STATUTORY INSTRUMENTS

1963 No. 1492

MALAYSIA

The North Borneo (Compensation and Retiring Benefits) Order in Council 1963

Made - - - -	*29th August* 1963
Laid before Parliament	*30th August* 1963
Coming into Operation	*Immediately before appointed day for Malaysia Act* 1963

At the Court at Balmoral, the 29th day of August 1963

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by the British Settlements Acts 1887(a) and 1945(b) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

Citation and commencement.

1.—(1) This Order may be cited as the North Borneo (Compensation and Retiring Benefits) Order in Council 1963.

(2) This Order shall come into operation immediately before the day referred to as the appointed day in the Malaysia Act 1963(c).

Interpretation.

2. The Interpretation Act 1889(d) shall apply, with the necessary adaptations, for the purposes of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

Application of Schedule.

3. The provisions contained in the Schedule to this Order shall have effect in relation to the public service of North Borneo.

Transitional provisions.

4.—(1) Where any officer or authority has before the commencement of this Order in pursuance of any provision of the compensation scheme given any permission or consent or prescribed any condition or made any declaration or done any other thing for the purposes of that scheme, that permission, consent, condition, declaration, or other thing shall be deemed to have been given, prescribed, made or done, as the case may be, under the corresponding provision of the Schedule to this Order, and the provisions of that Schedule shall have effect accordingly.

(2) Where any officer has before the commencement of this Order in pursuance of any provision in the compensation scheme given any

(a) 50 & 51 Vict. c. 54. (b) 9 & 10 Geo. 6. c. 7. (c) 1963 c. 35. (d) 52 & 53 Vict. c. 63.

undertaking or given or received any notice or retired he shall, provided that any conditions prescribed or deemed to have been prescribed by or under the Schedule to this Order are satisfied, be deemed to have given that undertaking, to have given or received that notice, or to have retired, as the case may be, under the corresponding provision in that Schedule, and the provisions of that Schedule shall have effect accordingly.

(3) Any conditions or notice prescribed by the appropriate authority for the purposes of paragraph 3(1)(*a*), paragraph 4(1) or paragraph 13(2) of the Schedule to this Order shall be not less favourable to any officer than any conditions or notice prescribed by or for the purposes of the corresponding provision of the compensation scheme.

(4) In this section " the compensation scheme " means the scheme for compensation, retiring benefits and related matters entitled " Scheme of Retirement Benefits for Members of Her Majesty's Overseas Civil Service and for officers designated under the Overseas Service (North Borneo) Agreement, 1961 ".

E. N. Landale.

THE SCHEDULE

Compensation and Retirement Benefits for certain Officers in the Public Service of North Borneo

Interpretation and application.

1. (1) In this Schedule, unless the context otherwise requires—

" appropriate authority " means such person or authority as may from time to time be designated for the purposes of this Schedule by the Governor of North Borneo or, at any time after the commencement of this Order, by the Yang di-Pertua Negara of the State of Sabah, and different persons or authorities may be so designated for the purposes of different provisions of this Schedule ;

" appropriate law " in relation to an officer in the public service means the law in force in North Borneo that governs the grant of pensions, gratuities, and other like benefits in respect of the service of that officer in the public service ;

" entitled officer " means an overseas officer in the public service who, on the operative date, had not attained the age of fifty-five years or, in the case of a judge, sixty-two years and—

(*a*) who was before the 1st January 1963, appointed or selected for appointment to an office in the public service, being a pensionable office for the purposes of the appropriate law ;

(*b*) who was on the operative date the substantive holder of an office that was at that date a pensionable office for the purposes of the appropriate law ;

(*c*) who was on the operative date a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary or a designated officer for the purposes of the Overseas Service (North Borneo) Agreement, 1961 ;

(*d*) who has since the operative date been a judge or the substantive holder of an office that has during his tenure thereof been a pensionable office for the purposes of the appropriate law ; and

(*e*) in the case of an officer whose appointment is subject to confirmation, who has been confirmed in that appointment ;

and includes an officer appointed on or after the 1st January 1963 and before the operative date to an office in the public service being a pensionable office for the purposes of the appropriate law who would have been an entitled officer for the purposes of the Sarawak (Compensation and Retiring Benefits) Order in Council 1963(a), if his service in the public service had been service in Sarawak.

"the Federation" means the Federation to be known by the name Malaysia;

"North Borneo" means the colony of North Borneo and, in relation to any period after the commencement of this Order, the State of Sabah;

"judge" means a judge of the Supreme Court of Sarawak, North Borneo and Brunei and, in relation to any period after the end of the operative date, a judge of the Federal Court or of a High Court of the Federation;

"operative date" means 30th August 1963;

"overseas officer" means an officer in the public service whose terms of service on the operative date included an entitlement to a free passage from North Borneo for the purpose of leave of absence upon completion of a tour of duty;

"pensionable emoluments" means emoluments that may be taken into account in computing the pension of an officer under the appropriate law;

"pensionable service" means the aggregate amount of service that may be taken into account for the purpose of computing the pension of an officer under the appropriate law and, for the purpose of paragraph 2(5) of this Schedule, includes service in the public service in respect of which an officer was pensionable as if he were serving in the National Health Service of the United Kingdom and which was immediately followed by service pensionable under the appropriate law;

"public service" means the public service of North Borneo;

"substantive holder" in relation to any office includes a person serving in that office on probation but does not include a person (other than a person serving under a probationary agreement) serving in that office for a specified term under a contract.

(2) For the purposes of the definition of "entitled officer" in sub-paragraph (1) of this paragraph, a person who was before the 1st January 1963, selected for appointment to an office in the public service being a pensionable office for the purposes of the appropriate law, but was appointed to that office on probation after the operative date, shall be deemed to have been serving in that office on probation on and since the operative date.

(3) For the purposes of this Schedule—

(*a*) a person shall not be regarded as holding any office on the operative date if on that date he was on leave of absence pending his retirement otherwise than under this Schedule;

(*b*) a person whose office has been abolished and who retires in consequence of the abolition of his office shall be deemed to be the substantive holder of that office during the period between the date on which the office was abolished and the date of expiration of any leave of absence granted to him;

(*c*) when an officer on probation is required to retire—

(i) under Article 57 of the Constitution of the State of Sabah;

(ii) to facilitate the introduction of constitutional changes;

(iii) because of the abolition of his office; or

(iv) on the grounds of age in accordance with the provisions of the appropriate law,

(a) S.I. 1963 II. p. 2778.

he shall be deemed to have been confirmed in his appointment immediately before the day upon which he was given notice requiring him to retire.

(4) Where an officer was on any date appointed or selected for appointment to an office in the public service upon transfer from pensionable employment under the Government of the United Kingdom in a public office as defined by the Superannuation Act 1892(a) and for any period thereafter was entitled to return to such pensionable employment he shall not for the purposes of this Schedule be regarded as having been on that date appointed or, as the case may be, selected for appointment as the substantive holder of an office in the public service but shall for those purposes be regarded as having been so appointed or selected on the date on which he ceases to be entitled to return to such pensionable employment if on that date he was the holder of an office in the public service.

Entitlement to compensation.

2. (1) Subject to the provisions of this Schedule, every entitled officer shall, on the operative date or, in the case of a person who becomes an entitled officer after that date, on the date on which he becomes an entitled officer, become entitled to compensation, which shall be assessed in accordance with the provisions of this paragraph and at each assessment shall be calculated by multiplying the amount of his annual pensionable emoluments on the date taken for calculation by the appropriate factor and the resulting amount, or twelve thousand pounds, whichever is the less, shall be the amount to which he is entitled:

Provided that an officer seconded to the service of another government or authority on the date taken for calculation shall, for the purposes of this paragraph, be deemed to have such annual pensionable emoluments on that date as he would have had on that date if he had not been so seconded but had continued until that date to hold the office in the public service that he was holding immediately before his secondment and had been granted all increments and other increases of salary for which he would thus have been eligible.

(2) The compensation of each entitled officer under this paragraph shall be provisionally assessed as soon as is reasonably practicable after the operative date or, in the case of a person who becomes an entitled officer after that date, as soon as is reasonably practicable after that person becomes an entitled officer, and for that purpose the date to be taken for calculation shall be the operative date or, in the case of a person who becomes an entitled officer after the operative date, the date on which that person became an entitled officer.

(3) The compensation under this paragraph of each person who is serving as an entitled officer shall be provisionally re-assessed upon each anniversary of the date in relation to which his compensation was assessed under sub-paragraph (2) of this paragraph, and shall be finally assessed upon his retirement or death while still serving as an entitled officer, and for the purposes of this sub-paragraph the date to be taken for calculation shall be such date (not being earlier than the date in relation to which his compensation was assessed under sub-paragraph (2) of this paragraph or later than the date upon which his compensation is provisionally re-assessed or finally assessed, as the case may be) as is most advantageous in relation to the officer.

(4) Each person who is serving as an entitled officer shall be entitled to additional compensation, notwithstanding that the additional compensation to which he is entitled under this sub-paragraph when added to the compensation to which he is entitled under the preceding provisions of this paragraph exceeds twelve thousand pounds, to be assessed on each occasion upon which his compensation is re-assessed under sub-paragraph (3) of this paragraph and calculated at each assessment by multiplying by decimal point 10 his annual pensionable emoluments for the period, reckoned in completed

(a) 55 & 56 Vict. c. 40.

years and months, beginning at the date by reference to which his compensation was last assessed and ending at the date by reference to which the next following assessment of his compensation is made:

Provided that any period of leave of absence for which such person is eligible and which is leave of absence in respect of a tour of duty which terminated before the operative date and the enjoyment of which has been deferred, shall not be taken into account in reckoning the period referred to in this sub-paragraph.

(5) In this paragraph " the appropriate factor " in relation to an officer means the factor obtained from Table I of the Annex to this Schedule (or, in the case of a judge, Table II of that Annex) that is appropriate to the age and pensionable service of that officer on the date taken for calculation reckoned in completed years and months or, if it is more favourable to the officer, reckoned in completed years without regard to parts of a year.

Payment of compensation.

3. (1) When the compensation of an entitled officer has been provisionally assessed under paragraph 2(2) of this Schedule, a payment shall be made to that officer, which—

(*a*) in the case of an entitled officer who has undertaken to serve as such upon such conditions as may be prescribed by the appropriate authority for any period not being less than two years, shall be an amount equal to the amount of the compensation or two thousand pounds, whichever is the less;

(*b*) in any other case, shall be an amount equal to the amount of the compensation as so assessed or, if that amount exceeds one thousand pounds, then one-sixth of the amount of compensation or one thousand pounds, whichever is the greater:

Provided that if an entitled officer gives such an undertaking after a payment has been made to him under this sub-paragraph, but not later than twelve months after the operative date, he shall be paid as soon as is reasonably practicable after the date on which he gave that undertaking. an amount which when added to the amount already paid to him equals the mount he would have been paid under this sub-paragraph if he had given that undertaking before any payment had been made to him under this sub-paragraph.

(2) Subject to the provisions of this paragraph, a further payment shall be made to every person who has become entitled to compensation under paragraph 2 of this Schedule and who has not already received the whole of that compensation (whether that person is serving as an entitled officer or has retired) upon each anniversary of the date in relation to which his compensation was assessed under sub-paragraph (2) of that paragraph, which—

(*a*) in the case of a payment made upon the first, second, third or fourth anniversary, shall be an amount equal to the appropriate fraction of the balance of compensation then outstanding; and

(*b*) in the case of a payment made upon the fifth or any later anniversary, shall be an amount equal to the balance of compensation then outstanding:

Provided that—

(i) where the balance of compensation outstanding upon the first, second, third or fourth anniversary exceeds five hundred pounds and, in the case of an officer to whom sub-paragraph (1)(*a*) of this paragraph applies, where that balance, if added to the amount of compensation already paid under this paragraph would exceed two thousand pounds, an amount equal to the appropriate fraction of that balance or four hundred pounds, whichever is the greater, shall be paid;

(ii) where the balance so outstanding is less than five hundred pounds, or, in the case of an officer to whom sub-paragraph (1)(*a*) of this paragraph applies, where that balance exceeds five hundred pounds but would not, if added to the amount of compensation already paid under this paragraph, exceed two thousand pounds, an amount equal to that balance shall be paid.

(3) Each person who is serving as an entitled officer shall be paid on each anniversary of the date in relation to which his compensation under paragraph 2(2) of this Schedule was assessed, the additional compensation to which he is then entitled under sub-paragraph (4) of that paragraph.

(4) Whenever—

(*a*) a person who has become entitled to compensation under paragraph 2 of this Schedule but who has not already received the whole of that compensation (and in the case of an entitled officer whether he is still serving as such or has already retired) attains the age of fifty-five years or, in the case of a person who is or was when he retired a judge, sixty-two years, or dies before attaining that age;

(*b*) an entitled officer who has not already received the whole of the compensation to which he is entitled under paragraph 2 retires in the circumstances described in paragraph 4(4)(*a*), (*c*) or (*d*) of this Schedule before he has attained that age or is required to retire in the circumstances described in paragraph 4(4)(*b*) of this Schedule; or

(*c*) an entitled officer who has not already received the whole of the compensation to which he is entitled under paragraph 2 of this Schedule retires in any other circumstances before he has attained that age but on or after the fifth anniversary of the operative date,

the balance then outstanding of the compensation to which he is entitled shall be paid to him or, if he is dead, to his personal representatives.

(5) Whenever an entitled officer, who has not already received the whole of the compensation to which he is entitled under paragraph 2 of this Schedule, is required before attaining the age of fifty-five years to retire

(*a*) in the circumstances described in paragraph 5 or paragraph 6 of this Schedule, the balance then outstanding of the compensation to which he is entitled under that paragraph shall be paid to him—

(i) if notice requiring him to retire is given to him while he is engaged upon a tour of residential service, before his departure from North Borneo; or

(ii) if such notice is given to him while on leave of absence after completing a tour of residential service, as soon as possible after the date upon which such notice is given to him;

(*b*) in the circumstances described in paragraph 7 of this Schedule, the balance then outstanding of the compensation to which he is entitled under paragraph 2 shall be paid to him as soon as possible after the date upon which notice requiring him to retire is given to him.

(6) The State Secretary may direct that instead of any payment being made to the personal representatives of a deceased person payment shall be made to one of the dependants of the deceased or to two or more of those dependants in such proportions as the State Secretary may think fit.

Provided that in the case of a deceased person having assigned the whole or part of the compensation due to him under this Schedule to

another person the balance outstanding of the compensation at the date of his death shall, to the extent to which it has been assigned by him, be paid to that other person.

(7) Whenever any payment of compensation is made under or in the manner prescribed by sub-paragraph (1) or sub-paragraph (2) of this paragraph, interest at the rate of five per centum per annum shall accrue from day to day during the period beginning at the date by reference to which that compensation was calculated and ending at the date of the next following assessment of compensation under any of the provisions of this Schedule upon any part of that compensation that did not become payable under this Schedule when the earlier assessment was made and that interest shall be paid in the manner and at the same time and place as that part of the compensation which is payable following the next assessment of compensation.

(8) In this paragraph " the appropriate fraction "—

(*a*) in relation to an assessment made upon the first anniversary, means one-fifth ;

(*b*) in relation to an assessment made upon the second anniversary, means one-quarter ;

(*c*) in relation to an assessment made upon the third anniversary, means one-third ; and

(*d*) in relation to an assessment made upon the fourth anniversary, means one-half.

Right to retire at any time.

4. (1) Subject to the provisions of this paragraph, an entitled officer may, after giving such notice as may be prescribed by the appropriate authority, retire at any time.

(2) An entitled officer who has given notice of his intention to retire under this paragraph on any date may, with the consent of the appropriate authority, withdraw the notice at any time before that date.

(3) No entitled officer shall retire under this paragraph without the permission of the Public Service Commission if the appropriate authority certifies that disciplinary proceedings are being taken against the officer and those proceedings might lead to his dismissal.

(4) An entitled officer—

(*a*) who is permitted to retire by reason of injury or ill-health ;

(*b*) who is required to retire on or after his attainment of any age prescribed by law ;

(*c*) who is required to retire in consequence of the abolition of his office or for the purpose of facilitating improvements in the organization of the part of the public service to which he belongs by which greater economy or efficiency may be effected ;

(*d*) who is required to retire in the public interest ; or

(*e*) in the case of a woman officer, who is required to retire upon her marriage ;

shall be deemed to have retired under this paragraph.

(5) In the case of the retirement of an entitled officer in pursuance of a notice given under sub-paragraph (1) of this paragraph, he shall be provided by the Government of the State with such passages and baggage facilities as he would have been entitled to under the scheme entitled " The Scheme of Retirement Benefits for Members of Her Majesty's Overseas Civil Service and for Officers designated under the Overseas Service (North Borneo) Agreement 1961 ", if he had retired in pursuance of a notice given by him under that scheme of his election to retire from the public service.

(6) The provisions of paragraph 5 of this Schedule shall apply in the case of the retirement of an entitled officer who is required to retire in the circumstances described in sub-paragraph (4)(*b*) or (*c*) of this paragraph as they apply in the case of the retirement of an officer in the circumstances described in that paragraph.

Compulsory retirement.

5. The provisions of this Schedule shall apply to an entitled officer required to retire under Article 57 of the Constitution of the State of Sabah as if he were an entitled officer retiring under this Schedule:

Provided that—

(*a*) in the case of the retirement under that Article of an officer who is on leave of absence after completing a tour of residential service—

(i) he shall, if the period of leave on full pensionable emoluments for which he is eligible on the date upon which he is given notice under that section requiring him to retire is less than six months, be granted such additional leave on full pensionable emoluments as will bring the aggregate period of such leave of absence from that date up to six months;

(ii) he shall be provided by the Government of the State with a passage to North Borneo for his own use as if he were returning to the State for a further tour of residential service, and such passage (if he returns to the State) and such baggage facilities as an officer of similar status is entitled to under the General Orders of that Government when retiring from the public service, having attained the age of fifty-five years and having completed a final tour of residential service: and

(*b*) in the case of the retirement under that Article of an officer in any other circumstances—

(i) he shall not be required to depart from the State on leave of absence pending his retirement until the expiration of a period of six months from the date upon which he was given notice under that section requiring him to retire;

(ii) he shall be provided by the Government of the State with such passages and baggage facilities as an officer of similar status is entitled to under the General Orders of that Government when retiring from the public service, having attained the age of fifty-five years and having completed a final tour of residential service;

(iii) he shall, if the period of leave on full pensionable emoluments for which he is eligible is less than six months, be granted such additional leave on full pensionable emoluments as will bring the aggregate period of such leave of absence pending his retirement up to six months.

Compulsory retirement after secondment.

6. Where an entitled officer, having been seconded to the public service of the Federation and that secondment having been terminated, is required to retire upon the termination of his secondment and the Public Service Commission certifies that his secondment was terminated to enable a local candidate or officer to be appointed to the office to which he was seconded and that no suitable employment in the public service was available the provisions of paragraph 5 of this Schedule shall apply to that entitled officer as if he were an entitled officer required to retire under Article 57 of the Constitution of the State of Sabah.

Retirement to facilitate constitutional changes.

7. (1) The provisions of this Schedule shall apply to an entitled officer who is required to retire to facilitate the introduction of constitutional changes as if he were an entitled officer retiring under this Schedule:

Provided that—

(*a*) he shall be paid before his departure on leave pending retirement, or as soon as possible thereafter, a disturbance grant equal to one-quarter of his annual pensionable emoluments at the date of his retirement;

(*b*) if the period of leave on full pensionable emoluments for which he is eligible on the date of his departure on leave pending retirement is less than six months, he shall be granted such additional leave on full pensionable emoluments as will bring the aggregate period of pensionable leave of absence from that date up to six months; and

(*c*) he shall be provided by the Government of North Borneo with such passages and baggage facilities as an officer of similar status is entitled to under the General Orders of that Government when retiring from the public service, having attained the age of fifty-five years and having completed a final tour of residential service.

(2) If any dispute arises as to whether or not an officer has for the purposes of this paragraph been required to retire to facilitate the introduction of constitutional changes it shall be referred to the Public Service Commission for decision and their decision shall be final.

Grant of pensions and gratuities to entitled officers.

8. (1) This paragraph applies to entitled officers who are the substantive holders of offices, being pensionable offices for the purposes of the appropriate law.

(2) Subject to the provisions of paragraphs 16 and 17 of this Schedule, an officer to whom this paragraph applies, on his retirement under this Schedule, may be granted at his option (such option to be exercised before the date of retirement or, in the case of an officer to whom paragraph 4(4) of this Schedule applies, within one month after that date) either—

(*a*) a pension of such amount as may be granted under the appropriate law;

(*b*) a reduced pension equal to such fraction as he may desire of the pension that may be granted under the appropriate law (not being, in the case of an officer who retires within twelve years of the operative date, less than the permitted fraction) together with a gratuity equal to the annual amount of the remaining fraction of that pension multiplied by the appropriate factor;

(*c*) a gratuity equal to the annual amount of the pension that may be granted under the appropriate law, or a fraction thereof, multiplied by the appropriate factor, but so that no such gratuity shall exceed that resulting from an annual pension of three hundred pounds multiplied by the appropriate factor and, where the gratuity equals a fraction of the annual amount of that pension multiplied by the appropriate factor, a reduced pension equal to the difference between that fraction and such annual amount or that fraction and three hundred pounds, whichever is the less; or

(*d*) in the case of an officer who retires not less than twelve years after the operative date, a gratuity equal to the annual amount of the pension that may be granted under the appropriate law multiplied by the appropriate factor.

