

A BILL

i n t i t u l e d

An Act to amend the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.

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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 Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 2

2. The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [*Act 670*], which is referred to as the “principal Act” in this Act, is amended in section 2 by substituting for the full stop at the end of the definition of “premises” a semi-colon and inserting after that definition the following definition:

‘ “place of refuge” means a place of refuge declared by the Minister under subsection 42(1) of this Act.’.

Amendment of section 6

3. Subsection 6(2) of the principal Act is amended—

(a) by deleting paragraph (c);

(b) by inserting after paragraph (l) the following paragraphs:

“(la) the Director-General of the Department of Women’s Development, or his representative;

(lb) the Director-General of Social Welfare Department, or his representative;

(lc) the Director-General of Labour, Department of Labour of Peninsular Malaysia, or his representative;

(ld) Director of Labour, Department of Labour Sabah, or his representative;

(le) Director of Labour, Department of Labour Sarawak, or his representative;”;

(c) by substituting for paragraph (m) the following paragraph:

“(m) a representative of the following Ministries:

(i) the Ministry responsible for internal security;

(ii) the Ministry responsible for defence;

(iii) the Ministry responsible for medical and health service;

(iv) the Ministry responsible for development of youth and sports;

(v) the Ministry responsible for international trade and industry;

- (vi) the Ministry responsible for plantation industries and commodities;”.

New Part IA

4. The principal Act is amended by inserting after Part I the following Part:

“PART IA

HIGH LEVEL COMMITTEE

High Level Committee

5A. (1) A High Level Committee shall be established consisting of the ministers of the Ministries who are represented on the Council.

(2) The High Level Committee shall be chaired by the Minister.

Meetings of the Committee

5B. The High Level Committee shall meet as often as may be necessary.

Function of the Committee

5C. The High Level Committee shall deliberate on and decide the recommendations made by the Council.”.

Amendment of section 7

5. Subsection 7(1) of the principal Act is amended—

(a) by deleting the word “and” appearing at the end of paragraph (j); and

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

“(ja) paying any allowance, subject to the availability of funds, to a trafficked person as the Council may determine; and”.

Amendment of section 11

6. Section 11 of the principal Act is amended—

(a) by renumbering that section as subsection (1); and

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

“(2) The Secretary of the Council shall have any duties and functions as may be determined by the Minister.”.

Amendment of section 42

7. Subsection 42(1) of the principal Act is amended by deleting the words “, by notification in the *Gazette*,”.

Amendment of section 43

8. Section 43 of the principal Act is amended—

(a) in subsection (1), by deleting the words “, by notification in the *Gazette*,” and the words “in the notification”; and

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

“(1A) The Minister may appoint any person who he thinks fit to exercise the powers and perform the duties of a Protection Officer under this Act subject to any condition as may be specified.”.

Amendment of section 44

9. Subsection 44(2) of the principal Act is amended by substituting for the words “fourteen days” the words “twenty-one days”.

Amendment of section 51

10. Section 51 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “fourteen days” the words “twenty-one days”; and

(b) in subparagraph (3)(a)(i), by substituting for the words “two years” the words “three months”.

New section 51A

11. The principal Act is amended by inserting after section 51 the following section:

“Permission to move freely and to work

51A. (1) Subject to any regulations made under section 66, any person to whom an interim protection order has been granted, or any trafficked person to whom a Protection Order has been granted, may be given permission by the Council—

(a) to move freely; or

(b) to be employed, engaged or contracted with to carry out work in any occupation during the period of the interim protection order or Protection Order, as the case may be.

(2) A foreign national who is granted permission to work under subsection (1) shall be subject to any restrictions and conditions as may be imposed by the relevant authorities relating to employment of foreign nationals in Malaysia.”.

Amendment of section 52

12. Section 52 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “At any time during the period of the Protection Order made under subparagraph 51(3)(a)(ii), where” the word “Where”; and
- (b) in subsection (2), by inserting after the words “is placed,” the words “or to the enforcement officer who is investigating the circumstances of the case of a trafficked person,”.

Amendment of section 54

13. The principal Act is amended by substituting for paragraph 54(1)(b) the following paragraph:

- “(b) in the case of a trafficked person who is a foreign national who has valid documents and is employed, release that person, or in any other case as may be prescribed, release that person to an immigration officer to be returned to his country of origin in accordance with any laws relating to immigration.”.

New section 65A

14. The principal Act is amended by inserting after section 65 the following section:

“Public servant

65A. Every Protection Officer, while discharging their duty as such Protection Officer under this Act shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].”.

Amendment of section 66

15. Subsection 66(2) of the principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) to prescribe the qualifications, conditions, procedures or any other matters relating to the granting of permission to move freely and to work under section 51A;”.

New sections 66A and 66B

16. The principal Act is amended by inserting after section 66 the following sections:

“Order for payment of compensation to the trafficked person

66A. (1) The Court before which a person is convicted of an offence under this Act may make an order for the payment of a sum fixed by the Court by way of compensation by the convicted person to the trafficked person.

(2) In relation to the order of the payment of compensation, subsections 426(1A), (1B), (1C) and (1D) of the Criminal Procedure Code [Act 593] shall apply.

(3) For the purposes of payment of compensation, section 432 of the Criminal Procedure Code shall apply.

(4) The order of payment of compensation under this section shall not prevent the commencement of any civil action in Court by the trafficked person against the convicted person.

Order for payment of wages in arrears in the case of no conviction

66B. (1) In the case of no conviction of an offence under this Act, where payment of wages is in arrears to an alleged trafficked person, the Court shall make an order for the

payment of such wages in arrears of a sum fixed by the Court to the alleged trafficked person upon application of the Public Prosecutor after conducting an inquiry by the Court.

(2) For the purposes of determining the sum of wages in arrears, the Court shall conduct an inquiry within seven days after the date of the decision to determine the order under subsection (1).

(3) For the purposes of subsection (2), any evidence produced during the trial of an offence under this Act may be used as evidence by the Court to determine the payment of wages in arrears.

(4) For the purposes of the payment of wages in arrears under subsection (1), section 432 of the Criminal Procedure Code shall apply.”.

Savings

17. The amendment of this Act shall not affect any order issued or made under the amended Act prior to the date of coming into operation of this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (“Act 670”).

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.
3. *Clause 2* seeks to amend section 2 of Act 670 to introduce the definition of “place of refuge”.
4. *Clause 3* seeks to amend section 6 of Act 670 to add new members to the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants.
5. *Clause 4* seeks to introduce a new Part IA relating to the High Level Committee. This new Part IA contains 3 new sections, namely sections 5A, 5B and 5C.
6. *Clause 5* seeks to amend section 7 of Act 670 to enable the Council to pay allowance to the trafficked person subject to the availability of funds.

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7. *Clause 6* seeks to amend section 11 of Act 670 to provide for the Minister to determine the functions of the Secretary of the Council.
8. *Clause 8* seeks to amend section 43 of Act 670 to introduce subsection (1A) to enable the Minister to appoint any person as a Protection Officer.
9. *Clause 9* seeks to amend subsection 44(2) of Act 670 to extend the period of an interim protection order from fourteen days to twenty-one days.
10. *Subclause 10(b)* seeks to amend subparagraph 51(3)(a)(i) of Act 670 to shorten the period of a Protection Order from a maximum of two years to three months.
11. *Clause 11* seeks to introduce a new section 51A into Act 670 to empower the Council to grant any person permission to move freely and to work during the period of the interim protection order or Protection Order.
12. *Clause 13* seeks to amend paragraph 54(b) of Act 670 relating to the release and return of a trafficked person who is a foreign national to his country of origin.
13. *Clause 16* seeks to introduce new sections 66A and 66B into Act 670 to enable the Court to issue an order for payment of compensation by the convicted person to the trafficked person, and an order for payment of wages in arrears in the case where there is no conviction to the alleged trafficked person.
14. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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