

No. S 29

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83)

EMERGENCY (EVIDENCE ACT) (AMENDMENT) ORDER, 1997

In exercise of the powers conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty The Sultan and Yang Di-Pertuan hereby makes the following Order –

1. (1) This Order may be cited as the Emergency (Evidence Act) (Amendment) Order, 1997.

Short title,
commencement
and
application.

(2) This Order shall come into force on 1st. day of December, 1997.

(3) This Order shall apply to all actions and prosecutions as from the date of commencement, whether or not such actions or prosecutions were instituted before or after such commencement.

2. The Evidence Act (hereinafter called "the Act"), is amended by the insertion of the following sections, immediately after section 35 –

Insertion of
new sections
35A and 35B.

"Admissibility
of statements
produced by
computers.

35A. (1) In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.

(2) The said conditions are –

- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual ;
- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived ;

- (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents ; and
- (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2)(a) was regularly performed by computers, whether –

- (a) by a combination of computers operating over that period ;
- (b) by different computers operating in succession over that period ;
- (c) by different combinations of computers operating in succession over that period ; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this Act as constituting a single computer ; and references in this Act to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things :

- (a) identifying the document containing the statement and describing the manner in which it was produced ;

- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer ;
- (c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate,

and purporting to be signed by a person holding a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate ; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) Notwithstanding subsection (4), in any such proceedings as are therein mentioned the court may for special cause require oral evidence to be given of any matter of which evidence could ordinarily be given by means of a certificate under that subsection.

(6) If any person in a certificate tendered in evidence in any proceedings by virtue of subsection (4) intentionally makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine or to both.

(7) For the purposes of this Act –

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment ;
- (b) where in the course of activities carried on by any individual or body, where corporate or not, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those

activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities ;

- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(8) Subject to subsection (3), in this Act "computer" means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Provisions
supplementary
to section 35A.

35B. (1) Where in any proceedings a statement contained in a document is admissible in evidence by virtue of section 35A, it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the court may approve.

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 35A, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and contents of that document.

(3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 35A, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer or with the

operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts."

3. The Act is amended by the insertion of the following section immediately after section 73 –

Insertion of
new section
73A.

"Documentary
evidence.

73A. (1) Notwithstanding anything contained in this Act, in any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied –

- (a) if the maker of the statement either –
 - (i) had personal knowledge of the matters dealt with by the statement ; or
 - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have had, personal knowledge of those matters ; and
- (b) if the maker of the statement is called as a witness in the proceedings :

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Brunei and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence –

- (a) notwithstanding that the maker of the statement is available but is not called as a witness ; and
- (b) notwithstanding that the original document is not produced, if, in lieu thereof, there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated, involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document, or the material part thereof, was written, made or produced by him with his own hand, or was signed or initialled by him, or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of subsections (1) to (4), the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason, it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(7) For the purpose of any rule of law or practice requiring evidence to be corroborated, or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement."

4. The Act is amended by the insertion of the following section immediately after section 80 –

Insertion of
new section
80A.

"Prints from
films in the
possession
of the
Government
or public body.

80A. (1) A print, whether enlarged or not, purporting to be made from a film of any document in the possession of the Government or any public body may be produced in proof of the contents of the document or such part of the document to which the print purports to be a copy upon proof that –

- (a) while the document was in the custody or control of the Government or public body the film was taken in order to keep a permanent record thereof ; and
- (b) the document photographed –
 - (i) was subsequently destroyed, whether deliberately or otherwise ;
 - (ii) was so damaged as to be wholly or partly indecipherable ;
 - (iii) was lost ; or
 - (iv) had passed out of the custody or control of the Government or public body.

(2) Proof –

- (a) that a print is made from a film of a document in the possession of the Government or public body ; and
- (b) of compliance with the conditions in subsection (1),

may be given in respect of any document or groups of documents by a public officer or by an employee of the public body having custody or control of the film, orally or by a certificate purporting to be signed by such public officer or employee.

(3) A certificate under subsection (2) shall be admissible in evidence in any proceedings before any court on its production without further proof.

(4) On the production of a certificate under subsection (3), the court before which it is produced shall, until the contrary is proved, presume –

- (a) that the facts stated in the certificate relating to the print and the compliance with the conditions in subsection (1) are true ; and
- (b) that the certificate purporting to be signed by a public officer or an employee of a specified statutory body has been signed by him.

(5) In this section – "film" includes a photographic plate, microfilm and photostatic negative."

Amendment of
section 120.

5. Section 120 of the Act is amended by the addition of the following subsections –

"(4) Where in any criminal proceedings the accused gives evidence, then, subject to this section and section 54, he shall not in cross-examination be asked, and if asked shall not be required to answer, any question tending to reveal to the court –

- (a) the fact that he has committed, or has been charged with or convicted or acquitted of, any offence other than the offence charged ; or
- (b) the fact that he is generally or in a particular respect a person of bad disposition or reputation.

(5) Subsection (4) shall not apply to a question tending to reveal to the court a fact about the accused such as is mentioned in paragraph (a) or (b) thereof if evidence of that fact is (by virtue of section 14 or 15 or of any other written law) admissible for the purpose of proving the commission by him of the offence charged.

(6) Where in any criminal proceedings in which two or more persons are jointly charged, any of the accused gives evidence, subsection (4) shall not in his case apply to any question tending to reveal to the court

a fact about him such as is mentioned in paragraph (a) or (b) thereof if evidence of that fact is admissible for the purpose of showing any other of the accused to be not guilty of the offence with which that other is charged.

(7) Subsection (4) shall not apply if –

- (a) the accused has personally or by his advocate asked any witness for the prosecution or for a person jointly charged with him any question concerning the witness's conduct on any occasion or as to whether the witness has committed, or has been charged with or convicted or acquitted of, any offence ; and
- (b) the court is of the opinion that the main purpose of that question was to raise an issue as to the witness's credibility,

but the court shall not permit a question falling within subsection (4) to be put to the accused by virtue of this subsection unless it is of the opinion that the question is relevant to his credibility as a witness.

(8) Subsection (4) shall not apply where the accused has himself given evidence against any person jointly charged with him in the same proceedings."

6. Section 132 of the Act is amended by the addition of the following subsections –

Amendment
of section 132.

"(4) Where the accused gives evidence in any criminal proceedings –

- (a) he shall not be entitled to refuse to answer a question or produce a document or thing on the ground that to do so would tend to prove the commission by him of the offence charged ; and
- (b) except as regards any question, document or thing which in the opinion of the court is relevant solely or mainly to the accused's credibility as a witness (not being, in the case of a question, one asked by virtue of section 54), he shall

not be entitled to refuse to answer a question or produce a document or thing on the ground that to do so would –

- (i) tend to expose him to proceedings for some other offence or for the recovery of a penalty ; or
- (ii) tend to expose his wife or husband to proceedings for an offence or for the recovery of a penalty.

(5) Where a person being the wife or husband of the accused gives evidence in any criminal proceedings, that person –

- (a) shall not be entitled to refuse to answer a question or produce a document or thing on the ground that to do so would tend to prove the commission by the accused of the offence charged ; and
- (b) except as regards any question, document or thing which in the opinion of the court is relevant solely or mainly to that person's credibility as a witness, shall not be entitled to refuse to answer a question or produce a document or thing on the ground that to do so would tend to expose her or him to proceedings as mentioned in subsection (4)(b)(i).

(6) No answer which an accused or his spouse shall be compelled to give under subsection (4)(b) or under subsection (5)(b) shall –

- (a) expose the accused to any proceedings for some other offence or for the recovery of a penalty or be proved against him in any such proceedings ; or
- (b) expose the spouse to any proceedings for an offence or for the recovery of a penalty or be proved against the spouse in any such proceedings.

(7) Any reference in this section to proceedings for the recovery of a penalty includes a reference to civil proceedings therefor."

7. The Act is amended by the insertion of the following section immediately after section 133 –

Insertion of
new section
133A.

"Evidence of
child.

133A. (1) Where, in any proceedings against any person for any offence, any child called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) Where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him."

8. The Act is amended by the insertion of the following section immediately after section 134 –

Insertion of
new section
134A.

"Abolition of
corroboration
rules.

134A. Any requirement whereby at a trial it is obligatory for the court to give a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is –

- (a) an alleged accomplice of the accused ; or
- (b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,

is hereby abrogated."

9. Section 145 of the Act is amended by the insertion of the following subsections –

Amendment
of section 145.

"(3) Where in any proceedings a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of this section, that statement shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

(4) Where a person called as a witness in any proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in those proceedings ; and where a document or any part of a document is received in evidence by virtue of

this subsection, any statement made in that document or part by the person using the document to refresh his memory shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

(5) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of this section regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.

(6) Notwithstanding any other written law or rule of practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement which is admissible in evidence by virtue of this section shall not be capable of corroborating evidence given by the maker of the statement."

Amendment of section 156. 10. Section 156 of the Act is amended –

- (a) by renumbering the existing section as subsection (1) ; and
- (b) by adding the following new subsection immediately after such newly – renumbered subsection (1) –

"(2) Any rule of law or practice whereby in criminal proceedings the evidence of one witness is incapable of corroborating the evidence of another witness is hereby abrogated."

Made this 24th. day of Rejab, 1418 Hijrah corresponding to the 24th. day of November, 1997 Masihi at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM