



Treaty Series No. 38 (1980)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of Malaysia

concerning Public Officers' Pensions
in respect of Services in Malaysia
(Malaysia-United Kingdom Pensions (Transfer of Liability)
Agreement, 1977)

Kuala Lumpur, 1 November 1977

[The Agreement entered into force on 27 March 1979]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
May 1980*

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AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF MALAYSIA CONCERNING PUBLIC
OFFICERS' PENSIONS IN RESPECT OF SERVICES IN MALAYSIA

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia have agreed as follows:

ARTICLE I

Interpretation

- (1) In this Agreement, except where the context otherwise requires:
- (a) "actuary" means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries in Scotland or a person suitably qualified in actuarial practice appointed by the Government of Malaysia;
 - (b) "the appointed day"⁽¹⁾ means the day mutually arranged between the Government of the United Kingdom and the Government of Malaysia;
 - (c) (i) "the British element" in relation to a pension means:
 - (aa) in respect of a pension arising from death resulting from an injury on duty or from contracting a disease or a pension arising from such an injury or from such a disease, being an injury received or a disease contracted before the operative date, the whole cost;
 - (bb) in respect of a pension arising from death resulting from an injury on duty or from contracting a disease or a pension arising from such an injury or from such a disease, being a pension which results from an occurrence during relevant service, that proportion (if any) of the pension which the rate of the officer's inducement allowance at the date he received the injury or contracted the disease bears to his total pensionable emoluments at that date;
 - (cc) in respect of a widows' and orphans' pension payable under the Widows and Orphans Pension Enactment, F.M.S.Cap.26 and any amendments thereto in force at any time prior to the appointed day and enacted prior to that date (hereinafter referred to as "F.M.S.Cap.26"), the whole cost;

⁽¹⁾ The appointed day is 1 September 1979.

- (*dd*) in respect of compensation and additional compensation payable under the North Borneo (Compensation and Retiring Benefits) Order in Council, 1963 and the Sarawak (Compensation and Retiring Benefits) Order in Council, 1963, the whole cost;
- (*ee*) in respect of any other pension (other than a widows' and orphans' pension payable under F.M.S.Cap.26, the Widows' and Orphans' Pensions Ordinance of Sarawak, Sarawak Cap.90 of the Laws of Malaysia and any amendments thereto in force at any time prior to the appointed day and enacted prior to that date (hereinafter referred to as "Sarawak Cap.90"), or the Widows' and Orphans' Pensions Ordinance of Sabah, Sabah Cap.156 of the Laws of Malaysia and any amendments thereto in force at any time prior to the appointed day and enacted prior to that date (hereinafter referred to as "Sabah Cap.156")) that proportion of the pension payable to or in respect of an officer which accrues from service before the operative date and that proportion (if any) which accrues from relevant service and which is attributable to inducement allowance;
- (ii) for the purpose of sub-paragraph 1(c)(i) of this Article the pension benefits shall be calculated according to the pensions laws in force before 1 April 1971 and enacted prior to that date and any other pensions laws accepted by the Government of the United Kingdom and the Government of Malaysia for the purpose of this sub-paragraph;
- (iii) for the purposes of sub-paragraph 1(c)(i)(*ee*) of this Article the proportion of a pension which accrues
- (*aa*) from service before the operative date, is that proportion which the total pensionable emoluments enjoyed by the officer from his public service under the Government of Malaysia or of a State prior to the operative date bears to his total pensionable emoluments enjoyed during all his public service under such Government taken into account in determining the amount of such pension;
- (*bb*) from relevant service and which is attributable to inducement allowance, is that proportion which the total inducement allowance enjoyed by the officer during his relevant service bears to the total pensionable emoluments enjoyed during all his public service under the Government of Malaysia or of a State taken into account in determining the amount of such pension;
- (*d*) "inducement allowance" means:
- (i) in respect of an officer falling within sub-paragraph 1(f)(ii) of this Article, any inducement allowance which is pensionable

under the pensions laws enjoyed by the officer under the Overseas Service (North Borneo) Agreement, 1961 or any agreement or arrangement amending or replacing the same⁽²⁾;

(ii) in respect of an officer falling within sub-paragraph (1)(f)(iii) of this Article, any inducement allowance which is pensionable under the pensions laws enjoyed by the officer under the Overseas Service (Sarawak) Agreement, 1961 or any agreement or arrangement amending or replacing the same⁽²⁾;

(e) "the Malaysian element" in relation to a pension means the full cost of the pension other than the British element;

(f) "officer" means an officer so defined in:

(i) the United Kingdom and Federation of Malaya Public Officers Agreement, 1959 between Her Majesty's Government in the United Kingdom and the Government of the Federation of Malaya and signed at Kuala Lumpur on 27 July 1959⁽³⁾; or

(ii) the Public Officers (Sabah) Agreement, 1964 between Her Majesty's Government in the United Kingdom and the Government of Malaysia and signed at Kuala Lumpur on 9 July 1964⁽⁴⁾; or

(iii) the Public Officers (Sarawak) Agreement, 1964 between Her Majesty's Government in the United Kingdom and the Government of Malaysia and signed at Kuala Lumpur on 9 July 1964⁽⁵⁾; and

who was not a citizen of Malaysia on 1 April 1971 or who, having retired from the public service or having died in public service after that date, is not or was not a citizen of Malaysia at the time of his retirement or death as the case may be;

(g) "the operative date" means:

(i) in respect of public service under the Government of Malaysia as an officer falling within sub-paragraph (1)(f)(i) of this Article, 31 August 1957;

(ii) in respect of public service under the Government of Malaysia as an officer falling within sub-paragraph (1)(f)(ii) or (1)(f)(iii) of this Article, 16 September 1963;

(h) "other public service" means public service not under the Government of Malaysia or of a State;

⁽²⁾ Treaty Series No. 99 (1972) Cmnd. 5069.

⁽³⁾ Cmnd. 854.

⁽⁴⁾ Cmnd. 2469.

⁽⁵⁾ Cmnd. 2470.

- (i) "pension" means pension, gratuity, compensation or any retiring allowance or other like benefit, or any increase of pension, or any contributions repayable to, or interest on contributions payable to any officer, payable under the pensions laws by the Government of Malaysia or a State to or in respect of any officer, or to the widow or child of any officer or to his legal personal representative;
- (j) "pensionable emoluments" means:
- (i) in respect of public service under the Government of Malaysia or a State, emoluments which count for pension under the pensions laws;
 - (ii) in respect of other public service, emoluments which count for pension in accordance with the law or regulations in force in such service;
- (k) "pensions laws" means:
- (i) in relation to pensions other than widows' and orphans' pensions, any law, regulation or administrative direction providing for the payment of pensions to officers in respect of public service and in force in Malaysia at any time prior to the appointed day and enacted prior to that date, including the North Borneo (Compensation and Retiring Benefits) Order in Council, 1963 and the Sarawak (Compensation and Retiring Benefits) Order in Council, 1963;
 - (ii) in relation to widows' and orphans' pensions, F.M.S.Cap.26, Sarawak Cap.90, Sabah Cap.156, the British North Borneo Company Pensions Ordinance 1963, Ordinance No 12 of 1963 and any amendments thereto in force at any time prior to the appointed day and enacted prior to that date (in this Agreement referred to as "Sabah Ordinance No. 12"), and Part III (together with any definitions and other provisions applicable thereto) of the Pensions Ordinance, Cap.22 of the Revised Edition of the Laws of Sarawak 1946, and any amendments thereto in force at any time prior to the appointed day and enacted prior to that date (in this Agreement referred to as "Sarawak Cap.22" ⁽⁹⁾); and
 - (iii) any other law, regulation or administrative direction accepted by the Government of the United Kingdom and the Government of Malaysia for the purpose of this Agreement;
- (l) "public service" means:
- (i) service in a civil capacity under the Government of Malaysia or a State or any other country or territory in the Commonwealth;
 - (ii) service under the East Africa High Commission, the East African Common Services Organisation, the East Africa Posts and Telecommunications Administration, the East African Railways and

(9) See footnote (?).

Harbours Administration, the East African Community, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation or the East African Railways Corporation;

- (iii) service which is pensionable:
 - (aa) under the Oversea Superannuation Scheme; or
 - (bb) under any Act relating to the superannuation of teachers in the United Kingdom; or
 - (cc) under a local authority in the United Kingdom; or
 - (dd) under the National Health Service of the United Kingdom; or
 - (ee) under the Post Office, United Kingdom of Great Britain and Northern Ireland;
- (iv) any other service accepted by the Government of the United Kingdom and the Government of Malaysia to be public service for the purposes of this Agreement;
- (v) except for the purposes of computation of a pension, gratuity or other allowance and of determination of the maximum pension grantable, service as a Governor in respect of which a pension may be granted under the Overseas Pensions Act, 1973, or any Act amending or replacing that Act;
- (vi) service as the holder of the office of President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for Eastern Africa established by the Eastern Africa Court of Appeal Order in Council, 1961 (United Kingdom S.I. 1961 No. 2323) or the Court of Appeal for East Africa;
- (vii) service in the service of the Interim Commissioner for the West Indies;
- (m) "relevant service" means public service under the Government of Malaysia or of a State on or after the operative date;
- (n) a "State" means a State in Malaysia;
- (o) "the taxation element" means the sum accepted by the two Governments as being equivalent to the proceeds of income tax or any similar tax received by the Government of Malaysia or of a State on any sums which are reimbursable in accordance with subparagraph (1)(d) of Article 3;
- (p) "widows' and orphans' pensions" means pensions payable under F.M.S. Cap.26, Sabah Ordinance No. 12, Sabah Cap.156, Sarawak Cap.22 and Sarawak Cap.90^(e).

(2) References to the Government of Malaysia, the Government of the Federation of Malaya, or the Government of a State shall be construed as including references to any predecessor Government or successor Government as appropriate.

ARTICLE 2

Transfer of liability to the Government of the United Kingdom

As from the appointed day the liability of the Government of Malaysia in respect of the pensions shall be transferred to the Government of the United Kingdom who shall thereon be responsible for the control, administration and payment of pensions which have been awarded before the appointed day and for the award, control, administration and payment of pensions which would fall to be awarded on or after the appointed day.

ARTICLE 3

Obligations of the Government of the United Kingdom

- 1) The Government of the United Kingdom undertake:
 - (a) that they shall award, control, administer and pay the pensions referred to in Article 2 of this Agreement to or in respect of the persons concerned in accordance with the principles and rules contained in the pensions laws, with such modifications as may be necessary in consequence of the transfer of responsibility under this Agreement, or in accordance with such other principles and rules as the Government of the United Kingdom consistent with the next paragraph may from time to time determine;
 - (b) that apart from any modifications arising from the pensions being payable out of public moneys of the United Kingdom, they shall not apply to or in respect of any officer different provisions from those contained in the pensions laws (other than any provisions, express or implied, relating to the currency and method of payment of a pension) so as to make such provisions less favourable to any beneficiary or potential beneficiary than the provisions applicable to him on the appointed day: Provided that if a beneficiary or potential beneficiary elects to have any provision applied to him, that provision shall be taken to be more favourable to him;
 - (c) that if in any action, suit or other proceeding relating to a pension for which the Government of the United Kingdom have assumed responsibility under this Agreement the Government of Malaysia should be adjudged by the order of a competent court of law having jurisdiction in Malaysia or outside Malaysia to be liable to pay to or in respect of an officer or to the widow or child or legal personal representative of a deceased officer any sum the Government of the United Kingdom shall repay to the Government of Malaysia any sum or sums paid to such person for the purpose of complying with the order of the court; but in such an event the Government of the

United Kingdom shall be free to reduce by corresponding sums, or totally to withhold, any payments of the same pension to or in respect of that person which would otherwise fall to be made by them under this Agreement;

(d) that they shall reimburse the Government of Malaysia, in accordance with such procedure as may be mutually arranged between the two Governments, the aggregate amount, less the taxation element, of the following payments due on or after 1 April 1973, being amounts due under the pensions laws, and made by the Government of Malaysia or of a State to or in respect of officers :

(i) the full cost of payments representing that proportion of a pension (other than a widows' and orphans' pension) payable to or in respect of an officer which accrues from public service under the Government of Malaysia or of a State^a before the operative date;

(ii) such proportion (if any) of the cost of payments representing that part of the pension (other than a widows' and orphans' pension) payable to or in respect of an officer which accrues from public service under the Government of a State on or after the operative date, as is attributable to his inducement allowance;

(iii) the full cost of payments representing compensation and additional compensation payable under the North Borneo (Compensation and Retiring Benefits) Order in Council, 1963 and the Sarawak (Compensation and Retiring Benefits) Order in Council, 1963.

(2) For the purposes of sub-paragraphs (1)(d)(i) and (ii) of this Article :

(a) the proportion of a pension which accrues from public service under the Government of Malaysia or of a State before the operative date is that proportion which the total pensionable emoluments enjoyed by an officer from his public service under such Government before the operative date bears to his total pensionable emoluments enjoyed during all his public service under that Government taken into account in determining the amount of such pension;

(b) subject to sub-paragraph (c) of this paragraph the proportion of a pension which is attributable to inducement allowance is that proportion which the total inducement allowance enjoyed by an officer during his relevant service under the Government of a State bears to the total pensionable emoluments enjoyed during all his public service under such Government taken into account in determining the amount of such pension;

(c) in respect of a pension arising from death resulting from an injury on duty or from contracting a disease or a pension arising from such an injury or from such a disease, being a pension which results from an occurrence during relevant service, the proportion which is attributable to inducement allowance is that proportion of

the pension which the rate of the officer's inducement allowance at the date he received the injury or contracted the disease bears to the rate of his total pensionable emoluments at that date;

- (d) the pension benefits shall be calculated according to the pensions laws in force before 1 April 1971 and enacted prior to that date, and any other pensions laws accepted by the Government of the United Kingdom for the purpose of this paragraph.

ARTICLE 4

Obligations of the Government of Malaysia

- (1) The Government of Malaysia undertake:

- (a) that they shall remain responsible for any instalments of pension granted to or in respect of an officer which remain unpaid on the appointed day;
- (b) that they shall as from the appointed day cease to be liable for pensions and shall relinquish responsibility for the award, control, administration and payment of any pension to or in respect of an officer otherwise than in accordance with the terms of this Agreement;
- (c) that they shall pay to the Government of the United Kingdom in accordance with such arrangements as may be accepted by the two Governments:
- (i) in respect of any pension (other than a widows' and orphans' pension payable under F.M.S. Cap.26 Sarawak Cap.90 or Sabah Cap.156, and a pension payable under Sabah Ordinance No. 12 or Sarawak Cap.22) awarded before the appointed day to or in respect of an officer, a sum representing the cost, if any, of the Malaysian element of such pension⁽⁶⁾;
- (ii) in respect of a pension (including a widows' and orphans' pension) payable under Sabah Ordinance No. 12 or Sarawak Cap.22 to or in respect of an officer, a sum representing the cost, if any, of the Malaysian element of such pension⁽⁶⁾;
- (iii) in respect of any pension (other than a widows' and orphans' pension payable under F.M.S. Cap.26, Sabah Cap.156, or Sarawak Cap.90 or in regard to sub-paragraph (1)(c)(iii)(aa) of this Article, a pension or widows' or orphans' pension payable under Sabah Ordinance No. 12 or Sarawak Cap.22) awarded on or after the appointed day to or in respect of an officer in public service on the appointed day;
- (aa) that part of the sum which would represent the Malaysian element of such pension if the public service of the officer ceased on the appointed day, which is attributable to the

officer's public service under the Government of Malaysia or of a State up to the day immediately preceding the appointed day; and

(bb) 25% of the pensionable emoluments earned by an officer during any part of his public service under the Government of Malaysia or of a State which occurs on or after the appointed day;

(iv) in respect of a widows' and orphans' pension payable under F.M.S. Cap.26, a sum representing the cost of any increase awarded before the appointed day which is not accepted by the Government of the United Kingdom;

(v) in respect of widows' and orphans' pensions (other than widows' and orphans' pensions payable under F.M.S. Cap.26, Sabah Ordinance No. 12 or Sarawak Cap.22) such stocks, funds, securities or moneys as represent the interest in the Widows' and Orphans' Pensions Fund of Sabah established under Sabah Cap.156 and in the Sarawak Widows' and Orphans' Pensions Fund established under Sarawak Cap.90 of contributory officers and their potential beneficiaries alive on the appointed day and the beneficiaries alive on the appointed day of deceased contributory officers⁽⁶⁾;

(vi) in respect of any officer who continues in relevant service on or after the appointed day, the contributions of the Government of Malaysia to the scheme for widows' and orphans' pensions which would but for the provisions of this Agreement have been payable during such relevant service under the provisions of Sabah Cap.156 or Sarawak Cap.90;

(d) that the payments in respect of compensation and gratuity paid in Malaysia to or in respect of an officer by the Government of the United Kingdom in accordance with the principles of the North Borneo (Compensation and Retiring Benefits) Order in Council, 1963 and the Sarawak (Compensation and Retiring Benefits) Order in Council, 1963 under Article 3 shall be exempt from income tax in Malaysia;

(e) that they shall as soon as possible after the appointed day and with effect therefrom, enact the necessary domestic legislation to give effect to this article.

(2) The sums payable under sub-paragraphs (1)(c)(i), (1)(c)(ii), (1)(c)(iii)(aa), (1)(c)(iv) and (1)(c)(v) of this Article shall be actuarially determined jointly by two actuaries, one nominated by the Government of the United Kingdom and one nominated by the Government of Malaysia and shall be reduced by a sum accepted by the two Governments as representing the tax which the Government of Malaysia would have received in respect of the Malaysian element of the pensions.

ARTICLE 5

Supply of information

Each of the Parties to this Agreement shall whenever requested to do so by the other Party, supply to that Party such information in connection with the operation of the arrangements contained in this Agreement as may be specified in such request.

ARTICLE 6

Modification of previous Agreements

(1) On and after the appointed day the provisions of any arrangement relating to the reimbursement of the Government of Malaysia or of a State by the Government of the United Kingdom of a proportion of the cost of a pension shall cease to apply to any pension payable to or in respect of an officer to whom this Agreement applies in respect of any period beginning on the appointed day.

(2) On and after the appointed day the provisions of clauses 3, 4, 5, 6, 7 and 8 of the United Kingdom and Federation of Malaya Public Officers Agreement, 1959 shall cease to apply to or in respect of officers to whom this Agreement applies.

(3) On and after the appointed day the provisions of Articles 3, 4, 5 and 6, the words "and shall take any action that may be necessary to preserve his pension rights when he is so transferred or promoted" in Article 8(2) and Article 9 of the Public Officers (Sabah) Agreement, 1964 and of the Public Officers (Sarawak) Agreement, 1964 shall cease to apply to or in respect of officers to whom this Agreement applies.

ARTICLE 7

Modification of this Agreement

If the Government of the United Kingdom and the Government of Malaysia mutually decide that this Agreement should be modified in any particular case or class of cases, the foregoing provisions of this Agreement shall be applied to such case or cases with such modifications, additions or exceptions as may be necessary to give effect to such mutual decision⁽⁷⁾.

⁽⁷⁾ By an Exchange of Letters dated 28 March, 1979 the two Governments mutually decided that in respect of pensions (including widows' and childrens' pensions) payable under Sarawak Order No. P-3 (Pensions (Senior Staff)) and any amendments thereto in force at any time prior to the appointed day and enacted prior to that date the Agreement shall, with effect from the appointed day be modified to the following extent:

"(a) Article 1(1)(k)(ii) and Article 1(1)(p) of the Agreement shall be read and construed as including a reference to Sarawak Order No. P-3;

(b) Article 4(1)(c)(i) of the Agreement shall not apply to or in respect of a pension payable under Sarawak Order No. P-3;

(c) Article 4(1)(c)(ii) of the Agreement shall apply to or in respect of a pension payable under Sarawak Order No. P-3; and

(d) Article 4(1)(c)(v) of the Agreement shall not apply to or in respect of a pension payable under Sarawak Order No. P-3."

ARTICLE 8

Entry into force

Each of the Parties to this Agreement shall notify the other Party in writing as soon as it has completed the preliminary arrangements necessary to enable it to carry out the Agreement, and this Agreement shall come into force on the date of the later of these two notifications⁽⁸⁾.

ARTICLE 9

Citation

This Agreement may be cited as the Malaysia-United Kingdom Pensions (Transfer of Liability) Agreement, 1977.

In witness whereof, the undersigned, duly authorised thereto by their respective Governments have signed this Agreement.

Done in two originals at Kuala Lumpur this 1st day of November, 1977.

E. G. NORRIS

ABDULLAH BIN MOHD SALLEH

For the Government of the
United Kingdom of Great Britain
and Northern Ireland.

For the Government of Malaysia.

⁽⁸⁾ The Agreement entered into force on 27 March 1979.