

A BILL

i n t i t u l e d

An Act to amend the Sexual Offences against Children Act 2017.

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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 Sexual Offences against Children (Amendment) Act 2023.

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

Amendment of Part II

2. The Sexual Offences against Children Act 2017 [*Act 792*], which is referred to as the “principal Act” in this Act, is amended in the heading of Part II by substituting for the words “CHILD PORNOGRAPHY” the words “CHILD SEXUAL ABUSE MATERIAL”.

Amendment of section 4**3. Section 4 of the principal Act is amended—**

- (a) by substituting for the shoulder note the following shoulder note:

“Child sexual abuse material”; and

- (b) in paragraph (a), by substituting for the words ‘ “child pornography” ’ the words ‘ “child sexual abuse material” ’.

Amendment of section 5**4. Section 5 of the principal Act is amended—**

- (a) in the shoulder note, by substituting for the words **“child pornography”** the words **“child sexual abuse material”**;

- (b) by substituting for the words “child pornography” the words “child sexual abuse material”; and

- (c) in the illustrations—

- (i) in paragraph (a)—

- (A) by substituting for the words “Z offers A to act in child pornography and A agrees to do so. A acts in that child pornography” the words “Z offers A to act in a film which has a scene where A is engaged in a sexually explicit conduct with a child and A agrees to do so. A acts in that sexually explicit scene”; and

- (B) by substituting for the words “production of child pornography” the words “production of child sexual abuse material”; and

(ii) in paragraph (b)—

- (A) by substituting for the words “director of child pornography” the words “director of child sexual abuse material”;
- (B) by substituting for the words “A’s direction of child pornography” the words “A’s direction of child sexual abuse material”; and
- (C) by substituting for the words “the making of child pornography” the words “the making of child sexual abuse material”.

Amendment of section 6

5. Section 6 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**child pornography**” the words “**child sexual abuse material**”; and
- (b) by substituting for the words “child pornography” the words “child sexual abuse material”.

Amendment of section 7

6. Section 7 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**child pornography**” the words “**child sexual abuse material**”;
- (b) by substituting for the words “child pornography” the words “child sexual abuse material”;
- (c) in the explanation, by substituting for the words “child pornography” wherever appearing the words “child sexual abuse material”; and

(d) in the illustrations—

(i) in paragraph (a), by substituting for the words “child pornography” wherever appearing the words “child sexual abuse material”; and

(ii) in paragraph (b)—

(A) by substituting for the words “for Z to act in child pornography” the words “for Z to be used in the production of child sexual abuse material”;

(B) by substituting for the words “Z acts in child pornography that B produces” the words “Z was used in B’s production of child sexual abuse material”;

(C) by substituting for the words “production of child pornography” wherever appearing the words “production of child sexual abuse material”; and

(D) by substituting for the words “producing child pornography” the words “producing child sexual abuse material”.

Amendment of section 8

7. Section 8 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**child pornography**” the words “**child sexual abuse material**”;

(b) by substituting for the words “child pornography” wherever appearing the words “child sexual abuse material”; and

(c) in the illustrations, by substituting for the words “child pornography” wherever appearing the words “child sexual abuse material”.

Amendment of section 9

8. Section 9 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**child pornography**” the words “**child sexual abuse material**”; and
- (b) by substituting for the words “child pornography” the words “child sexual abuse material”.

Amendment of section 10

9. Section 10 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**child pornography**” the words “**child sexual abuse material**”;
- (b) by substituting for the words “child pornography” the words “child sexual abuse material”;
- (c) in the explanation, by substituting for the words “child pornography” wherever appearing the words “child sexual abuse material”; and
- (d) in the illustrations, by substituting for the words “child pornography” wherever appearing the words “child sexual abuse material”.

Amendment of section 12

10. Section 12 of the principal Act is amended—

- (a) by substituting for the words “14 or 15” wherever appearing the words “14, 15, 15A or 15B”; and
- (b) in paragraph (a) of the illustrations, by substituting for the words “child pornography” the words “child sexual abuse material”.

Amendment of section 13

11. Section 13 of the principal Act is amended—

- (a) by substituting for the words “14 or 15” wherever appearing the words “14, 15, 15A or 15B”; and
- (b) in paragraph (a) of the illustrations, by substituting for the words “child pornography” the words “child sexual abuse material”.

Amendment of Part IV

12. The principal Act is amended in the heading of Part IV by inserting after the words “SEXUAL ASSAULT” the words “, SEXUAL PERFORMANCE AND SEXUAL EXTORTION”.

Amendment of section 15

13. Section 15 of the principal Act is amended by deleting paragraph (b).

New sections 15A and 15B

14. The principal Act is amended by inserting after section 15 the following sections:

“Sexual performance by a child

15A. (1) Any person who—

- (a) offers, procures or makes available a child for a sexual performance;
- (b) makes or causes a child to engage in a sexual performance;
- (c) takes part, whether as a participant or viewer, in a sexual performance by a child;

- (d) advertises, promotes or facilitates a sexual performance by a child; or
- (e) receives any benefit, including monetary benefit, from a sexual performance by a child,

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

(2) For the purposes of this section, “sexual performance” means any sexually explicit conduct performed before one or more viewers, including one which is recorded or transmitted in whole or in part, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or the combination of any means.

ILLUSTRATIONS

- (a) A asks Z, a child, to perform a lap dance on B while being recorded by A. A then posts the recorded performance of the dance on his social media account. A is guilty of an offence under this section by causing a child to engage in a sexual performance. B is guilty of an offence under this section by taking part as a participant in a sexual performance by a child.
- (b) A meets B on an online dating application and offers B money to arrange a sex show with B’s children. B has her two children stripped and engaged in a simulated sexually explicit conduct while being livestreamed *via* a video call with A. A is guilty of an offence under this section by causing a child to engage in a sexual performance and by taking part in a sexual performance by a child. B is guilty of an offence under this section by making available a child for a sexual performance and facilitating a sexual performance by a child.

Sexual extortion of a child

15B. Any person who—

- (a) threatens a child to engage in an activity that is sexual in nature;

- (b) threatens a child to share any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means, of a body or any part of the body of a child exposing a child's genital, buttock, breast, pubic area or anus or of a child engaged in an activity that is sexual in nature; or
- (c) threatens to use or distribute any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means, of a body or any part of the body of a child exposing a child's genital, buttock, breast, pubic area or anus or of a child engaged in an activity that is sexual in nature,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years.

Explanation—The act of threatening under this section may involve the use of inducement, coercion or force.

ILLUSTRATIONS

- (a) Z, a child, voluntarily shares a topless photo of herself with A. A then threatens Z to post the photo on A's social media account unless Z sends A a full nude photo of Z. A is guilty of an offence under this section.
- (b) A offers Z, a child, money to strip for A during a video call. A records the video call and then threatens Z that A will send the recorded video to Z's parents unless Z agrees to have sexual intercourse with A. A is guilty of an offence under this section."

New sections 26A and 26B

15. The principal Act is amended by inserting after section 26 the following sections:

“Order for payment of compensation to a child victim

26A. (1) The court before which a person is convicted of any offence under this Act, or any offence specified in the Schedule where the victim is a child, may make an order against the convicted person for the payment by him of a sum to be fixed by the court as it deems just and reasonable as compensation to a child victim in respect of the injury suffered by the child victim as a result of the offence committed.

(2) Where the person convicted of an offence referred to in subsection (1) is a child, the court shall make an order for the payment of the compensation to be made by the child’s parent or guardian.

(3) Where the child victim is deceased, the court shall make an order for the payment of compensation to be made to a representative of the deceased child victim.

(4) The court shall, in making an order under subsection (1), take into consideration any factor which the court thinks fit including—

- (a) the nature and seriousness of the offence committed;
- (b) the physical or emotional injury suffered by the child victim;
- (c) the expenses incurred by the child victim, including expenses for treatment, rehabilitation or counselling of the child victim;
- (d) the damage to, or loss of, property suffered by the child victim; and
- (e) the ability of the convicted person to pay or where the convicted person is a child, the ability of the parent or guardian of the child to pay.

(5) For the purpose of making an order under subsection (1), the court may hold an inquiry as it thinks fit.

(6) Where the court makes an order for payment of costs of prosecution under section 426 of the Criminal Procedure Code against the convicted person in respect of any offence under this Act, or any offence specified in the Schedule where the victim is a child, an order for payment of compensation under this section shall have priority over an order for the payment of costs of prosecution.

(7) To the extent of the amount which has been paid to the child victim, or to the representatives of the child victim, under an order for payment of compensation, any claim of such child victim or representatives of the child victim for any injury, damage or loss suffered by reason of the offence shall be deemed to have been satisfied, but the order for payment shall not prejudice any right to a civil remedy by the child victim or by the representatives of the child victim against the convicted person for the damages beyond the amount of compensation paid under the order.

(8) Every order made by the court under this section shall be appealable to the High Court.

Provisions as to payment of compensation

26B. (1) Where the person convicted of any offence under this Act, or any offence specified in the Schedule where the victim is a child is ordered to pay any sum as compensation under section 26A, the court making the order may do all or any of the following:

- (a) allow time for the payment of that sum;
- (b) direct payment of that sum by installments;
- (c) issue a warrant for the levy of that sum by distress and sale of any property belonging to the convicted person;

- (d) direct that in default of payment or of a sufficient distress to satisfy such sum, the convicted person shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of sentence:

Provided that where time is not allowed for the payment of that sum, an order for imprisonment in default of payment shall not be issued in the first instance unless it appears to the court that the convicted person has no property or insufficient property to satisfy the sum payable or that the levy by way of distress will be more injurious to him or his family than imprisonment;

- (e) direct that the convicted person be searched and that any money found on him when so searched or which in the event of his being committed to prison, may be found on him when taken to prison shall be applied towards the payment of that sum, the surplus, if any, being returned to him:

Provided that such money shall not be so applied if the court is satisfied that the money does not belong to the convicted person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment.

(2) The term for which the court directs the convicted person to be imprisoned in default of payment or of a sufficient distress to satisfy any sum shall not exceed the following scale:

When the money to be paid does not exceed RM500	One month
When the money to be paid exceeds RM500 but does not exceed RM1000	Two months
In any other case	Six months

(3) The imprisonment which the court imposes under this section shall terminate whenever the money is paid or levied by process of law.

(4) If before the expiration of the time of such imprisonment such a proportion of the money is paid or levied that the time of imprisonment suffered is not less than proportional to the part of the money still unpaid, the imprisonment shall terminate.

(5) A warrant for the levy of any such sum may be executed at any place in Malaysia but if it is required to be executed outside the State where it is issued, the warrant shall be endorsed for that purpose by a Judge or a First Class Magistrate having jurisdiction in the State where it is to be executed.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Sexual Offences against Children Act 2017 (“Act 792”).

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clauses 2 to 9* seek to amend the provisions in Part II of Act 792 by substituting for the term “child pornography” wherever appearing the term “child sexual abuse material”. Whilst the term “child pornography” is still widely used by the public, in line with the recent global movement and international consensus, the term has been replaced with the term “child sexual abuse material” as the term “child sexual abuse material” accurately describes the criminal nature of such material to which children will never give their consent.

4. *Clauses 10 and 11* seek to amend sections 12 and 13 of Act 792 respectively consequential to the introduction of new sections 15A and 15B into Act 792 on offences relating to sexual performance by a child and sexual extortion of a child. The amendments to sections 12 and 13 of Act 792 are also consequential to the substitution of the term “child pornography” with the term “child sexual abuse material”.

5. *Clause 13* seeks to delete paragraph 15(1)(b) of Act 792 as the offence under that paragraph will be dealt with under the new section 15B on offences relating to sexual extortion of a child.

6. *Clause 14* seeks to introduce new sections 15A and 15B into Act 792. The proposed new section 15A provides for the offences relating to sexual performance by a child whilst the proposed new section 15B provides for the offences relating to sexual extortion of a child.

7. *Clause 15* seeks to introduce new sections 26A and 26B into Act 792. The proposed new section 26A empowers the court to make an order for payment of compensation to a child victim of any offence under Act 792, or any offence specified in the Schedule whilst the proposed new section 26B provides for the payment of the compensation. Currently, provision relating to an order for payment of compensation to a victim of an offence and for the payment of the compensation have been provided in sections 426 and 432 of the Criminal Procedure Code respectively. However, it is the intention of the Government to introduce a specific provision for compensation under Act 792 to better enhance the protection of child victims of sexual offences.

8. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

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

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