

A BILL

*i n t i t u l e d*

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

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

1. (1) This Act may be cited as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2021.

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

**Amendment of section 2**

2. The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [*Act 670*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in the English language text, in the definition of “exploitation”, by substituting for the word “means” the word “includes”;

- (b) by deleting the definition of “coercion”;
- (c) in the definition of “enforcement officer”, by substituting for the words “section 27” the words “subsection 27(1) or any public officer appointed under subsection 27(1A)”;  
and
- (d) by substituting for the definition of “trafficking in persons” the following definition:

‘ “trafficking in persons” means all actions of recruiting, conveying, transferring, acquiring, maintaining, harbouring, providing or receiving, a person, for the purpose of exploitation, by the following means:

- (a) threat or use of force or other forms of coercion;
- (b) abduction;
- (c) fraud;
- (d) deception;
- (e) abuse of power;
- (f) abuse of the position of vulnerability of a person to an act of trafficking in persons; or
- (g) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person.”.

### **Amendment of section 6**

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

- (a) in paragraph (n), by substituting for the word “three” the word “five”; and
- (b) in paragraph (o), by substituting for the word “two” the word “three”.

**Amendment of section 12**

4. Section 12 of the principal Act is amended—

- (a) by substituting for the words “a child” the words “a child or not being a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition”;
- (b) by deleting the words “for the purpose of exploitation,”; and
- (c) by substituting for the words “fifteen years” the words “twenty years”.

**Substitution of section 13**

5. The principal Act is amended by substituting for section 13 the following section:

**“Aggravated offence of trafficking in persons**

**13.** Any person who commits an offence of trafficking in persons, where the trafficked person not being a child or not being a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition where any of the following applies:

- (a) in committing the offence, the person caused grievous hurt to the trafficked person or to any other person;
- (b) in committing the offence, the person caused death to the trafficked person or to any other person;
- (c) in committing the offence, where caused by or at the time the person was trafficked, the trafficked person committed suicide;
- (d) in committing the offence, the person exposed the trafficked person to life threatening diseases, including the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS);

- (e) in committing the offence, the person engaged in trafficking in persons activities as part of an organized criminal group activity; or
- (f) where the offence of trafficking in persons was committed by a public officer in the performance of his public duties,

shall, on conviction, be punished with imprisonment for life or with imprisonment for a term which shall not be less than five years, and shall also be liable to whipping.”.

#### **Amendment of section 14**

6. Section 14 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**children**” the words “**or a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition**”;
- (b) by renumbering the existing section as subsection (1);
- (c) in the renumbered subsection (1)—
  - (i) by substituting for the words “a child” the words “a child or a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition”;
  - (ii) by deleting the words “for the purpose of exploitation,”; and
  - (iii) by substituting for the words “imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine” the words “imprisonment for life or with imprisonment for a term which shall not be less than five years, and shall also be liable to whipping”; and

(d) by inserting after the renumbered subsection (1) the following subsection:

“(2) In a prosecution for an offence under this section, the means used against a trafficked person who is a child or a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition is irrelevant and is not a requirement to be proved.”.

**Amendment of section 15A**

7. Section 15A of the principal Act is amended by substituting for the words “seven years” the words “fifteen years”.

**Amendment of section 19**

8. Section 19 of the principal Act is amended by substituting for the words “ten years” the words “fifteen years”.

**Amendment of section 26A**

9. Section 26A of the principal Act is amended by substituting for the words “fifteen years” the words “twenty years”.

**Amendment of section 26B**

10. Section 26B of the principal Act is amended—

(a) in the national language text, by substituting for the word “menjalankan” the word “melakukan”;

(b) in paragraph (b), by deleting the word “or” at the end of the paragraph;

(c) in paragraph (c), by substituting for the comma at the end of the paragraph the words “; or”;

(d) by inserting after paragraph (c) the following paragraph:

“(d) where the offence of smuggling of migrants was committed by a public officer in the performance of his public duties.”; and

(e) by substituting for the words “imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine, or to both” the words “imprisonment for life or with imprisonment for a term which shall not be less than five years, and shall also be liable to whipping”.

### **Amendment of section 26c**

**11.** Section 26c of the principal Act is amended by substituting for the words “seven years” the words “fifteen years”.

### **Amendment of section 27**

**12.** Section 27 of the principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) The Minister may, after consultation with any other relevant Minister, appoint any public officer as may be deemed necessary as an enforcement officer for the purposes of this Act and the public officer appointed as such may exercise all powers of enforcement.

(1B) Every appointment under subsection (1A) shall be published in the *Gazette*.”.

### **Amendment of section 42**

**13.** Section 42 of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) The Minister charged with the responsibility for women, family and community development shall be responsible for any matter relating to the management, administration and control over the place of refuge declared under subsection (1), the trafficked person in the place of refuge and the Protection Officer appointed under section 43.

(4) The Minister charged with the responsibility for women, family and community development may issue any directions in any manner, whether generally or specifically for the purposes referred to in subsection (3).”.

**Amendment of section 43**

**14.** Section 43 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “Social Welfare Officers or any other public officers” the words “Social Welfare Officers, any other public officer or any other person”; and

(b) by deleting subsection (1A).

**Amendment of section 51**

**15.** Subsection 51(5) of the principal Act is amended by inserting after the words “section 52” the words “, the recording of deposition for the purposes of section 61A”.

**Amendment of section 54**

**16.** The principal Act is amended by substituting for subsection 54(3) the following subsection:

“(3) Notwithstanding subsection (1), the court may, upon an application made by a Protection Officer or an enforcement officer, and being satisfied that the trafficked person requires further care and protection for a reasonable reason or for the purposes of the management of repatriation, make an order that the trafficked person be placed in a place of refuge for any further period as the Magistrate may think fit.”.

**Amendment of section 57**

**17.** Section 57 of the principal Act is amended by inserting after the words “The Minister may,” the words “after consultation with the Minister charged with the responsibility for women, family and community development,”.

**Amendment of section 66**

**18.** Subsection 66(2) of the principal Act is amended by deleting paragraph (f).

**Saving**

**19.** (1) Notwithstanding the provisions of this Act, the members of the Council appointed by the Minister under paragraphs 6(2)(n) and (o) before the date of coming into operation of this Act shall continue to hold office until the appointments are revoked or until expiry of their terms of appointment.

(2) All directions, declarations, Protection Orders and interim protection orders made, issued or granted under the principal Act shall, to the extent that the directions, declarations, Protection Orders and interim protection orders are consistent with the principal Act as amended by this Act, continue to be in force until such directions, declarations, Protection Orders and interim protection orders are revoked or amended.

(3) Any investigation, recording of deposition, trial or proceedings done, taken or commenced under the principal Act immediately before the coming into operation of this Act, shall be dealt with as if the principal Act had not been amended by this Act.

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**EXPLANATORY STATEMENT**

This Bill (“the proposed Act”) seeks to amend the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (“Act 670”). The main purpose of these amendments is to ensure that Act 670 is consistent with the requirements stipulated in the Palermo Protocol and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (“ACTIP”) relating to anti-trafficking in persons.

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

3. *Clause 2* seeks to amend section 2 of Act 670. *Subclause 2(a)* seeks to amend the definition of “exploitation” in the English language text to make it consistent with the national language text. *Subclause 2(b)* seeks to delete the definition of “coercion”. *Subclause 2(c)* seeks to amend the definition of



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“enforcement officer” to include any public officer appointed under the proposed subsection 27(1A). *Subclause 2(d)* seeks to substitute for the definition of “trafficking in persons” a new definition into section 2 of Act 670.

4. *Clause 3* seeks to amend paragraphs 6(2)(n) and (o) of Act 670 to increase the number of members of the Council from non-governmental organization or other relevant organizations having appropriate experience, knowledge and expertise in problems and on issues relating to trafficking in persons including the protection and support of trafficked persons, to be appointed by the Minister from not more than three members to not more than five members, and to increase the number of members from non-governmental organizations or other relevant organizations with appropriate experience, knowledge and expertise on problems and issues relating to smuggling of migrants, to be appointed by the Minister from not more than two members to not more than three members respectively.

5. *Clause 4* seeks to amend section 12 of Act 670 to provide that any person who traffics in persons, not being a child or not being a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition, commits an offence. This *clause* also seeks to increase the punishment of imprisonment from a term not exceeding fifteen years to a term not exceeding twenty years.

6. *Clause 5* seeks to amend section 13 of Act 670 to provide for the aggravated offence of trafficking in persons where the trafficked person not being a child or not being a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition. This *clause* also seeks to provide that the punishment for such an aggravated offence of trafficking in persons shall be imprisonment for life or imprisonment for a term which shall not be less than five years, and shall also be liable to whipping.

7. *Clause 6* seeks to amend section 14 of Act 670 to provide that any person, who traffics in persons a child or a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition commits an offence. This *clause* also seeks to increase the punishment to be imposed upon conviction for such an offence. Further, this *clause* also seeks to provide that the means used against the trafficked person who is a child or a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition is irrelevant and is not a requirement to be proved in a prosecution for an offence under section 14 of Act 670.

8. *Clause 7* seeks to amend section 15A of Act 670 to increase the punishment of imprisonment for the offence relating to bringing in transit a trafficked person through Malaysia by land, sea or air, or otherwise arranging or facilitating such act, from a term not exceeding seven years to a term not exceeding fifteen years.

9. *Clause 8* seeks to amend section 19 of Act 670 to increase the punishment of imprisonment for the offence relating to any person who knowingly recruits, or agrees to recruit, another person to participate in the commission of an act of trafficking in persons, from a term not exceeding ten years to a term not exceeding fifteen years.

10. *Clause 9* seeks to amend section 26A of Act 670 to increase the punishment of imprisonment for the offence of smuggling of migrants, from a term not exceeding fifteen years to a term not exceeding twenty years.

11. *Clause 10* seeks to amend section 26B of Act 670 to provide that a public officer who commits an offence of smuggling of migrants in the performance of his public duties commits an aggravated offence of smuggling of migrants. This *clause* also seeks to increase the punishment for committing an aggravated offence of smuggling of migrants from a punishment of imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine, or to both to a punishment of imprisonment for life or imprisonment for a term which shall not be less than five years, and shall also be liable to whipping.

12. *Clause 11* seeks to amend section 26C of Act 670 to increase the punishment of imprisonment for the offence relating to bringing in transit a smuggled migrant through Malaysia by land, sea or air or otherwise arranging or facilitating such act, from a term not exceeding seven years to a term not exceeding fifteen years.

13. *Clause 12* seeks to introduce new subsections 27(1A) and (1B) into Act 670 to provide that the Minister may, after consultation with any other relevant Minister, appoint any public officer as may be deemed necessary as an enforcement officer for the purposes of Act 670 and the public officer appointed as such may exercise all powers of enforcement and that every appointment under the proposed subsection 27(1A) shall be published in the *Gazette*.

14. *Clause 13* seeks to introduce new subsections 42(3) and (4) into Act 670 to provide that the Minister charged with the responsibility for women, family and community development shall be responsible for any matters relating to the management, administration and control over the place of refuge declared under subsection 42(1) of Act 670, the trafficked persons in the place of refuge and the Protection Officer appointed under section 43 of Act 670. This *clause* also seeks to provide that the Minister charged with the responsibility for women, family and community development may issue any directions in any manner, whether generally or specifically for the purposes referred to in the proposed subsection 42(3).

15. *Clause 14* seeks to amend subsection 43(1) of Act 670 to provide that after consultation with the Minister charged with the responsibility for women, family and community development, the Minister may also appoint any other person to exercise the powers and perform the duties of a Protection Officer under this Act 670 subject to any condition as may be specified. This *clause* also seeks to delete subsection 43(1A) of Act 670.

16. *Clause 15* seeks to amend subsection 51(5) of Act 670 to provide that where the trafficked person is a foreign national, an extension of the Protection Order may be granted for the purpose of the recording of deposition under section 61A of Act 670.

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17. *Clause 16* seeks to amend subsection 54(3) of Act 670 to provide that the court may, upon an application made by a Protection Officer or an enforcement officer, and being satisfied that the trafficked person requires further care and protection for a reasonable reason or for the purposes of the management of repatriation, make an order that the trafficked person be placed in a place of refuge for any further period as the Magistrate may think fit.

18. *Clause 17* seeks to amend section 57 of Act 670 to provide that after consultation with the Minister charged with the responsibility for women, family and community development, the Minister may, at any time, for reasons which appear to him to be sufficient, by order in writing direct the removal of any trafficked person from a place of refuge to any other place of refuge as may be specified in the order.

19. *Clause 18* seeks to delete paragraph 66(2)(f) of Act 670. The deletion of paragraph 66(2)(f) of Act 670 is consequential to the amendment of section 42 of Act 670 in *clause 13* in which the Minister charged with the responsibility for women, family and community development may issue any directions in any manner, whether generally or specifically for any matters relating to the management, administration and control over the place of refuge declared under subsection 42(1) of Act 670, the trafficked persons in the place of refuge and the Protection Officer appointed under section 43 of Act 670.

20. *Clause 19* seeks to provide for saving provisions.

*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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