

[A draft Peaceful Assembly Bill prepared by the Bar Council]

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A BILL

intituled

An Act relating to the promotion and facilitation of the right to assemble peaceably and without arms, to provide necessary and reasonable conditions relating to such right in the interest of public safety or public order, including giving due regard to the rights and freedoms of other persons, and to provide for related matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, commencement and non-application

1. (1) This Act may be cited as the Peaceful Assembly Act 2011.
- (2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.
- (3) This Act shall not apply to an assembly which is a strike, lock-out or picket under the Industrial Relations Act 1967 [Act 177] and the Trade Unions Act 1959 [Act 262].

Objects

2. The objects of this Act are –
 - (a) to reaffirm, promote and facilitate the right of peaceful assembly for all persons; and
 - (b) to ensure that persons may exercise the right to participate in public assemblies free from unnecessary or unreasonable conditions, restrictions or hindrance; and
 - (c) to ensure that the exercise of the right to participate in public assemblies is subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of –
 - (i) public safety; or
 - (ii) public order; or

- (iii) the giving of due regard to the rights and freedoms of other persons; and
- (d) to ensure that the right of persons to participate in public assemblies may be exercised without payment of a fee, charge or other amount for a licence, permit or other authorisation.

Relationship with other laws

3. (1) This Act has effect despite any other law relating to –
- (a) the right of peaceful assembly; or
 - (b) the movement of traffic or pedestrians; or
 - (c) loitering; or
 - (d) the use or obstruction of a public place; or
 - (e) election campaigns; or
 - (f) the payment of a fee, charge or other amount for a licence, permit or other authorisation relating to a public assembly.
- (2) Despite subsection (1), nothing in this Act affects the common law of trespass and, in particular, the right of a person in, or entitled to, possession of land –
- (a) to request a trespasser to leave the land; and
 - (b) if the trespasser refuses to leave on being requested, to remove the trespasser from the land.

Definitions

4. In this Act, unless the context otherwise requires –

“acknowledgment notice” means a notice issued by the OCPD or his representative under section 9(1)(a);

“arms” mean any article made or adapted for causing injury to person, or intended by a person having it in his possession or under his control for such use by him or by some other person;

“assembly notice” means a notice of intention to hold a public assembly, referred to in section 7;

“Board” means the Peaceful Assembly Board established under section 16;

“counter public assembly” means a public assembly organised to convey disagreement with the purpose for which another assembly is organised, and

held at the same time, date and place or approximately at the same time, date and place as the other public assembly;

“**election campaign**” has the meaning as that referred to in section 24B of the Election Offences Act 1954 [Act 5];

“**Minister**” means the minister charged with the responsibility for Home Affairs;

“**OCPD**” means the Officer in charge of a Police District, as defined in the Criminal Procedure Code [Act 593], for the place of assembly or the proposed place of assembly;

“**organiser**”, in relation to a public assembly for which an assembly notice is given, means the person or persons specified in the assembly notice as the person or persons responsible for organising and conducting the public assembly; and may include any body corporate, statutory body, society and unincorporated body of persons;

“**participant**” means a person who takes part in a public assembly;

“**place of assembly**”, in relation to a public assembly that is a procession, includes a place at or through which it is proposed the assembly will start, stop, pass or end;

“**private assembly**” means an assembly or gathering of persons other than a public assembly;

“**public assembly**” means an assembly or gathering of more than 50 persons, held in a public place, whether or not the assembly is at a particular place or moving, and includes an election campaign;

“**public place**” includes –

- (a) a road; and
- (b) a place open to or used by the public as of right; and
- (c) a place (not privately-owned) for the time being open to or used by the public, whether or not –
 - (i) the place is ordinarily open to or used by the public; or
 - (ii) on payment of money;

“**representative**” means –

- (a) In relation to an OCPD – a police officer nominated by the OCPD; or
- (b) in relation to an organiser – a person nominated by the organiser;

“**road**” has the meaning assigned to it in the Road Transport Act 1997 [Act 333];

“**simultaneous public assemblies**” mean two or more public assemblies to be held at the same time, date and place, or approximately at the same time, date and place, but which are not counter public assemblies.

PART II

RIGHT TO ASSEMBLE PEACEABLY AND WITHOUT ARMS

Right to organise and participate in public assembly

5. (1) Everyone has the right to organise a public assembly, and the right to participate in a public assembly peaceably and without arms; provided that the right to organise a public assembly shall not extend to a person below the age of 18 years unless it is a religious, social, educational, family or cultural assembly.
- (2) The right to organise a public assembly and the right to participate in a public assembly peaceably and without arms are subject only to such conditions and restrictions as are necessary and reasonable in a democratic society in the interest of –
 - (a) public safety; or
 - (b) public order; or
 - (c) the giving of due regard to the rights and freedoms of other persons.

Legal immunity for participant in public assembly

6. A person who participates in a public assembly does not, merely because of his peaceful participation, incur any civil or criminal liability.

PART III

PROCEDURAL REQUIREMENTS

Assembly notice

7. (1) When a public assembly is to be held, the organiser shall notify the OCPD of the same in writing at least 5 days before the assembly.
- (2) No assembly notice is required to be given for a public assembly where it is not possible or reasonably practical to do so, or in respect of an election campaign.

- (3) Where an assembly notice is to be given to the OCPD, it may be done by leaving it at, or by delivering it to, the appropriate police station. Any police officer receiving an assembly notice shall state on the organiser's copy of the assembly notice the date and time of receipt of such notice, failing which the organiser or the person serving the notice shall be entitled to state the same.

Formalities and contents of assembly notice

8. (1) An assembly notice must –
- (a) be in writing; and
 - (b) be addressed to the OCPD; and
 - (c) be signed by the organiser or a representative of the organiser.
- (2) Where an assembly notice is required to be given, it must contain the following particulars –
- (a) the name and address of the organiser and his representative or representatives who must be reachable in the communication of all matters relating to the public assembly; and
 - (b) the local address for service, e-mail address and mobile telephone number of the organiser and his representative or representatives; and
 - (c) the day on which the public assembly is to be held; and
 - (d) the place at which the public assembly is to be held; and
 - (e) the time at which the participants are likely to assemble to participate in the public assembly; and
 - (f) the times at which the public assembly will likely commence and end; and
 - (g) if the public assembly is a procession –
 - (i) the proposed route of the procession; and
 - (ii) any place at which the procession is likely to stop; and
 - (iii) the length of time the procession is likely to remain at each such place; and
 - (h) the expected number of participants; and
 - (i) the purpose of the public assembly; and

- (j) the expected number of persons to be appointed by the organiser to assist in maintaining order in the public assembly; and
- (k) a description of any sound amplification or audio visual equipment proposed to be used by the organiser during the public assembly.

Procedural compliance

9. (1) Where an assembly notice is required to be given, a public assembly is taken to have complied with the requirements under this Act if, after the giving of the assembly notice –
- (a) an acknowledgement notice of the public assembly is received by the organiser of the public assembly from the OCPD or his representative; or
 - (b) no acknowledgment notice of the public assembly is received by the organiser, and no order of the Board made under section 18 prohibiting the holding of the public assembly is received by or communicated to the organiser, before the holding of the public assembly.
- (2) No assembly notice is required to be given in respect of any of the following –
- (a) a private assembly; or
 - (b) a public assembly falling under section 7(2); or
 - (c) an election campaign; or
 - (d) a public assembly falling under the First Schedule.

Pre-assembly consultations and meetings

10. (1) The OCPD shall, after receiving an assembly notice, forthwith consult with the organiser to consider the necessity for a pre-assembly meeting on any aspect of the conduct of the proposed public assembly.
- (2) If, after such consultation, the OCPD is of the opinion that negotiations are necessary, he shall forthwith call a pre-assembly meeting between himself or his representative and the organiser or his representative, to discuss any matter regarding the conduct of the proposed public assembly.
- (3) The OCPD shall ensure that every pre-assembly meeting takes place in good faith and with the objective of facilitating the holding of the proposed public assembly.

Acknowledgment notice may specify certain conditions

11. (1) The OCPD may, in an acknowledgment notice given under section 9(1)(a), specify conditions relating to the holding of the public assembly. An acknowledgment notice containing conditions must be served on the organiser or his representative within 48 hours of the receipt by the OCPD of the assembly notice, at the address for service stated in the assembly notice.
- (2) Except where the organiser has (through consultation or negotiation) agreed in writing to a condition, a condition may not be specified by the OCPD unless –
 - (a) it is consistent with the objects and spirit of this Act; and
 - (b) it concerns one of the matters stipulated in subsection (3); and
 - (c) it is non-arbitrary and does not give rise to any unequal treatment between different organisers or groups of organisers; and
 - (d) the negotiations required by subsection (4) have been held.
- (3) A condition specified by the OCPD must necessarily and reasonably relate to a significant matter concerning –
 - (a) public safety; or
 - (b) public order; or
 - (c) the giving of due regard to the rights and freedoms of other persons.
- (4) For the purposes of subsection (2)(d), the OCPD shall forthwith and expeditiously negotiate with the organiser to reach an agreement, where possible, before specifying any condition.
- (5) For the purposes of this Act, the expression “public order” relates to the sum of rules which ensure the functioning of a democratic society, and the set of fundamental principles on which a democratic society is founded. Respect for human rights and constitutional rights, including the right of freedom of expression and the right to assemble peaceably, is a part of public order.
- (6) For the purposes of this Act, “public safety” relates to protection against danger to the safety of persons, or against serious damage to their property.
- (7) Any organiser dissatisfied with a condition specified by the OCPD may forthwith make an application in writing to the Board to revoke or vary such condition.

Application to prohibit public assembly

12. If an assembly notice is given to the OCPD in accordance with the provisions of this Act, the OCPD may apply in writing, within 48 hours of the receipt of the assembly notice, to the Board for an order that the proposed public assembly be prohibited, stating in sufficient detail the reasons for his application; and shall forthwith notify the organiser regarding such application.

Restrictions affecting application to prohibit public assembly

13. The OCPD is not entitled to apply under section 12 for an order from the Board unless –
- (1) the OCPD has in good faith given due regard to the objects and spirit of this Act; and
 - (2) the OCPD has formed the opinion, on reasonable and disclosed written grounds, that if the public assembly were to be held –
 - (a) there will be real and serious risk to public safety; or
 - (b) serious public disorder will likely happen; or
 - (c) there will likely be excessive and prolonged interference with the rights or freedoms of other persons; and
 - (3) the OCPD has negotiated with the organiser, but failed to achieve an agreement on the matter.

Simultaneous assemblies

14. (1) If two public assemblies are notified to be held in the same place at the same time and date (or approximately the same time and date), and their simultaneous arrangement is not possible, the organiser who first submitted his assembly notice shall have precedence, unless the place of assembly is traditionally to be used by the other organiser on that date. In this event, the OCPD shall, after consulting with the other organiser, move the other public assembly to be held at another time or to another place that is suitable having regard to the purpose of the other public assembly.
- (2) If more than two public assemblies are notified to be held in the same place at the same time and date (or approximately the same time and date), the foregoing provisions shall apply *mutatis mutandis*.

Counter assemblies

15. If, after receiving an assembly notice for a public assembly, the OCPD receives an assembly notice for a counter public assembly, and it is evident that the counter public assembly will result in conflict between the participants of the two public assemblies at the place of assembly (of a nature that is likely

to disrupt public order or endanger public safety), the OCPD shall propose an alternative for the counter public assembly to be organised at another time, date or place.

PART IV

PEACEFUL ASSEMBLY BOARD

Establishment of a Peaceful Assembly Board

16. (1) There shall be established a body to be known as the Peaceful Assembly Board (in this Act referred to as "**the Board**").
- (2) It shall be the duty of the Board –
- (a) to hear any application from the OCPD or the organiser; and
 - (b) to promote greater understanding by the general public of issues concerning peaceful public assembly; and
 - (c) to ensure uniformity of treatment of different organisers or different groups of organisers; and
 - (d) to keep itself generally informed as to the conduct of public assemblies.
- (3) The Board shall comprise a Chairman, a Deputy Chairman and 23 other members. The 25 members of the Board shall be appointed as follows –
- (a) 5 members by the Prime Minister; and
 - (b) 5 members by the Leader of the Opposition in Parliament; and
 - (c) 5 members by SUHAKAM; and
 - (d) 5 members by the Chief Justice of Malaysia; and
 - (e) 5 members by the President of the Malaysian Bar.
- (4) The term of each member of the Board shall be for a period of 2 years but he or she may be reappointed.
- (5) No member of the Board shall be appointed from the public service or the judiciary.
- (6) Any vacancy on the Board howsoever arising shall be filled by a person appointed by the same appointing body or person specified in subsection (3) who had made the earlier appointment in respect of which the vacancy has arisen.

- (7) The Board shall elect among themselves by yearly rotation a Chairman and a Deputy Chairman.
- (8) Any act to be performed by the Chairman, or the Deputy Chairman, shall in their absence or inability to act, be performed by the senior-most member of the Board, by virtue of age, who is able and willing to do so.
- (9) No action, suit, prosecution or other proceedings whatsoever shall lie or be brought, instituted or maintained in any Court or before any authority against the Board or any member of the Board, for or on account of any act or thing done or statement made (or omitted to be done or made) in pursuance or in execution of, or in intended pursuance or execution of, this Act, or in respect of any order, direction, instruction, notice, or other thing whatsoever issued under this Act: provided that such act, thing or statement was done or made, or was omitted to be done or made, in good faith.

Peaceful Assembly Panel (“Panel”)

17. (1) Each Panel hearing an application made pursuant to section 11(7) or section 12 shall consist of 5 members from the Board who are empanelled by the Chairman of the Board, or in his absence by the Deputy Chairman of the Board, as follows –
 - (a) one member from the appointees made by the Prime Minister; and
 - (b) one member from the appointees made by the Leader of the Opposition in Parliament; and
 - (c) one member from the appointees made by SUHAKAM; and
 - (d) one member from the appointees made by the Chief Justice of Malaysia; and
 - (e) one member from the appointees made by the President of the Malaysian Bar.
- (2) The Chairman of the Board shall appoint the Chairman of the Panel from among the members of the Panel.
- (3) The Chairman of the Board and the Deputy Chairman of the Board may sit as a member of a Panel.

Hearing and determination of applications

18. (1) Upon receiving an application pursuant to section 11(7) or section 12, the Board shall forthwith further constitute the Panel. The Board shall forthwith notify, by telephone where the urgency of the situation so requires the parties of the date, time and place of the hearing.

- (2) In determining an application under section 11(7) or section 12 the Panel –
 - (a) shall expeditiously convene to consider and determine the application; and
 - (b) shall determine with the greatest expedition the application made to it so as to ensure that the application is not frustrated by any delay in the determination by the Panel; and
 - (c) must have due regard to the objects and spirit of the Act; and
 - (d) is not bound by the rules of evidence; and
 - (e) must conduct the proceeding with as little formality and technicality as possible.
- (3) Each party to the application is to bear its own costs of the proceeding, regardless of the outcome of the proceeding.
- (4) Each party shall not make more than 1 application in relation to the same public assembly.
- (5) In relation to the hearing of any application, every question before the Panel shall be determined by the decision of a majority of the members of the Panel.
- (6) In hearing an application, the Panel may receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law.
- (7) The Panel may, after hearing an application, prohibit the holding of the proposed public assembly or allow the holding of the public assembly with or without conditions provided that any condition imposed by the Panel must be consistent with the objects and spirit of this Act.
- (8) Where due notice has been given to the parties, the Panel may hear and determine the appeal in the absence of any one party.
- (9) Before deciding to dispose of any application in the absence of a party, the Panel may consider any representations in writing submitted by the absent party.
- (10) An order of the Panel shall be deemed to be the order of the Board.

PART V

MISCELLANEOUS

Duties of the police at a public assembly

19. A police officer on duty at a public assembly –
- (1) shall have a duty to take appropriate measures to enable the public assembly to take place and conclude peacefully, and at all times uphold the objects and spirit of this Act; and
 - (2) shall be uniformed; and
 - (3) may only issue an order to disperse if there are reasonable grounds to believe that there is real and imminent danger to public safety, or significant and prolonged interference with public order; and
 - (4) in exercising the power to disperse a public assembly, may only use reasonable and proportionate force and may do so only after reasonable and sufficient time and opportunity have been given to the participants to disperse voluntarily and peaceably; and
 - (5) may make any form of audio or visual recording of a public assembly, and shall not prevent, obstruct or restrict any other person from doing the same.

Presence of police at private assemblies

20. No police officer (whether uniformed or otherwise) shall be present at, attend, observe or participate in a private assembly, meeting or event, unless invited or allowed to do so by the organiser of such private assembly, meeting or event.

Role of the media

21. The police in discharging their duties in relation to a public assembly shall at all times facilitate the performance by all members of the media of their duties and functions.

Offences

22. (1) An organiser who has wilfully breached a condition lawfully imposed under this Act on a public assembly, or caused another to breach the same, shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding RM5,000.00. It is a valid defence under this subsection if the organiser is able to show that he has taken all reasonable and available steps to prevent the commission of the breach, or that the occurrence of the breach was beyond his reasonable control.

- (2) A police officer who has wilfully breached a provision of this Act, or a duty imposed on him under this Act, shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding RM5,000.00. It is a valid defence under this subsection if the police officer is able to show that he has done everything in his power to prevent the commission of the breach, or that the occurrence of the breach was beyond his reasonable control.

Maintenance of register

23. (1) The OCPD shall maintain a register containing a record of assembly notices received under section 7, in chronological order.
- (2) The register referred to in subsection (1) shall be in such form as the Minister may prescribe.

Rules and regulations

24. The Board may make regulations relating to such matters as it considers necessary or desirable for the furtherance of the objects of this Act or for the carrying out of the provisions of this Act, including rules governing applications made under this Act and the hearing and determinations of such applications. Subject to any rules so made, a Panel may at its discretion determine the rules, procedure and practice applicable to the consideration and determination of an application before it.

SCHEDULES

FIRST SCHEDULE

1. Public assemblies of a religious, festive, educational, cultural, social, recreational, or charitable nature
2. Funeral processions
3. Wedding receptions
4. Family gatherings
5. Gatherings held by an employer for the benefit of its employees

Explanatory Statement

The proposed Peaceful Assembly Act 2011 (“**the proposed Act**”) as drafted by the Bar Council takes significantly different approaches from the Bill drafted by the government.

Among the differences in the policies and principles include the following.

The government’s Bill approaches the right of peaceful assembly from a very limited and restrictive stand point that does not accord with international norms, the current rapid developments around the world on such fundamental rights, as well as the aspirations of the Malaysian people.

On the other hand, the Bar Council’s draft Bill approaches the matter with an understanding of the urgent need to change the mindset of how such matter has been dealt with by the authorities in the past half a century, and the democratic necessity to fulfill the Rakyat’s growing expectations of greater fundamental liberties in line with international practices and developments.

The Bar Council’s draft Bill is intended to promote and facilitate the freedom of the right of peaceful assembly, whereas the government’s Bill, while providing small improvements in certain limited aspects, continues to constrict the space for freedom of peaceful assembly that the Malaysian people ought to have. Worse still, in some aspects, such as the total prohibition of street protest, the government’s Bill contains conditions or restrictions which are not currently expressly provided for.

The Bar Council’s draft Bill complies with international conventions and norms, whereas the government’s Bill does not. For instance, the government’s Bill prohibits assemblies in motion (processions or street protests) which no other progressive jurisdiction does. The government’s Bill vests excessive powers and control with the police whilst imposing onerous duties and responsibilities on organisers and participants of public assemblies.

The Bar Council’s draft Bill takes into account the internationally accepted principle that the exercise of the right of peaceful assembly is part of “public order”, whereas the government’s Bill appears to view such exercise of fundamental right as antagonistic to public order.

The government’s Bill continues to retain the unacceptable practice of allowing the police to be its own judge and jury on matters relating to freedom of assembly. On the other hand, the Bar Council’s draft Bill has removed this unacceptable practice, by the creation of an independant Peaceful Assembly Board.

PART I

(2) Part I contains preliminary matters.

Clause 2 states clearly the objects of the proposed Act, bearing in mind the principles set out above.

Clause 3 makes it clear that the proposed Act represents a fresh approach in dealing with the legitimate exercise of fundamental freedoms. Thus, the proposed Act is to have effect in preference to other earlier laws that had used the outdated approach.

PART II

(3) Part II of the proposed Act deals with the right to organise and participate in public assemblies.

Clause 5 (1) makes it clear that everyone has the right to organise a public assembly and the right to participate in a public assembly. The only limitation pertains to the right of a person below the age of majority to organise a public assembly.

Clause 5 (2) sets out the only 3 areas that could be taken into account in determining what legitimate conditions may be imposed on the fundamental right of the freedom of assembly.

Clause 6 is necessary because in promoting (rather than simply acknowledging) the freedom of peaceful assembly, participants of public assemblies must be given legal immunity in relation to their mere act of participation.

PART III

(4) Part III deals with the requirements in relation to the organisation, notification and conduct of, and participation in, public assemblies, and related matters.

Clause 7 stipulates the requirement for the organiser of a public assembly to serve an assembly notice on the police at least 5 days beforehand, with provisions for exceptional circumstances such as in the case of spontaneous assemblies.

Clause 8 stipulates the necessary information that an organiser must provide to the police.

Clause 9 (1) provides for the situation of the police responding with the service of an acknowledgment notice (with or without conditions), and the other situation where the police fails to so respond.

Clause 9 (2) stipulates situations where no assembly notice is required.

Clause 10 provides for collaborative processes between the police and the organisers of public assemblies, with the view to encouraging the achievement of agreement between the parties so far as possible.

Clause 11 deals with situations where the police decides to specify conditions, the types of conditions that may be legitimately imposed, the factors that should be taken into account before imposing any condition, the principles upon which the condition may be specified, and the remedy open to the organiser who is dissatisfied with the imposition of the condition.

Clauses 12 and 13 deal with the situation where the police wishes to prohibit a public assembly for which an assembly notice has been given, and the steps that the police are obliged to take.

Clause 14 deals with simultaneous public assemblies.

Clause 15 deals with counter public assemblies.

PART IV

(5) Part IV deals with the creation of a new independent body to resolve all matters between the police and organisers concerning public assemblies.

Clause 16 deals with the Peaceful Assembly Board, its duties, its composition and other related matters.

Clause 17 provides for the Peaceful Assembly Panel which is a body under the Board charged with the function of dealing with applications made to the Board by either the police or the organisers, and other related matters.

Clause 18 provides for the rules and procedures that govern the hearing and determination of applications made to the Board by either the police or organiser in relation to an assembly notice.

PART V

(6) Part V deals with miscellaneous matters.

Clauses 19 and 20 contain the duties and responsibilities of the police in facilitating and protecting participants of public assemblies as well as other persons. This is a departure from the hitherto mindset of the police in preventing or limiting the exercise of such fundamental and constitutional rights. These provisions are necessary if the legislature is serious about giving the Rakyat a new dawn of freedom.

Clause 21 provides for the role of the media in public assemblies.

Clause 22 deals with offences.

Clause 23 deals with the register under the Act.

Clause 24 provides for the Board with the power to make rules and regulations in the discharge of its functions.

Schedules

(7) The First Schedule sets out the types of public assemblies which are excluded from the application of the proposed Act.