

No. S 6

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

CRIMINAL PROCEDURE CODE (AMENDMENT) ORDER, 2016

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CRIMINAL PROCEDURE CODE (AMENDMENT) ORDER, 2016

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

Citation

1. This Order may be cited as the Criminal Procedure Code (Amendment) Order, 2016.

Amendment of section 1 of Chapter 7

2. Section 1 of the Criminal Procedure Code, in this Order referred to as the Code, is amended by repealing subsection (2).

Substitution of section 13A

3. Section 13A of the Code is repealed and the following new section substituted therefor —

“Outstanding offences

13A. (1) If the accused is found guilty of an offence in any criminal proceedings begun by or on behalf of the Public Prosecutor, the Court in determining and passing sentence may with the consent of the prosecution and the accused, take into consideration any other outstanding offences that the accused admits to have committed.

(2) If the outstanding offences referred to in subsection (1) were not begun by or on behalf of the Public Prosecutor, the Court must first be satisfied that the person or authority by whom those proceedings were begun consents to that course of action.

(3) When consent is given under subsection (1) or (2) and any outstanding offences are taken into consideration in determining and passing sentence, such fact must be entered in the Court's record.

(4) After being sentenced, the accused may not, unless his conviction for the original offence under subsection (1) is set aside, be charged or tried for any such offence that the Court had taken into consideration under this section.”.

Amendment of section 56

4. Section 56 of the Code is amended, in subsection (1), by inserting “but subject to the provisions of the Evidence Act (Chapter 108)” immediately after “force” in the first line.

Amendment of section 89

5. Section 89 of the Code is amended by deleting “gazetted” from the last line.

Amendment of section 90

6. Section 90 of the Code is amended, in subsection (1), by deleting “gazetted” from the first and seventh lines.

Insertion of new sections 121A and 121B

7. The Code is amended by inserting the following new section immediately after section 121 —

“Surrender of travel documents

121A. (1) A Magistrate may, on the application of a police officer not below the rank of Inspector by written notice, require a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Code to surrender to a police officer not below the rank of Inspector any travel document in his possession.

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith.

(4) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may thereupon be arrested and taken before a Magistrate.

(5) Where a person is taken before a Magistrate under subsection (4), the Magistrate shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the Magistrate that he does not possess a travel document, by warrant commit him to prison there to be safely kept until —

(a) the expiry of the period of 28 days from the date of his committal to prison; or

(b) the person complies with the notice under subsection (1) and a Magistrate, by order, directs the Director of Prisons to discharge the person from prison (which order shall be sufficient warrant for the Director of Prisons so to do),

whichever occurs first.

(6) A travel document which is surrendered to a police officer not below the rank of Inspector under this section may be detained for 6 months from the date on which it was surrendered and may be detained for a further 3 months if a Magistrate, on application by a police officer not below the rank of Inspector, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorises such further detention.

(7) All proceedings before a Magistrate under this section shall be conducted in chambers.

(8) In this section, “travel document” means a passport or other document establishing the identity or nationality of a holder.

Return of travel documents

121B. (1) When a travel document has been surrendered and retained by a police officer not below the rank of Inspector under section 121A, a person affected by such order may at any time make application in writing, to a Magistrate for its return, and every such application shall contain a statement of the grounds on which it is made.

(2) A Magistrate shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the police officer not below the rank of Inspector.

(3) Before an application is granted under this section, the applicant may be required to —

(a) deposit such reasonable sum of cash money with the police officer not below the rank of Inspector as the Magistrate deems fit;

(b) provide local surety; or

(c) satisfy paragraphs *(a)* and *(b)*.

(4) Any such applicant or surety may be required to deposit reasonable sum of cash money with the police officer not below the rank of Inspector as the Magistrate deems fit, for retention by the police officer not

below the rank of Inspector until such time when the travel document is returned to the police officer not below the rank of Inspector.

(5) Failure of the applicant to return to Brunei Darussalam or to surrender the passport to the police officer not below the rank of Inspector within the specified time will render the deposit held by the police officer not below the rank of Inspector to be forfeited to the Government and the applicant may be arrested and dealt with in the same way that a person who fails to comply with the requirement under section 121A (1) may be arrested and dealt with under section 121A (4) and (5).

(6) An application under this section may be granted subject to the conditions that —

(a) the applicant shall further surrender his travel document to the police officer not below the rank of Inspector at such time as may be specified; and

(b) the applicant shall appear at such time and place in Brunei Darussalam as may be specified.

(7) Where a travel document is returned to the applicant under this section subject to a condition imposed under subsection (6), then after the time specified under the subsection, the provisions of section 121A(6) shall continue to apply in respect of the travel document surrendered by the applicant pursuant to the condition as if no return had been made to the applicant under this section.

Substitution of section 122

8. Section 122 of the Code is repealed and the following new section substituted therefor —

“Diary of proceedings in police investigation

122. (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth —

(a) the time at which the order for investigation, if any, reached him;

(b) the time at which he began and closed the investigation;

(c) the place or places visited by him;

(d) the person or persons questioned by him; and

(e) a statement of the circumstances ascertained through his investigation.

(2) Notwithstanding anything contained in the Evidence Act (Chapter 108), an accused person shall not be entitled, either before or in the course of any inquiry or trial, to call for or inspect the diary.

(3) If the police officer who has made the investigation refers to the diary, the entries only as the prosecutor or the police officer has referred to shall be shown to the accused and the Court shall, upon request of the prosecutor or the police officer, cause any other entry to be concealed from view or obliterated.”.

Amendment of section 186

9. Section 186 of the Code is amended —

(a) by deleting the section heading and by substituting “Public Prosecutor may decline to further prosecute at any stage” therefor;

(b) in subsection (1), by deleting “or the Court may of its own motion stay the proceedings” from the last two lines.

Substitution of section 223

10. Section 223 of the Code is repealed and the following new section substituted therefor —

“Power to postpone or adjourn proceedings

223. (1) The Court may, by order in writing, postpone or adjourn any inquiry, trial or other proceedings on such terms as it thinks fit and for as long as it considers reasonable, if the absence of a witness or any other reasonable cause makes this necessary or advisable.

(2) Subject to subsection (3), if the accused is not on bail, the Court may by a warrant remand him in custody as it thinks fit.

(3) If it appears likely that further evidence may be obtained by a remand, the Court may so remand the accused in custody for the purpose of any investigation by a law enforcement agency but not for more than 15 days at a time.

(4) If the accused is on bail, the Court may extend the bail.

(5) The Court must record in writing the reasons for the postponement or adjournment of the proceedings.

(6) Whenever a Judge or Magistrate is not available to constitute a Court of requisite jurisdiction any Magistrate may, by order in writing, notwithstanding that he has no jurisdiction in the case, if the circumstances render it necessary so to do, from time to time postpone or adjourn the trial and may remand the accused either in custody or on bail until a Judge or Magistrate is available as aforesaid.

(7) Whenever a Magistrate acts under the provisions of subsection (6) of this section, he shall report the fact forthwith to the Judge or Magistrate, as the case maybe, having jurisdiction in the case.”.

Insertion of new section 236AA

11. The Code is amended by inserting the following new section immediately after section 236A —

“Other persons may be authorised to take notes of evidence

236AA. Notwithstanding any provisions of this Code, a Judge or Magistrate in an inquiry or trial may cause *verbatim* notes of evidence to be taken by another person of what each witness deposes, in addition to any note of the substance of what each witness deposes which may be made or taken by the Judge or Magistrate himself, and the *verbatim* notes shall form part of the record.”.

Substitution of section 236B

12. Section 236B of the Code is repealed and the following new section substituted therefor —

“Evidence through live video or live television links

236B. (1) Notwithstanding any provisions of this Code or of any other written law, but subject to the provisions of this section, a person, other than the accused, whether within or outside Brunei Darussalam, may with the leave of the Court, give evidence through a live video or live television link in any inquiry, trial, appeal or other proceedings if the Court is satisfied that it is expedient in the interests of justice to do so.

(2) Notwithstanding any provision of this Code or of any other written law, the Court may order an accused to appear before it through a live video or live television link while in remand in Brunei Darussalam in proceedings for any of the following matters —

(a) an application for bail or release on personal bond;

(b) an extension of the remand of an accused under section 223.

(3) The Court may, in exercising its powers under subsection (1) or (2), make an order on all or any of the following matters —

(a) the persons who may be present at the place where the witness is giving evidence;

(b) the persons who may be excluded from the place while the witness is giving evidence;

(c) the persons in the courtroom who must be able to be heard, or seen and heard, by the witness and by the persons with the witness;

(d) the persons in the courtroom who must not be able to be heard, or seen and heard, by the witness and by the persons with the witness;

(e) the persons in the courtroom who must be able to see and hear the witness and the persons with the witness;

(f) the stages in the proceedings during which a specified part of the order is to have effect;

(g) any other order that the Court considers necessary in the interests of justice.

(4) The Court may revoke, suspend or vary an order made under this section if —

(a) the live video or live television link system stops working and it would cause unreasonable delay to wait until a working system becomes available;

(b) it is necessary for the Court to do so to comply with its duty to ensure fairness in the proceedings;

(c) it is necessary for the Court to do so in order that the witness can identify a person or a thing or so that the witness can participate in or view a demonstration or an experiment;

(d) it is necessary for the Court to do so because part of the proceedings is being heard outside a courtroom; or

(e) there has been a material change in the circumstances after the Court has made the order.

(5) Evidence given by a witness, whether within or outside Brunei Darussalam, through a live video or live television link by virtue of this section or of any other written law is deemed for the purposes of sections 193, 194, 195, 196, 205 and 209 of the Penal Code (Chapter 22) as having been given in the proceedings in which it is given.

(6) Where a witness gives evidence in accordance with this section or any other written law, he is deemed for the purposes of this Code to be giving evidence in the presence of the Court.

(7) In subsections (3), (5) and (6), a reference to “witness” includes a reference to an accused who appears before a Court through a live video or live television link under subsection (2).

(8) Where leave is given under subsection (1) in the case of any proceedings for the evidence to be given through a television link, a Court may sit, for the purpose of the whole or part of those proceedings, at a Court or at such other place as may be determined by a Judge, Magistrate or Registrar for the purposes of this section.”.

Insertion of new Chapter XXIII A

13. The Code is amended by inserting the following new Chapter immediately after Chapter XXIII —

“CHAPTER XXIII A

RECORDING OF PROCEEDINGS BY MECHANICAL MEANS

Application of this Chapter

236F. Notwithstanding the provisions contained in this Code or provisions of any other written law, dealing with the mode of taking and recording of evidence, any mechanical means may be employed for the recording of any proceedings before the Court, and where mechanical means are employed, the provisions of this Chapter shall apply.

Interpretation of this Chapter

236G. In this Chapter —

“electronic record” means any digitally, electronically, magnetically or mechanically produced records stored in any equipment, device, apparatus or medium or any other form of storage such as disc, tape, film, soundtrack, and includes a replication of such recording to a separate storage equipment, device, apparatus or medium or any other form of storage;

“mechanical means” includes any equipment, device, apparatus or medium operated digitally, electronically, magnetically or mechanically;

“proceedings” includes any inquiry, trial, appeal, reference or revision, or any part of it, any application, judgment, decision, ruling, direction, address, submission and any other matter done or said by or before a Court, including matters relating to procedure.

Proceedings may be recorded by mechanical means or combination of mechanical means and other modes

236H. (1) A Judge or Magistrate shall have the discretion to direct that any proceedings before any Court be recorded, in whole or in part, by any mechanical means or a combination of any mechanical means.

(2) Where any Judge or Magistrate directs that any proceedings be recorded by any mechanical means, the Judge or Magistrate shall satisfy himself as to the efficiency and functional capability of such mechanical means and that the mechanical means used for recording is in good working order for the purpose of ensuring that the electronic record of such proceedings is clear and accurate.

(3) Notwithstanding that any proceedings are being recorded by any mechanical means, a Judge or Magistrate may —

(a) employ any other mode of taking and recording of evidence; and

(b) at any time, direct that such recording be discontinued and that the recording of such proceedings be continued by any other mechanical means or any other mode of taking and recording of evidence.

(4) Where a Judge or Magistrate makes a ruling that any evidence adduced is inadmissible or irrelevant and shall not form part of the record of proceedings, he may direct that the electronic record of that evidence be erased or otherwise omitted from the record of proceedings.

Electronic record to be transcribed

236I. (1) Where any proceedings before any Judge or Magistrate are recorded by any mechanical means, the Judge or Magistrate shall cause the electronic record of such proceedings to be transcribed by any person authorised in writing by the Judge or Magistrate.

(2) Upon the production of the transcript by any person authorised under subsection (1), the Judge or Magistrate shall ascertain the accuracy and reliability of such transcript and where the Judge or Magistrate makes a ruling that any evidence recorded is inadmissible or irrelevant and shall not form part of the record of proceedings, he may direct that the electronic record of that evidence be excluded from the record of proceedings.

(3) The transcript shall be authenticated by the signature of the Judge or Magistrate.

Safe custody of electronic record and transcript

236J. (1) The Judge or Magistrate shall cause any electronic record of any proceedings before the Judge or Magistrate and the authenticated copy of the transcript of that electronic record to be kept in safe custody.

(2) The electronic record shall not be erased, destroyed or otherwise disposed of –

(a) within the time allowed by law for instituting any appeal or revision in relation to the proceedings in question; or

(b) where an appeal, reference or revision in relation to the proceedings in question is instituted, until that appeal, reference or revision is finally determined or otherwise terminated.

Electronic filing, lodgement, submission and transmission of document

236K. Where any document relating to any proceedings is required to be filed, lodged with, submitted or transmitted to the Court, such filing, lodgement, submission or transmission may be done electronically as may be determined by the Court.

Issuance of Practice Direction

236L. The Chief Justice may, where necessary, issue Practice Direction relating to the use of mechanical means and any matter related to it.”.

Insertion of new sections 237A and 237B

14. The Code is amended by inserting the following two new sections immediately after section 237 –

“Address on sentence

237A. (1) Before a Court passes sentence on a person convicted of an offence, the officer or other person conducting the prosecution may address the Court with respect to that sentence.

(2) Without limiting the generality of subsection (1), the officer or other person conducting the prosecution may, in an address pursuant to that subsection —

(a) draw the attention of the Court to any aggravating circumstances, or the presence or absence of any extenuating circumstances, in relation to the offence;

(b) where the Court has a choice with regard to the kinds of sentence that it may impose in relation to the offence, comment on the appropriateness of those kinds of sentence; and

(c) where the Court has a choice with regard to those kinds of sentence, recommend that the Court impose one of those kinds of sentence.

(3) The failure by the officer or other person conducting the prosecution to exercise his right under subsection (1) to address the Court with respect to the sentence for the offence shall not be taken into account by the Court in determining an appeal against that sentence by the Public Prosecutor.

Effect of certain offences on persons in respect of whom committed

237B. (1) In determining the sentence to be imposed on a person for an offence to which this section applies, a Court shall take into account, and may, where necessary, receive evidence or submissions concerning any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.

(2) This section applies to —

(a) an offence which involves an assault on, or injury or threat of injury to, any person;

(b) an offence against —

(i) section 354 of the Penal Code (Chapter 22) (outraging modesty);

(ii) section 376 of the Penal Code (Chapter 22) (rape);

- (iii) section 377 of the Penal Code (Chapter 22) (unnatural offences);
- (iv) section 377A of the Penal Code (Chapter 22) (incest);
- (v) section 2 of the Unlawful Carnal Knowledge Act (Chapter 29) (carnal knowledge);

(c) an offence which consists of attempting or conspiring to commit, or abetting the commission of, an offence referred to in paragraph (a) or (b).

(3) Where a Court is determining the sentence to be imposed on a person for an offence to which this section applies, the Court shall, upon application by the person in respect whom such offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on such person upon being requested to do so.”.

Amendment of section 265

15. Section 265 of the Code is amended, in subsection (2), by deleting “prescribed” from the second line and by substituting “determined” therefor.

Amendment of section 291A

16. Section 291A of the Code is amended, in subsection (2), by deleting paragraph (b).

Amendment of section 380A

17. Section 380A of the Code is amended, in subsection (2) –

(a) by deleting paragraph (d);

(b) by deleting paragraph (f) and by substituting the following new paragraph therefor –

“(f) any person or class of persons to whom the Permanent Secretary to the Office of the Prime Minister, by notification published in *Gazette*, declares that the provisions of this section shall apply.”.

Amendment of section 384

18. Section 384 of the Code is amended by deleting “in Council” from the first line.

Amendment of section 385

19. Section 385 of the Code is amended, in subsection (2), by deleting “of the Court” from the last line.

Amendment of section 387

20. Section 387 of the Code is amended by deleting “His Majesty in Council” from the second line and by substituting “the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan,” therefor.

Made this 4th. day of Jamadilawal, 1437 Hijriah corresponding to the 13th. day of February, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM