

A BILL

*i n t i t u l e d*

An Act to amend the Election Offences Act 1954.

[ ]

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

**Short title and commencement**

**1.** (1) This Act may be cited as the Election Offences (Amendment) Act 2012.

(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 Election Offences Act 1954 [*Act 5*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) by inserting after the definition of “authorized” the following definition:

‘ “before an election”, in relation to an election, means the period commencing from the date of dissolution of Parliament or Legislative Assembly or from the date on which it is established by the Election Commission that there is a casual vacancy among the members of the Dewan Rakyat or a Legislative Assembly for a constituency until the date immediately before the writ of election is issued;’;

(b) by inserting before the definition of “authorized” the following definition:

‘ “after an election”, in relation to an election, means the period commencing from the date the returning officer declares as having been elected the candidate who obtained the greatest number of votes and expiring thirty days from that date;’; and

(c) by inserting after the definition of “constituency” the following definition:

‘ “during an election”, in relation to an election, means the period commencing from the date the writ of election is issued until the date the returning officer declares as having been elected the candidate who obtained the greatest number of votes;’.

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

3. Section 4 of the principal Act is amended—

(a) in paragraph (e), by substituting for the word “cast” the word “marked”; and

(b) in paragraph (f), by substituting for the word “cast” wherever appearing the word “marked”.

#### **Amendment of section 11**

4. Subsection 11(1) of the principal Act is amended by deleting paragraph (c).

#### **Amendment of section 14**

5. Section 14 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the word “shall”;

(ii) in paragraph (a), by inserting before the word “appoint” the word “may”;

- (iii) by substituting for paragraph (b) the following paragraph:

“(b) may hire a political party office on behalf of the candidate;”;

- (iv) in paragraph (c), by inserting before the word “inform” the words “shall, if the polling agent or agents or counting agent or agents have been appointed under paragraph (a),”; and

- (v) in paragraph (d), by inserting before the word “inform” the words “shall, if the counting agent or agents have been appointed under paragraph (a),”; and

- (b) by substituting for subsection (1A) the following subsection:

“(1A) Every polling agent or counting agent of a candidate appointed under paragraph (1)(a) shall act or be present at the polling station or shall attend the counting of votes at the polling station in accordance with the time appointed by the Election Commission.”.

#### **Amendment of section 24A**

6. Section 24A of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) No person shall, on nomination day or days, wait or loiter within a distance of one hundred metres or any distance as determined by the Election Commission from the limit of any place of nomination except with the permission of the Election Commission.”.

#### **Amendment of section 24B**

7. Section 24B of the principal Act is amended—

- (a) in subsection (2), by substituting for the word “A” the words “Subject to subsection (2A), a”;

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

“(2A) Any office which is opened, established or maintained under subsection (2) may only be opened, established or maintained within a distance of not less than one hundred metres from the polling centre.

(2B) Any person who contravenes subsection (2A) shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand ringgit or to both.

(2C) The offence under subsection (2A) shall be a seizable offence within the meaning of the Criminal Procedure Code.”; and

(c) in subsection (7)—

(i) by substituting for the words “fifty metres” the words “one hundred metres or any distance as determined by the Election Commission”; and

(ii) by substituting for the word “station” the word “centre”.

## **Amendment of section 26**

8. Subsection 26(1) of the principal Act is amended—

(a) in paragraph (c), by substituting for the words “committee-room” the words “the political party office”;

(b) in paragraph (e)—

(i) by deleting the words “within a distance of fifty metres from the limits of any polling station—”; and

(ii) by renumbering the existing subparagraphs (i), (ii), (iii) and (iv) as paragraphs (e), (ea), (eb) and (ec) respectively;

(c) in the renumbered paragraphs (e) and (ea), by substituting for the words “polling station” the words “polling centre”;

(d) in the renumbered paragraph (ec)—

- (i) by inserting after the word “loiter” the words “within a distance of one hundred metres from the limits of any polling centre”;
- (ii) by substituting for the words “polling station” the words “polling centre”; and
- (iii) by substituting for the words “cast his vote” the word “vote”; and

(e) in paragraph (g)—

- (i) by substituting for the word “fifty” the words “one hundred”; and
- (ii) by substituting for the words “any polling station” the words “any polling centre”.

#### **Amendment of section 26A**

**9.** Section 26A of the principal Act is amended by deleting subsections (2) and (3).

#### **Substitution of section 27D**

**10.** The principal Act is amended by substituting for section 27D the following section:

##### **“Area of control of the enforcement team**

**27D.** An enforcement team shall perform its functions in the constituency for which the team is established.”.

#### **Amendment of section 30A**

**11.** Section 30A of the principal Act is amended by substituting for the word “before” the words “within a period of thirty days after”.

### Amendment of First Schedule

12. The First Schedule to the principal Act is amended in FORM A below the word “*Signature*”, by substituting for the words—

*“Chairman or Member of the Election Commission*

*Secretary to the Election Commission*

*State Elections Officer*

*Proper Officer”*

the words—

*“Chairman, Deputy Chairman or Members of the Election Commission*

*Secretary to the Election Commission*

*State Elections Officer*

*Proper Officer*

*Sessions Court Judge*

*Magistrate*

*Justice of the Peace*

*Commissioner for Oaths”.*

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### EXPLANATORY STATEMENT

This Bill seeks to amend the Election Offences Act 1954 (“Act 5”).

2. *Clause 1* contains the short title and empowers the Minister to appoint the date of commencement of the proposed Act.
3. *Clause 2* seeks to amend section 2 of Act 5 to introduce new definitions of “before an election”, “after an election” and “during an election” into Act 5.
4. *Clause 3* seeks to amend section 4 of Act 5 by substituting for the word “cast” the word “marked”. This amendment is made to avoid using the word “dibuang” in the national language text. In the national language text, the word “dibuang” is substituted with the word “ditandakan” as the word “dibuang” may connote a negative interpretation for the purpose of an election.
5. *Clause 4* seeks to delete paragraph 11(1)(c) of Act 5 to remove a provision that is difficult to enforce.

6. *Clause 5* seeks to amend section 14 of Act 5 to remove the mandatory requirement for an election agent of a candidate to appoint any polling agent or counting agent. The proposed amendment also allows an election agent of a candidate to hire a political party office on behalf of the candidate.

The amendment in *clause 5* also seeks to allow any polling agent or counting agent of a candidate to act or be present or attend the counting of votes at the polling station only at the time appointed by the Election Commission. This is to reduce overcrowding at the polling station.

7. *Clause 6* seeks to amend subsection 24A(2) of Act 5 to avoid difficulties relating to the existing requirement of a distance of fifty metres from the limit of any place of nomination which does not have a large compound. The amendment in *clause 6* also gives the Election Commission power to determine any other appropriate distance.

8. *Clause 7* seeks to introduce new subsections 24B(2A), (2B) and (2C) into Act 5 to require that any office which is opened, established or maintained during the campaign period under subsection 24B(2) is only opened, established or maintained within a distance of not less than one hundred metres from the polling centre.

The proposed amendment also provides that any contravention of the proposed new subsection (2A) is a seizable offence which is punishable under the proposed new subsection (2B).

The amendment in *clause 7* also seeks to amend subsection 24B(7) of Act 5 to avoid difficulties relating to the existing requirement of a distance of fifty metres from the limits of any polling centre which does not have a large compound. The proposed amendment also empowers the Election Commission to determine any other appropriate distance and to substitute the words “polling station” with the words “polling centre” to reflect the meaning as assigned to those words in section 2 of the Elections Act 1958 [Act 19].

9. *Subclause 8(a)* seeks to amend paragraph 26(1)(c) of Act 5 by substituting for the words “committee-room” the words “the political party office” as a consequential amendment to the proposed amendment in paragraph 14(1)(b) of Act 5.

10. *Subclause 8(b)* seeks to amend paragraph 26(1)(e) of Act 5 by deleting the words “within the distance of fifty metres from the limits of any polling station—” to remove the qualification of the distance of fifty metres for the purpose of committing any offence under paragraph 26(1)(e) of Act 5.

The amendment in *subclause 8(b)* also seeks to renumber the existing subparagraphs 26(1)(e)(i), (ii), (iii) and (iv) of Act 5 as paragraphs 26(1)(e), (ea), (eb) and (ec) respectively by making the offences referred in the existing subparagraphs 26(1)(e)(i), (ii), (iii) and (iv) as separate and distinct offences.

11. *Subclause 8(c)* seeks to amend the renumbered paragraph 26(1)(e) and (ea) by substituting for the words “polling station” the words “polling centre”. This is to reflect the meaning as assigned to those words in section 2 of the Elections Act 1958.

12. *Subclause 8(d)* seeks to amend the renumbered paragraph 26(1)(ec) of Act 5 to prohibit any person during polling day from waiting or loitering within a distance of one hundred metres from the limits of any polling centre except for the purpose of gaining entry to the polling centre.

The amendment in *subclause 8(d)* also seeks to amend the renumbered paragraph 26(1)(ec) of Act 5 by substituting for the words “polling station” the words “polling centre”. This is to reflect the meaning as assigned to those words in section 2 of the Elections Act 1958.

Further, the amendment in *subclause 8(d)* also seeks to substitute for the words “cast his vote” the word “vote”. Amendment to the words “cast his vote” in the English language text is made pursuant to the amendment to the words “membuang undinya” in the national language text. In the national language text, the words “membuang undinya” is substituted with the word “mengundi” as the word “membuang undinya” may connote a negative interpretation for the purpose of an election.

13. *Subclause 8(e)* seeks to amend paragraph 26(1)(g) of Act 5 to substitute the existing distance of fifty metres with the distance of one hundred metres to avoid difficulties relating to the existing distance requirement in the case of polling centres which do not have large compounds.

The amendment in *subclause 8(e)* also seeks to substitute for the words “any polling station” the words “any polling centre” to reflect the meaning as assigned to those words in section 2 of the Elections Act 1958.

14. *Clause 9* seeks to delete subsections 26A(2) and (3) of Act 5 as the attendance of observers at the booths causes difficulties to the election workers in performing their duties.

15. *Clause 10* seeks to substitute section 27D of Act 5 with a new provision that allows for the establishment of an enforcement team in a Parliamentary or State constituency.

16. *Clause 11* seeks to amend section 30A of Act 5 to provide for an application for an authorized excuse under section 30 of Act 5 to be made within thirty days after the expiration of the period of thirty-one days specified in section 23 of Act 5. However, until the application for such excuse is allowed by an Election Judge or a Judge of the High Court, the candidate cannot sit or vote.

17. *Clause 12* seeks to amend FORM A of the First Schedule to add individuals before whom the oath of secrecy may be sworn.

#### FINANCIAL IMPLICATIONS

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