

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 2015.

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

Amendment of long title

2. The Prevention of Crime Act 1959 [*Act 297*], which is referred to as the “principal Act” in this Act, is amended in the long title by inserting after the words “secret societies” the words “, terrorists”.

Amendment of section 2

3. Subsection 2(1) of the principal Act is amended by inserting after the definition of “Registrar” the following definition:

‘ “terrorist” has the same meaning assigned to it by the Penal Code [*Act 574*].’.

Amendment of section 3

4. Section 3 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) When a person is arrested under subsection (1), the case shall be referred by the police officer to the Public Prosecutor for direction not later than seven days from the date of arrest.”.

Amendment of section 4

5. Section 4 of the principal Act is amended—

(a) in subparagraph (2)(a)(i), by deleting the words “or a Deputy Public Prosecutor”;

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

“(2A) No person shall be arrested and detained under this section solely for his political belief or political activity.”; and

(c) by inserting after subsection (3) the following subsections:

“(4) The Public Prosecutor may appear in any application made under this section.

(5) For the purpose of this section, “political belief or political activity” means engaging in a lawful activity through—

(a) the expression of an opinion or the pursuit of a course of action made according to the tenets of a political party that is at the relevant time registered under the Societies Act 1966 [Act 335] as evidenced by—

(i) membership of or contribution to that party;
or

(ii) open and active participation in the affairs of that party;

- (b) the expression of an opinion directed towards any government in Malaysia; or
- (c) the pursuit of a course of action directed towards any government in Malaysia.”.

Substitution of section 7B

6. (1) The principal Act is amended by substituting for section 7B the following section:

“Prevention of Crime Board

7B. (1) A Prevention of Crime Board is established which shall consist of the following members to be appointed by the Yang di-Pertuan Agong:

- (a) a Chairman, who shall be a legally qualified person with at least fifteen years experience in the legal field;
- (b) a Deputy Chairman; and
- (c) not less than three and not more than six other members.

(2) Every member of the Board shall, unless he sooner resigns, hold office for a period not exceeding three years and is eligible for re-appointment once for another period of three years.

(3) Every member of the Board may at any time resign his office by giving notice in writing to the Yang di-Pertuan Agong.

(4) The appointment of any member of the Board may at any time be revoked by the Yang di-Pertuan Agong.

(5) The quorum for any sitting of the Board shall be three members.

(6) Subject to this Act, the Board shall determine its own procedure.

(7) Every member of the Board shall be deemed to be a public servant within the meaning of the Penal Code.”.

(2) Notwithstanding subsection (1), the members of the Board holding office immediately before the coming into operation of this section shall be deemed to have been appointed under the amended section 7B, shall continue to hold office until the expiry of their existing period of appointment and shall be eligible for re-appointment in accordance with the amended subsection 7B(2).

Amendment of section 9

7. Section 9 of the principal Act is amended—

- (a) in subsection (6), by deleting the words “or a Deputy Public Prosecutor”; and
- (b) by inserting after subsection (6) the following subsection:

“(7) The Minister may by regulations prescribe the allowances to be paid to witnesses summoned under subsection (3).”.

Amendment of section 15

8. Section 15 of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “the following restrictions” the words “and conditions”;
- (b) in subsection (3)—
 - (i) by deleting the words “from time to time.”; and
 - (ii) by inserting after the word “restrictions” the words “and conditions”;
- (c) in subsection (4), by inserting after the word “restriction” the words “or condition”; and
- (d) in subsection (5), by substituting for the word “conditions” the words “restriction or condition”.

Amendment of section 15A

9. Section 15A of the principal Act is amended—

(a) in subsection (1), by deleting the words “or finding”;
and

(b) in subsection (2)—

(i) by deleting the word “or” appearing at the end of
paragraph (b); and

(ii) by inserting after paragraph (b) the following
paragraph:

“(ba) a writ of *habeas corpus*; and”.

Amendment of section 19A

10. Section 19A of the principal Act is amended by inserting
after subsection (3) the following subsection:

“(4) A copy of every detention order made by the Board
under subsection (1) shall as soon as may be after the making
of the order be served on the person to whom it relates, and
every such person shall be entitled to make representations
to an Advisory Board constituted under Clause (2) of Article
151 of the Federal Constitution in accordance with the
prescribed procedures.”.

Amendment of section 19c

11. Section 19c of the principal Act is amended—

(a) in subsection (2), by substituting for the words “subsection
15(4)” the words “subsection 15(3)”; and

(b) in subsection (4)—

(i) by substituting for the words “subsection 15(4)”
the words “subsection 15(3)”; and

(ii) by substituting for the words “subsection 15(3)”
the words “subsection (3)”.

Substitution of sections 19E and 19F

12. The principal Act is amended by substituting for sections 19E and 19F the following sections:

“Power to order removal

19E. (1) The Board may by order direct the removal from any place of detention to another place of detention to be specified in such order of any person detained under section 19A to be there detained for the whole or any part of such period for which it has been ordered that such person shall be detained.

(2) Any person who is in the course of removal under subsection (1) shall be deemed to be in lawful custody.

Power to order production of detained person

19F. (1) On proof to his satisfaction that the presence at any place of any person detained under section 19A, or lawfully in the custody of the police or confined in any prison whether under section 19A or under an order of any court or otherwise howsoever, and notwithstanding any order of any court or other authority whatsoever, is required in the interests of justice, or for the purpose of any public or other inquiry, or in the national interest, or in the interests of the person detained, in custody, or confined, the Commissioner General of Prison where the person is detained in a place of detention or prison, or the Inspector General of Police where the person is in the lawful custody of the police, may order that such person be taken to that place.

