

A BILL

*i n t i t u l e d*

An Act to amend the Pensions Adjustment Act 1980.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Pensions Adjustment (Amendment) Act 2012.

(2) This Act comes into operation on 1 January 2013.

**Amendment of section 2**

**2.** The Pensions Adjustment Act 1980 [*Act 238*], which is referred to as the “principal Act” in this Act, is amended in section 2 by deleting the definition of “corresponding last drawn salary”.

**Substitution of section 3**

3. The principal Act is amended by substituting for section 3 the following section:

**“Adjustment of pensions and other benefits of officers and dependants**

3. (1) Pensions and other benefits granted to officers and their dependants under any written law shall be adjusted annually by an increment of two percent in accordance with the provisions of this Act and shall be paid or be payable with effect from January of each year.

(2) Notwithstanding subsection (1), where the application of the specified rate of increment would result in a situation that is less favourable to an officer appointed before the coming into force of this section, the Yang di-Pertuan Agong may by order in the *Gazette* prescribe an appropriate higher percentage of increment to be applied in such case.

(3) For the purpose of an order under subsection (2), the Yang di-Pertuan Agong may prescribe—

- (a) different percentages of increment for different categories of recipients;
- (b) that the higher percentage of increment shall only apply for a specified year or any part thereof, and in such case, the date on which the adjustment shall be payable.”.

**New sections 3A and 3B**

4. The principal Act is amended by inserting after section 3 the following sections:

**“Adjustment of pensions, disability pensions, retiring allowances or injury allowances**

3A. (1) Pensions, disability pensions, retiring allowances or injury allowances received by an officer under any written law shall be adjusted in accordance with subsection 3(1).

(2) The amount of pension, disability pension, retiring allowance or injury allowance to be used as the basis for the first of the adjustments under subsection 3(1)—

(a) in the case of an officer who retired before or on 1 January 2012, shall be the amount of pension, disability pension, retiring allowance or injury allowance which had been adjusted on that date;

(b) in the case of an officer who retired on or after 2 January 2012, shall be the amount of pension, disability pension, retiring allowance or injury allowance which had been granted to the officer.

(3) The adjustment referred to in subsection (1) is subject to any higher percentage of increment which may be made under subsection 3(2).

### **Adjustment of lowest pensions and other benefits**

**3B.** Where an officer is receiving the lowest amount of pension or other benefit payable pursuant to section 8, the said lowest amount shall be used as the basis for the first of the adjustments under subsection 3(1).”.

### **Amendment of section 4**

**5.** Section 4 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) Any derivative pension or derivative retiring allowance received under any other written law shall be adjusted in accordance with subsection 3(1).”;

(b) by inserting after subsection (1) the following subsections:

“(1A) The amount of derivative pension or derivative retiring allowance to be used as the basis for the first of the adjustments under subsection 3(1)—

(a) in the case of a recipient who received the derivative pension or derivative retiring allowance before or on 1 January 2012,

shall be the amount of derivative pension or derivative retiring allowance which had been adjusted on that date;

(b) in the case of a recipient who received the derivative pension or derivative retiring allowance on or after 2 January 2012, shall be the amount of derivative pension or derivative retiring allowance which had been granted to the recipient.

(1B) The adjustment referred to in subsection (1) is subject to any higher percentage of increment which may be made under subsection 3(2).”; and

(c) in subsections (2), (3) and (5), by substituting for the words “the Second Schedule” wherever they appear the words “subsection 3(1)”.

### **Amendment of section 5**

6. Section 5 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

“(2) The derivative pension or derivative retiring allowance granted under subsection (1) shall be adjusted in accordance with subsection 3(1).”;

(b) by inserting after subsection (2) the following subsections:

“(2A) The amount of derivative pension or derivative retiring allowance to be used as the basis for the first of the adjustments under subsection 3(1) shall be the amount of derivative pension or derivative retiring allowance which had been adjusted until 31 December 2012.

(2B) Notwithstanding subsection (2A), where a dependant is eligible to be granted a derivative pension or derivative retiring allowance under subsection (1) but has not been paid such derivative pension or derivative

retiring allowance as at 1 January 2013, the adjustment of the derivative pension or other benefits shall first be made until 31 December 2012 in accordance with this section and other related provisions which were in operation before 1 January 2013 before it is adjusted in accordance with subsection 3(1).

(2c) The adjustment referred to in subsection (2) is subject to any higher percentage of increment which may be made under subsection 3(2).”; and

(c) in subsections (4) and (6), by substituting for the words “the Second Schedule” wherever they appear the words “subsection 3(1)”.

#### **Deletion of section 6**

7. The principal Act is amended by deleting section 6.

#### **Amendment of section 8**

8. Subsection 8(1) of the principal Act is amended by substituting for the words “the Schedules” the words “subsection 3(1)”.

#### **Deletion of section 9**

9. The principal Act is amended by deleting section 9.

#### **Substitution of section 10**

10. The principal Act is amended by substituting for section 10 the following section:

##### **“Adjustment of dependant’s pension**

10. (1) Where a dependant’s pension is granted under any written law, it shall be adjusted in accordance with subsection 3(1) but the factor applicable shall be the factor applicable under that written law.

(2) Where the factor referred to in subsection (1) changes according to the eligibility of the dependant as specified under that written law, the dependant's pension shall be adjusted based on the notional salary as determined under subsection (3) using the new factor applicable under that written law.

(3) The notional salary—

(a) in the case of a dependant who received the dependant's pension before or on 1 January 2012, shall be the amount of the corresponding last drawn salary received by an officer on 1 January 2012 which has been calculated with an increment of two percent annually up to the year when the factor changes;

(b) in the case of a dependant who received the dependant's pension on or after 2 January 2012, shall be the amount of the last drawn salary received by an officer on the date of his death which has been calculated with an increment of two percent annually up to the year when the factor changes.

(4) Where a higher percentage of increment has been prescribed under subsection 3(2), the increment specified under subsection (3) shall be calculated using that prescribed higher percentage.

(5) The amount of dependant's pension adjusted under subsection (2) shall be used as the basis for adjustments under subsection (1) in subsequent years.

(6) The adjustment referred to in subsection (1) is subject to any higher percentage of increment which may be made under subsection 3(2).

(7) For the purpose of this section, "corresponding last drawn salary" means the corresponding last drawn salary which had been adjusted on 1 January 2012 pursuant to this Act before the coming into force of this section."

**New section 10A**

**11.** The principal Act is amended by inserting after section 10 the following section:

**“Amendment of maximum reckonable service**

**10A.** (1) Where the maximum reckonable service under any written law is amended, the adjustment in accordance with subsection 3(1) to the pension or other benefits shall be modified accordingly and shall be based on the amount of the pension or other benefits calculated based on the notional salary as determined by the Director General through the formula prescribed under the written law.

(2) In determining the calculation of the notional salary for the purpose of subsection (1), the Director General may use the calculation of notional salary as specified in subsection 10(3) with necessary modifications.”.

**Amendment of section 11**

**12.** Section 11 of the principal Act is amended by substituting for the words “sections 9” the words “sections 3A”.

**Deletion of First and Second Schedules**

**13.** The principal Act is amended by deleting the First and Second Schedules.

**Saving and transitional**

**14.** (1) Where any officer or his dependant is eligible for the adjustment of pension or other benefits under the principal Act before 1 January 2013 but the adjustment has not been made before that date, such pension or other benefits shall firstly be adjusted in accordance with the provisions of the principal Act until 31 December 2012 as if the principal Act had not been amended by this Act.

(2) Pensions and other benefits of officers and their dependants shall, from 1 January 2013, be calculated based on subsection 3(1) as amended by this Act and shall be payable from that date.

(3) For any officer or his dependant whose pension or other benefits have been adjusted in accordance with the principal Act immediately before 1 January 2013, the pension or other benefits shall, from 1 January 2013, be calculated based on subsection 3(1) as amended by this Act and shall be payable from that date.

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EXPLANATORY STATEMENT

This Bill seeks to amend the Pensions Adjustment Act 1980 (“Act 238”).

2. *Clause 1* contains the short title and the date of commencement of the proposed Act.
3. *Clause 2* seeks to amend section 2 of Act 238 to delete the definition of “corresponding last drawn salary”.
4. *Clause 3* seeks to substitute section 3 of Act 238 to provide that pensions and other benefits granted to officers and their dependants under any written law shall be adjusted annually by an increment of two percent and shall be paid or be payable with effect from January of each year and to provide safeguards for officers appointed before the commencement of the proposed Act.
5. *Clause 4* seeks to introduce new sections 3A and 3B into Act 238. Section 3A seeks to deal with the adjustment of pensions, disability pensions, retiring allowances and injury allowances while section 3B seeks to deal with the adjustment of lowest pensions and other benefits as determined under section 8 of Act 238.
6. *Clauses 5* and *6* seek to amend sections 4 and 5 of Act 238 respectively to clarify the procedure for the adjustment of derivative pensions and derivative retiring allowances under the respective schemes.
7. *Clause 10* seeks to substitute section 10 of Act 238 to clarify the procedure for the adjustment of dependant’s pensions.
8. *Clause 11* seeks to introduce a new section 10A into Act 238 to deal with adjustments of pensions or other benefits under section 3 of Act 238 where the maximum reckonable service under any written law changes.
9. *Clause 14* seeks to provide saving and transitional provisions.
10. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.



*FINANCIAL IMPLICATIONS*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U<sup>2</sup>)2886]