



# PARLIMEN MALAYSIA



**RANG UNDANG-UNDANG  
Perhubungan Perusahaan (Pindaan) 1971  
DR.74/1971**

## RANG UNDANG<sup>2</sup>

Suatu Akta bagi meminda Akta Perhubongan Perusahaan, 1967.

MAKA INI-LAH DI-PERBUAT UNDANG<sup>2</sup> oleh Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong dengan nasihat dan persetujuan Dewan Negara dan Dewan Ra'ayat yang bersidang dalam Parlimen, dan dengan kuasa daripada-nya, seperti berikut:

1. Akta ini boleh-lah di-namakan Akta Perhubongan Perusahaan (Pindaan), 1971. Tajok ringkas.
2. Akta Perhubongan Perusahaan, 1967, ada-lah dengan ini di-pinda mengikut sa-bagaimana yang di-nyatakan dalam Jadual bersama ini. Pindaan. 35/67.
3. Peratoran<sup>2</sup> Perlu (Perhubongan Perusahaan), 1969 dan Peratoran<sup>2</sup> Perlu (Perhubongan Perusahaan), 1971 ada-lah dengan ini di-mansokhkan. Peman-  
sokhan.  
P.U. (A)  
407/69.  
P.U. (A)  
33/71.

### JADUAL

(Pindaan<sup>2</sup> kepada Akta Perhubongan Perusahaan, 1967)

1. Sekshen 2
 

Masokkan sa-lepas sahaja ta'arif "collective bargaining" ta'arif baharu yang berikut—  
“‘Commissioner’ means the Commissioner for Industrial Relations and includes any other officer acting on his behalf;”.
2. Sekshen 4
  - (a) potong sekshen-kecil (1) dan (2);
  - (b) gantikan sekshen-kecil (3) dengan yang berikut—  
“(1) No person shall interfere with, restrain or coerce a workman or an employer in the exercise of his rights to form and assist in the formation of and join a trade union and participate in its lawful activities.”; dan

Pindaan bagi sekshen 2.

Pindaan bagi sekshen 4.

Pindaan bagi sekshen 5.

Leave on trade union business.

Pindaan bagi sekshen 8.

Pindaan bagi sekshen 9.

Prohibition of certain acts pending recognition of a trade union.

(c) nomborkan sa-mula sekshen-kecil (4) dan (5) yang sedia ada masing<sup>2</sup> sa-bagai sekshen-kecil (2) dan (3).

### 3. Sekshen 5

Masukkan sa-lepas sahaja sekshen 5 sekshen baharu yang berikut—

“5A. (1) A workman intending to carry out his duties or to exercise his rights as an officer of a trade union shall apply in writing to his employer for leave of absence stating the durations of and the purposes for which such leave is applied for and the employer shall grant such application for leave if the duration of the leave applied for is for a period that is no longer than what is reasonably required for the purposes stated in the application:

Provided that a workman shall not be entitled to leave with pay for the duration of his absence if the purposes for which he is absent from work are not to represent the members of his trade union in relation to industrial matters concerning his employer.”.

### 4. Sekshen 8

(a) masukkan sa-belum sahaja sekshen-kecil (1) suatu sekshen-kecil baharu saperti berikut—

“(1) No trade union of workmen the majority of whose membership consists of workmen in non-managerial or non-executive positions, excluding persons employed in confidential capacity or engaged in security work may seek recognition in respect of workmen in managerial or executive positions or workmen employed in confidential capacity or engaged in security work, or serve an invitation under section 12 in respect of such workmen.”;

(b) nomborkan sa-mula sekshen-kecil (1), (2) dan (3) yang sedia ada masing<sup>2</sup> sa-bagai sekshen-kecil (2), (3) dan (4);

(c) gantikan perkataan “subsection (2)” yang terdapat dalam baris pertama dan ketiga sekshen-kecil (4) dengan perkataan “subsection (3)”; dan

(d) gantikan sekshen-kecil (4) dengan yang berikut—

“(5) The Minister, upon receipt of a report under subsection (4) may take such steps as may be necessary or expedient to resolve the matter and shall, if the matter is not resolved, give a decision; and the Minister’s decision as to who shall be workmen in managerial or executive positions or employed in confidential capacity or engaged in security work made under subsection (1) of this section and any decision made by him under this section shall be final and shall not be questioned in any Court.”.

### 5. Sekshen 9

Gantikan sekshen 9 dengan yang berikut—

“9. (1) No workman shall go on strike for whatever reason during the pendency of proceedings under section 8 of this Act or after the Minister has decided that the trade union should not be accorded recognition by the employer of such workman.

(2) An employer shall not dismiss a workman once a trade union of workmen has served in writing on the employer or a trade union of employers to which the employer belongs a claim for recognition in respect of the workman or class of workmen:

Provided that a dismissal may be effected on disciplinary grounds and that this restriction shall no longer apply once the Minister has made a decision on the claim.”.

#### 6. Sekshen 10 dan 11

Potong perkataan “Court” yang terdapat dalam kedua<sup>2</sup> sekshen dan gantikan-nya dengan perkataan “Minister”.

Pindaan bagi sekshen<sup>2</sup> 10 dan 11.

#### 7. Sekshen 12

(a) masukkan suatu sekshen-kecil baharu sa-lepas sekshen-kecil (2) seperti berikut

“(3) Notwithstanding the provisions of subsection (1), no trade union of workmen may include in its proposals for a collective agreement a proposal in relation to any of the following matters, that is to say—

(a) the promotion by an employer of any workman from a lower grade or category to a higher grade or category;

(b) the transfer by an employer of a workman within the organisation of an employer's profession, business, trade or work, provided that such transfer does not entail a change to the detriment of a workman in regard to his terms of employment;

(c) the employment by an employer of any person that he may appoint in the event of a vacancy arising in his establishment;

(d) the termination by an employer of the services of a workman by reason of redundancy or by reason of the reorganisation of an employer's profession, business, trade or work or the criteria for such termination;

(e) the dismissal and reinstatement of a workman by an employer in circumstances in which subsection (1) of section 16A applies;

(f) the assignment or allocation by an employer of duties or specific tasks to a workman that are consistent or compatible with the terms of his employment:

Provided that nothing in this subsection shall prohibit a trade union of workmen to raise in the course of any discussion with an employer or trade union of employers (whether or not the discussion is in the course of any collective bargaining) questions of a general character relating to the procedures of promotion of workmen notwithstanding that such questions do not form part of the proposals aforesaid.”;

(b) nomborkan sa-mula sekshen-kecil (3), (4), (5) dan (6) masing<sup>2</sup> sa-bagai sekshen-kecil (4), (5), (6) dan (7); dan

Pindaan bagi sekshen 12.

(c) tambah sekshen-kecil (8) baharu yang berikut—

“(8) Where a trade union of workmen considers that an employer or a trade union of employers has refused to allow without just cause or excuse any question referred to under the proviso to subsection (3) to be raised in the course of any discussion, the trade union of workmen may, within one month of such refusal, make representations in writing to the Minister who may, before giving any direction thereon, give an opportunity to the employer or his trade union and the trade union of workmen to be heard; and the direction of the Minister shall be final and conclusive.”.

Pindaan bagi sekshen 13.

Restrictions on collective agreements in certain new undertakings.  
38/55.

13/68.

Pindaan bagi sekshen 14.

Pindaan bagi sekshen 16.

Representations to Minister on dismissals.

#### 8. Sekshen 13

Masokkan sa-lepas sahaja sekshen 13 sekshen baharu yang berikut—

“13A. (1) No collective agreement to which this section applies shall contain provisions with regard to terms and conditions of service that are more favourable to workmen than those contained in Part XII of the Employment Ordinance, 1955, unless such provisions are approved by the Minister after considering any representations in that regard made by an employer and a trade union representing his workmen:

Provided that the Minister may amend or modify such provisions before approving them.

(2) This section applies to collective agreements made between an employer and a trade union representing his workmen in respect of, or in relation to—

(a) a pioneer enterprise as defined under section 2 of the Investment Incentives Act, 1968;

(b) any other industry in respect of which the Minister may by notification in the *Gazette* declare that this section shall apply.

(3) The provisions of this section shall apply to industries specified in subsection (2) for a period of five years from the date such industries commence, or have commenced, operation in Malaysia:

Provided that the Minister may from time to time by notification in the *Gazette* extend such period for such further or periods as the Minister may decide.”.

#### 9. Sekshen 14

Gantikan sekshen-kecil (1) dengan yang berikut—

“(1) The parties to a collective agreement may deposit with the Secretary to the Court within one month from the date on which the agreement has been entered into, and the Secretary shall thereupon bring it to the notice of the Court for its cognizance.”.

#### 10. Sekshen 16

Masokkan sa-lepas sahaja sekshen 16 sekshen baharu yang berikut—

“16A. (1) Where a workman considers that he has been dismissed without just cause or excuse by his employer, in circumstances other than those arising out of a contravention of section 46A he may, within one month of such dismissal, make representations in writing to the Minister to be reinstated in his former employment.

(2) The Minister may, before making a decision on any such representations, request the Commissioner to enquire into the dismissal and report whether in his opinion the dismissal is without just cause or excuse and in such an enquiry the workman may be represented by his trade union.

(3) The Minister, if he decides to deal with the representations himself, may before making a decision thereon give an opportunity to the employer and his trade union and to a trade union representing the workman to be heard.

(4) If, after considering the representations of the workman and of the employer (if any) and any report made by the Commissioner under subsection (2) the Minister is satisfied that the workman has been dismissed without just cause or excuse he may, notwithstanding any rule of law or agreement to the contrary—

- (a) direct the employer to reinstate the workman in his former employment and to pay the workman an amount that is equivalent to the wages that he would have earned had he not been dismissed by the employer; or
- (b) direct the employer to pay such amount of wages as compensation as may be determined by the Minister, and the employer shall comply with the Minister's direction.

(5) The decision of the Minister on any representations made under this section shall be final and conclusive and shall not be challenged in any court or in a court established under this Act.

(6) Any direction by the Minister under subsection (4) shall operate as a bar to any action for damages by the workman in any court in respect of the wrongful dismissal.

(7) An employer who fails to comply with the direction of the Minister under subsection (4) shall be guilty of an offence under this Act and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(8) Where an amount to be paid under subsection (4) is not paid in accordance with the Minister's direction and the employer has been convicted of an offence under subsection (7) the amount, or so much thereof as remains unpaid, shall be recoverable as if it were a fine and the amount so recovered shall be paid to the workman entitled under the direction.

(9) Notwithstanding the provisions of the foregoing subsections, the Minister may of his own motion if he is satisfied that it is expedient so to do or on the joint request of the trade union representing the workman and his employer or his trade union refer any dismissal to the Court for settlement.”.

## 11. Sekshen 18

- (a) Gantikan sekshen-kechil (1) dengan yang berikut—

“(1) For the purposes of this Act, there shall be an Industrial Court which shall consist of—

- (a) a President who shall be appointed by the Yang di-Pertuan Agong; and

Pindaan bagi sekshen 18.

(b) a panel of independent persons, a panel of persons representing employers and a panel of persons representing workmen all of whom shall be appointed by the Minister:

Provided that before appointing the panels the Minister may consult such organisations representing employers and workmen respectively as he may think fit.”;

(b) dalam sekshen-kecil (2), gantikan perkataan “Minister” dengan perkataan “Yang di-Pertuan Agong”; dan

(c) gantikan sekshen-kecil (3) dengan yang berikut—

“(3) The appointments made in the preceding subsections shall be published in the *Gazette* and shall specify, if any, the terms and conditions upon which they are made.”.

Pindaan bagi sekshen 20.

#### 12. Sekshen 20

Dalam sekshen-kecil (2), gantikan perkataan “Minister” dengan perkataan “Yang di-Pertuan Agong”.

Pindaan bagi sekshen 23.

#### 13. Sekshen 23

Gantikan sekshen-kecil (2) dengan yang berikut—

“(2) The Minister may of his own motion refer any trade dispute to the Court if he is satisfied that it is expedient so to do:

50/67.

Provided that in the case of a trade dispute in any Government service or in the service of any statutory authority, such reference shall not be made except with the consent of the Yang di-Pertuan Agong or State Authority as the case may require.

For the purpose of this section and section 41 (c), the expression ‘statutory authority’ shall mean an authority or body established, appointed or constituted under a Federal or State law.”.

Pindaan bagi sekshen 27.

#### 14. Sekshen 27

Gantikan sekshen-kecil (7) dengan yang berikut—

“(7) An award may specify the period during which it shall continue in force, and may be retrospective to such date as it is specified in the award:

Provided that such retrospective date of the award may not, except in the case of a decision of the Court under section 30 and an order of the Court under paragraph (c) of subsection (4) of section 53, be earlier than six months from the date on which the dispute was referred to the Court.”.

Pindaan bagi sekshen 37.

#### 15. Sekshen 37

Gantikan sekshen 37 dengan yang berikut—

“(1) Without prejudice to the provisions of section 36, it shall be unlawful for one or more persons acting on his or their behalf or on behalf of a trade union or of an employer or firm in furtherance of a trade dispute—

Picketing.

(a) to attend at or near any place:

Provided that it shall not be unlawful if such person or persons so attend at or near the place where a workman works and where a trade dispute exists merely for the purpose of peacefully—

(i) obtaining or communicating information; or

(ii) persuading or inducing any person to work or to abstain from working; or

(b) to attend at or near the place where a workman works and where a trade dispute exists if such person or persons so attend or attend in such numbers or otherwise in such manner as to be calculated—

(i) to intimidate any person in that place; or

(ii) to obstruct the approach thereto or egress therefrom; or

(iii) to lead to a breach of the peace.

(2) If any person acts in contravention of subsection (1) he shall be deemed to have committed an offence under section 36 and liable to the punishment provided thereunder.”.

#### 16. Sekshen 41

Pindaan bagi sekshen 41.

Gantikan perenggan (e) dengan yang berikut—

“(e) in respect of any of the matters covered under subsection (3) of section 12.”.

#### 17. Sekshen 46

Pindaan bagi sekshen 46.

Masokkan sa-lepas sahaja sekshen 46 sekshen baharu yang berikut—

“46A. (1) Notwithstanding the provisions of section 5, it shall be an offence to dismiss a workman or injure or threaten to injure him in his employment or alter or threaten to alter his position to his prejudice, by reason of the circumstance that the workman—

(a) is, or proposes to become, an officer or member of a trade union or association that has applied to be registered as a trade union;

(b) is entitled to the benefit of a collective agreement or an award;

(c) has appeared or proposed to appear as a witness, or has given or proposes to give any evidence, in any proceeding under this Act;

(d) being a member of a trade union which is seeking to improve working conditions, is dissatisfied with such working conditions;

(e) is a member of a trade union which has served an invitation under section 12 or which is a party to negotiations under this Act or to a trade dispute which has been reported to the Minister in accordance with Part V or Part VI;

(f) has absented himself from work without leave for the purpose of carrying out his duties or exercising his rights as an officer of a trade union where he applied for leave in accordance with section 5A before he absented himself and leave was unreasonably deferred or withheld; or

Injuring a workman on account of certain acts.

(g) being a member of a Panel appointed under section 18 has absented himself from work for the purpose of performing his functions and duties as a member of the Court and has notified the employer before he absented himself.

(2) An employer who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(3) Where an employer has been convicted of an offence punishable under subsection (2) the court by which the employer is convicted may order the employer to pay the workman the amount of any wages lost by him and also the employer to reinstate the workman in his former position or a similar position.

(4) Where an amount ordered to be paid under subsection (3) is not paid in accordance with the order, the amount or so much thereof as remains unpaid shall be recoverable as if it were a fine and the amount so recovered shall be paid to the workman entitled under the order.

(5) Any employer who fails to comply with a direction given under subsection (3) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(6) Notwithstanding in this section shall be construed as prohibiting the Minister from enquiring into the dismissal of or the reinstatement of a workman who has been allegedly dismissed in contravention of the provisions of this section before any proceedings have commenced in a court of law; and any enquiry so made by the Minister shall be deemed to be a proceeding under section 16A and any decision made by him shall be construed as if it were made under the provisions of that section.”.

#### 18. Sekshen 53

(a) Sekshen-kecil (4) ada-lah dengan ini di-pinda—

(i) dengan memotong perkataan “other” yang terdapat dalam perenggan (b), dengan menggantikan noktah di-hujong-nya dengan koma bernoktah dan dengan menambah perkataan “or” sa-lepas-nya itu;

(ii) dengan menambah suatu perenggan (c) baharu sa-lepas sahaja perenggan (b)—

“(c) make such order as it considers desirable to vary or set aside upon special circumstances any term of the award or collective agreement.”.

(b) Masukkan sekshen baharu yang berikut sa-lepas sahaja sekshen 53—

“53A. (1) The Court may and shall, if so directed by the Attorney General, refer a question of law arising in any proceeding before it to the Attorney General for his opinion.

(2) Before referring a question of law to the Attorney General in accordance with subsection (1) the Court shall inform the parties to the proceeding in relation to which the question arises of the question which it proposes to refer and allow the parties a reasonable opportunity to make written submission relating to the question.

(3) Submissions made in accordance with subsection (2) shall be referred to the Attorney General and the Attorney General shall, after considering those submissions, furnish his opinion to the Court.

(4) Notwithstanding a reference of a question of law to the Attorney General (not being a question whether the Court may exercise powers under this Act in relation to a trade dispute or matter), the Court may make an award in relation to the proceeding in which the question arose.

(5) Upon receiving the opinion of the Attorney General the Court—

(a) may, if it has not made an award with respect to the parties of the proceeding in which the question arose, make an award not inconsistent with the opinion; or

(b) shall, if it has made an award as aforesaid, vary the award in such a way as will make it consistent with the opinion.”.

## 19. Sekshen 55

Gantikan sharat kapada sekshen-kechil (1) dengan yang berikut—

Pindaan bagi sekshen 55.

“Provided that no contravention of or failure to comply with any provision of Parts II, III (other than sections 8 and 9) or IV (other than subsection (8) of section 12) shall be deemed to be an offence punishable under this section.”.

## HURAIAN

Menurut kuasa<sup>2</sup> dharurat di-bawah sekshen 2 Ordinan No. 1 (Kuasa<sup>2</sup> Perlu) Dharurat, 1969, Pengarah Gerakan telah mengishtiharkan peratoran<sup>2</sup> bernama Peratoran<sup>2</sup> Perlu (Perhubongan Perusahaan), 1969 dan Peratoran<sup>2</sup> Perlu (Perhubongan Perusahaan), 1971 yang membuat pindaan<sup>2</sup> tertentu kapada Akta Perhubongan Perusahaan, 1967. Oleh yang demikian tujuan Rang Undang<sup>2</sup> ini ia-lah untuk memasokkan peruntukan<sup>2</sup> yang terkandong dalam Peratoran<sup>2</sup> itu dengan beberapa ubahsuaian yang perlu memandang kapada pengalaman yang di-perolehi semenjak Oktober 1969.

Dengan ringkasnya, maksud bagi pindaan<sup>2</sup> utama yang di-nyatakan dalam Rang Undang<sup>2</sup> ini ia-lah saperti berikut:

- (i) Melindungi hak orangkerja untuk memasuki atau tidak memasuki sa-suatu kesatuan sekerja dan menjelaskan sa-tengah<sup>2</sup> daripada hak majikan supaya perhubongan perusahaan atas dasar yang lebih sa-imbang dapat di-adakan.
- (ii) Memberi chuti kapada orangkerja untuk membolehkan mereka menjalankan kewajipan<sup>2</sup> mereka sa-bagai pegawai<sup>2</sup> kesatuan sekerja dalam perkara<sup>2</sup> berhubung dengan kesatuan-nya.

- (iii) Menyekat ahli<sup>2</sup> dalam jawatan pengurusan dan kerja dan mereka yang terlibat dalam kerja keselamatan daripada diwakili oleh kesatuan<sup>2</sup> sekerja yang tidak terkhas bagi pekerja<sup>2</sup> dari kategori itu.
- (iv) Melarang orangkerja daripada di-buangkerja, kechualи atas sebab<sup>2</sup> salah-laku, dalam masa menanti keputusan berkenaan dengan tuntutan meminta sa-suatu kesatuan sekerja di-iktiraf dan juga menchengah apa<sup>2</sup> bentok tindakan perusahaan dalam masa tuntutan pengiktirafan itu belum di-putuskan.
- (v) Melindungi perusahaan<sup>2</sup> perintis daripada tuntutan<sup>2</sup> yang tidak patut mengenai kadar gaji dan sharat<sup>2</sup> kerja yang mungkin merosakkan ekonomi sa-suatu perusahaan itu.
- (vi) Memberi kuasa kapada Menteri untuk mendengar dan membuat keputusan-nya yang muktamad mengenai perkara<sup>2</sup> buangkerja dan dengan itu menghindarkan achara yang meleret<sup>2</sup> yang mungkin berlaku sa-balek-nya dalam Mahkamah Perusahaan.
- (vii) Menghadkan piket hanya kepada tempat kerja di-mana pertikaian sekerja berlaku.
- (viii) Melarang mogok dan tutup-pintu atas apa<sup>2</sup> perkara berhubong dengan hak<sup>2</sup> majikan.
- (ix) Membuat peruntukan supaya Mahkamah Perusahaan merujukkan soal mengenai undang<sup>2</sup> kapada Peguam Negara.

[PU. (U<sup>2</sup>) 202.]

**A BILL**

to amend the Industrial Relations Act, 1967.

**An Act to amend the Industrial Relations Act, 1967.**

[ ]

**BE IT ENACTED** by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Industrial Relations (Amendment) Act, 1971. **Short title.**
2. The Industrial Relations Act, 1967, is hereby amended as specified in the Schedule hereto. **Amendment.**  
35/67.
3. The Essential (Industrial Relations) Regulations, 1969 and the Essential (Industrial Relations) Regulations, 1971 are hereby repealed. **Repeal.**  
P.U. (A) 407/69.  
P.U. (A) 33/71.

**SCHEDULE***(Amendments to the Industrial Relations Act, 1967)*

1. Section 2 **Amendment of section 2.**  
Insert immediately after the definition "collective bargaining" the following new definition—  
"Commissioner" means the Commissioner for Industrial Relations and includes any other officer acting on his behalf;".
2. Section 4 **Amendment of section 4.**  
(a) delete subsections (1) and (2);  
(b) substitute for subsection (3) the following—  
"(1) No person shall interfere with, restrain or coerce a workman or an employer in the exercise of his rights to form and assist in the formation of and join a trade union and to participate in its lawful activities."; and  
(c) renumber the existing subsections (4) and (5) thereof as subsections (2) and (3) respectively.

Amendment  
of section 5.

Leave on  
trade union  
business.

### 3. Section 5

Insert immediately after section 5 the following new section—

“5A. (1) A workman intending to carry out his duties or to exercise his rights as an officer of a trade union shall apply in writing to his employer for leave of absence stating the durations of and the purposes for which such leave is applied for and the employer shall grant such application for leave if the duration of the leave applied for is for a period that is no longer than what is reasonably required for the purposes stated in the application:

Provided that a workman shall not be entitled to leave with pay for the duration of his absence if the purposes for which he is absent from work are not to represent the members of his trade union in relation to industrial matters concerning his employer.”.

Amendment  
of section 8.

### 4. Section 8

(a) insert immediately before subsection (1) a new subsection as follows—

“(1) No trade union of workmen the majority of whose membership consists of workmen in non-managerial or non-executive positions, excluding persons employed in confidential capacity or engaged in security work may seek recognition in respect of workmen in managerial or executive positions or workmen employed in confidential capacity or engaged in security work, or serve an invitation under section 12 in respect of such workmen.”;

(b) renumber the existing subsections (1), (2) and (3) as subsections (2), (3) and (4) respectively;

(c) substitute for the words “subsection (2)” appearing in the first and third lines of subsection (4) the words “subsection (3)”; and

(d) substitute for subsection (4) the following—

“(5) The Minister, upon receipt of a report under subsection (4) may take such steps as may be necessary or expedient to resolve the matter and shall, if the matter is not resolved, give a decision; and the Minister’s decision as to who shall be workmen in managerial or executive positions or employed in confidential capacity or engaged in security work made under subsection (1) of this section and any decision made by him under this section shall be final and shall not be questioned in any Court.”.

Amendment  
of section 9.

### 5. Section 9

Substitute for section 9 the following—

“9. (1) No workman shall go on strike for whatever reason during the pendency of proceedings under section 8 of this Act or after the Minister has decided that the trade union should not be accorded recognition by the employer of such workman.

(2) An employer shall not dismiss a workman once a trade union of workmen has served in writing on the employer or a

Prohibition  
of certain  
acts pending  
recognition  
of a trade  
union.

trade union of employers to which the employer belongs a claim for recognition in respect of the workman or class of workmen:

Provided that a dismissal may be effected on disciplinary grounds and that this restriction shall no longer apply once the Minister has made a decision on the claim.”.

#### 6. Sections 10 and 11

Delete the word “Court” appearing in both the sections and substitute therefor the word “Minister”.

Amendments of section 10 and 11.

#### 7. Section 12

(a) insert a new subsection after subsection (2) as follows—

Amendment of section 12.

“(3) Notwithstanding the provisions of subsection (1), no trade union of workmen may include in its proposals for a collective agreement a proposal in relation to any of the following matters, that is to say—

- (a) the promotion by an employer of any workman from a lower grade or category to a higher grade or category;
- (b) the transfer by an employer of a workman within the organisation of an employer's profession, business, trade or work, provided that such transfer does not entail a change to the detriment of a workman in regard to his terms of employment;
- (c) the employment by an employer of any person that he may appoint in the event of a vacancy arising in his establishment;
- (d) the termination by an employer of the services of a workman by reason of redundancy or by reason of the reorganisation of an employer's profession, business, trade or work or the criteria for such termination;
- (e) the dismissal and reinstatement of a workman by an employer in circumstances in which subsection (1) of section 16A applies;
- (f) the assignment or allocation by an employer of duties or specific tasks to a workman that are consistent or compatible with the terms of his employment:

Provided that nothing in this subsection shall prohibit a trade union of workmen to raise in the course of any discussion with an employer or trade union of employers (whether or not the discussion is in the course of any collective bargaining) questions of a general character relating to the procedures of promotion of workmen notwithstanding that such questions do not form part of the proposals aforesaid.”;

(b) renumber subsections (3), (4), (5) and (6) as subsections (4), (5), (6) and (7) respectively; and

(c) add the following new subsection (8)—

“(8) Where a trade union of workmen considers that an employer or a trade union of employers has refused to allow without just cause or excuse any question referred to under the proviso to subsection (3) to be raised in the course of

any discussion, the trade union of workmen may, within one month of such refusal, make representations in writing to the Minister who may, before giving any direction thereon, give an opportunity to the employer or his trade union and the trade union of workmen to be heard; and the direction of the Minister shall be final and conclusive.”.

Amendment  
of section 13.

Restrictions  
on collective  
agreements in  
certain new  
undertakings.  
38/55.

13/68.

Amendment  
of section 14.

Amendment  
of section 16.

Representa-  
tions to  
Minister on  
dismissals.

#### 8. Section 13

Insert immediately after section 13 the following new section—

“13A. (1) No collective agreement to which this section applies shall contain provisions with regard to terms and conditions of service that are more favourable to workmen than those contained in Part XII of the Employment Ordinance, 1955, unless such provisions are approved by the Minister after considering any representations in that regard made by an employer and a trade union representing his workmen:

Provided that the Minister may amend or modify such provisions before approving them.

(2) This section applies to collective agreements made between an employer and a trade union representing his workmen in respect of, or in relation to—

(a) a pioneer enterprise as defined under section 2 of the Investment Incentives Act, 1968;

(b) any other industry in respect of which the Minister may by notification in the *Gazette* declare that this section shall apply.

(3) The provisions of this section shall apply to industries specified in subsection (2) for a period of five years from the date such industries commence, or have commenced, operation in Malaysia:

Provided that the Minister may from time to time by notification in the *Gazette* extend such period for such further or periods as the Minister may decide.”.

#### 9. Section 14

Substitute for subsection (1) the following—

“(1) The parties to a collective agreement may deposit with the Secretary to the Court within one month from the date on which the agreement has been entered into, and the Secretary shall thereupon bring it to the notice of the Court for its cognizance.”.

#### 10. Section 16

Insert immediately after section 16 the following new section—

“16A. (1) Where a workman considers that he has been dismissed without just cause or excuse by his employer, in circumstances other than those arising out of a contravention of section 46A he may, within one month of such dismissal, make representations in writing to the Minister to be reinstated in his former employment.

(2) The Minister may, before making a decision on any such representations, request the Commissioner to enquire into the dismissal and report whether in his opinion the dismissal is without just cause or excuse and in such an enquiry the workman may be represented by his trade union.

(3) The Minister, if he decides to deal with the representations himself, may before making a decision thereon give an opportunity to the employer and his trade union and to a trade union representing the workman to be heard.

(4) If, after considering the representations of the workman and of the employer (if any) and any report made by the Commissioner under subsection (2) the Minister is satisfied that the workman has been dismissed without just cause or excuse he may, notwithstanding any rule of law or agreement to the contrary—

(a) direct the employer to reinstate the workman in his former employment and to pay the workman an amount that is equivalent to the wages that he would have earned had he not been dismissed by the employer; or

(b) direct the employer to pay such amount of wages as compensation as may be determined by the Minister, and the employer shall comply with the Minister's direction.

(5) The decision of the Minister on any representations made under this section shall be final and conclusive and shall not be challenged in any court or in a court established under this Act.

(6) Any direction by the Minister under subsection (4) shall operate as a bar to any action for damages by the workman in any court in respect of the wrongful dismissal.

(7) An employer who fails to comply with the direction of the Minister under subsection (4) shall be guilty of an offence under this Act and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(8) Where an amount to be paid under subsection (4) is not paid in accordance with the Minister's direction and the employer has been convicted of an offence under subsection (7) the amount, or so much thereof as remains unpaid, shall be recoverable as if it were a fine and the amount so recovered shall be paid to the workman entitled under the direction.

(9) Notwithstanding the provisions of the foregoing subsections, the Minister may of his own motion if he is satisfied that it is expedient so to do or on the joint request of the trade union representing the workman and his employer or his trade union refer any dismissal to the Court for settlement.”.

## 11. Section 18

(a) substitute for subsection (1) the following—

“(1) For the purposes of this Act, there shall be an Industrial Court which shall consist of—

(a) a President who shall be appointed by the Yang di-Pertuan Agong; and

Amendment  
of section 18.

(b) a panel of independent persons, a panel of persons representing employers and a panel of persons representing workmen all of whom shall be appointed by the Minister:

Provided that before appointing the panels the Minister may consult such organisations representing employers and workmen respectively as he may think fit.”;

(b) in subsection (2) substitute for the word “Minister” the words “Yang di-Pertuan Agong”; and

(c) substitute for subsection (3) the following—

“(3) The appointments made in the preceding subsections shall be published in the *Gazette* and shall specify, if any, the terms and conditions upon which they are made.”.

Amendment  
of section 20.

## 12. Section 20

In subsection (2), substitute for the word “Minister” the words “Yang di-Pertuan Agong”.

Amendment  
of section 23.

## 13. Section 23

Substitute for subsection (2) the following—

“(2) The Minister may of his own motion refer any trade dispute to the Court if he is satisfied that it is expedient so to do:

Provided that in the case of a trade dispute in any Government service or in the service of any statutory authority, such reference shall not be made except with the consent of the Yang di-Pertuan Agong or State Authority as the case may require.

For the purpose of this section and section 41 (c), the expression ‘statutory authority’ shall mean an authority or body established, appointed or constituted under a Federal or State law.”.

50/67.

Amendment  
of section 27.

## 14. Section 27

Substitute subsection (7) thereof with the following—

“(7) An award may specify the period during which it shall continue in force, and may be retrospective to such date as it is specified in the award:

Provided that such retrospective date of the award may not, except in the case of a decision of the Court under section 30 and an order of the Court under paragraph (c) of subsection (4) of section 53, be earlier than six months from the date on which the dispute was referred to the Court.”.

Amendment  
of section 37.

## 15. Section 37

Substitute section 37 with the following—

“(1) Without prejudice to the provisions of section 36, it shall be unlawful for one or more persons acting on his or their behalf

Picketing.

or on behalf of a trade union or of an employer or firm in furtherance of a trade dispute—

(a) to attend at or near any place:

Provided that it shall not be unlawful if such person or persons so attend at or near the place where a workman works and where a trade dispute exists merely for the purpose of peacefully—

- (i) obtaining or communicating information; or
- (ii) persuading or inducing any person to work or to abstain from working; or

(b) to attend at or near the place where a workman works and where a trade dispute exists if such person or persons so attend or attend in such numbers or otherwise in such manner as to be calculated—

- (i) to intimidate any person in that place; or
- (ii) to obstruct the approach thereto or egress therefrom; or
- (iii) to lead to a breach of the peace.

(2) If any person acts in contravention of subsection (1) he shall be deemed to have committed an offence under section 36 and liable to the punishment provided thereunder.”.

#### 16. Section 41

Amendment  
of section 41.

Substitute for paragraph (e) the following—

“(e) in respect of any of the matters covered under subsection (3) of section 12.”.

#### 17. Section 46

Amendment  
of section 46.

Insert immediately after section 46 the following new section—

“46A. (1) Notwithstanding the provisions of section 5, it shall be an offence to dismiss a workman or injure or threaten to injure him in his employment or alter or threaten to alter his position to his prejudice, by reason of the circumstance that the workman—

Injuring a  
workman on  
account of  
certain acts.

- (a) is, or proposes to become, an officer or member of a trade union or association that has applied to be registered as a trade union;
- (b) is entitled to the benefit of a collective agreement or an award;
- (c) has appeared or proposed to appear as a witness, or has given or proposes to give any evidence, in any proceeding under this Act;
- (d) being a member of a trade union which is seeking to improve working conditions, is dissatisfied with such working conditions;
- (e) is a member of a trade union which has served an invitation under section 12 or which is a party to negotiations under this Act or to a trade dispute which has been reported to the Minister in accordance with Part V or Part VI;

(f) has absented himself from work without leave for the purpose of carrying out his duties or exercising his rights as an officer of a trade union where he applied for leave in accordance with section 5A before he absented himself and leave was unreasonably deferred or withheld; or

(g) being a member of a Panel appointed under section 18 has absented himself from work for the purpose of performing his functions and duties as a member of the Court and has notified the employer before he absented himself.

(2) An employer who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(3) Where an employer has been convicted of an offence punishable under subsection (2) the Court by which the employer is convicted may order the employer to pay the workman the amount of any wages lost by him and also direct the employer to reinstate the workman in his former position or a similar position.

(4) Where an amount ordered to be paid under subsection (3) is not paid in accordance with the order, the amount or so much thereof as remains unpaid shall be recoverable as if it were a fine and the amount so recovered shall be paid to the workman entitled under the order.

(5) Any employer who fails to comply with a direction given under subsection (3) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(6) Nothing in this section shall be construed as prohibiting the Minister from enquiring into the dismissal of or the reinstatement of a workman who has been allegedly dismissed in contravention of the provisions of this section before any proceedings have commenced in a Court of law; and any enquiry so made by the Minister shall be deemed to be a proceeding under section 16A and any decision made by him shall be construed as if it were made under the provisions of that section.”.

#### 18. Section 53

(a) Subsection (4) thereof is hereby amended—

(i) by deleting the word “other” appearing in paragraph (b) thereof, by substituting a semi-colon for the full-stop at the end thereof and by adding the word “or” thereafter;

(ii) by adding a new paragraph (c) immediately after paragraph (b) thereof—

“(c) make such order as it considers desirable to vary or set aside upon special circumstances any term of the award or collective agreement.”; and

(b) Insert immediately after section 53 the following new section—

“53A. (1) The Court may and shall, if so directed by the Attorney General, refer a question of law arising in any proceeding before it to the Attorney General for his opinion.

(2) Before referring a question of law to the Attorney General in accordance with subsection (1) the Court shall inform the parties to the proceeding in relation to which the question arises of the question which it proposes to refer and allow the parties a reasonable opportunity to make written submission relating to the question.

(3) Submissions made in accordance with subsection (2) shall be referred to the Attorney General and the Attorney General shall, after considering those submissions, furnish his opinion to the Court.

(4) Notwithstanding a reference of a question of law to the Attorney General (not being a question whether the Court may exercise powers under this Act in relation to a trade dispute or matter), the Court may make an award in relation to the proceeding in which the question arose.

(5) Upon receiving the opinion of the Attorney General the Court—

(a) may, if it has not made an award with respect to the parties of the proceeding in which the question arose, make an award not inconsistent with the opinion; or

(b) shall, if it has made an award as aforesaid, vary the award in such a way as will make it consistent with the opinion.”.

## 19. Section 55

Substitute for the proviso to subsection (1) the following—

Amendment of section 55.

“Provided that no contravention of or failure to comply with any provision of Parts II, III (other than sections 8 and 9) or IV (other than subsection 8 of section 12) shall be deemed to be an offence punishable under this section.”.

## EXPLANATORY STATEMENT

Pursuant to the Emergency Powers under section 2 of the Emergency (Essential Powers) Ordinance No. 1 of 1969, the Director of Operations promulgated regulations known as the Essential (Industrial Relations) Regulations, 1969 and the Essential (Industrial Relations) Regulations, 1971 which made certain amendments to the Industrial Relations Act, 1967. This Bill now merely seeks to reinstate the provisions contained in these Regulations with some modifications necessary in the light of the experience of these amendments since October 1969.

The purpose of the main amendments as set out in the Bill are briefly as follows:

- (i) To protect the rights of a workman to join or not to join a trade union and to identify some of the prerogatives of employers so as to establish industrial relations on a more rational basis.
- (ii) To grant leave to workmen to attend to their duties as officers of trade unions in matters pertaining to their establishment.

- (iii) To restrict members in managerial and executive positions and those involved in security work from being represented by trade unions which are not exclusively confined to these categories of employees.
- (iv) To prohibit any dismissal, other than on grounds of misconduct, of a workman during the pendency of a claim for recognition of a trade union and to preclude any form of industrial action while the claim for recognition is pending.
- (v) To protect pioneer industries against undue claims on wage rates and conditions of employment which might adversely affect the economy of such an industry.
- (vi) To provide the Minister with powers to hear and make his final decision on dismissal cases and thereby obviating lengthy procedures otherwise involved in Industrial Courts.
- (vii) To confine picketing only to a place of employment where a trade dispute exists.
- (viii) To prohibit strikes and lock-outs on any of the matters pertaining to the employers' rights.
- (ix) To provide for reference to the Attorney General on questions of law by the Industrial Court.

[PU. (U<sup>2</sup>) 202.]