(2) Any person in the course of being taken to any place under subsection (1) and whilst at such place shall be kept in such custody as the Commissioner General of Prison or the Inspector General of Police, as the case may be, may direct and whilst in that custody shall be deemed to be in lawful custody.

(3) In this section, “Commissioner General of Prison” has the same meaning assigned to it by subsection 2(1) of the Prison Act 1995 [*Act 537*].”.

New section 19G

13. The principal Act is amended by inserting after section 19F the following section:

“Saving in respect of prosecution of persons detained

19G. The detention of any person under this Part shall be without prejudice to the taking of any criminal proceeding against that person, whether during or after the period of his detention.”.

Amendment of section 21

14. Section 21 of the principal Act is amended—

- (a) in the shoulder note, by deleting the words “and destruction”; and
- (b) in subsection (3), by deleting the words “; and if no such application is received within three months from the date of the release or removal the Registrar shall destroy the sheet and every such negative and photograph”.

Amendment of section 23

15. Section 23 of the principal Act is amended—

- (a) in subsection (2), by inserting after paragraph (ba) the following paragraph:
 - “(bb) provide for the administration and management of the Board, including provisions on training for the members of the Board;”; and
- (b) by deleting subsection (3).

EXPLANATORY STATEMENT

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

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

3. *Clause 2* seeks to amend the long title of Act 297 to clarify that Act 297 applies to terrorists while *clause 3* seeks to introduce the definition of “terrorist” into subsection 2(1) of Act 297. These amendments are required to clarify that Act 297 will continue to apply to terrorist acts other than those covered by the proposed Prevention of Terrorism Act 2015 [Act ...]. In this regard, the Prevention of Terrorism Act 2015 will specifically deal with the prevention of the commission or support of terrorist acts involving listed terrorist organizations, as defined in that Act, in a foreign country or any part of a foreign country and the control of persons engaged in such acts.

4. *Clause 4* seeks to amend section 3 of Act 297 to introduce a new subsection (1A) to require a police officer to refer the case of the person arrested to the Public Prosecutor for direction not more than seven days from the date of arrest.

5. *Clause 5* seeks to amend section 4 of Act 297 to introduce new subsections (2A), (4) and (5). Subsection (2A) provides the safeguard that no person shall be arrested and detained under section 4 solely for his political belief or political activity while subsection (5) defines the expression “political belief or political activity” in line with the definition of that expression in the Security Offences (Special Measures) Act 2012 [Act 747]. Subsection (4) empowers the Public Prosecutor to appear in any application made under section 4.

6. *Clause 6* seeks to substitute section 7B of Act 297 to provide parity between the Prevention of Crime Board and the Prevention of Terrorism Board established under the proposed Prevention of Terrorism Act 2015. The Prevention of Crime Board shall continue to sit as a single Board with a quorum for its sitting being three members. This amendment is intended to facilitate the sittings of the Prevention of Crime Board.

7. *Clause 7* seeks to amend section 9 of Act 297 to introduce a new subsection (7) to empower the Minister to prescribe the allowances to be paid to witnesses summoned under subsection 9(3) by regulations made under Act 297.

8. *Clause 9* seeks to amend subsection 15A(2) of Act 297 by inserting a new paragraph (ba) to clarify that judicial review includes proceedings instituted by way of a writ of *habeas corpus*.

9. *Clause 10* seeks to amend section 19A of Act 297 by inserting a new subsection (4). The purpose of this amendment is for the avoidance of any doubt as to the application of Article 151 of the Federal Constitution to detention orders issued under section 19A. The new subsection (4) seeks to clarify that as provided by Article 151 of the Federal Constitution, where any law made under Article 149 of the Federal Constitution provides for preventive detention, any person detained under that law shall be given the opportunity of making representations against the detention order as soon as may be to an advisory board constituted under Clause (2) of Article 151. The procedures for making such representation have been provided in regulations made under Act 297.

10. *Clause 11* seeks to amend subsections 19c(2) and (4) of Act 297 to correct cross references.

11. *Clause 12* seeks to amend Act 297 by substituting sections 19E and 19F. This removes the requirement for the Minister of Home Affairs to submit annual reports to Parliament of all the activities under Part IVA (Detention Orders) under Act 297 and the requirement for Part IVA to be reviewed every five years by the Parliament. In their place, the new section 19E empowers the Board to direct the removal of a detained person from any place of detention to another place of detention while the new section 19F empowers the Commissioner General of Prison or the Inspector General of Police, as the case may be, to order the production of a detained person for the purpose of any public or other inquiry, or in the national interest, or in the interests of the person detained, in custody or confined.

12. *Clause 13* seeks to amend Act 297 by introducing a new section 19G. Section 19G provides that the detention of any person under Part IVA of Act 297 shall be without prejudice to the taking of any criminal proceeding against that person, whether during or after the period of his detention.

13. *Clause 14* seeks to amend section 21 of Act 297 to remove the power of the Registrar to destroy photographs and finger impressions where no application is made for them by the person whose photographs and finger impressions have been taken under section 21.

14. *Clause 15* seeks to amend section 23 of Act 297. The new paragraph (2)(bb) provides that regulations may be made by the Minister for the administration and management of the Board, including provisions on training for the members of the Board. Subsection (3) is deleted to provide parity with the regulation-making powers under the Prevention of Terrorism Act 2015.

15. Other amendments not specifically mentioned in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

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

[PN(U2)2975]