

SEXUAL OFFENCES AGAINST CHILDREN BILL 2017

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Application
3. Extra-territorial application

PART II

OFFENCES RELATING TO CHILD PORNOGRAPHY

4. Child pornography
5. Making, producing, directing the making or production of, etc., child pornography
6. Preparation to make, produce or direct the making or production of child pornography
7. Using a child in making, producing, directing the making or production of, etc., child pornography
8. Exchanging, publishing, etc., child pornography
9. Selling, etc., child pornography to a child
10. Accessing, etc., child pornography
11. Offence by body corporate

PART III

OFFENCES RELATING TO CHILD GROOMING

12. Sexually communicates with a child
13. Child grooming
14. Meeting following child grooming

PART IV

OFFENCES RELATING TO SEXUAL ASSAULT

Clause

15. Physical sexual assault on a child
16. Non-physical sexual assault on a child

PART V

PERSON IN RELATIONSHIP OF TRUST

17. Person in relationship of trust

PART VI

CREDIBILITY AND EVIDENCE OF CHILD WITNESS

18. Presumption as to credibility of child witness
19. Evidence of child witness

PART VII

MISCELLANEOUS

20. Failure to give information
21. Presumption of age of a child
22. Abetment
23. Evidence of *agent provocateur* admissible
24. Non-application of sections 173A, 293 and 294 of the Criminal Procedure Code
25. Provision regarding whipping
26. Schedule

SCHEDULE

A BILL

i n t i t u l e d

An Act to provide for certain sexual offences against children and their punishment in addition to other sexual offences against children and their punishment in other written laws, and in relation to it to provide for the administration of justice for children and connected matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Sexual Offences against Children Act 2017.

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

Application

2. (1) This Act shall apply to a child who is under the age of eighteen years.

(2) Any reference to a child shall include a person whom the accused for an offence under this Act believes is a person under the age of eighteen years.

Extra-territorial application

3. Where an offence under this Act is committed by a Malaysian citizen against a child in any place outside Malaysia, he may be dealt with in respect of such offence as if the offence was committed at any place within Malaysia.

PART II**OFFENCES RELATING TO CHILD PORNOGRAPHY****Child pornography**

4. In this Act—

(a) “child pornography” means any representation, whether visual, audio or written or the combination of visual, audio or written, or by any other means—

(i) of a child engaged in sexually explicit conduct;

(ii) of a person appearing to be a child engaged in sexually explicit conduct;

(iii) of realistic images of a child engaged in sexually explicit conduct; or

(iv) of realistic images of a person appearing to be a child engaged in sexually explicit conduct; and

(b) “sexually explicit conduct” includes actual or simulated of the following:

(i) sexual intercourse, or lascivious acts including physical contact involving genital to genital, oral to genital, anal to genital, or oral to anal, between persons of the same or opposite sex;

(ii) bestiality;

(iii) masturbation;

- (iv) sadistic or masochistic abuse in a sexual context;
- (v) lascivious exhibition of the genital, buttock, breast, pubic area or anus; and
- (vi) use of any object or instrument for lascivious acts.

Making, producing, directing the making or production of, etc., child pornography

5. Any person who makes, produces, directs the making or production of, or participates, engages or is involved, in any way, in the making, production or the directing of the making or production of, any child pornography commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding thirty years and shall also be punished with whipping of not less than six strokes.

ILLUSTRATIONS

- (a) A, an actor approaches Z, a film producer so that A can act in one of Z's film. Z offers A to act in child pornography and A agrees to do so. A acts in that child pornography. A is guilty of an offence under this section by participating in the production of child pornography.
- (b) A is a director of child pornography. A hires Z, an art director to oversee the artistic aspects of A's direction of child pornography. Z does as required of him by A. Z is guilty of an offence under this section by participating in the directing of the making of child pornography.

Preparation to make, produce or direct the making or production of child pornography

6. Any person who makes any preparation to make, produce or direct the making or production of any child pornography commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to whipping.

Using a child in making, producing, directing the making or production of, etc., child pornography

7. Any person who uses or causes a child to be used in the preparation to make or produce, or in the preparation to direct the making or production of, or in the making or production of, or in the directing of the making or production of, any child pornography commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding twenty years and shall also be punished with whipping of not less than five strokes.

Explanation—This section does not apply where the preparation to make or produce or the preparation to direct the making or production of child pornography or where the making or production or the directing of the making or the production of child pornography uses a person appearing to be a child.

