

LAWS OF BRUNEI

CHAPTER 25
UNDESIRABLE PUBLICATIONS

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CHAPTER 25
UNDESIRABLE PUBLICATIONS

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UNDESIRABLE PUBLICATIONS ACT

An Act to prevent the importation, distribution or reproduction of undesirable publications and for purposes connected therewith

Commencement: 1st December 1986
[S 25/86]

Citation.

1. This Act may be cited as the Undesirable Publications Act.

Interpretation.

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

“Minister” means the Minister of Home Affairs;

“objectionable” has the meaning assigned to it by section 2B;
[S 60/07]

“obscene” has the meaning assigned to it by section 2A;
[S 60/07]

“periodical publication” includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

“place” includes any vehicle, vessel, or aircraft, whether in a public place or not;

“prohibited publication” means any publication, the importation, sale or circulation of which has been prohibited under section 3;

“publication” means any of the following other than a film —

(a) any book, magazine or periodical, whether in manuscript or final form;

(b) any sound recording;

(c) any picture or drawing, whether made by computer-graphics or otherwise howsoever;

(d) any photograph, photographic negative, photographic plate or photographic slide; or

(e) any paper, model, sculpture, tape, disc, article or thing —

(i) that has printed or impressed upon it any word, statement, sign or representation; or

(ii) on which is recorded or stored for immediate or future retrieval any information that, by the use of any computer or other electronic device, is capable of being reproduced or shown as any picture, photograph, word, statement, sign or representation,

and includes a copy of any publication;

[S 60/07]

“sound recording” means any tape, disc or other recording of sounds from which the sounds may be reproduced but does not include any sound-track of a film.

[S 60/07]

Meaning of obscene. [S 60/07]

2A. For the purposes of this Act, a publication is obscene if its effect or where the publication comprises 2 or more distinct parts or items, the effect of any one of its parts or items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it.

Meaning of objectionable. [S 60/07]

2B. (1) For the purposes of this Act, a publication is objectionable if, in the opinion of a controller or authorised officer, it, or where the publication comprises 2 or more distinct parts or items, any one of its parts or items describes, depicts, expresses or otherwise deals with —

(a) matters such as sex, horror, crime, cruelty, violence or the consumption of drugs or other intoxicating substances in such a manner that the availability of the publication is likely to be injurious to the public good; or

(b) matters of race or religion in such a manner that the availability of the publication is likely to cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups.

(2) In determining for the purposes of this Act whether or not any publication is objectionable, the following matters shall be considered —

(a) the extent and degree to which, and the manner in which, the publication —

- (i) describes, depicts or otherwise deals with acts of torture, the infliction of serious physical harm, sexual conduct or violence of coercion in association with sexual conduct;
- (ii) exploits the nudity of any person;
- (iii) promotes or encourages criminal acts or acts of terrorism;
- (iv) represents, directly or indirectly, that members of any particular community or group are inherently inferior to other members of the public or of any other community or group;

(b) the impact of the medium in which the publication is presented;

(c) the character of the publication, including any merit, value or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific or other matters;

(d) the standards of morality, decency and propriety that are generally accepted by reasonable members of the community; and

(e) the persons, classes of person or age groups of the persons to whom the publication is intended or is likely to be made available.

(3) The question whether or not a publication is objectionable is a matter for the expert judgment of any person authorised or required by or pursuant to this Act to determine it, and evidence as to or proof of any of the matters or particulars that he is required to consider in determining the

question is not essential to its determination, except that if such evidence or proof of such matters or particulars is available, he shall take that evidence or proof into consideration.

(4) A controller authorised by the Minister shall keep and maintain a Register of Objectionable Publications containing all publications which a controller or authorised officer determines to be objectionable.

Power to prohibit importation, sale or circulation of publications.

3. (1) If the Minister* is of opinion that the importation, sale or circulation of any publication or series of publications published or printed outside Brunei Darussalam or within Brunei Darussalam by any person would be contrary to the public interest, he may in his absolute discretion, by order published in the *Gazette*, prohibit the importation, sale or circulation of that particular publication or series of publications or all publications published or printed by that person.

(2) If an order under subsection (1) specifies by name a publication which is a periodical publication, such order shall, unless a contrary intention be expressed therein, have effect with respect to —

(a) all past and subsequent issues of such publication; and

(b) any publication published or printed under any other name if the publishing or printing thereof is in any respect a continuation of, or in substitution for, the publishing or printing of the publication named in the order.

(3) If an order made under subsection (1) prohibits the importation, sale or circulation of all publications published or printed by a specified person such order shall, unless a contrary intention is expressed therein, have effect not only with respect to all publications published or printed by that person before the date of the order but also with respect to all publications so published or printed on or after such date.

(4) An order made under subsection (1) shall, unless a contrary intention is expressed therein, apply to any translation into any language whatsoever of the publication specified in the order.

*Transferred from the Mentri Besar to the Minister of Home Affairs with effect from 1st January 1984 — [S 10/84]

(5) The Minister* may at any time revoke, vary or amend any order made under this section.

Offences.

4. (1) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any prohibited publication or any extract therefrom is guilty of an offence: Penalty, for a first offence, a fine of \$3,000 and imprisonment for 3 years and for a subsequent offence, a fine of \$5,000 and imprisonment for 4 years.

(2) Any person who without reasonable excuse has in his possession any prohibited publication or any extract therefrom is guilty of an offence: Penalty, for a first offence, a fine of \$2,000 and imprisonment for one year and for a subsequent offence, a fine of \$3,000 and imprisonment for 2 years.

(3) In any proceedings against any person for an offence under subsection (2) such person shall be presumed, until the contrary is proved, to have known the contents and the nature of the contents of any publication immediately after such publication came into his possession.

Offences involving obscene publications. [S 60/07]

4A. Any person who —

(a) makes or reproduces;

(b) imports or has in his possession for the purposes of sale, supply, exhibition or distribution to any other person; or

(c) sells, offers for sale, supplies, offers to supply, exhibits or distributes to any other person,

any obscene publication, not being a prohibited publication, knowing or having reasonable cause to believe the publication to be obscene is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

*Transferred from the Menti Besar to the Minister of Home Affairs with effect from 1st January 1984 — [S 10/84]

Offences involving objectionable publications. [S 60/07]

4B. Any person who —

(a) makes or reproduces;

(b) imports or has in his possession for the purposes of sale, supply, exhibition or distribution to any other person; or

(c) sells, offers for sale, supplies, offers to supply, exhibits or distributes to any other person,

any objectionable publication, not being a prohibited publication, knowing or having reasonable cause to believe the publication to be objectionable is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

Search for and seizure of obscene or objectionable publications. [S 60/07]

4C. (1) If information is given upon oath to a magistrate that there is reasonable cause to suspect that there are in any premises or place any obscene or objectionable publications (not being prohibited publications) by means of or in relation to which any offence under sections 4A or 4B has been or is about to be committed, or any equipment used or intended to be used for the purpose of exhibiting, making or reproducing those publications, the magistrate may issue a warrant under his hand by virtue of which any police officer, controller or authorised officer named in the warrant may —

(a) with such assistance and by such force as is necessary, enter and search the premises or place;

(b) seize the publications and any equipment used in the exhibition, making or reproduction of those publications; and

(c) take into custody any person reasonably believed to be in possession of those publications or equipment.

(2) The court before which a person is charged with an offence under sections 4A or 4B may, whether he is convicted of the offence or not, order that any publication that appears to the court to be a prohibited publication, an obscene or objectionable publication, and any equipment used or intended to be used for exhibiting, making or reproducing the publications in the

possession of the alleged offender or before the court, be destroyed or delivered up to the Minister for disposal in such manner as the Minister may direct.

(3) Where —

(a) in proceedings brought under sections 4A or 4B in connection with the offence no order is made under subsection (2) as to the publication or equipment; or

(b) no such proceedings are instituted within 3 months of the seizure,

the publication or equipment shall be returned to the person from whom they were seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of the police.

Delivery of prohibited publication to police.

5. Any person —

(a) to whom any prohibited publication or any extract therefrom is sent without his knowledge or privity or is sent in response to a request made by such person before the prohibition of the importation, sale or circulation of such publication came into effect; or

(b) who has such a publication or extract therefrom in his possession at the time when the prohibition of its importation, sale or circulation comes into effect,

shall forthwith, as soon as the nature of its contents has become known to him, or in the case of a publication or extract therefrom coming into the possession of such person before an order prohibiting its importation, sale or circulation has been made upon the coming into effect of such order, deliver such publication or extract therefrom to a police officer not below the rank of Inspector or to the officer in charge of a police station and in default thereof is guilty of an offence: Penalty, a fine of \$2,000 and imprisonment for one year.

Power to examine packages.

6. (1) Any —

(a) officer of the Postal Services Department not below the rank of Postmaster-General;

(b) proper officer of customs;

(c) police officer not below the rank of Inspector; and

(d) other officer authorised in that behalf by the Minister*,

may detain, open and examine any package or article which he suspects to contain any prohibited publication or extract therefrom and during such examination may detain any person importing, distributing or posting such package or article, or in whose possession such package or article is found.

(2) If any prohibited publication or extract therefrom is found in such package or article, the whole package or article may be impounded and detained by the officer and the person importing, distributing or posting it, or in whose possession it is found, may forthwith be arrested by such officer and proceeded against for the commission of an offence under sections 4 or 5, as the case may be.

Forfeiture.

7. A court before which any proceedings are taken under this Act, if satisfied that any document produced in the proceedings is a prohibited publication or an extract therefrom, shall whether the alleged offender is convicted or not, order such publication or extract therefrom to be forfeited to the Commissioner of Police, who shall order the same to be destroyed or otherwise disposed of in such manner as he thinks fit.

Issue of search warrant.

8. (1) Whenever it appears to any magistrate upon information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any premises or place there is concealed or deposited any prohibited publication or extract therefrom, such magistrate may, by warrant directed to any police officer not below the rank of Inspector, empower such

* Transferred from the Mentri Besar to the Minister of Home Affairs with effect from 1st January 1984 — [S 10/84]

officer to enter such premises or place by force if necessary to search for, seize and detain any such publication.

(2) Whenever it appears to any police officer, not below the rank of Assistant Superintendent, that there is reasonable cause to believe that in any premises or place there is concealed or deposited any prohibited publication or extract therefrom, and he has good grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may enter and search such premises or place as if he were empowered to do so by a warrant issued under subsection (1).

Arrest without warrant.

9. Any police officer not below the rank of Inspector may arrest without warrant any person found or reasonably suspected, of committing or attempting to commit, or of procuring or abetting any person to commit, any offence against this Act, or reasonably suspected of the unlawful possession of any article liable to forfeiture thereunder.

Appointment of controllers and authorised officers.

10. (1) The Controller of Customs, the Commissioner of Police, the Head of Special Branch, the Postmaster-General and such other officers as the Minister* may by notification in the *Gazette* appoint, shall be controllers for the purposes of this Act.

[S 60/07]

(2) The Minister* may, by writing under his hand, appoint any public officer to be an authorised officer for the purposes of this Act.

[S 60/07]

(3) In the exercise of their powers and in carrying out their duties under this Act, controllers and authorised officers shall be guided by such general or special directions as may, from time to time, be given to them by the Minister*.

* Transferred from the Mentri Besar to the Minister of Home Affairs with effect from 1st January 1984 — [S 10/84]

Examination of articles coming into Brunei Darussalam.

11. (1) A controller or any authorised officer may detain, open and examine any article coming into Brunei Darussalam from any place outside Brunei Darussalam in any manner whatsoever which he has reason to believe contains or consists of a prohibited, obscene or objectionable publication.

[S 60/07]

(2) Where, in the course of opening and examining any article under subsection (1), the controller or authorised officer finds any publication that he believes on reasonable grounds to be prohibited, obscene or objectionable —

(a) he may detain the article for so long as is necessary to institute proceedings for an offence under this Act; or

(b) where no such proceedings are instituted within 3 months of the detention, he may return the article to the sender of the article or, if the publication is prohibited, obscene or objectionable or returning the article is not reasonably practicable, he may, subject to section 15, destroy or cause to be destroyed the article or the contents of the article consisting of any such publication.

[S 60/07]

Examination of persons entering Brunei Darussalam.

12. (1) Any person entering Brunei Darussalam shall, if he is required by a controller or any authorised officer to do so —

(a) declare whether or not he has with him any publication; and

(b) produce such publication for examination.

(2) A controller or an authorised officer may examine or search any person entering Brunei Darussalam or any article which such person has with him for the purpose of ascertaining whether he has in his possession any publication which the controller or the authorised officer believes on reasonable grounds to be prohibited, obscene or objectionable, and may seize any such publication produced or found upon such examination or search.

[S 60/07]

(3) Any publication seized under subsection (2) may be detained for so long as it is necessary to institute proceedings for an offence under this Act or, where no such proceedings are instituted within 3 months of the seizure, the controller or authorised officer —

(a) may return the article or publication to the person from whom it was seized; or

(b) if the publication is prohibited, obscene or objectionable, or returning the article or publication is not reasonably practicable, may —

(i) subject to section 15, destroy or cause to be destroyed the article or publication; or

(ii) order the publication to be exported forthwith from Brunei Darussalam.

[S 60/07]

(4) Any person who fails to comply with any requirement made by a controller or authorised officer under subsection (1) is guilty of an offence: Penalty, a fine of \$1,000 and imprisonment for 6 months.

Search of premises or place.

13. (1) A controller may authorise any police officer not below the rank of Inspector to enter and search any premises or place where he has reasonable cause to believe any publication prejudicial to public safety or public interest in Brunei Darussalam is likely to be found, and to seize such publication so found.

(2) A controller may detain such publication for so long as he deems necessary and may in his absolute discretion destroy or cause to be destroyed such publication so detained.

Corporate offenders and unincorporated associations. [S 60/07]

13A. (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, he

as well as the body corporate is also guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of that body corporate.

(3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought against the association in its own name, and not in that of any of its members and, for the purpose of any such proceedings, any rules of court relating to service of documents shall have effect as if the association were a body corporate.

(4) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is also guilty of that offence and be liable to be proceeded against and punished accordingly.

(5) Where an offence under this Act committed by an unincorporated association other than a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, that officer or member as well as the association is also guilty of that offence and be liable to be proceeded against and punished accordingly.

(6) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of any country or territory outside Brunei Darussalam.

(7) In this section —

“officer” —

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager,

secretary or other similar officer of the body or any person purporting to act in any such capacity; or

(b) in relation to an unincorporated association other than a partnership, means the president, the secretary, a member of the committee of the association, or any person holding a position analogous to that of the president, secretary or member of the committee;

“partner” includes any person purporting to act as a partner.

Bar to legal proceedings.

14. No legal proceedings whatsoever shall lie, or be instituted or maintained in any court for or on account of any loss of, or damage to any article or publication seized, detained, confiscated or destroyed under the provisions of sections 11, 12 or 13, or for or on account of any delay in the delivery or return of such article or publication to the person to whom such article or publication would otherwise have been delivered or returned.

Appeals.

15. (1) Any person aggrieved by the detention of any article or publication under the provisions of sections 11, 12 or 13 may appeal against such detention to the Minister* whose decision thereon shall be final and shall not be subject to any appeal to or review in any court:

Provided that no such appeal shall be allowed unless notice of appeal in writing together with the reasons for the appeal is given to the Minister* within 14 days of the date of service of the notification referred to in subsection (2).

(2) A controller or an authorised officer shall notify the addressee or consignee of any article detained under section 11 or the person from whom any publication has been seized and detained under sections 12 or 13 of his right to appeal under subsection (1).

(3) A notification given by a controller or an authorised officer under subsection (2) may be given personally or may be served by post and the day on which a notification which has been posted would be received in

* Transferred from the Mentri Besar to the Minister of Home Affairs with effect from 1st January 1984 — [S 10/84]

the ordinary course of post shall be deemed to be the date of service of such notification.

(4) Notwithstanding any other provisions of this Act, no article or publication shall be destroyed under sections 11, 12 or 13 unless its detention has not been appealed against or an appeal against its detention has been dismissed or abandoned.

Exemptions. [S 60/07]

15A. (1) Where any publication is a prohibited publication or an obscene or objectionable publication under this Act, any person may apply to the Minister for an exemption from any of the provisions of this Act in respect of that publication.

(2) Every application shall be in the form provided for the purpose by a controller authorised by the Minister and shall be accompanied by such fee as the Minister may, with the approval of the His Majesty the Sultan and Yang Di-Pertuan, prescribe by regulations.

(3) On receiving an application under this section in relation to a publication, the Minister, if satisfied that the publication should be made available to a limited class of persons or to a particular person for educational, professional, scientific, artistic or technical reasons, may exempt that class of person or that person from any such provision of this Act as he may specify in respect of that publication for such period as he thinks fit.

(4) An exemption under this section may be granted absolutely or subject to such conditions as may be specified by the Minister.

Saving.

16. Any order in force immediately before 1st December 1986, being the date of the commencement of this Act and made by —

(a) His Majesty the Sultan and Yang Di-Pertuan in Council under section 3 of the repealed Undesirable Publications Enactment (Chapter 25 of 1951); or

(b) the Minister* under order 3 of the Emergency (Control of Publications) Orders, 1967 (E.12 of 1967),

shall, for the purposes of this Act, be deemed to have been made by the Minister* under section 3 and published in the *Gazette* on such commencement; and any publication affected by such order shall be deemed to be a prohibited publication for the purposes of this Act so long as such order continues in force as respects such publication.

* Transferred from the Mentri Besar to the Minister of Home Affairs with effect from 1st January 1984 — [S 10/84]