

No. S 29

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

CRIMINALS REGISTRATION ACT (AMENDMENT) ORDER, 2013

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CRIMINALS REGISTRATION ACT (AMENDMENT) ORDER, 2013

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 and commencement.

1. (1) This Order may be cited as the Criminals Registration Act (Amendment) Order, 2013.

(2) Section 6 of this Order shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

Amendment of long title of Chapter 202.

2. The long title of the Criminals Registration Act, in this Order referred to as the Act, is amended by adding “and to limit the effect of a person’s conviction for certain offences upon the person completing a period of crime-free behaviour and for other incidental purposes”.

Amendment of section 2.

3. Section 2 of the Act is amended by inserting the following new definition immediately after the definition of “finger impressions” —

“ “Minister” means Minister responsible for the administration of this Act;” .

Amendment of section 3.

4. Section 3 of the Act is amended in subsection (1) —

(a) by deleting “and” in paragraph (a);

(b) by substituting the comma at the end of paragraph (b) with a semi-colon and inserting “and” immediately after; and

(c) by adding the following new paragraph therefor —

“(c) persons convicted of any offence in, or banished, expelled or deported from, any place outside Brunei Darussalam, whose registration may have been approved under section 3A(1).”.

Insertion of new section 3A.

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

“Registration of persons convicted in or banished from places outside Brunei Darussalam.

3A. (1) The Minister may approve the registration under Part II of any person convicted of any offence in, or banished, expelled or deported from, any place outside Brunei Darussalam in respect of whom any registrable particulars are furnished to the Registrar by the officer in charge of any criminal records, register of criminals or person in such place.

(2) Any approval given under subsection (1) may be either general, in respect of any place or of any class of case, or special, in respect of a particular case.

(3) Every general approval given under this section shall be published by notification in the *Gazette*.”

Insertion of new Part IIA.

6. The Act is amended by inserting the following new Part immediately after Part II —

“PART IIA

SPENT CONVICTIONS

Interpretation of this Part.

5A. (1) In this Part, unless the context otherwise requires —

“commencement date” means the date of commencement of this Part;

“crime-free period” means a period referred to in section 5C(4);

“excluded offence” means any offence included in the Schedule that is not capable of being treated as spent under this Part;

“place of detention” means any place (by whatsoever name so called) appointed or directed as such under any written law;

“place of safety” means any place (by whatsoever name so called) declared or established as such under any written law;

“probation order” means any order of a court made under any written law to place an offender on probation;

“record of conviction”, in relation to a person, means the record of his conviction which is kept in the register before, on or after the commencement date for —

(a) any offence committed in Brunei Darussalam; or

(b) any offence committed outside Brunei Darussalam and registrable under this Act,

and the registrable particulars related thereto;

“term of imprisonment” does not include a term of imprisonment imposed by a court in default of payment of a fine or penalty;

“unlawfully at large” refers to any person who has escaped from lawful arrest, a prison, a place of detention, a place of safety or any other place of confinement for persons deemed as such under any written law.

Part binds Government.

5B. This Part shall bind the Government.

Spent convictions.

5C. (1) Subject to section 5D, where a person has been convicted of an offence in Brunei Darussalam, such conviction shall be capable of becoming spent in accordance with this Part, whether the conviction is before, on or after the commencement date.

(2) Where a person’s conviction under subsection (1) is for an offence other than an excluded offence specified in the Schedule and he has completed the relevant crime-free period, his conviction in respect of such offence shall become spent on the expiration of the crime-free period applicable to the person, unless he is not qualified under section 5D.

(3) A person’s conviction that is spent in accordance with this section shall not be revived by the subsequent conviction of the person for any offence after the crime-free period.

(4) In this Part —

“crime-free period” means a period of not less than 5 consecutive years starting from the relevant date applicable to a person, during which the person —

(a) has not been convicted of an offence;

(b) has not been unlawfully at large in relation to any offence;

(c) has not been subject to a detention order under or an order for any other purposes stated in section 3(1) of the Internal Security Act (Chapter 133); and

(d) has not been detained or subject to supervision under section 2 of the Criminal Law (Preventive Detention) Act (Chapter 150);

“relevant date”, in relation to a person, means —

(a) where the sentence of the person does not include a term of imprisonment and is no longer subject to appeal, the date on which the sentence was passed;

(b) where the sentence of the person includes a term of imprisonment and is no longer subject to appeal, the date of his release from legal custody; or

(c) where a sentence of imprisonment has been wholly remitted or commuted to or substituted with a sentence other than a term of imprisonment, the date of that remission, commutation or substituted sentence, as the case may be.

(5) A sentence of imprisonment specified in subsection (4) shall not include any sentence of imprisonment which the court imposes in default of payment of a fine.

Person not qualified to have his conviction become spent.

5D. A person does not qualify to have his conviction become spent under section 5C if —

(a) that conviction was for an excluded offence specified in the Schedule;

(b) the sentence imposed on him for that conviction included —

(i) a term of imprisonment exceeding 6 months; or

(ii) a fine exceeding \$2,000;

(c) for the time being, he has a warrant of arrest issued against him for any offence which remains unexecuted;

(d) he has records in the register of more than one conviction, whether or not those convictions arise from the same particular occasion; or

(e) he has had any previous record in the register of any of his convictions become spent under section 5C or treated as spent under section 5E.

Application by person not qualified to have his conviction treated as spent.

5E. (1) A person who does not qualify under section 5D to have his conviction for any offence committed under section 5C(1) to be treated as spent may, at any time, apply to the Commissioner of Police to have the conviction treated as spent.

(2) An application by a person under subsection (1) shall be in such form and accompanied by such documents, particulars and information as the Commissioner of Police may require.

(3) Upon receiving an application under subsection (1), the Commissioner of Police may —

(a) refuse to grant the application; or

(b) grant the application.

(4) In determining whether to grant an application to treat the applicant's conviction as spent, the Commissioner of Police shall have regard to the circumstances of the case, including the following factors —

(a) the severity of the offence for which the conviction is to be spent;

(b) the severity of the sentence imposed for that conviction; and

(c) the applicant's conduct subsequent to the conviction.

(5) Where any document, particular or information given under subsection (2) is false in a material particular, the Commissioner of Police may, after giving the person concerned a reasonable opportunity to be heard in writing, revoke his grant of the application to treat the person's conviction as spent.

(6) Nothing in this section shall be construed to prevent the prosecution, conviction and punishment of any person according to the provisions of any other written law for the time being in force.

Consequences of spent convictions.

5F. (1) Subject to subsection (2), if a person's conviction is spent or is treated as spent under this Part —

(a) the person is not legally bound to disclose to any other person for any purpose information concerning the spent conviction;

(b) it shall be lawful for him to answer a question asked of him on or after the commencement date about his conviction or to disclose information about his conviction in the manner as if he had no record of that conviction;

(c) any question with respect to his criminal history shall not be taken to refer to the spent conviction; and

(d) in the application to the person of any other written law —

(i) a reference in the provision to a conviction, however expressed, shall be taken to be a reference only to any convictions of the person which are not spent; and

(ii) a reference in the provision to the person's character or fitness, however expressed, shall not be interpreted as permitting or requiring account to be taken of the spent conviction.

(2) Subsection (1)(a) to (c) shall not apply in relation to —

(a) any investigation into an offence by a person authorised under any written law to carry out such investigation;

(b) any prosecution against the person for any offence;

(c) any proceedings before a court, including the giving of evidence, or any decision by a court, including any decision as to sentence; and

(d) any application by a person for an appointment to or employment in any office, or for admission to any profession or vocation, from which the person may be disqualified under any written law by reason of his conviction.

(3) For the purpose of the non-application of subsection (1)(a) to (c) to subsection (2)(d), the application referred to therein is in respect of, and not limited to, an application —

(a) for an appointment as or employment of —

- (i) an accountant, advocate and solicitor, army personnel, a judge, judicial officer, law enforcement agency officer, magistrate, prison-officer, prosecutor, security personnel, teacher, teacher's aide, child-care provider, aged-care provider, provider of care for people with disabilities; or
- (ii) a person in any other employment or profession, and in particular, any employment or profession involving the physical care and handling of people,

as determined or prescribed by any written law;

(b) to be appointed, employed or otherwise engaged, whether or not for financial reward, in any other capacity —

- (i) in relation to the care, instruction or supervision of children, elderly people or people with disabilities; or
- (ii) at a school, child-centre, hospital or any other place where care, instruction, supervision or any other services are provided or proposed to be provided for children, elderly people or people with disabilities;

(c) to be permitted to provide care, instruction, supervision or any other services for children, elderly people or people with disabilities; or

(d) for such other purposes in respect of such other persons or class of persons as the Minister may declare by order published in the *Gazette*.

(4) Subject to subsection (2), where a person's conviction is spent or treated as spent under this Part, the Registrar shall, without delay, make an entry in the register to show that the conviction is spent.

Exceptions to section 5F.

5G. (1) Nothing in section 5F shall affect —

(a) the recovery of any fine or other sum adjudged to be paid;

(b) any proceedings in respect of a breach of any condition or requirement imposed following a conviction; or

(c) the operation of any other written law under which any person is subject to any disqualification, disability, prohibition or other penalty.

(2) Nothing in section 5F shall affect the determination of any issue or prevent the admission or requirement of any evidence relating to the spent conviction —

(a) in any proceedings relating to the interest of an infant;

(b) in any proceedings where a person consents in writing to the admission of evidence relating to that spent conviction; or

(c) in any proceedings where the court is satisfied that justice cannot be done except by the admission of evidence relating to that spent conviction.

(3) Nothing in section 5F shall prevent the admission of any legally admissible evidence relating to the previous conviction of any person in any criminal proceedings or for the purpose of sentencing him in respect of a further offence.

Record of conviction rendered spent when certain order completed.

5H. Notwithstanding any provisions in this Part, the record in the register of a person's conviction in Brunei Darussalam for an offence for which a probation order or a community service order is passed by a court shall become spent on the date on which the order is completed.

Reference to record of conviction not to include record of offence not kept in register.

5I. (1) Where a person has been convicted of any offence the record of which is not kept in the register, it shall be lawful for the person —

(a) to answer any question asked of him on or after the commencement date about his record of any conviction (whether or not kept in the register) in the manner as if the question relates only to his record of conviction defined under section 5A(1); and

(b) not to disclose any information about any record of a conviction which is not kept in the register.

(2) Any reference in any agreement or other document made on or after the commencement date to the record of any conviction (whether or not kept in the register) of a person to which this section applies, shall be

taken to refer only to his record of conviction defined under section 5A(1), and not to any record of a conviction which is not kept in the register.

Lawful disclosure.

5J. Notwithstanding anything to the contrary in this Act, it shall be lawful for any law enforcement agency and any public servant therein, in the exercise of its or his functions, to make information about any spent conviction available to any other law enforcement agency, ministry, department of Government or to any court.”

Insertion of new sections 13A, 13B and 13C.

7. The Act is amended by inserting the following three new sections immediately before section 14 —

“Removal of registrable particulars etc. of person upon death.

13A. The Registrar shall remove from the register and from the DNA database the registrable particulars and DNA information of any person whose death has been registered under the Registration of Births and Deaths Act (Chapter 79).

Unlawful disclosure.

13B. (1) A person who has access to the record of convictions received from, or kept by or on behalf of, any law enforcement agency shall not, without lawful authority, disclose any information about any spent conviction.

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

Improperly obtaining information.

13C. A person who obtains, by means of fraud or dishonesty, any information about a spent conviction from the record of convictions kept by or on behalf of any law enforcement agency is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 and imprisonment for a term not exceeding 2 years.”

Insertion of new section 15A.

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

“Amendment of Schedule.

15A. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend the Schedule by order published in the *Gazette*.”.

Insertion of new Schedule.

9. The Act is amended by inserting the following new Schedule immediately after Part V —

“SCHEDULE
(section 5C(2))

EXCLUDED OFFENCES

PART I

OFFENCES UNDER THE PENAL CODE
(CHAPTER 22)

Offences against The State	sections 121 – 123
Offences relating to the Army, Navy, Air Force and Police	sections 131 – 140
Offences Against the Public Tranquility	sections 141 – 160
Offences by or relating to Public Servants	sections 161 – 171
Resisting or escaping or attempting to escape from custody or lawful detention	section 224
Offences relating to Coin and Government Stamp	sections 230 – 263B
Possession of an indecent photograph of a child	section 293A
Taking, distribution, showing, advertisement and access of indecent photo of a child	section 293B
Offences relating to Religion	sections 295 – 298
Attempt to murder	section 307

Voluntarily causing grievous hurt by dangerous weapons or means	section 326
Outraging of modesty	section 354
Kidnapping, Abduction, Slavery and Forced Labour	sections 359 - 374
Sexual Offences	sections 375 - 377G
Robbery and Gang-Robbery	sections 390 - 402
Cheating	sections 415 - 420

PART II

OFFENCES UNDER OTHER LAWS

Trafficking in controlled drugs	section 3 of the Misuse of Drugs Act, (Chapter 27)
Possession for purpose of trafficking	section 3A of the Misuse of Drugs Act, (Chapter 27)
Manufacture of controlled drugs	section 4 of the Misuse of Drugs Act, (Chapter 27)
Importation and exportation of controlled drugs	section 5 of the Misuse of Drugs Act, (Chapter 27)
Cultivation of cannabis, opium and coca plants	section 8 of the Misuse of Drugs Act, (Chapter 27)
Manufacture, supply, possession, importation or exportation of equipment, materials or substances useful for manufacturing of controlled drugs	section 8A of the Misuse of Drugs Act, (Chapter 27)
Intoxicating liquor	section 172 of the Religious Council and Kadis Court Act, (Chapter 77)
Illicit intercourse	section 178 of the Religious Council and Kadis Court Act, (Chapter 77)

Unlawful mosques	section 184 of the Religious Council and Kadis Court Act, (Chapter 77)
Religious books	section 188 of the Religious Council and Kadis Court Act, (Chapter 77)
Misuse of the Quran	section 189 of the Religious Council and Kadis Court Act, (Chapter 77)
Contempts of religion	section 191 of the Religious Council and Kadis Court Act, (Chapter 77)
Unlawful Carnal Knowledge	section 2 of the Unlawful Carnal Knowledge Act, (Chapter 29)
Corruption	section 5 of the Prevention of Corruption Act, (Chapter 131)
Corrupt transaction with agents	section 6 of the Prevention of Corruption Act, (Chapter 131)
Corruptly procuring withdrawal of tenders	section 9 of the Prevention of Corruption Act, (Chapter 131)
Bribery of member of Legislature	section 10 of the Prevention of Corruption Act, (Chapter 131)
Bribery of member of public body	section 11 of the Prevention of Corruption Act, (Chapter 131)".

Made this 6th. day of Jamadilakhir, 1434 Hijriah corresponding to the 17th. day of April, 2013 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM