

A BILL

i n t i t u l e d

An Act to amend the Prevention of Crime Act 1959.

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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 Prevention of Crime (Amendment) Act 2017.

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

New section 4A

2. The Prevention of Crime Act 1959 [*Act 297*], which is referred to as the “principal Act” in this Act, is amended by inserting after section 4 the following section:

“Report of investigation to be submitted to Inquiry Officer, etc.

4A. The police officer making an investigation pertaining to a person arrested under subsection 3(1) shall cause a copy of the complete report of the investigation to be submitted to an Inquiry Officer and the Board, within such period as may be prescribed by the Minister.”.

Deletion of section 6

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

Amendment of section 7A

4. Section 7A of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “terms and conditions of the electronic monitoring device” the words “as specified in the form as specified in the Third Schedule”;
- (b) in subsection (5), by inserting after the words “electronic monitoring device” the words “as specified in the form as specified in the Third Schedule”; and
- (c) by substituting for subsection (7) the following subsection:

“(7) Any person who tampers with, damages, destroys or loses the electronic monitoring device or any other device used in relation to the operation of the electronic monitoring device shall be guilty of an offence and liable to imprisonment for a term not exceeding three years, and such person shall be liable to pay for any damage to or loss of the electronic monitoring device or any other device used in relation to the operation of the electronic monitoring device, and the court may direct that in default of payment for the damage or loss the person shall suffer imprisonment for a term not exceeding three years.”.

Amendment of section 7B

5. Subsection 7B(2) of the principal Act is amended by deleting the words “once for another period of three years”.

Amendment of section 9

6. Subsection 9(1) of the principal Act is amended by substituting for the words “When any person is brought before an Inquiry Officer under section 6, the Inquiry Officer” the words “Upon receiving a complete report of the investigation under section 4A, an Inquiry Officer”.

Amendment of section 10

7. Section 10 of the principal Act is amended—

(a) in subsections (1) and (2), by deleting the words “, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person”; and

(b) by deleting subsections (3) and (4).

New section 10A

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

“Decision of the Board

10A. (1) Where the Board, after considering the finding of the Inquiry Officer submitted under subsection 10(1) and the complete report of the investigation submitted under section 4A, is satisfied that—

(a) there are no sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall confirm the finding; or

(b) there are reasonable grounds for believing that the person is a member of any of the registrable categories, the Board shall reverse the finding.

(2) Where the Board, after considering the finding of the Inquiry Officer submitted under subsection 10(2) and the complete report of the investigation submitted under section 4A, is satisfied that—

(a) there are reasonable grounds for believing that the person is a member of any of the registrable categories, the Board shall confirm the finding; or

(b) there are no sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall reverse the finding.

(3) If the Board makes a decision under paragraph (1)(b) or (2)(a), the Board shall proceed in accordance with Parts III, IV and IV_A of this Act.

(4) If the Board makes a decision under paragraph (1)(a) or (2)(b), and the person who was the subject of the inquiry is still in custody, the Board shall direct any person having the custody of that person, within twenty-four hours from the receipt of the direction, to produce the person before a Sessions Court Judge, who shall thereupon discharge the order of remand and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release.”.

Deletion of section 11

9. The principal Act is amended by deleting section 11.

Amendment of section 12

10. Section 12 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) The Registrar shall keep a Register for the purposes of this Act, in which shall be entered the name of every person who was the subject of the inquiry against whom the Board has reversed the finding under paragraph 10A(1)(b) or confirmed the finding under paragraph 10A(2)(a) together with such other particulars as may be prescribed by the Minister.”.

Amendment of section 15A

11. The principal Act is amended—

- (a) by renumbering the existing section 15A as section 15B; and
- (b) by inserting before section 15B as renumbered the following section:

“Special procedure relating to electronic monitoring device by order of the Board

15A. (1) Upon the making of an order by the Board under paragraph 15(2)(l), the police officer shall explain the operation of the electronic monitoring device and the terms and conditions of the electronic monitoring device to the person.

(2) The person shall sign a form as specified in the Fourth Schedule and comply with all the terms and conditions as specified in the form and deposit the form with the officer in charge of the police district.

(3) The person shall be attached with an electronic monitoring device by a police officer.

(4) The person shall report to the nearest police station at such time as specified in the form.

(5) Any person who fails to comply with the terms and conditions of the electronic monitoring device under subsection (2) shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

(6) Any person who tampers with, damages, destroys or loses the electronic monitoring device or any other device used in relation to the operation of the electronic monitoring device shall be guilty of an offence and liable to imprisonment for a term not exceeding three years, and such person shall be liable to pay for any damage to or loss of the electronic monitoring device or any other device used in relation to the operation of the electronic monitoring device, and the court may

direct that in default of payment for the damage or loss the person shall suffer imprisonment for a term not exceeding three years.

(7) Upon expiry of the period referred to in the order, the person shall report to the nearest police station for removal of the electronic monitoring device.”.

Amendment of section 19A

12. Section 19A of the principal Act is amended—

(a) in subsection (1), by deleting the words “, after considering the report of the Inquiry Officer submitted under section 10 and the outcome of any review under section 11,”; and

(b) by deleting subsection (2).

Amendment of section 19B

13. Subparagraph 19B(a)(i) of the principal Act is amended by substituting for the word “before” the word “after”.

New section 19H

14. The principal Act is amended in Part IVA by inserting after section 19G the following section:

“Board’s power to revoke supervision order, detention order, suspended detention order or direction for extension of any such order

19H. (1) Notwithstanding anything in this Act, the Board may at any time revoke any supervision order made under section 15, any detention order made under section 19A, any suspended detention order made under section 19C or any direction for the extension of the duration of any such order, if the Board deems it just or fit to do so.

(2) Any revocation under subsection (1) shall be without prejudice to the validity of the order or direction before its revocation or to anything done thereunder, or to the power of the Board to make a fresh supervision order under section 15, a fresh detention order under section 19A or a fresh direction in respect of the person against whom the order or direction which is revoked was made or given.”.

Amendment of section 21

15. Paragraph 21(3)(a) of the principal Act is amended by substituting for the words “, 10 or 11” the words “or 10A”.

New Fourth Schedule

16. The principal Act is amended by inserting after the Third Schedule the following Schedule:

“FOURTH SCHEDULE

[Section 15A]

FORM

ELECTRONIC MONITORING DEVICE BY ORDER OF THE
PREVENTION OF CRIME BOARD

Dated

1. Name:.....
2. Case No.:.....
3. Identity Card No.:.....
4. Address:.....
5. Telephone No.:.....
6. Family members to be contacted:.....
7. Period to be attached with electronic monitoring device (“device”):.....
8. Terms and conditions:
 - (a) to report to the police station at/for every.....;
 - (b) understands that all movements will be tracked and retained as an official record;

- (c) agrees to be required to report for device equipment checks if necessary;
- (d) to notify a police officer if there is any change of address;
- (e) to allow inspections of the device by a police officer;
- (f) to report to the police station for removal of the device;
- (g) to return all the device equipment to a police officer;
- (h) to submit to procedures required by a police officer;
- (i) to maintain the device as instructed by a police officer including to ensure the device is charged and activated at all times;
- (j) to install the beacon in the house or premises where he is staying;
- (k) to ensure the device is not lost, damaged, tampered with or destroyed;
- (l) to report immediately to a police officer if the device is lost, damaged, tampered with or destroyed;
- (m) to comply with any directions of a police officer;
- (n) to comply with any other conditions as the Board may determine.

9. Failure to comply with the terms and conditions as stated in this Form is an offence under subsection 15A(5) of the Prevention of Crime Act 1959.

I hereby agree to and shall comply with the terms and conditions as stated in this Form.

.....
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Terms and conditions have been explained to the subject by:

Signature:

Name:

Police No.:

Rank: ”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Prevention of Crime Act 1959 (“Act 297”).

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.

3. *Clause 2* seeks to introduce a new section 4A into Act 297 to require the submission of a complete report of investigation of a person arrested under subsection 3(1). The complete report must be submitted to an Inquiry Officer and the Board within the period to be prescribed by the Minister in the regulations.

4. *Clause 3* seeks to delete section 6 of Act 297. With the deletion of section 6, a person remanded under section 4 is brought before an Inquiry Officer only for the purpose of an inquiry under section 9.

5. *Clause 4* seeks to amend section 7A of Act 297. *Subclauses 4(a)* and *(b)* seek to amend subsections 7A(2) and (5) of Act 297 to clarify that the terms and conditions of an electronic monitoring device to be explained by a Sessions Court Judge refers to the terms and conditions as stipulated in the form as specified in the Third Schedule of Act 297. *Subclause 4(c)* seeks to substitute subsection 7A(7) of Act 297 to include as an offence the act of damaging and losing an electronic monitoring device and any other device used in relation to the operation of the electronic monitoring device. This amendment also empowers the court to impose terms of imprisonment on a person who defaults his payment for the damage or loss of an electronic monitoring device and any other device used in relation to the operation of the electronic monitoring device.

6. *Clause 5* seeks to amend section 7B of Act 297 to enable members of the Board to be re-appointed for any period. Before the amendment, members of the Board may be re-appointed only once for another period of three years.

7. *Clause 6* seeks to amend section 9 of Act 297 as a consequence to the deletion of section 6 of Act 297.

8. *Clause 7* seeks to amend section 10 of Act 297. *Subclause 7(a)* seeks to amend subsections 10(1) and (2) of Act 297 to remove the requirement for service of the finding by an Inquiry Officer to the person who was the subject of an inquiry. The removal of such requirement is in line with the provision of other preventive laws such as the Dangerous Drugs (Special Preventive Measures) Act 1985 [Act 316] and the Prevention of Terrorism Act 2015 [Act 769]. *Subclause 7(b)* seeks to delete subsections 10(3) and (4) of Act 297 as a consequence to the introduction of a new section 10A into Act 297.

9. *Clause 8* seeks to introduce a new section 10A into Act 297 dealing with new provisions relating to decision of the Board. Currently, section 11 of Act 297 provides that the Board may review a finding of an Inquiry Officer or review a decision by the Board that there are reasonable grounds for believing that the person who was the subject of an inquiry is a member of any of the registrable categories. Under the proposed section 10A, the Board has the power to consider and decide on all findings of an Inquiry Officer. The removal of the review provision will also result in the removal of the role of a law officer in advising the Board where an application is made for review under section 11 of Act 297.

10. *Clause 9* seeks to delete section 11 of Act 297 which has been replaced by the introduction of the new section 10A in *clause 8*.

11. *Clause 10* seeks to amend section 12 of Act 297 consequential to the amendment of section 10 and the deletion of section 11. Through this amendment, the Registrar shall only register a person's name in the Register after the Board has decided that the person is a member of any of the registrable categories.

12. *Clause 11* seeks to renumber the existing section 15A of Act 297 as section 15B, and to introduce a new section 15A before section 15B as renumbered. The new section 15A provides for special procedures relating to electronic monitoring device by order of the Board made under paragraph 15(2)(l). The police shall explain to the registered person the terms and conditions of the electronic monitoring device as stipulated in the form specified in the new Fourth Schedule. Any person who tampers with, damages, destroys or loses an electronic monitoring device and any other device used in relation to the operation of the electronic monitoring device commits an offence and the court may impose terms of imprisonment on a person who defaults payment for the damage to or loss of an electronic monitoring device and any other device used in relation to the operation of the electronic monitoring device.

13. *Clause 12* seeks to amend section 19A of Act 297. *Subclause 12(a)* seeks to amend subsection 19A(1) of Act 297 consequential to the deletion of section 11. *Subclause 12(b)* seeks to delete subsection 19A(2) of Act 297 as the provision relating to review by the High Court has been clarified in the new paragraph 15A(2)(ba). Paragraph 15A(2)(ba) provides that judicial review includes proceedings instituted by way of writ of *habeas corpus*.

14. *Clause 13* seeks to amend subparagraph 19B(a)(i) of Act 297 to provide that a detention order made under subsection 19A(3) against a person shall not be invalidated or inoperative by reason that, immediately after the detention order is made, that person was detained in a place other than the place stated in the detention order.

15. *Clause 14* seeks to introduce a new section 19H into Act 297 to give express power to the Board to revoke the supervision order, detention order, suspension of detention order or direction for the extension of such orders.

16. *Clause 15* seeks to amend paragraph 21(3)(a) of Act 297 as a consequence to the deletion of subsection 10(3) in *subclause 7(b)*, the introduction of the new section 10A in *clause 8* and the deletion of section 11 in *clause 9* whereby a remanded person is no longer released under section 10 or 11 but under the new section 10A.

17. *Clause 16* seeks to introduce a new Fourth Schedule into Act 297 as a consequence to the insertion of the new section 15A. The new Fourth Schedule contains the form to be signed by the person who is ordered by the Board to be attached with an electronic monitoring device.

FINANCIAL IMPLICATIONS

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

[PN(U2) 3069]