

A BILL

i n t i t u l e d

An Act to amend the Trade Descriptions Act 2011.

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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 Trade Descriptions (Amendment) Act 2021.

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

Substitution of long title

2. The Trade Descriptions Act 2011 [*Act 730*], which is referred to as the “principal Act” in this Act, is amended by substituting for the long title the following long title:

“An Act for the purpose of promoting good trade practices by prohibiting false trade descriptions and false or misleading statements, conduct and practices in relation to the supply of goods and services, and by prohibiting, restricting or otherwise regulating or controlling the use of any statement, expression or indication which is likely to discriminate or boycott any product or goods or to discourage, forbid,

hinder or influence any person from using or consuming any product or goods in the course of trade or business, and to provide for matters connected therewith or incidental thereto.”.

New section 39A

3. The principal Act is amended by inserting before section 40 the following section:

“Power of arrest

39A. (1) An Assistant Controller may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit any offence under section 5, 16, 17, 20 or 51 of this Act.

(2) An Assistant Controller making an arrest under subsection (1) shall without unnecessary delay take such person to the nearest police station, and thereafter the person shall be dealt with as is provided for by the Criminal Procedure Code [Act 593] as if he had been arrested by a police officer.”.

New section 52A

4. The principal Act is amended by inserting after section 52 the following section:

“Power to take sample

52A. (1) An Assistant Controller may, without payment, demand, select, take or obtain samples of any goods for the purposes of analysis from any person manufacturing, producing, selling or importing such goods or from its agent or servant.

(2) Any person who refuses to comply with any demand made by an Assistant Controller under subsection (1) commits an offence.”.

Amendment of section 54

5. Section 54 of the principal Act is amended by substituting for the shoulder note the following shoulder note:

“Presumption and examination with regards to sample”.

Substitution of section 56

6. The principal Act is amended by substituting for section 56 the following section:

“Exemption

56. The Minister may, by order published in the *Gazette* and subject to such conditions specified in the order, exempt the application of any provision of this Act—

(a) to any person or class of persons; or

(b) to any description of goods which are intended for—

(i) dispatch to a destination outside Malaysia; or

(ii) any specific use or purpose as mentioned in the order.”.

New section 56A

7. The principal Act is amended by inserting after section 56 the following section:

“Power to order compliance

56A. (1) Where the Controller has reasonable grounds to believe that a person is contravening, has contravened or is about to contravene any provision of this Act, the Controller may make an order requiring the person to cease the contravention, refrain from the contravention or refrain from any further contravention.

(2) A copy of the order made under subsection (1) shall be served on every person named in it and the order shall take effect immediately after the order is served.

(3) For the purposes of this section, service may be made by personal service or by A.R. registered post, facsimile transmission or any other means of transmission which results in the order being transmitted in writing to the person named in it.

(4) The power to make an order under subsection (1) may be exercised by the Controller personally or by any officer authorized in writing by the Controller.

(5) Any person who fails to comply with any order issued under this section by the Controller or any officer authorized in writing by the Controller commits an offence.”.

Amendment of section 69

8. Paragraph 69(2)(b) of the principal Act is amended by inserting after the words “the use of any” the words “statement,”.

Validation and indemnity

9. (1) The fees which were charged and collected by any competent authority named by the Minister under section 29 of the principal Act in respect of certification and marking of halal for the period from 1 January 2012 to 22 October 2018, being the day before the date of the coming into operation of the Trade Descriptions (Certification and Marking of Halal Fees) (Amendment) Regulations 2018 [*P.U. (A) 268/2018*], shall be deemed to have been validly imposed and collected.

(2) No action or legal proceedings shall be brought, instituted or maintained against the Government of Malaysia, any officer of the Government of Malaysia, any competent authority named by the Minister under section 29 of the principal Act or any person acting under them in respect of any fees which were charged and collected in respect of certification and marking of halal during the period referred to in subsection (1), and if any action or legal proceedings has been brought, instituted or maintained, it shall be discharged and made void and no refund shall be made in respect of the fees charged and collected.

EXPLANATORY STATEMENT

This Bill seeks to amend the Trade Descriptions Act 2011 (“Act 730”).

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.
3. *Clause 2* seeks to substitute the long title of Act 730 to widen the scope of the Act to include the prohibition on the use of any statement, expression or indication which is likely to discriminate or boycott any product or goods or to discourage, forbid, hinder or influence any person from using or consuming any product or goods in the course of trade or business. With the expansion of the scope of Act 730, the statements, expressions or indications against Malaysia’s major commodities especially palm oil such as the expression “no palm oil” used in any advertisement including food labels, notices and catalogues will be prohibited through the regulations to be made under Act 730.
4. *Clause 3* seeks to introduce a new section 39A into Act 730 to empower an Assistance Controller to arrest any person whom he reasonably believes has committed or is attempting to commit any offence under section 5, 16, 17, 20 or 51 of Act 730.
5. *Clause 4* seeks to introduce a new section 52A into Act 730 to empower an Assistant Controller to demand, select, take or obtain samples of any goods for the purpose of analysis, without payment, from any person manufacturing, producing, selling or importing such goods or from its agent or servant. The proposed new section 52A also seeks to make it an offence if any person refuse to comply with any demand made by an Assistant Controller.
6. *Clause 5* seeks to substitute the shoulder note of section 54 of Act 730 to reflect the provision of section 54.
7. *Clause 6* seeks to amend section 56 of Act 730 to empower the Minister to exempt any person or class of persons from the application of any provision of Act 730. Currently, the Minister may only exempt any description of goods which are intended for dispatch to a destination outside Malaysia or any specific use or purpose.
8. *Clause 7* seeks to introduce a new section 56A into Act 730 to empower the Controller to make an order requiring any person to cease any contravention, refrain from the contravention or refrain from any further contravention of Act 730.
9. *Clause 8* seeks to amend paragraph 69(2)(b) of Act 730 as a consequential amendment of the long title of Act 730. The proposed amendment seeks to expand the power of the Minister to make regulations to prohibit, restrict, regulate or control the use of any statement in the course of trade of business.
10. *Clause 9* seeks to validate the charging and collection of fees for services rendered by the competent authority in respect of certification and marking of halal for the period from 1 January 2012 to 22 October 2018.

The charging and the collection of the fees are deemed valid although it was made before the date of coming into operation of the Trade Descriptions (Certification and Marking of Halal Fees) (Amendment) Regulations 2018 [P.U. (A) 268/2018] which provide for the charging and collection of the fees commencing from 23 October 2018.

FINANCIAL IMPLICATIONS

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

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