ten years together with road transport.
(c) Airways, aircraft and air navigation; civil aerodromes; provisions for the safety of aircraft;	Federal	
(d) (i) Regulation of traffic by land and air and by water, except— (A) within State ports and harbours; (B) on rivers wholly within one State but excluding Federal ports and harbours on such rivers;	Federal	Malayan Airways Limited and Borneo Airways Limited should for the present remain as separate entities but with close liaison and pooling arrangements between both Companies. The Federal Government should continue for the time being the present practice of allowing a rebate on landing fees for Borneo Airways and should accept the contingent liability for rural air services.
(ii) Regulation of traffic excepted from sub-paragraph (i) above;	State	
(e) (i) Carriage of passengers and goods by land and air and by water other than in vessels of under fifteen registered tons;	Federal	(i) Legislative authority over carriage of passengers and goods by land and mechanically propelled vehicles should be fully delegated to the Borneo State Governments for ten years, after which this delegation should be reviewed by the Federal Government in consultation with the State Government concerned.
(ii) Carriage of passengers and goods excepted from sub-paragraph (i) above;	Concurrent	
(f) Mechanically propelled vehicles;	Federal	(ii) The power of regulating licensing fees for mechanically propelled vehicles for a period of ten years should be similarly delegated to the North Borneo and Sarawak Governments.
		(iii) The cost of the land transport departments would be borne by the Federal Government which would reimburse local authorities performing functions on behalf of the Motor Licensing Authority.

LIST I. FEDERAL LIST—(Contd.)

(g) Posts and telecommunications; and	Federal	<p>(i) There should be one Borneo Region for the purposes of Posts and Telecommunications and the Federal Estimates should provide for a Regional Director with Headquarters in either Kuching or Jesselton and a Deputy Director in the State Capital where the Headquarters are not situated.</p> <p>(ii) The Regional Director should be granted direct access, through the Permanent Secretary, to the Federation Minister for Posts and Telecommunications until otherwise agreed. He should have administrative responsibility, subject to overriding Ministerial responsibility, in those matters delegated to him, and in the execution of day to day affairs.</p> <p>(iii) The Regional Director, or his representative, should sit on any existing or new Malaysian co-ordinating bodies whose work affects the Region, with such other Regional Directors and representatives of other telecommunications interests as the Minister deems appropriate.</p> <p>(i) There should be a delegation of executive functions in each case on a State basis.</p> <p>(ii) The broadcasting service within the State should retain its local identity.</p>
(A) Wireless, broadcasting and television.	Federal	
11. Federal works and power, including—		
(a) Public Works for federal purposes;	Federal	Public Works Departments should be State Departments and should undertake Federal public works on a repayment basis of direct costs.
(b) (i) Inter-State water supplies, etc.;	Federal	This item should be redefined to make it clear that water supplies, rivers and canals entirely within a State are State matters.
(ii) State Works for production, distribution and supply of water power, including hydro-electricity; and	Concurrent	
(c) Electricity other than hydro-electricity; gas and gas works; and other works for the production and distribution of power and energy.	Federal	Subject to delegation of legislative authority in the case of electricity and distribution of gas.
12. Surveys, inquiries and research, including—		
(a) Census; registration of births and deaths; registration of marriages; registration of adoptions other than adoptions under Muslim law or Muslim custom or Native law or custom;	Federal	
(b) (i) Survey of the Federation excluding cadastral surveys; social, economic and scientific surveys; meteorological organisations;	Federal	<p>(i) Subject to such delegation of legislative authority as may be necessary to maintain the Labuk survey as a State function.</p> <p>(ii) Topographical and geodetic surveys should be Federal subjects but should continue to be carried out as at present by the State Land Survey Departments as agents for the Federation Government on a repayment basis on a stated percentage of the annual cost of the Department subject to such cost being reviewed from time to time and to such surveys being made in conformation with Federal policy.</p> <p>(iii) Geological surveys should be a Federal subject, but the present joint Borneo Geological Surveys Department would be a branch of the Federal Department with administrative autonomy. The Director of the Borneo Geological Surveys Department should work direct to the Federal Minister responsible, through the Permanent Secretary.</p>
(ii) Cadastral surveys;	State	
(c) (i) Scientific and technical research, excluding Agricultural and Forestry Research;	Federal	

LIST I. FEDERAL LIST—(Contd.)

(ii) Agricultural and Forestry Research; and	Concurrent	If the Federation Government accepted responsibility for any part of the work there should be a devolution of responsibility to the Head of Department concerned for the day to day research to be carried out on the ground.
(d) Commissions of inquiry.	Federal	
13. Education, including—		
(a) Elementary secondary and university education, etc.;	Federal	Subject to the undertakings in paragraph 17 of the Report.
(b) (i) Libraries, museums, ancient and historical monuments and records and archaeological sites and remains if declared to be Federal by or under federal law;	Federal	Subject to an assurance that no declaration should be made without the concurrence of the State Government concerned.
(ii) Libraries, etc., not so declared.	State	
14. Medicine and Health, etc.	North Borneo: Concurrent until 31st December, 1970 and then Federal Sarawak: Federal	Subject to an assurance that local policy and the system of administering these subjects in Sarawak would not be disturbed until the State Government otherwise concurs. The financial provision for the services would be Federal. The local authorities should continue to exercise those functions in this respect which they now exercise under local legislation.
15. Labour and social security, including—		
(a) Trade unions, etc.	} Federal	(i) For an interim period until otherwise agreed the Commissioners of Labour of Sarawak and North Borneo should remain in charge of their respective Departments and should have direct access to the Federal Ministry and should be directly responsible to the Federal Minister of Labour.
(b) Unemployment, etc.		(ii) In the case of Sarawak, the Sarawak labour laws should remain in force when Malaysia is established and when necessary there should be a gradual move towards a common form of Malaysian legislation in this respect. In the meanwhile the registration of trade unions should be left with the Registrar-General of Sarawak.
		(iii) In the case of North Borneo, the Malayan Trade Union Act and the Malayan Trade Disputes Ordinance should be applied immediately after Malaysia Day, but current legislation on
		(a) Welfare of labour including housing of labourers by employers; employers liability and workmens compensation; and
		(b) Unemployment insurance; health insurance, widow's, orphan's and old age pensions; maternity benefits; provident and benevolent funds; and superannuation
		should remain in force for a period of seven years or such longer period as may be otherwise agreed.
		(iv) In the case of both North Borneo and Sarawak there should be a delegation of powers to make subsidiary legislation to deal with conditions peculiar to the State.
(c) Charities, etc.	Concurrent to the extent necessary to enable the States to legislate to control local charities.	

LEGISLATIVE LISTS—(Contd.)

LIST I. FEDERAL LIST—(Contd.)

16. Welfare of aborigines.	Federal	This item should not apply to North Borneo or Sarawak.
17. Professional occupations other than those specifically enumerated.	Federal	
18. Holidays, other than State holidays; standard of time.	Federal	Provision should be made to allow substitution in the Borneo States where Federal holidays relate to religious or other occasions that have no significance in the Borneo States.
19. Unincorporated societies.	Federal	There should be the maximum possible delegation of executive authority to the Borneo States.
20. Control of agricultural pests; protection against such pests; prevention of plant diseases.	Concurrent	
21. Newspapers; publications; publishers; printing and printing presses.	Federal	The Borneo Literature Bureau should remain a State responsibility.
22. Censorship.	Federal	Subject to an assurance that the existing censorship arrangements relating to films and entertainments in North Borneo and Sarawak should continue until other arrangements were made.
23. Subject to item 5 (f) of the State List: theatres; cinemas; cinematograph films; places of public amusement.	Concurrent	
24. Federal housing and improvement trusts.	Federal	
25. Co-operative Societies.	Federal	Until otherwise agreed between the Federation and Borneo States, the administration of co-operatives in the Borneo States should continue on the present lines.

LIST II. STATE LIST

1. Muslim law, etc.	State	
1A. Native law and custom and Native Courts, including Personal Law relating to marriage, divorce, guardianship, maintenance, adoption, family law, gifts or succession, testate or intestate.	State	
2. Land, etc.	State	Item 2 (b) should apply to Native Reservations instead of Malay Reservations.
3. Agricultural and forestry, etc.	State	The Government of North Borneo should not without the concurrence of the Federal Government amend the Rubber Industry Replanting Fund Ordinance, 1954, to alter the minimum or maximum rates of cess, nor should the Government of Sarawak alter the rate of rubber cess without the concurrence of the Federal Government.
4. Local Government, etc.	State	
5. Other services of a local character, that is to say— (a) Fire brigades, etc. (b) Boarding houses, etc. (c) Burial and cremation grounds; (d) Pounds and cattle trespass; (e) Markets and fairs; and (f) Licensing of theatres, etc.	State	Consideration should be given to the need to include other services of a local character.
6. State Works and Water, etc.	State	This item should also include rivers wholly within a State.

LEGISLATIVE LISTS—(Contd.)

LIST II. STATE LIST—(Contd.)

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| 7. Machinery of the State Government subject to the Federal List, etc. | State |
| 8. State holidays. | State |
| 9. Creation of offences in respect of any of the matters included in the State List. | State |
| 10. Inquiries for State purposes, etc. | State |
| 11. Indemnity in respect of any of the matters in the State List. | State |
| 12. Turtles and riverine fishing. | State |

- (i) (a) There should be a state Legal Department;
- (b) The State Attorney-General should be a State Officer and appointed by the Head of State on the advice of the Chief Minister from a panel of names submitted by the State Public Service Commission. The Chief Minister should be required to consult the Federal Government before tendering his advice. The appointment should after Malaysia Day normally be made from the Federal Legal and Judicial Service but if no suitable candidate were available, the post could be filled on contract terms from outside Malaysia after consultation with the Federal Government; and
- (c) The remaining posts in the State Legal Department would be filled by secondment from the Federal Legal Service if the State so desired.
- (ii) The appointments of the State Secretary and State Financial Secretary should be a matter for the State Governments but in making these appointments the procedure for making the appointment of the State Attorney General should be followed and the persons appointed should be members of the Public Service.

LIST III. CONCURRENT LIST

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| 1. Social Welfare, etc. | Concurrent |
| 2. Scholarships. | Concurrent |

- (i) The present Federation of Malaya quota system in the award of scholarships should not apply in the Borneo States.
- (ii) In any central allocation of scholarships by the Federal Government, the award of Colombo Plan and other scholarships to the Borneo States should be kept separate at all levels from awards in other States in Malaysia.
- (iii) Informal contact and the handling of detailed arrangements over scholarships between the Governments of the Borneo States and the authorities of the donor countries concerned should be maintained, but the formal and final conclusion of such awards and scholarships should be effected through the Federal Ministry of External Affairs.
- (iv) The Borneo States should be given generous treatment in the allocation of places for training in establishments within the Federation of Malaysia.
- (v) In the Borneo States local non-Government scholarships should remain a State responsibility.
- (vi) In Sarawak—
 - (a) Boarding subsidies and indigent pupils fund allowances should be a Federal liability. The present Sarawak policy on local scholarships should continue in force;
 - (b) The Supreme Council Centenary Scholarships should remain a State responsibility; and

LEGISLATIVE LISTS—(Contd.)

LIST III. CONCURRENT LIST—(Contd.)

		(c) As regards overseas scholarships and training courses, the Federal Government should pay for scholars returning to Federal posts and the State Government should pay for scholars returning to State service. As an <i>ad hoc</i> basis the Sarawak Government should provide for \$350,000 in its recurrent budget to meet the cost of State scholarships.
3. Protection of wild animals and wild birds; National Parks.	Concurrent	National Parks should not be established in the Borneo States without the concurrence of the State Government concerned.
4. Animal husbandry, etc.	Concurrent	The departments concerned should remain State departments.
5. Town and Country planning, except in the federal capital.	Concurrent	Subject to an assurance that Federal powers in this respect should only be used to enable the Federal Government to carry out its constitutional and administrative functions.
6. Vagrancy and itinerant hawkers.	Concurrent	
7. Public health, sanitation, etc.	Concurrent	Administrative functions in respect of these subjects should, where appropriate, continue to be exercised by local authorities in the Borneo States.
8. Drainage and Irrigation.	Concurrent	The departments concerned should remain State departments.
9. Rehabilitation of mining land, etc.	Concurrent	