

# NATIONAL SECURITY COUNCIL BILL 2015

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A BILL

*i n t i t u l e d*

An Act to provide for the establishment of the National Security Council, the declaration of security areas, the special powers of the Security Forces in the security areas and other related 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 National Security Council Act 2015.

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

**Interpretation**

**2.** In this Act, unless the context otherwise requires—

“armed forces” has the meaning assigned to it in the Armed Forces Act 1972 [*Act 77*];

“dangerous things” includes firearms, ammunition, explosive substances, weapons or any other thing that is reasonably likely to be used to cause serious damage to property, or death or serious injury to a person;

“Government Entities” includes—

- (a) any ministry, department, office, agency, authority, commission, committee, board or council of the Federal Government, or of any of the State Governments, established under any written law or otherwise;
- (b) any local authorities; and
- (c) the Security Forces;

“security area” means any area declared by the Prime Minister under section 18;

“Director General” means the Director General of National Security appointed under section 15;

“Council” means the National Security Council established under section 3;

“Security Forces” means—

- (a) the Royal Malaysia Police, the Royal Malaysia Police Volunteer Reserve and the Auxiliary Police referred to in the Police Act 1967 [*Act 344*];
- (b) the armed forces;
- (c) any force which is a visiting force for the purposes of Part I of the Visiting Forces Act 1960 [*Act 432*]; or
- (d) the Malaysian Maritime Enforcement Agency established under the Malaysian Maritime Enforcement Agency Act 2004 [*Act 633*];

“Director of Operations” means any person appointed by the Council under section 20;

“Chairman” means the Chairman of the Council referred to in section 6;

“declaration” means the declaration of a security area made under section 18.

## PART II

### NATIONAL SECURITY COUNCIL

#### **Establishment of the National Security Council**

3. (1) A council by the name of the “National Security Council” is established.

(2) The Council shall be the Government’s central authority for considering matters concerning national security.

#### **Functions of the Council**

4. The Council shall have the following functions:

- (a) to formulate policies and strategic measures on national security, including sovereignty, territorial integrity, defence, socio-political stability, economic stability, strategic resources, national unity and other interests relating to national security;
- (b) to monitor the implementation of the policies and strategic measures on national security;
- (c) to advise on the declaration of security areas; and
- (d) to perform any other functions relating to national security for the proper implementation of this Act.

#### **Powers of the Council**

5. Notwithstanding any other written law, the Council shall have the power to do all things necessary or expedient for or in connection with the performance of its functions including—

- (a) to control and coordinate Government Entities on operations concerning national security; and

- (b) to issue directives to any Government Entity on matters concerning national security.

### **Membership of the Council**

6. The Council shall consist of the following members:

- (a) the Prime Minister as Chairman;
- (b) the Deputy Prime Minister as Deputy Chairman;
- (c) the Minister charged with the responsibility for defence;
- (d) the Minister charged with the responsibility for home affairs;
- (e) the Minister charged with the responsibility for communication and multimedia;
- (f) the Chief Secretary to the Government;
- (g) the Chief of Defence Forces; and
- (h) the Inspector General of Police.

### **Meetings**

7. (1) The Council shall convene its meetings as often as may be necessary but which shall not be less than once in every three months.

(2) The meetings shall be held at the time and place as determined by the Chairman.

### **Procedure at meetings**

8. (1) The Chairman shall preside at all meetings of the Council.

(2) If the Chairman is absent from any meeting of the Council, he may appoint the Deputy Chairman or, in the absence of the Deputy Chairman, a member of the Council, to replace him as the chairman of the meeting.



(3) The quorum of the Council shall be five.

### **Temporary exercise of functions of Chairman**

**9.** (1) The Deputy Chairman shall act as the Chairman for the period when—

- (a) the office of the Chairman is vacant;
- (b) the Chairman is absent from duty or from Malaysia; or
- (c) the Chairman is, for any other reason, unable to carry out his functions.

(2) The Deputy Chairman shall, during the period in which he is carrying out the functions of the Chairman under this section, be deemed to be the Chairman.

### **Council may invite others to meetings**

**10.** The Council may invite any person not being a member of the Council to attend its meetings to advise the Council on any matter under discussion.

### **Procedures**

**11.** Subject to this Act, the Council may determine its own procedure.

### **Council may establish committees**

**12.** (1) The Council may establish any committee as it considers necessary or expedient to assist it in the performance of its functions.

(2) The Council may appoint any person to be a member of any committee established under subsection (1).

(3) The Council may appoint any of its members or any other person to be the chairman of the committee established under this section.

(4) The committee shall be subject to and act in accordance with any direction given by the Council.

(5) The committee shall meet as often as may be necessary at the time and place as the chairman of the committee may determine.

(6) The committee may regulate its own procedure.

(7) The committee may invite any other person to attend any meeting of the committee for the purpose of advising the committee on any matter under discussion.

### **Secretary to the Council**

**13.** (1) The Director General shall be the Secretary to the Council.

(2) The Secretary shall be responsible—

(a) for the overall administration and management of the functions and the day-to-day affairs of the Council; and

(b) for the carrying out of any other duties as directed by the Council.

(3) The Secretary shall, in carrying out his responsibilities, act under the direction of the Council.

### **Fund**

**14.** The Government shall provide sufficient funds for the Council annually to enable the Council to perform its functions under this Act.

PART III

DUTIES OF THE DIRECTOR GENERAL OF NATIONAL SECURITY  
AND GOVERNMENT ENTITIES

**Appointment of the Director General of National Security  
and officers**

**15.** (1) The Prime Minister shall, upon the recommendation of the Chief Secretary to the Government, appoint a person from amongst the public officers to be the Director General of National Security.

(2) There shall be appointed Deputies Director General of National Security and such number of other officers and servants from amongst the public officers as is considered necessary or expedient for the purposes of carrying out and giving effect to the provisions of this Act.

(3) The Director General shall be responsible to the Council in the performance of his duties under this Act.

(4) The Deputies Director General and such other officers and servants referred to in subsection (2) shall be subject to the general direction and supervision of the Director General.

**Duties and powers of the Director General**

**16.** (1) The Director General shall have such duties and powers as may be imposed or conferred upon him by the Council.

(2) Without prejudice to the generality of subsection (1), the Director General shall have the following duties:

- (a) to implement the policies and strategic measures on national security formulated by the Council;
- (b) to coordinate and monitor the implementation of the policies and strategic measures on national security by the Government Entities;

- (c) to advise and make recommendations to the Council on strategic measures concerning national security;
- (d) to collect, evaluate, correlate and coordinate the information and intelligence from all Government Entities, and to disseminate the information and intelligence to the Government Entities as may be essential in the interest of national security;
- (e) to supervise and monitor the implementation of the declaration of a security area and any executive order issued;
- (f) to issue directives to the Government Entities on national security measures; and
- (g) to perform such other duties as directed by the Council.

(3) Notwithstanding subsection (2), the supervisory and monitoring functions conferred on the Director General shall not extend to the operational control of the Security Forces.

### **Duties of Government Entities in relation to information or intelligence**

17. (1) In the interest of national security, the Government Entities shall immediately report to the Council through the Director General any information or intelligence that affects or is likely to affect national security together with the assessment of the credibility of such information or intelligence.

(2) Upon direction by the Council, any Government Entity or any person shall immediately make available any information or intelligence in its or his possession which relates to national security to the Council through the Director General.

(3) For the purposes of this section, the Council may issue a directive to facilitate the sharing of information and intelligence between the Government Entities.

PART IV

DECLARATION OF SECURITY AREA

**Declaration of security area**

**18.** (1) Where the Council advises the Prime Minister that the security in any area in Malaysia is seriously disturbed or threatened by any person, matter or thing which causes or is likely to cause serious harm to the people, or serious harm to the territories, economy, national key infrastructure of Malaysia or any other interest of Malaysia, and requires immediate national response, the Prime Minister may, if he considers it to be necessary in the interest of national security, declare in writing the area as a security area.

(2) A declaration made under subsection (1) shall—

(a) apply only to such security area as specified in the declaration; and

(b) cease to have effect upon the expiration of the period specified in subsection (3) or upon the expiration of the period of renewal specified in subsection (4), or in accordance with subsection (6).

(3) A declaration made under subsection (1) shall, but without prejudice to anything previously done by virtue of the declaration, cease to have effect upon the expiration of six months from the date it comes into force.

(4) Notwithstanding subsection (3), a declaration in force may be renewed by the Prime Minister from time to time for such period, not exceeding six months at a time, as may be specified in the declaration.

(5) A declaration made under subsection (1) and a renewal of declaration made under subsection (4) shall be published in such manner as the Prime Minister thinks necessary for bringing it to the notice of the public.

