



# LAWS OF MALAYSIA

REPRINT

Act 216

## EMERGENCY (ESSENTIAL POWERS) ACT 1979

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**EMERGENCY (ESSENTIAL POWERS) ACT 1979**

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**LAWS OF MALAYSIA****Act 216****EMERGENCY (ESSENTIAL POWERS) ACT 1979**

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**LAWS OF MALAYSIA****Act 216****EMERGENCY (ESSENTIAL POWERS) ACT 1979**

An Act under Clause (5) of Article 150 of the Federal Constitution to enact as an Act of Parliament the Emergency (Essential Powers) Ordinance 1969 [*P.U. (A) 146/1969*], and to provide for the validation of all subsidiary legislation made or purporting to have been made under the said Ordinance on or after 20 February 1971, and for the validation of all acts and things done under the said Ordinance or any subsidiary legislation made or purporting to have been made thereunder, and to provide for matters connected therewith.

[20 February 1971]

WHEREAS a Proclamation of Emergency has been issued by the Yang di-Pertuan Agong on 15 May 1969 under Article 150 of the Federal Constitution:

AND WHEREAS Parliament by reason of the Emergency considers it necessary to enact as an Act of Parliament the Emergency (Essential Powers) Ordinance 1969, and to provide for the validation of all subsidiary legislation made or purporting to have been made under the said Ordinance on or after 20 February 1971, and for the validation of all acts and things done under the said Ordinance or under any subsidiary legislation made or purporting to have been made thereunder:

AND WHEREAS it is hereby declared that this Act appears to Parliament to be required by reason of the Emergency:

NOW, THEREFORE, pursuant to Clause (5) of Article 150 of the Federal Constitution **BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

**Short title, application and commencement**

1. (1) This Act may be cited as the Emergency (Essential Powers) Act 1979, and shall have application throughout Malaysia.

(2) This Act shall be deemed for all purposes to have come into force on 20 February 1971.

### **Essential Regulations**

**2.** (1) Subject to the provisions of this section, the Yang di-Pertuan Agong may make any regulations whatsoever (in this Act referred to as “Essential Regulations”) which he considers desirable or expedient for securing the public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, Essential Regulations may, so far as appear to the Yang di-Pertuan Agong to be necessary or expedient for any of the purposes mentioned in that subsection—

- (a) make provisions for the apprehension, trial and punishment of persons offending against the regulations, and for the detention, exclusion and deportation of persons whose detention, exclusion or deportation appears to the Minister of Home Affairs to be expedient in the interests of the public safety or the defence of Malaysia;
- (b) create offences and prescribe penalties (including the death penalty) which may be imposed for any offence against any written law (including regulations made under this Act);
- (c) provide for the trial by such courts as may be specified in such regulations, of persons guilty of any offence against the regulations;
- (d) make special provisions in respect of procedure (including the hearing of proceedings in camera) in civil or criminal cases and of the law regulating evidence, proof and civil and criminal liability;
- (e) make provisions for the control of aliens;
- (f) make provisions for directing and regulating the performance of services by any persons;
- (g) authorize—
  - (i) the taking of possession, control, forfeiture or disposition on behalf of the Government of Malaysia, of any property or undertaking;

- (ii) the acquisition, on behalf of the Government of Malaysia, of any property other than land;
- (h) authorize the entering and search of any premises;
- (i) prescribe fees or other payments;
- (j) provide for amending any written law, for suspending the operation of any written law and for applying any written law with or without modification;
- (k) make provisions for the control of the harbours, ports and of territorial waters of any State in Malaysia and of the movements of vessels;
- (l) make provisions for the transportation by land, or water, and the control of the transport and movement of persons, animals and things;
- (m) make provisions for trading, storage, exportation, importation, production, and manufacture;
- (n) make provisions for the supply and distribution of food, water, fuel, light, and other necessities;
- (o) provide for any other matter in respect of which it is in the opinion of the Yang di-Pertuan Agong desirable in the public interest that regulations should be made.

(3) Essential Regulations may provide for empowering such authorities, persons or classes of persons as may be specified in the regulations to make orders, rules and by-laws for any of the purposes for which such regulations are authorized by this Act to be made, and may contain such incidental and supplementary provisions as appear to the Yang di-Pertuan Agong to be necessary or expedient for the purposes of the regulations.

(4) An Essential Regulation, and any order, rule, or by-law duly made in pursuance of such a regulation shall have effect notwithstanding anything inconsistent therewith contained in any written law, including the Constitution or the Constitution of any State, other than this Act or in any instrument having effect by virtue of any written law other than this Act.

### **Extra-territorial operation of Essential Regulations**

**3.** Unless the contrary intention appears therefrom any provisions contained in, or having effect under, any Essential Regulation shall—

- (a) in so far as they specifically impose prohibitions, restrictions or obligations in relation to ships, vessels or aircraft or specifically authorize the doing of anything in relation to ships, vessels or aircraft, apply to all ships, vessels or aircraft in or over Malaysia and to all ships or aircraft registered in Malaysia wherever they may be; and
- (b) in so far as they impose prohibitions, restrictions or obligations on persons, apply to all persons in Malaysia and all persons on board any ship or aircraft registered in Malaysia, and to all citizens:

Provided that Essential Regulations may make provisions whereby the owner, manager or charterer of any ship or aircraft registered in Malaysia (being a person resident in Malaysia or a corporation incorporated under the law of Malaysia) is subjected to restrictions in respect of the employment of persons in any country or territory in connection with the management of the ship or aircraft.

### **Proof of instruments**

**4.** Every document purporting to be an instrument made or issued by any Minister or authority or person in pursuance of any provision contained in, or having effect under, Essential Regulations, and to be signed by or on behalf of the said Minister, authority or person, shall be received in evidence, and shall, until the contrary is proved, be deemed to be an instrument made or issued by that Minister, authority or person; and *prima facie* evidence of any such instrument as aforesaid may, in any legal proceedings (including arbitrations), be given by the production of a document purporting to be certified to be a true copy of the instrument by, or on behalf of, the Minister or other authority or person having power to make or issue the instrument.

### **Indemnity of public officers and certain other persons**

**5.** No action, prosecution or other legal proceeding whatsoever shall be brought, instituted or maintained in any court against any public officer either personally or in his official capacity for or on

account of or in respect of any act ordered or done by him or purporting to have been ordered or done by him during the emergency period for the purpose of maintaining order or public security or of carrying into effect any regulation, order, rule, by-law, direction or notice made or issued under this Act, and no suit, prosecution or other legal proceeding shall lie in any court against any other person for or on account of or in respect of any act done or purporting to have been done by him under any regulation, order, rule, by-law, direction, notice or instruction of any public officer given for any such purpose as aforesaid:

Provided that the act of such officer or person was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

### **Essential Regulations under the 1964 Act**

6. For so long as the Proclamation of Emergency referred to in the preamble to this Act remains in force, the regulations made under the Emergency (Essential Powers) Act 1964 [*Act 30 of 1964*] (except those regulations which the Yang di-Pertuan Agong may by notification in the *Gazette* declare not to be in force) shall be in force and shall have effect as if they have been made under this Act; and the regulations may be amended, modified or repealed as if they have been made under this Act.

### **Powers to be additional to those under other laws**

7. The powers conferred by this Act and by any regulations made thereunder shall be in addition to and not in substitution for any powers conferred by or under other written law from time to time in force.

### **Penalties**

8. Every person who contravenes any regulation made under this Act shall, where no other penalty is provided by such regulation, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding twelve months or to both.

**Subsidiary legislation under the Ordinance to be deemed to have been made under this Act; and validation of acts and things done under the Ordinance and subsidiary legislation thereunder**

9. (1) Every subsidiary legislation whatsoever made or purporting to have been made under the Emergency (Essential Powers) Ordinance 1969, (hereinafter in this Act referred to as “the Ordinance”) on or after 20 February 1971, shall be valid and have effect as if the said subsidiary legislation has been made under the appropriate provision of this Act and shall be deemed to have come into force from the date on which the said subsidiary legislation came into force or purported to have come into force under the Ordinance, and shall be read with all such modifications as may be necessary to construe such subsidiary legislation as having been made under this Act.

(2) Any such subsidiary legislation as is referred to in subsection (1) may be amended, modified or repealed as if the same has been made under the appropriate provision of this Act.

(3) Any prosecution instituted, trial conducted, decision or order given, in respect of any person in any court, or any other proceeding whatsoever had, or any other act or thing whatsoever done or omitted to be done, under or by virtue of the Ordinance or any subsidiary legislation whatsoever made or purporting to have been made thereunder is declared lawful and hereby validated.

**Federal Court’s special power of review**

10. Where, before the publication of this Act in the *Gazette*, any person charged for any offence under the Internal Security Act 1960 [Act 82] has been tried in accordance with the Essential (Security Cases) Regulations 1975 [P.U. (A) 320/1975 (amended by P.U. (A) 362/1975)] and found guilty and convicted and his appeal to the Federal Court has been dismissed, the Public Prosecutor or such person may by notice of motion apply to the Federal Court within thirty days from the date of publication of this Act in the *Gazette*, or within such further time as the Federal Court may allow, to have such case reviewed, and, in such event, the Federal Court shall have jurisdiction to review such case and make such order as it deems fit.

**Public Prosecutor's power of election; validation of certain criminal proceedings**

**11.** (1) The Public Prosecutor shall have the power exercisable at his discretion to elect to charge any person for any offence either under a law promulgated or enacted under Part XI of the Federal Constitution or under any other law in respect of an act or acts which constitute an offence under a law promulgated or enacted under the said Part XI as well as under any other law, notwithstanding that the area within which such offence was committed is an area proclaimed as a security area under section 47 of the Internal Security Act 1960 [*Act 82*].

(2) Any charge preferred by the Public Prosecutor against any person before or after the commencement of this Act under the Arms Act 1960 [*Act 206*], the Firearms (Increased Penalties) Act 1971 [*Act 37*], or any other law not promulgated or enacted under Part XI of the Federal Constitution in relation to an offence committed in the area which has been proclaimed a security area under section 47 of the Internal Security Act 1960, as published in P.U. (A) 148 of 1969, and any trial conducted, or decision or order given, in consequence of such charge, are declared lawful and hereby validated.

**Jurisdiction of court in respect of proclamation under a law under Part XI of the Federal Constitution**

**12.** No court shall have jurisdiction to entertain or determine any application or question in whatever form, on any ground, regarding the validity or the continued operation of any proclamation issued by the Yang di-Pertuan Agong in exercise of any power vested in him under any Ordinance promulgated, or Act of Parliament enacted, under Part XI of the Federal Constitution.

**Repeal and saving**

**13.** (1) The Emergency (Essential Powers) Ordinance 1969 is hereby repealed.

(2) Notwithstanding subsection (1), all subsidiary legislation made under the said Ordinance and in force immediately before 20 February 1971 shall (without prejudice to the power to amend the same by any subsidiary legislation made under the appropriate provision of this Act and subject to such modifications as may be necessary to bring such subsidiary legislation into conformity with

this Act) continue in force until repealed or replaced by subsidiary legislation made under the appropriate provision of this Act, and shall be deemed to have been made thereunder.

### **Rules**

**14.** The Yang di-Pertuan Agong may make such rules as he may deem necessary or expedient to provide for the removal of any difficulty or anomaly whatsoever in any written law, or in the carrying out of any function, the exercise of any power, or the discharge of any duty, or the doing of any act, under any written law, that may be occasioned by the provisions of this Act, and for that purpose such rules may make any modification, adaptation, alteration, change, or amendment whatsoever to any written law.

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## LIST OF AMENDMENTS

Amending law	Short title	In force from
	- NIL -	

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LIST OF SECTIONS AMENDED

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