

No. S 49

SUCCESSION AND REGENCY PROCLAMATION, 1959

SUCCESSION AND REGENCY (AMENDMENT) PROCLAMATION, 2004

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Invocation.

SUCCESSION AND REGENCY PROCLAMATION, 1959

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In the name of ALLAH, the Compassionate, the Merciful, PRAISE be to ALLAH, the Lord of the Universe, and may the benediction and peace of ALLAH be upon Our Leader Muhammad and upon all his Relations and Friends.



**HIS MAJESTY THE SULTAN
AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM**

BY THE GRACE OF ALLAH, WE, SULTAN HAJI HASSANAL BOLKIAH MU'IZZADDIN WADDAULAH IBNI AL-MARHUM SULTAN HAJI OMAR 'ALI SAIFUDDIEN SA'ADUL KHAIRI WADDIEN, SOVEREIGN AND CHIEF OF THE ROYAL FAMILY ORDER OF THE CROWN OF BRUNEI, SOVEREIGN AND CHIEF OF THE MOST ESTEEMED FAMILY ORDER, SOVEREIGN AND CHIEF OF THE MOST EMINENT ORDER OF ISLAM OF BRUNEI, SOVEREIGN AND CHIEF OF THE MOST EMINENT ORDER OF ILLUSTRIOUS ORDER OF PADUKA LAILA JASA KEBERANIAN GEMILANG, SOVEREIGN AND CHIEF OF THE MOST EXALTED ORDER OF PADUKA KEBERANIAN LAILA TERBILANG, SOVEREIGN AND CHIEF OF THE MOST GALLANT ORDER OF PAHLAWAN NEGARA BRUNEI, SOVEREIGN AND CHIEF OF THE MOST BLESSED ORDER OF SETIA NEGARA BRUNEI, SOVEREIGN AND CHIEF OF THE MOST DISTINGUISHED ORDER OF PADUKA SERI LAILA JASA, SOVEREIGN AND CHIEF OF THE MOST HONOURABLE ORDER OF THE CROWN OF BRUNEI, SOVEREIGN AND CHIEF OF THE MOST FAITHFUL ORDER OF PERWIRA AGONG NEGARA BRUNEI, HONORARY KNIGHT GRAND CROSS, THE MOST HONOURABLE ORDER OF THE BATH (UNITED KINGDOM), HONORARY KNIGHT GRAND CROSS OF THE MOST DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT GEORGE (UNITED KINGDOM), DARJAH UTAMA SERI MAHKOTA NEGARA (MALAYSIA), COLLAR OF THE SUPREME ORDER OF CHRYSANTHEMUM (JAPAN), THE ORDER OF AL-HUSSEIN BIN ALI (JORDAN), THE CIVIL ORDER OF OMAN FIRST CLASS (OMAN), AL-KHALIFIA (BAHRAIN), QUISSAM EL MOHAMMDI GRAND COLLIER (MOROCCO), THE MOST AUSPICIOUS ORDER OF THE RAJAMITRABHORN (THAILAND), THE GREAT COLLAR OF BADR (ARAB SAUDI), KNIGHT OF THE ROYAL ORDER OF THE SERAPHIM (SWEDEN), GRAND ORDER OF

MUGUNGHWA (REPUBLIC OF KOREA), BINTANG REPUBLIK INDONESIA ADIPURNA (REPUBLIC OF INDONESIA), COLLAR OF THE NILE (REPUBLIC OF EGYPT), THE ANCIENT ORDER OF SIKATUNA RANK OF RAJAH (REPUBLIC OF THE PHILIPPINES), THE ORDER OF TEMASEK, FIRST CLASS (REPUBLIC OF SINGAPORE), NISHAN-E-PAKISTAN (REPUBLIC OF PAKISTAN), GRAND CROIX LEGION D'HONNEUR (REPUBLIC OF FRANCE), GRAND CROSS SPECIAL CLASS OF THE ORDER OF MERIT (REPUBLIC OF GERMANY), THE ORDER OF PRINCE YAROSLAV THE WISE (FIRST CLASS) (UKRAINE), MOST ESTEEMED ROYAL FAMILY ORDER (FIRST CLASS) (KELANTAN), MOST ESTEEMED ROYAL ORDER (FIRST CLASS) (JOHORE), MOST ESTEEMED ROYAL FAMILY ORDER (FIRST CLASS) (NEGERI SEMBILAN), MOST ESTEEMED ROYAL FAMILY ORDER OF SRI INDERA MAHKOTA PAHANG (PAHANG), MOST ESTEEMED ROYAL FAMILY ORDER (FIRST CLASS) (SELANGOR), MOST ESTEEMED ROYAL FAMILY ORDER (FIRST CLASS) (PERLIS), MOST ESTEEMED ROYAL FAMILY ORDER (FIRST CLASS) (PERAK), MOST ESTEEMED ROYAL FAMILY ORDER (FIRST CLASS) (TERENGGANU), MOST ESTEEMED ROYAL FAMILY ORDER (FIRST CLASS) (KEDAH), DARJAH UTAMA BINTANG SARAWAK (SARAWAK), SERI PANGLIMA DARJAH KINABALU (SABAH), FIRST GALLANTRY ORDER OF THE MALAYSIAN ARMED FORCES (MALAYSIA), DISTINGUISHED SERVICE ORDER (MILITARY) (REPUBLIC OF SINGAPORE), THE PHILIPPINES LEGION OF HONOUR (DEGREE OF CHIEF COMMANDER) (REPUBLIC OF THE PHILIPPINES), the Sultan and Yang Di-Pertuan of the Sovereign State and Territory of Brunei Darussalam and all its Dependencies;

WHEREAS on the 26th day of Rabiulawal the Hijrah of the Prophet (on Whom be the benediction and peace of ALLAH) One thousand three hundred and seventy-nine corresponding to the 29th day of September, One thousand nine hundred and fifty-nine of the Christian era, WE have proclaimed the Succession and Regency Proclamation, 1959;

AND WHEREAS it is provided under section 31 that the Proclamation may be amended by US with the approval of the Council of Succession;

AND WHEREAS WE have considered it expedient that certain provisions of the Proclamation should be amended in diverse respects;

NOW THEREFORE WE in exercise of the powers conferred on US by section 31 of the Proclamation and with the approval of the Council of Succession DO HEREBY PROCLAIM in OUR name and on OUR behalf and for and on behalf of OUR Successors as hereinafter follows —

Citation and commencement.

1. This Proclamation may be cited as the Succession and Regency (Amendment) Proclamation, 2004 and shall come into force on the day it is made.

Amendment of section 2 of Const. II.

2. Section 2 of the Succession and Regency Proclamation, 1959, in this Proclamation referred to as the Proclamation, is amended in subsection (1) —

(a) by deleting "(1)" from the first line;

(b) in the definition of "Clerk to the Privy Council", by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the second line;

(c) by deleting the definition of "Consort to His Majesty" and by substituting the following new definition therefor —

" "Consort to His Majesty the Sultan and Yang Di-Pertuan" means a lawful wife of the reigning Sultan according to the Malay Custom of Brunei Darussalam and, if there is more than one such wife, means the wife of His Majesty the Sultan and Yang Di-Pertuan who professes the Islamic Religion and is of the blood of the Sultans of Brunei Darussalam, or, if there is more than one of such wives, then that wife whom His Majesty the Sultan and Yang Di-Pertuan is satisfied is nearest in the direct line to such Sultans:

Provided that —

(a) if there is no such wife, the wife of His Majesty the Sultan and Yang Di-Pertuan who is of the blood of the ruling house of another Malay Muslim State, being a house which is related to His Majesty the Sultan and Yang Di-Pertuan, or, if there is more than one such wife with equal claims, then of those wives, the wife whom His Majesty the Sultan and Yang Di-Pertuan is satisfied is nearest related to His Majesty the Sultan and Yang Di-Pertuan;

(b) if there is no such wife, the wife of His Majesty the Sultan and Yang Di-Pertuan who is of the Malay race and who professes the Islamic Religion and who is of the blood of the ruling house of another Muslim State, or, if there is more than one such wife, then that wife whom His Majesty the Sultan and Yang Di-Pertuan is satisfied is nearest in the direct line to the Sultan of another Muslim State;

(c) if there is no such wife, the wife of His Majesty the Sultan and Yang Di-Pertuan who is a Pengiran Kebanyakan or if there is more than one such wife, then of those wives, the wife His Majesty the Sultan and Yang Di-Pertuan so chooses; or

(d) if there is no such wife, the wife His Majesty the Sultan and Yang Di-Pertuan so chooses:

Provided further that —

- (i) no wife shall be deemed to be a Consort of His Majesty the Sultan and Yang Di-Pertuan unless His Majesty the Sultan and Yang Di-Pertuan has, by Proclamation published in the *Gazette*, so proclaimed; and
- (ii) a subsequent wife shall not be proclaimed the Consort of His Majesty the Sultan and Yang Di-Pertuan if there is living a former wife who has been appointed Duli Raja Isteri or Pengiran Isteri in accordance with the provisions of section 22;";

(d) in the definition of "Constitution", by deleting the marginal note;

(e) by deleting the definition of "Council of Ministers" and by substituting the following new definition therefor —

" "Council of Ministers" means the Council of Ministers established by the Constitution;";

(f) by inserting the following new definition immediately after the definition of "Council of Ministers" —

" "Government" means the Government of His Majesty the Sultan and Yang Di-Pertuan;";

(g) by deleting the definition of "Heir Apparent" and by substituting the following new definition therefor —

" "Heir Apparent", subject to section 3, means the person who, if he survives His Majesty the Sultan and Yang Di-Pertuan, must be the Heir to the throne;";

(h) in the definition of "Heir Presumptive", by inserting ", subject to section 3," immediately before "means" in the first line;

(i) by inserting the following three new definitions immediately after the definition of "immediate ancestor" —

"Interpretation Tribunal" means the Interpretation Tribunal established by or under the Constitution;

"Islamic Religion" means the Islamic Religion according to the Shafeite sect of Ahlis Sunnah Waljamaah;

"Kepala Wazir" means the noble and illustrious personage known as the Duli Pengiran Perdana Wazir Sahibul Himmah Wal-Waqar;"

(j) in the definition of "Legislative Council", by deleting "section 23 of" from the second line;

(k) in the definition of "Minister", by deleting "the provisions of subsection (4) of section 4" from the first two lines;

(l) by deleting the definition of "Islamic Religion";

(m) in the definition of "Muslim State", by deleting "Muslim Religion" from the last line and by substituting "Islamic Religion" therefor;

(n) in the definition of "Pengiran Kebanyakan", by adding "Darussalam" immediately after "Brunei" in the last line;

(o) by deleting the definition of "person of the blood of the Sultans of Brunei" and by substituting the following new definition therefor —

"person of the blood of the Sultans of Brunei Darussalam" means a person who is a lawfully begotten descendant of Al-Marhum Sultan Mohamed Jamalul Alam or, if there is no such descendant of the appropriate sex, a person who is a lawfully begotten descendant of the grandfather in the male line of the reigning Sultan, or, if there is no reigning Sultan, a lawfully begotten descendant of the grandfather in the male line of the last reigning Sultan;"

(p) in the definition of "Privy Council", by deleting "subsection (1) of section 5 of";

(q) in the definition of "Regent", by inserting "or referred to in section 11" immediately after "13";

(r) by inserting into the definition of "Religious Council" "{Chapter 77}" immediately after "Act" in the last line and by deleting the marginal note;

(s) by deleting the definition of "Senior Wazir or Kepala Wazir";

(t) in the definition of "State", by deleting "Negara";

(u) by deleting the definition of "Brunei functions" and by substituting the following new definition therefor —

" "State functions" means the powers, authorities and privileges vested in His Majesty the Sultan and Yang Di-Pertuan by the Constitution, by any other written law or by virtue of His Majesty the Sultan and Yang Di-Pertuan's prerogative;"

(v) by deleting the definition of "Sultan" and by substituting the following new definition therefor —

" "Sultan" or "His Majesty" or "His Majesty the Sultan and Yang Di-Pertuan" means His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam but does not include a Council of Regency or His Majesty the Sultan and Yang Di-Pertuan's Deputy;"

(w) by deleting the definition of "Sultans Deputy" and by substituting the following new definition therefor —

" "Sultan's Deputy" means the Deputy appointed under section 17;"

(x) by adding the following new definition —

" "Wazirs" means the Duli Pengiran Perdana Wazir Sahibul Himmah Wal-Waqar, the Pengiran Bendahara Seri Maharaja Permaisua, the Pengiran Digadong Sahibul Mal, the Pengiran Pemancha Sahibol Rae Walmashuarah and the Pengiran Temanggong Sahibol Bahar."

Substitution of section 3.

3. Section 3 of the Proclamation is repealed and the following new section substituted therefor —

"His Majesty and succession to the Sultanate.

3. (1) It is hereby declared that His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien is the lawful Sultan and Yang Di-Pertuan of Brunei Darussalam.

(2) It is hereby declared that Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Mahkota Haji Al-Muhtadee Billah ibni Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah is the lawful Successor to the throne of Brunei Darussalam:

Provided that His Majesty the Sultan and Yang Di-Pertuan may from time to time, by Proclamation published in the *Gazette*, proclaim another person to be the only lawful Successor to the throne of Brunei Darussalam; the person whose right to succeed has been revoked by the later Proclamation shall forthwith cease to be entitled to the title of Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Mahkota and the title shall forthwith pass to such person so proclaimed in the later Proclamation.

(3) It is hereby declared that upon Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Mahkota Haji Al-Muhtadee Billah ibni Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ascending or for any reason whatsoever being unable to ascend to the throne of Brunei Darussalam, his lawful Heir as determined in accordance with section 5 shall be the lawful Successor to the throne of Brunei Darussalam.

(4) In the event that His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien ceases to occupy the throne of Brunei Darussalam, and Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Mahkota Haji Al-Muhtadee Billah ibni Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah for any reason whatsoever being unable to ascend to, or having ascended to ceasing to occupy, the throne of Brunei Darussalam without leaving a lawful Heir, the succession thereto is hereby vested —

(a) first, in the lawful Heirs of the body of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien in the following order —

- (i) Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Haji Abdul Azim ibni Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, and upon his ascending or for any reason whatsoever being unable to ascend to the throne of Brunei Darussalam, his lawful Heir as determined in accordance with section 5 shall be the lawful Successor to the throne of Brunei Darussalam;
- (ii) in the event that there is no lawful Heir under subsection 4(a)(i), Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Abdul Malik ibni Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Haji Hassanal

Bolkiah Mu'izzaddin Waddaulah, and upon his ascending or for any reason whatsoever being unable to ascend to the throne of Brunei Darussalam, his lawful Heir as determined in accordance with section 5 shall be the lawful Successor to the throne of Brunei Darussalam;

- (iii) in the event that there is no lawful Heir under subsection 4(a)(ii), Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Abdul Mateen ibni Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, and upon his ascending or for any reason whatsoever being unable to ascend to the throne of Brunei Darussalam, his lawful Heir as determined in accordance with section 5 shall be the lawful Successor to the throne of Brunei Darussalam;

(b) next, in the lawful Heirs of the body of Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien as determined in accordance with section 5; and

(c) finally, in the lawful Heirs of the body of Al-Marhum Sultan Mohamed Jamalul Alam as determined in accordance with section 5."

Substitution of section 4.

4. Section 4 of the Proclamation is repealed and the following new section substituted therefor —

"Person excluded from succession to the throne.

4. (1) No person shall be considered a lawful Heir or a lawful Successor unless he professes the Islamic Religion and is a male lawfully begotten descendant in the male line of the common ancestor.

(2) A lawful Heir shall be excluded from the succession if his right to succeed has been forfeited under subsection (1) of section 10."

Amendment of section 5.

5. Section 5 of the Proclamation is amended —

(a) in paragraph (b) of subsection (1), by deleting "old" and by substituting "older" therefor;

(b) by adding the following new subsection —

"(6) This section shall be read subject to section 3.";

(c) by deleting "heir" wherever that word appears and by substituting "Heir" therefor.

Amendment of section 6.

6. Section 6 of the Proclamation is amended by repealing subsection (2) and by substituting the following 2 new subsections therefor —

"(2) The Council of Succession shall consist of —

(a) such Malay Members of the Council of Ministers as may be appointed by His Majesty the Sultan and Yang Di-Pertuan to be Members of the Council of Succession;

(b) any person who holds the dignitary or office of Wazir or Cheteria appointed by His Majesty the Sultan and Yang Di-Pertuan to be a Member of the Council of Succession;

(c) any Pehin Manteri or any person of distinction appointed by His Majesty the Sultan and Yang Di-Pertuan to be a Member of the Council of Succession;

(d) any Member of the Religious Council appointed by His Majesty the Sultan and Yang Di-Pertuan to be a Member of the Council of Succession.

(2A) Every member of the Council of Succession shall hold his office during His Majesty the Sultan and Yang Di-Pertuan's pleasure."

Amendment of section 7.

7. Section 7 of the Proclamation is amended —

(a) in paragraph (c) of subsection (1), by inserting ", and such decision shall not be subject to any review by or appeal to any court" immediately after "thereto" in the last line;

(b) in subsection (2), by inserting ", who shall hold office during His Majesty the Sultan and Yang Di-Pertuan's pleasure" immediately after "Succession" in the last line;

(c) in subsection (3), by deleting "two" from the second line and by substituting "2" therefor.

Amendment of section 8.

8. Section 8 of the Proclamation is amended —

(a) by repealing subsection (1);

(b) in subsection (2) —

(i) by deleting ", or whenever the approval of the Council of Succession is required under subsection (1)," from the fourth, fifth and sixth lines;

(ii) in the proviso, by deleting "the Sultan" from the fourth line and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;

(c) by repealing subsection (3) and by substituting the following new subsection therefor —

"(3) At any such meeting, if a Successor has already been proclaimed or determined in accordance with subsection (2), (3) or (4) of section 3, then the Council of Succession shall not examine any other claim or make any inquiry required by subsection (4) and shall confirm the succession so proclaimed or declared.";

(d) in subsection (4) —

(i) by deleting "heir" from the seventh and fourteenth lines and by substituting "Heir" therefor;

(ii) by deleting "under subsection (1)" from the last line and by substituting "to the throne of Brunei Darussalam" therefor;

(e) in subsection (5), by deleting "successor" from the second line and by substituting "Successor" therefor.

Substitution of section 9.

9. Section 9 of the Proclamation is repealed and the following new section substituted therefor —

"Wrongful assumption of title of the Sultan's Successor.

9. Any person who, not having been duly proclaimed or determined in accordance with subsection (2), (3) or (4) of section 3 to be His Majesty the Sultan and Yang Di-Pertuan's Successor or whose right to succeed has been revoked by His Majesty the Sultan and Yang Di-Pertuan under section 3, claims or uses, or permits others to use in his regard, the title of Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Mahkota may, if His Majesty the Sultan and Yang Di-Pertuan or, if there is a Regency, if the Council of Regency, so directs, be required formally to renounce such claim or user in the presence of the Privy Council; His Majesty the Sultan and Yang Di-Pertuan may deprive the offender of any title, rank, dignity, decoration or precedence connected with Brunei Darussalam which the offender may in fact enjoy, and of any maintenance or other allowance payable to the offender by Brunei Darussalam."

Amendment of section 10.

10. Section 10 of the Proclamation is amended —

(a) by deleting "Cap. 22" from the marginal note;

(b) in subsection (1) —

(i) by deleting "heir" from the first line and by substituting "Heir" therefor;

(ii) in paragraph (a), by inserting "(Chapter 22)" immediately after "Code" in the second line;

(iii) in paragraph (c) —

(aa) by deleting "to any of the aforesaid offences" from the first two lines;

(ab) by deleting "in Council" from the second line and by substituting "the Sultan and Yang Di-Pertuan" therefor;

(iv) by inserting ", unless His Majesty the Sultan and Yang Di-Pertuan shall otherwise determine," immediately before "forfeit" in the twelfth line;

(c) in subsection (2), by deleting "in consultation with the Privy Council" from the sixth line and by substituting "the Sultan and Yang Di-Pertuan" therefor;

(d) in subsection (3), by deleting "heir" from the first and third lines and by substituting "Heir" therefor.

Substitution of section 11.

11. Section 11 of the Proclamation is repealed and the following new section substituted therefor —

"Council of Regency while His Majesty is under 18.

11. (1) It is hereby declared that if upon the death or occurrence of any other event by reason of which Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Mahkota Haji Al-Muhtadee Billah ibni Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah shall cease to occupy the throne of Brunei Darussalam, and his lawful Heir as determined in accordance with section 5 (hereinafter referred to as "the new Successor") is below the age of 18 years, the next eldest surviving son of His Majesty Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien shall be the Regent and shall perform the State functions in the name and on behalf of the new Successor, until the new Successor attains the age of 18 years.

(2) If the next eldest surviving son of His Majesty Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien is upon his death or occurrence of any other event by reason of which he shall be unable to perform the State functions, then the next surviving son of His Majesty Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien shall be the Regent and shall perform the State functions in the name and on behalf of the new Successor, until the new Successor attains the age of 18 years.

(3) In the event that a son of His Majesty Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien other than Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Mahkota Haji Al-Muhtadee Billah ibni Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah succeeds to the throne of Brunei Darussalam in accordance with paragraph (a) of subsection (4) of section 3, subsections (1) and (2) shall apply as if that son is referred to in subsection (1) in place of Duli Yang Teramat Mulia Paduka Seri Pengiran Muda Mahkota Haji Al-Muhtadee Billah ibni Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah.

(4) If none of the surviving sons of His Majesty Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien shall be able to perform the State

functions, then the State functions shall be performed in the name and on behalf of the new Successor by a Jemaah Pemangku Raja, to be styled in English "Council of Regency", appointed by the Privy Council.

(5) Subject to the preceding subsections, in all other cases where the Sultan is at his accession, under the age of 18 years, then, until he attains that age, the State functions shall be performed in the name and on behalf of the Sultan by the Council of Regency.

(6) For the purpose of any written law requiring any oath or declaration to be taken, made or subscribed by His Majesty the Sultan and Yang Di-Pertuan on or after his accession, the date on which His Majesty the Sultan and Yang Di-Pertuan attains the age of 18 years shall be deemed to be the date of his accession."

Substitution of section 12.

12. Section 12 of the Proclamation is repealed and the following new section substituted therefor —

"Council of Regency during total incapacity of His Majesty.

12. (1) If all of the following persons, or any 8 of them, that is to say, the Consort of His Majesty the Sultan and Yang Di-Pertuan, the Wazirs, the Ministers, the Chief Syar'ie Judge, the Kepala Cheteria and 5 Menteris, declare in writing to the Privy Council that they are satisfied by evidence, which shall include the evidence of 3 independent physicians, that His Majesty the Sultan and Yang Di-Pertuan is by reason of infirmity of mind or body incapable for the time being of performing the State functions, or that they are satisfied by evidence that His Majesty the Sultan and Yang Di-Pertuan is for some definite cause not available for the performance of those functions, then, until it is declared in like manner that His Majesty the Sultan and Yang Di-Pertuan has so far recovered his health as to warrant his resumption of the State functions, or has become available for the performance thereof, as the case may be, those functions shall be performed in the name and on behalf of His Majesty the Sultan and Yang Di-Pertuan —

(a) by his lawful Successor;

(b) where the lawful Successor is below the age of 18 years, by, where applicable, the Regent referred to under section 11 or by the Council of Regency appointed by the Privy Council; and

(c) in the absence of a lawful Successor, by the Council of Regency appointed by the Privy Council.

(2) If a declaration made under the first part of subsection (1) is not within 5 years from its communication to the Privy Council superseded by the declaration provided for in the latter part of such subsection, then, as from the expiration of such period of 5 years, the declaration first mentioned shall have the same effect for all purposes as if His Majesty the Sultan and Yang Di-Pertuan had renounced the throne under subsection (1) of section 19 by a valid Instrument of Abdication having effect at the expiration of the aforesaid period of 5 years.

(3) Subsection (1) shall apply to a Regent with the following modifications, namely —

(a) the declaration as to incapacity of performing the State functions shall be made by the Privy Council; and

(b) the recovery of health by a Regent who has been declared incapable of performing the State functions shall not require any declaration or affect the appointment of another Regent.

(4) Any declaration under this section shall be made by Order which shall be signified in the *Gazette* by the Privy Council."

Amendment of section 13.

13. Section 13 of the Proclamation is amended —

(a) in subsection (1) —

(i) by deleting "His Majesty" from the first line and by substituting "Notwithstanding section 11, His Majesty the Sultan and Yang Di-Pertuan" therefor;

(ii) by adding "the Sultan and Yang Di-Pertuan";

(b) in the proviso to subsection (3) —

(i) in paragraph (a), by deleting "a Regent in the order mentioned" from the fifth and sixth lines and by substituting "by His Majesty the Sultan and Yang Di-Pertuan as a Regent" therefor;

(ii) in paragraph (b), by inserting "the Sultan and Yang Di-Pertuan or under section 11" immediately after "Majesty" where it appears for the first time in the third line;

(c) by repealing subsection (5) and by substituting the following new subsection therefor —

"(5) The appointment of a Council of Regency shall cease to have effect —

(a) upon the arrival in Brunei Darussalam of His Majesty the Sultan and Yang Di-Pertuan save where His Majesty the Sultan and Yang Di-Pertuan is under the age of 18 years or a subsisting declaration of incapacity under section 12 has been made of him;

(b) upon His Majesty the Sultan and Yang Di-Pertuan attaining the age of 18 years, if he is then in Brunei Darussalam and not suffering from any incapacity within the meaning of subsection (1) of section 12; and

(c) upon a declaration under the second part of subsection (1) of section 12.";

(d) in subsection (6), by deleting "The" from the first line and by substituting "Subject to section 11, the" therefor.

Substitution of section 15.

14. Section 15 of the Proclamation is repealed and the following new section substituted therefor —

"Guardianship etc. of His Majesty during Regency.

15. When a Council of Regency has been appointed, unless the Privy Council otherwise determines —

(a) if His Majesty the Sultan and Yang Di-Pertuan, is under the age of 18 years, and unmarried, his mother, if she is living, shall have the guardianship of his person;

(b) if His Majesty the Sultan and Yang Di-Pertuan, being married, is under the age of 18 years or has been declared under this Proclamation to be incapable for the time being of performing the State functions, the Consort of His Majesty the Sultan and Yang Di-Pertuan, if of the age of 18 or more, shall have the guardianship of the person of His Majesty the Sultan and Yang Di-Pertuan;

(c) the Council of Regency shall, save in the cases aforesaid, have the guardianship of the person of His Majesty the Sultan and Yang Di-Pertuan;

and the property of His Majesty the Sultan and Yang Di-Pertuan, save and except any private property which in accordance with the terms of any trust affecting it is to be administered by some other person, shall be administered by the Council of Regency."

Amendment of section 17.

15. Section 17 of the Proclamation is amended —

(a) by repealing subsections (5) and (6) and by substituting the following 2 new subsections therefor —

"(5) If it appears to the Privy Council to be in the interest of Brunei Darussalam that His Majesty the Sultan and Yang Di-Pertuan, who has absented himself from Brunei Darussalam after lawfully appointing a Deputy under this section, should either return to Brunei Darussalam or appoint a Council of Regency, the Privy Council shall in such manner as that Council may deem appropriate inform His Majesty the Sultan and Yang Di-Pertuan accordingly; and, if within 30 days of such information being communicated to him, or if after 30 days have lapsed since the time that His Majesty the Sultan and Yang Di-Pertuan could not be found, His Majesty the Sultan and Yang Di-Pertuan has neither returned to Brunei Darussalam nor appointed a Council of Regency, then, the Privy Council shall proceed to appoint a Council of Regency.

(6) If His Majesty the Sultan and Yang Di-Pertuan has, at any time, been absent from Brunei Darussalam for a consecutive period of more than 24 months, then, whether or not the provisions of this section have been complied with and whether or not a Council of Regency has been appointed, it shall be lawful for the Privy Council to require His Majesty the Sultan and Yang Di-Pertuan to return to Brunei Darussalam and if His Majesty the Sultan and Yang Di-Pertuan shall fail to return to Brunei Darussalam within 3 months of the communication to him of such requirement, or if after 3 months have lapsed since the time of the public announcement of such requirement, the provisions of subsection (7) shall apply.";

(b) in subsection (7) —

- (i) by deleting "the Sultan" from the second line and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;
- (ii) by deleting paragraph (b) and by substituting the following new paragraph therefor —

"(b) that a final warning be sent to His Majesty the Sultan and Yang Di-Pertuan that, if he fails to return within 3 months from the communication to him or of a public announcement of such resolution, he shall be deemed to have abdicated; or";

- (iii) in paragraph (c), by deleting "the Sultan" from the first line and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;

(c) in subsection (8), by deleting "the Sultan" from the last two lines and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;

(d) in subsection (9) —

- (i) in paragraph (b), by deleting the fullstop and by substituting a comma therefor;
- (ii) by deleting "the Sultan" wherever those words appear and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;

(e) in subsection (10) —

- (i) by deleting "Brunei functions" from the eighth line and by substituting "the State functions" therefor;
- (ii) in paragraph (a), by deleting "the Sultan" from the second line and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;
- (iii) in paragraph (b), by deleting "the Sultan" from the second and fifth lines and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;

(f) by adding the following new subsection —

"(11) This section shall not apply where His Majesty the Sultan and Yang Di-Pertuan is below the age of 18 years.".

Amendment of section 18.

16. Section 18 of the Proclamation is amended by repealing subsection (1) and by substituting the following new subsection therefor —

"(1) If any Regent is or remains absent from Brunei Darussalam for more than 3 months, save in pursuance of and in accordance with the approval of the Privy Council, he shall automatically cease to be a Regent and, save where the appointment of a Regent is provided under section 11, a fresh appointment of a Regent shall be made, but without prejudice to the appointment of the ex-Regent on his return to Brunei Darussalam."

Amendment of section 19.

17. Section 19 of the Proclamation is amended —

(a) in subsection (1), by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the first line;

(b) by repealing subsections (2) and (3) and by substituting the following 2 new subsections therefor —

"(2) Upon the execution by His Majesty of the Instrument of Abdication in the manner specified in subsection (3), His Majesty shall cease to be the Sultan and Yang Di-Pertuan of Brunei Darussalam and the throne of Brunei Darussalam shall become vacant.

(3) An Instrument of Abdication executed in Brunei Darussalam shall not be accepted as valid if it has not been witnessed by at least 2 of the Wazirs and at least 10 of the other illustrious personages of Brunei Darussalam:

Provided that —

(a) if any dispute arises as to the validity of any such Instrument, the matter shall be referred to the Privy Council whose decision shall be final and shall not be open to review by, or appeal to, any court; and

(b) in the case of an Instrument of Abdication executed elsewhere than in Brunei Darussalam, any Instrument which is executed and witnessed in such manner and by such persons as the Privy Council shall, in all the circumstances of the case, consider acceptable, shall be valid."

Amendment of section 20.

18. Section 20 of the Proclamation is amended —

(a) by deleting the marginal note and by substituting "Emoluments of His Majesty who has abdicated." therefor;

(b) in the first line, by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty";

(c) in paragraph (a), by deleting "as may be voted by the Legislature" from the second and third lines and by substituting "as his lawful Successor may determine" therefor;

(d) in paragraph (b), by deleting "the Privy Council" from the second line and by substituting "his lawful Successor" therefor.

Substitution of section 21.

19. Section 21 of the Proclamation is repealed and the following new section substituted therefor —

"Emoluments of His Majesty who is deemed to have abdicated.

21. Whenever the Privy Council has made an Order under subsection (9) of section 17 declaring that His Majesty the Sultan and Yang Di-Pertuan shall be deemed to have abdicated, his lawful Successor may grant to him such emoluments as his lawful Successor may determine."

Substitution of section 22.

20. Section 22 of the Proclamation is repealed and the following new section substituted therefor —

"Appointment of Raja Isteri and title of Consort of His Majesty.

22. (1) If the Consort of His Majesty the Sultan and Yang Di-Pertuan is a Malay professing the Islamic Religion and of the blood of the Sultans of Brunei Darussalam or of the blood of the ruling house of another Muslim State, His Majesty the Sultan and Yang Di-Pertuan may —

(a) if she has been crowned, appoint her to be the "Duli Raja Isteri"; or

(b) if she has not been crowned, appoint her to be the "Pengiran Isteri".

(2) If the Consort of His Majesty the Sultan and Yang Di-Pertuan, whether crowned or not, is not of the Religion and blood aforesaid, the appropriate title shall be the "Pengiran Bini".

Substitution of section 23.

21. Section 23 of the Proclamation is repealed and the following new section substituted therefor —

"Allowances for Consort of His Majesty.

23. (1) The Consort of His Majesty the Sultan and Yang Di-Pertuan shall receive such allowances out of the funds of Brunei Darussalam as His Majesty the Sultan and Yang Di-Pertuan may determine.

(2) The allowances provided for under subsection (1) shall —

(a) in the event of the demise of His Majesty the Sultan and Yang Di-Pertuan or upon the abdication of His Majesty the Sultan and Yang Di-Pertuan, be not less than the sum fixed for her monthly allowance as the Consort of His Majesty the Sultan and Yang Di-Pertuan, as his Successor may determine; and

(b) on the divorce or remarriage of the Consort of His Majesty the Sultan and Yang Di-Pertuan, be such compassionate allowance as His Majesty the Sultan and Yang Di-Pertuan may determine."

Amendment of section 24.

22. Section 24 of the Proclamation is amended —

(a) in the marginal note, by deleting "Brunei" and by substituting "State" therefor;

(b) in subsection (1) —

(i) by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the first line;

(ii) by deleting "Cabinet" from the second line;

(c) in subsection (2), by deleting "Executive" from the penultimate line and by substituting "Privy" therefor.

Amendment of section 25.

23. Section 25 of the Proclamation is amended —

(a) in subsection (1) —

(i) by inserting "the" immediately before "State" in the second line;

(ii) in paragraph (a) —

(aa) by deleting "the Sultan" from the first line and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;

(ab) by deleting "the Sultan" from the last line and by substituting "His Majesty the Sultan and Yang Di-Pertuan" therefor;

(iii) by repealing paragraph (b) and by substituting the following new paragraph therefor —

"(b) His Majesty the Sultan and Yang Di-Pertuan can do no wrong in either his personal or any official capacity:

Provided that provision may be made by laws enacted under the Constitution for the bringing of proceedings against the Government or any officer, servant or agent thereof, but not His Majesty the Sultan and Yang Di-Pertuan, in respect of wrongs committed in the course of carrying on the government of Brunei Darussalam.";

(b) in subsection (2), by deleting "and shall have effect notwithstanding that it does not comply with section 31" from the last two lines.

Amendment of section 26.

24. Section 26 of the Proclamation is amended —

(a) in subsection (1), by deleting "His Majesty's" from paragraph (b) and by substituting "His Majesty the Sultan and Yang Di-Pertuan's" therefor;

(b) in subsection (2), by deleting "subsections" from the last line and by substituting "subsection" therefor.

Amendment of section 27.

25. Section 27 of the Proclamation is amended by deleting "His Majesty's" from the first line and by substituting "His Majesty the Sultan and Yang Di-Pertuan's" therefor.

Amendment of section 28.

26. Section 28 of the Proclamation is amended —

(a) by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the first line and in the second line;

(b) by inserting ", acting on behalf of and in the name of His Majesty the Sultan and Yang Di-Pertuan," immediately after "Council" in the third line.

Amendment of section 29.

27. Section 29 of the Proclamation is amended —

(a) in subsection (1) —

(i) by deleting "or the Prime Minister" from the first line and by substituting "the Sultan and Yang Di-Pertuan" therefor;

(ii) by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the third line;

(iii) by deleting "or the Prime Minister, as the case may be, consider can conveniently attend, not being less than one-half thereof," from the third, fourth and fifth lines and by substituting "considers can conveniently attend," therefor;

(b) in subsection (2), by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the last line.

Amendment of section 30.

28. Section 30 of the Proclamation is amended —

(a) in subsection (1) —

(i) by inserting ", suspension" immediately after "holding" in the third last line;

- (ii) by inserting "by His Majesty the Sultan and Yang Di-Pertuan" immediately after "precedence" in the penultimate line;

- (b) in subsection (2), by deleting ", with the consent of the Legislature," from the fifth line;

- (c) in subsection (4), by inserting "the" immediately before "power" in the second line.

Amendment of section 30A.

29. Section 30A of the Proclamation is amended by deleting "may approve and in any" from the third and fourth lines and by substituting "the Sultan and Yang Di-Pertuan may determine and in" therefor.

Amendment of section 31.

30. The Proclamation is amended by repealing section 31 and by substituting the following new section therefor —

"Amendment.

31. It shall be lawful for His Majesty the Sultan and Yang Di-Pertuan to, by Proclamation published in the *Gazette*, add to, amend or revoke all or any of the provisions of this Proclamation, including this section, and this Proclamation shall not otherwise be added to, amended or revoked."

Amendment of section 32.

31. Section 32 of the Proclamation is amended —

- (a) in the marginal note, by deleting "and prevailing text" and by substituting "Tribunal" therefor;

- (b) by repealing subsection (1) and by substituting the following new subsection therefor —

- "(1) His Majesty the Sultan and Yang Di-Pertuan may refer any question involving, arising from, relating to, or in connection with, the meaning, interpretation, purpose, construction, ambit or effect of any of the provisions of this Proclamation to the Interpretation Tribunal.";

- (c) by repealing subsection (2) and by substituting the following new subsection therefor —

"(2) When any such question arises in any legal proceedings before any court, His Majesty the Sultan and Yang Di-Pertuan may direct that court to refer such question to the Interpretation Tribunal or that court shall refer such question to His Majesty the Sultan and Yang Di-Pertuan, with a submission that His Majesty the Sultan and Yang Di-Pertuan should refer that question to the Interpretation Tribunal, and upon receiving such reference His Majesty the Sultan and Yang Di-Pertuan may refer such question to the Interpretation Tribunal:

Provided that the court shall not refer such question which has already been decided by the Interpretation Tribunal.";

(d) in subsection (3) —

- (i) by deleting "a question reported under subsection (2)" from the first two lines and by substituting "such question to the Interpretation Tribunal" therefor;
- (ii) by deleting "report" from the third line and by substituting "reference" therefor;

(e) in subsection (4) —

- (i) by deleting "Privy Council" from the first line and by substituting "Interpretation Tribunal" therefor;
- (ii) by deleting "Council" from the third line and by substituting "Tribunal" therefor;
- (iii) by deleting "Privy Council" from the third last line and by substituting "Interpretation Tribunal" therefor;

(f) in subsection (5) —

- (i) by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the first line;
- (ii) by deleting "Privy Council" from the second line and by substituting "Interpretation Tribunal" therefor;
- (iii) by deleting "report" from the second line and by substituting "reference" therefor;
- (iv) by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the third line;

- (v) by deleting "Privy Council" from the third and fourth lines and by substituting "Interpretation Tribunal" therefor;
- (vi) by deleting "reported" from the fifth line and by substituting "referred" therefor;
- (g) in subsection (6) —
 - (i) by deleting "Privy Council in any case" from the first two lines and by substituting "Interpretation Tribunal in any question" therefor;
 - (ii) by inserting "or be subject to any review by or appeal to" immediately after "in" in the last line;
- (h) in subsection (7) —
 - (i) by deleting "in Council" from the first line and by substituting "the Sultan and Yang Di-Pertuan" therefor;
 - (ii) by deleting "following" from the penultimate line and by substituting "followed" therefor;
 - (iii) by inserting ", and may make arrangements as to the remuneration to be paid to members of the Interpretation Tribunal, which remuneration shall be charged to the Consolidated Fund" immediately after "section" in the last line;
- (i) by repealing subsection (8) and by substituting the following new subsection therefor —

"(8) The Interpretation Tribunal may depart from any of its previous decisions."

Insertion of new sections 33 and 34.

32. The Proclamation is amended by inserting the following 2 new sections immediately after section 32 —

"Prevailing text.

33. In the case of any doubt, conflict or discrepancy between the Malay and the English texts of this Proclamation, the Malay text shall prevail.

No judicial review.

34. (1) The remedy of judicial review is and shall not be available in Brunei Darussalam.

(2) For the avoidance of doubt, there is and shall be no judicial review in any court of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion by His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, under the provisions of this Proclamation, including any question relating to compliance with any procedural requirement governing such act or decision.

(3) In this section, "judicial review" means proceedings instituted by any manner whatsoever including, but not limited to, proceedings by way of —

(a) an application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;

(b) an application for a declaration or an injunction;

(c) a writ of *habeas corpus*; and

(d) any other suit or action relating to or arising out of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion conferred on His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, under the provisions of this Proclamation."

Amendment of Schedule to Proclamation.

33. The Schedule to the Proclamation is amended —

(a) in paragraph (1) —

(i) by deleting "God" from the first line and by substituting "ALLAH" therefor;

(ii) by deleting "Sultan" from the penultimate line and by substituting "the Sultan and Yang Di-Pertuan" therefor;

- (iii) by deleting "heirs and successors" from the last two lines and by substituting "Heirs and Successors" therefor;
- (b) in paragraph (2) —
 - (i) by deleting "God" from the first line and by substituting "ALLAH" therefor;
 - (ii) by deleting "Sultan" from the penultimate line and by substituting "the Sultan and Yang Di-Pertuan" therefor;
- (c) in paragraph (3) —
 - (i) by deleting "God" from the first line and by substituting "ALLAH" therefor;
 - (ii) by deleting "the Muslim" from the second line and by substituting "Darussalam the Islamic" therefor;
- (d) in the line immediately after paragraph (3), by deleting "19" and by substituting "20" therefor.

Confirmation.

So be it. Such is the Succession and Regency (Amendment) Proclamation, 2004.

Invocation.

May ALLAH, to whom be praise and Whose name be exalted, the King of Kings, vouchsafe His grace and may the Prophet Muhammad (on whom be the benediction and peace of ALLAH) grant His Blessings to this Proclamation, for ever and ever. Amen! O Lord of the Universe!

Done at the Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam this 2nd. day of Rejab, the Hijrah of the Prophet (on Whom be the benediction and peace of ALLAH) 1425 corresponding to the 18th. day of August, 2004 of the Christian era, being the thirty-sixth year of our Reign.

Dicetak oleh AWANG MOHIDIN BIN HAJI DAUD, Pengarah Percetakan,
di Jabatan Percetakan Kerajaan, Bandar Seri Begawan BB3510, Negara Brunei Darussalam.

Harga B\$5.00