

A BILL

i n t i t u l e d

An Act to amend the Penal Code.

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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 Penal Code (Amendment) Act 2017.

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

Amendment of section 292

2. The Penal Code [*Act 574*], which is referred to as the “Code” in this Act, is amended in section 292—

(a) in paragraph (a), by inserting after the words “obscene object” the words “or document”;

(b) in paragraph (b)—

(i) by inserting after the words “obscene object” the words “or document”; and

- (ii) by inserting after the words “such object” the words “or document”;
- (c) in paragraph (c), by inserting after the words “obscene objects” the words “or documents”; and
- (d) in paragraph (d), by inserting after the words “obscene object” the words “or document”.

Amendment of section 293

3. The Code is amended in section 293—

- (a) in the shoulder note, by inserting after the words “**obscene objects**” the words “**or documents**”; and
- (b) by inserting after the words “obscene object” the words “or document”.

Substitution of section 326A

4. The Code is amended by substituting for section 326A the following section:

“Punishment for causing hurt to spouse, former spouse, etc.

326A. (1) Whoever causes hurt to his spouse or former spouse, a child, an incapacitated adult or other member of the family and commits an offence under section 323, 324, 325, 326, 334 or 335 shall be punished with imprisonment for a term which may extend to twice of the maximum term for which he would have been liable on conviction for that offence under the relevant section notwithstanding any other punishment provided for that offence.

(2) For the purpose of this section, “spouse”, “child”, “incapacitated adult” and “other member of the family” have the meanings assigned to them in section 2 of the Domestic Violence Act 1994 [*Act 52I*].”.

Amendment of section 376

5. The Code is amended in section 376—

- (a) in subsection (1), by substituting for the words “shall also be liable to” the words “shall also be punished with”; and
- (b) in subsection (2), by substituting for the words “shall also be liable to” the words “shall also be punished with”.

Amendment of section 376B

6. The Code is amended in subsection 376B(1) by substituting for the words “shall also be liable to” the words “shall also be punished with”.

Amendment of section 377B

7. The Code is amended in section 377B by substituting for the words “shall also be liable to” the words “shall also be punished with”.

Amendment of section 377C

8. The Code is amended in section 377C by substituting for the words “shall also be liable to” the words “shall also be punished with”.

Amendment of section 377CA

9. The Code is amended in section 377CA—

- (a) in the shoulder note, by inserting after the word “**object**” the word “, *etc.*”; and
- (b) by inserting after the words “of any object” the words “or any part of the body, except the penis”.

Amendment of section 377E

10. The Code is amended in section 377E by substituting for the words “shall also be liable to” the words “shall also be punished with”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Penal Code (“Act 574”) to extend the offences of sexual connection by object as to include any part of the body except the penis, to extend the punishment under section 326A of Act 574 for those who causing hurt to former spouse, child *etc.*, to include obscene documents as part of the things prohibited to be sold, *etc.*, and to make the punishment of whipping as mandatory for the specified sexual offences.

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

3. *Clause 2* seeks to include obscene documents as part of the things prohibited to be sold, *etc.*, under section 292 of Act 574. For this purpose, such documents will include obscene online contents.

4. *Clause 3* seeks to amend section 293 of Act 574 to include obscene documents as part of the things prohibited to be sold, *etc.*, under section 293 of Act 574 to persons under the age of twenty years.

5. *Clause 4* seeks to substitute the existing section 326A of Act 574 with a new section 326A to extend the application of this section to persons such as former spouse, a child, an incapacitated adult and other member of family and such persons are as defined in section 2 of the Domestic Violence Act 1994 and not limited to those who are in the subsistence of a valid marriage only. With this proposed amendment, the court shall have the power to punish the offender who causes hurt to his or her spouse, former spouse, a child, an incapacitated adult or other member of the family, and commits an offence under section 323, 324, 325, 326, 334 or 335 of Act 574 with imprisonment for a term which may extend to twice of the maximum term for which he would have been liable on conviction for that offence under the relevant section notwithstanding the other punishment of fine or whipping provided for that section.

6. *Clauses 5, 6, 7, 8 and 10* seeks to amend sections 376, 376B, 377B, 377C and 377E, respectively, to make whipping a mandatory punishment for sexual offences in Act 574.

7. *Clause 9* seeks to amend the existing section 377CA of Act 574 to extend the application of this section to offences involving sexual connection by using any part of the body other than penis. This proposed amendment is in line with the decision of the Court of Appeal in the case of *Shafiee bin Awang v PP [unreported]*, whereby the court decided and interpreted that finger is included in the definition of “object” under section 377CA of Act 574. The proposed amendment is done for the purpose of clarification and thus, the words “or any part of the body, except the penis” are proposed to be inserted after the words “of any object” in section 377CA of Act 574. With this proposed amendment, when there is a case for any offence involving sexual connection by object under section 377CA of Act 574 involving any part of the body such as the finger or tongue, prosecution can be instituted under section 377CA of Act 574.

FINANCIAL IMPLICATIONS

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

[PN(U2)3036]