



LAWS OF MALAYSIA

Act A1425

**STANDARDS OF MALAYSIA (AMENDMENT)
ACT 2012**

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LAWS OF MALAYSIA**Act A1425****STANDARDS OF MALAYSIA (AMENDMENT)
ACT 2012**

An Act to amend the Standards of Malaysia Act 1996.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Standards of Malaysia (Amendment) Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of long title

2. The Standards of Malaysia Act 1996 [*Act 549*], which is referred to as the “principal Act” in this Act, is amended in the long title by inserting after the word “standards” the words “, accreditation”.

General amendment**3.** The principal Act is amended—

(a) in the national language text—

- (i) by substituting for the word “pemerakuan” wherever appearing the word “pensijilan”;
- (ii) by substituting for the word “penentuan” wherever appearing the word “standard”;
- (iii) by substituting for the words “penentuan standard” wherever appearing the words “Standard Malaysia”;
- (iv) by substituting for the words “penilaian ketepatan” wherever appearing the words “penilaian pematuhan”; and
- (v) by substituting for the words “tanda ketepatan” wherever appearing the words “tanda pematuhan”; and

(b) in the English language text—

- (i) by substituting for the words “specification” and “specifications” wherever appearing the words “standard” and “standards”, respectively; and
- (ii) by substituting for the words “standard specification” and “standard specifications” wherever appearing the words “Malaysian Standard” and “Malaysian Standards”, respectively.

Amendment of section 2**4.** Section 2 of the principal Act is amended—

(a) by substituting for the definition of “accreditation” the following definition:

“accreditation” means a procedure by which the Department gives attestation that a conformity assessment body is competent to carry out specific conformity assessment activity;”;

- (b) by inserting after the definition of “provisional Malaysian Standard” the following definition:

‘ “recognized body”, in relation to standard, means a legal or administrative entity that has specific tasks and composition, with acknowledged authority for publishing standards;’;

- (c) by inserting after the definition of “Council” the following definition:

‘ “Department” means the Department of Standards, Malaysia which is responsible for national standardization and accreditation;’;

- (d) in the definition of “Minister”, by inserting after the word “standards” the words “and accreditation”;

- (e) by inserting after the definition of “accreditation” the following definition:

‘ “authorized officer” means an officer of the Department or any public officer authorized under section 21A;

- (f) in the national language text, by deleting the definition of “pemerakuan”;

- (g) by deleting the definition of “registration”;

- (h) by deleting the definition of “specification”;

- (i) by deleting the definition of “standard specification”;

- (j) by substituting for the definition of “conformity assessment” the following definition:

‘ “conformity assessment” means an activity of testing, calibrating, inspecting, certifying or any other activity as the Director General may determine for the purpose of demonstrating that the specific requirements relating to a commodity, process, system, person, practice or service are fulfilled;’;

- (k) by substituting for the definition of “certification” the following definition:

‘ “certification” means a procedure by which a third party gives written assurance that specific requirements relating to a commodity, process, system, person, body, practice or service are fulfilled;’;

- (l) by inserting after the definition of “successor company” the following definition:

‘ “technical regulation” means any written law that provides for technical requirements, either directly or by referring to or incorporating the content of a standard, technical specification or code of practice;’;

- (m) by inserting after the definition of “Minister” the following definition:

‘ “premises” includes any hut, shed, structure, platform, house, building, conveyance and land whether or not enclosed or built upon;’;

- (n) by inserting after the definition of “authorized officer” the following definition:

‘ “accreditation symbol” means a protected symbol applied or issued under the accreditation system established and operated by the Department;’;

- (o) by substituting for the definition of “standard” the following definition:

‘ “standard” means a document established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context, with which compliance is not mandatory;’;

- (p) by inserting after the definition of “liabilities” the following definition:

‘ “Malaysian Standard” means a standard declared under section 15;’;

(q) by substituting for the definition of “provisional Malaysian Standard” the following definition:

“provisional Malaysian Standard” means a standard which has not undergone the formal procedures of technical committees deliberation and public comment and—

(a) which in the opinion of the Council is urgently needed; or

(b) in respect of which the Minister considers that trial use thereof is necessary before it can be finalised;”;

(r) in the definition of “mark of conformity”, by inserting after the words “process,” the words “system, person,”; and

(s) by deleting the definition of “standard mark”.

Amendment of section 10

5. Section 10 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) The duties and functions of the Director General shall be to develop and promote standards, and to accredit conformity assessment bodies as a means of advancing the national economy, benefiting the health, safety and welfare of the public and the environment, assisting and protecting consumers, promoting industrial efficiency and development, facilitating domestic and international trade and furthering international co-operation in relation to standardization and accreditation.”; and

(b) in subsection (2)—

(i) by substituting for paragraph (a) the following paragraph:

“(a) represent Malaysia in international standardization and accreditation activities;”;

(ii) by inserting after paragraph (a) the following paragraph:

“(aa) appoint, in accordance with the criteria approved by the Council, any organization in Malaysia to develop standards and to coordinate Malaysian representation in international standardization activities;”;

(iii) by substituting for paragraph (b) the following paragraph:

“(b) promote co-operation between organizations concerned with standardization in Malaysia, Government departments and agencies for the purpose of achieving compatibility and maximum common usage of standards;”;

(iv) by substituting for paragraph (c) the following paragraph:

“(c) implement the criteria, as approved by the Council, relating to the preparation, approval, acceptance and designation of standards to be Malaysian Standards;”;

(v) by substituting for paragraph (d) the following paragraph:

“(d) recommend to the Minister standards submitted by any organization appointed under paragraph (aa) as Malaysian Standards, where appropriate, and maintain an index of Malaysian Standards;”;

(vi) by substituting for paragraph (f) the following paragraph:

“(f) promote the use of Malaysian Standards;”;

- (vii) by substituting for paragraph (*h*) the following paragraph:

“(*h*) accredit, in accordance with the criteria as approved by the Council, bodies that are engaged in conformity assessment and maintain a register of accredited bodies and of their marks of conformity;”;

- (viii) in paragraph (*i*), by deleting the words “and registration”;

(ix) by deleting paragraph (*j*);

(x) by deleting paragraph (*k*);

- (xi) by substituting for paragraph (*l*) the following paragraph:

“(*l*) establish and register under the Trade Marks Act 1976 the Department’s own accreditation symbol;”;

- (xii) in paragraph (*m*), by substituting for the word “mark” the word “symbol”;

- (xiii) by substituting for paragraph (*o*) the following paragraph:

“(*o*) promote co-operative arrangements with organizations engaged in standardization and accreditation in other countries for the exchange of information;”;

- (xiv) in paragraph (*p*), by deleting the word “voluntary”;

- (xv) by substituting for paragraph (*q*) the following paragraph:

“(*q*) seek and maintain liaison with local and foreign organizations concerned with standardization, accreditation and other related matters in the public and private sectors, and maintain contact with industrial needs in standardization and accreditation;”;

- (xvi) by deleting the word “and” at the end of paragraph (q); and
- (xvii) by inserting after paragraph (q) the following paragraph:
 - “(qa) by cooperation with the relevant agencies, facilitate the development of technical regulations and develop and promote principles and procedures for the implementation of technical regulations and conformity assessment; and”.

Amendment of section 13

6. Section 13 of the principal Act is amended—

- (a) by substituting for paragraph (1)(e) the following paragraph:

“(e) not more than twelve other members who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to standardization and accreditation.”;

- (b) in subsection (3)—

- (i) in paragraph (a), by inserting after the word “standardization” the words “and accreditation”;

- (ii) by substituting for paragraph (b) the following paragraph:

“(b) to advise the Minister in respect of programmes, schemes, projects and activities to promote industrial efficiency and development, and for consumer protection, through standardization and accreditation activities;”;

- (iii) in paragraph (c), by deleting the word “specifications”;

(iv) by substituting for paragraph (f) the following paragraph:

“(f) to approve criteria relating to the preparation, approval, acceptance and designation of standards in Malaysia;”;

(v) by substituting for paragraph (g) the following paragraph:

“(g) to approve criteria relating to the accreditation of a conformity assessment body;”;

(vi) by deleting paragraph (h); and

(vii) by deleting paragraph (j);

(c) by inserting after subsection (4) the following subsections:

“(4A) The Minister may appoint, on the nomination of a member, not more than one person to be an alternate member of the member to attend meetings of the Council in place of the member when the member is for any reason unable to attend.

(4B) When attending meetings of the Council in place of a member, an alternate member shall be deemed to be a member of the Council.”; and

(d) by inserting after subsection (5) the following subsection:

“(6) In the event of an equal division of votes on any matter before the Council, the Chairman shall have the casting vote.”.

Amendment of heading of Part V

7. The heading of Part V of the principal Act is amended by inserting after the word “STANDARDS” the words “AND ACCREDITATION”.

Amendment of section 15**8.** Section 15 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) The Minister may approve and declare any standard that has been adopted with or without modification to be a Malaysian Standard or a provisional Malaysian Standard for the purposes of this Act, and may amend, revise or withdraw any Malaysian Standard or provisional Malaysian Standard.”;

(b) by substituting for subsection (3) the following subsection:

“(3) No standard shall be declared to be a Malaysian Standard, and no Malaysian Standard shall be amended, revised or withdrawn, unless the Minister is satisfied that the persons who may be affected by the declaration, amendment, revision or withdrawal have had an opportunity to consider it and to comment thereon through a mechanism as the Council may determine.”;

(c) by substituting for subsection (4) the following subsection:

“(4) The declaration, amendment, revision or withdrawal of a Malaysian Standard shall be made in the manner prescribed by regulations or, if no such regulations have been made, in such manner as may be determined by the Council.”; and

(d) by deleting subsections (5) and (6).

Amendment of section 16**9.** Section 16 of the principal Act is amended—

(a) in the shoulder note, by deleting the words “and registration”;

(b) by deleting the words “or registration” wherever appearing in that section;

(c) by substituting for subsection (1) the following subsection:

“(1) Any person desiring to be accredited as a conformity assessment body may apply to the Director General in the manner prescribed by regulations, or if no such regulations have been made, in such manner as may be determined by the Council.”;

(d) by substituting for subsection (2) the following subsection:

“(2) Where the Director General, after considering the application made under subsection (1), is satisfied that the criteria and procedures relating to accreditation are fulfilled, he may grant to the applicant an accreditation certificate as prescribed by regulations, or if no such regulations have been made, as may be determined by the Council.”;

(e) by substituting for subsection (5) the following subsection:

“(5) For the purpose of accreditation under this section, there shall be payable to the Director General by the applicant or accreditation certificate holder, the prescribed accreditation fees and such other costs as may reasonably be incurred in connection with accreditation.”;

(f) by substituting for subsection (6) the following subsection:

“(6) The Director General shall keep a register to record the details of every accreditation certificate granted under this section and the register shall be made available to the public.”; and

- (g) by substituting for subsection (7) the following subsection:

“(7) The Director General may at any time suspend or revoke an accreditation certificate granted under this section if, in his opinion, any terms and conditions attached to the accreditation certificate have been breached, but an accreditation certificate holder whose accreditation certificate has been suspended or revoked may appeal to the Council.”.

Amendment of section 17

- 10.** Section 17 of the principal Act is amended—

- (a) by substituting for subsection (1) the following subsection:

“(1) No body of persons shall, except with the consent of the Minister, exercise the functions for which it is formed under a name that contains the words “Malaysian Standard” or the “Department of Standards, Malaysia” or any abbreviation or misleading abbreviation or any resemblance of it.”; and

- (b) in subsection (4), by inserting after the word “ringgit” the words “or to imprisonment for a term not exceeding three years or to both”.

Amendment of section 18

- 11.** The principal Act is amended by substituting for section 18 the following section:

“**18.** (1) Any person who—

- (a) makes any statement or representation, whether in writing or otherwise, with reference to any conformity assessment that conveys or is likely to convey the impression that a person who is not accredited under this Act with reference to that conformity assessment activity is so accredited;

- (b) makes any statement or representation, whether in writing or otherwise, that conveys or is likely to convey the impression that a conformity assessment complies with the requirements of accreditation when it does not so comply; or
- (c) having been accredited to use the accreditation symbol, uses the accreditation certificate after its withdrawal, or during its suspension, or otherwise in contravention of the terms and conditions of the accreditation certificate,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both and, for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.”.

New section 18A

12. The principal Act is amended by inserting after section 18 the following section:

“Ownership of Malaysian Standards

18A. All Malaysian Standards are owned by the Government of Malaysia and no part of a Malaysian Standard can be reproduced in any form without the written permission of the Director General.”.

New Part VA

13. The principal Act is amended by inserting after Part V the following Part:

“PART VA

ENFORCEMENT

Authorized officers

21A. (1) The Director General may, in writing, authorize any officer of the Department or public officer to exercise the powers of enforcement under this Act.

Authority card

21b. (1) The Director General shall issue to each authorized officer an authority card which shall be signed by the Director General.

(2) Whenever the authorized officer exercises any of the powers under this Act, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

Power of investigation

21c. (1) An authorized officer shall have all the powers necessary to carry out an investigation under this Act.

(2) In any case relating to the commission of an offence under this Act, an authorized officer carrying out an investigation may exercise all or any of the powers in relation to police investigation in seizable cases given by the Criminal Procedure Code [*Act 593*].

Search and seizure with warrant

21d. (1) If it appears to a Magistrate, upon written information on oath from the authorized officer and after such inquiry as the Magistrate considers necessary, that there is reasonable cause to believe that any premises have been used or are about to be used for, or there is in or on any premises evidence necessary to establish the commission of an offence under this Act, the Magistrate may issue a warrant authorizing the authorized officer named in the warrant, at any reasonable time by day or night and with or without assistance—

- (a) to enter the premises and search for, seize and detain any computer, book, record, computerized data, document or other article;
- (b) to inspect, make copies of, or take extracts from, any computer, book, record, computerized data, document or other article so seized and detained;

- (c) to take possession of, and remove from the premises any computer, book, record, computerized data, document or other article so seized and detain it for such period as may be necessary;
- (d) to search any person who is in, or on, such premises and for the purpose of the search, detain the person and remove him to such place as may be necessary to facilitate the search, and seize and detain any property or document found on the person; or
- (e) to break open, examine, and search any computer, book, record, computerized data, document or other article.

(2) An authorized officer acting under subsection (1) may, if it is necessary so to do—

- (a) break open any outer or inner door of the premises and enter the premises;
- (b) forcibly enter the premises and every part thereof;
- (c) remove by force any obstruction to the entry, search, seizure, detention or removal as he is empowered to effect; or
- (d) detain any person found on the premises searched under subsection (1) until the search is completed.

(3) If, by the reason of its nature, size or amount, it is not practicable to remove any computer, book, record, computerized data, document or other article seized under this section, the authorized officer shall, by any means, seal such computer, book, record, computerized data, document or other article.

(4) Any person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (3) or removes the computer, book, record, computerized data, document or other article under seal or attempts to do so shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Search and seizure without warrant

21E. If an authorized officer is satisfied upon information received that by reason of delay in obtaining a search warrant under section 21D the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the authorized officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 21D in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Warrant admissible notwithstanding defects

21F. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant, and any computer, book, record, computerized data, document or other article seized under such warrant shall be admissible in evidence in any proceedings under this Act.

Access to computerized data

21G. (1) Any authorized officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purposes of this section, an authorized officer shall be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerized data.

List of computers, books, records, etc., seized

21H. (1) Where any seizure is made under this Act, an authorized officer making the seizure shall prepare a list of the computers, books, records, computerized data, documents or other articles seized and shall sign the list.

(2) The list prepared in accordance with subsection (1) shall be delivered immediately to the person in control or in charge of the premises which have been searched.

Examination of persons acquainted with case

21i. (1) An authorized officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to the case put to him by the authorized officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The authorized officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be—

- (a) after it has been read to him in the language in which he made it; and
- (b) after he has been given an opportunity to make any correction he may wish.

Admissibility of statement in evidence

21j. (1) Except as provided in this section, no statement made by any person to an authorized officer in the course of an investigation made under this Act shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to an authorized officer in the course of an investigation under this Act and may then, if the court

thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to the making or the contents of any statement made by him to an authorized officer in the course of an investigation made under this Act, that statement may be used as evidence in the prosecution's case.

Power to require attendance of persons acquainted with case

21K. (1) An authorized officer making an investigation under this Act may, by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any such person refuses or fails to attend as required by an order made under subsection (1), the authorized officer may report his refusal or failure to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order.

Release of seized computer, book, record, etc.

21L. (1) If any computer, book, record, computerized data, document or other article has been seized under this Act, the authorized officer who effected the seizure may, after referring to the Director General, release the computer, book, record, computerized data, document or other article to the person from whose possession, custody or control it was seized.

(2) A record in writing shall be made by the authorized officer effecting the release of the computer, book, record, computerized data, document or other article under subsection (1) specifying in detail the circumstances of and the reason for the release, and he shall send a copy of the record to the Director General within seven days of the release.

Cost of holding seized computer, book, record, etc.

21M. Where any computer, book, record, computerized data, document or other article seized under this Act is held in the custody of the authorized officer pending completion of any proceedings in respect of an offence under this Act, the cost of holding it in custody shall, in the event of any person being convicted of such offence, be a debt due to the Government by such person and shall be recoverable accordingly.

No cost or damages arising from seizure to be recoverable

21N. No person shall, in any proceedings before any court in respect of any computer, book, record, computerized data, document or other article seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Additional powers

21o. An authorized officer shall, for the purposes of the execution of this Act, have the power to do all or any of the following:

- (a) to require the production of any computer, book, record, computerized data, document or other article kept by any person and to inspect, examine and make copies from them;
- (b) to require the production of any identification document from any person in relation to any act or offence under this Act;

- (c) to make such enquiries as may be necessary to ascertain whether the provisions of this Act have been complied with.

Obstruction of authorized officers

21P. Any person who—

- (a) assaults, obstructs, impedes or interferes with any authorized officer in the performance of his powers under this Act;
- (b) refuses any authorized officer access to any premises which the authorized officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act; or
- (c) refuses any authorized officer any information relating to an offence or suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.”.

Amendment of section 22

14. Section 22 of the principal Act is amended—

(a) in subsection (2)—

- (i) in paragraph (c), by inserting after the word “amendment” the words “, revision”;
- (ii) in paragraph (d), by deleting the words “or registration”;
- (iii) by deleting paragraph (f);

(iv) in paragraph (g), by deleting the words “or registration”;

(v) in paragraph (j), by substituting for the full stop at the end of the paragraph a semicolon; and

(vi) by inserting after paragraph (j) the following paragraph:

“(k) prescribing the offences which may be compounded.”; and

(b) by inserting after subsection (2) the following subsection:

“(3) Regulations made under subsection (2) may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding two years or to both.”.

Amendment of section 25

15. Section 25 of the principal Act is amended by deleting subsection (3).

Savings provision

16. (1) A member of the Council who was appointed or reappointed before the coming into operation of this Act and who has not completed his term of office immediately before the coming into operation of this Act may continue to hold office for the remainder of his term of office.

(2) Any application, approval, declaration, suspension or revocation of accreditation certificate, appeal or legal proceeding which is pending before the date of coming into operation of this Act shall not be affected by this Act and shall continue as if this Act had not been enacted.

