

No. S 44

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

EMERGENCY (CRIMINAL PROCEDURE CODE)
(AMENDMENT) ORDER, 1999

In exercise of the power conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan has made the following Order —

1. (1) This Order may be cited as the Emergency (Criminal Procedure Code) (Amendment) Order, 1999.

Citation,
commencement
and application.

(2) This Order shall come into force on 1st. September, 1999.

(3) The provisions of this Order shall apply to any offence committed before or after the date of commencement of this Order.

2. The Criminal Procedure Code (hereinafter referred to as the Code) is amended in section 2 in the definition of "Registrar" by inserting after the words "Chief Registrar" the following —

Amendment
of section 2.
Cap. 7.

" , a Deputy Chief Registrar, a Senior Registrar".

3. Section 7 of the Code is repealed and the following substituted —

Repeal and
replacement
of section 7.

"Jurisdiction. 7. Subject to the provisions of this Code, the jurisdiction of the High Court and the Court of a Magistrate in criminal matters shall extend to any offence committed —

(a) wholly or partly within Brunei Darussalam;
or

(b) on board any ship registered in Brunei Darussalam; or

(c) on board any aircraft registered in Brunei Darussalam; or

(d) on the high seas if the offence is piracy by the law of nations; or

(e) by any person outside Brunei Darussalam who abets, or enters a conspiracy to commit, an offence within Brunei Darussalam, whether or not any overt act in furtherance of such conspiracy takes place within Brunei Darussalam; or

(f) by a subject of His Majesty whether the offence was committed within or outside Brunei Darussalam."

Amendment
of section
117B.

4. Section 117B of the Code is amended in subsection (2) —

(a) by inserting "and" after "belief", at the end of paragraph (b);

(b) by deleting "and" at the end of paragraph (c);

(c) by deleting paragraph (d);

(d) by deleting the words "paragraphs (c) and (d)" in the proviso and substituting therefor the words "paragraph (c)";

(e) by repealing and replacing subsection (4) as follows —

"(4) Notwithstanding that the written statement of a person may be admissible as evidence by virtue of this section —

(a) the party by whom or on whose behalf a copy of the statement, was served may call the person making the statement to give additional evidence in cases, which may include matters which are not contained in the statement; and

(b) the maker of the statement shall attend the trial for cross-examination and re-examination."

Addition of
new sections
117D, 117E
and 117F.

5. The Code is amended by the addition of the following new sections, immediately after section 117C —

"Failure to
account for
objects,
substances or
marks.

117D. (1) Where a person is arrested by a police officer and —

(a) (i) there is on his person; or

(ii) in or on his clothing or footwear;
or

(iii) otherwise in his possession; or

(iv) in any place in which he is at the
time of his arrest,

any object, substance or mark, or there is any mark on
any such object; and

(b) that or another police officer investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the police officer; and

(c) the police officer informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies, the Court —

(a) in determining whether there is a case to answer; and

(b) in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

(4) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if he failed or refused to comply with the request.

(5) This section applies in relation to officers of customs as it applies in relation to police officers.

(6) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.

(7) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

Failure to
account for
presence.

117E. (1) Where —

(a) a person arrested by a police officer was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed; and

(b) that or another police officer investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to the latter's participation in the commission of the offence; and

(c) the police officer informs the person that he so believes, and requests him to account for that presence; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies, the Court —

(a) in determining whether there is a case to answer; and

(b) in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) above what the effect of this section would be if he failed or refused to comply with the request.

(4) This section applies in relation to officers of customs as it applies in relation to police officers.

(5) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for his presence at a place which could properly be drawn apart from this section.

(6) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

Interpretation
and savings.

117F. (1) In sections 117D and 117E —

“legal representative” means an advocate and solicitor;

“place” includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever.

(2) In sections 117D and 117E, references to an offence charged include references to any other offence of which the accused could lawfully be convicted on that charge.

(3) A person shall not have a case to answer or be convicted of an offence solely on an inference drawn from such a failure or refusal as is mentioned in sections 117D, 117E or 118.

(4) Nothing in sections 117D, 117E or 118 prejudices the operation of a provision of any enactment which provides (in whatever words) that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described, and whether civil or criminal).

(5) In subsection (4), the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(6) Nothing in sections 117D, 117E or 118 prejudices any power of a Court, in any proceedings, to exclude evidence (whether by preventing questions being put or otherwise) at its discretion.”.

6. Section 138 of the Code is amended, in subsection (1) by —

Amendment
of section 138.

(a) deleting paragraph (c) and by substituting the following therefor —

"(c) any offence in respect of which the punishment of death is authorised by law;"

(b) deleting paragraph (d).

Addition of
new section
139.

7. The Code is amended by the addition of the following new section, immediately after section 138 —

"Committal for
trial where
accused wishes
to plead guilty.

139. Notwithstanding subsection (1) of section 138, where an accused who is brought before a Magistrate states that he wishes to plead guilty to the charge preferred against him, the Magistrate shall record the facts of the case presented by the prosecution and if the facts disclose sufficient grounds for committing the accused, he shall satisfy himself that the accused understands the nature of the charge and intends to admit without qualification the offence alleged against him and, on being so satisfied, shall commit the accused for trial for the offence."

Addition of
new sections
151A and
151B.

8. The Code is amended by the addition of the following new sections, immediately after section 151 —

"Committal for
trial without
consideration
of the evidence.

151A. A Magistrate holding a preliminary inquiry into an alleged offence with a view to the committal of any person for trial by the High Court may, notwithstanding the other provisions of Chapter XVII, if satisfied that all the evidence before the Court (whether for the prosecution or the defence) consists of written statements tendered to him under the next following section, commit the accused person for trial for the offence without consideration of the contents of those statements, subject to subsection (2).

(2) The accused person may request the Magistrate to consider a submission that the statements disclose insufficient evidence to put the accused person on trial for the offence, in which case the Magistrate, if he agrees with the submission after hearing the officer conducting the prosecution, shall discharge the accused person.

Written
statements in
lieu of
depositions.

151B. (1) In any preliminary inquiry a written statement made by any person shall, if the conditions mentioned in subsection (2) are satisfied, be admissible

Cap. 108. to the like extent as oral evidence to the like effect given by that person would be admissible under the Evidence Act.

(2) The said conditions are that —

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person that it is true to the best of his knowledge and belief;

(c) not less than seven days before the statement is tendered in evidence a copy of it is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings; and

(d) none of the other parties, before the statement is tendered in evidence at the preliminary inquiry, objects to its being so tendered under this section.

(3) Notwithstanding that a written statement made by any person may be admissible in a preliminary inquiry by virtue of this section, the Magistrate by whom the preliminary inquiry is held may, of his own motion or on the application of any party to the proceedings, require that person to attend before him and give evidence.

(4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Magistrate for reasons to be recorded by him otherwise directs, be read aloud in Court at the preliminary inquiry by the party tendering it or his representative, or by an official of the Court, as the Magistrate may direct.

(5) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

Cap. 108. (6) So much of any statement as is admitted in evidence by virtue of this section shall, if the conditions mentioned in section 33 of the Evidence Act are

satisfied, be deemed to be evidence given in a judicial proceeding for the purpose of that section.

(7) Subject to the provisions of sections 151A and 151B, the provisions of Chapter XVII shall apply, with any necessary exceptions, qualifications or modifications, to any preliminary inquiry to which the provisions of sections 151A and 151B apply.

(8) The Magistrate may exercise the powers conferred upon him by section 145 in respect of any person whose statement has been admitted in evidence by virtue of this section as if that person had appeared before him as a witness in the preliminary inquiry, and for that purpose may summon the maker of the statement to appear before him at any time before the trial of the person or persons committed, and may issue a warrant for the arrest of the maker of the statement if he fails to appear in answer to any such summons."

Repeal and
replacement
of section 170.

9. Section 170 of the Code is repealed and the following substituted —

"Person charged
with an offence
can be convicted
of another.

170. Where a person is charged with an offence and facts are proved which constitute another offence, he may be convicted of that other offence though he was not charged with it:

Provided that he may not be so convicted of any offence with a greater maximum sentence than that prescribed for the offence with which he was charged."

Amendment
of section
189A.

10. Section 189A of the Code is amended by deleting the words "by reason of the character and antecedents of such accused".

Amendment
of section 221.

11. Section 221 of the Code is amended —

(a) by deleting paragraph (b) of subsection (1) and substituting the following —

"(b) remain silent,";

(b) by deleting subsection (3);"

(c) by amending subsection (5) —

(i) by deleting "shall not" and substituting "may";

(ii) by deleting "but" and substituting "and".

12. Section 248 of the Code is amended —

Amendment
of section 248.

- (a) by the deletion of subsection (1);
- (b) by the deletion of the word "also" in subsection (2);
- (c) by the deletion of subsection (4).

13. Section 262 of the Code is amended by the addition of the following new subsection (8) —

Amendment
of section 262.

"(8) This section shall apply to all offences, whether or not a minimum sentence has been prescribed for any offence."

14. Section 263 of the Code is amended by the addition of the following new subsection (6) —

Amendment
of section 263.

"(6) This section shall apply to offences, whether or not a minimum sentence has been prescribed for any offence."

Made this 23rd. day of Jamadilawal, 1420 Hijriah corresponding to the 4th. day of September, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM