

A BILL

i n t i t u l e d

An Act to amend the Dangerous Drugs Act 1952.

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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 Dangerous Drugs (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 39B

2. The Dangerous Drugs Act 1952 [*Act 234*], which is referred to as the “principal Act” in this Act, is amended in section 39B—

(a) by substituting for subsection (2) the following subsection:

“(2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death

or imprisonment for life and shall, if he is not sentenced to death, be punished with whipping of not less than fifteen strokes.”; and

(b) by inserting after subsection (2) the following subsections:

“(2A) In exercising the power conferred by subsection (2), the Court in imposing the sentence of imprisonment for life and whipping of not less than fifteen strokes, may have regard only to the following circumstances:

- (a) there was no evidence of buying and selling of a dangerous drug at the time when the person convicted was arrested;
- (b) there was no involvement of agent provocateur;
or
- (c) the involvement of the person convicted is restricted to transporting, carrying, sending or delivering a dangerous drug; and
- (d) the Public Prosecutor certifies in writing to the Court that in his determination, the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

(2B) The determination of whether or not any person has assisted an enforcement agency in disrupting drug trafficking activities shall be at the sole discretion of the Public Prosecutor and no action or proceeding shall lie against the Public Prosecutor in relation to any such determination done by him in good faith, in such capacity.

(2C) For the purposes of subsections (2A) and (2B), “enforcement agency” means—

- (a) the Royal Malaysia Police;
- (b) the National Anti-Drugs Agency;
- (c) the Royal Malaysian Customs Department;

- (d) the Malaysian Maritime Enforcement Agency; or
- (e) any other enforcement agency as may be determined by the Minister.”.

Transitional

3. (1) In this section, “appointed date” means the date appointed under subsection 1(2) of this Act.

(2) Any proceedings against any person who has been charged, whether or not trial has commenced or has been completed, and has not been convicted under section 39B of the principal Act by a competent Court before the appointed date, shall on the appointed date be dealt with by the competent Court and be continued under the provisions of the principal Act as amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Dangerous Drugs Act 1952 (“Act 234”).

1. *Clause 1* contains the short title and provision on the commencement of the proposed Act.
2. *Clause 2* seeks to amend subsection 39B(2) of Act 234. Under the existing Act 234, any person convicted with the offence of trafficking in dangerous drugs shall be punished with death. Section 39B was first inserted into Act 234 *vide* the Dangerous Drugs (Amendment) Act 1975 [Act A293] which came into operation on 30 April 1975. The amendment provided that a person convicted with the offence of trafficking in a dangerous drug shall be punished with death or with life imprisonment in which case he shall also be liable to whipping. Subsequently, the sentence provided under section 39B of Act 234 was amended to provide for the mandatory death penalty *vide* the Dangerous Drugs (Amendment) Act 1983 [Act A553]. This amendment came into operation on 15 April 1983.

The proposed amendment also seeks to revert to the position prior to the enactment of Act A553, whereby *clause 2* seeks to amend subsection 39B(2) of Act 234 to empower a Court to impose a punishment of death or imprisonment for life and whipping of not less than fifteen strokes for the offence of drug trafficking. However, in imposing the punishment of imprisonment for life and whipping of not less than fifteen strokes, the Court may have regard only to

any of the circumstances specified in the proposed new paragraph 39B(2A) (a), (b) or (c) and the Court shall have regard to a certification in writing by the Public Prosecutor that in the Public Prosecutor's determination the person convicted under subsection 39B(2) has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

Assistance to an enforcement agency in disrupting drug trafficking activities may include, for example, the provision of information leading to the arrest, detention or prosecution of any person involved in any drug trafficking activity. With the proposed amendment, without the Public Prosecutor's certification in writing, the Court cannot exercise its powers to sentence a convicted person to imprisonment for life and whipping of not less than fifteen strokes, even though the circumstances specified in the proposed new paragraph 39B(2A) (a), (b) or (c) exist.

4. *Clause 3* provides for transitional provision. The provisions of the proposed Act shall apply to any person who has been charged but has not been convicted under section 39B of the principal Act by a competent Court on the commencement of the proposed Act. The new proposed amendment to section 39B of Act 234 is not applicable to cases on appeal, whereby such cases will have to go through the existing due process.

ILLUSTRATION

A, has been charged with an offence under section 39B of the Dangerous Drugs Act 1952 on a date prior to the commencement of this proposed Act. The trial is ongoing and on the date the proposed Act comes into operation, A has yet to be convicted. Thereafter, if the Court convicts A, the proposed new section 39B shall apply.

FINANCIAL IMPLICATIONS

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

[PN(U2)3096]