

A BILL

*i n t i t u l e d*

An Act to amend the Sedition Act 1948.

[ ]

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

**Short title and commencement**

**1.** (1) This Act may be cited as the Sedition (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 section 2**

**2.** The Sedition Act 1948 [*Act 15*], which is referred to as the “principal Act” in this Act, is amended in section 2 by inserting before the definition of “Government” the following definition:

‘ “by electronic means”, in relation to a publication, means—

- (a) broadcasted so as to be available for reception by members of the public or of a section of the public; or
- (b) communicated through network services to members of the public or of a section of the public;’.

**Amendment of section 3****3. Section 3 of the principal Act is amended—**

(a) in subsection (1)—

- (i) in paragraph (a), by deleting the words “or against any Government”;
- (ii) by inserting after paragraph (b) the following illustration:

*“ILLUSTRATION*

A excites a person or a group of persons to demand for the secession of State B from Malaysia. Such act is seditious.”;

- (iii) by deleting paragraph (c);
- (iv) in paragraph (e)—
  - (A) by substituting for the words “and hostility” the words “, hostility or hatred”; and
  - (B) by deleting the word “or” at the end of the paragraph; and
- (v) by inserting after paragraph (e) the following paragraph:
  - “(ea) to promote feelings of ill will, hostility or hatred between persons or groups of persons on the ground of religion; or”;

(b) in subsection (2)—

- (i) in paragraph (b), by deleting the words “or in the administration of justice”; and

(ii) by substituting for subparagraph (c)(ii) the following subparagraph:

“(ii) to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill will, hostility or hatred—

(A) between different races or classes of the population of Malaysia; or

(B) between persons or groups of persons on the ground of religion,”; and

(c) in subsection (3), by inserting after the word “published” the words “or caused to be published”.

#### **Amendment of section 4**

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

(a) in subsection (1)—

(i) in paragraph (c), by inserting after the word “publishes” the words “or causes to be published”; and

(ii) by substituting for the words “for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years” the words “to imprisonment for a term of not less than three years but not exceeding seven years”; and

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

“(1A) Any person who—

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes or causes to be published, sells, offers for sale, distributes or reproduces any seditious publication;  
or
- (d) imports any seditious publication,

and by such act causes bodily injury or damage to property shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than five years but not exceeding twenty years.”.

### **New sections 5A and 5B**

**5.** The principal Act is amended by inserting after section 5 the following sections:

#### **“No bail to be granted**

**5A.** When a person is charged with an offence under subsection 4(1A) and there is a certificate in writing by the Public Prosecutor stating that it is not in the public interest to grant bail to the person charged, the person shall not be released on bail.

**Power of court to prevent person from leaving Malaysia**

**5B.** (1) When a person is charged with an offence under section 4 and released on bail, the court shall, on the application of the Public Prosecutor—

- (a) order the person to surrender his travel documents within such period specified in the order until all proceedings in relation to the charge against the person have been concluded; or
- (b) in cases where the person has no travel documents and he is a citizen or permanent resident, order the Director General of Immigration not to issue any travel document to the person until all proceedings in relation to the charge against the person have been concluded.

(2) Any person who fails to comply with an order made under paragraph (1)(a), shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and his bail shall be revoked by the court.

(3) For the purpose of this section—

- (a) “Director General of Immigration” means the Director General of Immigration appointed under section 3 of the Immigration Act 1959/63 [*Act 155*]; and
- (b) “travel document” means a passport or any form of valid document of identity issued by any government for the purpose of travel across international boundaries.”.

**Substitution of section 6**

**6.** The principal Act is amended by substituting for section 6 the following section:

**“Evidence**

**6.** No person shall be convicted of any offence under paragraph 4(1)(c) or (d) or 4(1A)(c) or (d) if the person proves that the publication in respect of which he is charged was

printed, published or caused to be published, sold, offered for sale, distributed, reproduced or imported without his authority, consent and knowledge and without any want of due care or caution on his part, or that he did not know and had no reasonable ground to believe that the publication had a seditious tendency.”.

### **New section 6A**

7. The principal Act is amended by inserting after section 6 the following section:

#### **“Non-application of sections 173A, 293 and 294 of the Criminal Procedure Code**

**6A.** Sections 173A, 293 and 294 of the Criminal Procedure Code [Act 593] shall not apply in respect of offences under subsection 4(1A).”.

### **Amendment of section 10**

8. Section 10 of the principal Act is amended—

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

“(1) Where on the application of the Public Prosecutor it is shown to the satisfaction of a Sessions Court Judge that the making or circulation of a seditious publication—

(a) is or if commenced or continued would likely lead to bodily injury or damage to property;

(b) appears to be promoting feeling of ill will, hostility or hatred between different races or classes of the population of Malaysia; or

- (c) appears to be promoting feeling of ill will, hostility or hatred between persons or groups of persons on the ground of religion,

the Sessions Court Judge shall make an order (“prohibition order”) prohibiting the making or circulation of that seditious publication (“prohibited publication”).”;

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

“(1A) The prohibition order under subsection (1) shall—

- (a) require every person having any copy of the prohibited publication in his possession, power, or control to deliver forthwith every such copy into the custody of the police; or

- (b) in the case of a prohibited publication by electronic means—

- (i) require the person making or circulating the prohibited publication to remove or cause to be removed wholly or partly the prohibited publication; and

- (ii) prohibit the person making or circulating the prohibited publication from accessing any electronic device.”;

- (c) by substituting for subsection (4) the following subsection:

“(4) Any person who contravenes a prohibition order made under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a fine of three thousand ringgit for each day during which the offence continues after conviction and in default of the payment of the fine, be liable to imprisonment for a term not exceeding one year.”;

(d) by substituting for subsection (5) the following subsection:

“(5) Every person who knowingly have in his possession, power or control a prohibited publication shall—

(a) forthwith deliver every such prohibited publication into the custody of the police; and

(b) in the case of a prohibited publication by electronic means, remove or cause to be removed wholly or partly the prohibited publication,

and if he fails to do so, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a fine of three thousand ringgit for each day during which the offence continues after conviction and in default of the payment of the fine, be liable to imprisonment for a term not exceeding one year.”; and

(e) by deleting subsection (9).

### **New section 10A**

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

#### **“Special power to issue order regarding seditious publication by electronic means**

**10A.** Where on the application of the Public Prosecutor it is shown to the satisfaction of a Sessions Court Judge that the making or circulation of a seditious publication by electronic means by a person who cannot be identified—

(a) is or if commenced or continued would likely lead to bodily injury or damage to property;

(b) appears to be promoting feeling of ill will, hostility or hatred between different races or classes of the population of Malaysia; or

- (c) appears to be promoting feeling of ill will, hostility or hatred between persons or groups of persons on the ground of religion,

the Sessions Court Judge shall make an order directing an officer authorized under the Communications and Multimedia Act 1998 [Act 588] to prevent access to such publication.”.

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EXPLANATORY STATEMENT

On the eve of Malaysia Day 2011, the Honourable Prime Minister pledged watershed changes to enhance parliamentary democracy system in Malaysia. This pledge was reiterated in July 2012 and a decision was made to repeal the Sedition Act 1948. However, events since that date have demonstrated the continued relevance of the Sedition Act 1948 in tandem with recognition for the need for enhanced safeguards against its misuse to stem legitimate criticism of Government and discussion of issues of concern to Malaysians. Among the issues of concern are the increasingly harmful and malicious comments, postings and publications that jeopardize that most valued ideals of Malaysia - tolerance and racial and religious harmony in a multiracial, multireligious and multicultural nation. Even more alarming are calls for the secession of States in the Federation of Malaysia established by the consensus of the peoples of Malaysia and unwarranted attacks against the sovereign institutions of Malaysia, the Yang di-Pertuan Agong and the Rulers of the States.

It is against this background that the Government has decided to retain the Sedition Act 1948 (“Act 15”) at this time with the addition of enhanced measures and penalties to deal with the threats against peace, public order and the security of Malaysia, in particular through the irresponsible misuse of social media platforms and other communication devices to spread divisiveness and to insult the race, religion, culture, *etc.* of particular groups of Malaysians without regard for the consequences.

2. *Clause 1* of the Bill contains the short title and provision on the commencement of the proposed Act.
3. *Clause 2* of the Bill seeks to amend section 2 of Act 15 to include the definition of term “by electronic means”. The term is consequential to the amendment made to section 10 of Act 15 and the introduction of a new section 10A into Act 15.

4. *Clause 3* of the Bill seeks to amend section 3 of Act 15 and among the salient amendments are as follows:

- (a) under *subclause (a)(i)*, it will no longer be an offence under Act 15 if any person commits an act of bringing into hatred or contempt or exciting disaffection against the Government. This amendment is in line with the intention of the Government to be more open whereby the public is at liberty to give feedback or criticize the Government so as to create a transparent and accountable administration in Malaysia;
- (b) *subclause (a)(ii)* seeks to amend paragraph 3(1)(b) of Act 15 by introducing an illustration so as to make clear that paragraph (b) would include the act of exciting any person or any group of persons to demand for the secession of any State from Malaysia. Such demand is already seditious under paragraph (b);
- (c) *subclause (a)(iii)* seeks to delete paragraph 3(1)(c) of Act 15 which relates to the administration of justice. With this deletion, any act of bringing into hatred or contempt or to excite disaffection against the administration of justice in Malaysia will no longer be considered as seditious and thus will not be dealt with as an offence under Act 15;
- (d) *subclause (a)(v)* seeks to introduce a new paragraph (ea) into subsection 3(1) of Act 15 to make it an offence for any person to promote feelings of ill will, hostility or hatred between persons or groups of persons on the ground of religion. This is in line with the intention of the Government to protect the sanctity of religions professed by the multi-religious society in Malaysia. An act of insulting and ridiculing any religion may cause disharmony and threaten public order. However, to avoid ambiguity, in relation to the religion of Islam, religion refers to the *Hukum Syarak* as codified under any written law and shall not include any deviant teachings; and
- (e) *subclause (c)* seeks to amend subsection 3(3) of Act 15 so as to expand the application of the provision to include indirect publication of seditious material.

5. *Clause 4* of the Bill seeks to amend section 4 of Act 15. The amendment to subsection 4(1) seeks to substitute the current penalty for offences under subsection 4(1) with a minimum penalty of three years imprisonment and a maximum penalty of seven years and to do away with the penalty of fine. In addition to the increase in penalty under subsection 4(1), this *clause* also seeks to insert the new subsection 4(1A) to provide for even a higher penalty for offences under the Act if bodily injury or damage to property occurs as a result of the commission of the offence. In such cases, a minimum penalty of five years imprisonment and a maximum penalty of twenty years imprisonment will be imposed in consideration of the seriousness of the offence.

6. *Clause 5* of the Bill seeks to introduce new sections 5A and 5B into Act 15. The new section 5A provides that where a person is charged with an offence under subsection 4(1A) and there is a certificate in writing by the Public Prosecutor stating that it is not in the public interest to grant bail to the person charged, the person shall not be released on bail. The new section 5A is in line with the proposal to impose a higher penalty for sedition offences involving bodily injury and damage to property. The new section 5B seeks to empower the court to prevent a person who is charged under section 4 who is released on bail from leaving Malaysia. This includes ordering the person charged to surrender his travel documents. In cases where the person does not own any travel document, the court may order the Director General of Immigration to refuse the issuance of any travel document to the person.

7. *Clause 6* of the Bill seeks to amend section 6 of Act 15. With this amendment, the court shall apply the ordinary rules of evidence as regards the credibility of a witness in sedition cases.

8. *Clause 7* of the Bill seeks to introduce a new section 6A into Act 15. The new section 6A specifies that sections 173A, 293 and 294 of the Criminal Procedure Code shall not apply in respect of offences under subsection 4(1A) of Act 15.

9. *Clause 8* of the Bill seeks to amend section 10 of Act 15 to empower the Court to issue an order for the removal of seditious publication which is made by electronic means, such as online publication.

10. *Clause 9* of the Bill seeks to introduce a new section 10A into Act 15. Under this new section, the court is empowered to issue an order regarding seditious publication made by electronic means by a person who cannot be identified. For this purpose, since the perpetrator cannot be identified, the order shall be directed to an authorized officer under the Communications and Multimedia Act 1998 to prevent access to such publication.

11. Other amendments not specifically dealt with 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) 2961]