

A BILL

i n t i t u l e d

An Act to amend the Employees' Social Security Act 1969.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Employees' Social Security (Amendment) Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Employees' Social Security Act 1969 [*Act 4*], which is referred to as the "principal Act" in this Act, is amended in subsection 2(5)—

- (a) by inserting before the word "“employee”" the words "Subject to section 3,";
- (b) by substituting for the comma at the end of subparagraph (iii) a semicolon; and
- (c) by deleting the words "but does not include a person of the descriptions specified in the First Schedule;".

Amendment of section 3

3. Section 3 of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) This Act shall not apply to persons described in the First Schedule.

(4) The Minister may, by order published in the *Gazette*, amend the First Schedule.”.

General amendment

4. Sections 15, 20A and 29 of the principal Act are amended by substituting for the word “55” wherever appearing the word “sixty”.

Amendment of section 17

5. Subsection 17(1) of the principal Act is amended by substituting for the words “completed his fifty-fifth year of age” the words “attained sixty years of age”.

Amendment of section 21

6. Subsection 21(3) of the principal Act is amended by substituting for the words “completed his fifty-fifth year of age” the words “attained sixty years of age”.

Amendment of section 30

7. (1) Section 30 of the principal Act is amended by substituting for the words “equivalent to forty per cent of the rate of such pension or benefit subject to such maximum” the words “at a rate”.

(2) The rate of constant-attendance allowance to be prescribed under section 30 of the principal Act as amended in subsection (1) shall not cause a less favourable situation to insured persons

who have been entitled to the constant-attendance allowance at the rate equivalent to forty per cent of the rate of such pension or benefit or at any higher rate as prescribed by the Minister pursuant to section 30 before the coming into operation of the amendment of section 30 of the principal Act in subsection (1).

Amendment of section 57A

8. Paragraph 57A(c) of the principal Act is amended by substituting for the word “fifty-five” the words “sixty”.

New section 112A

9. The principal Act is amended by inserting after section 112 the following section:

“Electronic submission of documents

112A. (1) Subject to subsection (2), the Organization may allow any returns, statements, particulars, records, notice, reports, register or other documents required to be submitted or furnished under this Act or regulations made under this Act by an electronic medium or by way of an electronic transmission.

(2) The conditions and specifications under which the returns, statements, particulars, records, notice, reports, register or other documents referred to in subsection (1) are to be submitted or furnished shall be as determined by the Organization.

(3) The returns, statements, particulars, records, notice, reports, register or other documents referred to in subsection (1) shall be deemed to have been submitted or furnished by a person to the Organization on the date the acknowledgment of receipt of such documents is transmitted electronically by the Organization to the person.

(4) The acknowledgment of receipt, returns, statements, particulars, records, notice, reports, register or other documents submitted or furnished pursuant to subsection (3) shall be admissible as evidence in any proceedings.”.

Amendment of First Schedule

10. The First Schedule to the principal Act is amended—

- (a) by substituting for the words “[Section 2]” appearing in the heading of the First Schedule the words “[Section 3]”;
- (b) in subparagraph 12(i), by substituting for the word “fifty” wherever appearing the word “fifty-five”;
- (c) in subparagraph 12(ii), by substituting for the word “fifty-five” the word “sixty”; and
- (d) by deleting paragraph 13.

Amendment of Eighth Schedule

11. The Eighth Schedule to the principal Act is amended in paragraphs 2, 3 and 6 by substituting for the word “fifty-five” wherever appearing the word “sixty”.

Effect of increasing the eligible age limit of insured person from fifty-five years to sixty years

12. (1) In this section, “appointed date” means the date appointed by the Minister under subsection 1(2).

(2) Subject to the principal Act, on the appointed date—

- (a) an insured person who has attained fifty-five years of age but has not attained sixty years of age may be eligible for invalidity pension except in the circumstances under subsections (3) and (4);
- (b) any dependant of an insured person who dies upon attaining any age from fifty-five to sixty years may be eligible for survivors’ pension except in the circumstances under subsections (5) and (6);
- (c) there shall be made payable in respect of the insured person referred to in paragraph (a) contributions of the second category at the rates specified in the Third Schedule to the principal Act; and

- (d) there shall be made payable in respect of an insured person who has not attained fifty-five years of age contributions of the first category at the rates specified in the Third Schedule to the principal Act.

(3) An insured person in respect of whom contributions of the first category were payable shall not be eligible for the invalidity pension if—

- (a) he is certified to be invalid upon attaining fifty-five years of age before the appointed date; or
- (b) he is certified to be invalid upon attaining sixty years of age either on or after the appointed date.

(4) An insured person shall not be eligible to invalidity pension if he is certified to be invalid upon attaining fifty-five years of age either on or after the appointed date, and he is employed only upon attaining fifty years of age and where no contributions of the first category were payable in his respect.

(5) A dependant of an insured person in respect of whom contributions of the first category were payable shall not be eligible for survivors' pension if—

- (a) the insured person dies upon attaining fifty-five years of age before the appointed date; or
- (b) the insured person dies upon attaining sixty years of age either on or after the appointed date.

(6) A dependant of an insured person shall not be eligible for survivors' pension if—

- (a) the insured person dies upon attaining fifty-five years of age either on or after the appointed date; and
- (b) the insured person is employed only upon attaining fifty years of age and where no contributions of the first category were payable in his respect.

EXPLANATORY STATEMENT

The Bill seeks to amend the Employees' Social Security Act 1969 ("Act 4"). The primary purpose of the Bill is to increase the eligibility of insured persons for invalidity pension and the eligibility of the dependant of the insured persons for survivors' pension by increasing the eligible age limit of the insured person from fifty-five years of age to sixty years of age.

2. *Clause 1* contains the short title and provision on the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to amend the definition of "employee" for the purpose of clarity.

4. *Clause 3* seeks to amend section 3 consequential upon the proposed amendments made to the definition of "employee" under *clause 2*. Via this amendment, the Minister is empowered to amend the First Schedule to prescribe for persons not included in the definition of "employee", by order published in the *Gazette*.

5. *Clauses 4, 5, 6, 8, 10 and 11* seek to amend sections 15, 17, 20A, 21, 29 and 57A of Act 4 as well as the First Schedule and Eighth Schedule to Act 4 to increase the eligible age limit of the insured person from fifty-five years of age to sixty years of age for the purpose of increasing the eligibility for invalidity pension and survivors' pension. These amendments are essential to realize the primary purpose of the proposed Act.

6. *Clause 7* seeks to amend section 30 of Act 4 to provide flexibility to the Minister in prescribing the rate for constant-attendance allowance. However, the rate of constant-attendance allowance to be prescribed under this section as amended by the proposed Act shall not cause a less favourable situation to insured persons who have been entitled to the constant-attendance allowance at the rate equivalent to forty per cent of the rate of such pension or benefit or at any higher rate as prescribed by the Minister pursuant to this section before the coming into operation of the amendment of this section.

7. *Clause 9* seeks to introduce new section 112A into Act 4 relating to electronic submission of documents. The new section 112A provides that the Organization may allow any returns, statements, particulars, records, notice, reports, register or other documents required to be submitted or furnished under this Act or regulations made under this Act by an electronic medium or by way of an electronic transmission and, such submission shall be subject to the conditions and specifications determined by the Organization. The acknowledgment of receipt by the Organization, returns, statements, particulars, records, notice, reports, register or other documents submitted or furnished pursuant to this section shall be admissible as evidence in any proceedings.

8. *Clause 12* provides for the effect of increasing the eligible age limit of insured person from fifty-five years to sixty years. This is to facilitate a better understanding on the application of the proposed amendment to the eligible age limit of insured person in relation to invalidity pension and the survivors' pension.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U²)2881]