

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

EMERGENCY (ISLAMIC FAMILY LAW) ORDER, 1999

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No. S 12

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

EMERGENCY (ISLAMIC FAMILY LAW) ORDER, 1999

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

PART I

PRELIMINARY

1. (1) This Order may be cited as the Emergency (Islamic Family Law) Order, 1999 and shall commence on such date or dates to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*. [*Muharram 1422 = 26-3-2001*] S 25/01

(2) Different dates may be appointed under subsection (1) for different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is "An Order to make certain provisions relating to Islamic family law in respect of marriage, divorce, maintenance, guardianship and other matters connected with family life".

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

Interpretation.

"bermastaunin" means permanently or ordinarily residing in a certain area;

"bermukim" means residing without the intention to bermastaunin in a certain area whilst not being a traveller;

"Chief Syar'ie Judge" means the Chief Syar'ie Judge appointed under section 8(1) of the Emergency (Syariah Courts) Order, 1998; S 37/98.

"Chief Syar'ie Prosecutor" means any officer who has been appointed and empowered to conduct all prosecutions in any Court under the provisions of this Order;

"Court" means the Syariah Subordinate Court, the Syariah High Court or the Syariah Court of Appeal, as the case may be, as established under section 6(1) of the Emergency (Syariah Court) Order 1998; S 37/98.

"*dharar Syarie*" means harm affecting a person in respect of religion, life, body, morals, mind or property, according to what is normally recognised by *Hukum Syara'*;

"*earnings*" in relation to a defendant, means any sums payable to him —

(a) by way of wages or salary , including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service;

(b) by way of pension, including an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments of any office or employment;

"*faraq*" means a separation between husband and his wife either temporarily or permanently;

"*fasakh*" means the annulment of a marriage by reason of any circumstances permitted by *Hukum Syara'* in accordance with section 46;

"*Hadd*" means any criminal punishment or penalty as ordained by Al-Quran or Sunnah Rasullullah S.A.W.;

"*harta sepencarian*" means property jointly acquired by husband and wife during the subsistence of marriage in accordance with the conditions specified by *Hukum Syara'*;

"*Hukum Syara'*" means the laws of any sects which the Court considers valid;

"*iddah*" means the duration or period under which a woman is forbidden by *Hukum Syara'* to remarry;

"*ila*" means an oath in the name of Allah or one of His attributes pronounced by a husband that he will not have sexual intercourse with his wife without mentioning a period or for the period of four months or more;

"*illegitimate*" means a child born out of wedlock and not a child conceived from *syubhah* intercourse;

"*iwad*" means a substitute;

"*janda*" means a woman who has been divorced with or without consummating her marriage;

"*jurunikah*" means a person appointed under section 26 to conduct the solemnisation of a marriage under this Order;

"*kaffarah*" means a punishment imposed on a husband who commits *zihar* to his wife;

"*khulu*" means the dissolution of marriage where the wife has made payment to the husband by mutual consent or by an order of the Court;

"*kinayah*" means a pronouncement which is not clear and ambiguous except with *qarinah* or intention;

"*li'an*" means an allegation of adultery by way of an oath in accordance with *Hukum Syara'* made by a husband to his wife whereas his wife by way of an oath in accordance with *Hukum Syara'* rejected the allegation, such allegation and rejection were made before the Syar'ie Judge by saying the words which in accordance with *Hukum Syara'* is sufficient to prove *li'an*;

"*Majlis*" means the Majlis Ugama Islam constituted under section 5 of the Religious Council and Kadis Court Act;

Cap. 77.

"*mas kahwin*" means the obligatory marriage gift from the husband to his wife in accordance with *Hukum Syara'*;

"*Minister*" means the Minister of Religious Affairs;

"*minor*" means a person who has not attained the age of eighteen years according to the Islamic calendar (*qamariah*) for the purpose of guardianship of person and property;

"*mumaiyiz*" means a child who is capable to differentiate a matter;

"*mut'ah*" means the obligatory gift from the husband to his divorced wife in accordance with *Hukum Syara'*;

"*nafkah*" means the obligatory provision of expenses for food, clothing and accommodation for the wife, children, divorcee and any other persons dependent upon a husband or former husband, including parents and step fathers in accordance with to *Hukum Syara'*;

"*nasab*" means descent based on lawful blood relationship;

"*nusyuz*" means an act by a wife against her husband which is considered as unfaithful in accordance with *Hukum Syara'*;

"*pemberian*" means gifts whether of cash or property that have been given by a husband to a wife during their marriage;

"*qarabah qarib*" means a family relationship of immediate *nasab*;

"Registrar" means a Registrar of Muslim Marriages, Divorces, Annulment and *Ruju'* appointed under section 26 and includes the Chief Registrar and the Assistant Registrar;

"*ruju'*" means the return to the original state of marriage without the requirement of a new solemnisation of marriage, for a woman who has been subjected to *talaq* by her husband, except in cases of *talaq baain*;

"*sarih*" means a pronoucement which is clear or certain, not ambiguous;

"*sesusuan*" means where a child below the age of two years according to the Islamic calendar (*qamariah*), is satisfied by breast feeding on at least five occasions, by a woman that is not his natural mother;

"*Syar'ie Judge*" means a *Syar'ie Judge* who has been appointed under sections 9(1), 10(1) and 11 of the Emergency (Syariah Courts) Order, 1998 and includes the Chief *Syar'ie Judge*;

"*syubhah intercourse*" means sexual intercourse performed under the erroneous impression that the marriage was valid when in fact it was invalid (*fasid*) or intercourse by mistake and includes any intercourse not punishable by *Hadd in Islam*;

"*talaq baain*" means a *talaq* that cannot be *ruju'* unless with a new solemnisation;

"*talaq raj'ie*" means a divorce by one or two *talaq* followed by completion of '*iddah*';

"*ta'liq*" means the vow expressed by the husband after solemnisation of marriage in accordance with *Hukum Syara'*;

"*wali Hakim*" means a *jurunikah* who has been authorised by general appointment by His Majesty the Sultan and Yang Di-Pertuan, to give away a woman in marriage in accordance with *Hukum Syara'*;

"*wali nasab*" means a lawful person in accordance with *Hukum Syara'* to become *wali* to give away in marriage a woman by descent based on blood relationship in accordance with *Hukum Syara'*;

"*zihar*" means an act by a husband making the back or any parts of the body of his mother or *muhrim* the same as his wife's.

(2) All words and expressions used in this Order and not defined therein but defined in the Interpretation and General Clauses Act, shall have the same meanings assigned thereto respectively to the extent that they do not conflict with *Hukum Syara'*.

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(3) To avoid any doubts as to the identity or definition of any of the words and expressions used in this Order and listed in the Schedule, reference can be made to the original form in Arabic script with respect to words and expressions that have been shown to be inconsistent with the Schedule.

Schedule.

(4) The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend, delete or add to the Schedule.

Schedule.

(5) References in this Order to the date of commencement of this Order are to the date of commencement of the main substantive provisions of this Order.

3. If any conflict or doubt arises as to the meaning or requirement of a provision under this Order, the text in the Malay language shall prevail.

Text in Malay language shall prevail.

Saving of
prerogative.

4. Nothing contained herein shall derogate from or effect the prerogative rights and powers of His Majesty the Sultan and Yang Di-Pertuan as the Head of the Religion of Brunei Darussalam.

Application.

S 37/98.

5. (1) Notwithstanding any contrary provisions in any written law, this Order shall apply in any matter in which at least one of the parties professes the Islamic religion and at least one of the parties, whether or not he professes the Islamic religion, in a *bermukim* manner in Brunei Darussalam or is *bermastautin* in Brunei Darussalam but in a *bermukim* manner outside Brunei Darussalam.

(2) For the avoidance of doubt, it is hereby declared that no Court other than a Court established under Part II of the Emergency (Syariah Courts) Order, 1998 shall hear or determine any claims or proceedings where at least one of the parties is a Muslim and related with any matters arising in this Order.

Criterion for
deciding
whether a
person is a
Muslim.

6. If for the purposes of this Order, any question arises as to whether a person is a Muslim, that question shall be decided according to the criterion of general reputation, without making any attempt to question the faith, belief, conduct, behaviour, character, acts or omissions of disobedience of that person.

Subsisting
valid
marriages
deemed to be
registered
under this
Order and
dissolvable
only under this
Order.

7. (1) Nothing in this Order shall affect the validity of any Muslim marriage solemnised under any law wheresoever prior to the date of commencement of this Order.

(2) Such marriage, if valid by the law under which it was solemnised, shall be deemed to be registered under this Order.

(3) Every such marriage, unless void by the law under which it was solemnised, shall continued until dissolved —

(a) by the death of one of the parties to the marriage;

(b) by such *talaq* as may be pronounced under this Order;

(c) by order of a Court of competent jurisdiction;

(d) by a temporary *faraq* order made by a Court; or

(e) by a declaration of nullity made by a Court of competent jurisdiction.

(4) Marriages between non-Muslims who have embraced Islam according to *Hukum Syara'* shall be regarded as marriages

which have been registered according to this Order if they are valid accordance to *Hukum Syara'*.

PART II

MARRIAGE

8. (1) A marriage may only be solemnised by any person holding an appointment from His Majesty the Sultan and Yang Di-Pertuan which empowers him to conduct a solemnisation of marriage.

Persons by whom marriages may be solemnised.

(2) No marriage shall be solemnised without the permission of the Registrar of the district where each person who intends to marry is *bermastaunin*.

(3) A *wali* or his representative may solemnise his *mauliah* in the presence of a *jurunikah* after the *mauliah* has given her consent in the prescribed form.

(4) A *jurunikah* may solemnise the marriage of a woman in accordance with the rules of Muslim marriage, divorce and *ruju'* after the *wali* of the woman has given his consent in the prescribed form.

(5) All *jurunikah* may solemnise the marriage of a woman who does not have a *wali* in accordance with the rules of Muslim marriage, divorce and *ruju'*.

(6) If a *wali* of a woman who is to be married refuses to be *wali* or refuses to give his permission without reasons in accordance with *Hukum Syara'*, the relevant *jurunikah* shall refer the matter to the Registrar of the district in which the woman who intends to marry is *bermastaunin* for a decision.

(7) If any marriage involves a woman who does not have a *wali* from a *nasab* in accordance with *Hukum Syara'* the marriage shall be solemnised by a *wali Hakim*.

9. (1) No man or woman, as the case may be, shall, on the grounds of *nasab*, marry —

Relationships prohibiting marriage.

(a) his mother or her father;

(b) his grandmother or any of her ascendants whether on the side of his father or mother;

(c) his daughter or her son and his granddaughter or her grandson and their descendants;

(d) his sister or her brother of the same parents, his sister or her brother of the same father, and his sister or her brother of the same mother;

(e) the daughter of his brother or sister, or the son of her brother or sister and the descendants of the brother or sister;

(f) his aunt or her uncle on the father's side and their descendants;

(g) his aunt or her uncle on the mother's side and their descendants;

(2) No man or woman, as the case may be, shall, on the grounds of affinity, marry —

(a) his mother-in-law or her father-in-law and their descendants;

(b) his stepmother or her stepfather, being his father's wife or her mother's husband;

(c) his stepgrandmother being the wife of his grandfather or her stepgrandfather being the husband of her grandmother, whether on the side of the father or the mother;

(d) his daughter-in-law or her son-in-law;

(e) his stepdaughter or her stepson and their descendants from the wives he has consummated.

(3) No man or woman, as the case may be, shall marry any woman or any man connected with him or her through *sesusuan* where, if the relationship is through birth and not through *sesusuan*, the woman or man would still have been prohibited from marrying on the grounds of *nasab* or affinity.

(4) No man shall have two wives at any one time if the wives are related to each other by *nasab*, affinity or *sesusuan* and where the relationship is of a type that if either of them had been a man rendering the marriage between them still void in accordance with *Hukum Syara'*.

Void
marriages.

10. A marriage shall be void unless all the necessary conditions, in accordance with *Hukum Syara'* have been satisfied.

11. (1) A marriage in contravention of this Order shall not be registered under this Order. Non-registrable marriages.

(2) Notwithstanding subsection (1), a marriage solemnised in contravention of this Part but valid in accordance with the rules of *Hukum Syara'* may, subject to section 38(2), be registered under this Order by an order of the Court.

12. A marriage shall be void and shall not be registered under this Order unless both parties to the marriage have consented thereto, and either — Consent required.

(a) the *wali* of the woman has consented thereto in accordance with *Hukum Syara'*; or

(b) a Syar'ie Judge having jurisdiction in the place where the woman is *bermastautin* or any person generally or specially authorised in that behalf by the Syar'ie Judge has, after due inquiry in the presence of all parties concerned, granted his consent thereto as *wali Hakim* in accordance with *Hukum Syara'*. Such consent may be given if the *wali* cannot be found or if the *wali* refuses to give his consent without reasonable grounds.

13. (1) No woman shall, during the subsistence of her marriage to a man, be married to another man. Marriage of a woman.

(2) Where the woman is a *janda* —

(a) subject to paragraph (c), she shall not, at any time prior to the expiry of the 'iddah period, be married to any man other than to the man from whom she was last divorced;

(b) she shall not be married unless she has given her clear consent and after she has produced —

- (i) copy of a valid certificate of divorce issued under any law then in force; or
- (ii) a certified copy of the entry relating to her divorce in the relevant register of divorce; or
- (iii) a certificate which may upon her application, be granted after due inquiry by a Syar'ie Judge having jurisdiction in the place where the application is made, to the effect that she is a *janda*;

(c) if the divorce was by *baain kubra*, that is, three *talaq*, she shall not remarry her previous husband, unless she has been lawfully married to some other person and that marriage has been consummated and later lawfully dissolved and the '*iddah* period has expired.

(3) Where the woman alleges that she was divorced before the marriage has been consummated, she shall not, during the '*iddah* period for an ordinary divorce, marry any person other than her previous husband, except with the permission of a Syar'ie Judge jurisdiction in the place where she is *bermastautin*.

(4) Where the woman is a widow —

(a) she shall not marry any man at any time prior to the expiration of the '*iddah* period; and

(b) she shall not marry unless she has produced a certificate of the death of her late husband or has otherwise proved his death.

(5) Where a woman has been pronounced divorced or *fasakh* by the Court and the matter has been referred to the Court of Appeal, she shall not marry any other man while waiting for the decision of the Court of Appeal.

Betrothal.

14. (1) Where any person has, either orally or in writing, and either personally or through an intermediary, entered into a contract of betrothal in accordance with *Hukum Syara'* and subsequently refuses without valid reason to marry the other party to the contract, the other party being willing to marry, the party in default shall be liable to return the betrothal gifts, if any, or the value thereof and to pay whatever money has been expended in good faith by or for the other party in preparation for the marriage, and the same may be recovered by action in the Court.

(2) Where the betrothal is followed by a valid marriage and one of the parties refuses to perform the terms made at the time they entered into in the contract of betrothal, then all losses may be claimed according to the manner as specified in subsection (1).

Application for
permission to
marry.

15. (1) A *jurunikah* shall not solemnise any marriage except after having received an application from both parties to the marriage in the prescribed form and the form shall be submitted to the Registrar within fourteen days before the marriage is to be solemnised, except when it is necessary for the marriage to be solemnised urgently due to reasons that are unavoidable and reasonable according to the opinion of the Registrar.

(2) The *jurunikah* shall not solemnise a marriage of any person coming from outside his area or district, except with the written permission of the Registrar of the district in which each party to be married is *bermastaatin*.

(3) A *jurunikah* shall not solemnise a marriage of any person who is not a citizen or permanent resident of Brunei Darussalam except when that person can produce to the Registrar permission or authorisation permitting the solemnisation of marriage in Brunei Darussalam with the party stated in that authorisation issued by the authority responsible for Muslim marriages and divorces or other relevant authority in his country, which has been certified by the Registrar to enable that person to get married in Brunei Darussalam.

(4) Notwithstanding subsection (1), (2) and (3), the Court may in any particular case permit the marriage to proceed.

16. Subject to section 17, the Registrar, on being satisfied of the truth of the matters stated in the application, of the validity of the intended marriage, and where the man is already married, that the permission required under section 23(3) has been granted, shall, on payment of the prescribed fee, issue to the applicant his permission in the prescribed form to marry.

Issue of
permission to
marry.

17. (1) In any of the following cases —

Reference to
an action by a
Syar'ie Judge.

(a) where the woman is a *janda* to whom section 13(3) applies; or

(b) where the woman has no *wali nasab* in accordance with to *Hukum Syara'*,

the Registrar shall, instead of acting under section 16, refer the application to a Syar'ie Judge having jurisdiction in the place where the woman is *bermastaatin*.

(2) The Syar'ie Judge on being satisfied of the truth of the matters stated in the application and the validity of the intended marriage and that the case is one that merits the giving of permission for the purpose of section 13(3) or his consent to the marriage being solemnised by *wali Hakim* for the purposes of section 12(b), as the case may be, shall, at any time after reference of the application to him and on payment of the prescribed fee, issue to the applicants in the prescribed form his permission to marry.

18. (1) A citizen or permanent resident of Brunei Darussalam who intends to marry outside the country are required to obtain permission from the Registrar.

Authorisation
solemnise
marriages
abroad.

(2) For the purpose of subsection (1), an application shall be made to the Registrar in the prescribed form at least fourteen days before the date of the intended marriage.

(3) The Registrar shall, upon receiving an application under subsection (2), conduct an investigation and if he is satisfied that all the requirements of *Hukum Syara'* and this Order have been complied with, he shall issue his permission in the prescribed form.

(4) Notwithstanding subsections (1), (2) and (3), a citizen or permanent resident of Brunei Darussalam who is in a country outside Brunei Darussalam and intending to marry inside in that country, shall inform the representative, if any, of Brunei Darussalam in that country, or in the absence of a representative, shall inform the Registrar in advance of the intended marriage.

Place of
marriage.

19. (1) No marriage shall be solemnised except in the area in which either the woman or man who intends to marry is *bermastaunin*.

(2) Notwithstanding subsection (1), a marriage may be solemnised in an area other than where either the woman or man is *bermastaunin* if —

(a) in a case where the woman or man is *bermastaunin* in Brunei Darussalam, the Registrar or Syar'ie Judge giving permission to marry under sections 16 or 17 gives permission for the marriage to be solemnised in an area agreed by both parties;

(b) in a case where the woman or man is *bermastaunin* in a country outside Brunei Darussalam, a permission to marry and a permission for the marriage to be solemnised elsewhere have been given by the proper authority of that country.

(3) A permission under subsection (2) may be included in the permission to marry given under sections 16 or 17.

Mas Kah-
win, belanja
and
pemberian.

20. The *mas kahwin*, *belanja* or *pemberian*, or all or any two of them at the same time, may be paid by the man or his representative to the woman or her representative by way of cash or loan whether with or without security and shall be made in a way agreed upon by the parties.

Entry in the
Marriage
Register.

21. (1) Immediately after the solemnisation of a marriage, the Registrar shall enter the prescribed particulars and the prescribed

ta'liq or other *ta'liq* of the in the Marriage Register as appearing in the prescribed Marriage Entry form.

(2) The entry shall be attested by the parties to the marriage, by the *wali* and by two witnesses as well as the *jurunikhah* who were present at the time the marriage was solemnised.

(3) For every marriage to be registered by him, the *jurunikhah* shall ascertain and record —

(a) the value and particulars of the *mas kahwin*;

(b) the value and particulars of the *belanja*;

(c) the value and particulars of the *pemberian*;

(d) the value and particulars or any other *mas kahwin*, *belanja* or *pemberian* which have been promised but not paid at the time the marriage was solemnised;

(e) particulars of any security given towards payment of any *mas kahwin*, *belanja* or *pemberian*.

(4) The entry shall then be signed by the *jurunikhah*.

22. (1) After the registration of a marriage and upon payment of the prescribed fees, the Registrar shall issue a Marriage Certificate and a Marriage Card in the prescribed form to both parties to the marriage.

Marriage
Certificate,
Marriage Card
and Ta'liq
Certificate.

(2) The Registrar shall also, on payment of the prescribed fee, issue a Ta'liq Certificate in the prescribed form to both parties to the marriage.

(3) The original Certificate of Marriage, Marriage Card and Ta'liq Certificate shall be kept by the Registrar of a district.

23. (1) No man shall marry another woman at any place during the subsistence of his marriage except with the written permission of a Syar'ie Judge in the prescribed form should he do so, such marriage can only be registered under this Order subject to section 123 and the completion of the prescribed form.

Polygamy.

(2) An application for permission under subsection (1) shall be submitted to the Syar'ie Judge in the prescribed manner and shall be accompanied by a written declaration stating the grounds on which the proposed marriage is claimed to be just and necessary, the present income of the applicant, particulars of his commitments and

ascertainable financial obligations and liabilities, the number of his dependants including persons who would be his dependants as a result of the proposed marriage and whether the consent or views of the existing wife have been obtained or not regarding the proposed marriage.

(3) On receipt of the application, the Syar'ie Judge shall hear the application and on payment of the prescribed fee, may grant permission if he is satisfied that the application should be approved in accordance with to *Hukum Syara'*.

(4) The procedure for solemnisation and registration of a marriage under this section shall be similar in all respects to that applicable to other marriages solemnised and registered in Brunei Darussalam under this Order.

PART III

REGISTRATION OF MARRIAGES

Registration.

24. (1) The marriage of every person *bermastautin* in Brunei Darussalam and of every person *bermukim* outside Brunei Darussalam but *bermastautin* in Brunei Darussalam shall be registered in accordance with this Order.

(2) Subsection (1) shall not apply to marriages solemnised before the date of commencement of this Order.

(3) The Registrar of a district shall, if practicable, register all marriages conducted by any *jurunikah* in his district and after the payment of the prescribed registration fee within the period of fourteen days from the date of a marriage.

(4) It shall be the duty of the Registrar of a district before registering any marriage to conduct an investigation until he is satisfied that all the requirements of *Hukum Syara'* and this Order relating to marriage have been complied with and also that the marriage is valid and registrable.

**Reporting of
marriages
contravening
this Order.**

25. It shall be the duty of every person to report to the registrar the circumstances of any case in which it appears to him that any registrable marriage was solemnised in contravention of this Order.

26. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint any qualified Muslim of the *Syafi'ie* sect to be the Chief Registrar of Muslim Marriages, Divorces, Annulments and *Ruju'* for the purposes of this Order, who shall have supervision and control over Registrars, Deputy Registrars and the registration of marriages, divorces, annulments and *ruju'* under this Order.

Appointment
of Chief
Registrar,
Registrar,
Deputy
Registrar and
Jurunikah.

(2) His Majesty the Sultan and Yang Di-Pertuan may appoint such number of qualified Muslims of the *Syafi'ie* sect as may be required to be Registrars and Deputy Registrars of Muslim Marriages, Divorces, Annulments and *Ruju'* for the purposes of this Order.

(3) The Chief Syar'ie Judge and the Syar'ie Judges shall be the *jurunikah ex-officio*.

(4) His Majesty the Sultan and Yang Di-Pertuan may appoint any person qualified to be *jurunikah*, other than those stated in subsection (3), and determine the area in Brunei Darussalam in which he will have jurisdiction to solemnise marriages.

(5) The Chief Registrar, Registrars and Deputy Registrars shall have the powers and rights vested in them and shall discharge their duties in accordance to the provisions of this Order or under any rules made under this Order.

(6) Every persons appointed under subsections (1) and (2) who is not a public officer shall be deemed to be a public officer for the purposes of the Penal Code.

Cap. 22.

27. Every Registrar shall keep a Marriage Register in the prescribed form and such books as are prescribed by this Order or rules made under this Order, and every marriage solemnised in Brunei Darussalam shall be registered by the Registrar in the Marriage Register.

Books and
Registers to be
kept of all
marriages.

28. (1) Every Registrar shall, as soon as practicable after the end of each month, deliver to the Chief Registrar a true copy certified under his hand of every entry made in the Marriage Register.

Copies of
entries to be
delivered to
Chief
Registrar.

(2) All such copies shall be kept by the Chief Registrar in such manner as may be prescribed and shall constitute the Marriage Register of the Chief Registrar.

Registration
of foreign
marriages of
citizens or
permanent
residents
of Brunei
Darussalam.

29. (1) Every person who is a citizen or permanent resident of Brunei Darussalam and who has contracted a valid marriage in accordance with *Hukum Syara'* outside Brunei Darussalam, shall register the marriage within six months of the first arrival of one or both parties in Brunei Darussalam by appearing before any Registrar and —

(a) producing to the Registrar the certificate of marriage or such evidence, either oral or documentary, that the marriage did take place;

(b) furnishing such particulars as may be required by the Registrar for the registration of the marriage; and

(c) applying in the prescribed form for the registration of the marriage and subscribing the declaration therein.

(2) The Registrar may dispense with the appearance of one of the parties if he is satisfied that there are sufficient reasonable grounds for the absence of the party and in that event the entry in the Marriage Register shall include a statement of the grounds for the absence.

(3) After the registration of a marriage under this section, certified copies of the entry in the Marriage Register signed by the Registrar shall be delivered or sent to the husband, the wife and, within such period as may be prescribed, to the Chief Registrar who shall cause all such certified copies to be bound together to constitute the Register of Muslim Marriages Outside Brunei Darussalam.

Unlawful
registers.

30. No person, other than a person appointed under section 26, shall —

(a) keep any book that is or purports to be a register kept in accordance with this Order, or

(b) issue to any person any document that is or purports to be a copy of a certificate of marriage or a certificate of marriage kept by the Registrar.

Voluntary
registration
of Muslim
marriages
previously
solemnised
under any law.

31. (1) Notwithstanding sections 7, 24(2) and 29, the parties to any marriage in accordance with *Hukum Syara'* solemnised under any law, whether before or after the date of commencement of this Order may, if the marriage has not been registered, apply at any time to a Registrar in the prescribed form for registration of the marriage.

(2) The Registrar may require the parties to the marriage to appear before him and to produce such evidence of the marriage,

either oral or documentary, and to furnish such other particulars as may be required by him.

(3) The Registrar may, on being satisfied of the truth of the statements contained in the application, register the marriage by entering the particulars thereof in the Marriage Register prescribed for this purpose.

(4) The entry of marriage in the Marriage Register shall be signed by the Registrar who made the entry and by both parties to the marriage, where available, if not, then by whichever party can appear before the Registrar.

(5) After the registration of a marriage, a certified copy of the entry in the Marriage Register signed by the Registrar and sealed with his seal of office, shall be delivered or sent to the husband, the wife and the Chief Registrar.

(6) The Registrar shall not register a marriage under this section if he is satisfied that the marriage is not valid under this Order.

32. Nothing in this Order or rules made under this Order shall be construed to render valid or invalid any marriage that otherwise is invalid or valid, merely by reason of its having been or not having been registered.

Legal effect of registration or non-registration.

PART IV

PENALTIES AND MISCELLANEOUS PROVISIONS RELATING TO THE SOLEMNISATION AND REGISTRATION OF MARRIAGES

33. Any person who, being required under section 29 to appear before a Registrar, fails to do so without reasonable grounds is guilty of an offence and liable on conviction to a fine not exceeding one thousand dollars, imprisonment not exceeding three months or both.

Failure to appear before Registrar within prescribed period.

34. A *jurunikah* who intentionally contravenes section 15, is guilty of an offence and liable on conviction to a fine not exceeding one thousand dollars, imprisonment not exceeding three months or both and for a second or subsequent offence to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

Contravention of section 15 by *jurunikah*.

35. Unless permitted under *Hukum Syara'*, any person who uses any force, threat or deception —

Interference with marriage.

- (a) to compel a person to marry against his will; or

(b) to prevent a man who has attained the age of eighteen years or a woman who has attained the age of sixteen years from entering into a valid marriage,

is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

False declaration or statement for procururing marriage.

36. Any person who for the purpose of procuring any marriage under this Order, intentionally makes any false declaration or statement is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

Unauthorised solemnnisation of marriage.

37. Any person who, not authorised under this Order, solemnises or purports to solemnise any marriage is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

Offences relating to solemnisation of marriage.

38. (1) Any person who knowingly solemnises or purports to solemnise or officiates a marriage —

(a) without there being a permission to marry as required by section 18; or

(b) otherwise than in the presence of at least two credible witnesses,

is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

(2) Any person who marries, or purports to marry, or goes through a form of marriage with any person contrary to any of the provisions of Part II is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

Sanction to prosecute.

39. No prosecution for an offence under this Part shall be instituted except with the sanction in writing of the Chief Syarie Prosecutor.

PART V

DISSOLUTION OF MARRIAGE

Annulment of marriage.

40. (1) Where any doubt arises as to the validity of a marriage or it is found that a marriage conflicts with *Hukum Syara'*, the Court

shall investigate the circumstances to determine whether the marriage is valid or invalid in accordance with *Hukum Syara'*.

(2) Where the Court is satisfied that the marriage is not valid in accordance with *Hukum Syara'*, the Court shall make an order to annul the marriage.

(3) The Court shall record the order to annul the marriage and shall deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

41. Save as is otherwise expressly provided, nothing in this Order shall authorise the Court to make an order of divorce or to permit a husband to pronounce a *talaq* except —

Extent of power to make an order.

(a) where the marriage has been registered or deemed to be registered under this Order; and

(b) where the marriage was contracted in accordance with *Hukum Syara*; and

(c) where either parties to the marriage at the time when the application is presented is *bermastautin* in Brunei Darussalam.

42. (1) A husband or a wife may present an application for divorce to the Court in the prescribed form, containing —

Divorce by *talaq* or by order.

(a) particulars of the marriage and the names, ages and sex of the children, if any, of the marriage;

(b) particulars of the facts giving the Court jurisdiction under section 41;

(c) particulars of any previous matrimonial proceedings between the parties, including the place where the proceedings took place;

(d) a statement as to the reasons for the application;

(e) a statement as to whether any, and if so, what steps had been taken to effect reconciliation;

(f) the terms of any agreement regarding maintenance and habitation of the wife and the children of the marriage, if any, the care and custody of the children of the marriage, if any, and the division of any assets acquired through the joint effort of the parties, if any, or where no such agreement has

been reached, the applicant's proposal regarding those matters; and

(g) particulars of the order sought.

(2) Upon receiving an application for divorce, the Court shall cause a summons to be served on the other party together with a copy of the application made by the applicant, and the summons shall direct the other party to appear before the Court so as to enable it to inquire whether or not the other party consents to the divorce.

(3) Where the other party consents to the divorce and the Court is satisfied after due inquiry and investigation that the marriage has irretrievably broken down, the Court shall advise the husband to pronounce a *talaq* before the Court.

(4) The Court shall record the pronouncement of the *talaq* and shall deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

(5) A *talaq raj'ie* pronounced by a husband except where *ruju'* has occurred before the end of the *'iddah* period, whether by *sarih* or by *kinayah* or by order of the Court, shall not take effect in dissolving the marriage until the end of the *'iddah* period.

(6) Where the other party does not consent to the divorce or it appears to the Court that there is reasonable possibility of a reconciliation between the parties, the Court may refer the case to the Family Advice Service Officer.

(7) The Court may give directions to the Family Advice Service Officer regarding their implementation.

(8) The Court may specify a reasonable period during which such Officer shall endeavour to achieve a reconciliation.

(9) The Officer shall require the attendance of the parties and shall give each of them an opportunity to be heard and may call and hear such other persons and make such inquiries as he thinks fit and may if he considers it necessary, adjourn the proceedings.

(10) Where the Officer is unable to effect reconciliation and is unable to persuade the parties to resume their conjugal relationship, the Officer shall issue a certificate to that effect and may attach to the certificate such recommendations as he thinks fit regarding maintenance and custody of the minor children of the marriage; but the Court shall not be bound by those recommendations.

(11) No advocate and solicitor shall appear or act for any party in any proceedings before the Family Advice Service Officer and no party shall be represented by any person, other than a member of his family, without the leave of the Officer.

(12) Where the Officer reports to the Court that reconciliation has been effected and the parties have resumed their conjugal relationship, the Court shall dismiss the application for divorce.

(13) Where the Officer submits to the Court a certificate that he is unable to effect reconciliation and to persuade the parties to resume their conjugal relationship, the Court shall advise the husband to pronounce one *talaq* before the Court and where the Court is unable to procure the presence of the husband before the Court to pronounce a *talaq*, or where the Court does not refer the case to a Family Advice Service Officer, the Court shall refer the case to the *Hakam* for action according to section 43.

43. (1) Whenever a husband has mistreated his wife or assaulted or caused any act harmful to her body or modesty or her property either by his words or actions and the wife is unwilling to live together and continue their conjugal relationship, the wife may apply for a divorce in the prescribed form to the Court and if the complaint has been proved and the Court fails to reconcile the parties, the Court may pronounce a divorce by a *talaq baain*.

Divorce by
syiqaq and
appointment
of *Hakam* as
arbitrator.

(2) Where it is found that the complaint of the wife has not been proved and rejected by the Court and subsequently the wife repeatedly makes the same complaint and the Court finds that there are constant quarrels between the husband and the wife, the Court may appoint two qualified *Hakam* competent in matters relating to arbitration, one acting on behalf of the husband and the other acting on behalf of the wife in accordance with *Hukum Syara'*.

(3) In appointing the *Hakam* under subsection (2), the Court shall where possible, give preference to *qarabah qarib* of the parties having knowledge of the circumstances of the case.

(4) The Court may give orders to the *Hakam* in respect of the procedures of the conduct of the reconciliation and the *Hakam* shall carry out the orders in accordance with *Hukum Syara'*, investigating the reasons for the quarrels (*syiqaq*) between the husband and the wife, and shall endeavour to reconcile them.

(5) The *Hakam* shall endeavour to obtain from both parties the full authority —

(a) if he is the *Hakam* for the husband, for the pronouncement of *talaq* or to accept *tebus talaq*; and

(b) if he is the *Hakam* for the wife, for the acceptance of the *talaq* or payment of *tebus talaq*,

and any action taken shall be made before the Court which shall record such action and deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

(6) Where it is found that the *Hakam* are unable to agree, the Court shall order both of them to try again and if thereafter it is found that the disagreement continues, the Court shall dismiss both of them and appoint other *Hakam*.

(7) Where it is found that the quarrels (*syiqaq*) between the husband and wife cannot be reconciled, and the *Hakam* are of the view that it will be unlikely to achieve a reconciliation, the *Hakam* shall make a decision of divorce with a *talaq baain* without *'iwadh* and refer it to the Court and the Court shall record a judgment in accordance with the decision of the *Hakam* and shall record such divorce and deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

Order for dissolution of marriage by way of *dharar Syar'ie*.

44. A person married in accordance with *Hukum Syara'* may apply in the prescribed form for an order for the dissolution of marriage by way of *dharar Syar'ie* on any one or more of the following grounds —

(a) habitually assaults or makes the life of his wife unbearable by cruelty of conduct;

(b) associates with women of evil repute or leads an infamous life in accordance with *Hukum Syara'*;

(c) attempts to force her to lead an immoral life;

(d) disposes of her property or prevents her from exercising her legal rights over it;

(e) obstructs her from the observance or performance of her religious obligations or practice; or

(f) if he has more than one wife, he does not treat her equitably in accordance with *Hukum Syara'*.

Divorce under *ta'liq*.

45. (1) A married woman may, if entitled to a divorce in pursuance of the terms of a *Ta'liq Certificate* made upon a marriage,

apply to the Court in the prescribed form to pronounce that such divorce has taken place.

(2) The Court shall, before pronouncing the divorce, examine the application and make an inquiry and shall, if satisfied that the divorce is valid in accordance with *Hukum Syara'*, pronounce and record such divorce and deliver a certified copy of the record to both the Registrar and the Chief Registrar for registration.

46. (1) A person married in accordance with *Hukum Syara'* shall be entitled to apply in the prescribed form for an order for the dissolution of marriage by way of *fasakh* on any one or more of the following grounds —

Order for
dissolution of
marriage by
way of
fasakh.

(a) that the whereabouts of the husband is not known for a period of one year or more;

(b) that the husband is in detention for a period of one year or more;

(c) that the husband has neglected or failed to provide maintenance for his wife for a period of four months;

(d) that the husband has been sentenced to imprisonment for a period of three years or more;

(e) that the husband has failed to perform without reasonable cause his marital obligations (*nafkah batin*) for a period of one year;

(f) that the husband was impotent at the time of marriage and remains so and that the wife was unaware at the time of the marriage that he was impotent;

(g) that the husband has been insane for a period of two years or is suffering from leprosy or vitiligo or Acquired Immune Deficiency Syndrome (AIDS) or is a HIV virus carrier or is suffering from a venereal disease in a communicable form;

(h) that after the lapse of four months from the order the marriage has still not been consummated owing to the wilful refusal of the husband to consummate it;

(i) that the wife did not consent to the marriage or her consent was not valid, whether as a consequence of duress, mistake, unsoundness of mind, or any other circumstances in accordance with *Hukum Syara'*;

(j) that the wife is incapacitated and unable to have sexual intercourse in accordance with *Hukum Syara'*;

(k) any other ground that is recognised as valid for dissolution of marriage by way of *fasakh* in accordance with *Hukum Syara'*.

(2) No order shall be made on the grounds in paragraph (d) of subsection (1) until the sentence has become final and the husband has already served one year of the sentence.

(3) Before making an order on the grounds in paragraph (f) of subsection (1) the Court shall make an order requiring the husband to satisfy the Court within a period of one year from the date of the order that he has ceased to be impotent, and if the husband so satisfies the Court within that period, no order shall be made on that ground.

Change of religion.

47. (1) The fact that either party to a marriage becomes an apostate or converts to a faith other than Islam shall not by itself operate to dissolve the marriage unless confirmed by the Court.

(2) The fact that either party to a marriage converts to Islam shall not by itself operate to dissolve the marriage unless confirmed by the Court.

Cerai tebus talaq.

48. (1) Where the husband does not agree to voluntarily pronounce a *talaq*, but the parties agree to a divorce by way of *cerai tebus talaq (khulu')*, the Court shall, after the amount of payment of *tebus talaq* is agreed upon and settled by the party for the wife, order the husband to pronounce a divorce by way of *cerai tebus talaq* and such divorce is *baain sughra* (irrevocable).

(2) Where the amount of the payment of *tebus talaq* is not agreed upon by the parties, the Court may assess the amount in accordance with *Hukum Syara'*, having regard to the status and financial means of the parties and to the *mas kahwin*. If the Court has fixed the amount of *tebus talaq* and the Court has ordered the husband to pronounce *talaq* and the husband is unwilling to do so, the Court may order the *talaq*.

(3) The Court shall record the *cerai tebus talaq* accordingly and deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

Divorce by way *li'an.*

49. (1) Whenever the husband to a marriage has taken an oath by way of *li'an* in accordance with *Hukum Syara'* before a Syar'iie

Judge and it has been so decided, the Syar'ie Judge shall sentence them to *faraq* and to be separated forever.

(2) The Syar'ie Judge shall record a divorce by way of *li'an* accordingly and deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

50. (1) Whenever the husband to a marriage has taken an oath by way of *ila* not to have sexual intercourse with his wife for four months or more, and the four-month period has passed without sexual intercourse taking place, the Court after confirming *ila* shall order the husband to have sexual intercourse with his wife or to divorce his wife.

Divorce by way of *ila*.

(2) Where the husband fails to obey the order of the Court under subsection (1), the Court shall dissolve the marriage.

(3) The Court shall record a divorce by way of *ila* accordingly and deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

51. (1) Where a husband to a marriage has committed *zihar* upon his wife, she shall become haram to her husband as long as her husband does not pay *kaffarah zihar*.

Divorce by way of *zihar*.

(2) Where the husband in subsection (1) does not pay *kaffarah zihar*, the Court after confirming *zihar*, following a complaint from his wife, may make an order restraining her husband from having sexual intercourse with her until he has paid *kaffarah* or divorced his wife.

(3) Where the husband in subsection (2) does not pay *kaffarah zihar*, and instead divorces his wife, the Court shall record a divorce by way of *zihar* accordingly and deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

52. (1) Where, after a *talaq raj'ie* and within an *'iddah* period, husband and wife have *ruju'*, they shall register, in the prescribed form, the *ruju'* and other relevant particulars to the Registrar for the area in which they are *bermastautin*, within fourteen days from the *ruju'*.

Ruju'.

(2) The Registrar shall make such inquiry as may be necessary and, if satisfied that the *ruju'* has taken place in accordance with *Hukum Syara'*, shall register the *ruju'* by endorsement upon the entry relating to that divorce in the Register of Divorces, Annulments and *Ruju'*, if the divorce was registered by him; and shall require the

parties to deliver to him the relevant certificates of divorce and shall on payment of the prescribed fee issue them Ruju' Certificate in the prescribed form.

(3) The Registrar shall also deliver a copy of the Ruju' Certificate to the Chief Registrar who shall register the *ruju'* by endorsement upon the entry relating to that divorce in the Register of Divorces, Annulments and Ruju' kept by him.

(4) Any party to a marriage who fails to register the *ruju'* as required by subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding one thousand dollars, imprisonment not exceeding three months or both.

(5) Where the divorce was not registered by the Registrar to whom the report under subsection (1) is made, he shall record on the certificates of divorce the serial number and particulars of the Ruju' Certificates and shall deliver the certificates of divorce to the Registrar by whom they were issued, together with a copy of the Ruju' Certificate, and the latter Registrar shall thereupon register the *ruju'* by endorsement upon the entry relating to that divorce in the Register of Divorces, Annulments and Ruju' kept by him and shall deliver the copy of the Ruju' Certificate to the Chief Registrar who shall register the *ruju'* by endorsement upon the entry relating to that divorce in the Register of Divorces, Annulments and Ruju' kept by him.

(6) Where a *talaq raj'ie* has taken place without the knowledge of the wife, the husband shall not request the wife to *ruju'* without disclosing divorce to her.

(7) Where after a *talaq raj'ie* the husband pronounces a *ruju'* and the wife has consented to the *ruju'* she may, on the application of the husband, be ordered by the Court to resume conjugal relations, unless she shows reasonable grounds to the contrary, in accordance with *Hukum Syara'* and, if this is the case, the Court may refer the case to the Family Advice Service Officer.

(8) Where after a *talaq raj'ie* the husband pronounces a *ruju'* and the wife has not consented to the *ruju'* for reasons allowed by *Hukum Syara'*, she shall not be ordered by the Court to resume conjugal relations, but the Court may refer the case to the Family Advice Service Officer.

Presumption
of death.

53. (1) Where the husband of any woman is believed to be dead, or has not been heard of for a period of four years or more, and the circumstances are such that he ought, for the purpose of enabling the woman to remarry, to be presumed in accordance with *Hukum Syara'*

to have died, the Court may on the application of the woman in the prescribed form and after such inquiry as may be proper, issue a Certificate of Presumption of Death of the husband in the prescribed form and the Court may, on the application of the woman in the prescribed form, order the dissolution of marriage by *fasakh*.

(2) A certificate issued under subsection (1) shall be registered in the Register of Divorces, Annulments and Ruju' as if it effected a divorce.

54. (1) Every Registrar and the Chief Registrar shall each maintain a Register of Divorces, Annulments and Ruju' in the prescribed form and shall forthwith enter therein the prescribed particulars of all orders of divorce and annulment delivered to him under subsection (2) and applications for registration of all orders of divorce and annulment under subsection (3).

Maintenance
of Register
of
Divorces,
Annulments
and Ruju'.

(2) Every Court that grants and records an order of divorce or annulment or permits and records any *talaq* or any other form of divorce shall forthwith deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

(3) Where a marriage that is solemnised in Brunei Darussalam is dissolved or annulled by an order of a Court of competent jurisdiction outside Brunei Darussalam, either of the parties may apply in the prescribed form to the relevant Registrar for registration of the order, and the relevant Registrar and the Chief Registrar, on being satisfied that the order is one that should be recognised as valid for the purposes of the law in Brunei Darussalam, shall register the order.

(4) Where a pronouncement of *talaq* before the Court or an order of divorce or annulment, wherever granted, has dissolved a marriage that was solemnised in Brunei Darussalam and has been registered under this Order or any written law in force before this Order, the relevant Registrar and the Chief Registrar shall, on registering the *talaq* or order, cause the entry relating to that marriage in the Marriage Register to be marked with the word "Dibubarkan (Dissolved)" and a reference to the proceedings in which the *talaq* was pronounced or the order was made.

(5) Upon registering the *talaq* or order of divorce and on payment of the prescribed fee, the Registrar shall issue a Divorce Certificate in the prescribed form to both parties.

(6) Upon registering an order of annulment, the Registrar shall issue a letter of annulment to both parties.

Registration of divorces outside the Court.

55. (1) Notwithstanding section 54, a man who has divorced his wife by pronouncing a *talaq* in whatever form outside the Court and without the permission of the Court, shall within seven days report the pronouncement of *talaq* to the Court.

(2) The Court shall hold a hearing to determine if the *talaq* has been validly pronounced in accordance with *Hukum Syara'*.

(3) Where the Court is satisfied that the *talaq* has been validly pronounced in accordance with *Hukum Syara'*, the Court shall, subject to section 124, make an order confirming the divorce by *talaq*. The Court shall record the divorce and deliver a certified copy of the record to both the relevant Registrar and the Chief Registrar for registration.

Order of divorce not registrable unless final order made.

56. No pronouncement of *talaq* or order of divorce or annulment shall be registered unless the Registrar is satisfied that the Court has made a final order.

Consolatory gift to a woman.

57. In addition to her right to apply for maintenance, a woman who has been divorced by her husband may apply to the Court for a consolatory gift (*mut'ah*), and the Court may, after hearing the parties and upon being satisfied that the woman has been divorced, order the husband to pay such sum as may be fair and just in accordance with *Hukum Syara'*.

Right to *mas kahwin*, etc., not affected.

58. Nothing contained in this Order shall affect any right that a married woman may have under *Hukum Syara'* to her *mas kahwin*, *belanja* and *pemberian* or any part thereof on the dissolution of the marriage.

Power of Court to order division of *harta sepencarian*.

59. (1) The Court shall have the power, when permitting the pronouncement of *talaq* or when making an order of divorce, to order any assets acquired by the parties during the marriage by their joint efforts to be divided between them or any such assets to be sold and the proceeds of any such sale to be divided between the parties.

(2) In exercising the power conferred by subsection (1), the Court shall have regard to —

(a) the extent of the contributions made by each party by way of money, property or labour towards acquiring the assets;

(b) any debts owed by either party that were contracted for their joint benefit;

(c) the needs of any minor children of the marriage,

and subject to those considerations, the Court shall order equal division.

(3) The Court shall have the power, when permitting the pronouncement of *talaq* or when making an order of divorce, to order any assets acquired during the marriage by the sole efforts of one party to the marriage to be divided between them or any such assets to be sold and the proceeds of any such sale to be divided between the parties.

(4) In exercising the power conferred by subsection (3), the Court shall have regard to —

(a) the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or family;

(b) the needs of any minor children of the marriage,

and subject to those considerations, the Court may divide the assets or the proceeds of sale in such proportions that the Court thinks reasonable, but in any case the party by whose efforts the assets were acquired shall receive a greater proportion.

(5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party that have been substantially improved during the marriage by the other party or by their joint efforts.

60. A woman who has been divorced from her husband or a man who has been divorced from his wife can apply to the Court for an order against her former husband or his former wife, as the case may be, relating to a division of *harta sepencarian*.

Application for
order relating
to division
of *harta*
sepencarian.

PART VI

MAINTENANCE OF WIFE, CHILDREN AND OTHERS

61. (1) Subject to *Hukum Syara'*, the Court may order a husband to pay maintenance to his wife or former wife.

Power of Court
to order
maintenance
of wife and
effect of
nusyuz.

(2) Subject to *Hukum Syara'* and confirmation by the Court, a wife shall not be entitled to maintenance when she is *nusyuz* or unreasonably refuses to obey the lawful wishes or commands of her husband, including —

(a) when she withdraws her association with her husband;

(b) when she leaves her husband's home against his wishes; or

(c) when she refuses to move with him to another home or place,

without any valid reason in accordance with *Hukum Syara'*.

(3) When a wife who is *nusyuz*, repents and obeys the lawful wishes and commands of her husband, she ceases to be *nusyuz*.

Power of the Court to order maintenance of certain persons.

62. Any person who, due to incapacity or ill-health, is unable to earn a livelihood, may on application to the Court obtain an order against anyone who is responsible for maintaining his subsistence in accordance with *Hukum Syara'*, to bear from time to time any reasonable costs relating to his maintenance.

Assessment of maintenance.

63. In determining the amount of any maintenance to be paid, the Court shall base its assessment primarily on the means and needs of the parties, by taking into consideration the proportionate amount of maintenance compared to the income of the person against whom the order is made.

Power of Court to order security for maintenance.

64. The Court may, when awarding maintenance, order the person liable to pay the maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay the maintenance or a part thereof out of the income from the property.

Settlement of maintenance.

65. An agreement for the payment, by way of money or other property, of a capital sum in settlement of all future claims to maintenance shall not be effective until it has been approved, with or without conditions, by the Court, but when so approved shall be a good defence to any claim for maintenance.

Duration of maintenance orders.

66. Except where a maintenance order is expressed to be for any shorter period or is revoked, and subject to section 67, a maintenance order shall expire on the death of the person against whom or in whose favour it was made, whichever is the earlier.

Right to maintenance or *pembe-rian* after divorce.

67. (1) The right of a divorced wife to receive maintenance from her former husband under any order of Court shall cease on the expiry of the *'iddah* period or when she is *nusyuz*.

(2) The right of a divorced wife to receive *pemberian* from her former husband under an agreement shall cease on her remarrying.

68. The Court may at any time vary or revoke a subsisting maintenance order, whether secured or unsecured, on the application of the person against whom or in whose favour it was made, if it is satisfied that the order was based on any misrepresentation or mistake of a fact or where there has been any material change in the circumstances.

Power of Court to vary maintenance orders.

69. Subject to section 65, the Court may at any time on the application of the person against whom or in whose favour a maintenance order is made, vary the terms of any agreement as to the maintenance made between husband and wife, if it is satisfied that there has been any material change in the circumstances, notwithstanding any contrary provision in the agreement.

Power of Court to vary agreements for maintenance.

70. Maintenance payable to any person under any order of Court shall not be assigned, transferred or liable to be attached, sequestered or levied upon, for or in respect of, any debt or claim.

Maintenance payable under order of Court inalienable.

71. (1) Arrears of unsecured maintenance shall be recoverable as a debt from the defaulter and, where they accrued due before the making of a receiving order against him, shall be provable in his bankruptcy and, where they accrued due before his death, shall be a debt payable by his estate.

Recovery of arrears of maintenance.

(2) Arrears of unsecured maintenance that accrued due before the death of the person entitled thereto shall be recoverable as a debt by the legal personal representative of the person.

72. (1) Any wife may, on application to the Court, obtain an order against her husband for payment from time to time for any amount relating to the maintenance that she may be entitled to receive in accordance with *Hukum Syara'*.

Maintenance of wife and presence in Court.

(2) Any person who has been divorced by her husband may, on application to the Court, obtain an order against her former husband for payment during her *'iddah* period, if the divorce is by pronouncement of one or two *talaq* or during her period of pregnancy with her former husband for any amount of maintenance she may be entitled to receive and any other reasonable expenditure in accordance with *Hukum Syara'*.

73. (1) Where the Court is satisfied that there are grounds for payment of maintenance, it may make an order against the husband

Interim maintenance.

for payment of interim maintenance to take immediate effect and to be in force until an order is made on the application for maintenance.

(2) The husband may adjust the interim maintenance paid against the amount ordered to be paid for maintenance under the order.

Right to accommodation.

74. (1) A divorced woman has the right to stay in the home where she used to live when she was married, for so long as the husband is not able to get other suitable accommodation for her.

(2) The right to accommodation provided in subsection (1) shall cease —

(a) if 'iddah period has expired;

(b) if the period of guardianship of the children has expired;

(c) if the woman has remarried with another man; or

(d) if the woman has committed any immoral act (*fahisyah*),

and thereupon the husband may apply to the Court for the return of the home to him.

Duty to maintain children.

75. (1) Except where an agreement or order of Court otherwise provides, it shall be the duty of a man to maintain his children, whether or not they are in his custody, either by providing them with such accommodation, clothing, food, medical attention and education as are reasonable having regard to his means and status in life or by paying the cost thereof.

(2) Except as aforesaid, it shall be the duty of a person liable under *Hukum Syara'*, to maintain or contribute to the maintenance of children if their father is dead or his whereabouts are unknown or if and in so far as he is unable to maintain them.

Power of Court to order maintenance for children.

76. (1) The Court may at any time order a man to pay maintenance for the benefit of any of his children —

(a) if he has refused or neglected to reasonably provide for his child;

(b) if he has deserted his wife and the child is in her care;

(c) pending the outcome of any matrimonial proceedings;
or

(d) when making or subsequent to the making of any order placing the child in the custody of any other person.

(2) The Court shall have the same power to order a person liable under *Hukum Syara'* to pay or contribute towards the maintenance of a child if it is satisfied that having regard to his means it is reasonable to make such order.

(3) An order under subsections (1) or (2) may direct payment to the person having care or custody and control of the child or to the trustees for the child.

77. The Court may, when ordering the payment of maintenance for the benefit of any child, order the person liable to pay the maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay the maintenance or a part thereof out of the income from the property.

Power of Court to order security for maintenance of a child.

78. The Court may at any time, on the application of any interested person, vary or revoke any order for the custody or maintenance of a child if it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

Power of Court to vary or revoke order for custody or maintenance of a child.

79. The Court may at any time vary the terms of any agreement relating to the custody or maintenance of a child, notwithstanding any contrary provision in the agreement if it is satisfied that it is reasonable and for the welfare of the child to do so.

Power of Court to vary agreement for custody or maintenance of a child.

80. Section 71 shall apply, with suitable variations in accordance with *Hukum Syara'* to orders for the payment of maintenance for the benefit of a child.

Recovery of arrears of maintenance of a child.

81. (1) Where a person has accepted a child who is not his child as a member of his family, it shall be his duty to maintain the child while he remains a child, so far as the parents of the child fail to do so, and the Court may make such orders as may be necessary to ensure the welfare of the child.

Duty to maintain child accepted as member of family.

(2) The duty imposed by subsection (1) shall cease if the child is taken back by either of the child's parents.

(3) Any sum expended by a person in maintaining a child as required by subsection (1) shall be recoverable as a debt from the father or mother of the child.

Duration of maintenance order of a child.

82. Except —

- (a) if a maintenance order of a child is expressed to be for any shorter period;
- (b) if any such order has been revoked; or
- (c) if any such order is made in favour of —
 - (i) a daughter who is not married; or
 - (ii) a child who, by reason of any mental or physical disability, is incapable of maintaining himself,

the maintenance order shall expire when the child attains the age of eighteen years, but the Court may, on the application by the child or any other person, extend the maintenance order to cover such further period as it thinks reasonable to enable the child to pursue further or higher education or training.

Duty to maintain illegitimate children.

83. (1) If a woman neglects or refuses to maintain her illegitimate child who is unable to maintain himself, other than a child born as a result of rape, the Court may, upon due proof thereof, order her to make such maintenance as it thinks reasonable.

(2) Maintenance under this section shall be payable from the date of commencement of the neglect or refusal to maintain or from such later date as may be specified in the order.

Power of Court to make attachment of earnings order.

84. (1) Notwithstanding contrary provisions in any written law, the Court may, on the application of a person in whose favour a maintenance order was made or the guardian of such person, make an attachment of earnings order if it thinks reasonable to do so.

(2) An application for an attachment of earnings order may be made during a hearing where a maintenance order is being applied for or any subsequent hearings.

Nature of attachment of earnings order.

85. (1) An attachment of earnings order shall require the person to whom the order is directed, being a person who in the opinion of the Court is the employer of the defendant, to make payments to the party making the claim from the earnings of the defendant, in satisfaction of the order.

(2) The amount to be prescribed in an attachment of earnings order shall be such sum as the Court thinks reasonable after taking into consideration the resources and needs of the defendant and the needs of the persons for whom he must or should provide.

(3) An attachment to earnings order shall contain, in so far as they are known to the Court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(4) An attachment of earnings order or any variation thereof shall not commence until the expiration of seven days from the date when a copy of the order is served on the person to whom the order is directed.

(5) An attachment of earnings order shall designate the officer to whom the payments under the order are to be made.

86. (1) When an attachment of earnings order is made, all other proceedings for the enforcement of the related maintenance order which has begun before the making of the attachment of earnings order, shall be suspended.

Effect of attachment of earnings order.

(2) The Court which has made an attachment of earnings order may, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order to discharge or vary the attachment of earnings order.

87. (1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other written law but subject to the provisions of this Order, comply with the order or, if the order is subsequently varied under section 86, comply with the order as varied.

Duty of defendant and employer to comply with attachment of earnings order.

(2) Where at any time when earnings are to be paid by a defendant, there are two or more attachment of earnings orders in force in relation to those earnings, for the purpose of complying with this Order, the employer shall —

(a) carry out those orders according to the respective dates of their commencement irrespective of any later order until all earlier order has been dealt with; and

(b) carry out has any later order as if the earnings to which it relates are the balance of the defendant's earnings after making any payment under this Order in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under this Order, shall give to the defendant a statement in writing specifying the amount of that payment.

(4) Where a person to whom an attachment of earnings order is directed has not been the defendant's employer at any time during the period of one month immediately preceding the date he was served with the order, he shall forthwith give notice in writing to that effect in the prescribed form to the Court.

PART VII

GUARDIANSHIP

Custody (*hadanah*) of children

Persons entitled to custody of a child who is not *mumaiyiz*.

88. (1) Subject to section 89, the mother shall be the most entitled person to custody of her children who are not *mumaiyiz* during her marriage and after the dissolution of the marriage.

(2) Where the Court is of the opinion that the mother has lost her entitlement under *Hukum Syara'* to the right to custody of her children, the right shall, subject to subsection (3), pass to one of the persons in the following order of preference —

- (a) the maternal grandmother and ascendants;
- (b) the paternal grandmother and ascendants;
- (c) the sister of the same parents;
- (d) the sister of the same father;
- (e) the sister of the same mother;
- (f) the maternal aunt of the same parents;
- (g) the maternal aunt of the same father;
- (h) the maternal aunt of the same mother;
- (i) the daughter of the sister;
- (j) the daughter of the brother;
- (k) the paternal aunt;

(i) the aunt of the father that is the sister of the child's grandfather;

and if there are no guardians (*hadinah*) as stated above, the right to custody passes to the following male persons —

(a) the father;

(b) the grandfather that is the father of the child's father and ascendants;

(c) the brother and descendants;

(d) the uncle and descendants;

(e) and onwards in the order of the *wali* for the solemnisation of marriage.

(3) No man shall be entitled to take care of a female child unless he is a *mahram*, that is where he is related to the child in such manner that he is prohibited from marrying her.

(4) Subject to sections 91 and 93, if there are a number of persons of the same ancestry or degree, all equally qualified and willing to take care the child, the custody shall be entrusted to the most virtuous person who shows the most love to the child and if all are equally virtuous, the oldest among them shall have the right to be given preference.

89. A person who has a right to the custody of a child shall be eligible to exercise those rights if —

Qualifications
necessary for
custody.

(a) he is a Muslim;

(b) he is of sound mind;

(c) he does not suffer from any long term diseases which prevents him from looking after himself or is suffering from diseases such as leprosy or vitiligo or Acquired Immune Deficiency Syndrome (AIDS) or is a carrier of the HIV virus or venereal diseases in a communicable form;

(d) he is of an age that qualifies him to give the child, care, love and affection that the child may need;

(e) he is of good conduct in terms of Islamic morality; and

(f) he lives in a place where the child will not face any moral or physical risks.

How right of custody is lost.

90. The right of a woman to custody is lost —

(a) if she marries a man who is not related to the child thereby prohibiting him from marrying the child, but the right shall revive on dissolution of the marriage;

(b) if she is of bad conduct in a gross and open manner;

(c) if she changes her place of *bermastautin* with the intention of preventing the father from exercising the necessary supervision over the child, except if the divorced wife can take her own child to the divorced wife's place of birth;

(d) if she becomes an apostate;

(e) if she neglects or abuses the child;

Manner of custody.

91. (1) If a woman loses her right to custody, the right passes to the father.

(2) If the child has reached the age of *mumaiyiz*, the child shall be entitled to choose to live with the mother or father, unless the Court orders otherwise.

Custody of illegitimate children.

92. Custody of illegitimate children shall be on the mother and her relative, however the Court may surrender the child to any party which it thinks appropriate, taking into consideration the welfare, care and education of the child.

Power to Court to make order for custody.

93. (1) Notwithstanding subsection (1) of section 88, the Court may at any time by order place a child in the custody of anyone of the persons mentioned in subsection (2) of section 88 or, if there are exceptional circumstances making it undesirable for the child to be entrusted to anyone of those persons, the Court may by order place the child in the custody of an institution or an association whose objects include welfare of the child or any other person who is appropriate in the opinion of the Court.

(2) When deciding in whose custody a child should be placed, the main consideration shall be the welfare of the child and, subject to that consideration, the Court shall have regard to —

(a) the wishes of the parents of the child; and

(b) the wishes of the child, where he is of an age where he is able to express his own opinion.

(3) It shall be a rebuttable presumption that it is for the good of a child that he be with his mother during his infancy, but in deciding whether that presumption applies to the facts of a particular case, the Court shall have regard to the undesirability of disturbing the life of a child by changes of custody.

(4) Where there are two or more children from a marriage, the Court shall not be bound to place both or all of them in the custody of the same person but shall consider the welfare of each of them independently.

(5) If it is found to be necessary, the Court may make a temporary order to place the child in the custody of any person or an institution or an association or any other person who is appropriate in the opinion of the Court and such order shall remain in force until an order of Court is made on application for the custody.

94. (1) An order of custody may be made, subject to such conditions as the Court may think fit to impose and subject to any conditions as may from time to time apply, for the person given custody the right to decide all questions relating to the welfare, guidance, upbringing and education of the child.

Orders subject
to conditions.

(2) Without prejudice to the generality of subsection (1), an order of custody may —

(a) contain conditions as to the place where the child is to live and the manner of his education;

(b) provide for the child to be in the temporary care and control of a person other than the person given custody;

(c) provide for the child to visit his parent who has been deprived of the right to custody or any member of the family of the parent who is dead or has been deprived of the right to custody at such times and such periods as the Court thinks reasonable;

(d) give a parent who has been deprived of the right to custody or any member of the family of the parent who is dead or has been deprived of the right to custody the right of access to the child at such times and such frequency as the Court thinks reasonable; or

(e) prohibit the person given custody from taking the child outside Brunei Darussalam.

Guardianship of Person and Property

**Persons
entitled to
guardianship.**

95. (1) Although the right to custody of a child may be vested in some other person, the father shall be the first and primary natural guardian of his minor child and the property of such child, and if the father is dead, the legal guardianship devolves to one of the persons in the following order of preference —

(a) the paternal grandfather;

(b) the father's or grandfather's executor (subject to whoever dies later);

(c) the executor of the father's or grandfather's executor (if consent is given by the executor);

(d) a Syar'ie Judge or a person that has been entrusted by a Syar'ie Judge;

provided that he is a Muslim, an adult, sane and trustworthy.

(2) A father shall, at all times, have the widest power to make by will such dispositions as he thinks best relating to the guardianship of his minor children and the protection of their interests, provided that he is completely sane.

(3) Subsection (1) shall not apply if the terms and conditions of the instrument vesting the property in the minor expressly exclude the persons mentioned therein from exercising guardianship over the property, and in that case the Court shall appoint a guardian for the property of the minor.

(4) Notwithstanding the above provisions, the welfare of the child shall be the main consideration in determining the guardianship of the child and his property.

**Power over
immovable
and movable
property.**

96. (1) Subject to section 102, with regards to immovable property, a legal guardian shall not have the power to sell except in the following cases —

(a) if the minor has no other means and the sale is absolutely necessary for his maintenance and he has no other property;

(b) if the property is required to be sold for the purpose of paying off the debts of the testator, which cannot otherwise be settled;

(c) if there is a general provision in the will of the testator that cannot be enforced without the sale of the property;

(d) if the income accruing from the estate is insufficient to pay for the expenditure incurred in its management and to pay any charges imposed on the land;

(e) if the property is in danger of being damaged or destroyed;

(f) if the property is in the hands of a person not entitled thereto and the guardian has reason to fear that there is no opportunity of fair restitution; or

(g) in any other case, if it is absolutely necessary to sell the property on other grounds permitted by *Hukum Syara'* and the sale is manifestly or evidently for the benefit of the minor.

(2) With regards to movable property, a legal guardian shall have power to sell or pledge the goods and chattels of the minor if he is in need of imperative necessities such as food, clothing and care; and if the movable property of a minor is sold *bona fide* for an adequate consideration, with the purpose of investing the proceeds safely and to obtain additional income, such sale shall be valid.

97. (1) In the absence of a legal guardian as provided by section 94, the duty of appointing a guardian for protecting and preserving the property of the minor shall be upon the Court and in making an appointment, the Court shall particularly consider the welfare of the minor.

Appointment
of guardians
by the Court.

(2) In considering what will be the welfare of the minor, the Court shall have regard to the age and sex of the minor, the character and the capability of the proposed guardian, the closeness of their relationship, any wishes of the deceased parents and any existing and previous relations between the proposed guardian and the minor or the property of the minor, and if the minor has reached an age where he is capable of forming an intelligent preference, the Court may consider that preference.

98. A mother may be validly appointed as an executrix of the father and in that case, she may exercise her powers as a testamentary guardian or, in the absence of a legal guardian, she may be appointed as a legal guardian by the Court.

Appointment
of mother as
testamentary
guardian.

- Joint guardian-ship with mother.** 99. Where the Court appoints a mother to be a guardian, the Court may also appoint another person to be a guardian for the minor, the property of the minor or both, to act jointly with the mother.
- Variation of power of guardian of property.** 100. In appointing a guardian of the property of a minor, the Court may by order, define, restrict or extend the power of the guardian in relation thereto, to such extent as is necessary for the welfare of the minor.
- Removal of guardian.** 101. The Court may at any time with proper reasons, remove a guardian appointed under this Part and may appoint another person to be guardian in his place.
- Limitation of powers of guardian appointed by Court.** 102. (1) A guardian of the property of a minor appointed by the Court shall not, without leave of the Court —
(a) sell, charge, mortgage, exchange, or otherwise part with the possession of any movable or immovable property of the minor; or
(b) charge or lease any land belonging to the minor for a term exceeding one year.
(2) Any disposal of the property of the minor in contravention of this section may be declared invalid and on such declaration the Court may make such order as is necessary in its opinion to restore the disposed property to the minor.
(3) The Court shall not make an order under subsection (1) unless it is necessary or in the best interest of the minor.
- Guardian may not give discharge for capital property.** 103. A guardian of the property of a minor appointed by the Court shall not, unless in any case the Court orders otherwise, be empowered to give a good discharge of any legacy or any other capital money payable to or receivable by the minor.
- Guardian may support minor out of income.** 104. (1) A guardian of the property of a minor appointed by the Court may make reasonable provision out of the income of the property for the maintenance and education of the minor, having regard to the status in life of the minor but no sum exceeding one thousand dollars per month may be applied without the leave of the Court.
(2) Where the income of the minor's property in the hands of the guardian is insufficient for such purpose, or money is required for the minor's advancement, the Court may order that the provision for such purpose be made out of the capital property and for such purpose, it may authorise the sale, charge or mortgage of any part of

the minor's property and give such directions in regard thereto as may be necessary in the interests of the minor.

105. (1) If it is found that having regard to the status in life of a minor and to the value of his property and to all the circumstances of the case, it would be expedient that the capital property of the minor be made available for his maintenance, education or advancement to avoid the expense of making an application to the Court, the Court may, instead of appointing a guardian of the property of the minor, order that all the property of the minor, of whatsoever description, be placed in the hands of a person to be appointed by the Court, with power to deal with and apply the property for the purpose aforesaid in his discretion; and in that case the receipt from the person appointed shall be a good discharge to any person making any payment or transfer of any property to him on behalf of the minor.

Special order
in the case of
property.

(2) Any person appointed under section (1) may be ordered by the Court to render an account of his dealings with regards to the property of the minor.

(3) The Court may, for an any sufficient reason, discharge any order or revoke any appointment made under subsection (1) and may appoint another person with the same power or such greater or lesser power as is proper in its opinion or may appoint a guardian of the property of the minor.

106. A guardian may apply to the Court for its opinion, advice or discretion on any question with regards to the management or administration of the property of the minor.

Application for
opinion., etc.

107. (1) Notwithstanding the provisions of section 95, the Court may, if it thinks necessary, make an order to prohibit the father or the paternal grandfather of the minor or their respective executors from selling, charging, mortgaging, exchanging or otherwise parting with the possession of any movable property of the minor without prior leave of the Court.

Prohibition
order by Court.

(2) A guardian of the property of a minor appointed by the Court shall not, without the leave of the Court, sell, charge, mortgage, exchange or otherwise part with the possession of any movable property of the minor.

(3) Any disposal of the property of the minor in contravention of any order made under this section may be declared invalid and on such declaration the Court may make such order as is necessary in its opinion to restore the disposed property to the minor.

(4) The Court shall not make any order under subsections (1) and (2) unless it is necessary or in the best interest of the minor.

Guardian of an orphan.

108. Where the father and grandfather of a minor have died without appointing a testamentary guardian, any penghulu, village heads, mosque official, any relevant public servant or any person taking care of the minor, may cause the minor to be taken before the Court and the Court may appoint a guardian either for the minor, the property of the minor or both.

Court to have regard to advice of welfare officer., etc.

109. When considering any question relating to the custody or maintenance of a child, the Court shall whenever practicable, take the advice of a person, whether or not a public officer, who is trained or experienced in welfare of children but it shall not be bound to follow that advice.

Power of Court to restrain child from being taken outside Brunei Darussalam.

110. (1) The Court may, on application of the father or mother of a child —

(a) if matrimonial proceeding is pending; or

(b) if, under any agreement or order of Court, only one parent has custody of the child to the exclusion of the other,

issue an injunction to restrain the other parent from taking the child outside Brunei Darussalam or it may give leave for the child to be taken outside Brunei Darussalam on condition that the Court shall take into consideration and hear the opinion of any interested person with regards to the care of the child and the welfare, education and faith of the child.

(2) The Court may, on the application of an interested person, issue an injunction to restrain any person, other than a person having custody of the child, from taking the child outside Brunei Darussalam.

Other Reliefs

Power of Court to set aside and prevent dispositions intended to defeat claims to maintenance.

111. (1) Where —

(a) any matrimonial proceeding is pending; or

(b) an order has been made under sections 57, 61 or 76 and has not been revoked; or

(c) maintenance is payable under any agreement to or for the benefit of a wife or a former wife or child,

the Court shall have the power on application —

- (i) if it is satisfied that any disposition of property has been made by the husband or former husband or parent of the person, by whom or on whose behalf, the application is made, within the preceding three years with the purpose, on the part of the person making the disposition, to reduce his means to pay maintenance or his means to pay *mut'ah* or to deprive his wife of any rights relating to the property, subject to subsection (2), to require the person making the disposition to revoke it; and
- (ii) if it is satisfied that any disposition of property is intended to be made with any purpose as set out in sub-paragraph (i) of this subsection, to grant an injunction to prevent the disposition.

(2) For the purposes of this section —

"disposition" includes a sale, gift, lease, mortgage or any other transaction whereby the ownership or possession of the property is transferred or encumbered but does not include a disposition made for money or money's worth, to or in favour of a person acting in good faith and without the knowledge of the purpose with which the disposition is made;

"property" means property of any nature, movable or immovable, and includes money.

112. The Court shall have power when matrimonial proceedings are pending or on or after an order for divorce, *fasakh* or annulment to order a person to refrain himself from any manner of disturbance or encroachment towards his spouse or former spouse or the families of both parties.

Injunction
against
disturbance.

PART VIII

MISCELLANEOUS

Order For Legitimisation Of Child

113. Where a woman who is married to a man gives birth to a child more than six *qamariah* months from the date of the marriage or within four *qamariah* years after the dissolution of the marriage either by reason of the death of the man or divorce, and the woman

Person deemed
to be father.

has not remarried, the man shall be deemed to be the father of the child, but the man may, by way of *li'an*, disclaim the child as his child before the Court.

Birth more than four years after dissolution of marriage.

114. Where the child is born more than four *qamariah* years after the dissolution of the marriage either by reason of the death of the man or by divorce, the man shall not be deemed to be the father of the child unless he or any of his heirs acknowledges that the child is his.

Syubhah intercourse.

115. Where a man has *syubhah* intercourse with a woman and she subsequently gives birth to a child within six *qamariah* months to four *qamariah* years after the intercourse, the man shall be deemed to be the father of the child.

Conditions of valid acknowledgement.

116. (1) Where a man acknowledges, either expressly or impliedly, that another person is his lawful child, the man shall be deemed to be the father of the child if the following conditions are fulfilled —

(a) no other person is deemed to be the father of the child;

(b) the difference in the ages of the man and the child is such that it is reasonable to have a father and child relationship between them;

(c) if the child is *akil baligh*, and has acquiesced the acknowledgement that he is the child of the man;

(d) it is possible for the man and the mother of the child to be validly married at the time of conception;

(e) the acknowledgement is not merely that the child is his but that the child is his legitimate child;

(f) the man is competent to make a solemnisation;

(g) the acknowledgement is made with the distinct intention of conferring the status of legitimacy;

(h) the acknowledgement has a definite meaning and the child is acknowledged to be his natural child.

(2) In this section, "*akil baligh*" means a person who is mature and of sufficient age in accordance with *Hukum Syara'*.

117. The presumption arising from the acknowledgement made by a person that he is the father to a person whom he acknowledges as his child may only be rebutted by —

Presumption from acknowledgement rebuttable.

(a) disclaimer on the part of the person acknowledged;

(b) proof that the difference in the ages of the party making the acknowledgement, and the party being acknowledged is small or the age of the party being acknowledged is high, rendering the alleged relationship physically unreasonable;

(c) proof that the party being acknowledged is in fact the child of another person; or

(d) proof that it is not possible for the mother of the child to be the valid wife of the party making the acknowledgement at the time when the child was conceived.

118. Where the person making the acknowledgement is a married woman or is in '*iddah*', her husband shall not be deemed to be the father of the person being acknowledged unless her acknowledgement is confirmed by him or by evidence.

Acknowledgment by a married woman or in '*iddah*'.

119. Where any person acknowledges another as his mother or father, the acknowledgement shall, if acquiesced or confirmed by the person being acknowledged, whether during the lifetime or after the death of the person making the acknowledgement, constitute a valid family tie in so far only as the relationship between the parents and the child, provided that having regard to the ages of the person making the acknowledgement and the person being acknowledged, it is reasonable that the person acknowledged is the parent of the person making the acknowledgement.

Acknowledging another as mother or father.

120. Once an acknowledgement or confirmation has been made in respect of a father and child relationship or family tie or relationship, the acknowledgement or confirmation shall be irrevocable.

Acknowledgement irrevocable.

Order To Resume Cohabitation

121. Where a person has no longer cohabit with her husband or his wife in a manner required by *Hukum Syara'*, the husband or the wife may apply to the Court for an order that the person resumes cohabitation.

Application to resume cohabitation.

Appeal

- Appeal.** 122. Any person aggrieved by any decision of a Court, a Syar'ie Judge or a Registrar under this Order may appeal in accordance with the prescribed procedure in any law relating to civil and criminal procedures in the Syariah Courts.

PART IX

PENALTY

- Polygamy without Court permission.** 123. A man who remarries at any place during the subsistence of his marriage without obtaining prior written permission from a Syar'ie Judge is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.
- Divorce outside Court without permission.** 124. A man who divorces his wife by pronouncement of *talaq* in any form outside the Court without permission of the Court is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.
- Failure to report.** 125. (1) Any person with a duty to report under this Order wilfully neglects or fails to do so is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.
- (2) Any person with a duty to report or is required to submit an application under this Order or to furnish any information or to execute or sign any necessary legal document for the purpose of effecting the registration thereof, wilfully neglects or fails to report or to comply with the requirement is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.
- False report.** 126. Any person who gives to the Registrar, an incorrect oral or written statement or declaration in respect of any matter to be recorded or registered by the Registrar in accordance with the provisions of this Order which he knows or has reason to believe to be false is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.
- Desertion of husband or wife.** 127. A husband or wife who has been ordered by the Court to resume cohabitation with his wife or husband, wilfully fails to comply with the order, is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

128. (1) Any person who ill-treats her husband or wife is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

III-treatment of
husband or
wife.

(2) A husband or wife who deprives his wife or husband of property by cheating is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both and the Court shall make an order that the property or if the property is not available, its value, to be returned to the husband or wife in accordance with *Hukum Syara'*.

129. A husband who fails to give proper justice to his wife in accordance with *Hukum Syara'* is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

Failure to give
proper justice
to wife.

130. A wife who wilfully disobeys an order by her husband in accordance with *Hukum Syara'* after being advised by a Syar'ie Judge is guilty of an offence and liable on conviction to a fine not exceeding five hundred dollars or for a second or subsequent offence, a fine not exceeding one thousand dollars.

Disobedient of
wife.

131. Any person who dislikes his spouse and by deception makes himself an apostate in order to annul his marriage is guilty of an offence and liable on conviction to imprisonment not exceeding five years.

Apostasy to
annul
marriage.

132. (1) A man who has validly divorced his wife, resumes cohabitation as husband and wife during '*iddah*' without the pronouncement of a valid *ruju'* is guilty of an offence and liable on conviction to a fine not exceeding one thousand dollars, imprisonment not exceeding three months or both.

Resumption of
cohabitation
between
divorced
persons.

(2) If the wife is not aware of the divorce at the time of resumption of cohabitation, the man is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

(3) Any person who abets an offence under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

133. Without prejudice to the right of any interested person under any order made under this Order to enforce the order under this Order or under any other law, the Court that made the order, in the case of wilful failure to comply therewith, may, if the order requires payment of any amount, direct the amount due to be levied in a

Wilful failure
to comply
with order.

manner provided by law for levying fines imposed by Court or sentence the person wilfully failing to comply therewith, if the order is for monthly payments, to imprisonment not exceeding one month for each monthly payment that is unpaid, or if the order is for other payment, to imprisonment no exceeding one year.

Contempt of Court.

134. Without prejudice to the provisions in any other law, failure to comply with an order of the Court made under this Order shall be regarded as contempt of Court and liable on conviction to a fine not exceeding ten thousand dollars, imprisonment not exceeding three years or both.

Marriage in contravention of this Order.

135. Any person who solemnises or makes any regulation for the solemnisation of a marriage in contravention of the provisions of this Order or wilfully officiates any invalid marriage under this Order is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

Penalty for non-compliance with an attachment of earnings order, etc.

136. (1) Any person who —

(a) does not comply with subsections (1) and (3) of section 87;

(b) does not give notice as stated in subsection (4) of section 87; or

(c) negligently gives a false notice or statement with regards to an important matter,

is guilty of an offence and subject to subsection (2), liable on conviction to a fine not exceeding five thousand dollars, imprisonment not exceeding one year or both.

(2) It shall be a defence for an accused person who does not comply with subsection (1) of section 87 to prove that he has taken all steps that should be taken to comply with the attachment of earnings order.

Failure to carry out agreements.

137. Any person who without reasonable cause fails to carry out any agreement which he is obliged to comply with in any matter that relates to or arises from this Order is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

Attempts and abetments.

138. Whoever attempts to commit or abets the commission of any offence under this Order is guilty of an offence and liable on conviction to the same punishment as provided by the offence.

139. (1) Any person who contravenes or fails to comply with any provision of this Order or direction given or requirement imposed thereunder for which no special penalty is provided is guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars, imprisonment not exceeding six months or both.

Penalty not provided for.

(2) A sentence of imprisonment may be pronounced if the fine imposed under this Order is not paid but the sentence of imprisonment shall not exceed half of the sentence of imprisonment provided for the offence or seven days if the offence is punishable with a fine only.

PART X

GENERAL

140. (1) If the Registrar is satisfied by written declaration or otherwise that any entry relating to any marriage, divorce, annulment or *ruju'* is erroneous in form or substance, he may, in the presence of persons who are married, divorced, *ruju'* or whose marriage has been annulled, or if they are absent, in the presence of two credible witnesses, correct the error by ruling through the entry and making the correct entry and he shall thereupon cause the entry in the local Marriage Register or the local Register of Divorces, Annulments and *Ruju'* to be corrected in the same manner.

Correction of errors.

(2) The Registrar shall sign and date the correction made in the certificates of marriage, divorce, annulment or *ruju'* and the local Marriage Register or the local Register of Divorces, Annulments and *Ruju'*.

(3) Every entry made under subsection (1) shall be attested by the witnesses in whose presence it was made.

(4) A certified copy of the correction shall be sent forthwith to the Chief Registrar for a similar correction to be made in the Marriage Register or Register of Divorces, Annulments and *Ruju'* kept by him.

141. (1) Every register or index of marriage, divorce, annulment and *ruju'* kept by the Chief Registrar or Registrar under this Order shall be open for inspection by any person on payment of the prescribed fee.

Inspection of register and index.

(2) The Chief Registrar or Registrar, as the case may be, shall on payment of the prescribed fee, furnish a copy of the entry in the register and index of marriage, divorce, annulment or *ruju'*, certified

under the hand or seal of the office of the Chief Registrar or Registrar, as the case may be, to any person requiring it.

Proof. 142. Every Marriage Register and Register of Divorces, Annulments or Ruju' kept by the Chief Registrar or Registrar under this Order and any copy of any entry therein, certified under his hand and seal of office to be a true copy or extract, shall be *prima-facie* evidence in all Courts and tribunals of the dates and acts contained or set out in the Marriage Register, Register of Divorces, Annulments or Ruju' or the copy.

Power to make rules. 143. (1) The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules to regulate the practice and procedure in all proceedings under this Order as he thinks expedient and rules to prescribe and regulate the fees and costs payable in all such proceedings; subject thereto, all proceedings under this Order shall be regulated by the practice and procedure of the Court as prescribed by the Religious Council and Kadis Court Act to the extent that such practice and procedure are not inconsistent with this Order.

Cap. 77. (2) In relation to matters of practice and procedure in proceedings not expressly provided for in this Order or in any rules made under this Order or under the Religious Council and Kadis Court Act, the Court may adopt such practice and procedures as it thinks proper for the avoidance of injustice and disposal of the matters in issue between the parties.

(3) The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules for the purpose of this Order and without prejudice to the generality of the foregoing, such rules may be provided for —

(a) the manner in which the Registrars of Muslim Marriages, Divorces, Annulments or Ruju' shall exercise the powers conferred to them by this Order;

(b) the forms of the Marriage Register, Register of Divorces, Annulments or Ruju' and the certificates of marriage, divorce, annulment and ruju' and the manner in which they are to be kept;

(c) the supply and safe custody of the Marriage Register, Register of Divorces, Annulments or Ruju', the Registrar's notebooks and all declarations made for the purposes of this Order;

(d) the preparation and submission of returns of marriage, divorce, annulment or *ruju'* registered under this Order;

(e) the forms of any document required to be prescribed, which may be in the Malay language, for the purpose of implementing this Order;

(f) the making of searches and the giving of certified copies;

(g) the fees chargeable for the purposes of this Order;

(h) the punishment for any breach or failure to comply with any rules made under this Order; and

(i) other matters for the purpose of implementing this Order.

144. (1) Any provision or interpretation of any provision in this Order that is inconsistent with *Hukum Syara'* shall be invalid to the extent of its inconsistency.

*Hukum
Syara'* shall
apply where
there is no
provision.

(2) In relation to any matter which is not expressly provided for in this Order or in any rules made under this Order, the Court shall apply *Hukum Syara'*.

145. All rules, orders, notices and forms issued or made under or in accordance with the Religious Council and Kadis Court Act which is repealed by this Order shall continue to be in force to the extent that they are not inconsistent with or not replaced by the provisions of this Order, until revoked or replaced by the rules made under the provisions of the Order.

Savings .
Cap. 77.

146. Parts VI, VII, sections 175, 176, 178(1), 178(2), 179 and 180 of the Religious Council and Kadis Court Act are hereby repealed.

Repeal.
Cap. 77.

147. Section 5 of the Registration of Marriages Act is amended in subsection (1), by inserting "other than a marriage both parties to which professed at the time of such marriage the religion of Islam," immediately after "Brunei Darussalam" in the second line.

Amendment of
section 5 of
Chapter 124.

SCHEDULE

Adil	.....	عادل
Akad	.....	عقد
Akal	.....	عقل
Baain Kubra	.....	بائن كبرى
Baain Sughra	.....	بائن صغرى
Baligh	.....	بالغ
Batal	.....	بطل
Dharar Syar'ie	.....	ضرر شرعى
Fahisyah	.....	فاحشة
Faraq	.....	فرق
Fasid	.....	فاسد
Fasakh	.....	فسخ
Hadanah	.....	حضانة
Hadinah	.....	حضينة
Hakam	.....	حكم
Hakim	.....	حاكم
Hakim Syar'ie	.....	حاكم شرعى
Hukum Syara'	.....	حكم شرع
'Iddah	.....	عدة
Ila	.....	أيلاء
'Iwadh	.....	عوض
Kaffarah	.....	كفاره
Qarib	.....	قريب

SCHEDULE (Continued)

Qarabah	.....	قرابة
Khulu'	.....	خلع
Kinayah	.....	كنية
Lafaz	.....	لفظ
Li'an	.....	لعان
Mastautin	.....	مستوطن
Mukim	.....	مقيم
Mauliah	.....	مولية
Mazhab	.....	مذهب
Mumaiyiz	.....	مميز
Murtad	.....	مرتد
Mut'ah	.....	متعة
Nafkah	.....	نفقة
Nasab	.....	نسب
Nusyuz	.....	نشوز
Qamariah	.....	قمرية
Raj'ie	.....	رجعي
Ruju'	.....	رجوع
Sahih	.....	صحيح
Sah	.....	صح
Sarih	.....	صحيح
Syafi'ie	.....	شافعي
Syiqaq	.....	شقاق

SCHEDULE (Continued)

Syubhah	.....	شبہة
Ta'liq	.....	تعليق
Talaq	.....	طلاق
Wali	.....	ولي
Wali Hakim	.....	ولي حاكم
Zahir	.....	ظاهر
Zihar	.....	ظهار

Made this 19th. day of Rabiulawal, 1420 Hijriah coresponding to the 3rd. day of July, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM