

No. S 62

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

ISLAMIC FAMILY LAW (AMENDMENT) ORDER, 2010

ARRANGEMENT OF SECTIONS

Section

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CONSTITUTION OF BRUNEI DARUSSALAM
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ISLAMIC FAMILY LAW (AMENDMENT) ORDER, 2010

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 Islamic Family Law (Amendment) Order, 2010.

Insertion of new Part VA into S 12/00.

2. The Emergency (Islamic Family Law) Order, 1999, in this Order referred to as the principal Order, is amended by inserting the following new Part immediately after Part V —

"PART VA

PROTECTION OF FAMILY

Interpretation of this Part.

60A. In this Part, unless the context otherwise requires —

"child" means an unmarried person who has not attained the age of 18 years *qamariah*;

"*dharar Syar'ie*" means the commission of any of the following acts —

(a) wilfully or knowingly causing, or attempting to cause, a family member to be in fear of hurt;

(b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;

(c) compelling the family member by force or threat to engage in any conduct or act from which he has a right to abstain;

(d) wrongfully confining or restraining a family member against his will;

(e) continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or

(f) causing destruction, damage or loss of property of a family member, or causing financial loss to a family member;

"enforcement officer" means a police officer or any person appointed in writing by the Director of Community Development or the Director of Syariah Affairs;

"expedited order" means an order made under section 60C(1);

"family member", in relation to a person, means —

(a) a spouse or former spouse of that person;

(b) a child of that person and their descendants, including an adopted child and a step-child;

(c) the father or mother of that person;

(d) a father-in-law or mother-in-law of that person;

(e) a grandfather or grandmother of that person or any of their ascendants, whether on the side of the father or mother of that person; or

(f) any relative or other person who in the opinion of the Court should, in the circumstances, be regarded as a member of the family of that person;

"incapacitated adult" means an adult who is wholly or partially incapacitated or infirm, by reason of physical or mental disability, ill-health or old age;

"place of protection" means any place or institution —

(a) declared as such under section 60I(1);

(b) maintained or managed by any agency or voluntary organisation approved by the Minister of Culture, Youth and Sports for the purposes of this Part; or

(c) suitable whereby the owner, occupier or manager is willing to receive the victim;

"protected person" means a person who is protected under a protection order or an expedited order;

"protection order" means an order made under section 60B(1);

"relative" means a person who is related through *nasab* or marriage, or through fostering or adoption, including *de facto* adoption;

"shared residence" means the premises at which the parties are, or have been, living together as members of the same household;

"victim" means a victim of *dharar Syar'ie*.

Protection order.

60B. (1) The Court may, upon being satisfied that *dharar Syar'ie* has been committed or is likely to be committed by any person against a family member and that it is necessary for the protection of that family member, make a protection order restraining that person from committing *dharar Syar'ie* against that family member.

(2) An application under this Part may be made by —

(a) the family member concerned;

(b) an enforcement officer; or

(c) in the case of a child or an incapacitated adult, a guardian, a relative or the person responsible for the care of that child or incapacitated adult, or by any person appointed by the Director of Community Development.

(3) A protection order may be made subject to such exceptions or conditions as may be specified in the order and for such period as may be specified therein.

(4) The Court, in making a protection order, may include a provision that the person against whom the order is made shall not incite or assist any other person to commit *dharar Syar'ie* against the protected person.

(5) A protection order may, where the Court is satisfied that it is necessary for the protection of the protected person, provide for such orders as it thinks fit, having regard to all the circumstances of the case, including any one or more of the following orders —

(a) granting the right of exclusive occupation to the protected person of the shared residence or any specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;

(b) prohibiting or restraining the person against whom the order is made from entering the protected person's place of residence, shared residence or alternative residence, or from entering the protected person's place of employment, school or other institution or from making personal contact with the protected person other than in the presence of an enforcement officer or such other person as may be specified or described in the order;

(c) requiring the person against whom the order is made to permit the protected person to enter the shared residence, or to enter the residence of the person against whom the order is made, accompanied by an enforcement officer for the purpose of collecting the protected person's personal belongings;

(d) specifying the circumstances in which the person against whom the order is made may be permitted to communicate with the protected person;

(e) requiring the person against whom the order is made to permit the protected person to have the continued use of a vehicle which has previously been ordinarily used by the protected person;

(f) requiring the person against whom the order is made, the protected person, both of them or their children to attend counselling provided by such person as the Director of Community Development may approve or as the Court may direct;

(g) requiring the person against whom the order is made to pay compensation under section 60E to the protected person in respect of any injuries, destruction, damage or loss as it considers just and reasonable;

(h) placing the protected person in any suitable place of protection for the *maslahah* of the protected person,

and giving such directions as are necessary for or incidental to the proper carrying into effect of any such orders.

(6) Except so far as the exercise by the person against whom a protection order is made of a right to the shared residence is suspended, restricted, prohibited or restrained by virtue of an order made under subsection (5), such order shall not affect any title or interest that the person against whom the order is made or any other person might have in that residence.

(7) Except so far as the exercise by the person against whom a protection order is made under subsection (5), such order shall not affect a right to maintenance or any other right to which the protected person is entitled under this Order.

Expedited order.

60C. (1) Where, upon an application for a protection order under section 60B, the Court is satisfied that *dharar Syar'ie* has been or is being committed that requires an expedited protection, the Court may make an expedited order notwithstanding —

(a) that the notice of application has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or

(b) that the notice of application requires the respondent to appear at some time or place.

(2) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent or, if the Court has specified a later date as the date on which the order is to take effect, that later date.

(3) An expedited order shall cease to have effect on whichever of the following dates occurs first —

(a) the date of the expiration of a period of 28 days beginning with the date of the making of the order; or

(b) the date of commencement of the hearing of the application for an order under this section.

(4) Notwithstanding subsection (3), the Court may extend the duration of the expedited order.

Provisions with respect to protection orders and expedited orders.

60D. (1) Where the Court is satisfied that the person against whom a protection order or expedited order is made is likely to commit *dharar Syar'ie* to the protected person, the Court may attach a power of arrest to such protection order or expedited order.

(2) If a power of arrest is attached by virtue of subsection (1), a police officer may arrest without warrant the person against whom the order is made when he has reasonable cause to believe that he is in breach of a protection order, an expedited order or an order made under section 60B(5)(a) or (b), by reason of that person's use of *dharar Syar'ie* or of his entry into any place prohibited under that order.

(3) Where a power of arrest is attached to a protection order or an expedited order and the person against whom such order is made is arrested under subsection (2) —

(a) he shall be brought to Court within 48 hours of his arrest; and

(b) he shall not be released within that period except on the direction of the Court, but nothing in this subsection shall authorise his continued detention under this paragraph after the expiry of that period.

(4) Where a person against whom a protection order or an expedited order has been made contravenes such order, the Court may, in addition to any penalty provided under subsection (5), make any one or more of the orders under section 60B(5) to commence from such date as is specified in such latter order or orders.

(5) Any person who wilfully contravenes a protection order, an expedited order or an order made under section 60B(5) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent offence, to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(6) The Court shall, on application made by the applicant or the person against whom a protection order or an expedited order is made, have power by order to vary, suspend or revoke any such order.

(7) The expiry by virtue of section 60C(3) of an expedited order shall not prejudice the making of a further expedited order under that section.

Compensation.

60E. (1) Where a victim of *dharar Syar'ie* suffers personal injuries, destruction or damage to property, loss of property or financial loss as a result of the *dharar Syar'ie*, the Court may award such compensation in respect of such injuries, destruction, damage or loss as it considers just and reasonable.

(2) The Court may take into account —

(a) the pain and suffering of the victim, and the nature and extent of the physical or mental injury suffered;

(b) the cost of medical treatment for any such injury;

(c) any loss of earnings arising from any such injury;

(d) the amount or value of the property destroyed, damaged or lost;

(e) necessary and reasonable expenses incurred by or on behalf of the victim when he is compelled to separate or be separated from the defendant due to the *dharar Syar'ie*, such as —

(i) lodging expenses to be contributed to a place of protection;

(ii) transport and moving expenses;

(iii) the expenses required in setting up a separate household which, subject to subsection (3), may include amounts representing such housing loan payments or rental payments or part thereof, in respect of the shared residence or alternative residence, for such period as the Court considers appropriate.

(3) In considering any expenses that may be taken into account under subsection (2)(e)(iii), the Court may also take into account —

(a) the financial position of the victim as well as that of the defendant;

(b) maintenance to be paid or any other obligatory expenses to be made or contributed by the defendant that arise from the relationship that exists between the parties;

(c) the possibility of other proceedings being taken between the parties and the matter being more appropriately dealt with under other provisions of this Order or of any other written law relating to the financial provision of spouses or former spouses and other dependants.

Power of arrest.

60F. (1) Where a police officer believes on reasonable grounds that *dharar Syar'ie* has been committed or is likely to be committed by any person against a family member and that it is necessary for the protection of the family member for the person to be detained until a protection order or expedited order is obtained, the police officer may without warrant arrest such person and every person so arrested shall be taken to a police station.

(2) Such person shall thereafter be dealt with under section 33 of the Criminal Procedure Code (Chapter 7).

Information on offences involving *dharar Syar'ie*.

60G. (1) Any person who has reason to believe that an offence involving *dharar Syar'ie* is being or has been committed may give information in respect thereof to an enforcement officer.

(2) No person who gives any such information in good faith shall incur any liability for defamation or otherwise in respect of the giving of such information.

Duties of enforcement officer.

60H. (1) The duties of an enforcement officer include —

(a) assisting a victim to file a complaint regarding the *dharar Syar'ie*;

(b) providing or arranging transportation for the victim to an alternative residence or to a place of protection if such transportation is required;

(c) providing or arranging transportation for the victim to the nearest hospital or medical facility for treatment of injuries if such treatment is needed;

(d) explaining to the victim his rights to protection against *dharar Syar'ie*;

(e) accompanying the victim to his residence or previous residence to collect his personal belongings;

(f) such other duties as are necessary or expedient for giving effect to and carrying out the provisions of this Part.

(2) An enforcement officer who is also a police officer has the following additional duties —

(a) exercising the powers of arrest under this Part or under any other written law;

(b) removing or supervising the removal of a person excluded from a shared residence where the Court has issued an order under section 60B(5)(a).

Place of protection.

60I. (1) The Minister of Culture, Youth and Sports may, by notification in the *Gazette*, declare any place or institution to be a place of protection for the purposes of this Part.

(2) The Permanent Secretary of the Ministry of Culture, Youth and Sports may order the transfer of a protected person from one place of protection to another as and when the need arises.

Power of Director to place victim in place of protection.

60J. The Director of Community Development may, upon being satisfied that *dharar Syar'ie* has been or is being committed against a family member and that it is necessary for the protection of that family member, place that family member in a place of protection until application for a protection order or an expedited order can be made.

Duties of Director.

60K. The Director of Community Development shall be responsible for the reception, care, welfare and safety of any victim sent to a place of protection under this Part for the period for which the victim is in that place of protection."

Amendment of section 121.

3. Section 121 of the principal Order is amended —

(a) by inserting "(1)" immediately before "Where" in the first line;

(b) by adding the following new subsection —

"(2) The Court shall, in making an order under subsection (1), take into account any order made under sections 60B or 60C."

Amendment of section 143.

4. Section 143 of the principal Order is amended —

(a) by repealing subsection (1) and by substituting the following new subsection therefor —

"(1) The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules to regulate the practice and procedure in all proceedings under this Order as he thinks expedient and rules to prescribe and regulate the fees and costs payable in all such proceedings; subject thereto, all proceedings under this Order shall be regulated by the practice and procedure of the Court as prescribed by Perintah Acara Mal Mahkamah-Mahkamah Syariah, 2005 (S 26/05) to the extent that such practice and procedure are not inconsistent with this Order.";

(b) by repealing subsection (2) and by substituting the following new subsection therefor —

"(2) In relation to matters of practice and procedure in proceedings not expressly provided for in this Order or in any rules made under this Order or under Perintah Acara Mal Mahkamah-Mahkamah Syariah, 2005 (S 26/05), the Court may adopt such practice and procedures as it thinks proper for the avoidance of injustice and disposal of the matters in issue between the parties."

Amendment of section 144.

5. Section 144(1) of the principal Order is amended by deleting "be" where it appears for the second time in the second line and by substituting "the" therefor.

Amendment of Third Schedule to S 26/05.

6. The Third Schedule to the Perintah Acara Mal Mahkamah-Mahkamah Syariah, 2005 is amended by inserting the following new item immediately after item 1 –

"1A. Semua permohonan berhubung dengan perlindungan keluarga di bawah Bahagian VA Perintah Darurat (Undang-Undang Keluarga Islam), 1999."

Made this 13th. day of Rejab, 1431 Hijriah corresponding to the 26th. day of June, 2010 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.