

No. S 6

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

EMERGENCY (IMMIGRATION ACT) (AMENDMENT) 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. This Order may be cited as the Emergency (Immigration Act) (Amendment) Order, 1998. Citation.

2. Section 2 of the Immigration Act, in this Order referred to as the Act, is amended by inserting the following new definition immediately after the definition of "crew"– Amendment of section 2 of Chapter 17.

" 'employ' means to engage or use the service of any person, whether under a contract of service or otherwise, with or without remuneration ;".

3. Subsection (3) of section 6 of the Act is amended – Amendment of section 6.
 - (a) by deleting the fullstop and by substituting therefor "and –"; and
 - (a) by adding the following two new paragraphs –
 - “(a) in the case of an offence under subsection (1), shall be liable on conviction to imprisonment for a term of not less than 3 months and not more than 2 years and to a fine not exceeding \$6,000 ;
 - (b) in the case of an offence under subsection (2), shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding \$4,000 or to both.”.

4. Subsection (2) of section 15 of the Act is amended – Amendment of section 15.
 - (a) by deleting the fullstop and by substituting therefor "and –"; and
 - (b) by adding the following two new paragraphs –
 - “(a) in the case where he remains unlawfully for a period not exceeding 90 days, shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$4,000 or to both ;

- (b) in the case where he remains unlawfully for a period exceeding 90 days, shall be liable on conviction to imprisonment for a term of not less than 3 months and not more than 2 years or to a fine not exceeding \$6,000 or to both."

Amendment
of section 38.

5. Section 38 of the Act is amended –

- (a) by inserting "(1)" immediately before "Every" in the first line ;
and
- (b) by adding the following new subsection –
"(2) Every Immigration Officer shall have the authority to appear in court and conduct any prosecution in respect of any offence under this Act or the regulations."

Amendment
of section 55.

6. Section 55 of the Act is amended –

- (a) by inserting "(1)" immediately before "Any" in the first line ;
and
- (b) by adding the following nine new subsections –
"(2) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, a director, manager, secretary or other similar officer of that body corporate, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of that offence and liable to be proceeded against and punished accordingly.

(3) Where a body corporate is guilty of an offence under this Act for which a period of mandatory imprisonment is prescribed, the body corporate shall, in lieu of imprisonment, be liable on conviction to a fine of not less than \$30,000 and not more than \$100,000.

(4) Where in any proceedings under this Act or the regulations it is proved that the defendant has failed to produce on demand by an Immigration Officer or a police officer –
 - (a) any valid permit, pass or certificate issued to him under this Act or the regulations ;
 - (b) any other document accepted by the Director as evidence that the defendant has entered or remained in Brunei Darussalam lawfully ; or

- (c) any other evidence showing to the satisfaction of the Director that the defendant is exempted from subsection (1) of section 6,

it shall be presumed, until the contrary is proved, that he has, as the case may be, entered or re-entered or remained in Brunei Darussalam unlawfully.

(5) Where in any proceedings for an offence under paragraph (c) of subsection (1), it is proved that the defendant has conveyed any prohibited immigrant in any vehicle, vessel or aircraft, it shall be presumed, until the contrary is proved, that he is engaged in the business or trade of conveying to Brunei Darussalam in or on that vehicle, vessel or aircraft that prohibited immigrant knowing him to be, or having reasonable grounds for believing him to be, a prohibited immigrant.

(6) Where in any proceedings for an offence under paragraph (d) of subsection (1), it is proved that the defendant has given shelter to any person who has remained in Brunei Darussalam unlawfully for a period exceeding 90 days after the expiration of any pass issued to him or who has entered Brunei Darussalam in contravention of subsection (1) of section 5 or of subsection (1) of section 6, it shall be presumed, until the contrary is proved, that the defendant has harboured him knowing him to be a person who has acted in contravention of the provisions of this Act or the regulations.

(7) Where an immigration offender is found at any premises or place, other than premises used solely for residential purposes, the occupier of the premises or place shall be presumed, until the contrary is proved to have employed him knowing that he is an immigration offender.

(8) In any proceedings for an offence under paragraphs (d) or (e) of subsection (1), it shall not be a defence for the defendant to prove that the person harboured or employed by him was in possession of a pass or permit issued to the person under this Act or the regulations unless the defendant further proves that he had exercised due diligence to ascertain that the pass or permit was at the material time valid under this Act or the regulations.

(9) For the purpose of subsection (8), a defendant shall not be deemed to have exercised due diligence unless he had personally checked the passport or other travel document of the person whom he had harboured or employed and had reasonable ground to believe that –

- (a) the person harboured or employed by him had, at the material time, in force a pass or permit issued under this Act or the regulations ; and
- (b) where such person is the holder of a visit pass, that person had, at the material time, obtained the written consent of the Director to work in Brunei Darussalam.

(10) In this section and section 55B, "immigration offender" means a person who acted in contravention of the provisions of section 6, 15 or 36 or of the regulations."

Insertion
of new sections
55A and 55B.

7. The Act is amended by inserting the following two new sections immediately after section 55 –

"Offences
by owners
and tenants, etc.

55A. (1) No person being the owner, tenant or occupier of any premises or place referred to in subsection (7) of section 55 shall knowingly permit or suffer such premises or place or any part thereof to be kept or used as a place or premises in which any person is employed in contravention of paragraph (e) of subsection (1) of section 55.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be punished with imprisonment for a term of not less than 6 months and not more than 2 years and to a fine not exceeding \$6,000.

Prohibition of
immigration
offender
entering or
remaining at
work place.

55B. (1) No occupier of a work place who has control of access to the work place shall permit any immigration offender to enter or remain at the work place.

(2) Where an immigration offender is found at a work place, it shall be presumed, until the contrary is proved, that the occupier of the work place –

- (a) had control of access to the work place ;
- (b) had permitted the immigration offender to enter or remain at the work place ; and
- (c) had knowledge that he is an immigration offender.

(3) The presumptions provided for in paragraphs (b) and (c) of subsection (2) shall not be rebutted unless the defendant proves that he had exercised due diligence to

prevent the immigration offender from entering or remaining at the work place.

(4) For the purposes of subsection (3), a defendant shall not be presumed to have exercised due diligence unless he had taken all reasonable measures to prevent any immigration offender from entering or remaining at the work place, including all the measures prescribed under subsection (5) in respect of the work place.

(5) For the purposes of subsection (4), the Minister may, by notification in the *Gazette*, prescribe the measures that are required to be taken by the occupier of a work place.

(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine of not less than \$6,000 and not more than \$12,000 or to both for each immigration offender found at the work place, and in the case of a second or subsequent conviction, to imprisonment for a term not exceeding 2 years or to a fine of not less than \$12,000 and not more than \$24,000 or to both for each immigration offender found at the work place.

(7) In this section –

“construction works” means construction, reconstruction, maintenance, repair, alteration, or demolition of any building, harbour, dock, pier, canal, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gasworks, waterworks or other work of construction, as well as the preparation for or laying the foundation of any such work or structure ;

“occupier”, in relation to a work place, means the principal contractor who undertakes any construction works at the work place and includes such other person as the Minister may, by notification in the *Gazette*, specify to be the occupier of the work place ;

“principal contractor” means a person who has entered into a contract with an owner, developer or lessee of a property or his agent for the purpose of carrying out any construction works on the property ;

"work place" means any place or premises where any construction works are being carried out and includes –

- (a) all the land within the vicinity of the work place which are owned by the person for whom the construction works are being carried out and to which the principal contractor has control of access ;
- (b) any canteen, sleeping quarters, office and other structures or buildings erected on the work place ; and
- (c) such other place or premises as the Minister may, by notification in the *Gazette*, specify to be a work place."

Made this 27th. day of Zulkaedah, 1418 Hijrah corresponding to the 26th. day of March, 1998 Masihi at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM