

A BILL

i n t i t u l e d

An Act to amend the National Security Council Act 2016.

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ENACTED by the Parliament of Malaysia as follows:

Short title

1. This Act may be cited as the National Security Council (Amendment) Act 2020.

Amendment of section 2

2. The National Security Council Act 2016 [*Act 776*], which is referred to as the “principal Act” in this Act, is amended in section 2, in the definition of “security area”, by substituting for the words “Prime Minister” the words “Yang di-Pertuan Agong”.

Amendment of section 6**3.** Section 6 of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1);
- (b) in subsection (1) as renumbered, by deleting paragraph (b); and
- (c) by inserting after subsection (1) as renumbered the following subsection:

“(2) The Chairman shall appoint from amongst the members of the Council a Deputy Chairman.”.

Amendment of section 8**4.** Section 8 of the principal Act is amended in subsection (2) by substituting for the words “a member of the Council” the words “any other member of the Council”.**Amendment of section 18****5.** Section 18 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “Prime Minister” wherever appearing the words “Yang di-Pertuan Agong”;
- (b) in subsection (4), by substituting for the words “Prime Minister” the words “Yang di-Pertuan Agong, on the advice of the Council,”;
- (c) in subsection (6), by substituting for the words “before Parliament” the words “before both Houses of Parliament”; and
- (d) in subsection (7), by substituting for the words “Prime Minister may” the words “Yang di-Pertuan Agong may, on the advice of the Council”.

Amendment of section 21

6. Section 21 of the principal Act is amended—

(a) in subsection (3)—

- (i) in paragraph (a), by deleting the word “and” at the end of the paragraph;
- (ii) in paragraph (b), by substituting for the full stop at the end of the paragraph the words “; and”; and
- (iii) by inserting after paragraph (b) the following paragraph:

“(c) request from any individual or entity other than a Government Entity, any information or intelligence in his or its possession.”; and

(b) by inserting after subsection (5) the following subsections:

“(6) Any individual who fails to comply with the request under paragraph (3)(c) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

(7) Any entity other than a Government Entity which fails to comply with the request under paragraph (3)(c) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit.”.

Amendment of section 37

7. Section 37 of the principal Act is amended in subsection (2) by substituting for the words “two years” the words “five years”.

Amendment of section 42

8. Section 42 of the principal Act is amended in subsections (1) and (2), by substituting for the words “Prime Minister” the word “Council”.

New sections 42A and 42B

9. The principal Act is amended by inserting after section 42 the following sections:

“Offence by company, etc.

42A. Where any person who commits an offence under this Act or any regulations made under this Act is a company, limited liability partnership, firm, society or other body of persons, a person who at the time of the commission of the offence was a director, compliance officer, partner, manager, secretary or other similar officer of the company, limited liability partnership, firm, society or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, limited liability partnership, firm, society or other body of persons or was assisting in its management—

- (a) may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or other body of persons; and
- (b) if the company, limited liability partnership, firm, society or other body of persons is found guilty of the offence, shall be deemed to be guilty of that offence and shall be liable to the same punishment or penalty as an individual unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge; and

- (ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

Liability of person for act, etc., of employee, etc.

42B. Where any person would be liable to any punishment or penalty under this Act or any regulations made under this Act for any act, omission, neglect or default committed—

- (a) by that person’s employee in the course of his employment;
- (b) by that person’s agent when acting on behalf of that person; or
- (c) by the employee of that person’s agent when acting in the course of his employment by the person’s agent or otherwise on behalf of the person’s agent acting on behalf of that person,

that person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of the person’s employee or agent, or of the employee of the person’s agent.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the National Security Council Act 2016 (“Act 776”).

- 2. *Clause 1* contains the short title of the proposed Act.
- 3. *Clause 2* seeks to amend section 2 of Act 776 in the definition of “security area” consequential to the proposed amendment in *clause 5*.
- 4. *Clause 3* seeks to amend section 6 of Act 776 to remove the Deputy Prime Minister as the Deputy Chairman of the Council from the membership of the Council and to empower the Chairman of the Council to appoint a Deputy Chairman from amongst other members of the Council. This is to further strengthen the membership of the Council.
- 5. *Clause 4* seeks to amend section 8 of Act 776 consequential to the proposed amendment in *clause 3*.

6. *Clause 5* seeks to amend section 18 of Act 776 to provide that the Yang di-Pertuan Agong may declare any area in Malaysia as a “security area” on the advice of the Council.
7. *Clause 6* seeks to amend section 21 of Act 776 to provide for the power of the Director of Operations to request from any individual or any entity other than a Government Entity, any information or intelligence in his or its possession. In this regard, although generally, the word “person” is sufficient to include both “individual” and “entity”, for the purposes of the proposed Act, the words “individual” and “entity other than a Government Entity” are preferred to be used to clarify that any individual and entity other than a Government Entity, are all obliged to comply with such request of the Director of Operations. The power of the Director of Operations shall be exercised in the interest of national security and in relation to a security area. Any individual or any entity other a Government Entity who fails to comply with such request of the Director of Operations commits an offence under Act 776.
8. *Clause 7* seeks to amend section 37 of Act 776 to increase the term of imprisonment for the offence under this section from two years to five years.
9. *Clause 8* seeks to amend section 42 of Act 776 to enable the Council to make regulations under Act 776.
10. *Clause 9* seeks to introduce into Act 776 a new section 42A which contains the provision relating to offences committed by any person who is a company, limited liability partnership, firm, society or other body of persons, and a new section 42B which contains the provision relating to the liability of a person for any act, omission, neglect or default by an employee of the person, agent of the person or employee of the person’s agent.

FINANCIAL IMPLICATIONS

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

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