

No. S 4

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

RETIREMENT AGE ORDER, 2010

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

RETIREMENT AGE ORDER, 2010

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

Citation, long title and commencement.

1. (1) This Order may be cited as the Retirement Age Order, 2010.

(2) The long title of this Order is "An Order to provide for a minimum retirement age for employees and for matters connected therewith or incidental thereto".

(3) This Order shall be deemed to have commenced on the 1st. January, 2010.

Interpretation.

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

"collective agreement" has the same meaning as in the Employment Order, 2009 (S 37/09);

"contract of service" means any agreement, whether in writing or oral, express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee;

"employee" means a person who has entered into or works under a contract of service with an employer;

"employer" means any person who employs another person under a contract of service and includes —

(a) the Government;

(b) any statutory authority;

(c) any duly authorised agent or manager of any employer; and

(d) any person who owns or is carrying on, or for the time being responsible for the management or control of a profession, business, trade or work in which any employee is engaged;

"investigating officer" means any person appointed as an investigating officer under section 3;

"Minister" means the Minister of Home Affairs.

(2) For the purposes of this Order, an employee shall be treated as dismissed by his employer if —

(a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice; or

(b) the employer retires the employee, or requires or causes that employee to retire or resign on the ground of age.

Appointment of investigating officers.

3. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan appoint such number of investigating officers as he considers necessary for the purposes of this Order.

Minimum retirement age.

4. (1) Notwithstanding anything in any other written law, contract of service or collective agreement, the retirement age of an employee shall be not less than 60 years.

(2) No employer shall dismiss on the ground of age any employee who is below the age of 60 years.

(3) Any employer who contravenes subsection (2) is guilty of an offence and is liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

Invalidity of term of contract of service.

5. Any term of a contract of service or collective agreement made before, on or after 1st. January, 2010 which provides for a retirement age which is less than 60 years shall be void to the extent that it is so less favourable.

Restriction on contracting out.

6. Any term of a contract of service or collective agreement shall be void in so far as it purports —

- (a) to exclude or limit the operation of any provision of this Order; or
- (b) to preclude any person from making a representation, claim or application under this Order.

Remedies for unlawful dismissal on ground of age.

7. (1) Where any employee below the age of 60 years considers that he has been unlawfully dismissed on the ground of age, he may, within one month of the dismissal, make representations in writing to the Minister to be reinstated in his former employment.

(2) The Minister may, before making a decision on any such representations, direct an investigating officer in writing to investigate and report whether in his opinion the employee has been unlawfully dismissed on the ground of age:

Provided that, if the employee is a public officer, the Minister shall seek the approval of His Majesty the Sultan and Yang Di-Pertuan before making any such direction.

(3) If, after considering any report made by an investigating officer under subsection (2), the Minister is satisfied that the employee has been unlawfully dismissed by his employer on the ground of age, the Minister may, notwithstanding any rule of law or agreement to the contrary —

(a) direct the employer to reinstate the employee in his former employment and to pay the employee an amount that is equivalent to the wages that the employee would have earned had he not been unlawfully dismissed by the employer; or

(b) direct the employer to pay such amount of wages as compensation as the Minister may consider just and equitable having regard to all the circumstances of the case,

and the employer shall comply with the direction of the Minister:

Provided that, if the employee is a public officer, the Minister shall seek the approval of His Majesty the Sultan and Yang Di-Pertuan before making any such direction.

(4) In determining the amount of compensation to be awarded under subsection (3), the Minister shall, in particular, have regard to —

(a) the loss sustained by the employee in consequence of the unlawful dismissal;

(b) the prospects of the employee in obtaining alternative employment;

(c) the steps taken by the employee to mitigate his loss;

(d) the period the employee has served with the employer; and

(e) the age of the employee.

(5) The decision of the Minister on any representation made under this section shall be final.

(6) Any direction of the Minister under subsection (3) shall operate as a bar to any action for damages by the employee in any court in respect of the unlawful dismissal on the ground of age.

(7) Any employer who fails to comply with the direction of the Minister under subsection (3) is guilty of an offence and is liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(8) Where any amount to be paid by an employer under subsection (3) is not paid in accordance with the direction of the Minister and the employer has been convicted of an offence under subsection (7), the amount or so much thereof as remains unpaid shall be recoverable by the court as if it were a fine and the amount so recovered shall be paid to the employee entitled to payment under the direction of the Minister.

(9) The Minister may, by writing under his hand, delegate all or any of his powers under this section (except this power of delegation) to any public officer.

(10) A delegation under subsection (9) is revocable at will and no delegation shall prevent the exercise of any power by the Minister.

(11) A power so delegated, when exercised by the delegate, shall for the purposes of this section be deemed to have been exercised by the Minister.

Powers of investigating officers.

8. (1) An investigating officer may enter without previous notice at any reasonable time any place of employment and make such enquiry into the conditions of employment of any employee as he may think fit.

(2) In the course of an investigation under section 8(1), an investigating officer may —

(a) put questions concerning the dismissal of an employee (including the particulars of reasons for the dismissal) to the employee, his employer or to any person who may be in charge of the employee, or to any other employee and the employee, employer, person in charge of the employee, or other employee shall be bound to answer those questions truthfully to the best of his knowledge and ability;

(b) require the employer to produce before him any other employee employed by the employer together with any contract of service or other document concerning the employment;

(c) make copies of any document required to be produced under paragraph (b); and

(d) take or remove for purposes of investigations any document.

(3) Any person who hinders or obstructs an investigating officer in the exercise of the power under this section or makes to an investigating officer exercising the power under this section a statement either orally or in writing which is false in any material particular is guilty of an offence and is liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

Composition of offences.

9. (1) An investigating officer may, in his discretion, compound any offence under this Order which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed the offence a sum not exceeding \$500.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to prescribe the offences which may be compounded.

Exemption.

10. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan by notification in the *Gazette*, exempt with or without conditions any person or class of person from all or any of the provisions of this Order.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, at any time revoke any such exemption, vary or revoke any existing conditions or impose new conditions.

Regulations.

11. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to or for carrying out the provisions of this Order and for prescribing anything which may be prescribed and generally for the purpose of carrying this Order into effect, and for the due administration thereof.

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

Savings.

12. Nothing in this Order shall operate to relieve any employer of any duty or liability imposed upon him by the provisions of any other written law.

Made this 28th. day of Muharam, 1431 Hijriah corresponding to the 14th. day of January, 2010 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM