

INTRODUCTION TO THE INTERPRETATION ACTS 1948 AND 1967

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The aims and benefits of the Act

The application of the Act

The salient provisions

Aims and Benefits of the Interpretation Acts

Aims

To provide standardized meanings to expressions in frequent use

To set out certain rules governing the way in which legislative provisions are to be interpreted

To create certain standard rules regarding the operation and application of legislation

To establish standard rules to legislative style

Benefits

Encourages adoption of uniform format, standardizing of language usage and development of uniform drafting practices and legislative style

Enables drafters to rely upon a core of common rules about legislation

Results in shortening of legislation

Resolves interpretation difficulties

The Application
of the
Interpretation Acts 1948 and 1967

1. Application

Part	Apply to
PART I (s.2(1))	(a) Interpretation Acts 1948 and 1967 [Act 388]
	(b) All Acts of Parliament enacted after 18 May 1967
	(c) All laws enacted before or after 18 May 1967, revised under Act 1
	(d) All subsidiary legislation made under Act 388
	(e) All subsidiary legislation made before or after 18 May 1967, revised under Act 1
	(f) All subsidiary legislation made after 31 December 1968 under the laws revised under Act 1

Part	Apply to
PART II s.65(2) & s. 66	Federal law made before 18 May 1967
	Subsidiary legislation made after 18 May 1967 under the Federal Law made before 18 May 1967

2. Non-application

s.2 (3) & s. 66	If there is express provision to the contrary
	If there is something in the subject or context inconsistent with or repugnant to its application

Does Act 388 apply for the interpretation the word 'Minister' in Act 172?

Section 2 of the Town and Country Planning Act 1976

“Minister” means the Minister responsible for town and country planning (Act 172)

Section 3 of Interpretation Acts 1948 and 1967

“Minister” means, subject to subsection 8(2), Minister of the Government of Malaysia (including the Prime Minister and a Deputy Minister)

Subsection 8(2) of the Interpretation Acts 1948 and 1967

A reference to “the Minister” is a reference to the Minister for the time being responsible for the matter in connection with which the reference is made

Does Act 388 apply to the interpretation of the
Federal Constitution?

Federal Constitution

Article 160. Interpretation.

(1) The Interpretation and General Clauses Ordinance 1948 [*M.U. 7 of 1948*], as in force immediately before Merdeka Day shall, to the extent specified in the Eleventh Schedule, apply for the interpretation of this Constitution as it applies for the interpretation of any written law within the meaning of that Ordinance, but with the substitution of references to the Yang di-Pertuan Agong for references to the High Commissioner.

The salient provisions

Meaning of certain
expressions and references
(s.3 - s.12)

Provisions affecting written
laws generally
(s.13 - s. 36)

Powers and appointments
(s.37 - s. 52)

Miscellaneous
(s.53 - s. 65)

Meaning of certain expressions and references

Meaning of certain expressions (s.3)

116 terms have been defined in s.3

The types of definitions can be either labeling definition or stipulative definition

Types of definition

1. Labeling Definition

(a) Definition of official authorities, officers, public bodies or institutions.

“Prime Minister”, “Attorney General”, “consular officer”, “court”, “Government Printer”.

(b) A term that is defined where no unusual definition is given to it. A shorter term is used instead of its longer term.

“State Government” means the Government of a State

“Parliament” means the Parliament of Malaysia

2. Stipulative definitions

(a) Comprehensive definition

Complete meaning is given to a word. No dictionary meaning is to be used as it is exclusive for the purposes of the Act.

“motor vehicle” means a motor car, motor carriage, motorcycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity or by any other means other than human or animal power.

(b) Restricting definition

Takes a dictionary meaning and limits the meaning for the purposes of the Act (narrowing the dictionary meaning).

“agricultural land” means land held under a lease issued under the Agricultural Holdings Act.

(c) Enlarging definition

Takes dictionary meaning and extends the meaning to cover a case that is linked or marginal to it (extending the dictionary meaning).

“oath” in the case of a person allowed by law to affirm or declare instead of swear, includes an affirmation or declaration.

(d) Excluding definition

Takes dictionary meaning and limits its meaning

“vessel” does not include a ship or boat used exclusively for navigation on inland waters.

(e) Clarifying definition

Gives precision to commonly used expressions that are indeterminate or capable of more than one meaning

“month” means a month reckoned according to the Gregorian calendar.

(f) Referential definition

Use a definition in another Act and incorporate it in new Act.

“document” has the meaning assigned to it in section 3 of the Evidence Act 1950 [Act 56].

Consider these definitions

- (a) “mental disorder”, means a disease of the mind
- (b) “cattle” means neat cattle or an animal of the bovine species by whatever technical or familiar name it is known, and includes any horse, mule, ass, sheep or goat.
- (c) “vehicle” includes a ship, but the ship must not be operated at a speed of more than 15 knots.
- (d) “approved container” means a container approved by the Minister.
- (e) “bank” means a building where a bank does business

Compare with :

“bank” means a bank to which this Act applies.

References

- Grammatical variations, gender and number (s.4)

- Where any word or expression is defined, the definition shall extend to all its grammatical variations and cognate expressions

Grammatical variations

eg: Wildlife Conservation Act 2010 [Act 6]

- “hunting” includes pursuing, trapping, capturing, taking or killing any wildlife by any prescribed means, whether or not the wildlife is then or subsequently taken, trapped, captured or killed.
- The words ‘hunt’ and ‘hunted’ that appear in the Act carry the same meaning.

References

- Cognate expressions

If an Act uses the term “sell” in a way that indicates that it extends also to “barter” (eg: because there is a definition to that effect), a reference in the Act to “sale” will be construed as covering the act of barter.

- Masculine gender include females

- Singular include plural, plural include singular

References

- References to offices *etc.* established by Constitution (s.5)

- ❖ For an office, council, court, or commission established under the Federal Constitution or the Constitution of a State, a reference to it by the name, style or title under which it is established is sufficient to identify it

eg: Armed Forces Council, Chief Justice, National Land Council

- Reference to office-holder includes acting, holding *etc.* (s.7)
 - A reference to the holder of any public or other office is a reference to the person for the time being lawfully holding, acting in or exercising the functions of that office

TIMBALAN MENTERI KDN v. ONG BENG CHUAN
[2006] 4 CLJ 703 FC

“Functions of the officer in charge can also be carried out by someone who is lawfully exercising the functions of that office.”

- Reference to –

- the High Court : the High Court established by the Federal Constitution
- the Minister : the Minister for the time being responsible for the matter in connection with which the reference is made
- the Treasury : the Minister for the time being responsible for finance and includes public officer under the administrative control or direction of that Minister to whom that Minister has delegated or who, in accordance with section 6 or 7 of the Delegation of Powers Act 1956, is authorized to exercise functions under the Financial Procedure Act 1957.

- **Reference to States (s.9)**

- A reference to the name of a State is a reference to the State of that name whether or not the name is preceded by the words “the State of”.

- **Reference to distance (s. 11)**

- A reference to distance is a reference to distance measured in a straight line on a horizontal plane

- **Service by post (s.12)**

if a document is required to be served by post, the service is presumed to be effected:

- by addressing, prepaying and posting it by registered post
- at the time when the letter would have been delivered in the ordinary course of the post

Provisions affecting written laws generally

Provisions affecting written laws generally

- Notice to be taken of division into parts, chapters etc. (s.16)
 - If an Act or subsidiary legislation is divided into parts or chapters, the fact and particulars of the division shall be taken notice by courts although there is no express mention about it in the Act or subsidiary legislation

Provisions affecting written laws generally

- **Citation (s.17)**
 - Citation of an Act or subsidiary legislation with or without a reference to its number and year is sufficient to identify it
- **Regard to be had to the purpose of Act (s.17A)**
 - A construction that would promote the purpose or object underlying the Act must be preferred to a construction that would not promote the purpose and object of the Act

**Datuk Seri Ahmad Said Hamdan & Ors v. Tan Boon Wah
[2010]6 CLJ 142**

PARTS OF GAZETTE (s.18)

1. ACT SUPPLEMENT : MAIN SERIES	Acts, Ordinances promulgated by the YDPA
2. LEGISLATIVE SUPPLEMENT "A": P.U.(A)	Royal Proclamations, orders, rules, regulations and by-laws
3. LEGISLATIVE SUPPLEMENT "B": P.U.(B)	All subsidiary legislation other than that which is required to be published in the Legislative Supplement A
4. BILLS SUPPLEMENT	Bills which are to be presented to the Parliament after the Bills have been read for the first time in the Dewan Rakyat
5. GAZETTE NOTIFICATION : G.N	All matters that need to be published in the Gazette or what the Government thinks is required to be published for general information other than the matters that need to be published in other Parts.

Provisions affecting written laws generally

- Commencement (s.19)

- The date of commencement of an Act or subsidiary legislation is the date provided in the Act or subsidiary legislation.
- If no date is provided, the date immediately following the date of its publication
- Act and subsidiary legislation come into operation on the expiration of the day preceding their commencement

Provisions affecting written laws generally

- Subsidiary legislation

- (a) retrospectivity: (s.20)

- May be made to operate retrospectively but not to a date earlier than the commencement of the parent Act and cannot impose penalty for any act done before the date of publication
 - Article 7 of Federal Constitution

Provisions affecting written laws generally

(b) Meaning of certain terms and expressions used in subsidiary legislation (s.21)

- ✓ Terms and expressions used in subsidiary legislation have the same meaning as in the parent Act
- ✓ The words 'the Act' means the Act under which the subsidiary legislation was made
- ✓ We can narrow the definition but not broaden it

Provisions affecting written laws generally

(c) Amendment, revocation etc (S. 22)

- Subsidiary legislation may be amended, varied, added to, revoked, suspended or revived by the person or authority by which it is made.
- If the person is replaced, who can amend, vary, etc. the subsidiary legislation?

e.g: Communications and Multimedia (Universal Service Provision) Regulations 2002 was made by Datuk Amar Leo Moggie Minister of Energy, Communications and Multimedia.

It was amended through Communications and Multimedia (Universal Service Provision) (Amendment) Regulations 2010 made by Dato' Seri Utama Dr. Rais Yatim Minister of Information, Communications and Culture.

Provisions affecting written laws generally

(d) Penalties: (s.27)

Although no express provision in the parent Act, a subsidiary legislation made under the Act may provide that:

- contravention of any provision of the subsidiary legislation constitutes an offence; and
- any persons guilty of such offence to be liable on conviction to a fine or a term of imprisonment or both.
- However the fine cannot exceed one thousand ringgit and imprisonment cannot exceed six months.

Provisions affecting written laws generally

(e) repeal of authorizing law: (s.28)

Subsidiary legislation unaffected/remain in force until revoked or replaced, in so far as it is not inconsistent with the repealing law

e.g: **WATER SERVICES INDUSTRY ACT 2006**

Any subsidiary legislation made under the repealed legislation (the Sewerage Services Act 1993) shall, in so far as it is consistent with this Act, remain in operation until revoked or replaced by any subsidiary legislation made under this Act, and shall be deemed for all purposes to have been made under this Act.

- Peraturan-Peraturan Perkhidmatan Pembentungan (Pelesenan) 1994
- Peraturan-Peraturan Perkhidmatan Pembentungan (Caj) 1994
- Peraturan-Peraturan Perkhidmatan Pembentungan (Pengkompanaan Kesalahan) (2001)

Provisions affecting written laws generally

- Repeal of a written law

(a) Repeal does not revive earlier repealed law (s.29)

(b) Matters not affected by repeal: (s.30)

- previous operation, anything done or incurred
- right, privilege, obligation, liability acquired/accrued/incurred
- penalty, forfeiture or punishment
- investigation, legal proceeding or remedy

Provisions affecting written laws generally

- Construction of amended law with amending law (s.34)
 - Where a written law amends another written law, the amending law shall be read and construed as one with the amended law

Provisions affecting written laws generally

- Reference to written law (s.35)
 - A reference to a particular written law is a reference to that law as amended or extended; and includes a reference to any subsidiary legislation made under it.
 - If a written law or any provision is repealed and re-enacted, references in any other written law to the repealed law or provision is construed as references to the re-enacted law or provision.
 - A reference to a group of sections or other divisions of a written law includes both the first and the last section or division referred to.

Powers and appointments

Powers and appointments

(a) Implied powers (s.40)

- power to make subsidiary legislation to control and regulate any matter includes power to regulate by licensing and to prohibit acts.

e.g: s.253 of the Land Public Transport Act 2010 [Act 715]

253.(1) The Commission may make rules for all or any of the following purposes:

(ff) to prohibit, in connection with the use of relevant vehicles and railways, the use of any appliances, accessories or machines, or the commission of any acts, which are likely to cause annoyance or danger;

Cont..

Powers and appointments

- power to grant licence, permit, authority, approval or exemption includes power to impose conditions for the licence, etc. to be granted.

(b) Power to impose fees and charges includes: (s.44)

- Power to impose specific fees or charges, maximum or minimum fees or charges, and no fee or charge
- Power to provide for partial or total reduction, waiver or refund of the fees or charges

Powers and appointments

(c) Power to appoint includes power to remove (s. 47)

- The appointing authority has an implied power to remove, suspend, reappoint or re-instate any person appointed in the exercise of the power

(d) Power to appoint temporary member (s.48)

- The appointing authority has the power to appoint other person to act temporarily during the absence or inability of appointed member

Powers and appointments

(e) Appointment may be made by office and with retrospective effect (s.50)

- The appointing authority may appoint by the term designating the office and not by person's name
- The appointment may be made retrospective but not earlier than the commencement of the law giving such power.

Powers and appointments

(f) Powers of certain bodies not affected by vacancy (s.41)

- Board, commission, committee may act although there is vacancy in its membership.
- its proceedings is valid although:
 - defect discovered in the appointment or qualification of a member
 - minor irregularity in convening or conduct of a meeting
 - presence or participation of a person not entitled to be present or participate

Powers and appointments

(g) power to appoint commencement date
(s.43)

- the power does not include power:

- To appoint a date prior to the date on which the instrument of appointment is published
- To appoint different dates for different provisions of that law, unless express provision is made in that behalf

Compare these provisions

- (A) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette, and the Minister may appoint different dates—
 - (a) for the coming into operation of this Act in different parts of Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan;
 - (b) for the coming into operation of different provisions of this Act; or
 - (c) for the coming into operation of different provisions of this Act in different parts of Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan.
- (B) This Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette*.

Miscellaneous

Miscellaneous

(a) computation of time (s.54)

- (a) A period of days from happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done

e.g :Where a licensee fails to comply with a condition of the licence, the DG shall issue a notice requiring the licensee to comply with such condition within 14 days from the date of issue of that notice

Q: If the notice is issued on 1.1.2011, when does the 14 days start to run and end?

- (b) if the last day of the period is a weekly holiday or a public holiday (referred to in this subsection as excluded days) the period shall include the next following day which is not an excluded day;

- (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day; and

- (d) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.
- (e) Where no time is prescribed within which anything shall be done, that thing shall be done with **all convenient speed** and as often as the prescribed occasion arises.

Miscellaneous

(b) Imposition of penalty no bar to civil action (s.58)

- The imposition of a penalty by any written law does not relieve any person from liability to answer for damages to a person injured
- Eg: accident cases

(c) Offences under two or more laws (s.59)

- If an act or omission constitutes an offence under two or more laws, the offender can be prosecuted and punished under either or any one of those laws.

Miscellaneous

(d) Penalties prescribed to be deemed maximum penalties (s.60)

- A written law which prescribes a penalty for an offence is construed as providing that the offence shall be punishable by a penalty not exceeding the penalty prescribed

Miscellaneous

(e) Deviation from forms (s.62)

- Any written law prescribing a form shall be deemed to provide that an instrument or other document purporting to be in that form shall not be invalidated by reason of any deviation from the form if the deviation has no substantial effect and is not calculated to mislead.

**KHAERYLL BENJAMIN IBRAHIM v. KETUA
POLIS NEGARA & ORS**

- There was also an allegation that the Form used by the investigating police officer under Section 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 was not a prescribed form under the Dangerous Drugs (Special Preventive Measures) Act 1985.
- In this regard I would agree with the view expressed by the learned SFC in that Section 62 of Interpretation Acts 1948 and 1967 protect prescribed forms being invalidated for trivial reasons.

Lim Kean Hong v. TMDNM & Anor [1990] 2 CLJ 378

- KC Vohrah J (as his lordship then was) enunciated that by analogy since there is no prescribed form envisaged under provision of section 3(2) Dangerous Drugs (Special Preventive Measures) Act 1985, therefore the police officer who authorized the extension of such detention provided by the related provision can do so not necessarily in written form but in other form such as oral or by way of affidavit evidence to reflect that it was done orally.

Miscellaneous

(f) saving of rights of the YDPA and Government (s.63)

- No written law shall in any manner whatsoever affect the rights of the YDPA or the Government unless it is expressly provided or it appears by necessary implication that the YDPA or the Government, as the case may be, is to be bound thereby

e.g. ARBITRATION ACT 2005

Section 5. Government to be bound

This Act shall apply to any arbitration to which the Federal Government or the Government of any component state of Malaysia is a party.

e.g. PERSONAL DATA PROTECTION ACT 2010

Section 3. Non-application

This Act shall not apply to the Federal Government and State Governments.

Why is there a need to put a non-application provision in a specific Act when s.63 expressly provides for it?

According to G.C Thornton :

“A provision already in interpretation legislation may be repeated in particular legislation if the need to communicate that provision effectively justifies it. Of course, there is no technical need to do this and the critic may cry redundancy. However, the drafter has a continuing need to communicate and this need can be more important than the **sin of a little repetition.**”

(Legislative Drafting, Fourth Edition, page 113)

THANK YOU