(6) A declaration made under subsection (1) and the renewal of declaration made under subsection (4) shall be published in the *Gazette* and laid before Parliament as soon as possible after it has been made, and if resolutions are passed by both Houses of

Parliament annulling the declaration, it shall cease to have effect, notwithstanding subsections (3) and (4), but without prejudice to anything previously done by virtue of the declaration.

(7) Notwithstanding anything in subsection (2), (3), (4) or (6), the Prime Minister may, at any time, revoke the declaration.

### **Executive order of the Council**

**19.** (1) Upon a declaration being made under section 18, the Council may issue an executive order to the Director of Operations or such Government Entities as the Council deems necessary in relation to the security area in the interest of national security.

(2) The executive order issued by the Council may include the deployment of any Security Forces or any other relevant Government Entities to the security area.

(3) The Council may amend, replace or revoke the executive order issued under subsection (1).

(4) The executive order shall remain in force until it is revoked by the Council but notwithstanding this it shall cease to have effect if the declaration made under section 18 ceases to have effect or is revoked.

### **Director of Operations**

**20.** (1) The Council shall appoint a Director of Operations to be the person in charge of the operations in a security area.

(2) The Director of Operations shall be responsible to the Council.

### **Duties and powers of Director of Operations**

**21.** (1) The Director of Operations shall have the following duties:

- (a) to prepare strategic plans for the deployment of the Security Forces to the security area and to provide strategic direction to such Security Forces;

- (b) to establish unified commands of the Security Forces in the security area;
- (c) to supervise, control and co-ordinate the deployment of the Security Forces to the security area; and
- (d) to perform such other functions as directed by the Council.

(2) The Director of Operations shall have the power to do all things necessary or expedient for or in connection with the performance of his duties in the security area.

(3) In the interest of national security, the Director of Operations may in relation to a security area—

- (a) establish a committee as he considers necessary or expedient to assist him in carrying out his duties; and
- (b) issue a directive to any Government Entity deployed to the security area.

(4) The committee established under paragraph (3)(a) shall be responsible to the Director of Operations.

(5) The Government Entities which have been issued with the directive referred to in paragraph (3)(b) shall comply with the directive.

## PART V

### SPECIAL POWERS OF THE DIRECTOR OF OPERATIONS AND SECURITY FORCES DEPLOYED TO THE SECURITY AREA

#### **Exclusion and evacuation of persons**

**22.** (1) The Director of Operations may, by order in writing, exclude any person from the security area or any part of the security area for a period as specified in the order.

(2) The Director of Operations may, by order in writing, evacuate any person or group of persons from the security area or any part of the security area, and resettle such person or group of persons to an area as determined by the Director of Operations.

(3) Any person who fails to comply with the order under subsection (1) or (2) commits 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.

### **Curfew**

**23.** (1) The Director of Operations may, in writing, order all persons in the security area or any part of the security area to remain indoors between such hours as may be specified in the order unless he is in possession of a written permit in that behalf issued by the Director of Operations.

(2) No order under this section shall apply to—

- (a) the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri;
- (b) any member of the Security Forces or personnel of other Government Entities when acting in the course of his duty in the security area; or
- (c) any person or class of persons exempted from the order by the Director of Operations.

(3) Any person who fails to comply with the order under subsection (1) commits 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.

### **Power to control movement, road, etc.**

**24.** (1) The Director of Operations may direct any member of the Security Forces in the security area—

- (a) to control the movement of any person or any vehicle, vessel, aircraft or conveyance in and out of the security area, including to direct to leave the security area and to refuse entry into the security area;



(b) to control or prohibit the use of any road or water-way in, or air space above, any security area by any person or any vehicle, vessel, aircraft or conveyance; or

(c) to close any road or water-way in the security area.

(2) If a member of the Security Forces in the security area believes on reasonable grounds that a dangerous thing is in or on any vehicle, vessel, aircraft or conveyance in the security area, the member of the Security Forces may do anything necessary to stop the vehicle, vessel, aircraft or conveyance including erecting barriers or other structures.

(3) If the member of the Security Forces stops the vehicle, vessel, aircraft or conveyance, the member of the Security Forces shall not detain it for longer than is reasonable and necessary to search it and anything found in or on it.

### **Power of arrest**

**25.** Any member of the Security Forces may, without warrant, arrest any person found committing, alleged to have committed or reasonably suspected of having committed any offence under any written laws in the security area.

### **Power to search and seize**

**26.** (1) Any member of the Security Forces may, without warrant and with or without assistance, stop and search any individual, vehicle, vessel, aircraft or conveyance in the security area if he suspects that any article or thing being evidence of the commission of an offence against any written law is likely to be found on the individual or in the vehicle, vessel, aircraft or conveyance, and may seize any article or thing so found.

(2) Any member of the Security Forces may, without warrant, enter and search any premises or place if he suspects that any article or thing being evidence of the commission of an offence against any written law is likely to be found on the premises or place, and may seize any article or thing so found.

**Power to search premises for dangerous things**

**27.** (1) If any member of the Security Forces believes on reasonable grounds that—

- (a) there is a dangerous thing on any premises in the security area; and
- (b) it is necessary as a matter of urgency to make the dangerous thing safe or to prevent it from being used,

the member of the Security Forces may—

- (A) enter into and search the premises;
- (B) seize anything found on the premises in the course of the search that the member of the Security Forces believes on reasonable grounds to be a dangerous thing; and
- (C) search any person who is at or near the premises where the search is being carried out and seize any dangerous thing found on the person whom the search member believes on reasonable grounds to have any dangerous thing in his possession.

(2) If any member of the Security Forces seizes a dangerous thing—

- (a) the member of the Security Forces may take such action as is reasonable and necessary to make the dangerous thing safe or to prevent it from being used; and
- (b) the member of the Security Forces shall prepare a list of the dangerous things seized and sign the list, and shall as soon as practicable serve a copy of the list of the dangerous things seized to the occupier of the premises which have been searched, or to his agent or servant at the premises.

(3) If the member of the Security Forces believes on reasonable grounds that the dangerous thing has been used or otherwise involved in the commission of an offence against any written law, the member of the Security Forces shall, as soon as practicable, hand over the dangerous thing to the officer-in-charge of the nearest police station.

(4) If the member of the Security Forces believes on reasonable grounds that the dangerous thing has not been used or otherwise involved in the commission of an offence against any written law, the member of the Security Forces shall, if it is practicable to do so, return the dangerous thing to the occupier of the premises which have been searched, or to his agent or servant at the premises.

(5) If the member of the Security Forces seizes a dangerous thing from a person and believes on reasonable grounds that the person used the thing in the commission of an offence against any written law, the member of the Security Forces may detain the person for the purpose of placing him in the custody of a police officer at the earliest practicable time.

### **Power to search persons for dangerous things**

**28.** If any member of the Security Forces in the security area believes on reasonable grounds that a person in the area has a dangerous thing in the person's possession, the member of the Security Forces may—

- (a) search the person for such dangerous thing; and
- (b) seize any such dangerous thing found in the search.

### **Power to seize vehicle, vessel, aircraft or conveyance**

**29.** Any member of the Security Forces may seize any vehicle, vessel, aircraft or conveyance in the security area if he suspects that the vehicle, vessel, aircraft or conveyance is likely to be connected with the commission of an offence under any written laws.

### **Power to take temporary possession of land, building or movable property**

**30.** (1) The Director of Operations or any person authorized by the Director of Operations may, if it appears to him to be necessary or expedient to do so in the interest of national security, or for the accommodation of any Security Forces, take temporary

possession of any land, any building or part of a building, or any movable property in any security area and may give such directions as appear to him necessary or expedient in connection with the taking of possession of that land, building or movable property.

(2) Any member of the Security Forces may take such steps and use such force as appears to him to be reasonably necessary for securing compliance with directions given to any person under subsection (1).

(3) While any land, building or movable property is in temporary possession of the Director of Operations or any person authorized by the Director of Operations under this section, the land, building or movable property may, notwithstanding any restriction imposed on the use thereof (whether by any written law or other instrument or otherwise), be used by, or under the authority of, the Director of Operations or any person authorized by the Director of Operations for such purpose, and in such manner, as the Director of Operations or any person authorized by the Director of Operations thinks expedient in the interest of national security or for the accommodation of any Security Forces.

(4) The Director of Operations or any person authorized by the Director of Operations, so far as appears to him to be necessary or expedient in connection with the taking of temporary possession or use of the land, building or movable property in pursuance of subsection (3)—

- (a) may do, or authorize persons using the land, building or movable property to do, in relation to the land, building or movable property, anything any person having an interest in the land, building or movable property would be entitled to do by virtue of that interest; and
- (b) may by order provide for prohibiting or restricting the exercise of rights of way over the land or building, and of other rights relating thereto which are enjoyed by any person, whether by virtue of an interest in the land or building or otherwise.

(5) The owner or occupier of any land, building or movable property shall, if requested by or on behalf of the Director of Operations or any person authorized by the Director of Operations so to do, furnish to such authority or person as may be specified in the request such information in his possession relating to the land, building or movable property, being information which may reasonably be demanded of him in connection with the execution of this section, as may be so specified.

(6) Any person aggrieved by reason of the taking possession of any land, building or movable property under this section may, within fourteen days after possession has been taken, give notice of his objection thereto to an advisory committee appointed under subsection (7).

(7) The advisory committee referred to in subsection (6) shall consist of the persons appointed by the Director General and such committee may make rules for the conduct of its proceedings.

(8) The chairman of an advisory committee to which such notice has been given under subsection (6) by an aggrieved person shall inform the Director of Operations or any person authorized by the Director of Operations who has taken possession of the land, building or movable property.

(9) The advisory committee shall consider the objection made by the aggrieved person under subsection (6) and any grounds which may be put forward against the objection by the Director of Operations or any person authorized by the Director of Operations who has taken possession of the land, building or movable property and shall forward its recommendations to the Director General.

(10) The Director General shall, after considering the recommendations of the advisory committee, give such directions as he thinks fit.

(11) If possession is taken of any land, building or movable property in any security area under subsection (1) or the Director General gives direction under subsection (10) to the Director of Operations or any person authorized by the Director of Operations to take temporary possession of any land, building or movable property in the security area, compensation shall be paid to the aggrieved person.

**Demand for use of resources**

**31.** (1) If it appears to the Director of Operations or any person authorized by the Director of Operations that any resources is required in preserving national security in the security area, the Director of Operations or any person authorized by the Director of Operations may demand that such resources be utilized for such purpose.

(2) Compensation shall be paid to the person whose resources are demanded under this section.

(3) For the purposes of this section, “resources” includes utilities and assets.

**Compensation**

**32.** If possession is taken of any land, building or movable property under section 30, or resources are demanded to be utilized under section 31, compensation in respect of the possession or utilization shall be as assessed by the Director General.

**Power to order destruction of certain unoccupied buildings**

**33.** (1) If in any security area any building or structure is left unoccupied by reason of the operation of any order made under this Part, the Director of Operations or any person authorized by the Director of Operations may if it appears to him—

(a) to be likely that the building or structure will, if left standing, be used by persons who intend, or are about, to act or have recently acted in a manner prejudicial to national security or by any other person who is likely to harbour any such person; and

(b) to be impracticable in any other way to prevent such use, destroy or authorize the destruction of that building or structure.

(2) Compensation shall be paid to any aggrieved person in respect of the destruction of any building or structure under this section if the aggrieved person satisfies the Director General that—

- (a) the building or structure was erected by or with the consent of the person lawfully entitled to the land on which the building or structure was erected; and
- (b) the building or structure was not liable to forfeiture under any written law.

(3) Compensation may be paid to the aggrieved person in relation to any building or structure erected by or with the consent of the person lawfully entitled to the land on which it was erected, notwithstanding that the building or structure is liable to forfeiture under any written law, if the aggrieved person satisfies the Director General that the building or structure was used by persons who intend, or are about, to act or have recently acted, in a manner prejudicial to national security or that those persons were being or had been harboured by his servant or agent, as the case may be, without his knowledge or consent, and that he exercised all due diligence to prevent the building or structure being so used or the harbouring of those persons, as the case may be.

(4) Any compensation payable under this section shall be as assessed by the Director General.

### **Use of reasonable and necessary force**

**34.** (1) Any member of the Security Forces in a security area may use such force against persons and things as is reasonable and necessary in the circumstances to preserve national security.

(2) The use of such force against a person shall not—

- (a) include anything that is likely to cause the death of, or grievous bodily harm to, the person unless the member of the Security Forces believes on reasonable grounds that doing such action is deemed necessary—

- (i) to protect the life of, or to prevent serious injury to, another person, including the member; or
  - (ii) to protect the security area or any part of the security area against a threat of armed attack; or
- (b) subject the person to greater indignity than is reasonable and necessary in the circumstances.

**Power to dispense with inquests, etc.**

**35.** Notwithstanding anything to the contrary in any written law, in the security area—

- (a) a Magistrate or a coroner may dispense with the holding of a death inquiry or inquest on the dead body of any member of the Security Forces on duty; and
- (b) where the Magistrate or coroner responsible for holding a death inquiry or inquest upon the body of any person is satisfied that the person has been killed in the security area as a result of operations undertaken by the Security Forces for the purpose of enforcing any written laws, the Magistrate or coroner, as the case may be, may dispense with the holding of a death inquiry or inquest on the body of the person.

**Arrested persons and things seized to be handed over to police**

**36.** Any person arrested and taken into custody under this Act and any things seized shall be handed over to the officer-in-charge of the nearest police station without unnecessary delay, together with a report of the circumstances occasioning the arrest or seizure.



PART VI

GENERAL

**Obligations of secrecy**

**37.** (1) Except for any of the purposes of this Act or for the purposes of any civil or criminal proceedings under any written law or where otherwise authorized by the Council—

(a) no member of the Council or committee or any person attending any meeting of the Council or committee, whether during or after his tenure of office or employment, shall disclose any information obtained by him in the course of his duties; and

(b) no other person who has by any means access to any information or document relating to the affairs of the Council shall disclose such information or document.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand ringgit or to both.

**Protection against suits and legal proceedings**

**38.** No action, suit, prosecution or any other proceeding shall lie or be brought, instituted or maintained in any court against the Council, any committee, any member of the Council or committee, the Director of Operations, or any member of the Security Forces or personnel of other Government Entities in respect of any act, neglect or default done or omitted by it or him in good faith, in such capacity.

**Public servant**

**39.** Every member of the Council or committee, the Director of Operations, or every member of the Security Forces or personnel of other Government Entities while discharging his duty or performing his functions under this Act in such capacity shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

**Public Authorities Protection Act 1948**

**40.** The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Council, any committee, any member of the Council or committee, the Director of Operations, or any member of the Security Forces or personnel of other Government Entities in respect of any act or thing done or committed by it or him in such capacity.

**Prosecution**

**41.** No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the Public Prosecutor.

**Regulations**

**42.** (1) The Prime Minister may make regulations for the purposes of carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Prime Minister may make regulations—

- (a) to control the movement of persons, vehicles, vessels, aircrafts and conveyance in any security area;
- (b) to prescribe any prohibited action and activities during the period of the declaration made under section 18;
- (c) to prescribe the procedures for the taking possession of land, buildings and other movable property, and the procedures for demand for use of resources in any security area; and
- (d) to prescribe the procedures for the destruction of buildings and other structures in any security area.

(3) The regulations made under this Act may provide for any act or omission in contravention of the regulations to be an offence and may provide for penalties of a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding five years or both.

PART VII

SAVINGS

**Existing National Security Council**

**43.** (1) Any act done or action taken prior to the commencement of this Act by the existing National Security Council established by the Federal Government shall be deemed to have been done or taken under this Act and may accordingly be continued by the Council.

(2) Any directive, order or decision made by the existing National Security Council and in force immediately before the commencement of this Act shall, upon the commencement of this Act, so far as it is not inconsistent with this Act continue to remain in force until it is revoked by the Council.

**Existing committees**

**44.** All committees established under the existing National Security Council and in force immediately before the commencement of this Act shall, upon the commencement of this Act, continue to remain in force until dissolved by the Council.

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EXPLANATORY STATEMENT

The proposed National Security Council Act 2015 (“the proposed Act”) seeks to establish the National Security Council with powers, among others, to control and coordinate, and to issue directives to, the Government Entities on matters concerning national security. The proposed Act also empowers the Prime Minister, upon advice by the Council, to declare certain area in Malaysia as a security area. Special powers are given to the Security Forces in the security area.

PART I

2. Part I deals with preliminary matters.

3. *Clause 1* contains the short title of the proposed Act and empowers the Prime Minister to appoint the date for the coming into operation of the proposed Act.

4. *Clause 2* contains the definitions of certain words used in the proposed Act.

## PART II

5. Part II contains provisions relating to the establishment of the National Security Council, and its functions and powers.

6. *Clause 3* seeks to provide for the establishment of the Council.

7. *Clause 4* seeks to provide for the functions of the Council.

8. *Clause 5* seeks to provide for the powers of the Council.

9. *Clause 6* contains provisions on the membership of the Council.

10. *Clause 7* seeks to provide for the meetings of the Council which shall not be less than once in every three months.

11. *Clause 8* seeks to provide for the procedure at the Council's meetings.

12. *Clause 9* seeks to empower the Deputy Chairman to temporarily exercise the functions of the Chairman where the office of the Chairman is vacant or when the Chairman is absent from duty or unable to carry out his functions.

13. *Clause 10* seeks to empower the Council to invite any person to attend its meetings to advise the Council on any matter under discussion.

14. *Clause 11* seeks to empower the Council to determine its own procedure.

15. *Clause 12* seeks to empower the Council to establish committees to assist it in the performance of its functions.

16. *Clause 13* seeks to provide for the duties of the Secretary to the Council who shall be the Director General of National Security.

17. *Clause 14* seeks to require the Government to provide sufficient funds for the Council annually to enable the Council to perform its functions.

## PART III

18. Part III provides for the appointment and duties of the Director General of National Security and his officers, and duties of the Government Entities in relation to information and intelligence.

19. *Clause 15* seeks to empower the Prime Minister, upon the recommendation of the Chief Secretary to the Government, to appoint the Director General of National Security from amongst the public officers. Deputies Director General of National Security and such number of other officers and servants shall also be appointed from amongst the public officers as is necessary or expedient for

the purposes of carrying out and giving effect to the provisions of the proposed Act. This *clause* also states that the Director General shall be responsible to the Council in the performance of his duties under the proposed Act.

20. *Clause 16* seeks to provide for the duties and powers of the Director General.

21. *Clause 17* seeks to impose a duty on the Government Entities to immediately report to the Council through the Director General any information or intelligence that affects or likely to affect national security together with the assessment of the credibility of such information or intelligence. This *clause* also seeks to impose a duty on the Government Entities or any person, upon direction by the Council, to immediately make available any information or intelligence in its or his possession which relates to national security to the Council through the Director General.

#### PART IV

22. Part IV seeks to provide for the declaration of security area, and the appointment of the Director of Operations and his duties and powers.

23. *Clause 18* seeks to provide that where the Council advises the Prime Minister that the security in any area in Malaysia is seriously disturbed or threatened by any person, matter or thing which causes or is likely to cause serious harm to the people, or serious harm to the territories, economy, national key infrastructure of Malaysia or any other interest of Malaysia, and requires immediate national response, the Prime Minister may, if he considers it to be necessary for the purpose of national security, declare in writing the area as a security area. This *clause* also provides that the declaration is only valid for six months subject to renewal being made by the Prime Minister for such period not exceeding six months at a time. The declaration and the renewal of declaration shall be published in any manner as the Prime Minister thinks necessary and shall also be published in the *Gazette* and laid before Parliament as soon as possible after it has been made. If resolutions are passed by both Houses of Parliament annulling the declaration, it shall cease to have effect. The Prime Minister is also empowered to revoke the declaration at any time.

24. *Clause 19* seeks to empower the Council to issue an executive order to the Director of Operations or such Government Entities as the Council deems necessary in the security area for the purposes of national security.

25. *Clause 20* seeks to empower the Council to appoint a Director of Operations to be the person in charge of the operations in a security area. The Director of Operations shall be responsible to the Council.

26. *Clause 21* seeks to provide for the duties and powers of the Director of Operations.

## PART V

27. Part V deals with the special powers of the Director of Operations and the Security Forces deployed to the security area.

28. *Clause 22* seeks to empower the Director of Operations to exclude, by order in writing, any person from the security area or any part of the security area for a certain period as specified in the order. The Director of Operations may also order any person or group of persons to be evacuated from the security area or any part of the security area, and resettled to an area as determined by the Director of Operations. Any person who fails to comply with this exclusion or evacuation order commits an offence.

29. *Clause 23* seeks to empower the Director of Operations to issue a curfew order in the security area. Any person who fails to comply with this curfew order commits an offence.

30. *Clause 24* seeks to empower the Director of Operations to direct any member of the Security Forces to control the movement of any person or any vehicle, vessel, aircraft or conveyance in and out of the security area, to control or prohibit the use of any road or water-way in, or air space above, any security area, and to close any road or water-way in the security area. The Security Forces are also given the power to stop and search any vehicle, vessel, aircraft or conveyance in the security area.

31. *Clause 25* seeks to provide the members of the Security Forces with the powers to arrest, without warrant, any person found committing, alleged to have committed or reasonably suspected of having committed any offence under any written laws in the security area.

32. *Clause 26* seeks to provide the members of the Security Forces with the powers to stop and search, without warrant, any individual, vehicle, vessel, aircraft or conveyance in the security area if the members of the Security Forces suspect that any article or thing being evidence of the commission of an offence is likely to be found, and to seize any article or thing so found. This *clause* also provides the power to enter and search, without warrant, any premises or place if the members of the Security Forces suspect that any article or thing being evidence of the commission of any offence is likely to be found on the premises or place, and to seize any article or thing so found.

33. *Clause 27* seeks to deal with the power of any member of the Security Forces to enter into and search the premises and to seize anything found if he believes on reasonable grounds that there is a dangerous thing on any premises in the security area and it is necessary as a matter of urgency to make the dangerous thing safe or prevent it from being used.

34. *Clause 28* seeks to provide the members of the Security Forces with the power to search any person in the security area for dangerous things in the person's possession.

35. *Clause 29* seeks to provide for the powers of the members of the Security Forces to seize any vehicle, vessel, aircraft or conveyance in the security area if the members suspect that the vehicle, vessel, aircraft or conveyance is likely to be connected with the commission of an offence.

36. *Clause 30* seeks to deal with the power of the Director of Operations or any person authorized by the Director of Operations to take temporary possession of any land, building or movable property in any security area in the interest of national security, or for the accommodation of the Security Forces. Any person aggrieved by reason of the taking possession of the land, building or movable property may, within fourteen days after possession has been taken, give notice of his objection to an advisory committee. The advisory committee shall consider the objection made by the aggrieved person and shall forward its recommendations to the Director General. The Director General shall, after considering the recommendations of the advisory committee, give such directions as he thinks fit. If any land, building or movable property in any security area is taken possession under the proposed section 30, compensation shall be paid to the aggrieved person.

37. *Clause 31* seeks to empower the Director of Operations or any person authorized by him to demand any resources to be utilized in preserving national security in the security area and compensation shall be paid to the person whose resources are demanded under the proposed section 31.

38. *Clause 32* seeks to provide that where temporary possession is taken of any land, building or movable property under the proposed section 30, or resources are demanded to be utilized under the proposed section 31, compensation in respect of the possession or utilization shall be as assessed by the Director General.

39. *Clause 33* seeks to empower the Director of Operations or any person authorized by him to destroy or authorize the destruction of any building or structure left unoccupied in a security area if the building or structure is likely to be used by any person who intends, or is about, to act or has recently acted in a manner prejudicial to national security or by any other person who is likely to harbour any such person, and if it is impracticable in any other way to prevent such use. Compensation shall be paid in respect of the destruction of any building or structure if the aggrieved person satisfies the Director General on certain requirements. Compensation payable under this *clause* shall be as assessed by the Director General.

40. *Clause 34* seeks to allow any member of the Security Forces in a security area to use such force against persons and things as is reasonable and necessary in the circumstances to preserve national security. The member of the Security Forces is prohibited to use such force which is likely to cause the death of, or grievous bodily harm to, the person unless the member of the Security Forces believes on reasonable grounds that doing such action is deemed necessary to protect the life of, or to prevent serious injury to, another person (including the member), and to protect the security area or any part of the security area against a threat of armed attack. The use of force against a person which subjects the person to greater indignity than is reasonable and necessary in the circumstances is also prohibited.

41. *Clause 35* deals with the power of a Magistrate or coroner to dispense with death inquiry or inquests on the dead body of any member of the Security Forces on duty in a security area or on the body of any person if the Magistrate or coroner is satisfied that the person has been killed in the security area as a result of operations undertaken by the Security Forces for the purpose of enforcing any written laws.

42. *Clause 36* seeks to require that any person arrested and taken into custody under the proposed Act and any things seized shall be handed over to the officer-in-charge of the nearest police station without unnecessary delay together with a report of the circumstances occasioning the arrest or seizure.

#### PART VI

43. Part VI deals with the general provisions.

44. *Clause 37* seeks to deal with the provision relating to the duty to maintain secrecy.

45. *Clause 38* seeks to provide for the protection of the Council, any committee, any member of the Council or committee, the Director of Operations, or any member of the Security Forces or personnel of other Government Entities in respect of any act, neglect, default or omission done or omitted by it or him in good faith in such capacity.

46. *Clause 39* states that the members of the Council or committee, the Director of Operations, or the members of the Security Forces or personnel of other Government Entities are deemed to be public servants within the meaning of the Penal Code [*Act 574*].

47. *Clause 40* seeks to confer the protection afforded in the Public Authorities Protection Act 1948 [*Act 198*] against any action, suit, prosecution or proceedings to the Council, the committee, the members of the Council or committee, the Director of Operations, or the members of the Security Forces or personnel of other Government Entities.

48. *Clause 41* seeks to provide for the institution of prosecution of offences under the proposed Act.

49. *Clause 42* seeks to empower the Prime Minister to make regulations under the proposed Act.

#### PART VII

50. *Clauses 43* and *44* seek to provide for the savings provisions in relation to the existing National Security Council established by the Federal Government and the existing committees under the existing National Security Council.



*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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