

No. S 61

CONSTITUTION OF BRUNEI DARUSSALAM
{Order made under Article 83{3}}

PENAL CODE {AMENDMENT} ORDER, 2017

ARRANGEMENT OF SECTIONS

Section

1. Citation
 2. Amendment of section 375 of Chapter 22
 3. Substitution of section 376
 4. Substitution of section 377
 5. Consequential amendment of Schedule to Chapter 4
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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

PENAL CODE (AMENDMENT) ORDER, 2017

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 Penal Code (Amendment) Order, 2017.

Amendment of section 375 of Chapter 22

2. Section 375 of the Penal Code is amended —

(a) by deleting “five” from the third line;

(b) in paragraph (c), by adding “to herself or any other person”;

(c) by inserting the following new paragraph immediately after paragraph (d) —

“(da) with her consent, when the man is in a position of trust or authority towards the woman or is a person with whom the woman is in a relationship of dependency;”;

(d) in Explanation, by inserting “1” immediately after “Explanation”;

(e) by inserting the following two new Explanations immediately after “Explanation 1” —

“Explanation 2 - A person consents if she agrees by choice, and if she has the freedom and capacity to make that choice.

Explanation 3 - A person does not consent if the sexual intercourse is induced by the abuse of a position of trust or authority.”.

Substitution of section 376

3. Section 376 of the Penal Code is repealed and the following new section substituted therefor —

“Punishment for rape

376. [1] Subject to subsections [2], [3] and [4], whoever commits rape shall be punished with imprisonment for a term which may extend to 30 years and whipping.

(2) Whoever—

(a) in order to commit or to facilitate the commission of an offence of rape against a woman —

(i) voluntarily causes hurt to her or to any other person; or

(ii) puts her in fear of death or hurt to herself or any other person;

(b) commits rape against a woman under 14 years of age; or

(c) is in a position of trust or authority towards a woman or is a person with whom the woman is in a relationship of dependency, commits rape against a woman,

shall be punished with imprisonment for a term of not less than 10 years and not more than 30 years and whipping with not less than 12 strokes.

(3) Whoever commits rape against a woman under 14 years of age —

(a) voluntarily causes hurt to her or to any other person;

(b) puts her in fear of death or hurt to herself or any other person;

(c) is in a position of trust or authority towards her or is a person with whom she is in a relationship of dependency,

shall be punished with imprisonment for a term of not less than 15 years and not more than 30 years and whipping with not less than 12 strokes.

(4) Any person who is convicted of an offence under this section shall, in the case of a second or subsequent conviction, be punished with imprisonment for a term not less than 20 years and not more than 50 years and whipping not less than 20 strokes.

(5) In any case in which section 258 of the Criminal Procedure Code (Chapter 7) applies, the Court shall sentence the offender, instead of whipping, to imprisonment for a term which may extend to 12 months, in

addition to the punishment to which he has been sentenced under this section.”.

Substitution of section 377

4. Section 377 of the Penal Code is repealed and the following new section substituted therefor —

“Unnatural offences

377. (1) Whoever voluntarily has sexual intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term not exceeding 30 years and whipping.

Explanation – Penetration is sufficient to constitute the sexual intercourse necessary to the offence described in this section.

(2) Whoever commits an offence under subsection (1) against a person under the age of 14 years, shall be punished with imprisonment for a term of not less than 15 years and not more than 30 years and whipping with not less than 12 strokes, and in the case of a second or subsequent conviction, imprisonment for a term of not less than 20 years and not more than 50 years and whipping with not less than 20 strokes.

(3) In any case in which section 258 of the Criminal Procedure Code (Chapter 7) applies, the Court shall sentence the offender, instead of whipping, to imprisonment for a term which may extend to 12 months, in addition to the punishment to which he has been sentenced under this section.”.

Consequential amendment of Schedule to Chapter 4

5. The Schedule to the Interpretation and General Clauses Act is amended in the second paragraph relating to the Penal Code, by inserting “377,” immediately before “380A” in the first line.

Made this 29th. day of Syawal, 1438 Hijriah corresponding to the 24th. day of July, 2017 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PBERTUAN
BRUNEI DARUSSALAM