

No. S 60

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

UNDESIRABLE PUBLICATIONS ACT (AMENDMENT) ORDER, 2007

ARRANGEMENT OF SECTIONS

Section.

1. Citation.
 2. Amendment of section 2 of Chapter 25.
 3. Insertion of new sections 2A and 2B.
 4. Insertion of new sections 4A to 4C.
 5. Amendment of section 10.
 6. Amendment of section 11.
 7. Amendment of section 12.
 8. Insertion of new section 13A.
 9. Insertion of new section 15A.
-

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

UNDESIRABLE PUBLICATIONS ACT (AMENDMENT) ORDER, 2007

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

Citation.

1. This Order may be cited as the Undesirable Publications Act (Amendment) Order, 2007.

Amendment of section 2 of Chapter 25.

2. Section 2 of the Undesirable Publications Act, in this Order referred to as the Act, is amended —

(a) by inserting the following 2 new definitions immediately before the definition of "periodical publication" —

" "objectionable" has the meaning assigned to it by section 2B;

"obscene" has the meaning assigned to it by section 2A;"

(b) by deleting the definition of "publication" and by substituting the following new definition therefor —

" "publication" means any of the following other than a film —

(a) any book, magazine or periodical, whether in manuscript or final form;

(b) any sound recording;

(c) any picture or drawing, whether made by computer-graphics or otherwise howsoever;

(d) any photograph, photographic negative, photographic plate or photographic slide; or

(e) any paper, model, sculpture, tape, disc, article or thing —

(i) that has printed or impressed upon it any word, statement, sign or representation; or

(ii) on which is recorded or stored for immediate or future retrieval any information that, by the use of any computer or other electronic device, is capable of being reproduced or shown as any picture, photograph, word, statement, sign or representation,

and includes a copy of any publication;"

(c) by inserting the following new definition immediately after the definition of "publication" —

" "sound recording" means any tape, disc or other recording of sounds from which the sounds may be reproduced but does not include any sound-track of a film."

Insertion of new sections 2A and 2B.

3. The Act is amended by inserting the following 2 new sections immediately after section 2 —

"Meaning of obscene.

2A. For the purposes of this Act, a publication is obscene if its effect or where the publication comprises 2 or more distinct parts or items, the effect of any one of its parts or items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it.

Meaning of objectionable.

2B. (1) For the purposes of this Act, a publication is objectionable if, in the opinion of a controller or authorised officer, it, or where the publication comprises 2 or more distinct parts or items, any one of its parts or items describes, depicts, expresses or otherwise deals with —

(a) matters such as sex, horror, crime, cruelty, violence or the consumption of drugs or other intoxicating substances in such a manner that the availability of the publication is likely to be injurious to the public good; or

- (b) matters of race or religion in such a manner that the availability of the publication is likely to cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups.

(2) In determining for the purposes of this Act whether or not any publication is objectionable, the following matters shall be considered —

- (a) the extent and degree to which, and the manner in which, the publication —
 - (i) describes, depicts or otherwise deals with acts of torture, the infliction of serious physical harm, sexual conduct or violence of coercion in association with sexual conduct;
 - (ii) exploits the nudity of any person;
 - (iii) promotes or encourages criminal acts or acts of terrorism;
 - (iv) represents, directly or indirectly, that members of any particular community or group are inherently inferior to other members of the public or of any other community or group;
- (b) the impact of the medium in which the publication is presented;
- (c) the character of the publication, including any merit, value or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific or other matters;
- (d) the standards of morality, decency and propriety that are generally accepted by reasonable members of the community; and
- (e) the persons, classes of person or age groups of the persons to whom the publication is intended or is likely to be made available.

(3) The question whether or not a publication is objectionable is a matter for the expert judgment of any person authorised or required by or pursuant to this Act to determine it, and evidence as to or proof of any of the matters or particulars that he is required to consider in determining the question is not essential to its determination, except that if such evidence or

proof of such matters or particulars is available, he shall take that evidence or proof into consideration.

(4) A controller authorised by the Minister of Home Affairs shall keep and maintain a Register of Objectionable Publications containing all publications which a controller or authorised officer determines to be objectionable."

Insertion of new sections 4A to 4C.

4. The Act is amended by inserting the following 3 new sections immediately after section 4 —

"Offences involving obscene publications.

4A. Any person who —

- (a) makes or reproduces;
- (b) imports or has in his possession for the purposes of sale, supply, exhibition or distribution to any other person; or
- (c) sells, offers for sale, supplies, offers to supply, exhibits or distributes to any other person,

any obscene publication, not being a prohibited publication, knowing or having reasonable cause to believe the publication to be obscene is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Offences involving objectionable publications.

4B. Any person who —

- (a) makes or reproduces;
- (b) imports or has in his possession for the purposes of sale, supply, exhibition or distribution to any other person; or
- (c) sells, offers for sale, supplies, offers to supply, exhibits or distributes to any other person,

any objectionable publication, not being a prohibited publication, knowing or having reasonable cause to believe the publication to be objectionable is

guilty of an offence liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

Search for and seizure of obscene or objectionable publications.

4C. (1) If information is given upon oath to a magistrate that there is reasonable cause to suspect that there are in any premises or place any obscene or objectionable publications (not being prohibited publications) by means of or in relation to which any offence under sections 4A or 4B has been or is about to be committed, or any equipment used or intended to be used for the purpose of exhibiting, making or reproducing those publications, the magistrate may issue a warrant under his hand by virtue of which any police officer, controller or authorised officer named in the warrant may —

- (a) with such assistance and by such force as is necessary, enter and search the premises or place;
- (b) seize the publications and any equipment used in the exhibition, making or reproduction of those publications; and
- (c) take into custody any person reasonably believed to be in possession of those publications or equipment.

(2) The court before which a person is charged with an offence under sections 4A or 4B may, whether he is convicted of the offence or not, order that any publication that appears to the court to be a prohibited publication, an obscene or objectionable publication, and any equipment used or intended to be used for exhibiting, making or reproducing the publications in the possession of the alleged offender or before the court, be destroyed or delivered up to the Minister of Home Affairs for disposal in such manner as the Minister may direct.

(3) Where —

- (a) in proceedings brought under sections 4A or 4B in connection with the offence no order is made under subsection (2) as to the publication or equipment; or
- (b) no such proceedings are instituted within 3 months of the seizure,

the publication or equipment shall be returned to the person from whom they were seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law

regulating the disposal of lost or unclaimed property in the hands of the police.".

Amendment of section 10.

5. Section 10 of the Act is amended —

- (a) in subsection (1), by deleting "sections 11, 12 and 13" from the last line and by substituting "this Act" therefor;
- (b) in subsection (2), by deleting "sections 11 and 12" from the last line and by substituting "this Act" therefor.

Amendment of section 11.

6. Section 11 of the Act is amended —

- (a) in subsection (1), by deleting "publication the importation, sale or circulation of which is prejudicial to public safety or public interest in Brunei" from the last two lines and by substituting "prohibited, obscene or objectionable publication" therefor;
- (b) by repealing subsection (2) and by substituting the following new subsection therefor —

"(2) Where, in the course of opening and examining any article under subsection (1), the controller or authorised officer finds any publication that he believes on reasonable grounds to be prohibited, obscene or objectionable —

- (a) he may detain the article for so long as is necessary to institute proceedings for an offence under this Act; or
- (b) where no such proceedings are instituted within 3 months of the detention, he may return the article to the sender of the article or, if the publication is prohibited, obscene or objectionable or returning the article is not reasonably practicable, he may, subject to section 15, destroy or cause to be destroyed the article or the contents of the article consisting of any such publication."

Amendment of section 12.

7. Section 12 of the Act is amended —

- (a) in subsection (2), by deleting "considers prejudicial to public safety or public interest in Brunei" from the fifth and sixth lines and by substituting "believes on reasonable grounds to be prohibited, obscene or objectionable" therefor;
- (b) by repealing subsection (3) and by substituting the following new subsection therefor —

"(3) Any publication seized under subsection (2) may be detained for so long as it is necessary to institute proceedings for an offence under this Act or, where no such proceedings are instituted within 3 months of the seizure, the controller or authorised officer —

- (a) may return the article or publication to the person from whom it was seized; or
- (b) if the publication is prohibited, obscene or objectionable, or returning the article or publication is not reasonably practicable, may —
 - (i) subject to section 15, destroy or cause to be destroyed the article or publication; or
 - (ii) order the publication to be exported forthwith from Brunei Darussalam."

Insertion of new section 13A.

8. The Act is amended by inserting the following new section immediately after section 13 —

"Corporate offenders and unincorporated associations.

13A. (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, he as well as the body corporate is also guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of that body corporate.

(3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought against the association in its own name, and not in that of any of its members and, for the purposes of any such proceedings, any rules of court relating to service of documents shall have effect as if the association were a body corporate.

(4) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is also guilty of that offence and be liable to be proceeded against and punished accordingly.

(5) Where an offence under this Act committed by an unincorporated association other than a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, that officer or member as well as the association is also guilty of that offence and be liable to be proceeded against and punished accordingly.

(6) The Minister of Home Affairs may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to a body corporate or unincorporated association formed or recognized under the law of any country or territory outside Brunei Darussalam.

(7) In this section —

"officer" —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body or any person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association other than a partnership, means the president, the secretary, a member of the committee of the association, or any

person holding a position analogous to that of the president, secretary or member of the committee;

"partner" includes any person purporting to act as a partner."

Insertion of new section 15A.

9. The Act is amended by inserting the following new section immediately after section 15 —

"Exemptions.

15A. (1) Where any publication is a prohibited publication or an obscene or objectionable publication under this Act, any person may apply to the Minister of Home Affairs for an exemption from any of the provisions of this Act in respect of that publication.

(2) Every application shall be in the form provided for the purpose by a controller authorised by the Minister of Home Affairs and shall be accompanied by such fee as the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, prescribe by regulations.

(3) On receiving an application under this section in relation to a publication, the Minister of Home Affairs, if satisfied that the publication should be made available to a limited class of persons or to a particular person for educational, professional, scientific, artistic or technical reasons, may exempt that class of person or that person from any such provision of this Act as he may specify in respect of that publication for such period as he thinks fit.

(4) An exemption under this section may be granted absolutely or subject to such conditions as may be specified by the Minister of Home Affairs."

Made this 7th. day of Zulhijjah, 1428 Hijriah corresponding to the 17th. day of December, 2007 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM