

MALAYSIA



Treaty Series No. 88 (1965)

Agreement

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

concerning certain Overseas Officers
serving in Sabah and Sarawak

Kuala Lumpur, 7 May 1965

[The Agreement is deemed to have entered into force on 1 January ¹⁹⁶⁴ 1965]

*Presented to Parliament by the Secretary of State for Commonwealth Relations
by Command of Her Majesty
November 1965*

LONDON

HER MAJESTY'S STATIONERY OFFICE

NINEPENCE NET

Cmnd. 2820

**AGREEMENT BETWEEN
THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

WHEREAS the Government of Malaysia considers that it would be in the public interest to employ in the public service certain officers from other countries, seconded from the Government of Sabah or the Government of Sarawak or recruited by the Government of Malaysia for service in Sabah or Sarawak or both

AND WHEREAS Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Government of the United Kingdom) is prepared to contribute to that part of the cost of employing such officers as is attributable to the fact that such officers will be serving outside their own countries

AND WHEREAS the Government of Malaysia is responsible on and after the 1st day of January, 1964, for the payment of the pensions of all persons who were designated officers for the purpose of the Overseas Service (Sarawak) Agreement, 1961, and the Overseas Service (North Borneo) Agreement, 1961;

NOW, THEREFORE, it is agreed between Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia as follows:

1. (1) In this Agreement unless the context otherwise requires:—

“appointed day” means the date on which Malaysia was established;

“child” means the son or daughter of a designated officer, including a step-son, step-daughter, adopted son or adopted daughter, not having passed his or her nineteenth birthday and being unmarried and wholly dependent upon the designated officer;

“compensation” means any sum of money, not being a pension or the commutation thereof or a gratuity, which is payable by the Government of Malaysia, on or after the appointed day, either in one payment or by instalments, including any sum payable by way of commutation of additions to a pension, to a designated officer by virtue of arrangements for the payment of compensation approved by a Secretary of State for the purpose of this Agreement;

“contract officer” means a designated officer seconded from the service of the Government of Sabah or the Government of Sarawak to the service of the Government of Malaysia or recruited by the Government of Malaysia for service in Sabah or Sarawak who is on or after the appointed day a party to a contract of service in writing with one or other of the aforementioned Governments and whose service under that contract does not qualify him for a pension;

“designated officer” means an officer designated as such by a Secretary of State who is

- (i) an expatriate officer who, on or after the appointed day, is seconded by the Government of Sabah or the Government of Sarawak for service under the Government of Malaysia or is recruited by the Government of Malaysia for service in Sabah or Sarawak or is transferred to the service of the Government of Malaysia in the office of Judge of the High Court of Borneo having immediately before such transfer been the substantive holder of a pensionable office in the service of the Government of Sabah or the Government of Sarawak; and
- (ii) who
 - (a) is a member of Her Majesty’s Overseas Civil Service; or
 - (b) was selected for appointment by or with the approval of a Secretary of State, or was recruited by the Crown Agents for Oversea Governments and Administrations; or
 - (c) was otherwise recruited to a post for which a normal channel of recruitment is either the Ministry of Overseas Development or the Crown Agents for Oversea Governments and Administrations and whose appointment for the purpose of this Agreement is approved by a Secretary of State;

“gratuity” means the sum payable to a contract officer, in addition to salary and allowance, under his contract of service, and described therein as such or in the laws and regulations applicable thereto, in return for service rendered, whether such sum is paid at the conclusion of that service or otherwise;

“passage” means transportation of a designated officer, his wife, children and effects by such means, by such routes, in such classes of accommodation and in accordance with such conditions as the Government of Malaysia may with the concurrence of the Government of the United Kingdom prescribe;

“pension” means the pension payable to a designated officer under pensions Laws and Regulations applicable to him, including any sum paid to him by way of commutation of such pension, but excluding any compensation;

“Secretary of State” means one of Her Majesty’s Principal Secretaries of State in the United Kingdom.

(2) Reference in this Agreement to Sabah shall in relation to any period prior to the appointed day be construed as a reference to North Borneo.

2. In the event of the Government of Malaysia on or after the appointed day paying the allowances, and providing for the passages referred to in clause 3 of this Agreement, the Government of the United Kingdom will, in accordance with such procedure as may mutually be agreed between the said two Governments, reimburse the Government of Malaysia the following sums:—

- (a) the aggregate amount of the allowance, referred to in paragraphs (a) and (b) of clause 3 of this Agreement, and paid to designated officers less such sum as may be agreed by the said two Governments as

being equivalent for the purpose of this Agreement to the proceeds of taxation payable by designated officers on the inducement allowance referred to in paragraph (a) of clause 3 of this Agreement;

- (b) one-half of the aggregate amount paid by the Government of Malaysia in providing for designated officers the passages referred to in paragraph (c) of clause 3 of this Agreement;
- (c) that part of any gratuity paid by the Government of Malaysia to a designated officer which accrues to that officer by virtue of the addition to his emoluments, after the appointed day, of the inducement allowance referred to in paragraph (a) of clause 3 of this Agreement;
- (d) that part of any pension paid by the Government of Malaysia to a designated officer which accrues to that officer by virtue of the addition to his pensionable emoluments, after the appointed day, of the inducement allowance referred to in paragraph (a) of clause 3 of this Agreement which shall bear the same proportion to the total pension payable to that officer by the Government of Malaysia as the total amount of inducement allowance as aforesaid paid to him by the Government of Malaysia bears to the aggregate pensionable emoluments earned by him, before or after the appointed day while in the public service of the Government of Malaysia.

3. The allowances and passages mentioned in clause 2 of this Agreement are as follows:—

- (a) an inducement allowance paid to a designated officer at such annual rate as may be specified from time to time by the Government of the United Kingdom after consultation with the Government of Malaysia;
- (b) any education allowance to which a designated officer may be entitled at rates and under conditions specified from time to time by the Government of the United Kingdom after consultation with the Government of Malaysia;
- (c) passages on such occasions as the Government of Malaysia may with the concurrence of the Government of the United Kingdom prescribe.

4. In the event of the Government of Malaysia on or after the appointed day paying a pension, gratuity or compensation to a person who was a designated officer for the purposes of the Overseas Service (Sarawak) Agreement, 1961, or the Overseas Service (North Borneo) Agreement, 1961, the Government of the United Kingdom will, in accordance with such procedure as may mutually be agreed between the said two Governments, reimburse the Government of Malaysia the following sums:—

- (a) that part of any gratuity paid by the Government of Malaysia to such a person which accrues to that person by virtue of the addition to his emoluments of the inducement allowance referred to in whichever of those Agreements apply in relation to him;
- (b) that part of any pension paid by the Government of Malaysia to any such person which accrues to such person by virtue of the addition to his pensionable emoluments of the inducement allowance referred to in paragraph (a) of this clause which shall bear the same proportion to the total pension payable to that person in respect of his service in

Sarawak or Sabah, as the case may be, as the total amount of inducement allowance as aforesaid paid to him by the Government of Malaysia bears to the aggregate pensionable emoluments earned by him while in the public service of the Government of Sabah or Sarawak;

(c) one half of the aggregate amount paid by the Government of Malaysia as compensation to such a person.

5. The Government of the United Kingdom will take such steps as may be necessary to exempt the allowance referred to in paragraph (b) of clause 3 of this Agreement from the operation of any income tax law for the time being in force in the United Kingdom, and the Government of Malaysia will take such steps as may be necessary either to exempt the said allowance from the operation of any income tax law for the time being in force in Malaysia, or to ensure that the amount after the deduction of income tax received by a designated officer by way of the said allowance is equal to the allowance specified by the Government of the United Kingdom in pursuance of paragraph (b) of clause 3.

6. (1) On or before the 1st of October in each year the Government of Malaysia will provide the Government of the United Kingdom with such information, including information concerning any variation in the numbers of designated officers which results from the establishment requirements of the Government of Malaysia, as the Government of the United Kingdom may require to calculate the amounts payable by the Government of the United Kingdom under clauses 2 and 4 of this Agreement during the ensuing financial year of the Government of the United Kingdom.

(2) The Government of Malaysia will supply to the Government of the United Kingdom such accounts and other information in connection with the operation of this Agreement as may be requested from time to time.

7. The Government of Malaysia will consult the Government of the United Kingdom before effecting any changes which would have the effect of varying the amounts reimbursable by the Government of the United Kingdom under clauses 2 and 4 of this Agreement.

8. Subject to the provisions of clauses 6 and 7 of this Agreement nothing in this Agreement shall affect the right of the Government of Malaysia to vary its disposition or requirements of officers in its public service as it sees fit.

9. This Agreement shall terminate, unless some other date is agreed between the Government of Malaysia and the Government of the United Kingdom, on the 31st day of March, 1971;

Provided that —

(i) This Agreement shall not be terminated on a date earlier than the 31st March, 1971, unless all the obligations arising thereunder, other than those in respect of pensions referred to in paragraph (d) of clause 2 and in paragraph (b) of clause 4 of this Agreement, have been discharged; and

(ii) the termination of this Agreement shall not affect the liability of the Government of the United Kingdom to make reimbursements in respect of pensions referred to in paragraph (d) of clause 2 and in paragraph (b) of clause 4 of this Agreement.

10. This Agreement shall be deemed to have come into operation on the 1st day of January, 1964, and may be cited as the Overseas Service (Malaysia) Agreement, 1964.

Done in duplicate in Kuala Lumpur this 7th day of May 1965.

HEAD.

TUN RAZAK.

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

For the Government of Malaysia.

Printed and published by
HER MAJESTY'S STATIONERY OFFICE

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