ILLUSTRATIONS

- (a) A entices Z, a child through a fake singing competition advertisement and uses Z in making child pornography. A is guilty of an offence under this section by using a child in the making of child pornography. A is also guilty of an offence under section 5 for making child pornography.
- (b) A offers his six-year-old daughter Z, to B for Z to act in child pornography for a certain amount of money. Z acts in child pornography that B produces. A is guilty of an offence under this section for causing Z, a child to be used in the production of child pornography.

Exchanging, publishing, etc., child pornography

8. Any person who—

- (a) exchanges, publishes, sells, lets for hire, distributes, exhibits, advertises, transmits, promotes, imports, exports, conveys, offers or makes available, in any manner, any child pornography;
- (b) obtains, collects or seeks any child pornography; or

- (c) participates in or receives profits from any business that he knows or has reason to believe is related to any child pornography,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be punished with whipping of not less than three strokes.

ILLUSTRATIONS

- (a) A is an administrator of a child pornography website. A is guilty of an offence under this section by making available child pornography online.
- (b) A carries on a logistic services business and manages the transportation and storage of publication material owned by Z's company. Z's publication material includes child pornography material. Z reveals such information to A and makes profit sharing plan with A in relation to the sale of the child pornography material with a condition that A continues to perform the logistic services for Z. A accepts Z's offer. A is guilty of an offence under this section for receiving profits from a business that he knows or has reason to believe is related to child pornography.

Selling, etc., child pornography to a child

9. Any person who sells, lets for hire, distributes, exhibits, advertises, transmits, promotes, conveys, offers or makes available, in any manner, any child pornography to a child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be punished with whipping of not less than five strokes.

Accessing, etc., child pornography

10. Any person who accesses, or has in his possession or control, any child pornography commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both.

Explanation—A person is said to access child pornography if he knowingly causes child pornography to be viewed by, or transmitted to, himself.

ILLUSTRATIONS

- (a) A receives an e-mail from an unknown sender with an untitled attachment. A accesses the attachment without knowing that the attachment contains child pornography. Upon viewing the content of the attachment, A immediately deletes the e-mail from his e-mail account. A is not guilty of an offence under this section.
- (b) A receives an e-mail from an unknown sender with an untitled attachment. A accesses the attachment without knowing that the attachment contains child pornography. Upon viewing the content of the attachment and despite knowing that the attachment contains child pornography, A continuously views the child pornography. A is guilty of an offence under this section.
- (c) A uses B's computer and discovers a document containing child pornography stored in the computer's hard disk. A transmits the said documents into his pen drive and keeps the pen drive in his office. A is guilty of an offence under this section.

Offence by body corporate

11. Where any offence under this Part has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall also be guilty of that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he had exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

PART III

OFFENCES RELATING TO CHILD GROOMING

Sexually communicates with a child

12. (1) Subject to subsection (3), any person who—

- (a) sexually communicates with a child; or
- (b) encourages a child to sexually communicate,

by any means, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding three years.

(2) For the purposes of this section, a person is said to sexually communicate if—

- (a) the communication or any part of the communication relates to an activity that is sexual in nature; or
- (b) any reasonable person would consider any part of the communication to be sexual.

(3) No person shall be convicted for an offence under this section if the communication is for education, scientific or medical purposes.

Child grooming

13. (1) Any person who communicates by any means with a child with the intention to commit or to facilitate the commission of any offence under section 5, 6, 7, 8, 15 or 16 or any offence under the Schedule against the child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding five years and shall also be liable to whipping.

(2) In any proceedings under this section, the fact that any offence under section 5, 6, 7, 8, 15 or 16 or any offence under the Schedule has been committed need not be specified or proven.

ILLUSTRATIONS

- (a) A communicates with Z, a child *via* social media by pretending to be a teenager and develops a love relationship with Z with the intention of using Z for child pornography. A never meets Z. A is guilty of an offence under this section.
- (b) A communicates with Z, a child *via* e-mail and befriends Z with the intention that A's friends C and B could rape Z. A never meets Z. A is guilty of an offence under this section.

Meeting following child grooming

14. (1) Any person who, having communicated by any means with a child, meets with the child with the intention to commit or to facilitate the commission of any offence under section 5, 6, 7, 8, 15 or 16 or any offence under the Schedule against the child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to whipping.

(2) In any proceedings under this section, the fact that any offence under section 5, 6, 7, 8, 15 or 16 or any offence under the Schedule has been committed need not be specified or proven.

ILLUSTRATIONS

- (a) A communicates with Z, a child *via* social media by pretending to be a teenager and develops a love relationship with Z. A takes a step further and meets Z with the intention of using Z for child pornography. A is guilty of an offence under this section.
- (b) A communicates with Z, a child *via* e-mail and befriends Z. A takes a step further and meets Z with the intention that A's friends C and B could rape Z. A is guilty of an offence under this section.

PART IV

OFFENCES RELATING TO SEXUAL ASSAULT

Physical sexual assault on a child

15. Any person who, for sexual purposes—

- (a) touches any part of the body of a child;
- (b) makes a child touch any part of the body of such person or of any other person;
- (c) makes a child touch any part of the child's own body;
or
- (d) does any other acts that involve physical contact with a child without sexual intercourse,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding twenty years and shall also be liable to whipping.

Explanation—The act of touching may involve the act of touching with any part of the body or with an object and may be done through anything including anything worn by the person touching or by the child touched.

Non-physical sexual assault on a child

16. Any person who—

(a) for sexual purposes—

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or his body or any part of his body with the intention that such word or sound shall be heard, or such gesture or object or body or part of his body shall be seen by a child;
- (ii) makes a child exhibit the child's body or any part of the child's body so as it is seen by such person or any other person;
- (iii) repeatedly or constantly follows or watches or contacts a child by any means; or
- (iv) threatens to use any representation whether visual, audio or written or the combination of visual, audio or written, or by any other means, any part of the body of a child or the child engaged in an activity that is sexual in nature;

(b) engages in an activity that is sexual in nature in the presence of a child;

(c) causes a child to watch another person engaging in an activity that is sexual in nature;

(d) causes a child to watch or hear any representation, whether visual, audio or written or the combination of visual, audio or written, or by any other means, of another person engaging in an activity that is sexual in nature;
or

(e) makes a child engage in an activity that is sexual in nature,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding twenty thousand ringgit or to both.

PART V

PERSON IN RELATIONSHIP OF TRUST

Person in relationship of trust

17. (1) If a person who commits any offence under this Act or any offence under the Schedule against a child, is in a relationship of trust with the child, such person shall, in addition to the punishment to which he is liable for such offence, be punished with imprisonment for a term not exceeding five years and shall also be punished with whipping of not less than two strokes.

(2) In this section, a person is said to be in a relationship of trust with the child if the child is under his care, supervision or authority, including but not limited to—

- (a) a parent, guardian or person who is related through full-blood or half-blood, or through marriage or adoption, including *de facto* adoption;
- (b) a person who looks after one or more children for valuable consideration for any period of time;
- (c) a teacher, lecturer or warden of a kindergarten, school, public institution of higher learning or private institution of higher learning;
- (d) any person providing healthcare services in a Government healthcare facility or private healthcare facility as defined in section 2 of the Private Healthcare Facilities and Services Act 1998 [Act 586];
- (e) a coach; and
- (f) a public servant of whatever rank in the course of his duty under any written law in respect of the child.

PART VI

CREDIBILITY AND EVIDENCE OF CHILD WITNESS

Presumption as to credibility of child witness

18. Notwithstanding anything contrary in any written law, in any proceedings against any person relating to any offence under this Act, or any offence under the Schedule where the victim is a child, a child is presumed to be competent to give evidence unless the court thinks otherwise.

Evidence of child witness

19. (1) Notwithstanding anything contrary in any written law, in any proceedings against any person relating to any offence under this Act, or any offence under the Schedule where the victim is a child, the court may allow for the uncorroborated evidence of a child, given upon oath or otherwise, be admissible.

(2) The court, before allowing for the uncorroborated evidence of a child to be admissible under subsection (1), shall ascertain that the child is possessed of sufficient intelligence and understands the duty of speaking the truth.

PART VII

MISCELLANEOUS

Failure to give information

20. Notwithstanding section 13 of the Criminal Procedure Code [*Act 593*], any person who fails to give information of the commission of or the intention of any other person to commit any offence under this Act, or any offence under the Schedule where the victim is a child, to the officer in charge of the nearest police station, commits an offence and shall on conviction, be liable to a fine not exceeding five thousand ringgit.

Presumption of age of a child

21. It is not a defence to a charge for any offence under this Act, or for any offence under the Schedule where the victim is a child, that the accused believed that the child was eighteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the child.

Abetment

22. Any person who abets the commission of any offence punishable under this Act shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Evidence of *agent provocateur* admissible

23. (1) Notwithstanding any law or rule of law to the contrary, in any proceedings against any person for any offence under this Act, or any offence under the Schedule where the victim is a child, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person.

(2) Notwithstanding any law or rule of law to the contrary, a conviction for any offence under this Act, or any offence under the Schedule where the victim is a child, solely on the uncorroborated evidence of any agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

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

24. Sections 173A, 293 and 294 of the Criminal Procedure Code shall not apply in respect of any offence under this Act, or any offence under the Schedule where the victim is a child, if the person convicted for such offence is of or above the age of eighteen years.

Provision regarding whipping

25. Notwithstanding paragraph 289(c) of the Criminal Procedure Code, where a person convicted under any offence under this Act is a male whom the court considers to be more than fifty years of age, he may still be punished with whipping.

Schedule

26. The Minister may, upon consultation with the Public Prosecutor, amend the Schedule by order published in the *Gazette*, including to exclude or include any offence of any description under any written law.

SCHEDULE

[Sections 13, 14, 17, 18, 19, 20, 21, 23, 24 and 26]

1. Section 354, 372, 375, 375B, 376, 376A, 376B, 377A, 377B, 377C, 377CA, 377D, 377E or 509 of the Penal Code, except for the purposes of section 24 of this Act relating to the non-application of sections 173A and 294 of the Criminal Procedure Code to a serious offence under the Penal Code
2. Section 14 or 15 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670], in so far as it relates to sexual exploitation, except for the purposes of section 23 of this Act
3. Section 31 in so far as it relates to sexual abuse or section 43 of the Child Act 2001 [Act 611]

EXPLANATORY STATEMENT

The proposed Sexual Offences against Children Act 2017 (“the proposed Act”) seeks to provide for certain sexual offences against children and their punishment in addition to other sexual offences against children and their punishment in other written laws, and in relation to it to provide for the administration of justice for children and connected matters. The proposed Act is pertinent to address the seriousness of sexual offences committed against children in Malaysia. The ultimate object of the proposed Act is to provide for better protection for children against sexual offences and to safeguard the interest and well-being of children and to provide effective deterrence. In ensuring the effectiveness of the proposed Act, the relevant parties dealing with children including the public are obliged to furnish information to the relevant authority on the commission of or the intention of any other person to commit any sexual offence against children.

PART I

2. Part I of the proposed Act contains preliminary matters.
3. *Clause 1* contains the short title and empowers the Minister to appoint the date of commencement of the proposed Act.
4. *Clause 2* provides that the proposed Act shall apply to a child who is under the age of eighteen years and any reference to a child shall include a person whom the accused for an offence under the proposed Act believes is a person under the age of eighteen years.
5. *Clause 3* contains provision on extra-territorial application of the proposed Act. Where an offence under the proposed Act is committed by a Malaysian citizen against a child in any place outside Malaysia, he may be dealt with in respect of such offence as if the offence was committed at any place within Malaysia.

PART II

6. Part II of the proposed Act provides for punishment for offences relating to child pornography and other relevant provisions.
7. *Clause 4* contains the definition of “child pornography” and “sexually explicit conduct”.
8. *Clause 5* seeks to provide for the punishment for the offence of making, producing directing the making or production of, participating, engaging or being involved, in any way, in the making, production or the directing of the making or production of, any child pornography. Due to the seriousness of the offence, any person who commits an offence under this *clause* shall, on conviction, be punished with imprisonment for a term not exceeding thirty years and shall also be punished with whipping of not less than six strokes.
9. *Clause 6* seeks to provide for the punishment for the offence of preparing to make, produce or direct the making or production of child pornography. Any person who commits an offence under this *clause* shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to whipping.

10. *Clause 7* seeks to provide for the punishment for the offence of using or causing a child to be used in the preparation to make or produce, or in the preparation to direct the making or production of, or in the making or production of, or in the directing of the making or production of, any child pornography. Any person who commits an offence under this *clause* shall, on conviction, be punished with imprisonment for a term not exceeding twenty years and shall also be punished with whipping of not less than five strokes. This section does not apply where the preparation to make or produce or the preparation to direct the making or production of child pornography or where the making or production or the directing of the making or the production of child pornography uses a person appearing to be a child.

11. *Clause 8* seeks to provide for the punishment for the following offences:

- (a) exchanging, publishing, selling, letting for hire, distributing, exhibiting, advertising, transmitting, promoting, importing, exporting, conveying, offering or making available, in any manner, any child pornography;
- (b) obtaining, collecting or seeking any child pornography; or
- (c) participating in or receiving profits from any business that he knows or has reason to believe is related to any child pornography.

Any person who commits an offence under this *clause* shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be punished with whipping of not less than three strokes.

12. *Clause 9* seeks to provide for the punishment for the offence of selling, letting for hire, distributing, exhibiting, advertising, transmitting, promoting, conveying, offering or making available, in any manner, any child pornography to a child. Any person who commits an offence under this *clause* shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be punished with whipping of not less than five strokes.

13. *Clause 10* seeks to provide for the punishment for the offence of accessing, or having in possession or control, any child pornography. Any person who commits an offence under this *clause* shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both. A person is said to access child pornography if he knowingly causes child pornography to be viewed by, or transmitted to, himself.

14. *Clause 11* deals with the provision relating to offences committed under Part II by a body corporate.

PART III

15. Part III of the proposed Act provides for the punishment for offences relating to child grooming.

16. *Clause 12* seeks to provide for the punishment for the offence of sexually communicating with a child. Child grooming is usually initiated by the perpetrator through sexual communication with a child. This offence is created to ensure that children are fully protected so as to allow for early intervention to prevent more serious sexual offences against children.

17. *Clause 13* seeks to provide for the punishment for the offence of child grooming. Under this *clause*, any person who communicates by any means with a child with the intention to commit or to facilitate the commission of any offence under section 5, 6, 7, 8, 15 or 16 of the proposed Act or any offence under the Schedule against the child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding five years and shall also be liable to whipping. In any proceedings under this section, the fact that any offence under section 5, 6, 7, 8, 15 or 16 of the proposed Act or any offence under the Schedule has been committed need not be specified or proven.

18. *Clause 14* seeks to provide for the punishment for the offence of meeting following child grooming. Under this *clause*, any person who, having communicated by any means with a child, meets with the child with the intention to commit or to facilitate the commission of any offence under section 5, 6, 7, 8, 15 or 16 of the proposed Act or any offence under the Schedule against the child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to whipping.

PART IV

19. Part IV of the proposed Act provides for the punishment for offences of sexual assault.

20. *Clause 15* seeks to provide for the punishment for the offence of physical sexual assault on a child. Under this *clause*, any person who, for sexual purposes touches any part of the body of a child, makes a child touch any part of the body of such person or of any other person, makes a child touch any part of the child's own body or does any other act that involve physical contact with a child without sexual intercourse, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding twenty years and shall also be liable to whipping.

21. *Clause 16* seeks to provide for the punishment for the offence of non-physical sexual assault on a child. Under this *clause*, any person who, for sexual purposes, utters any word or makes any sound, or makes any gesture or exhibits any object or his body or any part of his body with the intention that such word or sound shall be heard, or such gesture or object or body or part of his body shall be seen by a child, makes a child exhibit the child's body or any part of the child's body so that it can be seen by such person or any other person, repeatedly or constantly follows or watches or contacts a child by any means or threatens to use any representation whether visual, audio or written or the combination of visual, audio or written, or by any other means, of any part of the body of a child or the child engages in an activity that is sexual in nature commits an offence. It is also an offence under

this *clause* for any person to engage in an activity that is sexual in nature in the presence of a child, cause a child to watch another person engaging in an activity that is sexual in nature, cause a child to watch or hear any representation, whether visual, audio or written or the combination of visual, audio or written, or by any other means of another person engaging in an activity that is sexual in nature or make a child engage in an activity that is sexual in nature. Any person who commits an offence under this *clause* shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding twenty thousand ringgit or to both.

PART V

22. Part V of the proposed Act relates to a person who is in a relationship of trust with a child.

23. *Clause 17* provides that where a person who commits any offence under the proposed Act or any offence under the Schedule against a child, is in a relationship of trust with the child, such person shall, in addition to the punishment to which he is liable for such offence, be punished with imprisonment for a term not exceeding five years and shall also be punished with whipping of not less than two strokes. A person is said to be in a relationship of trust with the child if the child is under his care, supervision or authority, including but not limited to a parent, guardian or person who is related through full-blood or half-blood, or through marriage or adoption, including *de facto* adoption, a person who looks after one or more children for valuable consideration for any period of time, teacher, lecturer or warden of a kindergarten, school, public institution of higher learning or private institution of higher learning, any person providing healthcare services in a Government healthcare facility or private healthcare facility as defined in section 2 of the Private Healthcare Facilities and Services Act 1998 [*Act 586*], coach and public servant of whatever rank in the course of his duty under any written law in respect of the child.

