

PREVENTION OF TERRORISM BILL 2015

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A BILL

i n t i t u l e d

An Act to provide for the prevention of the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country and for the control of persons engaged in such acts and for related matters.

[]

WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia which is prejudicial to the security of Malaysia or any part of Malaysia;

AND WHEREAS Parliament considers it necessary to stop and prevent such action;

NOW, THEREFORE, pursuant to Article 149 of the Federal Constitution, **IT IS ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Prevention of Terrorism Act 2015.

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

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“district, mukim, town or village” means the land included in any district, mukim, town or village under the provisions of any law for the time being in force relating to land;

“Register” means the register kept by the Registrar under section 22;

“Board” means the Prevention of Terrorism Board established under section 8;

“Minister” means the Minister charged with the responsibility for home affairs;

“registered person” means a person whose name is entered in the Register;

“listed terrorist organization” means any specified entity declared under sections 66B and 66C of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [*Act 613*];

“Inquiry Officer” means an officer appointed by the Minister under section 9;

“Registrar” means the Registrar of Criminals appointed under section 3 of the Registration of Criminals and Undesirable Persons Act 1969 [*Act 7*];

“terrorist act” has the same meaning assigned to it by the Penal Code [*Act 574*].

(2) References to the supervision of the police shall be construed as references to the obligations imposed upon persons subject to police supervision under section 296 of the Criminal Procedure Code [*Act 593*].

PART II

POWERS OF ARREST AND REMAND

Arrest and production before Magistrate

3. (1) A police officer may without a warrant arrest any person if he has reason to believe that grounds exist which would justify the holding of an inquiry into the case of that person under this Act.

(2) When a person is arrested under subsection (1), the case shall be referred by the police officer to the Public Prosecutor for direction not later than seven days from the date of arrest.

(3) Any person arrested under subsection (1) shall, unless sooner released, be taken without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) before a Magistrate.

(4) The police officer making an investigation pertaining to a person arrested under this section shall cause a copy of the complete report of the investigation to be submitted to—

- (a) an Inquiry Officer; and
- (b) the Board,

within such period as may be prescribed by the Minister by regulations made under this Act.

Procedure before Magistrate

4. (1) Whenever any person is taken before a Magistrate under subsection 3(3), the Magistrate shall—

- (a) on production of a statement in writing signed by a police officer not below the rank of Inspector stating that there are grounds for believing that the name of the person who is engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country should be entered in the Register, remand the person in police custody for a period of twenty-one days; or
- (b) if no such statement is produced, and there are no other grounds on which the person is lawfully detained, direct his release.

(2) Any person remanded under paragraph (1)(a) shall, unless sooner released, on or before the expiry of the period for which he is remanded, be taken before a Magistrate, who shall—

(a) on production of—

- (i) a statement in writing signed by the Public Prosecutor stating that in his opinion sufficient evidence exists to justify the holding of an inquiry under section 10; and
- (ii) a statement in writing signed by a police officer not below the rank of Assistant Superintendent stating that it is intended to hold an inquiry into the case of that person under section 10,

order the person to be remanded in custody for a period of thirty-eight days; or

(b) if no such statements are produced, and there are no other grounds on which the person is lawfully detained, direct his release.

(3) No person shall be arrested and detained under this section solely for his political belief or political activity.

(4) Except as provided in subsection 10(6), the provisions of section 28A of the Criminal Procedure Code shall apply to any person remanded under section 4.

(5) The Public Prosecutor may appear in any application made under this section.

(6) For the purpose of this section, “political belief or political activity” means engaging in a lawful activity through—

- (a) the expression of an opinion or the pursuit of a course of action made according to the tenets of a political party that is at the relevant time registered under the Societies Act 1966 [Act 335] as evidenced by—
 - (i) membership of or contribution to that party; or
 - (ii) open and active participation in the affairs of that party;

- (b) the expression of an opinion directed towards any government in Malaysia; or
- (c) the pursuit of a course of action directed towards any government in Malaysia.

Person in custody to be brought before Inquiry Officer

5. Every person remanded in custody under section 4 shall, if not sooner released, as soon as possible be brought before an Inquiry Officer.

Release of person remanded in custody

6. (1) Any person remanded in custody under section 4 may at any time be taken before a Sessions Court Judge who, if there are no other grounds on which the person is lawfully detained—

- (a) shall direct his release if there is produced to the Sessions Court Judge a statement in writing signed by a police officer not below the rank of Assistant Superintendent stating that it is not intended to continue with an inquiry into the case of that person under section 10; or
- (b) in any other case, on the application of a police officer, may direct his release subject to—
 - (i) the execution by the person of a bond, with or without sureties, for his due appearance at such place or places and at such time or times and within such period not exceeding fifty-nine days as the Sessions Court Judge may direct; or
 - (ii) the supervision of the police for such period not exceeding fifty-nine days as the Sessions Court Judge may direct.

(2) If a person is released under paragraph (1)(b), an electronic monitoring device shall be attached on the person in accordance with subsections (3) and (4).

(3) If the police officer intends to release the person under paragraph (1)(b) and attach an electronic monitoring device on the person upon his release, he shall submit a report to the Public Prosecutor before the application under paragraph (1)(b) is made.

(4) Upon receipt of the report under subsection (3), the Public Prosecutor may apply to the Sessions Court Judge for the person to be attached with an electronic monitoring device in accordance with section 7 for the period of his release as allowed under paragraph (1)(b).

Special procedures relating to electronic monitoring device

7. (1) Upon application by the Public Prosecutor under section 6, the Sessions Court Judge shall order the person to be attached with an electronic monitoring device for a period as the Sessions Court Judge may determine but which shall not exceed the period of his release as allowed under paragraph 6(1)(b).

(2) The Sessions Court Judge shall explain the operation of the electronic monitoring device and the terms and conditions of the electronic monitoring device to the person.

(3) The person shall sign a form as specified in the Schedule and deposit the form with the Sessions Court Judge.

(4) The person shall be attached with an electronic monitoring device by a police officer.

(5) The person shall comply with all the terms and conditions of the electronic monitoring device and shall report to the nearest police station at such time as specified in the form.

(6) Any person who fails to comply with the terms and conditions under subsection (5) commits an offence and shall be punished with imprisonment for a term not exceeding three years.

(7) Any person who tampers with, or destroys, the electronic monitoring device commits an offence and shall be punished with imprisonment for a term not exceeding three years and such person shall be liable to pay for any damage to the electronic monitoring device arising from his action.

(8) Upon expiry of the period referred to in subsection (1), the person shall report to the nearest police station for removal of the electronic monitoring device.

PART III

INQUIRIES

Prevention of Terrorism Board

8. (1) A Prevention of Terrorism Board is established which shall consist of the following members to be appointed by the Yang di-Pertuan Agong:

- (a) a Chairman, who shall be a legally qualified person with at least fifteen years experience in the legal field;
- (b) a Deputy Chairman; and
- (c) not less than three and not more than six other members.

(2) Every member of the Board shall, unless he sooner resigns, hold office for a period not exceeding three years and is eligible for re-appointment once for another period of three years.

(3) Every member of the Board may at any time resign his office by giving notice in writing to the Yang di-Pertuan Agong.

(4) The appointment of any member of the Board may at any time be revoked by the Yang di-Pertuan Agong.

(5) The quorum for any sitting of the Board shall be three members.

(6) Subject to this Act, the Board shall determine its own procedure.

(7) Every member of the Board shall be deemed to be a public servant within the meaning of the Penal Code.

Appointment of Inquiry Officers

9. (1) The Minister may in writing appoint any person by name or office, and either generally or for any particular case, to be an Inquiry Officer for the purposes of this Act.

(2) No police officer shall be appointed as an Inquiry Officer.

Duties and powers of Inquiry Officers

10. (1) When any person is brought before an Inquiry Officer under section 5, the Inquiry Officer shall inquire and report in writing to the Board whether there are reasonable grounds for believing that the person is engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country.

(2) An inquiry held under subsection (1) shall be held in such manner and in accordance with such procedure as the Board may direct.

(3) An Inquiry Officer may, for the purpose of any inquiry under this Act—

- (a) procure and receive all such evidence, in any form and whether the evidence be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;
- (b) summon and examine witnesses on oath or affirmation, and may for those purposes administer any oath or affirmation;
- (c) require the production of any document or other thing in his opinion relevant to the inquiry;
- (d) if he considers it necessary in the public interest or to protect a witness or his family or associates, receive evidence in the absence of the person who is the subject of the inquiry;
- (e) give any direction as may be necessary.

(4) For the purposes of paragraph (3)(d), where any evidence is received in the absence of the person who is the subject of the inquiry, the Inquiry Officer shall communicate to the person the substance of the evidence, so far as he may consider it compatible with the public interest or the need to protect a witness or his family or associates so to do, and shall in every such case include in any report made under paragraph 12(2)(a) a statement of the circumstances in which the evidence was received.

(5) Any person summoned as a witness under subsection (3) who without reasonable excuse fails to attend at the time and place mentioned in the summons or who, having attended, refuses to answer any question that may lawfully be put to him or to produce any document or thing which is in his power to produce, commits an offence and shall be punished with imprisonment for a term not exceeding six months or to a fine not exceeding two thousand ringgit or to both.

(6) Neither the person who is the subject of the inquiry nor a witness at an inquiry shall be represented by an advocate and solicitor at the inquiry except when his own evidence is being taken and recorded by the Inquiry Officer.

(7) The Public Prosecutor may appear at an inquiry to assist the Inquiry Officer.

(8) The Minister may by regulations prescribe the allowances to be paid to witnesses summoned under subsection (3).

Access by Inquiry Officer to detainees or prisoners

11. (1) Notwithstanding any other written law, an Inquiry Officer conducting an inquiry under this Act shall be allowed to have access to any person whom he has reason to believe to be connected to or has any evidence of any offence who is—

(a) being detained under any other written law; or

(b) under confinement in prison, whether convicted or not.

(2) Nothing in this section shall authorize the attendance of the subject of the inquiry or his advocate and solicitor or representative, if any, at the place of detention or prison.

Report of Inquiry Officer

12. (1) An Inquiry Officer shall submit his report in writing to the Board within such period as may be prescribed by the Minister by regulations made under this Act.

(2) Upon receipt of the report under subsection (1)—

- (a) where the Board concurs with the Inquiry Officer that there are reasonable grounds for believing that the person who was the subject of the inquiry is engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country, the Board shall proceed under section 13;
- (b) where the Board concurs with the Inquiry Officer that there are no reasonable grounds for believing that the person who was the subject of the inquiry is engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country, the Board shall forthwith direct any person having the custody of that person, within twenty-four hours from the receipt of the direction, to produce the person before a Sessions Court Judge, who shall thereupon discharge the order of remand made under section 4 and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release.

PART IV**DETENTION AND RESTRICTION ORDERS****Power to order detention and restriction**

13. (1) Whenever the Board, after considering—

- (a) the complete report of the investigation submitted under subsection 3(4); and
- (b) the report of the Inquiry Officer submitted under section 12,

is satisfied with respect to any person that such person has been or is engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country, the Board may, if it is satisfied that it is necessary in the interest of the security of Malaysia or any part of Malaysia that such person be detained, by order (“detention order”) direct that such person be detained for a period not exceeding two years.

(2) Every person detained in pursuance of a detention order shall be detained in such place (“place of detention”) as the Board may direct and in accordance with any instructions issued by the Board and any regulations made under section 34.

(3) If the Board is satisfied that for the purpose mentioned in subsection (1) it is necessary that control and supervision should be exercised over any person or that restrictions and conditions should be imposed upon that person in respect of his activities, freedom of movement or places of residence or employment, but for that purpose it is unnecessary to detain him, the Board may by order (“restriction order”) direct that the person named in the order (“restricted person”) shall be subject to the supervision of the police for any period not exceeding five years at a time and may impose all or any of the following restrictions and conditions:

- (a) he shall be required to reside within the limits of any State, district, mukim, town or village specified in the order;
- (b) he shall not be permitted to transfer his residence to any other State, district, mukim, town or village, as the case may be, without the written authority of the Board;
- (c) except so far as may be otherwise provided by the order, he shall not leave the State, district, mukim, town or village within which he resides without the written authority of the Chief Police Officer of the State concerned;
- (d) he shall at all times keep the Officer in Charge of the Police District in which he resides notified of the house or place in which he resides;
- (e) he shall be liable, at such time or times as may be specified in the order, to present himself at the nearest police station;

- (f) he shall remain within doors, or within such area as may be defined in the order, between such hours as may be specified in the order, unless he obtains special permission to the contrary from the Officer in Charge of the Police District;
- (g) except so far as may be otherwise provided by the order, he shall not be permitted to enter any State, district, mukim, town or village specified in the order;
- (h) he shall use only equipment and facilities of communication which are declared to and approved by the Chief Police Officer of any State concerned;
- (i) except so far as may be otherwise provided by the order, he shall not access the internet;
- (j) he shall keep the peace and be of good behaviour;
- (k) he shall enter into a bond, with or without sureties as the Board may direct and in such amount as may be specified in the order, for his due compliance with the restrictions and conditions imposed on him by the order;
- (l) he shall be attached with an electronic monitoring device.

(4) The Board may, by order in writing served on the person subject to a restriction order, vary, cancel or add to any restrictions and conditions imposed under subsection (3).

(5) Any restricted person who fails to comply with any restriction or condition imposed on him under this section commits an offence and shall be punished with imprisonment for a term not exceeding ten years and not less than two years.

(6) Any person who conspires with, abets or assists any restricted person to breach any restriction or condition under this section commits an offence and shall be punished with imprisonment for a term not exceeding ten years and not less than two years.

(7) Sections 173A and 294 of the Criminal Procedure Code shall not apply in respect of offences under subsections (5) and (6).

(8) The punishment imposed under subsection (5) and any term of imprisonment imposed under any written law shall not be taken into consideration for the purpose of the period of supervision imposed under subsection (3) and the period of supervision shall be continued from the date of completion of the sentence of imprisonment imposed.

(9) A copy of every detention order made by the Board under subsection (1) shall as soon as may be after the making of the order be served on the person to whom it relates, and every such person shall be entitled to make representations to an Advisory Board constituted under Clause (2) of Article 151 of the Federal Constitution in accordance with the prescribed procedures.

(10) The direction of the Board under subsection (1) shall be subject to review by the High Court.

Validity of detention orders

14. No detention order shall be invalid or inoperative by reason—

(a) that the person to whom it relates—

- (i) was immediately before the making of the detention order detained in any place other than a place of detention referred to in subsection 13(2);
- (ii) continued to be detained immediately after the making of the detention order in the place in which he was detained under section 3 before his removal to a place of detention referred to in subsection 13(2); or
- (iii) was during the duration of the detention order on journey in police custody or any other custody to a place of detention referred to in subsection 13(2); or

(b) that the detention order was served on him at any place other than the place of detention referred to in subsection 13(2), or that there was any defect relating to its service upon him.

Suspension of detention orders

15. (1) The Board may, at any time, direct that the operation of any detention order under subsection 13(1) be suspended subject to the imposition of all or any of the restrictions and conditions under subsection 13(3).

(2) Where a detention order is suspended under subsection (1), subsection 13(3) shall have effect as if the restrictions and conditions on which the detention order is suspended were restrictions and conditions imposed by a restriction order made under subsection 13(3).

(3) The Board may revoke the suspension of any detention order if it is satisfied that—

- (a) the person against whom the detention order was made has failed to comply with any restriction or condition imposed upon him; or
- (b) it is necessary in the interest of public order or public security that the suspension should be revoked,

and in any such case the revocation of the suspension shall be sufficient authority to any police officer to re-arrest without warrant the person against whom the detention order was made, and that person shall as soon as practicable be returned to his former place of detention or, if the Board so directs, sent to another place of detention.

(4) The suspension of any detention order under this section shall, subject to subsection 13(4) as applied by subsection (2) and subject also to subsection (3), continue in force for the unexpired portion of the period of the order specified under subsection 13(1).

Effect on term of imprisonment

16. Where a person—

- (a) who is undergoing detention under subsection 13(1) is sentenced to any term of imprisonment under this Act or any other written law; or
- (b) has his period of detention extended under subsection 17(1) whilst he is serving any such term of imprisonment,

the detention or extended detention shall be deemed to be undergone concurrently with that term of imprisonment, and if upon completion of any such term of imprisonment, there still remain any unexpired portion of the detention period or of the extended detention period, he shall be required to be detained for such unexpired portion of such period.

Board's power to extend detention order, restriction order or suspended detention order

17. (1) The Board may at any time before the expiration of the duration of—

- (a) a detention order made under subsection 13(1);
- (b) a restriction order made under subsection 13(3); or
- (c) a detention order suspended under subsection 15(1) (“suspended detention order”),

direct that the duration of the order be extended for such further period, not exceeding two years for a detention order or five years for a restriction order, as the Board may specify, commencing immediately upon the expiration of its then current duration.

(2) Where the Board directs for the duration of a detention order, restriction order or suspended detention order to be extended under subsection (1), it shall set out in the direction the grounds for the extension and state whether such grounds are—

- (a) the same as the grounds on which the order was originally made;
- (b) different from the grounds on which the order was originally made; or
- (c) partly the same grounds and partly different grounds.

(3) Where the duration of a suspended detention order is extended under subsection (1), the duration of the direction for its suspension under subsection 15(1) shall be deemed to be extended for the duration of the extension of the suspended detention order together with the restrictions and conditions imposed in

respect of such suspension, subject, if the Board so directs, to the requirement that the person against whom the detention order was made shall enter into a fresh bond as provided in paragraph 13(3)(k), and section 15 shall apply to such extended suspension in the same manner as it applies to an original suspension under subsection 15(1).

(4) Where the direction under subsection (1) for the extension of the duration of a detention order or a suspended detention order is on grounds which fall under paragraph (2)(b) or (c), subsection 13(9) shall apply to such direction as if the direction were a fresh detention order.

(5) The duration of a detention order, restriction order or suspended detention order which is extended under subsection (1) may be further extended from time to time for further periods not exceeding two years at a time, and the provisions of this section shall apply *mutatis mutandis* in relation to each such extension.

Board's power to revoke detention order, restriction order, suspended detention order or direction for extension of any such order

18. (1) Notwithstanding anything contained in this Act, the Board may at any time revoke any detention order made under subsection 13(1) or any restriction order made under subsection 13(3) or any suspended detention order or any direction under subsection 17(1) for the extension of the duration of any such order, if it deems it just or fit to do so.

(2) Any revocation under subsection (1) shall be without prejudice to the validity of the order or direction before its revocation or to anything done under it, or to the power of the Board to make a fresh detention order under subsection 13(1) or a fresh restriction order under subsection 13(3) or a fresh direction under subsection 17(1) in respect of the person against whom the order or direction which is revoked was made or given.

Judicial review of act or decision of Board

19. (1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Board in the exercise of its discretionary power in accordance with this Act, except in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

(2) In this Act, “judicial review” includes proceedings instituted by way of—

- (a) an application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;
- (b) an application for a declaration or an injunction;
- (c) a writ of *habeas corpus*; and
- (d) any other suit, action or legal proceedings relating to or arising out of any act done or decision made by the Board in accordance with this Act.

Power to order removal

20. (1) The Board may by order direct the removal from any place of detention to another place of detention to be specified in such order of any person detained under subsection 13(1), or under subsection 17(1), to be there detained for the whole or any part of such period for which it has been ordered that such person shall be detained.

(2) Any person who is in the course of removal under subsection (1) shall be deemed to be in lawful custody.

Power to order production of detained person

21. (1) On proof to his satisfaction that the presence at any place of any person detained under subsection 13(1) or 17(1), or lawfully in the custody of the police or confined in any prison whether under subsection 13(1), subsection 17(1) or under an order of any court or otherwise howsoever, and notwithstanding

any order of any court or other authority whatsoever, is required in the interests of justice, or for the purpose of any public or other inquiry, or in the national interest, or in the interests of the person detained, in custody or confined, the Commissioner General of Prison where the person is detained in a place of detention or prison, or the Inspector General of Police where the person is in the lawful custody of the police, may order that such person be taken to that place.

(2) Any person in the course of being taken to any place under subsection (1) and whilst at such place shall be kept in such custody as the Commissioner General of Prison or the Inspector General of Police, as the case may be, may direct and whilst in that custody shall be deemed to be in lawful custody.

(3) In this section, “Commissioner General of Prison” has the same meaning assigned to it by subsection 2(1) of the Prison Act 1995 [*Act 537*].

Registration

22. (1) The Registrar shall keep a Register for the purposes of this Act, in which shall be entered the name of every restricted person and of every person in respect of whom a detention order is in force (whether suspended under section 15 or not), together with such particulars concerning any such person as may be prescribed; and upon the name and particulars of any such person being entered in the Register he shall be a “registered person” for the purposes of this Act.

(2) Any police officer not below the rank of Inspector may—

- (a) visit any place referred to in subsection 13(2) for the purpose of taking finger impressions and photographs of any person detained therein and of obtaining such other particulars concerning any such person as may be prescribed or as may be necessary for effecting the registration of that person under subsection (1);
- (b) by notice in writing direct the attendance before him, at a time and place specified in the notice, of any restricted person for the purpose of taking finger impressions

and photographs of that person and of obtaining such other particulars concerning any such person as may be prescribed or as may be necessary for effecting the registration of that person under subsection (1).

(3) Any person who, being required by a police officer not below the rank of Inspector to furnish the particulars referred to in paragraph (2)(a) or (b), refuses to furnish any such particulars or furnishes any particulars which he knows or has reason to believe to be false, commits an offence and shall be punished with a fine not exceeding ten thousand ringgit or with imprisonment for a term not exceeding three years or to both.

(4) If any person fails to attend as directed under paragraph (2)(b), the police officer who issued the notice may cause him to be arrested without warrant by any police officer and brought before him for the purposes mentioned in that subsection.

Removal of name from Register

23. (1) Whenever an order under subsection 13(1) or 13(3), or a direction under subsection 17(1), expires or is revoked so that the person in respect of whom the order was made ceases to be subject to any restrictions or conditions whatsoever, the Registrar shall forthwith remove his name and all entries concerning him from the Register.

(2) The Board may at any time in its discretion direct the Registrar to remove the name of any person from the Register, and upon such removal the person shall cease to be a registered person, unless his name is subsequently re-entered in the Register in accordance with section 22.

Registered person not to consort with other registered persons

24. (1) No registered person shall consort or habitually associate with any other registered person without the permission of the Officer in Charge of the Police District in which he resides, unless he shall prove that he did not know and had no reason to suspect that such other person was a registered person.

(2) Any person who contravenes the provisions of this section commits an offence and shall be punished with imprisonment for a term not exceeding fifteen years and not less than five years.

Double penalties

25. Any registered person who is convicted of any offence committed after the date of the entry of his name in the Register under any written law shall be liable to imprisonment for a term of twice as long as the maximum term for which he would have been liable on conviction for that offence, and also to whipping.

Loitering in public place, etc.

26. Any registered person who—

- (a) is found between the hours of sunset and sunrise frequenting or loitering in or about any public place or in or in the neighbourhood of any place of public entertainment;
- (b) at any time is found in the company of two or more registered persons; or
- (c) at any time is found in or near any place in which any act of violence or breach of the peace is being or has just been committed,

and who is unable satisfactorily to account for his presence at such place or time or in such company commits an offence and shall be punished with imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both.

Harbouring

27. (1) Any person who knowingly harbours or conceals any person who enters any State, district, mukim, town or village in contravention of any order under section 13 commits an offence and shall be punished with imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both: provided that this subsection shall not apply to the case of a wife harbouring or concealing her husband or a husband harbouring or concealing his wife.

(2) Any person aware of the presence in any State, district, mukim, town or village of any person, not being the husband or wife of the first-mentioned person, who has been ordered not to enter the State, district, mukim, town or village or has been ordered to reside in any other State, district, mukim, town or village, and being aware also of the making of the order, shall in the absence of reasonable excuse, proof whereof shall lie on him, forthwith give information thereof to the nearest police officer or Magistrate, and in default of his so doing commits an offence and shall be punished with imprisonment for a term not exceeding three years or to a fine not exceeding five thousand or to both.

Saving in respect of prosecution of persons detained

28. The detention of any person under this Part shall be without prejudice to the taking of any criminal proceeding against that person, whether during or after the period of his detention.

PART V

GENERAL

Powers of police to investigate

29. (1) When a police officer not below the rank of Inspector has reason to believe that grounds exist which would justify the holding of an inquiry into the case of any person under this Act, he or any police officer subordinate to him and acting under his orders may investigate the facts and circumstances of the case so far as they may be relevant to any proceedings in respect of that person under this Act.

(2) In making any investigation under subsection (1), a police officer may exercise all or any of the powers in relation to police investigations in any seizable case which are given to him by the law for the time being in force relating to criminal procedure.

Arrest

30. A police officer may without a warrant arrest any person if he has reason to believe that the person has committed an offence against section 24, 26 or 27 and every such offence shall be seizable and non-bailable for the purposes of the Criminal Procedure Code.

Taking of photographs and finger impressions

31. (1) A police officer may take or cause to be taken the photograph and finger impressions of any person arrested under subsection 3(1), or whose name is required to be entered in the Register under section 22, and shall send the photograph and impressions to the Registrar for identification and report; and every such person shall be legally bound to submit to the taking of his photographs and finger impressions, and may be compelled thereto by the use of force if necessary.

(2) Any person who, being legally bound under subsection (1) to submit to the taking of his photographs or finger impressions, refuses or fails to submit thereto on demand commits an offence and shall be punished with imprisonment for a term not exceeding six months or to a fine not exceeding two thousand ringgit or to both.

(3) Whenever—

(a) any person whose photograph and finger impressions have been taken under this section is released under section 4, 6 or 12; or

(b) the name of any person is removed from the Register under section 23,

the officer in charge of the case shall forthwith notify the Registrar of the release or removal, and the Registrar shall, upon the application of the person, deliver to that person the sheet upon which his finger impressions have been made, together with the negative and all copies of any photograph taken of him and forwarded to the Registrar under this section.

Disclosure of information

32. Nothing in this Act or in any regulations made under this Act shall require the Board, any member of the Board, any Inquiry Officer or any public servant to disclose facts or to produce documents which he considers—

- (a) to be against the public interest to disclose or produce; or
- (b) would compromise the protection of a witness or his family or associates.

Power to amend Schedule

33. The Minister may, by order published in the *Gazette*, amend the Schedule.

Regulations

34. (1) The Minister may make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), such regulations may—

- (a) prescribe the form of the Register, and such other forms as may be necessary or desirable to be used in connection with the matters dealt with in this Act or in any regulations made under this Act;
- (b) require all or any class of registered persons to carry identity cards, provide for the form, issue, production, inspection, cancellation, alteration, endorsement on and replacement of those cards, and the substitution of those identity cards for identity cards issued to those persons under any other written law, and for all other matters necessary or desirable in connection with the cards or the carrying of the cards or the enforcement of the regulations, including the prescription of penalties not exceeding in respect of any offence a fine of five thousand ringgit or imprisonment for a term of three years or both;

- (c) provide for the administration and management of the Board, including provisions on training for the members of the Board;
- (d) provide for the maintenance and management of places of detention and for the discipline and treatment of persons detained in places of detention and different regulations may be made for different places of detention;
- (e) provide for any other matter which under this Act is required or permitted to be prescribed.

Saving and transitional

35. (1) This Act shall not affect any supervision order or detention order issued under the Prevention of Crime Act 1959 [*Act 297*] in relation to any person who was engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country before the date of coming into operation of this Act and such person shall continue to be subject to the supervision order or detention order, as the case may be, for so long as the supervision order or detention order is in force.

(2) This Act shall not affect any inquiry initiated under the Prevention of Crime Act 1959 in relation to any person who was engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country which is pending at the date of coming into operation of this Act and such inquiry shall be continued until its conclusion under that Act as if this Act had not been enacted and where it is decided that a supervision order or detention order shall be issued, the supervision order or a detention order shall be issued under that Act.

(3) This Act shall not affect any proceeding initiated under or pursuant to the Prevention of Crime Act 1959 in relation to any person who was engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country which is pending at the date of coming into operation of this Act and such proceeding shall be continued until its conclusion under that Act as if this Act had not been enacted and after that, where any action is required in relation to a supervision order or a detention order issued under that Act which is the subject of such proceeding, such action shall be taken under that Act.

SCHEDULE

[Section 7]

FORM

ELECTRONIC MONITORING DEVICE

IN THE SESSIONS COURT AT IN THE STATE OF

1. Name:
2. Case No.:
3. Identity Card No.:
4. Address:
.....
.....
5. Telephone No.:
6. Family members to be contacted:
.....
7. Period to be attached with electronic monitoring device (“device”):
8. Terms and conditions:
 - (a) to report to the nearest police station at/for every
 - (b) understands that all movements will be tracked and retained as an official record;
 - (c) agrees to be required to report for device equipment checks if necessary;
 - (d) to notify the police officer if there is any change of address;
 - (e) to allow inspections of the device by the police officer;
 - (f) to report to the nearest police station for removal of the device;
 - (g) to return all the device equipment to the police officer;
 - (h) to submit to procedures required by the police officer;
 - (i) to maintain the device as instructed by the police officer;
 - (j) to comply with any directions of the police officer;
 - (k) to comply with any other conditions as the court may determine.

9. Failure to comply with the terms and conditions is an offence under subsection 7(6) of the Prevention of Terrorism Act 2015.

I hereby agree to and shall comply with the terms and conditions as stated in this Form.

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EXPLANATORY STATEMENT

On 24 September 2014, the United Nations Security Council passed Resolution 2178 (“SCR 2178”) to address the threats to international peace and security caused by terrorist acts. SCR 2178 calls upon all Member States, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by persons engaging in the commission or support of terrorist acts in a foreign country or any part of a foreign country, including by preventing recruitment and travel of such persons, disrupting and preventing financial support to terrorist groups and developing and implementing prosecution, rehabilitation and reintegration strategies for such persons upon their return to Malaysia.

2. In recognition of the continuing threat of terrorism within and outside Malaysia, on 26 November 2014, the Honourable Prime Minister tabled the White Paper entitled “Ke Arah Menangani Ancaman Kumpulan Islamic State” in Parliament. The White Paper reaffirmed the Government’s commitment in combating the threats posed by the Islamic State (IS) along with the rest of the international community and provided for the proposed measures to deal with those threats. Paragraph 41 of the White Paper also recognized the Resolutions passed by the United Nations Security Council.

3. Based on the recommendation in paragraph 59 of the White Paper, a new law is to be enacted to specifically address the IS threats. In addition, other laws such as the Security Offences (Special Measures) Act 2012 [*Act 747*], the Prevention of Crime Act 1959 [*Act 297*] and the Penal Code [*Act 574*] are to be further strengthened.

4. Pursuant to the White Paper, this Bill seeks to provide for the prevention of the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country and for the control of persons engaged in such acts and for related matters.

PART I

5. This Part deals with preliminary matters.

Clause 1 contains the short title and provision on the commencement of the Act while *clause 2* contains definitions of certain words and expressions used in the Act. Among the salient terms defined are “terrorist act” and “listed terrorist organization” where “terrorist act” has the same meaning assigned to it by the Penal Code and “listed terrorist organization” means any specified entity declared under sections 66B and 66C of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

PART II

6. Part II contains powers of arrest, and deals with the steps preceding the holding of an inquiry under Part III.

By *clause 3*, a police officer may without a warrant arrest any person if he has reason to believe that grounds exist which would justify the holding of an inquiry into the case of that person. This power is coupled with the power of investigation contained in *clause 29* under which a police officer not below the rank of Inspector is empowered to make an investigation into the facts and circumstances of any case in which he has reason to believe that grounds exist which would justify the holding of an inquiry under Part III. When a person is arrested under *subclause 3(1)*, the case shall be referred by the police officer to the Public Prosecutor for direction not later than seven days from the date of arrest.

Any person arrested must be produced before a Magistrate who, on production of a written statement signed by a police officer not below the rank of Inspector stating that it is intended to hold an inquiry into the case of such person, must either order his detention in custody for a period of twenty-one days, or, if no such statement is produced, direct his release (*clause 4*).

Any person so detained must, unless sooner released, on or before the expiry of the period of twenty-one days be produced before a Magistrate. Where there is a statement from the Public Prosecutor stating that in his opinion sufficient evidence exists to justify the holding of an inquiry under *clause 10* and a statement from a police officer not below the rank of Assistant Superintendent stating that it is proposed to hold such an inquiry, the Magistrate must order the remand of such person in custody for a further period of thirty-eight days. In any other case, the Magistrate must direct his release.

Notwithstanding the special powers of arrest and detention under *clause 4*, an important element under this *clause* that must be emphasized is that no person shall be arrested under this *clause* solely for his political belief or political activity (*subclause 4(3)*).

Under *clause 5*, every person remanded in custody under *clause 4* shall, if not sooner released, as soon as possible be brought before an Inquiry Officer.

Clause 6 provides that any person remanded in custody under *clause 4* may at any time be taken before a Sessions Court Judge who, if there are no other grounds on which the person is lawfully detained, shall direct his release if

there is produced to him a statement in writing signed by a police officer not below the rank of Assistant Superintendent stating that it is not intended to continue with an inquiry into the case of that person under *clause 10*. In any other case, on the application of a police officer, the Sessions Court Judge may direct for the person to be released subject to the execution of bond for his due appearance at such place and at such time and within such period not exceeding fifty-nine days or be released subject to the supervision of the police for such period not exceeding fifty-nine days. Where the person is released subject to a bond or supervision of the police, an electronic monitoring device shall be attached to the person.

Clause 7 prescribes the procedures relating to the attachment of the electronic monitoring device on a remanded person upon his release under *clause 6*.

PART III

7. Part III deals with inquiries.

Clause 8 establishes the Prevention of Terrorism Board and provides for its powers.

Clause 9 empowers the Minister to appoint Inquiry Officers. No police officer may be appointed as an Inquiry Officer.

Clause 10 sets out the duties and powers of Inquiry Officers. An Inquiry Officer shall inquire and report in writing to the Board whether there are reasonable grounds for believing that a person is engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country. For the purpose of any inquiry, the Inquiry Officer may procure and receive all evidence, summon and examine witnesses, require the production of any document or other thing in his opinion relevant to the inquiry, receive evidence in the absence of the person who is the subject of the inquiry if it is necessary in the public interest or to protect a witness or his family or associates, and give any direction as may be necessary.

A person summoned as a witness who fails to attend at the time and place mentioned in the summons or who refuses to answer any question that may lawfully be put to him or to produce any document or thing which is in his power to produce, commits an offence and shall be punished with imprisonment for a term not exceeding six months or to a fine not exceeding two thousand ringgit or to both. A person who is the subject of an inquiry or a witness at an inquiry shall not be represented by an advocate and solicitor at the inquiry except when his own evidence is being taken and recorded by the Inquiry Officer.

Clause 11 provides for the access of the Inquiry Officer to persons detained under any other written law or confined in prison.

Clause 12 prescribes the requirement for the reporting by the Inquiry Officer to the Board. Where the Board concurs with the Inquiry Officer that there are reasonable grounds for believing that the person who was the subject of the inquiry is engaged in the commission or support of terrorist acts

involving listed terrorist organizations in a foreign country or any part of a foreign country, the Board shall proceed under *clause 13*. Where there are no reasonable grounds for such belief, the Board shall forthwith direct any person having the custody of that person to produce the person within twenty-four hours before a Sessions Court Judge who shall thereupon discharge the order of remand made under *clause 4*. Further, if there are no other grounds on which the person is lawfully detained, the Sessions Court Judge shall order his immediate release.

PART IV

8. Part IV provides for detention and restriction orders.

Clause 13

Clause 13 empowers the Board to order the detention or restriction of any person who is engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country after considering the complete report of an investigation submitted under *subclause 3(4)* and the report of the Inquiry Officer submitted under *clause 12*. *Subclause (1)* provides that detention orders may be issued by the Board directing that such person be detained for a period not exceeding two years if it is considered necessary in the interest of the security of Malaysia or any part of Malaysia. A detention order may be renewed under *clause 17* for further periods not exceeding two years at a time.

Subclause (3) empowers the Board to issue restriction orders where it is necessary to control and supervise a person in respect of his activities, freedom of movement or places of residence or employment but there is no necessity to detain the person. A restriction order shall direct that such person be subject to the supervision of the police for any period not exceeding five years at a time and may be subject to such restrictions and conditions as may be necessary. A restriction order may be renewed under *clause 17* for further periods not exceeding five years at a time.

Subclauses (5) and (6) make it an offence for any restricted person to fail to comply with any restriction or condition imposed on him and for any other person to conspire with, abet or assist the restricted person to breach such restriction or condition. Offences under these *subclauses* shall be punished with imprisonment for a term not exceeding ten years and not less than two years. Sections 173A and 294 of the Criminal Procedure Code shall not apply in respect of these offences.

Subclause (9) is included for the avoidance of doubt as to the application of Article 151 of the Federal Constitution. Since this Act is enacted under Article 149 of the Federal Constitution and provides for preventive detention, the safeguard under Article 151(1) automatically applies and requires that any person detained under this Act shall be given the opportunity of making representations against the detention order as soon as may be to an advisory board constituted under Article 151(2). The procedures for making such representation will be provided in regulations made under this Act.

Clauses 14 to 18

Clause 14 affirms the validity of detention orders in the event of administrative shortcomings in service on the person to be detained while *clause 15* provides for the suspension of detention orders.

Clause 16 provides that the term of detention shall be deemed to be undergone concurrently with any term of imprisonment imposed under any written law.

Clause 18 empowers the Board to revoke any detention order, restriction order, suspended detention order or direction for extension of any such order if the Board deems it just or fit to do so.

Clause 19

Clause 19 seeks to oust judicial review of any act or decision of the Prevention of Terrorism Board regarding any question except on compliance with any procedural requirement in this Act.

Clauses 20 and 21

The Board is empowered under *clause 20* to order the removal of any person detained from one place of detention to another, while *subclause 21(1)* empowers the Commissioner General of Prison or the Inspector General of Police, as the case may be, to order the production of a detained person at any place in the interest of justice, or for the purpose of any public or other inquiry, or in the national interest, or in the interests of the person detained, in custody or confined.

Clauses 22 and 23

Subclause 22(1) provides for the name of every restricted person and every person in respect of whom a detention order is in force to be entered in a Register to be kept by the Registrar of Criminals appointed under section 3 of the Registration of Criminals and Undesirable Persons Act 1969 while *subclause 23(1)* provides that such name shall be removed from the Register where the detention order or restriction order expires or is revoked. The Board may, at any time in its discretion, direct the Registrar to remove the name of any person from the Register.

Clauses 24 to 28

Clause 24 makes it an offence for any registered person to consort or habitually associate with any other registered person without the permission of the Officer in Charge of the Police District in which he resides, unless he did not know and had no reason to suspect that such other person was a registered person. An offence under this *clause* shall be punished with imprisonment for a term not exceeding fifteen years and not less than five years.

Clause 25 imposes double penalties and also whipping for any registered person who is convicted of any offence committed under any written law after the date of the entry of his name in the Register.

Clause 26 makes it an offence for any registered person who is unable to give a satisfactory explanation therefor to be found in the company of two or more registered persons, or in or near any place in which any act of violence or breach of the peace is being or has just been committed or frequenting or loitering in or about any public place or place of public entertainment. An offence under this *clause* shall be punished with imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both.

Clause 27 makes it an offence to harbour any registered person contravening any order under *clause 13* provided that this *clause* shall not apply to the case of a wife harbouring or concealing her husband or a husband harbouring or concealing his wife. An offence under this *clause* shall be punished with imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both.

Clause 28 provides that the detention of any person under Part IV shall be without prejudice to the taking of any criminal proceeding against that person, whether during or after the period of his detention.

PART V

9. Part V contains certain general provisions.

Clause 30 empowers a police officer to arrest without warrant any person committing an offence under *clauses 24, 26* or *27*.

Clause 31 empowers the taking of photographs and finger impressions of any person arrested under *subclause 3(1)*, or whose name is required to be entered in the Register under *clause 22* by any police officer who shall then send them to the Registrar. *Subclause 31(2)* makes it an offence for such person to refuse or fail to submit to the taking of his photographs or finger impressions and such offence shall be punished with imprisonment for a term not exceeding six months or to a fine not exceeding two thousand ringgit or to both.

Clause 32 prohibits the disclosure of information to protect the public interest and a witness, or his family or associates.

Clause 33 empowers the Minister by order published in the *Gazette* to amend the Schedule.

Clause 34 empowers the Minister to make regulations for carrying out the purposes of this Act.

Clause 35 provides saving and transitional provisions.

This Act shall not affect any supervision order or detention order issued under the Prevention of Crime Act 1959 in relation to any person who was engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country before the date of coming into operation of this Act and such person shall continue to be subject to the supervision order or detention order, as the case may be, for so long as the supervision order or detention order is in force.

This Act shall not affect any inquiry initiated under the Prevention of Crime Act 1959 in relation to any person who was engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country which is pending at the date of coming into operation of this Act and such inquiry shall be continued until its conclusion under that Act as if this Act had not been enacted and where it is decided that a supervision or detention order shall be issued, the supervision order or a detention order shall be issued under that Act.

This Act shall not affect any proceeding initiated under or pursuant to the Prevention of Crime Act 1959 in relation to any person who was engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country which is pending at the date of coming into operation of this Act and such proceeding shall be continued until its conclusion under that Act as if this Act had not been enacted and after that, where any action is required in relation to a supervision order or a detention order issued under that Act which is the subject of such proceeding such action shall be taken under that Act.

FINANCIAL IMPLICATIONS

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

[PN(U2)2976]