

MALAYSIA

Report of

The

Inter-Governmental

Committee

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CONTENTS

	PAGE	PARAGRAPH
Introduction	1	
Establishment of the Federation of Malaysia	2	
Proposed Constitutional Arrangements	3	
Religion	3	15
Immigration	3	16
Education	4	17
Citizenship	5	18
Federal Legislature	6	19
State Constitutions	6	20
Distribution of Legislative powers	7	21
Land	7	22
National Council for Local Government	8	23
Financial provisions	8	24
Taxation	8	24 (1)
Revenues of Borneo States	8	24 (2)
Capitation grant	8	24 (3)
Road Grant	9	24 (4) (5)
Balancing Grant	9	24 (6)
Sarawak escalating grant	9	24 (7)
North Borneo 40% growth Revenue grant	9	24 (8)
Review by Assessor	9	24 (9)
Sarawak Development Expenditure	10	24 (10)
North Borneo Development Expenditure	10	24 (11)
British grant	10	24 (12)
Property, assets and buildings	10	24 (13)-17)
Loans	11	24 (18)
Pensions	11	24 (19)
Creation of posts	11	24 (20)-(22)
Audit	12	24 (23)-(24)
Transitional financial arrangements	12	24 (25)
Elections	12	25
Judiciary	13	26
Supreme Court and High Courts	13	26 (1)-(2)
Jurisdiction of Courts	13	26 (3)-(6)
Appointment of Judges	14	26 (8)
Qualification of Judges	14	26 (9)
Retiring age	14	26 (10)
Removal of Judges	14	26 (11)-(12)
Transfer of Judges	14	26 (13)
Acting Judges	14	26 (14)
Judicial Commissioners	14	26 (15)
Safeguard for High Court	14	26 (16)
Responsibility to Ministry	14	26 (17)
Public Service	15	27
National language	16	28
Special position of Indigenous races	16	29
Constitutional Safeguards	17	30
Proceedings questioning validity of a Federal or State Law	17	31
Existing Laws	17	32
Emergency Powers	18	33
Transitional arrangements for Federal Departments	18	34
Pending Legal Proceedings	18	35
International agreements for financial and technical aid	18	36
Consent of Conference of Rulers	18	37
ANNEX A		
<i>Legislative Lists</i>		
Federal List	19	
State List	26	
Concurrent List	27	
ANNEX B		
The Public Service	29	
Compensation Scheme	34	
Public Officers Agreement	48	
ANNEX C		
Joint Public Statement issued by the British and Malayan Governments on the 1st August, 1962	50	
ANNEX D		
Dates and venue of meetings; membership	51	

MALAYSIA

Report of the Inter-Governmental Committee, 1962

CHAPTER I

INTRODUCTION

A Commission under the chairmanship of Lord Cobbold visited North Borneo and Sarawak between February and April, 1962, and its Report was published as CMND 1794 on the 1st August, 1962. The Commission was unanimously agreed that a Federation of Malaysia is in the best interests of North Borneo and Sarawak and that an early decision in principle should be reached.

2. The Report was considered in detail in a series of meetings in London in July, 1962 by British and Malayan Ministers. In the light of the Report and of the agreement reached between the Government of Malaya and the Government of Singapore, the British and Malayan Governments decided in principle that, subject to the necessary legislation, the proposed Federation of Malaysia should be brought into being by the 31st August, 1963. A copy of the Joint Public Statement is at Annex C.

3. The two Governments decided to establish an Inter-Governmental Committee, on which the British, Malayan, North Borneo and Sarawak Governments would be represented. Its task was to work out the future constitutional arrangements, including safeguards for the special interests of North Borneo and Sarawak to cover such matters as religious freedom, education, representation in the Federal Parliament, the position of the indigenous races, control of immigration, citizenship and the State Constitutions.

4. The Minister of State for Colonial Affairs, Lord Lansdowne, the Chairman of the Committee, and the Deputy Prime Minister of the Federation of Malaya, Tun Abdul Razak, the Deputy Chairman of the Committee, visited North Borneo and Sarawak in August, 1962 and a Preparatory Meeting of the Inter-Governmental Committee was held in Jesselton on the 30th August, 1962.

5. At this Preparatory Meeting it was decided to set up five Sub-Committees:—

- The Constitutional Sub-Committee
- The Fiscal Sub-Committee
- The Legal and Judicial Sub-Committee
- The Public Service Sub-Committee
- The Departmental Organisation Sub-Committee.

6. On the 12th September, 1962 the following motion was unanimously adopted by the Legislative Council of North Borneo:—

“Be it resolved that this Council do welcome the decision in principle of the British and Malayan Governments to establish Malaysia by the 31st August, 1963 provided that the terms of participation and the constitutional arrangements will safeguard the special interests of North Borneo, and do accordingly authorise the following Members of this Council to represent North Borneo on the proposed Inter-Governmental Committee to prepare detailed constitutional arrangements which will be laid before this Council:—

- The Honourable the Chief Secretary
- The Honourable the Attorney-General
- The Honourable the Financial Secretary
- The Honourable O.K.K. Datu Mustapha bin Datu Harun, O.B.E.
- The Honourable Khoo Siak Chiew
- The Honourable D. A. Stephens.”

7. On the 26th September, 1962 the following motion was adopted without dissent by the Council Negri of Sarawak:—

“That this Council—

- (a) welcomes the decision in principle of the British and Malayan Governments to establish Malaysia by the 31st August, 1963, on the understanding that the special interests of Sarawak will be safeguarded;
- (b) notes that an Inter-Governmental Committee has been established to work out the detailed constitutional arrangements and the form of these safeguards, which will be laid before this Council;
- (c) authorises the Chief Secretary, the Attorney-General, the Financial Secretary, the Datu Bandar Abang Haji Mustapha, Temenggong Jugah anak Barieng, Pengarah Montegrai anak Tugang, Mr. Ling Beng Siew and Mr. Chia Chin Shin to represent Sarawak on this Committee; and
- (d) authorises the Governor in Council to nominate as additional members of the Committee or as members of Sub-Committees thereof such unofficial members of this Council and such public officers as may be desirable.”

8. The first Sub-Committee meeting was held in Jesselton on the 8th October and the series of meetings concluded with Plenary meetings in Kuala Lumpur on the 18th, 19th, and 20th December. A list of the meetings held and the delegates who took part is at Annex D.

9. The recommendations of the Inter-Governmental Committee, in so far as they are not fully covered in the body of this Report are set out in Annex A, and with respect to the Public Service in Annex B.

CHAPTER II

ESTABLISHMENT OF THE FEDERATION OF MALAYSIA

10. The Federation will consist of the States of the existing Federation of Malaya, Sabah (at present known as North Borneo), Sarawak and Singapore and also, if agreement is reached on the admission of Brunei, that State. The name of the Federation shall be Malaysia.

11. The Committee noted the intention stated in paragraph 4 of the joint public statement (Annex C) to conclude a formal agreement embodying detailed constitutional arrangements, including safeguards for the special interests of North Borneo and Sarawak. In order to carry out this intention, the annexures to the formal agreement should include:—

- (a) a Bill to be introduced into the Malayan Parliament to amend the Constitution of the present Federation of Malaya to meet the requirements of the new States and to change the name of the Federation;
- (b) the Draft State Constitutions to be submitted to Her Majesty in Council.

12. The Committee examined the Constitution of the Federation of Malaya and this Report sets out the amendments, including transitional provisions, which the Committee considers will be necessary to meet the requirements of North Borneo and Sarawak (hereinafter referred to as the Borneo States) and, subject to these and the amendments necessary in relation to any other new State, accepts that the Constitution of the Federation of Malaysia will be based upon the Constitution of the Federation of Malaya as it applies in relation to the States which are at present States of the Federation of Malaya. This Report will be laid before the Legislative Council of North Borneo and the Council Negri of Sarawak. If it is approved by those Councils, the draft of the formal agreement will be drawn up and initialled by representatives of the United Kingdom, the Federation of Malaya, North Borneo and Sarawak.

13. The Committee recognised that the nature of the constitutional arrangements to govern the relationship of the State of Singapore to the Federation of Malaysia was not a matter within its terms of reference. But certain of the Committee's recommendations, for example regarding the composition of the Federal Supreme Court, and the establishment of territorial High Courts, are in some respects necessarily of general application and in other respects such that a considerable degree of uniformity is clearly desirable. Consequently in a few contexts the recommendations are formulated in general terms applicable to the whole of Malaysia, and the Committee has expressed

the hope that these recommendations will be acceptable in relation to Singapore and, should Brunei join the Federation, that State.

14. In certain respects the Committee agreed that the requirements of the Borneo States could appropriately be met by undertakings or assurances to be given by the Government of the Federation of Malaya rather than by Constitutional provisions, and these are mentioned in the appropriate sections of this Report. The Committee agreed that the more important undertakings should be included in the formal agreement and envisaged that the other undertakings and assurances might be dealt with in exchanges of letters between the Governments concerned.

CHAPTER III

PROPOSED CONSTITUTIONAL ARRANGEMENTS

15. Religion

(1) No amendment is required to Article 3 (1), which provides "Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation". As in the case of Penang and Malacca (Article 3 (2)) the Heads of State in the Borneo States should not be Head of the Muslim religion in the State; but Article 3(3) should be left unamended so as not to confer on the Yang di-Pertuan Agong the position of Head of the Muslim religion in the Borneo States.

(2) The guarantee for religious freedom contained in Article 11 should be retained. As regards Article 11 (4) which provides "State law may control or restrict the propagation of any religious doctrine or belief among persons professing the Muslim religion", it was agreed that the Constitutions of the Borneo States could properly provide that a law having the effect described in Article 11 (4) would need to be passed by a two-thirds majority vote of the total membership of the State Legislative Assembly.

(3) Sections 36 and 37 of the Malayan Education Act, 1961, should not be applied to North Borneo and Sarawak; Federal law should not provide for special financial aid for the establishment of Muslim institutions or the instruction in the Muslim religion of persons professing that religion in respect of North Borneo and Sarawak without the concurrence of the State Government concerned; and the Federal Constitution should be amended to secure that where federal law provides for special financial aid for Muslim institutions or Muslim religious education in pursuance of Article 12 (2) the Malaysian Government would grant to the North Borneo and Sarawak Governments proportionate amounts* for social welfare purposes in those States. Any grants paid out by the Malaysian Government from the proceeds of lotteries conducted by the Social and Welfare Services Lotteries Board would not be regarded as payment made from Federal revenue in this respect.

(4) Article 38 (2) (b) and (6) (d), which deals with the functions of the Conference of Rulers relating to the extension of religious acts, observances and ceremonies to the Federation as a whole, should not apply to the Borneo States.

16. Immigration

The following arrangements should apply:—

- (a) immigration into Malaysia should remain on the Federal List, but legislation should be enacted by the Federal Parliament to ensure that, except as provided in sub-paragraph (f) below, entry into the Borneo States will require the approval of the State concerned;
- (b) the Federal Constitution should be amended to enable the Federal Parliament to legislate to control the movement of persons between the existing Federation and a new State or between new States on any ground (i.e. not merely the grounds specified in Article 9 (2));

*These amounts should bear the same proportion to the amount of special financial aid paid from Federal Revenue as the amount of Federal revenue derived from a Borneo State during the financial year in question and retained by the Malaysian Government bears to the total Federal revenue for that year.

- (c) the Federal Government should undertake in the formal agreement for the establishment of Malaysia to pass before Malaysia Day a law coming into operation on Malaysia Day, the draft of which would be agreed by the Governments of the Borneo States and scheduled to the formal agreement and an outline of which is set out in sub-paragraph (f) below;
- (d) the Federal Constitution should be amended to provide that this law may not be amended or repealed in its application to a Borneo State without the concurrence of the Government of the State concerned;
- (e) the Federal Constitution should be amended to provide that the provisions referred to in sub-paragraphs (b) and (d) may not be amended or repealed in their application to a Borneo State without the concurrence of the Government of the State concerned;
- (f) the law referred to in sub-paragraph (c) should contain provisions to secure that:—
 - (i) any person from outside Malaysia whose entry into a Borneo State the Government of that State considers is necessary for State purposes shall be given entry except in cases where the Federal Government, which will be consulted for this purpose, considers that it is desirable in the national interest that entry should be refused;
 - (ii) subject to Article 9 (1) and to sub-paragraph (iv) below, admission to a Borneo State will not be granted to any other person or class of persons, whether from inside or outside Malaysia, without the approval of the Government of the State concerned;
 - (iii) subject to Article 9 (1) and to sub-paragraph (iv) below, any person who is present in a Borneo State contrary to the provisions of sub-paragraph (ii) above or whose presence is otherwise unlawful, whom the Government of the State wishes to be removed from the State, shall be so removed;
 - (iv) the provisions outlined in sub-paragraphs (ii) and (iii) above do not apply to members or officers of the Federal Government or any person or class of persons whose temporary presence in the State the Federal Government, after consultation with the State Government, considers is necessary in order to enable the Federal Government to carry out its constitutional and administrative responsibilities or any citizen who enters for the purpose of exercising his rights in connection with the functioning of parliamentary democracy in Malaysia or any part thereof, or any person who belongs to the State, i.e. who is a permanent resident of the State or who is a citizen of Malaysia on account of connection with the State;
 - (v) no person who resides temporarily in the State in accordance with sub-paragraph (iv) shall by reason of such residence be deemed to belong to the State or to be a citizen of Malaysia on account of connection with the State for the purposes of that sub-paragraph; and
- (g) the Federation Government should give an assurance that labour for federal projects in the Borneo States will not be recruited from outside the State, if adequate local labour is available, and that it is not the intention of the Federal Government, in its control of immigration, to hinder the recruitment of persons from outside Malaysia as experts or technical advisers or for the purpose of employment by the Governments of the Borneo States.

17. Education

Certain aspects of religious education have been dealt with under the heading "Religion".

In addition:—

- (a) although Education (item 13 (a) of the Federal List in the Ninth Schedule) will be a federal subject, the present policy and system of administration of education in North Borneo and Sarawak (including their present Ordinances) should be undisturbed and remain under the control of the Government of the State until that Government otherwise agrees. In particular:—
 - (i) the present policy in the Borneo States regarding the use of English should continue;
 - (ii) knowledge of the Malay language should not be required as a qualification for any educational opportunity until such time as the State Government concerned considers that sufficient provision has been made to teach Malay in all schools in the State;

- (iii) there should be no application to the Borneo States of any Federal requirements regarding religious education;
 - (iv) State provisions for the special position of the indigenous peoples should continue to apply;
 - (v) the Directors of Education in the Borneo States, who would be officers serving in Federal posts and responsible to the Federal Minister of Education through the Ministry of Education, should carry out much the same duties as they do at present in consultation with the State Government concerned;
 - (vi) to enable local wishes to be fully consulted and taken into account as far as possible, the Directors of Education of the Borneo States should continue to be advised by the respective existing Boards of Education and the local Education Committees; and
 - (vii) in the case of Sarawak the local authorities should continue to be used as agents for primary education; and
- (b) when expansion of higher education facilities was being considered by the Malaysian Government the requirements of the Borneo States should be given special consideration and the desirability of locating some of the institutions in the Borneo States should be borne in mind.

18. *Citizenship*

(1) Any citizen of the United Kingdom and Colonies who—

- (a) was born in North Borneo or Sarawak or was naturalised or registered as a citizen of the United Kingdom and Colonies in North Borneo or Sarawak; and
- (b) was ordinarily resident on Malaysia Day in North Borneo, Sarawak or Brunei;

should become a citizen of the Federation of Malaysia by operation of law on Malaysia Day.

(2) Any person of or over the age of eighteen years and ordinarily resident in Sarawak or North Borneo on Malaysia Day but who does not become a citizen of Malaysia by operation of law should be entitled during the first eight years after Malaysia Day to be registered as such a citizen if he satisfies the Federal Government that—

- (a) he has resided before Malaysia Day in North Borneo, Sarawak or Brunei (whether in one or more of them) or after Malaysia Day in any part of Malaysia for periods amounting to seven out of the ten years preceding his application and which include the twelve months immediately preceding his application;
- (b) he intends to reside permanently in Malaysia;
- (c) he is of good character; and
- (d) (except in the case of a person who has attained the age of forty-five years and who applies within two years after Malaysia Day) he is able to satisfy the existing language test applicable to applicants for naturalisation in North Borneo or Sarawak as a citizen of the United Kingdom and Colonies.

(3) There should be no presumption as to good character on the lines of the former Article 18 (4) of the Federal Constitution; that provision has proved inconvenient in operation and has been repealed. Applicants for registration should be required to take the citizenship oath in the form prescribed in the existing Federal Constitution.

(4) It was considered that Article 15 (2) of the existing Federal Constitution makes adequate provision for the registration of the minor children of persons who obtain citizenship by registration. Should there be no federal registrar of citizens in either of the Borneo States powers of registration should be delegated to the State Secretary under paragraph 4 of the Second Schedule to the Federal Constitution.

(5) The Constitution should provide that the provisions recommended in sub-paragraphs (1) and (2) above should not be amended or repealed in their application to a Borneo State without the concurrence of the Government of the State concerned.

(6) Subject to the provisions recommended in sub-paragraphs (1) and (2) above, the provisions of the Federal Constitution relating to the acquisition and termination of citizenship should apply *mutatis mutandis*. As regards persons born within Malaysia after Malaysia Day, arrangements should be made to secure that, where one of the parents was a citizen or permanent resident of Malaysia, this fact should be entered in the register of births.

(7) The Constitution should provide that no amendment of the citizenship provisions referred to in sub-paragraph (6) above should be made that discriminated against the inhabitants of the Borneo States.

19. Federal Legislature

(1) Two members of the Senate should be elected for each Borneo State in accordance with Article 45 (1) (a) of the Constitution. Article 45 (1) (b) of the Constitution should be amended to increase the number of appointed members of the Senate by six in respect of the accession of North Borneo and Sarawak to Malaysia. An assurance should be given that, on the occasion of the first appointments of these additional members after Malaysia Day, at least two would be appointed from North Borneo and at least two from Sarawak after consultation with the Chief Minister of the State concerned.

(2) Article 46 (1) should be amended to increase the number of elected members of the House of Representatives from one hundred and four to one hundred and fifty-nine (including the fifteen proposed for Singapore). Of the additional members sixteen should be elected in North Borneo and twenty-four in Sarawak. The proportion that the number of seats allocated respectively to Sarawak and to North Borneo bears to the total number of seats in the House should not be reduced (except by reason of the granting of seats to any other new State) during a period of seven years after Malaysia Day without the concurrence of the Government of the State concerned, and thereafter (except as aforesaid) shall be subject to Article 159 (3) of the existing Federal Constitution (which requires Bills making amendments to the Constitution to be supported in each House of Parliament by the votes of not less than two-thirds of the total number of members of that House).

(3) The question of elections to the House of Representatives is dealt with in paragraph 25.

20. State Constitutions

(1) The first Head of State should be a person nominated before Malaysia Day by Her Majesty the Queen and His Majesty the Yang di-Pertuan Agong and should be appointed by him for a period of two years. Thereafter the Head of State should be appointed by the Yang di-Pertuan Agong acting in his discretion after consulting the Chief Minister of the State. The Head of State should be known as the Yang di-Pertua Negara in the case of North Borneo and as the Governor in the case of Sarawak and should exercise similar functions to those of the Governors of Malacca and Penang.

(2) As regards Article 71 (4), which enables the Federal Parliament to make provision for giving effect in a State to "the essential provisions" of a State Constitution set out in the Eighth Schedule or for removing from a State Constitution provisions inconsistent with the essential provisions, the question whether a State Constitution does not contain the essential provisions or contains provisions inconsistent with them should be one which is ultimately determinable by the Courts and not one depending solely on the opinion of the Federal Parliament.

(3) Subject to sub-paragraph (4) below Part I of the Eighth Schedule to the Federal Constitution should apply to the Borneo States in the same way as it applies to the States of Penang and Malacca subject to the following modifications—

- (a) the definition of "office of profit" in Article 160 (2) should be amended by the addition of a provision to the effect that the expression shall not include the office of Chief Minister or any other member of the Executive Council or Speaker or any other member of the Legislative Assembly of the State. In order to make it clear that a Ministerial system is not precluded in the Borneo States, this amendment should apply to them as if the reference to the office of Chief Minister included a reference to the office of any Minister;

- (b) Clause 2 (3) of the Eighth Schedule should allow persons who are citizens by registration to be appointed Chief Minister;
- (c) the Legislative Assembly should be able to choose its Speaker either from among the members of the Assembly or from among persons who are not members but are qualified to be members;
- (d) Sarawak should be allowed to call their Executive Council "the Supreme Council" and to call their Legislative Assembly "the Council Negeri";
- (e) in section 4 (1), the words after "provide" should not apply; and
- (f) provision should be made giving a member of the Legislative Assembly who becomes subject to the disqualification mentioned in section 6 (1) (e) a period of grace during which to pursue an appeal against his conviction or sentence, and securing that during that period the member should be suspended from taking part in the proceedings of the Assembly.

(4) Until the expiration of ten years after Malaysia Day, or such earlier date as the Federal Government may, in relation to either State, prescribe with the concurrence of the Government of that State, provision on the lines of Part II of the Eighth Schedule, which will require amendment in the light of the terms of the draft State Constitution, should apply. This would ensure that the essential parts of the State Constitution are not amended in such a way that the amendments would constitute a backward step from the position on Malaysia Day.

21. *Distribution of Legislative Powers*

(1) The modifications to the Legislative Lists which should be made in respect of the Borneo States are set out in Annex A to this Report.

(2) New provision should be inserted in the Federal Constitution enabling the Federal Parliament by law to empower a State Legislature to legislate, either unconditionally or subject to such conditions and restrictions as may be specified in the law, on a matter on the Federal List. Until such time as Parliament otherwise provides, this power and the power to authorize the State to exercise federal executive authority under Article 80 (4) should also be exercisable in relation to the Borneo States by order made by the Yang di-Pertuan Agong which should be required to be laid before both Houses of the Federal Parliament as soon as practicable after it has been made.

(3) To the extent that power to legislate on a matter on the Federal List is conferred on a State Legislature, the principles contained in Article 82 regarding the distribution of financial burdens should apply as respects that State as if the matter were one enumerated in the Concurrent List.

(4) A reference to the law or custom of Natives (defined as in paragraph 29) should be inserted after the reference to Muslim law or custom of the Malays in Article 76 (2).

(5) Article 76 (4), which empowers the Federal Parliament to legislate on certain State matters for the purpose of ensuring uniformity of law and policy, should not apply to the Borneo States.

22. *Land*

(1) So as to ensure that State Governments are consulted with regard to the acquisition under Article 83 of alienated, as well as unalienated, land in the State for Federal purposes, Article 83 (5) (a) should not apply to the Borneo States.

(2) Article 88 should, subject to the preceding paragraph, be replaced by provision on the following lines:—

"Parliament may by law make any provision necessary to adapt Articles 83 to 86 in order that they may apply to land in the States of North Borneo, Malacca, Penang, Sarawak and Singapore as nearly as practicable, having regard to differences in the system of land tenure, in the same manner as they apply to land in other States."

(3) Article 89, which relates to Malay reservations, should not apply to the Borneo States and instead there should be provision in the Constitution enabling the legislature of a Borneo State to make provision with respect to the reservation or alienation of land to Natives of the State. (For the meaning of the expression Natives, see paragraph 29 of this Report).

(4) In Article 91, which relates to the establishment and functions of the National Land Council, the last phrase of Clause 5, which reads "and the Federal and State Governments shall follow the policy so formulated", should not apply to the Borneo States. The representatives of the Borneo States would participate in the Council as members without vote.

(5) Article 92 should be amended in its application to the Borneo States so as to provide that the concurrence of the State Government concerned will be required in respect of any development plan which it is proposed should be put into operation in that State.

(6) The last phrase of Article 94 (1), which reads "and the agricultural and forestry officers of any State shall accept any professional advice given to the Government of that State under this Clause", should not apply to the Borneo States and instead provision should be made that the heads of the Agriculture and Forestry Departments of those States shall consider any professional advice given to the Government of that State under Article 94 (1).

23. *National Council for Local Government*

The last phrase of Article 95A (5), which reads "and the Federal and State Governments shall follow the policy so formulated", should not apply to either of the Borneo States until such time as the Federal Parliament with the concurrence of the State Legislative Assembly concerned otherwise provides. The representatives of a Borneo State would participate in the Council as a member without vote until such time as the State has accepted the obligation to follow the advice formulated in the Council under Article 95A (5).

24. *Financial Provisions*

(1) Taxation, including in particular customs and excise duties and taxes on incomes and profits, should be a Federal subject but each Borneo State should have power to impose a Sales Tax, if it wishes, provided that any Federal sales tax would take priority over any State sales tax and provided that discriminatory rates would not be imposed on goods of the same type but of different places of origin. The level of Federal taxation in the Borneo States should be brought up to Federation of Malaya levels in graduated stages over a period of years and the steps should not be grossly disproportionate. There should be ad-hoc consultation with the senior officials concerned in the Borneo States regarding tax changes and in addition the Borneo States should each be represented on a Malaysian Board of Income Tax.

(2) (i) Subject to the provisions of sub-paragraph (9) below relating to reviews, the revenues to be assigned to the States of Sarawak and North Borneo should, in addition to those listed in Part III of the Tenth Schedule of the present Federal Constitution, consist of the following revenues levied in the States:—

- (a) import duty and excise duty on petroleum products;
- (b) mechanically propelled vehicles and drivers' licence fees for the period of the delegation of carriage of passengers and goods by land*;
- (c) export duty on timber and other forest produce;
- (d) export duty on minerals up to a joint total of royalty and export duty of 10% *ad valorem* calculated on the manner laid down for the payment of export duty;
- (e) States Sales Taxes;
- (f) in respect of North Borneo only, 30% of Customs revenue less revenue from import duty on petroleum products and from export duty on timber and other forest produce for so long as North Borneo is responsible for Medical and Health expenditure; and
- (g) fees and dues from State ports and harbours.

(ii) It was noted that trade licence fees as imposed under the Sarawak Business Professions and Trade Licensing Ordinance and the North Borneo Trades Licensing Ordinance (Cap. 144) would be State revenue.

(3) North Borneo and Sarawak should receive a capitation grant as provided for in Part I of the Tenth Schedule to the Federal Constitution.

*See item 10 in the Federal List in Annex A.

(4) North Borneo and Sarawak should receive a State road grant for the first two years after the application of Part VII of the Constitution at a rate to be agreed between the Federal and the Borneo Governments; thereafter the provisions of Part II of the Tenth Schedule should apply but so that—

- (a) the average cost of maintenance should be that in the State concerned and should include an on-cost element for supervision and for the depreciation and maintenance of plant and equipment (excluding depreciation of any plant or equipment given free by the Federal Government);
- (b) minimum standards of roads lower than those applicable in other States could qualify for the road grant; and
- (c) roads maintained by local authorities at the expense of the State should qualify.

(5) If the rate of annual road grant for North Borneo finally agreed upon is less than \$4,500 per mile in respect of 1,151 miles (representing the 1962 road mileage) the Federal Government should make good the short-fall in each year up to and including 1967.

(6) Subject to the provisions for review made in sub-paragraph (9) below, in order that the Borneo State Governments should have enough revenue to meet the cost of State services, the State should receive as of right, where the assignment of revenues to the State would in 1963 have resulted in a deficit, an annual balancing grant equal to the difference between the estimated State revenue in 1963, including assigned revenue and statutory grants, and the estimated cost of State services in 1963, calculated as if the proposed constitutional arrangements had already come into force. The published Revenue and Expenditure Estimates for 1963 would be used as the basis of the calculations.

(7) Subject to the provisions for review made in sub-paragraph (9) below, in addition to the annual balancing grant, Sarawak should receive as of right revenue sufficient to meet the annual increase in the current costs of State services plus any sum required to offset any decrease in the State's revenue. During the first ten years this would take the form of an escalating annual grant; the amount of this grant would be fixed in advance for each of the first five years and would be decided at the end of this period by an independent assessor as described in sub-paragraph (9). In recognition of the fact that the Sarawak State Departments are still relatively undeveloped compared with their Malayan equivalents and because otherwise there would be no means of enabling them to develop to an acceptable level the escalating annual grant together with the natural growth in State revenue and revenue assigned will, until the first independent review, assure an expansion of State services of not less than 10% per annum provided examination of expenditure over the period 1959 to 1962 shows a rate of expansion in such services of not less than that rate. If the average percentage growth over the period 1959 to 1962 proves to be less than 10% per annum then the escalating annual grant shall be calculated so as to provide for a continued expansion at the same rate.

(8) Subject to the provisions for review made in sub-paragraph (9) below, North Borneo should receive each year a grant equal to 40% of any increase in Federal revenue derived from North Borneo and not assigned to the State over the Federal revenue which would have accrued in 1963 if these financial arrangements had been in force in that year. The sum payable would be calculated on the basis of actual revenue received in each year.

(9) (i) The following arrangements should be subject to review by the Governments concerned and, in default of agreement, by an independent assessor, appointed jointly by the Federal Government and the Government or Governments of the State or States concerned, and his recommendations would be binding upon each party:—

- (a) the annual balancing grants referred to in sub-paragraph (6);
- (b) the escalating annual grant referred to in sub-paragraph (7); and
- (c) the grant equal to the percentage of the increase in Federal revenue referred to in sub-paragraph (8).

(ii) The assessor should, in carrying out his review, take into account not only the needs of the State concerned but also the financial position of the Federal Government. Subject to that, he should aim to ensure that his recommendations will result in securing as of right to the State or States concerned sufficient revenue to meet the cost of State services at their then existing level with such provision for their expansion as he thinks reasonable.

(iii) The first review should be undertaken in time to enable the assessor's recommendations to be implemented with effect from the beginning of the sixth year after the application of Part VII of the Constitution to the Borneo States, and once implemented should remain in force until superseded by implementation of the recommendations of a second assessor.

(iv) The second review should similarly be undertaken in time to enable the assessor's recommendations to be implemented with effect from the beginning of the eleventh year and should relate to the ensuing period of five years or such longer period as might be agreed upon by the parties concerned, and once implemented should remain in force until the end of that period and thereafter until superseded by implementation of the recommendations of a subsequent assessor.

(v) If, before the end of the period to which the second (or any later) review relates, or at any time afterwards, any of the parties desires a further review, but not otherwise, an assessor should again be appointed.

(vi) The Federal Government should be able on the occasion of any review to vary any of the assignments of revenue specified in sub-paragraph (2) (i) (a), (c) or (d), and, on the second or a subsequent review, that specified in sub-paragraph (2) (i) (b); on the second or a subsequent review this power should extend to any substituted assignment made on the occasion of a previous review. Where the Federal Government intends to do this, it should give the State concerned and the assessor notice of its intention, and the assessor should take the effect into account in his recommendations.

(10) The Malayan Government agreed that the figure of \$300 million should be accepted for planning purposes as the total of Federal and State development expenditure required in Sarawak for the first five years after the inception of the Federation of Malaysia, and, subject to the amount of financial aid which might be forthcoming from the British Government and to the general availability of funds, undertook to use its best endeavours to enable this amount of development expenditure to be achieved.

(11) The North Borneo delegation mentioned that development expenditure in North Borneo should amount to \$200 million during the first five years after the establishment of Malaysia in order to obtain a satisfactory rate of economic growth. The Malayan delegation noted this estimate and recognised that State resources under the proposed arrangements would be inadequate to reach this level of investment and that subject to the amount of financial aid which might be forthcoming additional funds from outside North Borneo would be required.

(12) The British delegation promised on behalf of the British Government that a grant of one and a half million pounds a year would be paid for five years after Malaysia Day towards the development of the Borneo States. This grant would be for the specific sum of one and a half million pounds a year and would not be to cover any gap in development finance. It would be taken into account at the ultimate financial settlement. How the grant was divided between the two Borneo States would be for the Government of Malaysia to decide. The British Government was extending this promise for five years on the basis that the Malayan Government was also extending aid for the same purpose for at least this period.

(13) Notwithstanding the provisions of Article 166 (7) it was recognised that North Borneo and Sarawak would wish to specify certain property and assets they would wish to retain and discussions on this are proceeding. Where assets (including loans and investments) created from the proceeds of a State Government loan issue were retained by the State Government, the State Government would remain liable for the corresponding public debt. It was also accepted that Article 166 (7) of the Constitution should not be applicable to assets representing the unappropriated balances and reserves of North Borneo and Sarawak, which would remain State assets.

(14) Where State loan funds had been expended on what would become a Federal purpose on Malaysia Day the debt service charges should become a liability of the Federal Government except where the State concerned retained the asset in question under sub-paragraph (13).

(15) The principles of Article 166(2) and 166(3) of the Federal Constitution in their relation to land and buildings should apply *mutatis mutandis* in Sarawak and North Borneo and the principles of Clause (3) should also apply to land and buildings which were used for purposes which might become exclusively Federal after a lapse of time after the establishment of Malaysia (e.g. Medical and Health in the case of North Borneo).

(16) The agreement set out in sub-paragraphs (13) to (15) was reached on the understanding that the Federal Government would be responsible for payment of any contribution in lieu of rates in respect of buildings to which Article 166(3) of the Constitution applies and also for the cost of upkeep. Where office buildings would be occupied only in part by Federal Departments the contribution in lieu of rates and the cost of maintenance would be borne between the Federal and State Governments concerned on a basis to be determined. The possibility of fixing a flat rate per square foot to cover these costs should be examined.

(17) The principle of Article 166(3) should not apply to Government quarters other than institutional quarters used for exclusively Federal purposes. Where such quarters in North Borneo and Sarawak were occupied by officers serving in or seconded to Federal departments, the Federal Government would pay to the State Government concerned an economic rent on a basis to be agreed. The payment of an economic rent would not affect the question of rent to be paid by the individual officer. The same principles would apply where a Federal quarter was occupied by a State officer.

(18) Sarawak and North Borneo should have a right to raise loans within the confines of the State with the approval of the central bank for the time being of Malaysia, and Article 111 of the Federal Constitution should be amended accordingly.

(19) The Federal Government should accept liability for all current and future pensions (including gratuities and retiring allowances) payable by the Governments of North Borneo and Sarawak and for contributions to the Widows and Orphans Pensions Funds of the Borneo States in respect of officers serving in State and Federal Departments. This should not apply to pensions payable by Sarawak to His Highness the Rajah and his dependants and those future pensions for which either State expressly accepted liability. Similarly, the pensions payable by the State to officers of local authorities and statutory bodies would be Federal on the understanding, however, that the State would reimburse the Federal Government for such pensions, if the authorities concerned did not refund to the Federal Government that portion of the pensions liability which was due from them.

(20) With regard to Article 112 of the Federal Constitution in relation to its application to Sarawak and North Borneo—

- (a) the power to approve the creation of posts, up to and including those in Division III of the Borneo establishments where the liability for payment of pensions, gratuities or retiring allowances falls on the Federal Government, should be delegated for one year at a time to the Financial Secretaries of the respective States to be exercised after consultation with the local branch of the Federal Establishment Office; this delegation to be subject to annual renewal at the discretion of the Federal Government; and
- (b) the Financial Secretaries of the respective States should, subject to annual renewal and consultation with the local branch of the Federal Establishment Office, have delegated power to create supernumerary posts in any Division of the Public Service, as might be necessary to accommodate returning scholars or local staff who were qualified for appointment or promotion to a grade for which there were no vacancies so as to facilitate implementation of the Borneanisation programme.

(21) The Financial Secretaries of North Borneo and Sarawak should consult the local branch of the Federal Establishment Office before creating posts of any grade for contract officers whose salaries and gratuities are borne entirely by the State Government.

(22) All salary scales, whether for permanent or temporary officers and whether or not retirement benefits were the liability of a State or Federal Government, should be subject to the approval of the Federal Government.

(23) The functions of the Auditor-General in respect of accounts of the States of North Borneo and Sarawak and State statutory bodies for the years up to and including 1968 should be delegated to the Directors of Audit in those States. The Reports on the State's accounts and those of the State statutory bodies should be presented to the Head of State concerned as well as to the Yang di-Pertuan Agong.

(24) Part VII of the Federal Constitution as modified to give effect to this Report should apply in North Borneo and Sarawak not later than 1st January, 1965, except for Articles 105, 106 and 107 (Audit) and 111 (State borrowing) which should apply on Malaysia Day. The Committee considered that it is desirable that this Part should apply on 1st January, 1964 if this is practicable. The periods of time variously specified in this paragraph should begin from the date on which Part VII, as amended, came into operation in the Borneo States.

(25) Since Part VII of the Federal Constitution will not apply to the Borneo States on Malaysia Day, it is necessary to make transitional financial arrangements. The proposed arrangements are as follows:—

- (a) until such time as Part VII of the Constitution is applied to the Borneo States, they should be responsible for all expenditure whether or not it relates to Federal or State services;
- (b) all revenue accruing to or collected in the States which would accrue to the Federal Government under the terms of the Constitution as amended will continue to accrue to the Borneo States until Part VII of the Constitution applies;
- (c) the Governments of the Borneo States should continue to accept liability for the payment of pensions and for all contributions to the Widows and Orphans Pensions and Provident Funds until Part VII of the Constitution applies;
- (d) all assignments of revenue and statutory grants payable to the Borneo States in furtherance of this Report and under the Constitution should only be payable to the States when Part VII of the Constitution applies;
- (e) all development projects in the Borneo States relating to what will be Federal services after Malaysia Day will remain liabilities of the States until Part VII of the Constitution applies;
- (f) all equipment, stores and supplies ordered by the Governments of the Borneo States for what will be Federal services after Malaysia Day but for which the charges do not fall due for payment until after Malaysia Day shall be liabilities of the States until Part VII of the Constitution applies, but shall be the liabilities of the Federal Government if they fall due after that date;
- (g) all assets and liabilities of the States which should properly become assets and liabilities of the Federal Government on Malaysia Day will remain assets and liabilities of the Governments of the Borneo States until Part VII of the Constitution applies;
- (h) any expenditure which should, under the terms of the Constitution, be charged on the Federal Consolidated Fund on and after Malaysia Day shall not be so charged but shall, until Part VII of the Constitution applies, be charged on the revenues of the Borneo States; and
- (i) nothing in the foregoing should preclude the Federal Government from incurring additional expenditure on its own account in the Borneo States before Part VII of the Constitution applies.

25. Elections

(1) Article 114 should be amended to provide for the appointment of an additional member of the Election Commission. An assurance will be given that he will be appointed from the Borneo States.

(2) Initially members of the House of Representatives for a Borneo State will be elected by the Legislative Assembly of the State, and the Federal Constitution should so provide. The Federal Constitution should require the Head of State of each State, with the concurrence of the Yang di-Pertuan Agong, to provide by regulations for the procedure to be followed by the State Assembly in electing members of the House of Representatives; and the procedure may be such as to require or not to require that members of the House of Representatives are elected from among the

members of the Assembly. The Committee recommends that consideration should be given to a procedure designed to result in representation reflecting the political composition of the State Assembly.

(3) During an initial period after Malaysia Day elections to the State Assemblies should be indirect and during this period elections to the State Assemblies should be a matter on the Concurrent List and not included in Item 6 (a) of the Federal List.

(4) The Federal Constitution should provide that direct elections will be introduced in each Borneo State for—

- (a) the first general election to the House of Representatives, and,
- (b) the first general election to the Legislative Assembly

held after the fifth anniversary of Malaysia Day or such earlier date as the Federal Government may, in relation to either State, prescribe with the concurrence of the Government of that State. With effect from this date elections to the State Assemblies should become a matter included in Item 6 (a) of the Federal List. In order to enable the first constituencies to be delimited for the purpose of the first direct elections the Federal Constitution should enable the Federal Government to require the Election Commission to consider and make recommendations on the division of a Borneo State into constituencies for the purpose of elections to the House of Representatives or the Legislative Assembly within such time as the Federal Government may specify. Provisions on the lines of the Thirteenth Schedule to the existing Federal Constitution should apply to this first delimitation. (The total number of members of the House of Representatives to be elected in each Borneo State will be specified in the Constitution itself—see paragraph 19 above).

(5) When the first constituencies have been delimited, it will be necessary for the Election Commission to prepare electoral rolls for each constituency, and the federal legislation governing the procedure to be followed by the Commission in discharging this function will need to be extended, with any necessary modifications, to the Borneo States concerned, as also will the federal legislation governing the conduct of elections to the House of Representatives and the Legislative Assemblies of the States.

26. *The Judiciary*

(1) In addition to a supreme Court of Malaysia the Federal Constitution should establish three High Courts, for the States of the existing Federation, Singapore, and the Borneo States* respectively.

(2) The supreme Court of the Federation of Malaysia would consist of—

- (a) the Chief Justice of Malaysia, who would be President of the Court;
- (b) the Chief Justice of the High Court of Malaya;
- (c) the Chief Justice of the High Court of Singapore;
- (d) the Chief Justice of the High Court of the Borneo States; and
- (e) such number of Judges of the supreme Court as Parliament may provide.

The Chief Justice of Malaysia should have power to designate as an Acting Judge of the supreme Court any of the Puisne Judges of the High Courts when he considers that the interests of justice so require.

(3) The Federal Constitution should provide that the supreme Court shall have—

- (i) exclusive jurisdiction to hear appeals from the High Courts;
- (ii) exclusive original jurisdiction in cases between States and between any State and the Federation; and
- (iii) power to determine constitutional questions in accordance with Articles 129 and 130 of the existing Federal Constitution subject to an amendment of Article 129 to permit reference of such a question to the supreme Court from a High Court.

(4) The domicile of the supreme Court should be in Kuala Lumpur. Normally at least one of the Judges of the supreme Court should be a Judge with Bornean judicial experience when the Court is hearing a case arising in a Borneo State; and it should normally sit in a Borneo State to hear appeals in cases arising in that State.

*In this paragraph the term "Borneo States" could include Brunei.

(5) The High Court of the Borneo States should consist of a Chief Justice and not less than four nor, unless the Federal Parliament enacts a law increasing the maximum number, more than eight Puisne Judges.

(6) Each of the High Courts should have—

- (a) unlimited original jurisdiction in the State or States for which it is established except matters within the exclusive original jurisdiction of the supreme Court; and
- (b) such appellate and revisional jurisdiction over inferior Courts in that State or States as may be provided by Federal Law.

(7) The domicile of the High Court of the Borneo States should be in such centre in the Borneo States as may be convenient.

(8) As regards appointment of judges of the supreme Court and the High Courts—

- (a) the Chief Justice of Malaysia should be appointed by the Yang di-Pertuan Agong after consulting the Conference of Rulers, on the advice of the Prime Minister of Malaysia;
- (b) the Chief Justice of the High Court of the Borneo States should be appointed by the Yang di-Pertuan Agong after consulting the Conference of Rulers, on the advice of the Prime Minister of Malaysia, who would be required before tendering his advice to consult the Chief Justice of Malaysia, the Chief Justices of the High Courts and the Chief Ministers of the Borneo States;
- (c) the permanent Judges of the supreme Court should be appointed by the Yang di-Pertuan Agong after consulting the Conference of Rulers, on the advice of the Prime Minister of Malaysia, who would be required before tendering his advice to consult the Chief Justice of Malaysia and the Chief Justices of the High Courts;
- (d) the Puisne Judges of the High Court of the Borneo States should be appointed by the Yang di-Pertuan Agong after consulting the Conference of Rulers, on the advice of the Prime Minister, who would be required before tendering his advice to consult the Chief Justice of Malaysia and the Chief Justice of the Borneo States; and
- (e) the consultation by the Prime Minister with the Chief Justices would be direct.

(9) The qualifications for appointment as a Judge of the supreme Court or any of the High Courts should be as provided in the existing Federal Constitution subject to—

- (a) provision on the lines of Article 174 (1) for the continuance in office* as Judges of the High Court of the Borneo States of existing members of the unified Judiciary in the Borneo States notwithstanding anything in Article 123;
- (b) provision applying Article 123 (b) to advocates of the future High Courts and of the existing Supreme Courts of Singapore and of Sarawak, North Borneo and Brunei and to members of any of the existing judicial and legal services in Singapore or the Borneo States;
- (c) provision additional to, but on the lines of, Article 174 (3)† with the substitution of a reference to Malaysia Day for the reference to Merdeka Day and a reference to the existing judicial and legal services in Singapore or the Borneo States for the reference to the judicial and legal service of the Federation; and
- (d) provision additional to, but on the lines of, Article 174 (4)‡ should be made referable to Malaysia Day but applicable only to the appointment of a Judge of the High Court of the Borneo States.

* to permit the continuance in office of these Judges their eligibility for full compensation payable by instalments should be preserved and they would remain designated officers under the Overseas Service Aid Scheme.

† This dispenses with the citizenship requirement of Article 123 in the case of a person who was a member of the judicial and legal service of the Federation immediately before Merdeka Day.

‡ This enables an appointment to be made within ten years after Merdeka Day of a person who is not qualified under Article 123, if he is and has been for not less than five years an advocate of a superior court in any Commonwealth country; and enables such an appointment to be made for a fixed period.

(10) The retiring age for Judges of the supreme Court and the High Courts should be 65, subject to extension for up to six months in the case of a particular Judge as provided in Clause 125 (1) of the Federal Constitution.

(11) The provisions of Article 125 (3) of the Federal Constitution should apply to the removal of Judges of the supreme Court and Judges of the High Courts.

(12) Article 125 (5) of the Federal Constitution should be amended so as to provide that—

- (a) the Chief Justice of Malaysia may be suspended by the Yang di-Pertuan Agong upon the recommendation of the Prime Minister;
- (b) other Chief Justices and other Judges of the supreme Court may be suspended by the Yang di-Pertuan Agong on the recommendation of the Prime Minister after consulting the Chief Justice of Malaysia; and
- (c) Puisne Judges of the High Courts may be suspended by the Yang di-Pertuan Agong on the recommendation of the Prime Minister after consulting the Chief Justice of the High Court concerned.

(13) The Federal Constitution should enable the Yang di-Pertuan Agong on the recommendation of the Chief Justice of Malaysia, after consulting the Chief Justice of the High Courts concerned, to transfer a Puisne Judge from one High Court to another. This power should, however, only be exercisable with the consent of the Judge concerned in the case of a Judge serving on Malaysia Day.

(14) Appointments of acting Judges of a High Court should be made in the same way as substantive appointments.

(15) The Federal Constitution should contain provision enabling Judicial Commissioners to be appointed in the Borneo States on the lines of the existing section 10 (i) (b) of the Sarawak, North Borneo and Brunei (Courts) Order in Council subject to the following two modifications:—

- (a) there should be two methods for the appointment of Judicial Commissioners—
 - (i) by the Yang di-Pertuan Agong on the advice of the Chief Justice of Malaysia; and
 - (ii) by the Head of State of North Borneo or Sarawak on the advice of the Chief Justice of the High Court; and
- (b) Judicial Commissioners should be appointed only from among persons qualified under Section 4 (1) of the Advocates Ordinances of North Borneo and Sarawak to practise as advocates before the High Court.

(16) The Federal Constitution should provide that the provisions establishing the High Court of the Borneo States and providing for the appointment and removal of Judges and for the Court's jurisdiction may not be repealed or amended without the concurrence of the Governments of the Borneo States.

(17) The Chief Justice of each High Court would be responsible to the Federal Ministry for the administration of his Court, on the understanding that the Registrar of the supreme Court would be the channel of communication between the High Courts and the Ministry.

27. *Public Service*

(1) The Federal Constitution should be modified as necessary in its application to each of the Borneo States to secure that the qualifications (including language) normally required in Malaya for candidates for appointment in each Division of the Federal Public Service may be adjusted in relation to the Borneo States so as to permit the acceptance of the qualifications in force in those States on Malaysia Day. An assurance would be given that they would be so adjusted until such time as, after consultation with the State Government, the Federal Government was satisfied that a sufficient number of candidates from that State was available with the standard qualifications under the Federal schemes of service.

(2) The Federal Constitution should provide for the establishment for a minimum period of five years of two separate branches of the Federal Public Service Commission, one in North Borneo and one in Sarawak. Each branch should have jurisdiction over members of the Federal public services in the State concerned who would otherwise be under the jurisdiction of the Federal

Public Service Commission, and the provisions of Article 144 should be applied to these branches so as to give them full powers of appointment, promotion and disciplinary control over persons to whom their jurisdiction extends within the Borneo States*. The Federal Government should undertake that the branches of the Federal Public Service Commission would consist of the members of the respective State Public Service Commission with the addition of not more than two members of the Federal Public Service Commission designated by the Federal Government. The Chairman of a branch would be such member of the branch as may be designated by the Chairman of the Federal Public Service Commission. The Governments of the Borneo States would undertake that, so long as the arrangement lasted whereby members of the State Public Service Commission were members of the branches of the Federal Public Service Commission new appointments to the State Public Service Commission would only be made after consultation with the Federal Government.

(3) Provision should be made in the appropriate constitution for an Appeals Board with neutral membership (see paragraph 23 of Annex B) to which any overseas officer entitled to compensation can appeal in the event of a disciplinary decision of a Service Commission affecting his compensation or pension. The appeal would be against the effect of the decision on the officer's compensation or pension rather than against the disciplinary decision itself.

(4) Detailed recommendations covering the Public Service generally are set out in Annex B.

28. *National Language*

Malay should be the national language of the Federation of Malaysia, but Article 152 should be modified in its application to the Borneo States so as to secure that:—

- (a) for a period of ten years after Malaysia Day and thereafter until the State Legislature otherwise provides, the English language shall be an official language and may be used in the Legislative Assembly and for all other official purposes in the State, whether Federal or State purposes, including correspondence with Federal Ministries and Departments;
- (b) for a period of ten years after Malaysia Day and thereafter until the Federal Parliament otherwise provides, the English language may be used by the representatives of the Borneo States in both Houses of the Federal Parliament;
- (c) for a period of ten years after Malaysia Day and thereafter until both the State Legislatures have otherwise provided, all proceedings in the supreme Court relating to cases arising in the Borneo States and all proceedings in the High Court of the Borneo States shall be in the English language (subject to the proviso regarding evidence in the existing Clause (4)); and
- (d) until the State Legislature otherwise provides, all proceedings in subordinate Courts in the State, other than the taking of evidence, shall be in the English language.

29. *Special position of the indigenous races*

It was agreed that:—

- (a) in the application of Article 153 of the Federal Constitution in and to the Borneo States its terms should be construed as if "Natives" were substituted for "Malays";
- (b) the term "Native" should be defined in the Federal Constitution by adopting:
 - (i) in Sarawak the definition in the Sarawak Interpretation Ordinance; and
 - (ii) in North Borneo the definition that will appear in the State Constitution;
- (c) in the application of Article 153 to the Borneo States the Yang di-Pertuan Agong should continue to exercise his powers under the Article on the advice of the Federal Cabinet, but such advice shall only be given after consultation with the Chief Minister of the State concerned. This procedure will apply to the Federal Public Service in the Borneo States;

* Where a regional post is established for the Borneo States, appointments to the post and disciplinary control over the holder should be vested in the branch of the Federal Public Service Commission established for the State in which the holder is normally stationed or, in the event of doubt, in whichever branch is designated by the Federal Government for this purpose.

- (d) in the application of Article 153 to the Federal Public Service as a whole (as distinct from the Federalised Departments in the Borneo States) the term "Malays" should be construed to include the term "Natives" as defined under (b) above; and
- (e) Article 153 (10), which permits the Constitution of "the State of any Ruler" to make provision corresponding to Article 153 should be amended so as to apply to the Borneo States.

30. *Constitutional safeguards*

(1) It is mentioned in other parts of this Report that the Federal Constitution should provide that certain provisions relating to the Borneo States should not be amended or repealed without the concurrence of the Government of the State concerned. These provisions relate to immigration, citizenship, representation in the Federal Parliament and the High Court of the Borneo States. In addition, in relation to the Borneo States, special safeguards on these lines will also be needed in respect of the distribution of legislative powers, and the executive authority of the Borneo States on matters within their legislative powers, and related financial arrangements, and in respect of the following other matters—

- (i) religion;
- (ii) language; and
- (iii) the special position of the indigenous races.

(2) It is considered desirable that modifications to the special constitutional arrangements made in respect of a Borneo State should, subject to the safeguard of the consent of the State Government in cases where this is required, be capable of being amended to the extent of bringing the State into line with the present States of the Federation without the requirement that the Federal Bill making such amendment should be supported by the votes of not less than two-thirds of the total number of members of the Houses of Parliament. Article 159 (3) should not, therefore, apply to such amendments which would then fall under Article 159 (4) (bb). However, Article 159 (4) (bb) should be amended so as to ensure that such modifications could not go beyond bringing a Borneo State into line with the present States of the Federation.

31. *Proceedings questioning the validity of a Federal or State law*

Under Article 4 (3) of the existing Federal Constitution the validity of a law made by the Federal Parliament or the Legislature of a State may not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or the Legislature in question has no power to make laws except in proceedings of the kind mentioned in paragraphs (a) and (b) of Article 4 (3), i.e. in proceedings between Governments. In order to enable proceedings questioning the validity of a law on this ground to be brought otherwise than by a Government Article 4 (3) should be amended to enable its validity to be questioned in proceedings for a declaration commenced with the leave of a Judge of the Supreme Court, to which the Federal Government and the Government of any State to which the law applies should be entitled to be parties.

32. *Existing Laws*

(1) The Malaysian Constitution should contain provision to secure that laws on Federal matters in force in a Borneo State immediately before Malaysia Day continue in force, notwithstanding inconsistency with the Constitution, until repealed by the competent authority under the Constitution and subject to any amendment or modification made by such authority.

(2) In order to enable necessary modifications to the laws of the Borneo States to be made expeditiously the Federal Constitution should empower the Yang di-Pertuan Agong until Parliament otherwise provides by order—

- (a) to make such modifications to existing State laws on Federal matters as may be necessary or expedient for the purpose of bringing them into accord with the provisions of the Federal Constitution;
- (b) to extend existing Federal laws on Federal matters, with or without modification, to a Borneo State; and
- (c) to repeal or modify State laws on Federal matters in so far as may be necessary or expedient in consequence of such extension.

Every such order should be required to be laid before each House of the Federal Parliament as soon as practicable after it has been made.

33. *Emergency Powers*

In order to enable a Proclamation of Emergency to be made when a grave emergency threatens the security or economic life of the Federation or any part thereof, whatever the cause and even though no war, external aggression or internal disturbance has actually broken out, Article 150 (1) should be amended by the deletion of the words, "whether by war or external aggression or internal disturbance". Furthermore, in order to ensure that the central government will have adequate powers to govern during a national emergency, Article 150 should also be amended to give Parliament unqualified power, while a Proclamation of Emergency is in force, to make laws which appear to Parliament to be required by reason of the emergency with respect to any matter, other than religion, citizenship, language, Muslim law or the custom of the Malays or Native law or custom in North Borneo or Sarawak, notwithstanding anything in the Constitution. Article 79 of the Constitution would not apply to a Bill for any such law, nor should any such law be invalid on the ground of any inconsistency with any provision of the Constitution. Article 150 (7) would apply to every such law which would, consequently, cease to have effect six months after the end of the emergency to the extent that it could not have been validly made but for the emergency.

34. *Transitional Arrangements for Federal Departments*

In paragraph 6 of the Joint Public Statement at Annex C it was agreed that there should be a transitional period during which a number of constitutional powers will be delegated to the State Governments. The Report contains certain recommendations with regard to delegation or devolution of powers from the central Government. Apart from the services or departments directly involved in these specific recommendations, transitional arrangements would have to be provided for other departments of the Federalised services and these should be determined as expeditiously as possible.

35. *Pending Legal Proceedings*

Transitional provision will be needed in connection with pending proceedings by or against Her Majesty in respect of North Borneo or Sarawak and the replacement of the old courts in Borneo by the new—including provision for the continuation in the new courts of proceedings pending in the old courts, and for conferring on the new courts power to deal (on appeal or otherwise) with judgments and orders of the old courts.

36. *International agreements for financial and technical aid*

The Federal Government should take such action as may be appropriate to secure the continuance in force of, and the assumption by that Government of international responsibility for, rights, liabilities and obligations under existing international agreements relating to the provision of financial and technical assistance to the Borneo States, but should give an assurance that, as respects matters administered by a Borneo State, the benefits of the agreements will continue to be enjoyed and administered by the State.

37. *Consent of Conference of Rulers*

It was noted that the agreement of the Government of the Federation to the recommendations contained in this Report is subject to the consent of the Conference of Rulers to the proposed amendments to Articles 38, 70 and 153 being obtained before the conclusion of the formal agreement referred to in paragraph 11.

Signed this twenty-seventh day of February, 1963.

For the United Kingdom

Lansdowne
J. M. Martin
H. P. Hall
D. J. Gordon-Smith
T. J. O'Brien (Joint Secretary)

For North Borneo

R. N. Turner }
D. A. Stephens } (Joint Leaders)
W. K. H. Jones
H. W. Davidson
Datu Mustapha bin Datu Harun
Khoo Siak Chiew
W. S. Holley (Joint Secretary)

For the Federation of Malaya

Abdul Razak
Abdul Aziz
C. M. Sheridan
N. Daud
R. J. C. Wait
Abdul Aziz (Joint Secretary)

For Sarawak

F. D. Jakeway
P. E. H. Pike
B. A. St. J. Hepburn
Abang Haji Mustapha
Jugah anak Barieng
Bernard Montegrai
Ling Beng Siew
Chia Chin Shin
G. A. T. Shaw (Joint Secretary)

ANNEX: A

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.

* "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.

(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	
(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 cor- porations;	State	
(d) Insurance, including compulsory in- surance;	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 resour- ces; mines; mining; minerals and mineral ores; etc;	Federal	
(k) Factories; boilers and machinery; and	Federal	
(l) Dangerous and inflammable sub- stances.	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	
(ii) Ports and harbours not so declared;	State	The Federal Government will not interfere with the present policy which aims at ad- ministration 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	This is subject to the over-riding requirements of defence. The Borneo Governments under- took that their legislation should provide that foreshores are either alienated or State land.

(c) Lighthouses and other provisions for the safety of navigation;	Federal	
(d) Maritime and estuarine fishing, etc.	Concurrent	The Federal Government would not interfere unnecessarily with native fishing rights in traditional fishing grounds.
(e) Light dues; and	Federal	
(f) Wrecks and salvage.	Federal	
10. 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	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.
(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	
(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.

- (g) Posts and telecommunications; and Federal
- (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.
- (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.
- (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.
- (h) Wireless, broadcasting and television. Federal
- (i) There should be a delegation of executive functions in each case on a State basis.
- (ii) The broadcasting service within the State should retain its local identity.
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 redrafted 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	(i) Subject to such delegation of legislative authority as may be necessary to maintain the Labuk survey as a State function. (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. (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.
(ii) Cadastral surveys;	State	
(c) (i) Scientific and technical research, excluding Agricultural and Forestry Research;	Federal	
(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.

(b) Unemployment, 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.

(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; employer's liability and workmen's 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.

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.

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| 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.

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| 1. Muslim law, etc. | State | |
| 1A. Native law and custom and Native Courts, including Personal Law relating 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. Agriculture 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. |

7. Machinery of the State Government State
subject to the Federal List, etc.

(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.

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

List III. CONCURRENT LIST.

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 Federation 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
- (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 ad hoc basis the Sarawak Government should provide for \$350,000 in its recurrent budget to meet the cost of State scholarships.
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|---|------------|--|
| 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 | |

ANNEX B

THE PUBLIC SERVICE

1. The arrangements for the Public Service have three main purposes: to provide for the proper functioning of the Federalised and State Departments in the Borneo States when Malaysia comes into being while preserving the existing terms of service of serving officers, to provide for the progressive Borneanisation of the State Departments and over an interim period of the Federalised Departments, and subject to these interim arrangements to provide for the full integration of the Federalised Departments with the Federal Public Service as a whole. The means recommended for achieving these purposes are set out below.

ARRANGEMENTS ON THE ESTABLISHMENT OF MALAYSIA

2. When Malaysia comes into being, about one half of the posts filled by serving officers will be in Federalised Departments. The rest of the existing Public Services will be in State Departments, and the officers in these Departments will thus continue in State service with their conditions of service unchanged. Officers in Borneo Divisions IV and V and in Division III up to the maximum of scale C3 and equivalent grades N4 and P7 (except in respect of the Police) serving in Federalised Departments will also remain in State service; their conditions of service will be unchanged and they will be subject for all purposes of appointment, discipline, promotion and termination of service to the State Public Service Commissions.

3. Officers in Borneo Divisions I and II and scales C4 to 6 of Division III and equivalent grades N5—7 and P8—9 (except in respect of the Police) serving in Federalised Departments will be seconded for an indefinite period to the Federal Public Service. They will retain their existing conditions of service, including the application to them of the State pensions legislation and Widows and Orphans Pensions and Provident Fund legislation, and they will remain subject to the disciplinary control of their parent State Public Service Commission. It will be open to local and to non-designated expatriate officers at any time to opt to transfer to the Federal Public Service and promotion will be conditional on transfer to that Service. Designated officers will not be eligible to opt to join the Federal Public Service and therefore their promotion will not be conditional on their transfer to that Service. Officers whether seconded, transferred or promoted to the Federal Public Service will not be liable for service outside the Borneo States save with their consent. Once an officer has transferred to the Federal Public Service he becomes in all respects subject to the jurisdiction of the Federal Public Service Commission. Officers transferring to the Federal Public Service and officers newly appointed to Federalised Departments will serve on Borneo conditions of service until posted outside the Borneo States.

4. The Federal Government will be responsible for the emoluments of all officers serving in Federalised Departments and will pay all these officers direct. Until income tax throughout Malaysia is made uniform the remuneration of existing officers serving in Federalised Departments in the Borneo States will be subject only to income tax under the legislation in force in the Borneo State concerned.

THE INTERIM PERIOD

5. Borneanisation of the Public Services in the Borneo States is a major objective of policy. For a number of years to come special arrangements will be necessary to secure this objective and to protect the legitimate interests of the Native peoples. There are two problems: the preference to be given to Native over other candidates for State and Federalised posts and the laying-down of suitable schemes of service.

6. In relation to the State Service there will be provision in the State Constitution on the lines of Article 153 of the Federal Constitution to empower the State Government to prescribe, from time to time, the extent to which preference will be given to Natives. The term "Native" will be defined in the Constitution by adopting—

(i) in Sarawak the definition in the Sarawak Interpretation Ordinance; and

(ii) in North Borneo the definition that will appear in the State Constitution.

Similarly the State Governments will prescribe in respect of the State Services their own schemes of service and decide how far external recruitment is needed. If such recruitment is needed the State may either make its own arrangements through the Department of Technical Co-operation or from any other sources acceptable to the Federal Government or ask for the help of the Federal Government.

7. In relation to posts in the Federalised Departments Article 153 of the Federal Constitution will be construed as if Natives were substituted for Malays. The Yang di-Pertuan Agong will continue to exercise his powers under Article 153 on the advice of the Federal Cabinet, but in relation to the Borneo States there will be provision that such advice shall be given only after consultation with the Chief Minister of the State concerned. In relation to the Public Service as a whole (as distinct from the Federalised Departments in the Borneo States) Natives should be included with Malays for the purposes of the application of Article 153.

8. Until the Federal and State Governments agree otherwise, in filling posts in Federalised Departments in the States the full qualifications normally required by the Federal Government for candidates for each grade of the Service will be brought into line with the qualifications at present in force in the States. Instructions to the Public Service Commissions will provide that when a local candidate is in sight no vacancy will be filled except on a temporary or contract basis or by promotion of a serving officer.

9. To reassure officers seconded or transferred to the Federal Public Service, and to reassure officers in the States that Borneanisation will be given first priority in the Federalised Departments, the Federal Constitution will provide for the establishment of a separate branch of the Federal Public Service Commission in each State. Subject to the directions given to them in relation to Borneanisation and schemes of service, these branches will have full authority, except as provided in paragraph 2 above, in respect of all appointments, promotions and discipline in the Federalised Departments, saving that the discipline of seconded officers will be a matter for the State Public Service Commission. The Federal Government will undertake that the members of these branches will be the members of the respective State Public Service Commissions together with not more than two members of the Federal Public Service Commission nominated by the Federal Government. These arrangements will be subject to review five years after Malaysia Day. While they are in force the State Governments will consult the Federal Government before making any new appointments to the State Public Service Commissions.

10. Recruitment to Borneo Divisions IV and V and to Division III up to the maximum of scale C3 or equivalent grades will be by the State Public Service Commission for service in the State. Recruitment to and promotion to posts above this scale will be by the Federal Public Service Commission whether for federal service in the State or for federal service throughout Malaysia. To facilitate such recruitment and general liaison between the Federal and State Public Services, the Federal Government will establish branches of the Federal Establishment Office in the States.

11. New recruits to Federalised Departments and local and non-designated expatriate officers serving in these Departments who opt for liability to serve outside Borneo will receive equal consideration for promotion with officers throughout Malaysia who are similarly liable. Within Federalised Departments officers without this liability will be eligible for promotion within the area of their original service equally with officers who are so liable.

12. Certain problems also arise from the citizenship requirements under the Federal schemes of service. Many serving officers in the Borneo States are British subjects (and probably also citizens of the United Kingdom and Colonies) who were born in Hong Kong, Burma or other former British possessions in South East Asia; some of these officers may not qualify for Malaysian citizenship by operation of law immediately on the creation of Malaysia. The citizenship requirements of Federal schemes of service should not be applied to officers otherwise eligible to opt to join the Federal Public Service serving in Federalised Departments in the Borneo States on Malaysia Day. But in view of the traditional composition of the existing Borneo Public Services there will be further provision relaxing the citizenship requirements of the Federal schemes of service to the extent that if it is the clear intention of candidates for service to obtain Malaysian citizenship they will be eligible for appointments on contract or other temporary terms. When they subsequently acquire Malaysian citizenship they will be eligible for permanent appointment with up to four increments on the salary scale, and the back-dating of their appointments for pension purposes only to the date of their original appointment on contract or temporary terms.

13. Subject to the transitional arrangements recommended in paragraph 24 (25) (c) of the Report, the Federal Government will assume responsibility for the pensions of all retired and serving officers of the State Public Services and the Chartered Company and Rajah's Services which preceded these services, including Widows and Orphans Pensions and Provident Fund payments. Future pensions legislation affecting these officers and their dependants will be a matter for the Federal Parliament but there will be constitutional provision protecting these officers and their dependants against changes to their detriment in pension terms. There should also be constitutional provision that the discretionary power to withhold, reduce in amount or suspend any benefit under such legislation may not be exercised adversely to any officer or his dependant unless the appropriate Service Commission or corresponding authority concurs in this exercise of the discretion.

DESIGNATED OVERSEAS OFFICERS AND MEMBERS OF HER MAJESTY'S OVERSEAS CIVIL SERVICE

14. There are about 630 overseas officers either designated by the British Government under the Overseas Service Aid Scheme or members of Her Majesty's Overseas Civil Service, serving in the two States. On Malaysia Day those serving in Federalised Departments will, like their local colleagues in these Departments, be seconded to the Federal Service on their existing terms of service. They will not be eligible to opt to join the Federal Public Service. Subject to the overriding requirements of Borneanisation they will be equally eligible with their local colleagues for promotion within the Federalised Departments according to current service principles and the provisions of paragraph 11 above. Pensions legislation will need to be amended to make such promotion effective for the purpose of pensions. While on secondment they will remain subject to the State pensions legislation and retain the benefits of the existing State Widows and Orphans Pensions and Provident Fund legislation. The North Borneo Government has tabled a study of the prospects of future service by overseas officers. The Sarawak Government are engaged in a similar study. These studies will be further considered by the Governments concerned and the intention is that they should enable these Governments to advise individual overseas officers of the minimum length of service likely to be open to them.

15. The inducement allowances, education allowances and half the passage costs of these officers are met by the British Government by reimbursement of the State Governments under the Overseas Service Aid Scheme Agreements concluded with the Governments in 1961. The Agreements are for a period of 10 years and payments will therefore continue after Malaysia Day. Payments will continue to be to the State Governments in respect of the designated officers remaining in State Service. In respect of officers seconded to the Federal Public Service for service in Borneo and in respect of judges, since these officers will be paid by the Federal Government, the British Government are willing to enter into an O.S.A.S. Agreement with the Federal Government to make similar reimbursements to that Government. Such an Agreement will extend only to overseas officers serving in the Borneo States on Malaysia Day or overseas officers subsequently recruited under the arrangements in paragraph 17 for service in the Borneo States.

16. Once the Federal Government assumes a general financial responsibility for Service pensions the British Government will also, under the proposed O.S.A.S. Agreement with the Federation, reimburse the Federal Government in accordance with the principles of the Scheme the proportion of an officer's pension attributable to the pensionable element in the inducement allowance provided by the British Government.

17. Under the Scheme it will be possible for the Federal and State Governments, subject to agreement with the British Government each year about overall costs, to continue to recruit on contract from overseas to fill gaps in the Services while Borneanisation proceeds. Save in exceptional cases new recruitment under the Scheme will be confined to citizens of the United Kingdom and Colonies and of the Irish Republic. The British Department of Technical Co-operation are willing to be agents for such recruitment and will need in any case to receive particulars of new recruits to discharge their statutory responsibility for the designation of officers under the Scheme.

18. Since the allowances under the Scheme are variable in accordance with changes in economic and other living conditions the British Government will wish to keep in touch with the Federal and State Governments about the working of the Scheme and, subject to their concurrence, with the staff associations concerned.

JUDICIAL AND LEGAL OFFICERS

19. As stated in paragraph 26 (9) of the Report, the existing members of the Unified Judiciary in the Borneo States will continue in office as judges of the High Court of the Borneo States. In view of the overriding requirements of Borneanisation the term of office of those existing judges who are overseas officers will be for a period of years after Malaysia Day to be prescribed by the Federal Government. There should be provision to preserve the eligibility for full lump sum compensation payable by instalments of the existing judges who are overseas officers and they should remain designated officers under the Overseas Service Aid Scheme.

20. Existing members of the Judicial and Legal Services in the Borneo States will be eligible for appointment on transfer to the High Court of the Borneo States. Existing members who are designated officers will also be eligible for such appointment but in view of the overriding requirements of Borneanisation the appointment of any such officer should be for a fixed period in accordance with Article 174 (4) of the Federal Constitution. The transfer provisions of the compensation scheme should not apply to designated officers accepting appointment as judges of the High Court of the Borneo States and they should remain designated officers under the O.S.A.S.

COMPENSATION AND PUBLIC OFFICERS AGREEMENTS

21. In accordance with undertakings given by the British Government to Her Majesty's Overseas Civil Service, a compensation scheme on the lines of the attached draft will be brought into force on Malaysia Day for entitled officers serving in the Borneo States.

22. The compensation scheme should be brought into effect by an Order in Council, which will preserve the continuing rights under the scheme of an officer who is seconded to Federal Service within the Borneo States. To all officers, other than those who may be required to retire under procedures laid down in the scheme, compensation is to be paid by instalments over a period of five years. These capital payments are exempt from income tax in the United Kingdom. The Order in Council should provide for a similar exemption from tax in the Borneo States, and insofar as this may be necessary the Federal Government will secure that these payments (but not any interest payable on them) are exempt from tax under Federal law.

23. Certain features of the compensation scheme have special implications for the Federation:—

- (a) the scheme contains special inducements to officers to continue to serve until their posts can be filled by local officers. In particular, to reassure officers who continue to serve that their compensation and pension cannot be lost by a possibly arbitrary decision of Government, the scheme provides for the establishment of an Appeals Board with neutral membership to hear and decide any appeal by an entitled officer against a disciplinary decision insofar as that decision involves the loss of compensation or pension. There should be provision for this Board in the appropriate Constitutions;
- (b) the scheme lays down a special procedure for the localisation of posts held by entitled officers and provision for this procedure should be made in the State and also the Federal Constitutions; and
- (c) the scheme contains special provisions for the commutation of pensions. Federal pensions legislation should be amended as necessary to provide for this commutation.

24. Public Officers Agreements on the lines of the attached draft should be concluded with the Federal and State Governments to safeguard the conditions of service of overseas officers, and in particular their pensions. These Agreements should come into effect on Malaysia Day.

DESIGNATED CONTRACT OFFICERS

25. Over 100 contract officers from overseas are serving in Departments due to be Federalised. The great majority of these are serving on contracts for a single tour. The Federal Government and the Borneo Governments wish to reassure these officers that the terms of their existing contracts will be observed and that they can expect to complete the full term of their contracts on secondment to the Federal Service but without liability to serve outside Borneo.

26. The terms of service of the small number of officers serving on long term contract will also, of course, be observed. It appears likely that these officers too will complete the full term of their contracts and the Governments of North Borneo and Sarawak are confident that this will prove to be the case. It is however, desirable, both as a protection for officers and a proper provision for Government, that a regular procedure should be laid down for localising the posts of these officers if and when this becomes possible, similar to the procedure for localising the posts of pensionable overseas officers. This would involve a special payment to the officer to compensate for any premature termination of contract.

OFFICERS OTHER THAN DESIGNATED OFFICERS SERVING ON CERTAIN OVERSEAS TERMS

27. Some officers serving in the Borneo States, although not eligible for designation under the Overseas Service Aid Scheme and not in receipt of overseas inducement pay, have within certain limits been recognised as overseas officers, primarily by according them overseas passage terms. These officers will be treated in all respects as local officers, so that no question of the Borneanisation of their posts will arise and they will throughout their careers be equally eligible for promotion with local officers. Since the establishment of Malaysia is not to disturb existing conditions of service, they will continue while serving in the Borneo States to enjoy their existing overseas passage terms on a personal basis unless they opt to surrender them at some future date as part of a generally favourable change to new conditions of service.

28. There are a small number of officers not eligible for designation under the O.S.A.S. who are in receipt of overseas inducement pay from the Sarawak Government. The Sarawak Government will consider whether some alternative offer of premature retirement terms should be made to them.

POLICE

29. Principles similar to those set out above for the State Public Services should apply to the North Borneo Police Force and the Sarawak Constabulary. Designated officers will be seconded to the Federal Police Service retaining their existing terms of service and they will be eligible for promotion within the Borneo States according to the principles in paragraph 14. All Police Officers and all non-designated officers serving with the Police Forces will also be seconded to the Federal Police Service. It will be open to non-designated officers at any time to opt to join the Federal Police Service and promotion will be conditional on transfer to that Service. Officers will not be liable for service outside the Borneo States, save with their consent. For disciplinary purposes officers transferred to the Federal Police Service will be subject to the Federal Police Service Commission. Officers seconded from the State Public Service will be subject to a State Police Board with the following membership:—

Chairman — The Chairman of the State Public Service Commission.

Members — The State Attorney-General

The State Commissioner of Police, and

A representative of the Inspector General of the Federal Police Service.

The State Police Board will have powers similar to the Federal Police Service Commission to delegate its authority and it is recommended that it should delegate this authority to the full extent that the Federal Police Service Commission delegates its authority. Once the Police Service is fully federalised the State Police Boards will cease to exist.

GENERAL

30. The arrangements set out above should go far to meet the representations made by the North Borneo Civil Service Union and the Sarawak Government Asian Officers Union, which have been taken into account. They should also secure the smooth transition of the existing Public Services in the Borneo States into the Federal Public Service, where appropriate, on the establishment of Malaysia and preference for local officers for promotion in the Borneo States. They must not, however, be allowed to impede a constructive partnership within the future Federal Public Service. In the longer term, Malaysia will be an unreal creation unless the principle of Malaysianisation is accepted. In its absence, the Borneo States will be the first to suffer. Borneo officers must play their part in helping to frame Federal policies in the Federal Capital and enjoy opportunities of entering Federal Departments of which the Borneo States have no present counterparts. Similarly Malayan officers in the Federal Public Service must be brought to view problems from a Malaysian point of view that takes full account of the interests, anxieties and hopes of the Borneo States. They can never do this until numbers of them have had reasonable opportunities of serving in the Borneo States and of being made to be directly responsible for their interests. If the safeguards provided for Borneanisation were used for the permanent exclusion of Malayan officers from Federal posts in the Borneo States, Federal policies could not take full account of the views of the Borneo States.

31. During the early years of Malaysia it is desirable that a limited number of suitably qualified officers from the Borneo States should be posted to other parts of Malaysia. The opportunity will also be taken of posting to the Borneo States a limited number of Federal officers or officers from other States. If any designated overseas officers are posted on secondment from the Borneo States, either as a part of these exchanges, or in the interests of the Borneo States to Federal Ministries and Departmental headquarters, they will continue to be entitled to the benefits of the O.S.A.S.

32. It is recommended that the Federal and State Governments should as soon as possible set up a joint Commission to enquire into and make recommendations on bringing terms and conditions of service throughout the Federal Public Service in Malaysia into line; to recommend whether officers in Divisions III to V serving in Federalised Departments may opt to join the Federal Public Service of Malaysia; and to recommend whether Federal conditions should apply to officers who join the Federal Public Service but continue to serve in the Borneo States.

NORTH BORNEO AND SARAWAK

SCHEME OF RETIREMENT BENEFITS FOR MEMBERS OF HER MAJESTY'S OVERSEAS CIVIL SERVICE AND FOR OFFICERS DESIGNATED UNDER THE OVERSEAS SERVICE (NORTH BORNEO/SARAWAK) AGREEMENT, 1961

1. *Date of Introduction of the Scheme*

(i) The Scheme shall come into operation on the date (which shall be the "operative date" of the Scheme) on which North Borneo/Sarawak becomes part of the Federation of Malaysia, or on the date on which the Public Service Commission enjoys executive powers, whichever is the earlier.

(ii) The details of this Scheme will be embodied in an Order in Council.

(iii) With effect from the operative date, entitled officers, as defined in paragraph 2 below, will be entitled to lump sum compensation which shall be calculated and paid in accordance with the provisions of this Scheme.

2. *Definition of Officers Entitled to Compensation*

(i) Pensionable overseas officers, who are members of Her Majesty's Overseas Civil Service or who are designated officers under the Overseas Service (North Borneo/Sarawak) Agreement, 1961, and who were either (a) selected for appointment or (b) were admitted to the pensionable establishment or (c) were transferred to the service of the North Borneo/Sarawak Government from other scheduled service, before the 1st January, 1963, shall be entitled officers and are referred to hereinafter as "entitled officers" for the purposes of this Scheme.

(ii) Officers aged 55 or over, judges aged 62 or over, officers seconded or temporarily transferred to North Borneo/Sarawak from other public service and officers on leave pending retirement on the operative date (other than those who, before that date, have been called upon to retire for constitutional reasons) or who, without the agreement of the Government, have given less than six months notice of retirement under paragraph 10 below shall not be entitled officers.

(iii) Entitled officers who are borne on the establishment of the Government of North Borneo/Sarawak, who, on the operative date, are seconded for service outside North Borneo/Sarawak will be treated in the same way as other entitled officers, and the compensation will be paid to them in accordance with paragraph 6 of this Scheme. Where an entitled seconded officer was serving on an incremental scale at the time of his secondment, compensation will be calculated on the basis of the point on that scale which he would have reached had he not been seconded.

(iv) An officer who is serving on probation on the operative date, but who otherwise satisfies the requirements for entitlement set out in sub-paragraph (i) above, shall, subject to the provisions of paragraphs 6 (viii) and 13 (v) below, become entitled to compensation with effect from the date on which he is confirmed in his appointment and his compensation will be calculated with effect from that date. Service on probation will be "service" for the purposes of this Scheme.

3. *Termination or Continuation of Service*

(i) As soon as possible after the publication of this Scheme, the Government shall notify every entitled officer whether he will continue to be employed in the pensionable service of the Government and if so for what minimum period. At the conclusion of that or any further minimum period, Government shall notify every entitled officer whether he will continue to be employed in the pensionable service and if so for what further minimum period.

(ii) Every entitled officer shall as from a date not less than four months before the operative date be permitted to give by notice in writing in accordance with paragraph 10 below notice of retirement to take effect from a date not more than four months before the operative date.

(iii) An officer who continues in pensionable service after the operative date may at any time after that date give notice of retirement in accordance with paragraph 10 below.

4. *Eligibility for Pension*

(i) The effect of the Scheme on pensions (in view of the provisions of the Pensions Laws and Schemes in North Borneo/Sarawak and in other territories) is as follows.

(ii) Any entitled officer who (a) elects to retire from the pensionable service under this Scheme (whether he accepts an offer of a contract appointment or not) or (b) retires from the service on medical grounds or (c) is required to retire from the service either in accordance with the provisions of paragraph 12 or 13 below or to facilitate the reorganisation of the Public Service or on the grounds of public interest or because of the abolition of his office or on grounds of age will be eligible to receive such pension from the Government of North Borneo/Sarawak as he has earned by his pensionable service in North Borneo/Sarawak irrespective of whether his length of service in North Borneo/Sarawak is less than ten years and of whether he has attained the minimum retiring age at the date of his retirement or has served the minimum period under the Scheme applicable to him.

(iii) Where an entitled officer has other scheduled service, his eligibility for pension in respect of that other service will depend on the pensions law relating to it. An entitled officer who elects to retire before he has completed ten years' total pensionable service (including qualifying service which is not in itself reckonable for the computation of pension) will be eligible only for a gratuity in respect of that part of his scheduled pensionable service which was not served in North Borneo/Sarawak; provided that reciprocal arrangements will so far as possible be made by the Governments of the Federation of Malaya, Singapore, Sarawak, Brunei and North Borneo so that an officer who retires under this Scheme with less than 10 years' total pensionable service which includes other scheduled pensionable service in Malaysia will receive pension in respect of his pensionable service under those Governments notwithstanding that his length of pensionable service is less than 10 years.

(iv) The pension of any entitled officer who is called upon to retire under this Scheme (either for constitutional reasons or to facilitate the localisation of the Public Service or to facilitate the reorganisation of the Public Service or because of the abolition of his office or on grounds of age) (paragraphs 6 (vi) to (viii), 12 and 13 below refer) will be calculated on the basis of the pensionable emoluments which he is drawing at the date on which his leave prior to retirement expires, and the averaging provisions of the Pensions Ordinance will not apply to such officers.

5. *Calculation of Compensation*

(i) An entitled officer will be eligible for compensation to be calculated and paid as set out below.

(ii) Compensation shall be calculated as a lump sum in accordance with the tables (Appendices I and II) which have been drawn up by the Government Actuary in the United Kingdom. These tables take account of length of pensionable service up to ten years. The maximum amount of compensation payable under this Scheme shall be £12,000.

(iii) Compensation shall be calculated by multiplying the officer's annual pensionable emoluments at the date taken for calculation by the factor appropriate to his age and length of service at that date.

(iv) The dates taken for calculation shall be:—

- (a) in the case of the initial instalment, the operative date, or for an officer serving on probation, the date of confirmation;
- (b) in the case of subsequent instalments each anniversary of the operative date, or, for an officer serving on probation, each anniversary of the date of his confirmation;
- (c) the date of retirement, when an officer's compensation will be finally fixed:

Provided that at each date taken for calculation after the operative date, the point in time in relation to which the calculation is made shall be the point most favourable to the officer between the operative date and that date.

(v) Service (whether under the North Borneo/Sarawak Government or under a scheduled Government) shall count for compensation to the same extent as it counts in the computation of the officer's retirement benefits in respect of service under a scheduled Government as defined in the Pensions Ordinance.

(vi) The pensionable emoluments to be taken for calculation will be the pensionable emoluments which the officer is drawing on the date taken for calculation.

(vii) The compensation due to officers who remain on the pensionable establishment will not decrease below the figure as assessed on the operative date. The compensation of these officers will be recalculated each year to take account of changes in age, salary and length of service or promotion, where this will result in an increased assessment, and the officers' entitlements will not thereafter fall below the increased amounts. This process will continue after the sixth instalment has been paid and any further compensation will be paid on each anniversary of the date taken for calculation.

(viii) The tables shall be interpreted on the basis of completed months of age and service only where this is to the advantage of the officer concerned. In all other cases, the compensation factor of an officer shall be based on completed years of service and his age on his last birthday before the date taken for calculation.

(ix) Every entitled officer who is offered promotion carrying an increase in his pensionable emoluments after the operative date will (irrespective of the effective date of the promotion) be required, as a condition of the offer of promotion, to undertake to serve the Government of North Borneo/Sarawak for a further period of not less than 24 months' residential service from the date of notification of the promotion. The recalculation, on any date subsequent to the operative date of an officer's entitlement to compensation, will also be made on the basis of the pensionable emoluments which the officer is drawing on such subsequent date, except that if the officer breaks his undertaking by retiring without the agreement of the Government before serving for 24 months' residential service, his compensation will be calculated on the basis of the annual pensionable emoluments he was drawing immediately before the date of his promotion, or on the basis of the average of his annual pensionable emoluments during the three years before his retirement, whichever is the greater. An officer who accepts promotion, after giving an undertaking to serve for not less than 24 months' residential service, and who might, in order to complete his 24 months, have to return to North Borneo/Sarawak for a final tour of less than 12 months, may be required by the Government to serve for a final tour of not more than 12 months.

(x) The compensation of an entitled officer who continues in the pensionable service after the operative date will be increased by an amount arrived at by multiplying his annual pensionable emoluments on each anniversary of the operative date or finally on his retirement by a factor of 0.10 in respect of each completed period of 12 months service (and *pro rata* for each completed month) since the operative date or the previous anniversary as the case may be. This compensation shall not be affected by the ceiling of £12,000 provided for in sub-paragraph (ii) above and shall be paid in one lump sum on each anniversary of the operative date and finally on retirement. For the purpose of this sub-paragraph deferred leave as at the operative date shall not be reckoned as service.

(xi) Each entitled officer will be given an initial certificate of the amount of compensation to which he is entitled on the occasion of its initial calculation and (in the case of officers who continue to serve on pensionable terms) on the occasion of any subsequent recalculation. Where an officer retires from the pensionable service before the final instalment of compensation has been paid to him he will be given a final certificate of his entitlement as soon as possible after his retirement leave has expired and after all details of his age, salary and length of service at the date of his final retirement have been taken into account.

(xii) Some officers may wish to use the certificates provided under (xi) to establish their credit worthiness with various lending institutions. To assist in this Her Majesty's Government have informed the major financial institutions in the United Kingdom which provide credit — the banks, insurance institutions and buildings societies — of the existence of compensation schemes providing for capital payments by instalments to which Her Majesty's Government contribute, and of the provision of certificates of entitlement to individual officers. These institutions have informed their branches accordingly, and have left it the responsibility of their branch managers to take

account of these certificates to the extent they think appropriate in assessing the credit worthiness of individual officers. The Department of Technical Co-operation are prepared, on request from an entitled officer, to write to a particular bank or similar institution confirming the status of the certificate that the officer may have shown to the institution. The Governments of North Borneo and Sarawak will consider whether these certificates should be made negotiable.

6. *Method of payment*

(i) Subject to the provisions of sub-paragraphs (v) to (viii) below and to the provisions of paragraphs 12 and 13 of this Scheme, the lump sum compensation calculated in accordance with paragraph 5 above shall be payable over a period of five years from the operative date in six instalments, of which the first shall be paid as soon as possible after the operative date. Subsequent instalments shall be paid at intervals of one year from the operative date.

(ii) These instalments shall be paid to all entitled officers whether they elect to retire from the Public Service or to remain on the pensionable establishment or to retire from the pensionable service and accept an offer to remain in the Public Service on contract terms (see paragraph 9 below).

(iii) Subject to the provisions of paragraph 7 below, the initial instalment of compensation shall be £1,000 or one-sixth of the total compensation payable, whichever is the greater, except that where the total compensation is £1,000 or less it shall be paid in full at once. Subject to the provisions of sub-paragraph (iv) below, one-fifth of the balance of compensation due will be paid as a second instalment, one-fourth as a third instalment and so on.

(iv) If on any anniversary of the operative date, the instalment due does not exceed £400 then, if the total amount of the balance of compensation payable is more than £400, an instalment of £400 shall be paid; if the balance of compensation payable is less than £400, then the balance shall be paid at once. If, when any instalment is paid, the balance of compensation after payment of the instalment would be less than £100, it will be paid in full forthwith.

(v) An entitled officer who attains the age of 55 (or, in the case of a judge, the age of 62) shall be paid forthwith the balance of compensation due to him.

(vi) An entitled officer who is required to retire at any time on medical grounds or in the public interest shall be paid forthwith the balance of compensation due to him.

(vii) An entitled officer who is required to retire at any time either to facilitate the reorganisation of the Public Service or because his office is abolished or on grounds of age in accordance with the provisions of the Pensions Ordinance shall be paid forthwith the balance of compensation due to him and shall also be given the additional benefits set out in paragraph (13) (iii) or (iv) as may be appropriate.

(viii) If an officer serving on probation (who is otherwise an entitled officer within the meaning of paragraph 2 (i) above), is required to retire either to facilitate the reorganisation of the Public Service or because his office is abolished or on grounds of age in accordance with the provisions of the Pensions Ordinance, he shall be deemed to have been confirmed in his appointment and the provisions of sub-paragraph (vii) of this paragraph shall then apply to him.

7. *Officers who undertake to continue to serve on pensionable terms for a minimum further period of 24 months of residential service.*

(i) An entitled officer who gives a written undertaking to continue to serve on pensionable terms for a further minimum period of 24 months of residential service, and whose undertaking is accepted by Government, shall receive an initial compensation payment of £2,000 if the compensation due to him exceeds £2,000, or the total due to him if his entitlement is less than £2,000. In subsequent years, payments will be one-fifth, one-quarter, etc. of the reassessed balance of compensation, subject to the provisions of paragraph 6 (iv).

(ii) An entitled officer who enters into this arrangement and who might, in order to complete his 24 months of residential service, only have to return to North Borneo/Sarawak for a final tour of less than 12 months, may be required by the Government to serve for a final tour of not more than 12 months.

(iii) An entitled officer who, having received an initial payment of £2,000, breaks his undertaking to serve on pensionable terms for a further minimum period of 24 months of residential service by retiring without the agreement of the Government, shall be liable to lose one-half per cent of the total compensation due to him (as calculated, if appropriate, in accordance with the provisions of paragraph 5 (vii) above) in respect of each month or part of a month by which he has failed to serve.

(iv) An entitled officer who enters into this arrangement may proceed in one of the following ways:—

- (a) if the undertaking is given not later than three months after the operative date, any period of service in North Borneo/Sarawak between the operative date and three months thereafter will count towards his 24 months' residential service; and he will be entitled to an initial payment of £2,000. (If, before the undertaking is given the officer has already received an initial instalment calculated in accordance with paragraph 6 (iii) above the additional sum required to bring his first instalment up to the appropriate figure calculated in accordance with sub-paragraph (i) of this paragraph will be paid to him as soon as possible after he has given the undertaking); or
- (b) if the undertaking is given after the expiration of three months from the operative date but before the expiration of 12 months from the operative date, the period of 24 months of further residential service, which he undertakes to serve, will start from the day on which the undertaking is given. He will already have received an initial payment of compensation, as though he had given no undertaking (see paragraph 6), but as soon as possible after he has given the undertaking, a further payment will be made to him to bring his initial payment up to the enhanced level set out in sub-paragraph (i) of this paragraph.

8. *Payment of Interest*

(i) Interest at 5 per cent per annum, based on the previously assessed balance of compensation due, will be paid at the time of the payment of the next instalment. Where a recalculation of the entitlement to compensation is made on an anniversary of the operative date interest will become payable on the reassessed balance from the date when the recalculation is made.

(ii) Where a recalculation is made on the occasion of an officer's retirement interest will be paid, at the time the next instalment of compensation is due, calculated as follows:—

5 per cent per annum on the balance of compensation due at the previous anniversary of the operative date for the period between the anniversary of the operative date and the date of retirement, plus 5 per cent per annum on the balance of compensation due on recalculation at the date of retirement from the date of retirement to the next anniversary of the operative date.

(iii) For the purpose of calculating interest the first instalment of compensation will be deemed to have been paid on the operative date.

9. *Contract Appointments*

(i) An entitled officer may request re-engagement on contract terms and, with the approval of the Public Service Commission, such officer may be so re-engaged on terms which are not more favourable than those he enjoyed before he retired. Such entitled officer will not be required to give the normal period of notice of retirement.

(ii) The contract will commence with effect from the first day of the month following the officer's acceptance of the offer of contract employment. The day immediately preceding the effective date for the commencement of the contract will be regarded as the last day of the officer's pensionable service for the purpose of computation of his pension and of final calculation of his compensation entitlement. Re-engagement on contract terms will not affect the officer's entitlement to payment of pension and compensation under this Scheme as from the date of his retirement from the pensionable service.

(iii) Any leave due to the officer on the day on which his contract service starts will not be regarded as pensionable service, but will be added to leave earned under the contract and will earn gratuity.

10. *The giving of notice by entitled officers who elect to retire from the Service*

GIVING OF NOTICE WHILE IN NORTH BORNEO/SARAWAK

(i) An entitled officer may, at any time after the date on which this Scheme is announced, give notice of his intention to retire from the Public Service. An officer will normally be required to give six months resident service notice of retirement, provided that:—

- (a) no period of notice can start more than four months before the operative date;
- (b) a shorter period of notice than six months may be accepted by mutual agreement between the officer and the Government.
- (c) the Government will not insist on the full period of six months' notice, if this would entail the officer's serving more than the normal tour prescribed for him or if approval has already been given for the officer to proceed on leave within six months of the date on which he gives notice of his intention to retire;
- (d) if the officer gives notice of his intention to retire within three months of the commencement of his current tour, his period of notice will start on the day following the completion of the first three months of his tour.

(ii) An entitled officer who gives notice of his intention to retire under this Scheme and who proceeds on leave prior to retirement before the expiration of the normal tour prescribed for him will be entitled to the full retirement passage and baggage concessions, prescribed by Standing Orders, which he would have been entitled to if he had completed the normal tour prescribed for him.

GIVING OF NOTICE WHILE ON VACATION LEAVE

(iii) An entitled officer who is absent from North Borneo/Sarawak on vacation leave may (at any time after the announcement of this Scheme) give notice of his intention to retire from the Service, provided that no period of notice can start more than four months before the operative date.

(iv) The Government may require the officer concerned to return to North Borneo/Sarawak after the expiration of the leave granted to him for a period of six months' residential service to work out his notice; in which event, the Government will pay the full cost of passages for the officer and his family to and from North Borneo/Sarawak and will give the officer full retirement baggage concessions on his final journey from North Borneo/Sarawak, as if he were returning for and completing a full normal tour of service. The Government will avail itself of its right to require an officer to return to North Borneo/Sarawak in these circumstances, only if this is essential in the public interest.

(v) If it is agreed that the officer need not return to North Borneo/Sarawak to work out a period of notice, he will forthwith be granted any balance of leave (including any deferred leave) earned up to the day on which he proceeded on leave; he will be allowed the retirement baggage concessions prescribed in Standing Orders, to enable him to transport his effects from North Borneo/Sarawak; and his service will be deemed to finish on the expiration of the leave due to him.

(vi) If the officer himself expresses a wish to return to North Borneo/Sarawak to settle up his affairs, he will be permitted to do so, but the cost of his and his family's passages will be paid by the Government only if he completes on his return a final tour of not less than 12 months.

WITHDRAWAL OF NOTICE

(vii) An entitled officer may request permission to withdraw his notice of retirement, but it will be for the Government to decide whether or not he should be permitted to do so.

11. *Arrangements on Transfer*

(i) If an entitled officer is offered, after the operative date, a transfer to pensionable public service scheduled under the Pensions Laws without a break in his service, and if he accepts such a transfer, he will be liable to return any instalments of compensation paid to him; and it will be for the Government of North Borneo/Sarawak to satisfy itself as to the arrangements made with the officer for this repayment. (The amount of the refund will be shared equally between the North Borneo/Sarawak Government and the United Kingdom Government).

(ii) If an entitled officer accepts a transfer (as defined in sub-paragraph (i) above) to a post carrying lower pensionable emoluments than his post in North Borneo/Sarawak, he will be granted compensation either:—

- (a) calculated by multiplying the amount by which his annual pensionable emoluments immediately prior to transfer exceed the initial annual pensionable emoluments of his new post by the factor appropriate to his age as set out in the table prepared by the Government Actuary, at Appendix III, or
- (b) equal to the compensation which would have been payable to him if he had retired at the date of his transfer;

whichever is the less, and the compensation shall be paid as set out in paragraph 6 above.

12. *Officers who are required to retire during 1963 and subsequently to facilitate the introduction of constitutional changes*

(i) An entitled officer who is required to retire in the circumstances described above will be entitled to the following benefits:—

- (a) the compensation due to him will be paid in one lump sum as soon as possible after he has been given notice of his retirement;
- (b) he will receive (before or as soon as possible after his departure on leave prior to retirement) a disturbance grant equal to one-quarter of his annual pensionable emoluments and this grant will not be liable to income tax either in the United Kingdom or in North Borneo/Sarawak;
- (c) if he has less than six months' earned leave (including any deferred leave) standing to his credit when he leaves North Borneo/Sarawak, he will be granted additional leave to bring his period of leave up to a total of six months;
- (d) he will receive full retirement passages and baggage concessions as if he had completed a normal tour;
- (e) his pension will be calculated on the basis of the pensionable emoluments which he is drawing at the date of his retirement; and the "averaging" provisions of the Pensions Ordinance will not apply to him.

(ii) The decision whether or not a particular retirement falls within the terms of this paragraph will rest with the Public Service Commission.

13. *Officers who are required to retire to facilitate the localisation of the Public Service*

(i) The Government may inform the Service Commissions that, as a general policy, expatriate officers should be required to retire in sufficient numbers whenever suitably qualified local candidates are available for appointment or promotion and sufficient vacancies are not available to accommodate them; or, alternatively, it may inform the Service Commissions of the application of this policy to particular cadres from time to time. It will be for the Service Commission concerned to determine whether suitably qualified local candidates are available who cannot be accommodated in existing vacancies and, if so, to select the individual expatriate officers who should be required to retire.

(ii) No officer who has been notified that he will continue to be employed for a minimum period in accordance with paragraph 3 above shall be required to retire under this paragraph before the expiry of that minimum period.

(iii) It will be for the appropriate Service Commission to determine, in the light of the public interest, what period of notice should be given to an entitled officer who is required to retire in these circumstances, provided:—

- (a) that, unless the officer is on vacation leave, the period of notice shall not be less than six months' resident service, or such shorter period as the officer, with the concurrence of the appropriate Service Commission, may wish to give;
- (b) that, if an entitled officer is required to retire while absent from North Borneo/Sarawak on vacation leave, the special provisions set out in sub-paragraph (v) of this paragraph will apply;

(iv) Every entitled officer who (while in North Borneo/Sarawak) is required to retire in these circumstances shall be entitled to the following benefits:—

- (a) the balance of any compensation due to him (re-assessed as provided in paragraph 5 (vii)) will be paid to him in one lump sum not more than one month before his expected date of departure from North Borneo/Sarawak;
- (b) if he has less than six months' earned leave (including any deferred leave) standing to his credit when he leaves North Borneo/Sarawak, he will be granted additional leave to bring his period of leave up to a total of six months;
- (c) his pension will be calculated on the basis of the pensionable emoluments which he is drawing at the date of his retirement, and the "averaging" provisions of the Pensions Ordinance will not apply to him;
- (d) he will be given full retirement passage and baggage facilities as if he had completed a normal tour.

(v) If an entitled officer is given notice to retire in these circumstances while on vacation leave, he shall be granted the following benefits:

- (a) the balance of any compensation due to him (re-assessed as provided in paragraph 5 (vii) above) will be paid to him in one lump sum forthwith;
- (b) if he has less than six months' leave (including deferred leave) outstanding at the date on which notice is given, additional leave to bring the period of leave due to him on that date up to a total of six months;
- (c) his pension will be calculated on the basis of the pensionable emoluments which he is drawing at the date of his retirement, and the "averaging" provisions of the Pensions Ordinance will not apply to him;
- (d) passages at Government expense to and from North Borneo/Sarawak for himself (but not for his family) to enable him to settle up his affairs;
- (e) full retirement baggage concessions, as prescribed in Standing Orders, to enable him to transport his effects from North Borneo/Sarawak.

(vi) If an officer serving on probation (who is otherwise an entitled officer within the meaning of paragraph 2 (i) above) is required to retire in these circumstances, he shall be confirmed in his appointment forthwith and shall then be entitled to compensation and other appropriate benefits set out in this paragraph.

14. *Death of an Entitled Officer*

(i) The dependants or the legal personal representatives of an entitled officer who after the operative date dies while still serving or while on leave prior to retirement and before all payments of compensation due to him have been made, shall receive the outstanding balance of compensation and the death gratuity for which provision is made in the Pensions Ordinance, provided that the death gratuity shall, where applicable, be calculated by reference to the special table of factors provided for in paragraph 15 (i) below and to the additional commutations of pension provided for under paragraph 15 (ii) below.

(ii) Where an entitled officer dies after he has retired, his dependants or legal personal representatives shall receive the outstanding balance of any compensation and any other benefits due to them under the Pensions Ordinance.

15. *Commutation of Pensions*

(i) Entitled officers retiring under this Scheme shall be entitled to commute up to one-quarter of their earned pension (whether that pension has been earned solely by service in North Borneo/Sarawak or partly by service in North Borneo/Sarawak and partly by service under another Government or administration which schedules North Borneo/Sarawak in its pension law) in accordance with the special table of commutation factors which is set out in Appendix IV. The North Borneo/Sarawak Government will bear the cost arising from the difference between these factors and the commutation factor provided for in the pensions law of the other Government or Administration. These special factors shall also apply to the commutation of pensions of entitled officers who retire after the final instalment of compensation has been paid.

(ii) Entitled officers who remain in the Service on pensionable terms after the operative date shall be entitled, on retirement, to commute a further one-sixteenth of their pensions earned in respect of their service in North Borneo/Sarawak for each completed year of service after the operative date, in accordance with the special table of commutation factors set out in Appendix IV, provided that deferred leave (i.e. vacation leave due to an officer in excess of vacation leave earned in respect of his final tour of service) shall not count as service in respect of which the officer may commute an extra one-sixteenth of his pension.

(iii) An entitled officer will be permitted to commute the whole or any part in excess of the statutory provisions of the pension earned in respect of his service in North Borneo/Sarawak up to a maximum of £300 in accordance with the special table of commutation factors set out in Appendix IV, but any excess of pension over £300 will be forfeited.

(iv) Officers who are pensionable under the Overseas Superannuation Scheme are not entitled under the Regulations of that Scheme to commute any part of their pensions but instead receive a smaller pension and a lump sum which is equivalent to one-quarter of a normal pension multiplied by a factor of 10. North Borneo/Sarawak will add to this lump sum to bring it up to the amount which would have been payable if the officer had not been eligible for a pension and a lump sum but had been eligible for a pension calculated on a pension constant of one-six-hundredth for each month of service and had been able to commute one-quarter of that pension in accordance with the table referred to in sub-paragraph (i) above.

16. *Incidence of Income Tax*

(i) Compensation payments (whether paid in a lump sum or by instalments), disturbance grants and capital sums paid in respect of commutation of pensions, whether paid to the officer, or (in the event of his death) to his dependants or his legal personal representatives shall not be liable to income tax either in the United Kingdom or in North Borneo/Sarawak.

(ii) Interest paid on the balance of compensation due to an entitled officer (after the initial payment has been made) may be liable to income tax either in the officer's country of residence or in North Borneo/Sarawak or in both, according to the circumstances of the officer and subject to the provisions of any Double Taxation Agreement where applicable.

17. *Disciplinary proceedings which may affect the pension or compensation of an entitled officer serving after the operative date.*

(i) If any decision of a Service Commission has the effect of withholding, suspending, reducing or otherwise altering to his detriment any pension, compensation or other retiring benefit due to or in respect of an entitled officer, he or his legal personal representatives as the case may be shall have the right to appeal against the decision to an Appeals Board whose decision shall be final. The Appeals Board will be composed of one member selected by the Chief Minister, one member selected by an association representing public officers or a professional body nominated by the entitled officer concerned, and one selected by the two other members jointly, to be Chairman of the Board. An officer shall be entitled to legal representation before the Board.

(ii) If an entitled officer, who has retired from the pensionable service with compensation and has been engaged on contract terms, terminates his contract or has his contract terminated for any reason, this will not affect the payment of his pension or the payment of any balance of compensation due to him.

18. *Officers on temporary transfer from the Home Civil Service*

An officer on temporary transfer from the Home Civil Service who is in the service of the North Borneo/Sarawak Government on the operative date and who would then have been an entitled officer if he had not been serving on temporary transfer, if he returns to the Home Civil Service to a post carrying lower pensionable emoluments than the post he holds in North Borneo/Sarawak, shall receive (after the date of his return to the Home Civil Service) compensation calculated as in paragraph 11 above, provided:—

- (a) that, in the opinion of the appropriate Service Commission, he would have had a reasonable expectation of being appointed to the pensionable establishment of North Borneo/Sarawak if such appointments had not been generally discontinued;

- (b) that either he has served for a period of not less than 24 months of residential service after the operative date or his office has been abolished or he is required to return to the Home Civil Service to facilitate the localisation or re-organisation of the Public Service;
- (c) that the compensation shall not in any case exceed half the compensation which would have been payable to him if he had retired at the date of his transfer; and
- (d) that the compensation shall be paid as set out in paragraph 6 above.

19. *Arrangements regarding the refund of compensation on established appointment to the Home Civil Service (including the Foreign Service).*

(i) An entitled officer who enters the pensionable establishment of the Home Civil Service through a competition conducted by the Civil Service Commissioners will not be required to refund his compensation if there is a break between the last day of his pensionable service under the North Borneo/Sarawak Government and the first day of his established service in the Home Civil Service.

(ii) An officer who takes up an established appointment in the Home Civil Service without a break in service may be regarded for the purpose of the North Borneo/Sarawak Pensions Law as having been transferred to the Home Civil Service. Subject to the provisions of paragraph 11 above, he will be required to refund any instalments of compensation he has received and will not be eligible to receive a pension from the North Borneo/Sarawak Government (or any other scheduled government which he has served) until his final retirement from public service.

(iii) An entitled officer who, having been formerly a pensionable member of the Home Civil Service, returns to a pensionable appointment in that Service, otherwise than as the result of a competition conducted by the Civil Service Commissioners, within twelve months of the expiration of his retirement leave from North Borneo/Sarawak, shall receive either compensation calculated in accordance with paragraph 11 above, or half the compensation to which he is entitled, whichever is the less, and will be required to refund any instalments of compensation in excess of this amount which he may already have received. The amount of the refund will be shared equally between the North Borneo/Sarawak Government and the United Kingdom Government. The compensation shall be paid as set out in paragraph 6 above.

20. *Abolition of office terms*

(i) An entitled officer shall not be eligible to receive any addition to earned pension or gratuity provided for in the Pensions Ordinance or Scheme in respect of abolition of office if he receives compensation for loss of career.

(ii) An entitled officer who before the operative date gives notice of retirement under this Scheme may at his option on his retirement receive the abolition addition to pension provided for in the pensions law or Scheme instead of the compensation provided for under this Scheme.

21. *General*

Any compensation or gratuity payable under this Scheme to an officer or to his personal representative or dependants shall be paid, in accordance with any requests 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 North Borneo, Sarawak, Malaya or Singapore;
- (c) in the country 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 country in which the personal representatives or the dependants, as the case may be, reside; or
- (e) in such other country as the officer or his personal representatives or dependants may, with the concurrence of the North Borneo/Sarawak Government, select.

Payment shall be made in the currency of the country in which payment is to be made; and, where payment is to be made in a country other than North Borneo/Sarawak, the amount of the payment shall be such as would produce, at the official rate of exchange prevailing at the date of payment, the amount in sterling of the compensation or gratuity as calculated at a rate of exchange not less than Sterling two shillings and four pence (2s. 4d.) to the Malayan dollar.

APPENDIX I

NORTH BORNEO AND SARAWAK COMPENSATION FACTORS—OFFICERS

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

NOTE:—The factor corresponding to the officer's age and service in years and completed months should be obtained by interpolation.

APPENDIX II

NORTH BORNEO AND SARAWAK COMPENSATION FACTORS
JUDGES—NORMAL RETIREMENT AGE 62

<i>Age of judge</i>	<i>Factor</i>	<i>Age of judge</i>	<i>Factor</i>
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		

NOTE:—These factors apply where the judge has at least ten years' service. The factors corresponding to the judge's age in completed months should be obtained by interpolation.

APPENDIX III

NORTH BORNEO AND SARAWAK

COMPENSATION IN RESPECT OF TRANSFERRED OFFICERS
 FACTOR TO BE APPLIED TO REDUCTION IN SALARY SUSTAINED ON TRANSFER

<i>Age</i>	<i>Factor</i>
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

NOTE:—The factor corresponding to the officer's age in years and completed months should be obtained by interpolation.

APPENDIX IV

NORTH BORNEO AND SARAWAK

COMMUTATION OF PENSION UNDER COMPENSATION ARRANGEMENTS

TABLE SHOWING THE LUMP SUM TO BE PAID FOR THE COMMUTATION OF EACH £1 P.A. OF PENSION

<i>Age of officer</i>	<i>Factor</i>	<i>Age of officer</i>	<i>Factor</i>
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

NOTE:—The factor corresponding to the officer's age in years and completed months should be obtained by interpolation.

PUBLIC OFFICERS AGREEMENT BETWEEN HER MAJESTY'S GOVERNMENT IN
THE UNITED KINGDOM AND THE GOVERNMENT OF

Her Majesty's Government in the United Kingdom and the Government of
have agreed as follows:—

Interpretation

1. (1) In this Agreement—

- (a) "the appointed day" means Malaysia Day;
- (b) "conditions of service" means the laws, rules, regulations, orders and other instruments that regulate the terms of service of an overseas officer relating to his tenure of office, disciplinary control, salary (including salary scales), pensionable allowances and passages;
- (c) "overseas officer" means an officer whose conditions of service before the appointed day included an entitlement to free passages from for the purpose of leave of absence upon the completion of a tour of duty and who was before that day the substantive holder of a pensionable office in the Public Service of _____, being a person—
- (i) who was selected for or offered appointment to the Public Service of _____ by a Secretary of State; or
- (ii) whose appointment to the Public Service of _____ was approved by a Secretary of State; or
- (iii) who had entered into an agreement with the Crown Agents for Oversea Governments and Administrations to serve in the Public Service of _____; or
- (iv) who (although not an officer falling within heads (i), (ii) or (iii) of this subparagraph) is or has been a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary, or has been a member of a former Colonial Unified Service, or is or was a designated officer for the purposes of the Overseas Service (_____) Agreement 1961;
- (d) "pension" means any pension, gratuity, compensation and interest thereon, retiring allowance or other like benefit payable by the Government of _____ to or in respect of any overseas officer or to the widow or child of any overseas officer or their legal personal representatives, including any increase of pension, and any contributions repayable and interest payable to any officer under any law providing for payment of pensions to widows and children of officers.

(2) "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 the office for a specified term under a contract.

Conditions of Service

2. The conditions of service applicable to an overseas officer who continues to be the substantive holder of a pensionable office in the Public Service of _____ on or after the appointed day shall not be less favourable than those which were applicable to him immediately before the appointed day.

Retirement and Pensions

3. The entitlement to retire and the eligibility to receive a pension of any overseas officer who continues to be the substantive holder of a pensionable office in the Public Service of _____ on or after the appointed day or of his widow, children, dependants or personal representatives shall be as provided for in the laws, regulations and administrative directions in force on the appointed day or in such other laws, regulations and administrative directions made thereafter as are not less favourable; and pensions shall be granted and paid to such officers and other persons accordingly.

Preservations of Pensions

4. The pension of any overseas officer who has ceased to be the substantive holder of a pensionable office in the Public Service of _____ before the appointed day, or of the widow, children, dependants or personal representatives of any such officer, shall be granted and paid, or if granted before that date shall continue to be paid, in accordance with

the laws, regulations and administrative directions governing those pensions immediately before the appointed day or in accordance with such other laws, regulations and administrative directions made thereafter that are not less favourable.

Payment of Pensions

5. (1) A pension shall, at the option of the person to whom it is payable, be paid either in _____ or in the country in which he is residing or in any other country to which he had an entitlement to a free passage for the purpose of leave of absence upon the completion of a tour of duty as may from time to time be requested by him in writing.

(2) An option exercised under paragraph (1) of this Article—

(a) may be revoked at any time and a fresh option be exercised;

(b) shall be exercised or revoked by notice in writing;

(c) shall take effect on the first day of the next succeeding month, or at the person's election on the first day of any subsequent month after the date on which the notice is received by the [Secretary to the _____ Treasury].

(3) Pensions payable outside _____ after the appointed day shall be paid in the currency of the country in which payment is to be made, and 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 pension calculated as at the official rate of exchange prevailing on the appointed day: Provided that if there is a general revision of salaries consequent upon the revaluation of the currency in use in _____ as a result of which the pensionable emoluments of an overseas officer may be increased the Government of _____ may require that officer to agree that any pension that may be granted to him shall be calculated at the rate of exchange prevailing at the date of the revision of salaries before granting him the benefit of the increase of pensionable emoluments.

(4) Where the person to whom a pension is payable is a minor, his or her lawful guardian may exercise the option conferred by this paragraph.

Options

6. For the purposes of this Agreement, in so far as the law, regulations or administrative directions applicable to the grant of a pension or to other conditions of service depends on the option of the person to or in respect of whom the pension is granted or is to be granted, or of the overseas officer to whom the conditions of service apply, the law, regulations or administrative directions for which such person or officer opts shall be taken to be more favourable to him, than any other law, regulation or administrative direction for which he might have opted.

Officers in H.M.O.C.S. and H.M.O.J.

7. (1) Overseas officers who are members of Her Majesty's Overseas Civil Service or of Her Majesty's Overseas Judiciary shall continue to be eligible for consideration by Her Majesty's Government in the United Kingdom for transfer or promotion to employ in the Public Service of some other territory.

(2) The Government of _____ shall comply with any reasonable request that may at any time be made by Her Majesty's Government in the United Kingdom for the release of an overseas officer for transfer or promotion in pursuance of paragraph (1) of this Article and shall take any action that may be necessary to preserve his pension rights when he is so transferred or promoted.

(3) Before he is released an overseas officer shall be required to make arrangements satisfactory to the Government of _____ for the repayment to that Government of any compensation or instalments of compensation he may be required to make under the (Compensation Scheme), but not of any interest paid on outstanding instalments.

Appeals Board

8. Section _____ (Appeals Board) of the (_____ Constitution), relating to benefits, to which Section _____ of the (_____ Constitution) applies, that may be granted or that may have been granted to or in respect of any overseas officer, shall not be revoked or amended to the prejudice of the interest of any such officer.

Citation and Commencement

9. This Agreement may be cited as the Public Officers (_____) Agreement, 196 _____, and shall come into operation on the date of signature.

Done in duplicate at _____ this _____ day of _____, 196 _____.

Signed on behalf of Her Majesty's Government in the United Kingdom

Signed on behalf of the Government of _____

ANNEX C

JOINT PUBLIC STATEMENT

ISSUED BY THE BRITISH AND MALAYAN GOVERNMENTS
ON THE 1ST AUGUST, 1962

1. The British and Malayan Governments have received and studied the Report of the Commission under the chairmanship of Lord Cobbold which visited North Borneo and Sarawak earlier this year to ascertain the views of the inhabitants on the proposal to create a Federation of Malaysia embracing Malaya, Singapore, Sarawak, North Borneo and Brunei. The Report is being published today.
2. The two Governments are most grateful to the Commission for their valuable Report and have accepted almost all the recommendations on which the Commission were unanimous. The two Governments have noted in particular that the Commission were unanimously agreed that a Federation of Malaysia is in the best interests of North Borneo and Sarawak and that an early decision in principle should be reached.
3. In the light of this Report and of the agreement reached between the Government of Malaya and the Government of Singapore, the British and Malayan Governments have now decided in principle that, subject to the necessary legislation, the proposed Federation of Malaysia should be brought into being by 31st August, 1963.
4. To give effect to this decision, the two Governments intend to conclude, within the next six months, a formal agreement which, among other things, will provide for:
 - (a) the transfer of sovereignty in North Borneo, Sarawak and Singapore by 31st August, 1963;
 - (b) provisions governing the relationship between Singapore and the new Federation, as agreed between the Governments of Malaya and Singapore;
 - (c) defence arrangements as set out in the Joint statement by the British and Malayan Governments dated 22nd November, 1961; and
 - (d) detailed constitutional arrangements, including safeguards for the special interests of North Borneo and Sarawak, to be drawn up after consultation with the Legislatures of the two territories.
5. These safeguards will cover such matters as religious freedom, education, representation in the Federal Parliament, the position of the indigenous races, control of immigration, citizenship and the State constitutions.
6. In order that the introduction of the new Federal system may be effected as smoothly as possible and with the least disturbance to existing administrative arrangements, there will be, after the transfer of sovereignty, a transition period, during which a number of the Federal constitutional powers will be delegated temporarily to the State Governments.
7. An Inter-Governmental Committee will be established as soon as possible, on which the British, Malayan, North Borneo and Sarawak Governments will be represented. Its task will be to work out the future constitutional arrangements and the form of the necessary safeguards.
8. The Minister of State for the Colonies, Lord Lansdowne, who will be the Chairman of this Committee, and the Deputy Prime Minister of the Federation of Malaya, Tun Abdul Razak, will proceed shortly to Sarawak and North Borneo to conduct discussions.
9. In order to maintain the efficiency of the administration, the British and Malayan Governments are agreed on the importance of retaining the services of as many of the expatriate officials as possible. The Minister of State will discuss with the Governments of the territories and with the Staff Associations how this best can be done.
10. The British and Malayan Governments have informed the Sultan of Brunei of the agreement they have reached and have made it clear that they would welcome the inclusion of the State of Brunei in the new Federation.

ANNEX D

LIST OF MEETINGS AND MEMBERS OF PLENARY SESSIONS AND OF SUB-COMMITTEES OF THE INTER-GOVERNMENTAL COMMITTEE (1962)

A. MEETINGS

1. *Plenary*

Preparatory Meeting	...	30th August	(Jesselton)
1st Meeting	...	22nd October	(Jesselton)
2nd Meeting	...	Morning of 23rd October	(Jesselton)
3rd Meeting	...	Afternoon of 23rd October	(Jesselton)
4th Meeting	...	Afternoon of 23rd November	(Jesselton)
5th Meeting	...	Morning of 24th November	(Jesselton)
6th Meeting	...	Afternoon of 25th November	(Jesselton)
7th Meeting	...	Morning of 26th November	(Jesselton)
8th Meeting	...	18th December	(Kuala Lumpur)
9th Meeting	...	Morning of 19th December	(Kuala Lumpur)
10th Meeting	...	Afternoon of 19th December	(Kuala Lumpur)
11th Meeting	...	Morning of 20th December	(Kuala Lumpur)

2. *Constitutional Sub-Committee*

1st Meeting	...	8th and 9th October	(Jesselton)
2nd Meeting	...	14th, 15th and 16 November	(Kuala Lumpur)

3. *Fiscal Sub-Committee*

1st Meeting	...	19th October	(Jesselton)
2nd Meeting	...	14th November	(Kuala Lumpur)
3rd Meeting	...	17th December	(Kuala Lumpur)

4. *Public Service Sub-Committee*

1st Meeting	...	6th November	(Kuching)
Meeting of Officials only	...	Afternoon 24th November	(Jesselton)
2nd Meeting	...	6th December	(Jesselton)

5. *Legal and Judicial Sub-Committee*

1st Meeting	...	18th October	(Jesselton)
2nd Meeting	...	8th November	(Kuching)

6. *Departmental Organisation Sub-Committee*

1st Meeting	...	7th November	(Kuching)
2nd Meeting	...	7th December	(Jesselton)

B. MEMBERS

British Members

Lord Lansdowne (Chairman)
 Sir John Martin, K.C.M.G., C.B., C.V.O. (Chairman of Sub-Committees)
 Mr. H. P. Hall, M.B.E.
 *Mr. M. G. Smith
 Mr. E. M. West
 Mr. D. G. Gordon-Smith
 *Mr. R. G. Tremeer
 Mr. T. J. O'Brien, M.C. (Joint Secretary)

Malayan Members

- The Hon. Tun Abdul Razak bin Dato Hussein, S.M.N. (Deputy Chairman)
- *The Hon. Dato Dr. Ismail bin Dato Haji Abdul Rahman, P.M.N.
- *The Hon. Enche Tan Siew Sin, J.P.
- *The Hon. Enche Cheah Theam Swee
- *Dato Sir James Thomson, P.M.N., P.J.K.
- Dato Abdul Aziz bin Haji Abdul Majid, P.M.N., D.P.M.K., P.J.K.
- *Dato Abdul Jamil bin Abdul Rais, P.M.N., P.J.K.
- The Hon. Enche Ismail bin Yusoff
- *Dato Hamzah bin Abdullah
- Mr. C. M. Sheridan, C.M.G.
- *Dato C. H. Fenner, C.M.G., P.M.N.
- Dato Nik Daud bin Haji Nik Mat, S.P.M.K.
- Mr. R. J. C. Wait, O.B.E., P.J.K.
- Enche Abdul Kadir bin Shamsuddin, A.M.N.
- *Enche Abu Bakar Samad bin Noor
- *Mr. G. W. Gould, M.C.
- *Enche Chong Hon Nyan, A.M.N.
- *Enche Yeap Kee Aik, A.M.N.
- *Enche W. Fernando, K.M.N.
- Enche Abdul Aziz bin Yeop (Joint Secretary)

Sarawak Members

- The Hon. Mr. F. D. Jakeway, C.M.G., O.B.E.
- The Hon. Mr. P. E. H. Pike, Q.C.
- The Hon. Mr. B. A. St. J. Hepburn, C.M.G.
- *The Hon. Mr. A. R. Snelus, C.M.G.
- The Hon. Datu Bandar Abang Haji Mustapha, C.B.E.
- The Hon. Temenggong Jugah, O.B.E.
- *The Hon. Datu Abang Haji Openg, O.B.E.
- *The Hon. Mr. James Wong
- The Hon. Pengarah Montegrai
- *The Hon. Mr. Chen Ko Meng
- *The Hon. Wan Abdul Rahman bin Datu Tuanku Bujang
- *The Hon. Penghulu Umpau
- *The Hon. Mr. Mak Yau Lim
- The Hon. Mr. Ling Beng Siew
- The Hon. Mr. Chia Chin Shin
- *The Hon. Mr. Yeo Cheng Hoe, O.B.E.
- *The Hon. Mr. Ainnie bin Dhoby
- *The Hon. Mr. Dagok anak Randen
- *Mr. R. L. V. Wilkes, C.M.G.
- *Mr. P. E. Turnbull
- *Mr. R. Kirkwood, M.B.E.
- *Mr. J. R. Blease
- *Mr. A. J. N. Richards
- *Mr. G. V. C. Young
- Mr. J. Pike
- *Mr. J. A. Williams
- *Mr. W. C. B. Wilson
- *Mr. Gerunsin Lemat
- Mr. G. A. T. Shaw (Joint Secretary)

North Borneo Members

The Hon. Mr. R. N. Turner, C.M.G.	} Joint Leaders
The Hon. Mr. D. A. Stephens	
The Hon. Mr. W. K. H. Jones	
The Hon. Mr. H. W. Davidson, C.M.G., M.B.E.	
*The Hon. Mr. J. H. Macartney	
The Hon. Datu Mustapha bin Datu Harun, O.B.E.	
The Hon. Mr. Khoo Siak Chew	
*The Hon. Mr. Pang Tet Tshung	
*The Hon. Mr. Peter Lo	
*The Hon. Mr. R. G. Barrett	
*Mr. D. Matheson	
*Mr. C. J. Fenton, O.B.E.	
*Mr. A. H. Masterton-Smith	
*Mr. M. V. Saville	
*Mr. D. F. Barton	
Mr. J. O. Ballard	
Mr. W. S. Holley	(Joint Secretary)

Chief Justice of Sarawak, North Borneo and Brunei

Sir John Ainley, M.C.

Brunei Observers

Dato' Setia Pengiran Haji Mohd. Yusof
Tuan Haji Jamil.

(Those marked * were not members of Plenary Meetings)