PART VI

24. Part VI of the proposed Act contains provisions on the credibility and evidence of a child witness.

25. *Clause 18* seeks to provide that, notwithstanding anything contrary in any written law, a child is presumed to be competent to give evidence in relation to any proceedings relating to any offence under the proposed Act, or any offence under the Schedule where the victim is a child unless the court thinks otherwise.

26. *Clause 19* contains the provision on the admissibility of child evidence in relation to any proceedings against any person for any offence under the proposed Act, or any offence under the Schedule where the victim is a child. In relation to these sexual offences, the court may allow for the uncorroborated evidence of a child, given upon oath or otherwise, be admissible. However, the court, before allowing for the uncorroborated evidence of a child to be admissible, shall ascertain that the child is possessed of sufficient intelligence and understands the duty of speaking the truth. This provision is a departure

from section 133A of the Evidence Act 1950 [Act 56] which provides that a person cannot be convicted upon uncorroborated evidence not given upon oath by a child of tender years. Nevertheless this provision is to enhance the status of children as witnesses so that their evidence is given the appropriate weight.

PART VII

27. Part VII of the proposed Act contains miscellaneous provisions.

28. *Clause 20* seeks to provide that notwithstanding section 13 of the Criminal Procedure Code [Act 593], any person who fails to give information of the commission of or the intention of any other person to commit any offence under the proposed Act, or any offence under the Schedule where the victim is a child, to the officer in charge of the nearest police station, commits an offence and shall on conviction, be liable to a fine not exceeding five thousand ringgit.

29. *Clause 21* seeks to provide that it is not a defence to a charge for any offence under the proposed Act, or any offence under the Schedule where the victim is a child, that the accused believed that the child was eighteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the child.

30. *Clause 22* seeks to provide for the abetment of any offence under the proposed Act. Any person who abets the commission of any offence punishable under the proposed Act shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence. As to the punishment for any attempt of any offence under the proposed Act, or any offence under the Schedule where the victim is a child, section 511 of the Penal Code shall be applicable.

31. *Clause 23* seeks to provide that notwithstanding any law or rule of law to the contrary, evidence of *agent provocateur* shall be admissible in any proceedings against any person for an offence under the proposed Act, or any offence under the Schedule where the victim is a child, except for an offence under sections 14 and 15 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]. For the purposes of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, the provision on the admissibility of the evidence of *agent provocateur* is already provided for in section 59 of the Act. This *clause* also provides that a conviction in relation to such offences solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal.

32. *Clause 24* seeks to provide that sections 173A, 293 and 294 of the Criminal Procedure Code shall not apply in respect of any offence under the proposed Act, or any offence under the Schedule where the victim is a child, if the person convicted for such offence is of or above the age of eighteen years. This *clause* however, shall not apply in respect of offence under the Penal Code relating to the non-application of sections 173A and 294 of the Criminal Procedure Code to a serious offence under the Penal Code. By

virtue of the Criminal Procedure Code (Amendment) 2016 [*Act A152I*] which came into operation on 1 March 2017, sections 173A and 294 of the Criminal Procedure Code have been amended to provide that these sections shall not apply, among others, to a serious offence under the Penal Code. Under the Penal Code, “serious offence” denotes an offence punishable with imprisonment for a term of ten years or more.

33. *Clause 25* provides for the exception to the application of paragraph 289(c) of the Criminal Procedure Code. Under paragraph 289(c) of the Criminal Procedure Code, males whom the court considers to be more than fifty years of age shall not be punishable for whipping if he is convicted of an offence except for offences under section 376, 377c, 377CA or 377E of the Penal Code. This *clause* seeks to provide that notwithstanding paragraph 289(c) of the Criminal Procedure Code, where a person convicted for any offence under the proposed Act is a male whom the court considers to be more than fifty years of age, he may still be punished with whipping. This is provided after taking into account the seriousness of the offences under the proposed Act.

34. *Clause 26* seeks to provide that the Minister may, upon consultation with the Public Prosecutor, to amend the Schedule by order published in the *Gazette* including to exclude or include any offence of any description under any written law.

FINANCIAL IMPLICATIONS

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

[PN(U2)3051]