(3) For the purposes of this paragraph an officer shall be deemed to be eligible for the grant of a pension under the appropriate law—

(*a*) notwithstanding that he may have retired before attaining the age specified in the appropriate law as qualifying him for the grant of a pension; and

(*b*) notwithstanding that he may not have completed at the date of his retirement the period of qualifying service required by the appropriate law to render him eligible for the grant of a pension.

(4) Where an officer to whom this paragraph applies retires by reason of ill-health in circumstances in which he could under the appropriate law be granted an additional pension the provisions of this paragraph shall have effect in relation to that officer as if references to the pension that may be granted under the appropriate law included references to that additional pension.

(5) Where an officer to whom this paragraph applies retires by reason of injury or in consequence of the abolition of his office or for the purpose of facilitating improvements in the organisation of the part of the public service to which he belongs by which greater economy or efficiency may be effected in circumstances in which he could under the appropriate law be granted an additional pension, the provisions of this paragraph shall have effect in relation to that officer as if references to the pension that may be granted under the appropriate law did not include references to that additional pension.

(6) For the purposes of this paragraph the amount of the pension that an officer who is required to retire under paragraph 4(4)(*b*) or (*c*) or paragraph 5, 6 or 7 of this Schedule may be granted under the appropriate law shall be calculated as if his annual pensionable emoluments on the date by reference to which his compensation is finally assessed under paragraph 2 of this Schedule were the emoluments to be taken for computing his pension under the appropriate law.

(7) If an officer has not exercised the option conferred upon him by sub-paragraph (2) of this paragraph within the period in which it is required to be exercised he shall be deemed to have opted for the grant of a pension of such amount as may be granted under the appropriate law.

(8) In this paragraph—

"the appropriate factor" in relation to an officer means the factor obtained from Table III of the Annex to this Schedule that is appropriate to the age of that officer at his retirement reckoned in completed years and completed months;

"the permitted fraction"—

(*a*) in relation to an officer who retires within one year of the operative date, means three-quarters; and

(*b*) in relation to an officer who retires within not less than one year of the operative date, means such fraction as is obtained by subtracting one-sixteenth for each complete year of his pensionable service after the operative date from three quarters:

Provided that in reckoning for the purposes of this sub-paragraph the years of pensionable service of an officer who is granted leave of absence pending his retirement, leave of absence granted in respect of service prior to the operative date enjoyment of which had on the operative date been deferred shall not be taken into account.

Special gratuity for certain officers.

9. (1) Subject to the provisions of paragraphs 16 and 17 of this Schedule, where any entitled officer to whom Part III of the Schedule to the Pensions Ordinance of North Borneo applies retires under this Schedule and is granted by any government or other authority that is a scheduled government for the purposes of that Part both a pension and a gratuity, having elected to receive that pension and that gratuity in lieu of a pension of greater amount, he may be granted (in addition to any gratuity that may be granted to him under paragraph 8 of this Schedule) a gratuity equal to the amount (if any) by which the amount produced by—

(*a*) subtracting the annual amount of the pension granted to him by the scheduled government from the annual amount of the pension that would have been granted to him by that government had he not elected to receive the gratuity granted to him by the scheduled government; and

(*b*) by multiplying the resulting amount by the appropriate factor,

exceeds the amount of the gratuity granted to him by the scheduled government.

(2) Subject to the provisions of paragraphs 16 and 17 of this Schedule, where an entitled officer to whom the provisions of the Oversea Superannuation Scheme Regulations apply retires under this Schedule and is granted under those Regulations a pension and a lump sum he may be granted a gratuity equal to the amount produced by subtracting that lump sum from the sum arrived at by multiplying by the appropriate factor one-quarter of the annual amount of the pension he would have received if his pension had been calculated under the Pensions Ordinance of North Borneo.

(3) In this paragraph "the appropriate factor" has the same meaning as in paragraph 8 of this Schedule.

Special gratuity on the death of certain officers.

10. (1) Where an entitled officer dies and it is lawful under the provisions of the appropriate law for a gratuity to be granted to his personal representatives there shall be granted to his personal representatives either that gratuity or a gratuity equal to the maximum gratuity which could have been granted to that officer under the provisions of paragraph 8 of this Schedule, if he had retired under this Schedule at the date of his death, whichever is the greater:

Provided that, in the case of an officer to whom Part III of the Schedule to the Pensions Ordinance of North Borneo applied, in respect of that proportion of the pension for which he would have been eligible, if he had retired under this Schedule at the date of his death, and which is attributable to his pensionable service otherwise than in the public service the provisions of paragraph 8(2)(*d*) of this Schedule shall not apply and the permitted fraction referred to in that paragraph shall not be less than three-quarters.

(2) For the purposes of the proviso to sub-paragraph (1) of this paragraph the proportion of a pension which is attributable to the pensionable service of an officer otherwise than in North Borneo shall be that proportion of the pension for which the officer would have been eligible if his pensionable service had been wholly in North Borneo as the aggregate amount of his pensionable emoluments during his pensionable service otherwise than in North Borneo bears to the aggregate amount of his pensionable emoluments throughout his pensionable service.

(3) Where an entitled officer to whom the Oversea Superannuation Scheme Regulations apply dies and a gratuity is payable to his personal representatives under those Regulations, there shall be granted to his personal representatives a gratuity equal to the amount produced by subtracting the amount of the gratuity payable under those Regulations from the amount of the maximum gratuity which could have been granted to that officer under paragraph 9 of this Schedule, if that paragraph and the Pensions Ordinance of North Borneo had applied to him and he had retired under this Schedule at the date of his death.

(4) The State Secretary may direct that instead of being paid to the personal representatives, any gratuity payable under sub-paragraph (1) or sub-paragraph (3) of this paragraph shall be paid to one of the dependants of the deceased or be divided among any two or more of those dependants in such proportions as the State Secretary may think fit.

Entitled officer re-appointed to U.K. service.

11. (1) This paragraph applies to an entitled officer who has retired under this Schedule and—

(*a*) who was transferred to the public service from pensionable employment under the Government of the United Kingdom in a public office as defined by the Superannuation Act 1892; and

(*b*) who not later than twelve months after he retired has (other than as the result of a competition conducted by the Civil Service Commissioners of the United Kingdom) returned to such pensionable employment.

(2) A person to whom this paragraph applies shall cease to be entitled to compensation under paragraph 2 of this Schedule, but shall be entitled to compensation of an amount equal to—

(*a*) one-half of the amount he would receive if he were entitled to compensation under paragraph 2 of this Schedule; or

(*b*) the amount he would receive if he were entitled to compensation under paragraph 12 of this Schedule having been transferred to the pensionable employment referred to in sub-paragraph (1)(*b*) of this paragraph on the date on which he retired,

whichever is the less.

(3) If the provisions of this paragraph become applicable to any officer his compensation shall forthwith be re-assessed, and—

(*a*) if the amount of compensation as so re-assessed exceeds the amount he has already received under paragraph 3 of this Schedule, the balance of compensation then outstanding shall be paid, together with any unpaid interest that has accrued under that paragraph before the re-assessment in the manner prescribed by paragraph 3(2) of this Schedule for the payment of compensation assessed under paragraph 2 of this Schedule; or

(*b*) if the amount of compensation he has already received under that paragraph exceeds the amount of compensation to which he is entitled under this paragraph, the excess shall forthwith become repayable, but in any such case any interest received on account of such excess shall not be repayable.

Transfer of entitled officer to other public service.

12. (1) This paragraph applies to an entitled officer who is transferred from the public service—

(*a*) to the service of a government or authority that is a scheduled government for the purposes of Part III of the Schedule to the Pensions Ordinance of North Borneo in circumstances in which he remains eligible for the grant of a pension under the appropriate law or the Oversea Superannuation Scheme Regulations, as the case may be, upon his eventual retirement; or

(*b*) to service in the office of Governor in such circumstances that he is or may become eligible for a pension under the Governors' Pensions Act 1957(a):

Provided that—

(*a*) it does not apply to an officer to whom paragraph 11 of this Schedule applies;

(*b*) it applies to any officer who having served after the operative date for a tour or tours of duty amounting in the aggregate to not less than two years residential service (or less than two years, in the case of an officer returning to pensionable employment under the Government of the United Kingdom in consequence of the termination of his service in the public service otherwise than on disciplinary grounds) would but for the provisions of sub-paragraph (4) of paragraph 1 of this Schedule be an

(a) 5 & 6 Eliz. 2. c. 62.

entitled officer and who, in the opinion of the appropriate authority, would have had a reasonable expectation of becoming an entitled officer if no constitutional changes had been introduced, as if he were an entitled officer.

(2) An officer to whom this paragraph applies shall cease to be entitled to compensation under paragraph 2 of this Schedule, but if the amount of his annual pensionable emoluments immediately before his transfer exceeds the amount of the annual emoluments payable to him immediately after his transfer (being emoluments that may be taken into account for the purpose of his pension under the law or regulations relating to his service in that other public service) he shall be entitled to compensation equal to—

(*a*) the amount of the excess multiplied by the appropriate factor; or

(*b*) the amount he would receive if he were entitled to compensation under paragraph 2 of this Schedule, having retired on the date of his transfer,

whichever is the less.

(3) If the provisions of this paragraph become applicable to any officer, his compensation shall forthwith be re-assessed, and—

(*a*) if the amount of compensation as so re-assessed exceeds the amount he has already received under paragraph 3 of this Schedule, the balance of compensation then outstanding shall be paid, together with any unpaid interest that has accrued under that paragraph before the re-assessment in the manner prescribed by paragraph 3(2) of this Schedule for the payment of compensation assessed under paragraph 2 of this Schedule; or

(*b*) if the amount of compensation he has already received under that paragraph exceeds the amount of compensation to which he is entitled under this paragraph, the excess shall forthwith become repayable, but in any such case any interest received on account of the excess shall not be repayable.

(4) In this paragraph "the appropriate factor" in relation to an officer means the factor obtained from Table IV of the Annex to this Schedule that is appropriate to the age of the officer at the date of his transfer reckoned in completed years and completed months.

Penalties for breach of undertakings.

13. (1) If an entitled officer who has given an undertaking for the purposes of head (*a*) of sub-paragraph (1) of paragraph 3 of this Schedule ceases to serve in accordance with the terms of that undertaking at any time before the end of the period to which the undertaking relates otherwise than by reason of his death or his retirement in circumstances beyond his control, then the amount of compensation to which he would otherwise be entitled under paragraph 2 of this Schedule shall be reduced by one-half per cent for each month or part of a month during that period in which he has not served in accordance with the undertaking.

(2) If an entitled officer has been granted promotion in the public service (whether before or after the operative date) upon his giving an undertaking to serve upon such conditions as may be prescribed by the appropriate authority for any period ceases to serve in accordance with the terms of that undertaking at any time before the end of the period to which the undertaking relates otherwise than by reason of his death or his retirement in circumstances beyond his control then the amount of compensation to which he is entitled under paragraph 2 of this Schedule shall be calculated as if his annual pensionable emoluments on the date taken for calculation were equal to his annual pensionable emoluments immediately before his promotion or were equal to the average of his annual pensionable emoluments during the three years immediately preceding his so ceasing to serve, whichever are the greater; and in determining the average of such pensionable emoluments, the provisions of the appropriate law relating to the deter-

mination of the average of annual pensionable emoluments for the purposes of pension shall be applied ; and, in the case of officers to whom the Oversea Superannuation Scheme Regulations apply, in determining the average of such pensionable emoluments, the provisions of the Pensions Ordinance of North Borneo relating to the determination of the average of annual pensionable emoluments for the purposes of pension shall be applied.

(3) If any of the provisions of this paragraph becomes applicable to any entitled officer, his compensation shall be re-assessed accordingly and paid in accordance with paragraph 3 of this Schedule and if the amount of compensation he has already received under that paragraph exceeds the amount of compensation to which he is entitled under the re-assessment the excess shall forthwith become repayable, but in any such case any interest received on account of the excess shall not be repayable.

Disciplinary proceedings and dismissal.

14. (1) When disciplinary proceedings are taken, or are about to be taken, against any person who is serving as an entitled officer and those proceedings might lead to his dismissal, the payment of compensation under this Schedule and interest thereon shall be withheld pending the determination of those proceedings.

(2) Where any person who is serving as an entitled officer is dismissed, any compensation that he has not already received may, with the approval of the Public Service Commission, be withheld.

Place of payment and rate of exchange.

15. Any compensation or gratuity payable under this Schedule to an officer or to his personal representatives or dependants shall be paid, in accordance with any request made from time to time by such officer, his personal representatives or his dependants, as the case may be, in any of the following countries—

(*a*) in the United Kingdom ;

(*b*) in any of the territories which will comprise the Federation of Malaysia ;

(*c*) in the territory from which the officer was recruited or where he intends to reside ;

(*d*) in the case of payment to the personal representatives of an officer or his dependants, in the territory in which the personal representatives or the dependants, as the case may be, reside ; or

(*e*) in such territory as the officer or his personal representatives or dependants may, with the concurrence of the State Secretary, select,

in the currency of the territory in which payment is to be made ; and, where payment is to be made in a territory other than a territory included in the Federation, the amount of the payment shall be such as would produce, at the official rate of exchange prevailing at the date of the payment, the amount in sterling of the compensation or gratuity as calculated at the official rate of exchange prevailing on the operative date.

Right to opt for abolition terms.

16. (1) An entitled officer may at his option (such option to be exercised within three months of the operative date or, in the case of an officer who was not an entitled officer on the operative date, within three months of the date on which he became an entitled officer) become an officer to whom this paragraph applies.

(2) An officer to whom this paragraph applies shall not be entitled to compensation under this Schedule or be granted a pension or gratuity under this Schedule but, subject to the provisions of paragraph 17 of this Schedule may, on his retirement under this Schedule, be granted such benefits as may be granted under the appropriate law to an officer whose office has been abolished.

(3) An officer to whom this paragraph applies shall repay the amount of any compensation that may have been paid to him.

Application of appropriate law.

17. The provisions of the appropriate law shall, subject to the provisions of this Schedule, apply in relation to the grant of any pension or gratuity under this Schedule and to any pension or gratuity granted thereunder as they apply in relation to the grant of a pension or gratuity, and to any pension or gratuity granted, under the appropriate law.

Exemption from tax.

18. Any compensation, gratuity or disturbance grant payable under any of the provisions of this Schedule or the Schedule to the Sarawak (Compensation and Retiring Benefits) Order in Council 1963 shall be exempt from tax under any law in force in North Borneo relating to the taxation of incomes.

Exercise of option.

19. Any option exercisable by any person for the purposes of this Schedule—

(*a*) shall be irrevocable after the end of the period within which it is to be exercised;

(*b*) shall be exercised by notice in writing to the appropriate authority;

(*c*) shall be deemed to have been exercised on the date on which the notice is received:

Provided that the appropriate authority may, if it thinks fit, generally or in respect of a particular person and subject or not to conditions, extend the period for the exercise of an option.

Compensation charged on Consolidated Fund.

20. Any compensation or disturbance grant payable under any of the provisions of this Schedule shall be a charge on and paid out of the Consolidated Fund or, as the case may require, the revenues and other funds of North Borneo.

Modified application of Schedule.

21. If the Government of the United Kingdom, the Government of the Federation and the Government of Sabah agree that, in their application to any entitled officer, the foregoing provisions of this Schedule shall have effect subject to modifications or exceptions, being modifications or exceptions which do not cause the provisions of this Schedule to be less favourable to that officer, then the provisions of this Schedule shall have effect accordingly.

ANNEX

Instructions for obtaining the appropriate factor from Table I

I. Read off from the table the factors for the officer's age at his last birthday and his completed years of service.

II. Read off from the table the factor for ten years' service and the officer's age in years and completed months by interpolation arithmetically.

III. Divide II by 120 and multiply the result by the number of completed months of service, not exceeding 120.

IV. The greater of I and III, adjusted to the nearest second decimal place (when the third decimal place is 5 exactly take the next highest second place), is the factor required.

Instructions for obtaining the appropriate factor from Table II

I. Read off from the table the factor for the officer's age at his last birthday.

II. Read off from the table the factor for the officer's age in years and completed months by interpolation arithmetically.

III. The greater of I and II, adjusted to the nearest second decimal place (when the third decimal place is 5 exactly take the next highest second place), is the factor required.

Instructions for obtaining the appropriate factor from Tables III and IV

I. The factor required is obtained by reading off from the table the factor for the officer's age in years and completed months by interpolation arithmetically, and adjusting to the nearest second decimal place (when the third decimal place is 5 exactly take the next highest second place).

TABLE 1

The Schedule, paragraph 2

Age of officer	Factor when length of service is							
	3 years	4 years	5 years	6 years	7 years	8 years	9 years	10 years or more
21	·16							
22	·18	·24						
23	·21	·28	·34					
24	·23	·31	·39	·47				
25	·26	·35	·44	·53	·62			
26	·30	·40	·50	·59	·69	·79		
27	·33	·44	·56	·67	·78	·89	1·00	
28	·38	·50	·63	·76	·88	1·01	1·13	1·26
29	·44	·58	·72	·87	1·02	1·16	1·30	1·45
30	·51	·68	·85	1·02	1·19	1·36	1·53	1·70
31	·60	·80	1·00	1·21	1·41	1·61	1·81	2·01
32	·70	·94	1·18	1·41	1·64	1·88	2·12	2·35
33	·81	1·08	1·36	1·63	1·90	2·17	2·44	2·71
34	·92	1·23	1·54	1·84	2·15	2·46	2·76	3·07
35	1·02	1·36	1·70	2·05	2·39	2·73	3·07	3·41
36	1·11	1·48	1·86	2·23	2·60	2·97	3·34	3·71
37	1·19	1·58	1·98	2·38	2·77	3·17	3·56	3·96
38	1·24	1·66	2·08	2·49	2·90	3·32	3·74	4·15
39	1·28	1·70	2·13	2·56	2·98	3·41	3·83	4·26
40	1·29	1·72	2·15	2·58	3·01	3·44	3·87	4·30
41	1·28	1·71	2·14	2·57	3·00	3·42	3·85	4·28
42	1·26	1·68	2·10	2·51	2·93	3·35	3·77	4·19
43	1·21	1·62	2·02	2·42	2·83	3·23	3·64	4·04
44	1·15	1·54	1·92	2·30	2·69	3·07	3·46	3·84
45	1·08	1·44	1·80	2·16	2·52	2·88	3·24	3·60
46	1·00	1·33	1·66	2·00	2·33	2·66	3·00	3·33
47	·91	1·22	1·52	1·82	2·13	2·43	2·74	3·04
48	·82	1·10	1·37	1·64	1·92	2·19	2·47	2·74
49	·73	·98	1·22	1·46	1·71	1·95	2·20	2·44
50	·64	·85	1·06	1·28	1·49	1·70	1·92	2·13
51	·54	·72	·90	1·07	1·25	1·43	1·61	1·79
52	·43	·57	·71	·85	·99	1·14	1·28	1·42
53	·30	·40	·50	·60	·70	·80	·90	1·00
54	·15	·20	·25	·30	·35	·40	·45	·50
55 or more ...	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil

TABLE II

The Schedule, paragraph 2

Age of judge	*Factor where length of service is 10 years or more*	*Age of judge*	*Factor where length of service is 10 years or more*
40	3·96	55	2·50
41	4·15	56	2·27
42	4·26	57	2·04
43	4·30	58	1·76
44	4·28	59	1·42
45	4·22	60	1·00
46	4·13	61	·50
47	4·02	62 or over	Nil
48	3·89		
49	3·74		
50	3·57		
51	3·38		
52	3·17		
53	2·95		
54	2·73		

TABLE III

The Schedule, paragraphs 8 and 9

Table showing the lump sum to be paid for the commutation of each £1 p.a. of pension

Age of Officer	*Factor*	*Age of Officer*	*Factor*
25	17·08	40	15·07
26	16·97	41	14·90
27	16·86	42	14·73
28	16·74	43	14·55
29	16·62	44	14·36
30	16·50	45	14·17
31	16·38	46	13·97
32	16·25	47	13·76
33	16·12	48	13·54
34	15·98	49	13·32
35	15·84	50	13·08
36	15·70	51	12·84
37	15·55	52	12·59
38	15·40	53	12·50
39	15·24	54	12·50

TABLE IV

The Schedule, paragraph 12

Age	*Factor*
30 and below	5·00
31	5·08
32	5·21
33	5·47
34	5·90
35	6·56
36	7·44
37	8·10
38	8·53
39	8·79
40	8·92
41	9·00
42	8·92
43	8·77
44	8·40
45	7·61
46	6·39
47	5·60
48	5·23
49	5·08
50 and above	5·00

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order makes provision for compensation and retiring benefits for certain officers in the public service of North Borneo.