

No. S 17

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

EMERGENCY (PUBLIC HEALTH) (FOOD) ORDER, 1998

In exercise of the power 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 (Public Health) (Food) Order, 1998 and shall come into force on a date to be appointed by notification in the *Gazette* by the Minister. Citation,
commencement
and non-
derogation.

(2) The provisions of this Order are in addition to and not in derogation of any provision of any other written law.

2. In this Order, unless the context otherwise requires – Interpretation.

"advertisement" means any representation by any means whatsoever for the purpose of directly or indirectly promoting the sale or other disposal of any food ;

"analysis" includes micro-biological assay ;

"appliance" includes the whole or any part of any utensil, machinery, instrument, apparatus or article used or intended for use in or for making, keeping, preparing or supplying any food ;

"article" means any labelling or advertising material in respect of, and anything used for the preparation, preservation, packing or storing of, any food ;

"Director" means the Director of Medical and Health Services and anyone authorised by him to act on his behalf in the exercise of any function conferred or imposed on him by this Order ;

"food" includes any substance manufactured, processed, sold or represented for use for human consumption, chewing substances, and any ingredient thereof ;

"food analyst" means a person appointed under subsection (1) of section 3 ;

"food officer" means a person appointed under subsection (2) of section 3 ;

"Hukum Syarak" means the Laws of Islam in the Mazhab Shafie or in any other mazhabs which are approved by His Majesty The Sultan and Yang Di-Pertuan to be in force in Brunei Darussalam ;

"import" does not include the bringing into Brunei Darussalam by land, water or air of any food or appliance which it is proved to be intended to be taken out of Brunei Darussalam on the same vehicle, vessel or aircraft on which it was brought into Brunei without any landing or transshipment within Brunei Darussalam ;

"importer" includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or is otherwise entitled to the custody or control of the imported goods ;

"ingredient" includes an ingredient of an ingredient ;

"insanitary conditions" means conditions or circumstances that might cause contamination of any food or render it injurious to health or unfit for human consumption ;

"label" includes any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, painted, embossed or impressed on, or attached to, included in, belonging to or accompanying any food ;

"Minister" means the Minister for Health ;

"package" includes anything in which or any means by which any food is wholly or partly cased, covered, enclosed, contained, placed or otherwise packed, and includes a basket, pail, bottle, tray or receptacle of any kind, whether open or closed ;

"premises" –

- (a) includes a building, tent or other structure, whether permanent or otherwise, and any adjoining land used in connection therewith, and also includes a vehicle ; and
- (b) in section 4, is in addition deemed to include a public place and a vehicle, used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of any article ;

"preparation" includes manufacture, processing and any form of treatment ;

"sell" includes offer, advertise, keep, expose for sale, transmit, convey, deliver or prepare for sale or exchange, dispose of for any

consideration whatsoever, or transmit, convey or deliver in pursuance of any such sale, exchange or disposal ;

“substance” includes a liquid ;

“vehicle” includes motor vehicle, ship, aircraft and bicycle.

3. (1) His Majesty The Sultan and Yang Di-Pertuan may appoint such number of food analysts as he may consider necessary for the purpose of this Order. Foods analysts and food officers.

(2) His Majesty The Sultan and Yang Di-Pertuan may appoint such number of food officers as he may consider necessary for the purpose of this Order, and every food officer shall be issued with such authority card as the Minister may direct to be carried by such officers.

(3) All food analysts and food officers shall be deemed to be public servants within the meaning of the Penal Code. Chapter 22.

(4) The Minister shall at least once in every year publish or cause to be published in the *Gazette* the names of persons appointed under this section as food analysts or food officers.

4. (1) Any food officer may, at any reasonable time – Powers of food officers.

(a) enter any premises where he has reasonable cause to believe any food is being prepared, preserved, packaged, stored, conveyed, distributed or sold and examine any such food and take samples thereof, and examine anything that he has reasonable cause to believe is being used, or capable of being used, for or in connection with such preparation, preservation, packaging, storing, conveying, distribution or sale ;

(b) on payment or tender of the current market value of the food, select and take samples of such food for analysis by a food analyst :

Provided that where the food is kept for retail sale in an unopened package, no person shall be required to allow to be selected and taken less than the whole contents of such package ;

(c) without payment, at any place, demand, select and take samples of any food for analysis by a food analyst from any manufacturer making food for sale, or from any importer of any food ;

- (d) require the inspection of the package in which any food mentioned in paragraph (c) is kept and to select and take therefrom the samples demanded ;
- (e) stop, search or detain any vehicle in which he has reasonable cause to believe any food is being conveyed, and examine such food and take samples thereof ;
- (f) open and examine any package which he has reasonable cause to believe contains any food ;
- (g) examine and seize any books, documents or other records found on any premises mentioned in paragraph (a) which he has reasonable cause to believe contains any information relevant to the enforcement of this Order, and make or cause to be made copies thereof or take extracts therefrom ;
- (h) seize and detain for such time as may be necessary any food or appliance by means of or in relation to which he has reasonable cause to believe any provision of this Order has been contravened ;
- (i) demand the production of proof of identity, business licence or any other document which he considers relevant ;
- (j) mark, seal or otherwise secure, weigh, count or measure any food or appliance, the preparation, preservation, packaging, storage, conveyance, distribution or sale of which is, or which he has reasonable cause to believe to be, contrary to this Order.

(2) A food officer acting under this section shall, on demand, declare his office and produce his authority card.

(3) A food officer shall forthwith release any food seized by him if he is satisfied that the provisions of this Order with respect to it have been complied with.

(4) Where a food officer has seized any food and the owner or the person in whose possession the food was at the time of such seizure consents in writing to its destruction, the food may be destroyed or otherwise disposed of as such food officer may direct ; and if such owner or person does not so consent, the food officer shall forthwith apply to a Court for an order for the destruction or disposal of the food and the Court shall thereupon make such order as it may think fit, notwithstanding that the owner or person has not been convicted of any offence in connection therewith.

{5} Where a food officer has seized any food which is perishable in nature and the owner or the person in whose possession the food was at the time of seizure does not consent in writing to its destruction, such owner or person shall be liable for the storage of such food pending an order of the Court.

{6} Where any food or appliance has been seized and detained under paragraph (h) of subsection (1) and the owner thereof has been convicted of an offence in connection therewith, the food or appliance may be destroyed or otherwise disposed of as the Court shall direct.

{7} Notwithstanding any other provision of this section, a food officer may destroy any food which he considers to be injurious to health or unfit for human consumption, the importation of which is prohibited, or which has been surrendered by the owner for destruction.

{8} A food officer may send any food seized by him or any sample from it for analysis by a food analyst.

{9} Where the seizure of any food or appliance is made under paragraph (h) of subsection (1), the food officer making the seizure shall forthwith give notice in writing of the seizure in Form 1 in the Schedule to the owner or to the consignor or to the agent of the owner of the food or appliance seized, if his name and address are attached thereto or are otherwise known to the food officer and such address is in Brunei Darussalam.

Schedule.

5. (1) The Director may in writing direct any person carrying on a business involving the production, importation or sale of any food, appliance or substance to which this Order applies to furnish to him, within such time as may be specified therein, such particulars as may be specified.

Powers of Director.

(2) Without prejudice to the generality of subsection (1), a direction made thereunder may require particulars to be furnished of –

- (a) the composition and chemical formula of the food or substance ;
- (b) the manner in which the food or substance is used or proposed to be used in the preparation of food ;
- (c) any investigation carried out by or to the knowledge of that person, for the purpose of determining whether and to what extent the food or substance, or any product formed when the food or substance is so used, is injurious to health ; and

- (d) any investigation or enquiry carried out by or to the knowledge of that person, for the purpose of determining the cumulative effect on the health of a person consuming the food or substance in ordinary quantities.

(3) No particulars furnished in accordance with a direction under subsection (1) and no information relating to any business obtained by means of such particulars shall, without the previous written consent of the person carrying on that business, be disclosed except in the due discharge of the functions of the Director under this Order.

(4) Where the Director has reasonable cause to believe that any premises used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food, or any article or appliance used for or in connection with any of such purposes is in a condition that fails to comply with such requirements as may be specified in this Order, he may, by a written direction served on the proprietor, owner or occupier of such premises or on the proprietor or owner of such article or appliance, order that such premises, article or appliance be put into a condition satisfactory to a food officer within the period specified in such direction.

(5) If after the expiration of that period, the Director is not satisfied that the premises, article or appliance to which such order relates have been put into a condition which complies with those requirements, he may by a written direction served on such proprietor, owner or occupier order that –

- (a) such premises shall not be kept for the preparation, preservation, packaging, storage or sale or, in the case of a vehicle, for the conveyance, distribution or sale of food ; and
- (b) such article or appliance shall not be used in or for the preparation, preservation, packaging, handling, supplying or serving of food,

until a food officer has given to that person a certificate that such premises, article or appliance have been put into a condition which complies with those requirements.

(6) Where a direction under subsection (5) has been served on the proprietor, owner or occupier of any premises, or on the proprietor or owner of any article or appliance, and a certificate in respect thereof has not been given thereafter, no person shall –

- (a) keep or use such premises or any part thereof for the preparation, preservation, packaging, storage or sale or, in the case of a vehicle, for the conveyance, distribution or sale of food ; or

- (b) use such article or appliance in or for the preparation, preservation, packaging, handling, supplying or serving of food.

6. (1) Subject to subsections (2) and (3), no food or appliance shall be imported which does not comply with this Order and with any regulations made thereunder. **Importation.**

(2) Where any food which is sought to be imported is processed food in a finished form which, if sold in Brunei Darussalam, would constitute an offence relating to labelling, it may be imported for the purpose of re-labelling so that it can be made to comply with this Order.

(3) Where any food sought to be imported is raw or semi-processed food which, if sold in Brunei Darussalam, would constitute an offence against this Order, it may be imported for the purpose of reprocessing or reconditioning so that it can be made to comply with this Order.

(4) Where such food is imported under subsections (2) and (3) and is not so re-labelled, reprocessed or reconditioned within three months of such importation, it shall be exported by the importer within two months or such longer period as the Director may determine or, if it is not so exported, shall be forfeited or disposed of as the Director may direct.

(5) The Director may require the importer to re-label, reprocess or recondition any food to which subsections (2) and (3) apply in a place to be specified by him and under the supervision and to the satisfaction of a food officer.

(6) The Minister may exempt any food or class of food from subsections (2) and (3).

7. No manufacturer or distributor of, or dealer in, any food or appliance prescribed by the Minister shall sell such food or appliance in Brunei unless it is accompanied by a written undertaking that it complies with this Order. **Written undertaking for prescribed food.**

8. (1) A certificate of the results of an analysis given by a food analyst shall be in Form 2 in the Schedule and signed by the food analyst, but the analysis may be made by a person acting under the direction of the food analyst. **Foods analyst's certificate. Schedule.**

(2) A copy of the result of any analysis of any food or appliance procured by a food officer may be obtained from the food analyst by the person from whom the article so analysed was purchased or obtained, on payment of such fee as may be prescribed.

(3) No such copy of the result of any analysis shall be used as an advertisement, and any person who so uses it shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(4) Notwithstanding any other written law, a certificate purporting to be signed by a food analyst and purporting to relate to any food or appliance shall be admitted in evidence in proceedings for an offence under this Order on its production by the prosecution without proof of signature and, until the contrary is proved, shall be prima facie evidence of all matters contained therein.

Offences.

9. (1) Any person who –

- (a) prepares, sells or imports any food that is injurious to health, unfit for human consumption or is adulterated ;
- (b) labels, packages, prepares, sells or advertises any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, strength, purity, weight, origin, age or proportion, or in contravention of section 10 or other provisions of this Order ;
- (c) labels, packages, prepares, manufactures, sells, imports or advertises any food which does not comply with any standard that has been prescribed for such food, in such a manner that is likely to be mistaken for food of the prescribed standard ;
- (d) sells any food which contains any substance the addition or use of which is prohibited by any regulations made under this Order ;
- (e) sells any food containing a greater proportion of any substance than is permitted by any regulations made under this Order ;
- (f) sells any food which contains more than 50 parts of methyl alcohol, isopropyl alcohol or denatured alcohol in one million parts of food ;
- (g) sells any food which is not of the nature, substance or quality of the article asked for by the purchaser ;
- (h) being the owner, occupier or person in charge of any premises entered by a food officer pursuant to paragraph (a) of subsection (1) of section 4, or any person found therein, does not give him all reasonable assistance in his power or

furnish him with all the information as he may reasonably require ;

- (i) obstructs a food officer in the course of his duty or prevents the execution by him of his duty ;
- (j) knowingly makes any false or misleading statement to a food officer engaged in carrying out his functions ;
- (k) removes, alters or interferes in any way with any food or appliance seized under this Order without the authority of a food officer ;
- (l) without authority opens, alters, breaks, removes or erases any mark, fastening or seal placed by a food officer in pursuance of this Order upon any food or appliance or upon any package, place, door or opening containing or affording access to any food or appliance ;
- (m) contravenes subsection (3) of section 5 ;
- (n) contravenes subsection (6) of section 5 ;
- (o) contravenes section 7 ; or
- (p) contravenes any other provision of this Order,

is guilty of an offence : Penalty –

- (i) in the case of an offence under paragraphs (a), (b), (c), (d), (e), (f), (g), (m) or (n), imprisonment for 5 years or a fine or both ;
- (ii) in the case of an offence under paragraph (o), imprisonment for 3 years or a fine or both ;
- (iii) in the case of an offence under paragraphs (h), (i), (j), (k), (l) or (p), imprisonment for one year or a fine or both.

(2) On the conviction of a person for an offence under this Order, the Court may, in addition to any other penalty, order the suspension for a period not exceeding 3 months or the cancellation of any licence concerning or affecting the manufacture, sale or disposal of any food or appliance issued or granted to him under any other written law.

(3) Where a person has been convicted of an offence under this Order, the Court may order to be forfeited to the Government any article by means of or in relation to which the offence was committed and any

food of a similar nature belonging to or in the possession of that person or found with such article or food, and upon such an order being made, the article or food shall be disposed of in such manner as the Court directs.

The use of
expressions
"Halal" etc.

10. When used in relation to food in any form whatsoever in the course of trade or business as applied to the food, the expressions "Halal", "Ditanggung Halal" or "Makanan Islam" or any other expressions indicating or likely to be understood as indicating that Muslims are permitted by their religion to consume such food, such expressions shall have the following meanings, that is to say the food in relation to which such expressions or expression are used –

- (a) neither is nor consist of or contains any part or matter of an animal that a Muslim is prohibited by Hukum Syarak to consume or that has not been slaughtered in accordance with Hukum Syarak ;
- (b) does not contain anything which is considered to be impure according to Hukum Syarak ;
- (c) has not been prepared, processed or manufactured using any instrument that was not free from anything impure according to Hukum Syarak ; and
- (d) has not in the course of preparation, processing or storage been in contact with or close proximity to any food that fails to satisfy paragraph (a), (b) or (c) or anything that is considered to be impure according to Hukum Syarak.

Defence.

11. (1) It shall be a defence in a prosecution for an offence under this Order if the defendant proves that –

- (a) he purchased the food or appliance sold by him in reliance on a warranty or other written statement as to its nature, signed by or on behalf of the person from whom he purchased it ;
- (b) he had no reason to believe that the food or appliance did not conform to such warranty or other written statement ; and
- (c) if the food or appliance had conformed to such warranty or other written statement, the sale of it by him would not have constituted the offence :

Provided that no warranty or other written statement made by a person resident or carrying on business outside Brunei shall be a defence under this section unless the defendant proves that he took reasonable

steps to ascertain, and did in fact believe in, the truth of such warranty or other written statement.

(2) Any person who in respect of any food or appliance sold by him as principal or agent gives to the purchaser a false warranty in writing shall be guilty of an offence and liable on conviction to imprisonment for one year or a fine or both, and for any subsequent offence to imprisonment for 3 years or a fine or both, unless he proves to the satisfaction of the Court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true.

12. (1) In proceedings under this Order –

Presumptions
etc.

- (a) a package containing an article to which this Order applies, or bearing a name, address or mark of the person by whom it was imported, manufactured or packed shall, until the contrary is proved, be presumed to have been imported, manufactured or packed by that person ;
- (b) any substance commonly used for human consumption, if sold or offered, exposed or kept for sale, shall, until the contrary is proved, be presumed to have been sold or to have been intended for sale, for human consumption ;
- (c) any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance and any substance commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products shall, until the contrary is proved, be presumed to be intended for sale, or for the manufacturing of products for sale, for human consumption ;
- (d) any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on the premises on which that substance is prepared shall, until the contrary is proved, be presumed to be intended for such use ;
- (e) the contents of any package appearing to be intact and in the original state of packing by the manufacturer shall, until the contrary is proved, be presumed to be food of the description on the label of such package.

(2) For the purposes of this Order, any food shall be deemed to be adulterated if –

- (a) it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure and normal state and in an undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer ;
 - (b) any substance or ingredient has been extracted or omitted therefrom, and by reason of such extraction or omission the nutritive or other beneficial properties of the food as sold are less than those of the food in its pure and normal state or the purchaser or consumer is or may be in any manner prejudiced ;
 - (c) it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure and normal state and in an undeteriorated and sound condition ;
 - (d) it does not comply with the prescribed standard ; or
 - (e) it contains any substance which renders the food injurious to health.
- (3) For the purposes of this Order –
- (a) every person shall be deemed to sell any food or appliance who sells the food or appliance either on his own account or as the agent or employee of any other person ; and
 - (b) in the case of any sale by an agent or employee, his principal or employer shall be under the same liability as if he had effected the sale personally.

**Non-disclosure
of information.**

13. (1) No prosecutor or witness in any prosecution under this Order shall be compelled to disclose the fact that he received any information or the nature of the information or the name of any person who gave the information.

(2) The Director, and no food officer or food analyst appearing as a prosecutor or witness, shall be compelled to produce any confidential report or document made or received by him in his official capacity or to make any statement in relation thereto.

**Recovery of fees
etc., incidental
to prosecution.**

14. (1) When any person is convicted of an offence under this Order, the Court may order that all fees and other expenses incidental to the analysis of any food or appliance in respect of which the conviction was

obtained, and any other reasonable expenses incurred by the prosecution, shall be paid by the person convicted.

(2) All such fees and expenses shall be recoverable in the same manner as a fine is recoverable.

15. (1) The Minister may, by notification published in the *Gazette*, prohibit after the date therein mentioned the importation, advertisement or sale of any appliance which is, in the opinion of the Minister, injurious to life or health.

Sale of
prohibited
appliance.

(2) No person shall import, advertise or sell any appliance in contravention of any notification referred to in subsection (1).

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable on conviction to imprisonment for 5 years or a fine or both.

16. The Minister, with the approval of His Majesty The Sultan and Yang Di-Pertuan, may make regulations for the purpose of carrying out this Order and, without prejudice to the generality of this provision –

Regulations.

- (a) to prescribe the standard, composition, strength, potency, purity, quality, weight, quantity, shelf-life or other property of any food ;
- (b) to prohibit the addition of, or more than a specified quantity of, a prescribed substance ;
- (c) to declare that any food or class of food is deemed to be contaminated or injurious to health due to the presence therein, addition thereto, or extraction or omission therefrom, of any prescribed substance or class of substance ;
- (d) to prohibit any mode of preparation or preservation of any food ;
- (e) concerning the qualification, conduct and duties of persons appointed to be food analysts under subsection (1) of section 3 ;
- (f) in respect of the use of any food or ingredient, so as to prevent a purchaser or consumer from being misled as to its quality, quantity, character, value, composition, effect, merit or safety, or to prevent injury to the health of a purchaser or consumer ;

- (g) to secure the cleanliness and freedom from insanitary conditions of any food in the course of its preparation, preservation, packaging, storage, conveyance, distribution or sale, to secure the cleanliness and freedom from insanitary conditions of any place, receptacle, appliance or vehicle used in such preparation, preservation, packaging, storage, conveyance, distribution or sale and to secure the proper conduct of any place in which the sale or preparation for sale of food is carried on, and for any of these purposes to require any person to submit to a medical examination ;
- (h) to provide for the registration of premises used for, or of person engaged in preparation, preservation, packaging, storage, conveyance, distribution or sale of, any food or in the re-labelling, reprocessing or reconditioning thereof ;
- (i) in respect of the carriage of any food, including the licensing of vehicles used ;
- (j) to provide for and regulate the use in relation to food in any form whatsoever in the course of trade or business of the expressions "Halal", "Ditanggung Halal" or "Makanan Islam" or any other expressions indicating or likely to be understood as indicating that Muslims are permitted by their religion to consume such food ;
- (k) to prescribe the mode of labelling of food sold in packages or otherwise the matter to be referred to or not to be referred to on such labels ;
- (l) to prescribe the size, dimensions and other specifications of packages of any food ;
- (m) to prescribe the method of analysis of any food ;
- (n) to prohibit or regulate the sale, advertisement, promotion of the sale, importation or exportation of any food or appliance ;
- (o) to prescribe any food which requires an undertaking to be given and the form of such undertaking ;
- (p) to require persons who sell food to maintain such books and records necessary for compliance with this Order ;
- (q) to exempt any food from this Order or from any part thereof and to prescribe conditions of such exemption ;

- (r) to prescribe the procedure for the taking and dealing with samples ;
- (s) to constitute a committee or committees to advise him on any aspect of the manufacture, distribution or consumption of any food, or on the science, technology, administration or commercial aspects concerning any food, food standards and food safety ; and
- (t) to prescribe fees payable under subsection (2) of section 8.

SCHEDULE

FORM 1

Section 4(1)

EMERGENCY (PUBLIC HEALTH) (FOOD) ORDER, 1998

NOTICE OF SEIZURE

To :

.....
.....

Take notice that under section 4(1) of the Order, the undermentioned goods

.....
.....
..... lying
at.....

..... which have been placed under
seal under section 4(1) of the Order have been seized by me at
..... a.m./p.m. on the day of 19
under section 4(1) of the Order.

Should you have any reason to claim these goods you may complain
to a Magistrate's Court under section 4(1) of the Order within
..... hours of the time of seizure, failing which these articles shall
become the property of the Government and shall be destroyed or
otherwise disposed of so as to prevent them being used for human
consumption or application.

Dated this day of 19

.....
Officer appointed under the Order

How served

When served

By whom served

FORM 2

Section 8(1)

EMERGENCY (PUBLIC HEALTH) (FOOD) ORDER, 1998

ANALYST'S CERTIFICATE

I, the undersigned, an analyst appointed under the Order, do hereby
certify that on the day of 19
I received by
from
an officer appointed under the Order, a sample of
contained in a
which was properly closed, labelled and sealed

I further certify that an analysis of the sample was made and that the
result of that analysis is as follows –

As witness my hand this day of 19.....

.....
Analyst

Made this 16th. day of Safar 1419 Hijrah corresponding to 11th. day
of June, 1998 Masihi at Our Istana Nurul Iman, Bandar Seri Begawan,
Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM