

No. S 26

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

PENAL CODE (AMENDMENT) ORDER, 2012

ARRANGEMENT OF SECTIONS

Section

1. Citation.
 2. Insertion of new sections 293A, 293B, 293C and 293D into Chapter 22.
 3. Substitution of section 294A.
 4. Insertion of new section 294B.
 5. Insertion of new sections 354A and 354B.
 6. Insertion of new sections 377B, 377C, 377D, 377E, 377F, 377G, 377H, 377I, 377J and 377K.
 7. Consequential amendment of First Schedule to Chapter 7.
 8. 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, 2012

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, 2012.

Insertion of new sections 293A, 293B, 293C and 293D into Chapter 22.

2. The Penal Code is amended by inserting the following four new sections immediately after section 293 —

“Possession of indecent photograph of child.

293A. (1) Whoever has in his possession an indecent or obscene photograph or pseudo-photograph of a child shall be guilty of an offence and shall be punished with imprisonment which may extend to 5 years, or with fine or with both.

(2) Where a person is charged with an offence under subsection (1), it shall be a defence for him to prove that —

(a) he had legitimate reason for having the photograph or pseudo-photograph in his possession;

(b) he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent or obscene; or

(c) the photograph or pseudo-photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

Taking, distribution, showing, advertisement and access of indecent photograph of child.

293B. (1) Whoever —

(a) takes or permits to be taken or abets the taking of any indecent or obscene photograph or pseudo-photograph of a child;

(b) distributes or shows such indecent or obscene photographs or pseudo-photographs;

(c) has in his possession such indecent or obscene photographs with a view to their being distributed or shown by himself to others;

(d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so; or

(e) accesses any indecent or obscene photograph or pseudo-photograph of a child,

shall be guilty of an offence and shall be punished with imprisonment which may extend to 10 years, or with fine, or with both.

(2) In this section, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) For the purposes of subsection (1)*(e)*, a person accesses an indecent or obscene photograph or pseudo-photograph of a child if he knowingly causes the indecent or obscene photograph or pseudo-photograph to be viewed by, or transmitted to, himself.

(4) Where a person is charged with an offence under subsection (1)*(b)* or *(c)*, it shall be a defence for him to prove that —

(a) he had a legitimate reason for distributing or showing the photographs or pseudo-photographs or having them in his possession; or

(b) he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

Interpretation of sections 293A and 293B.

293C. (1) In sections 293A and 293B —

(a) references to an indecent or obscene photograph include an indecent or obscene film, a copy of an indecent or obscene photograph or film, and an indecent or obscene photograph comprised in a film;

(b) photographs and pseudo-photographs (including those comprised in a film) shall, if they show children and are indecent or obscene, be treated for all purposes of this Code as indecent or obscene photographs of children;

(c) references to a photograph include —

- (i) the negative as well as the positive version; and
- (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;

(d) for the purposes of sections 293A and 293B, a photograph or pseudo-photograph shall be deemed to be obscene if its effect is, if taken as a whole, such as to tend to deprave and corrupt persons who, having regard to all relevant circumstances are likely (or would have been likely but for the lawful seizure of the article) to read, see or hear the matter contained or embodied in it;

(e) “film” includes any form of video-recording;

(f) “child” means a person under the age of 18 years;

(g) “pseudo-photograph” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph;

(h) if the impression conveyed by a photograph or pseudo-photograph is that the person shown is a child, the photograph or pseudo-photograph shall be treated for all purposes as showing a child and so shall a photograph or pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult;

(i) references to an indecent or obscene photograph or pseudo-photograph include —

- (i) a copy of an indecent or obscene photograph or pseudo-photograph; and
- (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph or pseudo-photograph.

(2) In the proceedings under sections 293A and 293B, a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of 18 years.

Defence.

293D. It is not a defence to a charge under sections 293A and 293B in respect of a photograph or pseudo-photograph that the accused believed that a person shown in the photograph or pseudo-photograph was or was depicted as being 18 years of age or more unless the accused took all reasonable steps to ascertain the age of that person and took all reasonable steps to ensure that, where the person was 18 years of age or more, the photograph or pseudo-photograph did not depict that person as being under the age of 18 years.”.

Substitution of section 294A.

3. Section 294A of the Penal Code is repealed and the following new section substituted therefor —

“Prostitution.

294A. (1) Whoever —

(a) engages in, offers or agrees to engage in sexual services with another person for consideration; or

(b) loiters or solicits in any place for the purpose of prostitution or for any other immoral purpose,

shall be guilty of an offence and shall be punished with a fine of not less than \$500 and not more than \$5,000 and imprisonment which may extend to one year, and in the case of a second or subsequent conviction, with a fine of not less than \$1,000 and not more than \$10,000 and imprisonment which may extend to 3 years.”.

Insertion of new section 294B.

4. The Penal Code is amended by inserting the following new section immediately after section 294A —

“Paying for sexual services.

294B. (1) Whoever —

(a) intentionally obtains for himself the sexual services of another person (A); and

(b) before obtaining those services, he has made or promised payment for those services to A or a third person, or knows that another person has made or promised such a payment,

shall be guilty of an offence and shall be punished with a fine of not less than \$1,000 and not more than \$5,000 and imprisonment which may extend to one year, and in the case of a second or subsequent conviction, with a fine of not less than \$2,000 and not more than \$10,000 and imprisonment which may extend to 3 years.

(2) In this section, "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount."

Insertion of new sections 354A and 354B.

5. The Penal Code is amended by inserting the following two new sections immediately after section 354 —

"Aggravated outraging modesty.

354A. (1) Whoever, in order to commit or to facilitate the commission of an offence against any person under section 354 —

(a) voluntarily causes or attempts to cause to that person death, hurt, or wrongful restraint; or

(b) puts that person in fear of death, hurt or wrongful restraint,

shall be punished with imprisonment for a term of not less than 2 years and not more than 7 years and with whipping.

(2) Whoever commits an offence under subsection (1) against any person under 14 years of age, shall be punished with imprisonment for a term of not less than 3 years and not more than 7 years and with whipping.

Outraging modesty by person in position of trust or authority.

354B. Whoever being in a position of trust or authority towards a person under 18 years of age (A) or is a person with whom A is in a relationship of dependency assaults or uses criminal force to A, intending thereby to outrage, or knowing it likely that he will thereby outrage the modesty of A, shall be punished with imprisonment for a term not less than 3 years and not more than 10 years and with whipping."

Insertion of new sections 377B, 377C, 377D, 377E, 377F, 377G, 377H, 377I, 377J and 377K.

6. The Penal Code is amended by inserting the following ten new sections immediately after section 377A —

“Engaging in sexual activity in presence of person under 16.

377B. (1) Whoever (A) —

(a) intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, he engages it —

(i) in the presence of a person under 16 years of age (B) or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware or intending that B should be aware, that he is engaging in it,

shall be guilty of an offence.

(2) A person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 5 years, or with fine, or with both.

Causing person under 16 to watch sexual act.

377C. (1) Whoever (A) —

(a) for the purpose of obtaining sexual gratification intentionally causes a person under 16 years of age (B) to watch a third person engaging in an activity or to look at an image of any person engaging in an activity; and

(b) the activity is sexual,

shall be guilty of an offence.

(2) A person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 5 years, or with fine or with both.

Commercial sex with person under 18.

377D. (1) Whoever obtains for consideration the sexual services of a person, who is under 18 years of age, shall be punished with imprisonment for a term which shall not be less than 2 years and not more than 7 years and with whipping.

(2) Any person who communicates with another person for the purpose of obtaining for consideration, the sexual services of a person who is under 18 years of age, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

Commercial sex with person under 18 outside Brunei Darussalam.

377E. (1) Whoever, being a citizen of Brunei Darussalam or a permanent resident, does, outside Brunei Darussalam, any act that would, if done in Brunei Darussalam, constitute an offence under section 377D, shall be guilty of an offence.

(2) A person who is guilty of an offence under this section shall be liable to the same punishment to which he would have been liable had he been convicted of an offence under section 377D.

Tour outside Brunei Darussalam for commercial sex with person under 18.

377F. (1) Whoever —

(a) makes or organises any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of an offence under section 377D, whether or not such an offence is actually committed by that other person;

(b) transports any other person to a place outside Brunei Darussalam with the intention of facilitating the commission by that other person of an offence under section 377D, whether or not such an offence is actually committed by that other person; or

(c) prints, publishes or distributes any information that is intended to promote conduct that would constitute an offence under section 377D, or to assist any other person to engage in such conduct,

shall be guilty of an offence.

(2) For the purposes of subsection (1)(c), the publication of information means publication of information by any means, whether by written, electronic, or other form of communication.

(3) A person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

Sexual grooming of person under 16.

377G. (1) Whoever is of or above the age of 21 years (A) if having met or communicated with another person (B) on 2 or more previous occasions —

(a) A intentionally meets B or travels with the intention of meeting B; and

(b) at the time of the acts referred to in paragraph (a) —

(i) A intends to do anything to or in respect of B, during or after the meeting, which if done will involve the commission by A of a relevant offence;

(ii) B is under 16 years of age; and

(iii) A does not reasonably believe that B is of or above the age of 16 years,

shall be guilty of an offence.

(2) In subsection (1), “relevant offence” means an offence under —

(a) section 354, 354A, 354B, 375, 377, 377B, 377C or 377D;

(b) section 2 of the Unlawful Carnal Knowledge Act (Chapter 29); or

(c) section 3(1) of the Women and Girls Protection Act (Chapter 120).

(3) For the purposes of this section, it is immaterial whether the 2 or more previous occasions of A having met or communicated with B referred to in subsection (1) took place in or outside Brunei Darussalam.

(4) A person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 3 years, or with fine or with both.

Voyeurism.

377H. (1) A person commits an offence if —

(a) for the purpose of obtaining sexual gratification, he observes another person doing a private act; and

(b) he knows that the other person does not consent to being observed for his sexual gratification.

(2) A person commits an offence if —

(a) he operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person (B) doing a private act; and

(b) he knows that B does not consent to his operating equipment with that intention.

(3) A person commits an offence if —

(a) he records another person (B) doing a private act;

(b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act; and

(c) he knows that B does not consent to his recording the act with that intention.

(4) A person commits an offence if he installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under subsection (1).

(5) A person guilty of an offence under this section is liable to imprisonment of a term extending to 3 years, or with fine, or with both.

Printing, publication, etc. of voyeuristic recordings.

377I. Any person, knowing that a recording was obtained by the commission of an offence under section 377H, prints, copies, publishes, distributes, circulates, sells, advertises or makes available the recording, or has the recording in his possession for the purpose of printing, copying, publishing, distributing, circulating, selling or advertising it or making it available is guilty of an offence and shall be punished with imprisonment for a term which may extend to 5 years, or with fine, or with both.

Voyeurism: interpretation.

377J. (1) For the purposes of section 377H, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and —

(a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;

(b) the person is using a lavatory; or

(c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(2) In section 377H, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

Mistake as to age.

377K. (1) Subject to subsections (2) and (3) and notwithstanding anything in section 79, a reasonable mistake as to the age of a person shall not be a defence to any charge of an offence under section 377B, 377C, 377D or 377E.

(2) In the case of a person who at the time of the alleged offence was under 21 years of age, the presence of a reasonable mistaken belief that the person, who is of the opposite sex, was of or above the age of 18 years, shall be a valid defence to a charge of an offence under section 377D or 377E.

(3) For the purposes of subsection (2), the defence under that subsection shall no longer be available if at the time of the offence, the person charged with that offence has previously been charged in court for an offence under section 377D, 377E or section 3(1) of the Women and Girls Protection Act (Chapter 120).

(4) It is not a defence to a charge under section 377B, 377C, 377D, 377E, 377G or section 2 of the Unlawful Carnal Knowledge Act (Chapter 29) that the accused had reasonable cause to believe that the person was of or above the age of 16 years or 18 years, as the case may be, unless the accused took all reasonable steps to ascertain the age of that person."

Consequential amendment of First Schedule to Chapter 7.

7. The First Schedule to the Criminal Procedure Code is amended —

(a) by inserting the following two new items immediately after the item relating to section 293 —

“293A	Possession of indecent photograph of child	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 5 years and with fine	Court of a Magistrate
293B	Taking, distribution, showing, advertisement, access of indecent photograph of child	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 10 years and with fine	High Court”;

(b) by deleting the items relating to section 294A and by substituting the following four new items therefor —

“294A	Prostitution	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for one year and a fine not less than \$500 and not more than \$5,000	Court of a Magistrate
294A	In the case of second or subsequent conviction	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 3 years and fine not less than \$1,000 and not more than \$10,000	Court of a Magistrate
294B	Paying for sexual service	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for one year and fine not less than \$1,000 and not more than \$5,000	Court of a Magistrate

294B	In the case of second or subsequent conviction	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 3 years and fine not less than \$2,000 and not more than \$10,000	Court of a Magistrate";
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(c) by inserting the following two new items immediately after the item relating to section 354 —

"354A	Aggravated outraging modesty	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 7 years and with whipping	Court of a Magistrate";
354B	Outraging modesty by person in position of trust or authority	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 10 years and with whipping	High Court";

(d) by inserting the following eight new items immediately after the item relating to section 377A —

"377B	Engaging in sexual activity in the presence of person under 16	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 5 years and with fine	Court of a Magistrate
377C	Causing a person under 16 to watch sexual act	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 5 years and with fine	Court of a Magistrate
377D	Commercial sex with person under 18	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 7 years and with fine	Court of a Magistrate
377E	Commercial sex with person under 18 outside Brunei Darussalam	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 7 years and with fine	Court of a Magistrate

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

377F	Tour outside Brunei Darussalam for commercial sex with person under 18	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 10 years and with fine	High Court
377G	Sexual grooming of person under 16	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 3 years and with fine	Court of a Magistrate
377H	Voyeurism	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 3 years and with fine	Court of a Magistrate
377I	Printing, publication of voyeuristic recordings	May arrest without warrant	Warrant	Non-bailable	Not compoundable	Imprisonment for 5 years and with fine	Court of a Magistrate";

Consequential amendment of Schedule to Chapter 4.

8. The Schedule to the Interpretation and General Clauses Act is amended by inserting "354A, 354B," immediately after "354," in the third line.

Made this 1st. day of Jamadilawal, 1433 Hijriah corresponding to the 24th. day of March, 2012 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM