

**EMERGENCY (SYARIAH COURTS) ORDER, 1998**

**ARRANGEMENT OF SECTIONS**

**Section**

**PART I**

**PRELIMINARY**

1. Citation, commencement and long title.
2. Interpretation.
3. Text in Malay language shall prevail.
4. Saving of prerogative.
5. Exclusive jurisdiction of Syariah Courts.

**PART II**

**SYARIAH COURTS**

**CONSTITUTION AND JURISDICTION**

6. Syariah Courts.
7. Court's seal, language and record.
8. Appointment of Chief Syar'ie Judge.
9. Appointment of Syariah Appeal Court Judges.
10. Appointment of Syariah High Court Judges.
11. Appointment of Syariah Subordinate Courts Judges.
12. Tenure of office, termination and removal of service of Syariah Courts Judge.
13. Appointment of Chief Registrar, Deputy Registrar, Registrar and Assistant Registrars.
14. Appointments to be notified.
15. Jurisdiction of Syariah High Court.

16. Jurisdiction of Syariah Subordinate Courts.
17. Appeal to Syariah High Court.
18. Appeals and applications for leave to appeal.
19. Supervisory and revisionary jurisdiction of Syariah High Court.
20. Jurisdiction of Syariah Appeal Court.
21. Supervisory and revisionary jurisdiction of Syariah Appeal Court.
22. Membership of Syariah Appeal Court.
23. Majority decision.
24. Continuation of proceedings in Syariah Appeal Court notwithstanding the absence of Syar'ie Judge.

**PART III**

**PROSECUTION, INVESTIGATION AND REPRESENTATION**

25. Appointment of Syar'ie Prosecutors.
26. Appointment of Religious Enforcement Officers.
27. Syar'ie Lawyer.

**PART IV**

**GENERAL**

28. Rules of Court.
29. Determination and confirmation of new moon.
30. Transitional.
31. Savings.
32. Temporary application on pending cases.
33. Repeals.

No. S 37

**CONSTITUTION OF BRUNEI DARUSSALAM**  
**(Order under section 83(3))**

**EMERGENCY (SYARIAH COURTS) ORDER, 1998**

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

**PART I**

**PRELIMINARY**

1. (1) This Order may be cited as the Emergency (Syariah Courts) Order, 1998 and shall commence on such date or dates as His Majesty the Sultan and Yang Di-Pertuan may specify, by notification in the *Gazette*.

Citation,  
commencement  
and long title.

(2) Different dates may be appointed under subsection (1) for different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is "An Order to make specific provisions in respect of the establishment of Syariah Courts, appointments, powers of Syar'ie Judge and jurisdiction of Syariah Courts and other matters connected with the proceedings of Syariah Courts, and for the determination and confirmation of the new moon".

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

Interpretation.

"Chief Syar'ie Judge" means the Chief Syar'ie Judge appointed under section 8(1) ;

"Chief Syar'ie Prosecutor" means an officer appointed under section 25(1) ;

"Judge" means a Syar'ie Judge appointed under sections 9(1), 10(1) and 11 and includes the Chief Syar'ie Judge ;

"Kadi" means a kadi appointed under section 45(1) of the Religious Council and Kadis Courts Act and includes the Chief Kadi and the Deputy Chief Kadi ;

Chapter 77.

"Majlis" means Majlis Ugama Islam constituted under section 5 of the Religious Council and Kadis Courts Act ;

Chapter 77.

- Chapter 77. "President of the Majlis" means a person appointed under section 13 of the Religious Council and Kadis Courts Act ;
- "Religious Enforcement Officer" means an officer appointed under section 26 and includes the Chief Religious Enforcement Officer ;
- "Syariah Appeal Court Judge" means a Judge of Syariah Appeal Court appointed under section 9(1) ;
- "Syariah Courts" means the Syariah Subordinate Courts, the Syariah High Court or the Syariah Appeal Court, as the case may be, established under section 6(1) ;
- "Syariah High Court Judge" means a Judge of Syariah High Court appointed under section 10(1) ;
- "Syariah Subordinate Court Judge" means a Judge of Syariah Subordinate Court appointed under section 11 ;
- "Syar'ie Judge" means a Syar'ie Judge appointed under sections 9(1), 10(1) and 11 and includes the Chief Syar'ie Judge ;
- "Syar'ie Lawyer" means a person admitted as Syar'ie Lawyer under section 27(1).
- Chapter 4. (2) All words and expressions used in this Order and not defined therein but defined in the Interpretation and General Clauses Act, shall have the same meanings respectively assigned thereto in that Act to the extent that they do not conflict with *Hukum Syara'*.
- (3) If any conflict or doubt arises when interpreting any word or expression relating to *Hukum Syara'*, it shall be the discretion of the Syariah Courts to decide the meaning of such word or expression.
- Text in Malay language shall prevail. 3. If any conflict or doubt arises as to the meaning or requirement of a provision under this Order, the text in the Malay language shall prevail.
- Saving of prerogative. 4. Nothing contained herein shall derogate from or affect the prerogative rights and powers of His Majesty the Sultan and Yang Di-Pertuan as the Head of the Religion of Brunei Darussalam.
- Exclusive jurisdiction of Syariah Courts. 5. For the avoidance of doubt, it is hereby declared that no court other than a court established under Part II shall hear or determine any claims or proceedings under the jurisdiction of the Syariah Courts.

**PART II**

**SYARIAH COURTS**

**CONSTITUTION AND JURISDICTION**

6. (1) There are hereby established Syariah Courts consisting of Syariah Subordinate Courts, the Syariah High Court and the Syariah Appeal Court, with such jurisdiction, powers, duties and authority as are conferred and imposed by this Order and by any other written law. Syariah Courts.

(2) The Syariah Subordinate Courts, Syariah High Court and Syariah Appeal Court shall have jurisdiction throughout Brunei Darussalam.

(3) Notwithstanding subsection (2), the Syariah Courts shall have criminal jurisdiction in respect of offences committed outside Brunei Darussalam by a citizen or permanent resident of Brunei Darussalam.

7. (1) Every Syariah Court shall have and use where necessary a seal of such form and format as may be approved by the Majlis. Court's seal,  
language and  
record.

(2) (a) The Malay language shall be the language of the Syariah Courts but the Syariah Courts may in the interest of justice allow the use of any other language.

(b) All documents or records of proceedings may be written in jawi or rumi script.

(c) Every Syariah Court shall keep and maintain full and proper records relating to all actions or proceedings before it, full and proper accounts relating to all financial matters of the Syariah Court and shall account for all monies received in a manner provided by the Financial Regulations or in such other manner as His Majesty the Sultan and Yang Di-Pertuan may direct.

(d) Any process issued by the Syariah Courts shall bear its seal and shall be signed by an authorised officer.

(e) All summonses, warrants, orders, regulations, notices and processes whatsoever, whether civil or criminal, issued or made by any Syariah Court having power in relation to matters within its jurisdiction shall have full power and effect and may be served or executed anywhere within Brunei Darussalam.

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

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Appointment of  
Chief Syar'ie  
Judge.

8. (1) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint a Chief Syar'ie Judge.

(2) A person is qualified to be appointed under subsection (1) if –

(a) he is a citizen of Brunei Darussalam ; and

(b) he –

(i) has, for a cumulative period of not less than seven years prior to his appointment, served as either a Judge of a Syariah Court, or Kadi, or in both capacities ; or

(ii) is a person learned in *Hukum Syara'*.

Appointment of  
Syariah Appeal  
Court Judges.

9. (1) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint and re-appoint, for a period of not exceeding three years, not more than five Muslims to form a standing panel of Judges, and the Chief Syar'ie Judge shall elect two of them to constitute a quorum of Judges in the Syariah Appeal Court for each proceedings.

(2) A person is qualified to be appointed under subsection (1) if –

(a) he is a citizen of Brunei Darussalam ; and

(b) he –

(i) has, for a cumulative period of not less than seven years prior to his appointment, served as either a Judge of a Syariah Court, or Kadi, or in both capacities ; or

(ii) is a person learned in *Hukum Syara'*.

Appointment of  
Syariah High  
Court Judges.

10. (1) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint Judges of the Syariah High Court.

(2) A person is qualified to be appointed under subsection (1) if –

(a) he is a citizen of Brunei Darussalam ; and

(b) he –

(i) has, for a cumulative period of not less than seven years prior to his appointment, served as either a

Judge of a Syariah Subordinate Court, or Kadi, or Registrar, or Syar'ie Prosecutor, or in more than one of such capacities ; or

(ii) is a person learned in *Hukum Syara'*.

11. His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint Judges of the Syariah Subordinate Courts.

Appointment of  
Syariah  
Subordinate  
Courts Judges.

12. (1) The Chief Syar'ie Judge and Syar'ie Judges appointed under sections 8(1) or 10(1) respectively shall hold office until the age of sixty-five years or until such later time as may be approved by His Majesty the Sultan and Yang Di-Pertuan.

Tenure of office,  
termination and  
removal of  
service of  
Syariah Courts  
Judge.

(2) The Chief Syar'ie Judge and any Syar'ie Judge appointed under sections 8(1), 9(1) and 10(1), as the case may be, may at any time resign from his office by sending to His Majesty the Sultan and Yang Di-Pertuan a letter of resignation under his hand, through the Majlis or the Chief Syar'ie Judge, as the case may be, but he may not be removed from office or his service terminated except in accordance with the provisions of subsections (3), (4) and (5).

(3) Where the Majlis or the Chief Syar'ie Judge refers a representation to His Majesty the Sultan and Yang Di-Pertuan that the Chief Syar'ie Judge, or any Syar'ie Judge appointed under sections 8(1), 9(1) and 10(1), as the case may be, should be removed or his service terminated on grounds of –

(a) misconduct ; or

(b) disability, due to mental or bodily weakness or other causes, to properly perform his duty,

His Majesty the Sultan and Yang Di-Pertuan shall appoint a tribunal in accordance with subsection (4) and refer the representation to it, and may on the recommendation of the tribunal terminate the service of the Chief Syar'ie Judge or the Syar'ie Judge, as the case may be.

(4) The tribunal shall consist of not less than three Muslims who are or have been a Syar'ie Judge or Supreme Court Judge or who have been appointed as a member of the Judicial Committee of the Majlis under section 44 of the Religious Council and Kadis Courts Act, and the tribunal shall be presided by the member who is the most senior :

Chapter 77.

Provided that His Majesty the Sultan and Yang Di-Pertuan may appoint any other person as he thinks fit or who is learned in *Hukum Syara'* to be a member of the tribunal.

(5) Pending any reference and report under subsection (3), His Majesty the Sultan and Yang Di-Pertuan may, on the recommendation of the Majlis or the Chief Syar'ie Judge, suspend the Chief Syar'ie Judge or the Syar'ie Judge, as the case may be, from performing his duties.

(6) Notwithstanding the provisions of subsection (1), the validity of anything done by a Syar'ie Judge shall not be questioned on ground that the Syar'ie Judge has reached the retiring age limit.

Appointment of  
Chief Registrar,  
Deputy  
Registrar,  
Registrar and  
Assistant  
Registrars.

13. His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the Chief Syar'ie Judge, appoint a Chief Registrar of the Syariah Appeal Court, a Deputy Registrar and Registrars of the Syariah High Court and Assistant Registrars of the Syariah Subordinate Courts.

Appointments  
to be notified.

14. Notice of all appointments under this Part shall be published in the *Gazette*.

Jurisdiction of  
Syariah High  
Court.

15. The Syariah High Court shall –

- (a) in its criminal jurisdiction, try any offence punishable under any written law which provides for syariah criminal offences, under any written law relating to Islamic family law or under any other written law which confers on the Syariah High Court jurisdiction to try any offence, and may impose any punishment provided therein ; and
- (b) in its civil jurisdiction, hear and determine all actions and proceedings which relate to –
  - (i) betrothal, marriage (including *ta'at balik*), divorce, *khulu'*, *fasakh*, *cerai ta'liq*, determination of turns, *li'an*, *illa* or any matrimonial matter ;
  - (ii) any disposition of or claim to any property arising out of any matter set out in subparagraph (i) of this paragraph ;
  - (iii) maintenance of dependants, legitimacy (*ithbatun nasab*) or guardianship or custody (*hadanah*) of infants ;
  - (iv) division of or claims to *harta sepencarian* ;
  - (v) wills or gifts during *maradal-maut* of a deceased Muslim ;
  - (vi) gift *inter vivos* (*hibah*), or settlement (*sulh*) made without adequate monetary consideration or value by a Muslim ;

- (vii) *waqaf* or *nazar* ;
- (viii) division of and inheritance of property, testate or intestate ;
- (ix) determination of persons entitled to part of the estate of a deceased Muslim or the part thereof which such persons are respectively entitled to ; or
- (x) other matters in respect of which jurisdiction is conferred by any written law.

16. (1) The Syariah Subordinate Courts shall –

Jurisdiction of  
Syariah  
Subordinate  
Courts.

- (a) in their criminal jurisdiction, try any offence punishable under any written law which provides for syariah criminal offences, prescribing offences where the maximum punishment provided for does not exceed ten thousand dollars or imprisonment for a period not exceeding seven years or both and may impose any punishment provided therefor ;
- (b) in their civil jurisdiction, hear and determine all actions and proceedings which the Syariah High Court is empowered to hear and determine, where the amount or value of the subject-matter in dispute does not exceed five hundred thousand dollars or is not capable of estimation in terms of money.

(2) His Majesty the Sultan and Yang Di-Pertuan may, on the recommendation of the Chief Syar'ie Judge from time to time, by notification in the *Gazette* increase the civil jurisdiction of the Syariah Subordinate Courts.

17. (1) An appeal shall lie to the Syariah High Court from any decision of the Syariah Subordinate Courts.

Appeal to  
Syariah High  
Court.

(2) In its criminal jurisdiction, an appeal may be made by a Syar'ie Prosecutor or by a person convicted and sentenced to imprisonment or fined and such appeal may be made against an acquittal, or against a conviction or sentence or both, or any part of it.

(3) In its civil jurisdiction, an appeal may be made –

- (a) by any person aggrieved by or dissatisfied with any decision ;
- (b) in all cases involving any decision as to personal status, by any person aggrieved by or dissatisfied with the decision ; and

- (c) in all cases relating to maintenance of dependants, by any person aggrieved by or dissatisfied with the decision :

Provided that no such appeal shall lie against a decision made by consent.

(4) In any case not provided for in subsections (2) or (3), an appeal may be made if the Syariah High Court grants leave to appeal.

(5) On any appeal, the Syariah High Court may –

- (a) in a criminal matter, dismiss the appeal, convict and sentence the appellant, order the trial Court to call for the defence or order further investigation, enhance or vary the sentence, order a re-trial, or vary or reverse any order of the trial Court ;
- (b) in a civil matter, confirm, reverse or vary the decision of the trial Court, exercise any such power as the trial Court could have exercised, make such order as the trial Court ought to have made, or order a re-trial.

**Appeals and applications for leave to appeal.**

18. (1) An appeal or application for leave to appeal under section 17(4) shall be made to the Syariah High Court in accordance with the prescribed procedure, but shall, in any case, be within fourteen days from the date of the judgment, order or decision in respect of which the appeal or application is made.

(2) The Syariah High Court, on hearing any application for leave to appeal may, on special ground, extend the period of appeal, notwithstanding that the time has expired.

**Supervisory and revisionary jurisdiction of Syariah High Court.**

19. (1) The Syariah High Court shall have supervisory and revisionary jurisdiction over all Syariah Subordinate Courts and may, if it appears necessary, in the interest of justice, either on its own motion or on application by any party or interested person, at any stage in any matter or proceedings, whether civil or criminal, in any Syariah Subordinate Court, call for and examine any record relating to it and may make any order necessary in the interests of justice.

(2) Whenever the Syariah High Court calls for the record under subsection (1), all proceedings in the Syariah Subordinate Courts relating to the matter or proceedings shall be suspended pending further order from the Syariah High Court.

20. (1) The Syariah Appeal Court shall have jurisdiction to hear and determine any appeal against any decision made by the Syariah High Court in the exercise of its original jurisdiction.

**Jurisdiction of  
Syariah Appeal  
Court.**

(2) Whenever an appeal against a decision of the Syariah Subordinate Court has been determined by the Syariah High Court, the Syariah Appeal Court may, on application by any party, grant leave for any question of law in the public interest which has arisen in the course of the appeal, and where the decision of the Syariah High Court has affected the determination of the appeal, to be referred to the Syariah Appeal Court for its decision.

(3) Whenever leave is granted by the Syariah Appeal Court, it shall hear and determine the questions allowed to be referred for its decision and make any order which the Syariah High Court might have made, and as it thinks just for the disposal of the appeal.

21. (1) The Syariah Appeal Court shall have supervisory and revisionary jurisdiction over the Syariah High Court and may, if it appears necessary in the interests of justice, either on its own motion or on application by any party or interested person, at any stage in any matter or proceedings, whether civil or criminal, in the Syariah High Court, call for and examine any record relating to it and may give any direction necessary in the interests of justice.

**Supervisory and  
revisionary  
jurisdiction of  
Syariah Appeal  
Court.**

(2) Whenever the Syariah Appeal Court calls for the record under subsection (1), all proceedings in the Syariah High Court relating to the matter or proceedings shall be suspended pending further order from the Syariah Appeal Court.

22. (1) An appeal in the Syariah Appeal Court shall be heard and determined by a Chairman and any two of the Syariah Appeal Court Judges as specified by the Chief Syar'ie Judge.

**Membership of  
Syariah Appeal  
Court.**

(2) The Chief Syar'ie Judge may appoint any Syariah High Court Judge to become a member of the Syariah Appeal Court in any specific proceeding if the Chief Syar'ie Judge thinks necessary to do so.

(3) The two persons appointed to be members of the Syariah Appeal Court under subsections (1) and (2) shall not include the Syar'ie Judge who tried or made decision on the case appealed against.

(4) The Chief Syar'ie Judge shall be the Chairman in every proceeding in the Syariah Appeal Court, and in case he is unable to perform his duty, the Chief Syar'ie Judge shall appoint the most senior amongst the Syariah Appeal Court Judges to become the Chairman.

**Majority decision.** 23. An appeal shall be determined in accordance with the decision of the majority of the members of the Syariah Appeal Court.

**Continuation of proceedings in Syariah Appeal Court notwithstanding the absence of Syar'ie Judge.** 24. (1) If, in the course of any proceeding in an appeal or at any time before the pronouncement of judgment, any Syariah Appeal Court Judge who hears the case is unable, due to sickness or any other reason, to attend and conclude the proceedings or otherwise carry out his function as a Judge of the Court, then, if both parties agree, the hearing shall be proceeded with and judgment or reserved judgment, as the case may be, shall be given by the remaining two Syar'ie Judges available, and for the purpose of the appeal, the Court shall be deemed to have been duly constituted.

(2) In any such case as mentioned in subsection (1), if there is no unanimous decision, the appeal shall be re-heard.

(3) If under subsection (1), both parties do not give their consent, or more than one Syar'ie Judge is unable, due to sickness or any other reason, to attend and carry out their function as Judges of the Court, the appeal shall be re-heard.

### PART III

#### PROSECUTION, INVESTIGATION AND REPRESENTATION

**Appointment of Syar'ie Prosecutors.** 25. (1) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint a person who is qualified to become a Syariah High Court Judge, to be the Chief Syar'ie Prosecutor.

(2) The Chief Syar'ie Prosecutor shall have powers exercisable at his discretion to commence and carry out any proceedings for an offence before a Syariah Court.

(3) In exercise of this power the Chief Syar'ie Prosecutor shall not be subject to the direction or control of any other person or authority.

(4) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Chief Syar'ie Prosecutor, appoint fit and suitable persons from members of the public service to be Syar'ie Prosecutors who shall act under the supervision and direction of the Chief Syar'ie Prosecutor and may exercise all or any right and power vested in or exercisable by the Chief Syar'ie Prosecutor himself.

26. His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint a fit and suitable person or persons from members of the public service to be –

Appointment of Religious Enforcement Officers.

- (a) Chief Religious Enforcement Officer ; and
- (b) Religious Enforcement Officers ;

to conduct an investigation into the offences under this Order or under any other written law which provides for offences against *Hukum Syara'*.

27. (1) The Chief Syar'ie Judge may, on payment of the prescribed fee, admit a person who possesses sufficient knowledge about *Hukum Syara'* and suitable to become a Syar'ie Lawyer to represent the parties in any proceedings before any Syariah Court.

Syar'ie Lawyer.

(2) No person other than a Syar'ie Lawyer shall have the right to appear as a *bil-khusumah* representative in any Syariah Court on behalf of any party to any proceedings before it.

#### PART IV

#### GENERAL

28. The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court –

Rules of Court.

- (a) for regulating the practice and procedure of the Syariah Courts ;
- (b) to provide for the procedure, qualifications and fees for admission of Syar'ie Lawyers ; and
- (c) to regulate, control and supervise the conduct of Syar'ie Lawyers.

29. (1) It shall be the duty of the Chief Syar'ie Judge at or about the beginning or end of each lunar month to make the enquiry in determining the dates of new moons on which *rukayah* may occur and also to make the enquiry on any specified day the new moon may be sighted and then to determine and confirm the result of *rukayah* under his hand.

Determination and confirmation of new moon.

(2) After the enquiries mentioned in subsection (1), the Chief Syar'ie Judge shall forthwith inform the President of the Majlis who shall submit the determination and confirmation of *rukayah* to His Majesty the Sultan and Yang Di-Pertuan.

(3) The determination and confirmation which has been made by the Chief Syar'ie Judge in respect of *rukayah* shall be final.

**Transitional.** 30. (1) On the commencement of this Order, the Court of the Chief Kadi and the Court of a Kadi constituted under subsections (1) and (2) of section 46 of the Religious Council and Kadis Courts Act shall be known as Syariah High Court and Syariah Subordinate Courts, as the case may be, established under section 6(1) of this Order and all proceedings which have been instituted in such Courts shall be proceeded with and conducted under this Order.

**Chapter 77**

(2) Persons who immediately before the commencement of this Order had been holding the office of Chief Kadi and Deputy Chief Kadi appointed under section 45(1) of the Religious Council and Kadis Courts Act shall at the commencement of this Order, hold the office of Syariah High Court Judge as if he has been appointed under section 10(1) of this Order.

(3) Any person who immediately before the commencement of this Order had been holding the office of Kadi appointed under section 45(1) of the Religious Council and Kadis Courts Act shall at the commencement of this Order, hold the office of Syariah Subordinate Court Judge as if he has been appointed under section 11 of this Order.

**Savings.** 31. Before the Syariah Appeal Court is established under section 6(1) and the Chief Syar'ie Judge and the panel of Judges of the Syariah Appeal Court are appointed under sections 8(1) or 9(1) respectively –

- Chapter 77.**
- (a) the Judicial Committee of the Majlis constituted under section 44(1) of the Religious Council and Kadis Courts Act shall be retained with all powers of the Syariah Appeal Court established under section 6(1) of this Order ;
  - (b) a person who holds the office of Chairman of the Judicial Committee of the Majlis appointed under section 44(1) of the Religious Council and Kadis Courts Act before the commencement of this Order, shall at the commencement of this Order be deemed to be the Chief Syar'ie Judge as if he has been appointed under section 8(1) of this Order ;
  - (c) any member of the Judicial Committee of the Majlis appointed under section 44(2) of the Religious Council and Kadis Courts Act before the commencement of this Order, shall at the commencement of this Order be deemed to be the panel of Judges of the Syariah Appeal Court as if they have been appointed under section 9(1) of this Order,

until their appointments are terminated or the Syariah Appeal Court is established, whichever is the earlier.

32. For the disposal of cases and matters pending before any Court constituted under the Religious Council and Kadis Courts Act at the commencement of this Order, the provisions of the procedure under this Order shall be applicable to the extent that it does not cause injustice.

Temporary  
application on  
pending cases.

Chapter 77.

33. Sections 45, 46, 47, 48, 49, 50, 50A, 51, 52, 53, 54, 55, 68, 75, 94 and 198 of the Religious Council and Kadis Courts Act are hereby repealed.

Repeals.

Chapter 77.

Made this 29th day of Jamadilakhir, 1419 Hijriah corresponding to 20th day of October, 1998 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM