



LAWS OF MALAYSIA

Act 79

BANISHMENT ACT, 1959

(Revised—1972)

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(Revised—1972)

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SCHEDULE

LAWS OF MALAYSIA

Act 79

BANISHMENT ACT, 1959

(Revised—1972)

An Act relating to the banishment and expulsion from Malaysia of persons other than citizens.

[West Malaysia—1st May, 1959;
East Malaysia—16th September, 1963.]

LN 117/59
LN 232/63

1. This Act may be cited as the Banishment Act, 1959.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“banishment order” means an order made under section 5;

“Chief Police Officer” has the meaning assigned to it in the Police Act, 1967, and includes a Commissioner of Police vested with the control of the Royal Malaysia Police in Sabah and Sarawak;

41/67.

“exempted person” means a person exempted from sections 5 and 8 by any order made under section 12;

“expulsion order” means an order made under section 8; and “expelled” means that the person against whom an expulsion order is made has been served with the order and has left Malaysia within the meaning of section 18 (3);

“senior police officer” means a police officer of or above the rank of Inspector;

“warrant of arrest and detention” means a warrant issued under section 3.

3. (1) Where it appears to the Minister, on receiving written information submitted to him by the Inspector-General of Police or a Chief Police Officer, that there are reasonable grounds for believing that the banishment of any person whom the Minister is satisfied is not a citizen or an exempted person is conducive to the good of Malaysia, the Minister may issue a warrant for the arrest and detention of that person.

Warrant of arrest and detention.

(2) The Minister may by notification in the *Gazette*, and subject to such conditions and instructions as may be prescribed in the notification, delegate the exercise of the powers conferred by subsection (1)—

(a) in the case of Sabah and Sarawak, to the local federal authority or to any other person in the State as the Minister may deem expedient; and

(b) in the case of any other State, to the State Secretary of the State.

(3) A warrant of arrest and detention shall be in Form A of the Schedule.

Execution of
warrant of
arrest and
detention.

4. (1) The police or prison officer executing a warrant of arrest and detention shall notify the substance thereof to the person arrested or detained and, if so required, shall show him the warrant or a copy thereof under the hand of the authority by whom it was issued.

(2) Where in execution of a warrant of arrest and detention any person is arrested or is required to be further detained in prison after the expiration of any sentence of imprisonment passed upon him the officer executing the warrant shall without unnecessary delay, and in any case within twenty-four hours (excluding the time of any necessary journey) from the arrest or from the expiration of the sentence produce the person arrested, or so detained before a Magistrate who shall, upon production of the warrant duly signed and upon proof of the identity of the person arrested or detained with the person named in the warrant, by order endorsed on the warrant, commit the person to prison, there to be detained in accordance with the tenor of that warrant:

Provided that if the person proves that he is a citizen or an exempted person the Magistrate shall order the person to be released forthwith.

Banishment
order.

5. (1) Where the Minister is satisfied after such inquiry or on such written information as he may deem necessary or sufficient that the banishment from Malaysia of any person not being a citizen or an exempted person would be conducive to the good of Malaysia the Minister may make an order that the person be banished from Malaysia either for the term of his natural life or for such other term as may be specified in the order.

(2) A banishment order shall be in Form B of the Schedule and shall be signed by the Minister.

(3) As soon as possible after the making of a banishment order against any person a copy of the order shall be served on the person by the officer-in-charge of the prison in which the person may be confined or by a senior police officer; and the officer serving the copy shall notify the person against whom it is made that he may at any time within fourteen days of the service apply to the High Court for an order that the banishment order be set aside on the ground that he is a citizen or an exempted person.

6. (1) Subject to this Act a banishment order may be carried into execution at any time after the expiration of fourteen days from the date of service of a copy thereof under section 5 (3), upon the issue by the Minister of a warrant of execution which shall be in Form C of the Schedule and shall be signed by the Minister.

Execution of
banishment
order.

(2) Upon receiving the warrant of execution of a banishment order made against any person, the officer-in-charge of the prison in which the person is confined shall inform the person of the period for which he is banished and warn him that he is forbidden by law to return to Malaysia or to enter or reside in Malaysia, except as specially provided in the banishment order.

(3) As soon as possible after receiving the warrant of execution of a banishment order against any person, the officer-in-charge of the prison in which the person is confined or some prison officer appointed by that officer in that behalf shall hand the person ordered to be banished to a senior police officer appointed by the Inspector-General of Police to receive him, and the person shall thereupon be conveyed in the custody of that or some other senior police officer and placed on such means of transport as may be expedient for conveyance to the country of which he is a citizen or to such other place as may be stated in the warrant.

(4) Any banished person who is in the custody of a senior police officer under subsection (3) may be received into and detained in any prison or other suitable place in Malaysia until he can be placed on some means of transport for conveyance in accordance with that subsection.

Suspension
of banish-
ment order
on execution
of a bond.

7. (1) The Minister may at his discretion at the time of making a banishment order or at any time thereafter direct that the order be suspended and that the person ordered to be banished shall execute a bond with sureties to the satisfaction of the Minister for his good behaviour in such amount and for such period (not exceeding five years) and subject to such conditions as to residence or otherwise as may be specified in the direction.

(2) If the Minister is satisfied that a person subject to a banishment order directed to be suspended under subsection (1) has failed to observe any condition specified in the bond executed by him under the subsection or that it is not conducive to the good of Malaysia that the person should further remain therein, the Minister may at any time revoke the suspension of the banishment order and upon revocation of the suspension the person may be arrested and detained without a warrant, and the original banishment order shall thereupon be executed in accordance with this Act.

(3) Where a banishment order has been suspended under subsection (1) and the suspension has not been revoked before the expiration of the period for which security for good behaviour was given under that subsection, then upon the expiration of the period the order shall lapse and cease to have effect, but nothing in this subsection shall prevent the making of a fresh banishment order against the person.

Expulsion
order.

8. (1) The Minister may, if he thinks fit, in place of issuing a warrant of arrest and detention or in place of making a banishment order make an order requiring any person who he is satisfied is not a citizen or an exempted person to leave Malaysia before the expiration of a period of fourteen days from the date of service under subsection (4) of a copy of the order.

(2) An expulsion order shall be in Form D of the Schedule.

(3) The Minister may by an expulsion order impose such conditions as he may think fit as to the residence, occupation or conduct or police supervision or otherwise of the person against whom the order is made which shall be observed by that person so long as he remains in Malaysia.

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(4) A copy of the expulsion order shall be served on the person against whom it is made by a senior police officer, or by any other person authorized by the Minister to serve the order and shall be served personally on that person in the same manner as a summons is required to be served under the Criminal Procedure Code; and the officer or person serving the copy shall notify the person against whom it is made that he may at any time within fourteen days of the service apply to the High Court for an order that the expulsion order be set aside on the ground that he is a citizen or an exempted person.

F.M.S.
~~Cap. 6, s. 35;~~
~~S.S. Cap. 21,~~
~~s. 43;~~
~~Sabah 4/59,~~
~~s. 40;~~
~~Swt. Cap. 58,~~
~~s. 40.~~

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(5) A person against whom an expulsion order has been made shall on or before a date specified by the Minister in the order execute a bond with sureties to the satisfaction of the Minister for due compliance with the terms of the expulsion order and for such amount and subject to such conditions as the Minister may think fit to specify.

(6) If a person against whom an expulsion order has been made absconds or conceals himself so that the order cannot be served or if he fails before the specified date to execute the bond required under subsection (5) to the satisfaction of the Minister or if the person fails to observe any condition of the bond or fails to leave the country in accordance with the order the person may be arrested without a warrant by any police officer and shall without unnecessary delay and in any case within twenty-four hours (excluding the time of any necessary journey) from the arrest be brought before a Magistrate who upon production before him of the expulsion order and upon proof of the identity of the person arrested with the person named in the order shall commit the person to prison there to be detained pending a decision as to whether a banishment order should be made against that person:

Provided that if the person proves that he is a citizen or an exempted person the Magistrate shall order the person to be released forthwith.

(7) Where any person has been arrested and detained under subsection (6) the Minister may thereupon cancel the expulsion order and make a banishment order against the person in accordance with section 5.

(8) Nothing in this section shall prevent the Minister at any time from cancelling any expulsion order made by him against any person and taking action against the person in accordance with section 3, 4 or 5.

(9) Where an expulsion order has been made against any person detained in accordance with a warrant of arrest and detention the person shall upon his executing the bond required under subsection (5) be released from detention under the said warrant.

(10) Where a person against whom an expulsion order has been made makes an application to the High Court under section 10 for the order to be set aside and the application is refused, the period of fourteen days specified in subsection (1) shall commence to run from the date of the refusal of that application.

Removal of
detained
person to
mental
hospital.

9. (1) Whenever a person detained under this Act appears to the Minister, on the certificate of a registered medical practitioner, to be of unsound mind, the Minister may, by order in writing setting forth the grounds of belief that the person is of unsound mind, direct his removal to any mental hospital or other fit place of safe custody within Malaysia, there to be kept and treated as the Minister directs until it appears to the Minister, on the certificate of a registered medical practitioner, that the person has again become of sound mind; and an order made under this subsection shall, notwithstanding any written law to the contrary, be sufficient authority for the reception of that person into the mental hospital or other place mentioned in the order.

(2) In this section "registered medical practitioner" means a medical practitioner who is registered under any written law for the time being in force relating to the registration of medical practitioners.

Special
provision
relating to
claim to
citizenship.

10. Any person in respect of whom a banishment or expulsion order has been made may within fourteen days of the service of a copy of the banishment order under section 5 (3), or of the service of a copy of the expulsion order under section 8 (4), as the case may be, apply to the High Court for an order that the banishment or expulsion order be set aside on the ground that he is a citizen or an exempted person; and if it be proved on that application that the person is a citizen or an exempted person the High Court shall set aside the banishment or expulsion order, as the case may be, and direct that the applicant be set at liberty.

Power to
revoke
banishment
or expulsion
order.

11. A banishment or expulsion order may at any time be revoked by the Minister.

12. The Minister may by order direct that any particular person, or persons of any specified class, shall be exempt, either unconditionally or subject to such conditions as the Minister may impose, from sections 5 and 8.

Power to grant exemption.

13. (1) Any person who has committed or is reasonably suspected of having committed an offence against this Act may be arrested without warrant by any police officer.

Arrest and detention.

(2) Where a person has been arrested or detained under this Act any police officer, or any other person authorized by the Minister in that behalf, may take all such steps as may be reasonably necessary for photographing, measuring, finger-printing and otherwise identifying the person.

14. (1) Every person, not being a citizen or an exempted person—

Persons banished or expelled prohibited from entering Malaysia.

(a) lawfully banished or expelled from Malaysia or from any territory comprised in Malaysia; or

(b) lawfully banished, deported or expelled from Singapore or from the Straits Settlements,

is hereby prohibited from entering or residing in Malaysia so long as the term for which he was banished, deported or expelled has not expired or the banishment, deportation or expulsion order has not been cancelled or revoked, and whether or not the order has been executed:

Provided that the Minister may in his discretion exempt any person banished, deported or expelled from Singapore or the Straits Settlements from the prohibition contained in this subsection.

(2) Any person entering or residing in any part of Malaysia in contravention of the prohibition contained in subsection (1) shall be guilty of an offence against this Act and shall, on conviction, be liable—

(a) if the term for which the person was banished, deported or expelled be less than five years, to imprisonment for a term not exceeding the term of the banishment, deportation or expulsion;

(b) if the term for which the person was banished, deported or expelled be for life or for five years or more, to imprisonment for a term not exceeding five years; and

(c) if the person shall previously have been convicted under this Act or any law superseded by this Act of unlawfully entering or residing in Malaysia or any part thereof or in any of the territories now comprised therein after having been lawfully banished, deported or expelled therefrom or from Singapore, to imprisonment for a term not exceeding fifteen years.

(3) Notwithstanding the fact that a prosecution is pending against any person under this section the Minister may make a banishment order against the person in accordance with this Act and thereupon the court shall order the person to be discharged not amounting to an acquittal from the charge under this section in order to enable the banishment order to be executed.

(4) If at the expiration of any sentence passed on any person under this section the term for which the person has been banished, deported or expelled has not expired, the person shall, unless the Minister shall otherwise order, be removed from Malaysia, and section 6 (3) and (4) shall mutatis mutandis apply to such person as if a banishment order had been made in his case under section 5.

Concealing
or harbouring
a
banished or
expelled
person.

15. Any person who knowingly conceals or harbours any other person—

- (a) against whom a warrant of arrest and detention has been issued but has not yet been executed;
- (b) against whom an expulsion order has been made but has not yet been served; or
- (c) who is liable to be arrested and detained under this Act,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred dollars and to imprisonment for a term not exceeding six months:

Provided that this section shall not apply to a wife harbouring or concealing her husband or a husband harbouring or concealing his wife.

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16. (1) Any person aware of the presence in Malaysia of any person described in section 15 (a), (b) or (c) shall forthwith give full and accurate information thereof to the nearest Magistrate or police officer.

Duty of all persons to give information concerning person banished or expelled.

(2) Any person failing without reasonable excuse (the proof whereof shall be on him) to give the aforesaid information shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty dollars and to imprisonment for a term not exceeding three months:

*ruiggot
Act 160*

Provided that this subsection shall not apply to a wife failing to give information relating to her husband or a husband failing to give information relating to his wife.

17. If in any proceedings under this Act or with reference to anything done or proposed to be done under this Act, any question arises whether any person is a citizen or an exempted person the onus of proving that he is a citizen or an exempted person lies upon that person.

Onus of proof of citizenship.

18. (1) Subject to section 10, a banishment or expulsion order shall, until it has been set aside or revoked under this Act, or until it has expired, as the case may be, be conclusive evidence in all courts and for all purposes that the person thereby ordered to be banished or expelled is not a citizen or an exempted person.

Presumption relating to banishment and expulsion orders.

(2) An endorsement on a banishment order that it has been executed by placing the person named therein on some means of transport bound for a destination outside Malaysia without touching at any other place in Malaysia shall be conclusive evidence until the contrary be proved that the person ordered to be banished has been sent out of Malaysia.

(3) An endorsement on an expulsion order that it has been executed by serving it on the person named therein in the manner set out in section 8 (4) shall, after the expiry of the period of fourteen days mentioned in section 8 (1) or (10), as the case may be, be conclusive evidence until the contrary be proved that the person ordered to be expelled has left Malaysia.

Presumption of residence. 19. If it is proved in any prosecution under this Act that any person has remained in Malaysia for more than twenty-four hours the court shall presume until the contrary is proved that that person has voluntarily resided therein.

Proof of instruments. 20. Every document purporting to be a warrant, order, direction or other instrument made or issued by the Minister or any other person in pursuance of any provision contained in or having effect under this Act and to be signed by him or on his behalf shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by him.

Protection to persons acting under this Act. 21. Except as provided by this Act no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

Power to make regulations. 22. (1) The Minister may from time to time make regulations for carrying this Act into effect.

(2) In making any regulations under subsection (1) the Minister may add to, vary or revoke all or any of the forms set out in the Schedule.

23. *(Omitted).*

Prosecutions and proceedings under Act. 24. (1) Any order made or warrant issued or bond executed under any law superseded by this Act and any proceedings taken under any such law before the commencement of this Act shall have effect in all respects as if the same had been validly made, issued, executed or taken under this Act.

(2) For the purpose of any prosecution or proceeding under this Act any order of banishment, deportation or expulsion purporting to be issued by the authority empowered in that behalf under any law in force at the date of the order in Malaysia or in any territory now comprised in Malaysia or in Singapore, shall be sufficient proof of the fact and date of the banishment, deportation or expulsion and of the terms and conditions thereof.

(3) The provisions of section 18 (2) and (3) shall apply to any order referred to in subsection (2) as if the order had been a banishment or expulsion order.

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SCHEDULE
(Section 22 (2))

FORM A
(Section 3)

WARRANT OF ARREST AND DETENTION

To:

*The Inspector-General of Police and all other police officers and to the**

Superintendent of Prisons at.....

WHEREAS it appears to me in accordance with section 3 of the Banishment Act, 1959, that it is conducive to the public good that of.....be banished from Malaysia:

*Now therefore you the said police officers are hereby directed to arrest the said..... wherever he may be found in Malaysia and to convey him to the Prison at.....: and**

You the said Superintendent of Prisons are hereby directed to detain the said.....in safe custody in the prison at.....until you shall receive further orders from me/the Minister†.

Dated this.....day of....., 19.....

.....
Minister†

.....
(By virtue of a delegation under section 3 (2))†

ENDORSEMENT

IT IS HEREBY ORDERED pursuant to section 4 (2) of the Banishment Act, 1959, that the within-named..... of.....be committed to prison, there to be detained in accordance with the tenor of this warrant.

Dated this.....day of....., 19.....

.....
Magistrate

* Delete in the case of a person already detained in prison.

† Delete as appropriate.

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FORM B
(Section 5)

BANISHMENT ORDER

I,.....the Minister for the time being charged with responsibility for banishment hereby order in accordance with section 5 of the Banishment Act, 1959, that.....be banished from Malaysia for the term of his natural life *
.....years from the date of this Order.

Given under my hand this.....day of....., 19.....

.....
Minister

ENDORSEMENT

I.....hereby certify that I to-day served a copy of the above order on the person named therein and explained to him the effect of such order.

Dated this.....day of....., 19.....

.....
*(Officer-in-Charge of the prison at
.....or senior police officer)*

* Delete whichever alternative is inapplicable.

FORM C
(Section 6)

WARRANT OF EXECUTION OF BANISHMENT ORDER

To the Superintendent of Prisons at.....and to the Inspector-General of Police and all other police officers:

WHEREAS by a Banishment order made in accordance with section 5 of the Banishment Act, 1959,.....(hereinafter called "the said banishee") has been ordered to be banished from Malaysia for the term of his natural life *
.....years from the date of such order.

Now therefore I hereby direct you the said Superintendent of Prisons to deliver the said banishee into the custody of such senior police officer as may be appointed by the Inspector-General of Police in that behalf together with this Warrant:

AND I further direct you the Inspector-General of Police or other senior police officer appointed by you in that behalf to receive the said banishee into your custody and to cause him to be conveyed to

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.....and there placed on a suitable means of transport for removal to.....

AND I further direct you the Inspector-General of Police to return this Warrant to me within the space of.....days from the execution thereof showing by an endorsement made thereon its due execution.

Given under my hand this.....day of....., 19.....

.....
Minister

ENDORSEMENT

I,hereby certify that the above Warrant was duly executed by conveying the banishee named therein to.....and there placing him onfor removal to..... :

AND I further certify that I handed a copy of the banishment order referred to in the said Warrant to the said banishee at the time of his removal from Malaysia and explained to him the effect of the order and warned him that he is forbidden by law to return to or to enter or reside in Malaysia, during the term of his banishment.

Dated this.....day of....., 19.....

.....
(Senior Police Officer)

* Delete whichever alternative is inapplicable.

FORM D
(Section 8)

EXPULSION ORDER

I,the Minister for the time being charged with responsibility for banishment hereby order in accordance with section 8 of the Banishment Act, 1959, that..... leave Malaysia before the expiration of a period of fourteen days from the date of service of a copy of this order, and thereafter remain out of Malaysia :

And I hereby specify the.....day of....., 19..... as the date on or before which the said..... shall execute the bond specified in subsection (5) of the said section in the sum of \$.....with ^{sureties}/_{surety} :

[Insert here any conditions imposed under section 8 of the Banishment Act, 1959.]

Given under my hand this.....day of....., 19.....

.....
Minister

ENDORSEMENT

I,.....hereby certify that I to-day executed the above order by serving a copy thereof on the person named therein and explained to him the effect of the order and warned him that upon the coming into force of the order he is forbidden by law to return to or to enter or reside in Malaysia.

Dated this.....day of....., 19.....

.....
*(Senior Police Officer or other person
authorized by the Minister to serve
the above order)*

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(Revised—1972)

*Particulars under section 7 (ii) and (iii) of the Revision of
Laws Act, 1968 (Act I)*

LIST OF AMENDMENTS

Amending law	Short title	In force from
L.N. 231/1963 ...	Modification of Laws (Internal Security and Public Order) (Singapore) Order, 1963	16-9-1963
L.N. 232/1963 ...	Modification of Laws (Internal Security and Public Order) (Borneo States) Order, 1963	16-9-1963
L.N. 239/1963 ...	Corrigendum to L.Ns. 231/1963 and 232/1963	—
L.N. 359/1964 ...	Modification of Laws (General Provisions) (Sabah) Order, 1964	16-9-1963
L.N. 360/1964 ...	Modification of Laws (General Provisions) (Sarawak) Order, 1964	16-9-1963
L.N. 361/1964 ...	Modification of Laws (General Provisions) (Singapore) Order, 1964	16-9-1963
L.N. 406/1964 ...	Modification of Laws (Internal Security and Public Order) (Borneo States) (Amendment) Order, 1964	26-11-1964
L.N. 407/1964 ...	Modification of Laws (Internal Security and Public Order) (Singapore) (Amendment) Order, 1964	26-11-1964

LIST OF LAWS OR PARTS THEREOF SUPERSEDED

No.	Title
11 of 1959 ...	Banishment Ordinance, 1959