

No. S 16

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

PREVENTION OF PEOPLE SMUGGLING ORDER, 2019

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

PREVENTION OF PEOPLE SMUGGLING ORDER, 2019

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 —

PART I

PRELIMINARY

Citation and long title

1. (1) This Order may be cited as the Prevention of People Smuggling Order, 2019.

(2) The long title of this order is “An Order to criminalise the smuggling of people and for purposes connected herewith”.

Interpretation

2. In this Order, unless the context otherwise requires —

“child” means a person who is under 18 years of age;

“conveyance” means any vehicle, vessel, ship, aircraft, or any other mode of transport whether by air, sea or land;

“exploitation” includes all forms of sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;

“financial and other benefit” includes any type of financial or non-financial inducement, gratification, payment, bribe, reward, advantage or service;

“forged travel or identity document” means a travel or identity document that —

(a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country or territory;

(b) has been issued or obtained through misrepresentation, corruption or duress in any other unlawful manner; or

(c) is being improperly used by a person other than the rightful holder;

“harbour” includes giving a person shelter, food, drink, money or clothes or means or supplying a conveyance, or the act of assisting a person in any way to evade apprehension;

“master” includes any person in command or having charge of any means of transport;

“Minister” means the Minister of Home Affairs;

“owner” includes any part-owner, charterer or consignee in possession thereof or any duly authorised agent of any such person;

“people smuggling” means arranging or assisting a person’s unlawful entry into any receiving country including Brunei Darussalam, of which the person is not a citizen or permanent resident of the receiving country, knowing or having reason to suspect that the person’s entry is unlawful, in order to obtain a financial or other material benefit;

“premises” includes —

(a) a vehicle, ship, aircraft or hovercraft;

(b) an installation which is maintained, or is intended to be established for underwater exploitation or exploration;

(c) tent or other movable structure;

“public servant” shall have the same meaning as a public servant under the Penal Code (Chapter 22);

“receiving country” means any country into which a smuggled person is brought or is arranged to be brought as part of an act of people smuggling;

“smuggled person” means any person who is a victim or object of an act of people smuggling, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted;

“repealed order” means the Trafficking and Smuggling of Persons Order, 2004 (S 82/2004);

“transit country” means the country from which, or into or through which, a smuggled person, is brought or travels through by air, land or sea or temporarily remains in as part of an act of smuggling of persons;

“transits” means arriving and passing through Brunei Darussalam by any means of transport for the purpose of continuing journey by any means of transport to a place outside of Brunei Darussalam;

“travel document” includes an internationally recognised passport, a certificate of identity and any similar document, issued by an authority recognised by the receiving country;

“unlawful entry” means crossing borders without complying with the necessary requirements for lawful entry into the receiving country.

Application

3. The offences in this Order apply, regardless of whether the conduct constituting the offence whether in whole or in part took place within or outside Brunei Darussalam, in the following circumstances —

(a) if Brunei Darussalam is the receiving country, or the transit country;

(b) if the receiving country is a foreign country but the people smuggling starts or transits in Brunei Darussalam; or

(c) if the person who engages in people smuggling is a citizen of Brunei Darussalam or a permanent resident.

Authorised officers

4. For the purposes of this Order, the following persons are authorised officers —

(a) an officer of the Royal Brunei Police Force;

(b) an Immigration Officer appointed under section 3 of the Immigration Act (Chapter 17);

(c) an officer of customs appointed under section 3(1) of the Customs Order, 2006 (S 39/2006); or

(d) an authorised officer appointed under section 3(1) of the Employment Order, 2009 (S 37/2009); or

(e) such person or class of persons appointed by the Minister and designated by notification published in the *Gazette*.

PART II
OFFENCES

Offence of people smuggling

5. (1) Any person who engages in people smuggling, regardless of whether the smuggled person arrives in the receiving country, is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and not less than \$6,000 in respect of each smuggled person, imprisonment for a term not exceeding 30 years and whipping.

(2) Where in any proceeding for an offence under subsection (1), it is proved that the defendant arranged or assisted the unlawful entry of any person into any receiving country (including Brunei Darussalam) of which that person was not a citizen of Brunei Darussalam or a permanent resident, it shall be presumed, until the contrary is proved, that the defendant did so knowing that such person's entry was unlawful and in order to obtain a financial or other benefit.

(3) Where any of the following aggravated circumstances are present during the commission of an offence under this section —

(a) the smuggled person is, or intended to be, subject to exploitation after entry into the receiving country or transit country whether by the person himself or by another person;

(b) the smuggled person is subjected to torture, or to any other cruel, inhuman or degrading treatment;

(c) the life or safety of the smuggled person is, or is likely to be, endangered regardless of whether the smuggled person arrives in the receiving country;

(d) the offence involved serious injury or death of the smuggled person or another person, including death as a result of suicide;

(e) the offender took advantage of the particular vulnerability or dependency of the smuggled person for financial or other material gain;

(f) the offender had committed the same or similar offences before;

(g) the offence of people smuggling was committed as part of the activity of an organised criminal group;

(h) the offender used drugs, medication or weapons in the commission of the offence;

- (i)* the offence involved 3 or more smuggled persons;
- (j)* the offender abused his position of authority or position as a public servant in the commission of the offence;
- (k)* the smuggled person is a child;
- (l)* the offender used a child as an accomplice or participant in the criminal conduct;
- (m)* the offender used or threatened to use any form of violence against the smuggled person or his family; or
- (n)* the offender confiscated, destroyed or attempted to destroy the travel or identity documents of the smuggled person,

the offender is liable on conviction to a fine not exceeding \$1,000,000 and not less than \$6,000 in respect of each smuggled person, imprisonment for a term of not less than 4 years but not exceeding 30 years and not less than 5 strokes of whipping.

Offence relating to forged travel or identity documents

6. Any person who —

- (a)* makes;
- (b)* obtains;
- (c)* gives;
- (d)* sells; or
- (e)* possesses,

a forged travel or identity document for the purpose of facilitating people smuggling is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

Facilitating stay of smuggled person

7. (1) Any person who facilitates the continued presence of a smuggled person in a receiving country in order to obtain a financial or other material benefit is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 30 years and whipping.

(2) For the purpose of subsection (1), such assistance or facilitation includes producing, providing or procuring forged travel or identity documents in respect of the smuggled person.

(3) Where a smuggled person is found at any premises or place, the occupier of such premises or place shall be presumed, until the contrary is proved, to have facilitated the continued presence of that person at such premises or place in order to obtain a financial or material benefit.

Concealing or harbouring smuggled persons and people smugglers

8. Any person who conceals or harbours, or prevents, hinders or interferes with the arrest of any person knowing or having reason to believe that such person is —

(a) a smuggled person;

(b) a person who has committed or is planning or is likely to commit the offence of people smuggling,

is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

Supporting offence of people smuggling

9. (1) Any person who provides material support or resources to another person and the support and resources aid the receiver or any other person to engage in conduct constituting the offence of people smuggling is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

(2) For the avoidance of doubt, a person commits an offence under subsection (1), even if the offence of people smuggling is not committed.

Offence of conveyance of smuggled persons

10. Any person being the owner, operator or master of any conveyance who engages in the conveyance of smuggled persons is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

Obligation of owner etc. of conveyance

11. (1) Any person being the owner, operator or master of any conveyance that engages in the conveyance of goods or people for commercial gain shall ensure that every person travelling on board is in possession of travel documents for the

lawful entry of that person into the receiving country or transit country, and if not, shall refuse to convey such person.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

(3) In any proceeding for an offence under this section, it shall be a defence for such owner, operator or master to prove that —

(a) he has reasonable grounds to believe that the travel documents of the person referred to in subsection (1) are travel documents required for lawful entry of that person into the receiving country or transit country;

(b) the person referred to in subsection (1) possessed travel documents required for lawful entry to the receiving country or transit country when that person boarded, or last boarded, the conveyance to travel to the receiving country or transit country; or

(c) the entry of the person referred to in subsection (1) into the receiving country or transit country occurred only because of illness or injury to that person, stress of weather or any other circumstances beyond the control of such owner, operator or master.

(4) Any person convicted of an offence under this section is liable to pay the costs of the smuggled person's detention in, and removal from, the receiving country or transit country.

(5) Where there is no prosecution or conviction under this section, the owner, operator or master of the conveyance used shall be jointly and severally liable for all expenses incurred by the Government in respect of the detention and maintenance of the smuggled person and his removal from Brunei Darussalam and such expenses shall be recoverable as a debt due to the Government.

Attempts, abetment and conspiracy

12. (1) Whoever attempts to commit any offence punishable under this Order or any regulations made thereunder, or abets the commission of such offence, shall be punished with the punishment provided for such offence.

(2) A person who conspires with another person to commit an offence under this Order or any regulations made thereunder shall be guilty of the offence of conspiracy to commit that offence and may be punished as if the offence to which the conspiracy relates had been committed.

Offences by bodies corporate

13. Where an offence against this Order or any regulations made thereunder has been committed by a company, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the company, firm, society or other body of persons or has purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Facilitating the commission of people smuggling

14. Any person, being the owner, occupier, lessee or person in charge of —

(a) any premises, room or place, knowingly permits a meeting of persons to be held in that premises, room or place; or

(b) any equipment or facility that allows for recording, conferences or meetings of technology, knowingly permits that equipment or facility to be used,

for the purpose of committing an offence against this Order, is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

Providing financial services for purposes of people smuggling

15. (1) Any person who, directly or indirectly, provides or makes available financial services or facilities —

(a) intending that the services or facilities be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or part, for the purpose of committing or facilitating the commission of an offence of people smuggling or for the purpose of benefiting any person who is committing or facilitating the commission of an offence of people smuggling; or

(b) knowingly or having reasonable grounds to believe that, in whole or in part, the services or facilities will be used by or will benefit any person involved in an offence of people smuggling,

is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

(2) For the purpose of subsection (1), “financial services or facilities” includes the services and facilities offered by advocates or accountants acting as nominees or agents for their clients.

PART III

ENFORCEMENT

Powers of arrest and investigation

16. (1) An authorised officer may arrest without warrant any person who he reasonably believes has committed an offence under this Order or any regulations made thereunder.

(2) When any person is arrested by an authorised officer, such officer shall comply with the provisions of section 33 of the Criminal Procedure Code (Chapter 7).

(3) In any case relating to the commission of any offence against this Order or any regulations made thereunder, an authorised officer shall have the same powers of investigation of a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).

Powers of search

17. (1) An authorised officer may without a warrant —

(a) enter and search any premises; and

(b) stop and search any conveyance or person, whether in a public place or not,

if he has reason to believe that any evidence of the commission of an offence against this Order or any regulations made hereunder is likely to be found on such premises or person or in such conveyance and may seize any evidence so found.

(2) No woman shall be searched under this section except by a woman.

Access to computerised data

18. (1) Any authorised officer conducting a search under this Order shall be given access to computerised data whether stored in a computer or otherwise.

(2) For the purpose of subsection (1), the authorised officer shall be provided with the necessary password, encryption code, decryption code,

software or hardware or any other means required for his access to enable comprehension of the computerised data.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence, to a further fine not exceeding \$2,000 for each day during which the offence continues after conviction.

(4) In this section, "computer" means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Power to examine persons

19. (1) An authorised officer may, by notice in writing, require any person whom he believes to be acquainted with the facts and circumstances of the case to —

(a) attend before him for examination;

(b) produce before him any movable property, record, report or document; or

(c) furnish him a statement in writing setting out such information as he may require.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence, to a further fine not exceeding \$2,000 for each day during which the offence continues after conviction.

Power to intercept telecommunications

20. (1) Notwithstanding the provisions of any other written law, the Public Prosecutor, if he considers that it is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Order, may, on the application of an authorised officer, authorise the said officer —

(a) to intercept, detain and open any postal article in the course of transmission by post;

(b) to intercept any message transmitted or received by any telecommunication; or

(c) to intercept, listen to and record any conversation by any telecommunication, and listen to the recording of the intercepted conversation.

(2) When any person is charged with an offence against this Order, any information obtained by an authorised officer under subsection (1), whether before or after such person is charged, shall be admissible at his trial in evidence.

(3) An authorisation by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorisation is given, the Public Prosecutor shall, as soon as practicable, reduce the authorisation into writing.

(4) A certificate by the Public Prosecutor stating that the action taken by the authorised officer under subsection (1) had been authorised by him under that subsection shall be conclusive evidence that it had been so authorised, and such certificate shall be admissible in evidence without proof of signature thereof.

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related thereto, of any thing done under subsection (1)(a), (b) or (c).

(6) In this section —

“postal article” has the same meaning as in section 2 of the Post Office Act (Chapter 52);

“Public Prosecutor” means the Public Prosecutor personally;

“telecommunication” has the same meaning as in section 2 of the Telecommunications Order, 2001 (S 38/2001).

Provision of telecommunication records

21. Any telecommunications authority established in Brunei Darussalam shall provide telecommunication records of a person under investigation for committing or attempting to commit an offence against this Order if required to do so by any authorised officer.

False statements, information etc.

22. Any person who, being required to make any statement or furnish any information or document under this Order —

(a) makes any statement or furnishes any information or document which is false or misleading in a material particular; or

(b) knows or ought reasonably to know that, or is reckless as to whether, it is false or misleading in a material particular,

is guilty of an offence and is liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Obstruction

23. Any person who assaults, obstructs, impedes, hinders, interferes or fails to comply with any lawful demand of an authorised officer in the performance of his functions under this Order is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 2 years or both.

Cost of holding conveyance, movable property etc. seized

24. Where any conveyance, movable property, record, report or document seized under this Order is held in the custody of the authorised officer pending completion of any proceedings in respect of an offence under this Order, the cost of holding such conveyance, movable property, record, report or document in custody shall, in the event of any person being found guilty of an offence, be a civil debt due to the Government by such person and shall be recoverable accordingly.

Release of conveyance, movable property etc. under bond

25. (1) Where any conveyance, movable property, record, report or document has been seized under this Order, an authorised officer may temporarily return such conveyance, movable property, record, report or document to the owner of the same on security or bond being furnished to the satisfaction of such officer and subject to such conditions as such officer may impose, that the conveyance, movable property, record, report or document shall be surrendered to him on demand.

(2) Any person who —

(a) fails to surrender on demand to an authorised officer the conveyance, movable property, record, report or document, temporarily returned to him under subsection (1); or

(b) fails to comply with or contravenes any of the conditions imposed under subsection (1),

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both, and any security or bond being furnished shall be forfeited.

PART IV

GENARAL

Offences to be non-bailable and seizable

26. Every offence against this Order or any regulation made hereunder shall be non-bailable and seizable for the purposes of the Criminal Procedure Code (Chapter 7).

Consent of Public Prosecutor

27. No prosecution for any offence against this Order shall be instituted except with the consent in writing of the Public Prosecutor.

Taking of evidence before trial

28. (1) Subject to subsection (2), where an application is made by the Public Prosecutor or the accused to a court for the evidence of a witness to be taken at any time before the date on which a criminal matter is fixed for trial, the court shall take the evidence of the witness appearing before it.

(2) An application under subsection (1) can only be made if it is shown with respect to the witness that it is not reasonably practicable to secure his attendance at the time fixed for the trial.

(3) The proceedings under this section must be conducted in the presence of the accused and co-accused, if any.

(4) The witness called by a party to give evidence in the proceedings under this section may be cross-examined by any other party to the proceedings, after which the witness may be re-examined by the party calling him to give evidence.

(5) Any statement of a witness taken in proceedings under this section may be given in evidence in any trial under this Order (whether or not by the same judge hearing the proceedings) although the person is not called as a witness.

Admissibility of statements

29. Notwithstanding any written law to the contrary, for the purposes of any proceedings under this Order —

(a) any statement made by any person to an authorised officer in the course of an investigation under this Order; and

(b) any document, or copy of any document, seized from any person by an authorised officer in exercise of his powers under this Order, shall be admissible in evidence in any proceedings under this Order before any court, where the person who made the statement or the document or the copy of the document —

- (i) is dead;
- (ii) or cannot be traced or found;
- (iii) has become incapable of giving evidence; or
- (iv) whose attendance cannot be procured without an amount of delay or expense which appears to the court unreasonable.

Penalties to be cumulative

30. For the avoidance of any doubt, where more than one penalty is prescribed for an offence against this Order, the use of the word “and” shall signify that the penalties shall be inflicted cumulatively.

Forfeiture of conveyance, movable property etc.

31. (1) All conveyance, movable property, record, report or document, or any human organ seized in the exercise of any power conferred under this Order are liable to forfeiture.

(2) The court trying any person accused of an offence under this Order may at the conclusion of the trial, whether he is convicted or not, order that the conveyance, movable property, record, report or document of any human organ seized from that person be forfeited.

(3) Where there is no prosecution with regard to any offence under this Order —

(a) in the case of human organ seized, it shall be deemed to be forfeited; and

(b) in the case of the conveyance, movable property, record, report or document seized, the authorised officer shall serve a notice in writing to the last known address of the person from whom the conveyance, movable property, record, report or document was seized.

(4) The notice in paragraph (3)(b) shall specify that if there is no prosecution in respect of such conveyance, movable property, record, report or document and that such conveyance, movable property, record, report or document will be forfeited at the expiration of one calendar month from the date

of service of the notice unless a claim is made by the person from whom the conveyance, movable property, record, report or document was seized.

(5) Upon receipt of the notice issued under paragraph (3)/b), any person asserting that he is the owner of any conveyance, movable property, record, report or document seized under this Order which is not liable to forfeiture may, personally or by his agent authorised in writing by him, give written notice to the authorised officer in whose possession the conveyance, movable property, record, report or document is held.

(6) Upon receipt of a notice under subsection (5), the authorised officer who made the seizure shall refer the matter to the Court for its determination.

(7) The Court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the conveyance, movable property, record, report or document and the person from whom it was seized to appear before the Court, and upon their appearance or default to appear, due service of the summons being proved, the Court shall proceed to the examination of the matter, and on proof that such conveyance, movable property, record, report or document was the subject matter of or was used in the commission of an offence under this Act, shall order the conveyance, movable property, record, report or document to be forfeited or may, in the absence of such proof, order the release of such conveyance, movable property, record, report or document to the person entitled to it.

(8) Any conveyance, movable property, record, report or document or any human organ forfeited or deemed to be forfeited shall be disposed of in any manner as the authorised officer deems it.

Agent provocateur

32. (1) Notwithstanding any written law to the contrary, in any proceedings against any person for an offence under this Order, no *agent provocateur*, whether he is an authorised officer or not, shall be presumed to be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person.

(2) Notwithstanding any written law to the contrary, a conviction for any offence under this Order solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the Court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

Protection of informants

33. (1) Except as hereinafter provided, no complaint as to an offence or any proceedings under this Order shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceedings whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passage to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

Offender deemed to be prohibited immigrant

34. A person, not being a citizen of Brunei Darussalam, convicted for any offence under this Order or any regulations made thereunder shall be deemed to be a prohibited immigrant under section 8 of the Immigration Act (Chapter 17).

Regulations

35. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Repeal of S 82/2004 and savings

36. (1) Subject to subsection (2), the Trafficking and Smuggling of Persons Order, 2004 is repealed.

(2) Anything done or made under the repealed law and in force immediately before the date of commencement of this Order and so far as it is not inconsistent with this Order shall continue to be in force as if done under this Order, until it is amended, repealed or revoked under this Order.

Made this 3rd. day of Zulkaedah, 1440 Hijriah corresponding to the 6th. day of July, 2019 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

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