

Column 7 of the First Schedule to the Code is modified to the extent required to bring the punishments mentioned therein into conformity with the amended punishments prescribed in the Penal Code (Amendment and Extension) Act, 1976 (Act A 327).

It may be noted that by an Order made under section 74 of the Malaysia Act — that is the Modification of Laws (Criminal Procedure) (Sabah and Sarawak) Order 1976 — certain modifications have been made to the Criminal Procedure Code in its application to Sabah and Sarawak. These are mainly transitional provisions until the coming into operation of the Subordinate Courts Act, 1948. In addition it is provided that sections 328–341 (Inquiries of Death) shall not come into operation until a date to be appointed by the Minister. The Minister is also given power to make rules to deal with youthful offenders.

Ahmad Ibrahim

THE PENAL CODE (AMENDMENT AND EXTENSION ACT, 1976) ACT A 327

This Act amends the Penal Code (F.M.S. Cap. 45) and extends it as amended to the whole of Malaysia. It is to come into force on a date to be fixed by the Minister. The Act is a prelude to the issue of a Revised Edition of the Penal Code, which will then be the only Penal Code in Malaysia. At present Sabah and Sarawak have their own Penal Codes.

The Penal Code is extended to extra-territorial offences by a new section which provides that the provision of Chapter VI (which relates to offences against the State) shall apply to any offence committed —

- (a) by any citizen or any permanent resident on the high seas on board any ship or any aircraft whether or not such ship or aircraft is registered in Malaysia;
- (b) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia as if the offence had been committed in Malaysia.

The word "offence" in the new provision is defined as including every act done outside Malaysia, which if done in Malaysia, would be an offence punishable under the Penal Code. The word "permanent resident" has the meaning assigned to it by the Courts of Judicature Act, 1964, that is, a person who has permission granted without limit of time under any Federal Law to reside in Malaysia including a person treated as such under any written law relating to immigration (Section 2(1)).

Section 82 of the Penal Code has been amended to provide that nothing is an offence which is done by a child under ten years of age (instead of seven years as formerly); and section 83 of the Penal Code is amended to provide that nothing is an offence which is done by a child above ten years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion. (Section 2(2)).

The definition of "harbour" in Chapter VI of the Penal Code (relating to offences against the State) has been extended to include the supplying a person with shelter, food, drink, money or clothes or except by a person employed in a Government hospital, medicine, bandages, surgical dressings or any other form of aid to a person wounded; or arms, ammunition or means of conveyance or the assisting of a person in any way to evade apprehension. A new definition of "imprisonment for life" is also added to apply to offences under Chapter VI — to mean (subject to the provisions of any written law conferring power to grant pardons, reprieves or respites or suspension or remission of punishments) imprisonment until the death of the person on whom the sentence is imposed (Section 2(3)).

Section 3 of the amendment Act makes a number of substantial amendments to the punishments provided in the Penal Code. These are set out in the Schedule to the Act but two general provisions might be noted. Firstly under section 3(5) of the amending Act it is provided that the maximum amount of every fine specified in the Code as a sum of money is increased by multiplying by four the sum so specified. Secondly the concept of life imprisonment has been modified. The Criminal Justice Ordinance, 1953, abolished penal servitude and substituted "imprisonment for life" for that punishment. The Ordinance further provided that a sentence of imprisonment for life should be deemed for all purposes to be a sentence of imprisonment for twenty years. There were a number of sections in the Penal Code which gave the alternative of "penal servitude for life or imprisonment for a term which may extend to ten years". The amendment made by the Criminal Justice Ordinance, 1953 created a situation in which the maximum sentence under these sections, although expressed to be for life, was 20 years to which there was an alternative sentence not exceeding 10 years. Thus it was not possible for the court to pass any sentence between 10 and 20 years. To overcome this difficulty it is provided that the maximum prison sentence which can be passed for offences at present punishable with imprisonment for life shall be twenty years, except for offences under Chapter VI, which are offences in the category of treason. Here the sentence of imprisonment for life remains, with an alternative sentence of imprisonment which may extend to 20 years. This will enable a Judge in a case involving extreme danger to the State to pass a sentence, which is defined under the new section 130A to mean imprisonment until the death of the person sentenced, while offering

him the alternative, in a less serious case, of passing a sentence of up to twenty years.

Sections 115, 118 and 119 of the Penal Code are amended so as to provide for the punishment of abetments of offences punishable with death or imprisonment for life or imprisonment for a term which may extend to twenty years. Before the amendment the sections dealt only with abetment of offences punishable with death or imprisonment for life and abetment of offences punishable with imprisonment would have been dealt with under sections 116 or 120. (Section 3(1), and Schedule 3 Part I).

Section 450 of the Penal Code is amended so as to make a person, who commits house-trespass in order to the committing of an offence punishable with imprisonment for life or imprisonment for a term which may extend to twenty years, punishable under the section. Formerly the section only applied where the offences to be committed was punishable with imprisonment for life (Section 3(1) and Schedule 3 Part I).

The wording of section 216 of the Penal Code is made clearer by substituting the expression "for not less than one year but less than ten years" for the expression "which may extend to one year and not to ten years".

Section 222 of the Penal Code is amended to make a public servant who intentionally omits to apprehend or keep in confinement a person punishable with imprisonment for a term which may extend to seven years if the person who ought to be apprehended or kept in confinement has been sentenced to imprisonment for a term which may extend to twenty years (instead of to imprisonment for life or imprisonment for a term of ten years or upwards as formerly).

Similarly section 235 of the Penal Code is amended to make a person who resists or obstructs the lawful apprehension of another person liable to imprisonment for a term which may extend to three years or a fine, if the person to be apprehended is charged with an offence punishable with imprisonment for a term which may extend to twenty years (instead of to imprisonment for life or imprisonment for a term which may extend to ten years, as formerly). No amendment appears to be made however to cover the case where the person to be apprehended is liable to imprisonment for life or imprisonment for a term of ten years or upwards.

A number of amendments have been made to the punishments provided for various offences under the Penal Code and these may be summarised as follows:—

Section	Description	New Punishment
75	Punishment of persons convicted after previous conviction.	Double the amount of punishment to which he would otherwise have been liable for the same.

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131	Abetting mutiny etc.	Imprisonment for a term which may extend to twenty years and fine.
132	Abetting of mutiny, if convicted.	Ditto
194	Giving false evidence to procure conviction for a criminal offence (1st part).	Ditto
222	Intentional omission to apprehend etc. if person is under sentence of death.	Ditto
225	Resistance or obstruction to lawful apprehension of person under sentence of death	Ditto
232	Counterfeiting coin.	Ditto
238	Import or export of counterfeit coin.	Ditto
255	Counterfeiting Government Stamp.	Ditto
304	Culpable homicide not amounting to murder (1st part)	Ditto
305	Abetment of suicide of child or insane person.	Ditto
307	Attempt to murder, if hurt caused.	Imprisonment for a term which may extend to twenty years.
309B	Infanticide.	Imprisonment for a term which may extend to twenty years and a fine.
313	Causing miscarriage without woman's consent.	Ditto
314	Death caused by act done with intent to cause miscarriage, if without woman's consent.	Imprisonment for a term which may extend to twenty years.

326	Voluntarily causing grievous hurt by dangerous weapon.	Imprisonment for a term which may extend to twenty years and fine or whipping.	412
329	Voluntarily causing grievous hurt to extort property.	Ditto	413
364	Kidnapping in order to murder	Death or imprisonment for a term which may extend to twenty years and whipping.	430
371	Habitual dealing in shares	Imprisonment for a term which may extend to twenty years and fine.	436
376	Rape	Imprisonment for a term which may extend to twenty years and fine or whipping.	438
377	Unnatural offence	Ditto	449
388	Extortion by threat of accusation of offence punishable under S.377 (unnatural offence).	Imprisonment for a term which may extend to twenty years.	459
389	Putting person in fear of accusation of offence punishable under S.377	Ditto	460
394	Voluntarily causing hurt in committing robbery.	Imprisonment for a term which may extend to twenty years.	467
395	Gang robbery	Imprisonment for a term which may extend to twenty years and whipping.	472
396	Gang robbery with murder	Death or imprisonment for a term which may extend to twenty years and whipping	474
400	Belonging to gang of robbers	Imprisonment for a term which may extend to twenty years and whipping.	477
409	Criminal breach of trust by public servant, banker, merchant or agent.	Imprisonment for a term which may extend to twenty years and fine.	481

412	Dishonestly receiving property stolen in gang robbery.	Ditto
413	Habitually dealing in stolen property.	Ditto
430A	Mischief affecting railway train etc.	Imprisonment for a term which may extend to twenty years and fine or whipping.
436	Mischief by fire or explosives to destroy house.	Imprisonment for a term which may extend to twenty years and fine.
438	Mischief by fire or explosives to destroy vessel.	Ditto
449	House trespass to commit offence punishable with death	Ditto
459	Grievous hurt caused whilst committing lurking house trespass or housebreaking.	Imprisonment for a term which may extend to twenty years and fine or whipping.
460	Persons jointly concerned in housebreaking where death or grievous hurt is caused.	Imprisonment for a term which may extend to twenty years and fine.
467	Forgery of valuable security or will.	Ditto
472	Making or possessing counterfeit plate with intent to commit forgery.	Ditto
474	Possessing valuable security or will known to be forged with intent to use it as genuine.	Ditto
475	Counterfeiting device or mark used for authenticating documents.	Ditto
477	Fraudulent cancellation of will etc.	Ditto
489A	Forging or counterfeiting currency notes	Ditto

489B	Using as genuine a forged or counterfeit currency notes	Ditto
489D	Making or possessing instruments for forging or counterfeiting currency notes.	Ditto

The above amendments represent an attempt to rationalise the position where imprisonment for life can be imposed. The amendments may have resulted in the unintended repeal of the option of a fine in the case of the offences of attempt to murder where hurt is caused (S. 307) and of causing death by act done with intent to cause miscarriage, if the act was done without the woman's consent (S. 314).

In section 388 it is doubtful if the intention was to amend the words "imprisonment for life" in the first part of the section (line 4 of the Reprint). By contrast where such an amendment is intended in section 307 it is expressly provided that the words "or for a term of twenty years" are to be added after the words "under sentence of imprisonment for life".

A number of amendments are made to Chapter VI which deal with offences against the State. Section 121 (Waging War) is amended to make it clear that a fine may only be imposed if the accused is not sentenced to death.

Section 122 (Collecting men, arms, ammunition etc) is extended to cover attempts to collect the men, arms etc. and abettor of "waging or the preparation of such war". The punishment for the offence is also increased to imprisonment for life or imprisonment for a term not exceeding twenty years and a fine.

Section 123 (Concealing existence of design to wage war) is also extended to cover attempts to conceal.

Section 124 (Assaulting member of Parliament etc. to compel or restrain the exercise of any legal power) is extended to cover acts done with the intention of attempting to induce or compel a member of Parliament etc.

Section 125 (Waging War) is amended to make it an offence to wage war "whether in conjunction with the enemies of the Yang di-Pertuan Agung or otherwise". The punishment for the offence is also increased to imprisonment for life or for a term which may extend to twenty years and a fine.

A new section 125A is added to make it an offence for anyone by any act, to harbour or attempt to harbour either in Malaysia or in the territories of any power at war with or otherwise in actual hostility against the Yang di-Pertuan Agung or elsewhere, the enemies of the Yang di-Pertuan Agung. This new section must be read with the amended definition of "harbour" (section 2(3)).

Section 126 (Committing depredation) is amended to make the person liable whether the depredation is committed "in conjunction with the enemies of the Yang di-Pertuan Agung or otherwise".

Section 127 (Receiving property taken by war or depredation) is extended to cover attempts to receive the property taken by war or depredation.

The punishment for the offences of allowing a prisoner of State to escape (S. 128) and aiding escape of such prisoner (S. 130) is increased to imprisonment for life or imprisonment for a term which may extend to twenty years and a fine.

Chapter XII of the Penal Code which deals with offences relating to coin and Government stamps has also been amended in a number of particulars. There was formerly a distinction drawn between "current coin" being the Malaysian coinage and "coin" being foreign coinage. This distinction has now been removed.

The word "counterfeit" has been given an extended meaning by a new definition included in Section 230. "Counterfeit", it is provided includes the causing of a genuine coin to appear like a different coin if it is done with the intention of practising deception or with the knowledge that deception will thereby be caused. This renders unnecessary the explanation to section 231 of the Penal Code, which is therefore omitted.

The definition of "current coin" is deleted from section 230 of the Penal Code and as a consequence the reference to "current coin" in sections 232, 234, 247 and 249 of the Penal Code is amended to read "coin". At the same time sections 233 (making or selling instrument for counterfeiting coin), 237 (import or export of counterfeit coin), 239 (delivering of coin with knowledge that it is counterfeit) 242 (possession of counterfeit coin), 246 (Fraudulently or dishonestly diminishing the weight or altering the composition of coin), 248 (altering appearance of coin), 250 (delivery of coin with knowledge that it is altered) and 252 (possession of altered coin) have been repealed, as the offences dealt with in those sections are now covered by sections 234, 238, 240, 243, 247, 249, 251, and 253 respectively of the Penal Code.

The punishment for the offence of possession of an instrument or material for the purpose of using it for counterfeiting coin (section 235) is increased to imprisonment for a term which may extend to ten years and a fine; and the reference to current coin is deleted (Section 3(4), Schedule, Part iv).

In Section 238 of the Penal Code the reference to the States of Malaya is deleted and the offence now covers the import or export of counterfeits of coins.

In section 240 of the Penal Code the words "which is counterfeit of current coin" is deleted and the reference to "current coin" is substituted by a reference to "coin".

The punishment for the offence of delivery to another of coin as genuine (section 241) is altered to imprisonment for a term which may extend to five years or a fine (without reference to the value of the coin). In the illustration to the section the references to "Hongkong dollars" and "dollars" are substituted by reference to coin; and the reference to section 239 (which has been repealed) is deleted.

Similarly in section 254 of the Penal Code which deals with the offence of delivering to another of coin as genuine, the punishment for the offence has been altered to imprisonment for a term which may extend to five years or a fine (without reference to the value of the coin); and the reference to section 246 and 248 are deleted.

It is provided that the Code as amended will extend to the whole of Malaysia. References to the "States of Malaya" in the Penal Code are therefore substituted by references to "Malaysia"; and in section 86(i) the references to the Criminal Procedure Code of the Straits Settlements is deleted.

With the coming into force of the Act, the Penal Codes of Sabah and Sarawak will be repealed and there will be only one Penal Code for the whole of Malaysia.

Ahmad Ibrahim

LEGISLATION

The following list of Acts passed and revised in Malaysia is a continuation of the list of Federal Acts contained in Vol. 2, Part 2 [1975] J.M.C.L. 364-374.

FEDERAL ACTS PASSED

<i>Bil. Akta/ Act.No.</i>	<i>Tajuk Ringkas/Short Title</i>
163	Akta Kesalahan-kesalahan di Luar Negeri, 1976 Extra-territorial Offences Act, 1976
164	Akta Membaharui Undang-Undang (Perkahwinan & Perceraian), 1976 Law Reform (Marriage & Divorce) Act, 1976
165	Akta Membaharui Undang-Undang (Penghapusan Samsu Gelap), 1976 Law Reform (Eradication of Illicit Samsu) Act, 1976
166	Akta Profession Undang-Undang, 1976 Legal Profession Act, 1976
167	Akta Makhluk Perosak Pertanian & Tumbuh-tumbuhan Berbahaya, 1976 Agricultural Pests & Noxious Plants Act, 1976
168	Akta Bendapurba, 1976 Antiquities Act, 1976
169	Akta Cukai Keuntungan Harta Tanah, 1976 Real Property Gains Tax Act, 1976
170	Akta Pertubuhan Seni Mempertahankan Diri, 1976 Martial Arts Societies Act, 1976
171	Akta Kerajaan Tempatan, 1976 Local Government Act, 1976
172	Akta Perancangan Bandar & Desa, 1976 Town & Country Planning Act, 1976