

No. S 27

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

PERSONS WITH DISABILITIES ORDER, 2021

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

PERSONS WITH DISABILITIES ORDER, 2021

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 —

PART I
PRELIMINARY

Citation, long title and commencement

1. (1) This Order may be cited as the Persons with Disabilities Order, 2021 and shall commence on a date to be appointed by the Minister, with the consent of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The long title of this Order is “An Order to provide for the registration of, and offences against, persons with disabilities and for other matters connected therewith or incidental thereto”.

Interpretation

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

“authorised officer” means any person authorised by the Minister under section 5;

“Deputy Registrar” means the Deputy Registrar of Persons with Disabilities appointed under section 4;

“medical practitioner” means a medical practitioner registered under the provisions of the Medical Practitioners and Dentists Act (Chapter 112) and includes a Government Medical Officer or Government Medical Practitioner;

“Minister” means the Minister of Culture, Youth and Sports;

“person with disabilities” includes a person who has long-term behavioral, communication, developmental, physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder his full and effective participation in society;

“register” means the register for persons with disabilities kept and maintained under section 6;

“Registrar” means the Registrar of Persons with Disabilities appointed under section 3 and includes any Deputy Registrar.

PART 2 ADMINISTRATION

Registrar of Persons with Disabilities

3. The Director of Community Development shall be the Registrar of Persons with Disabilities, who shall be responsible for the maintenance and custody of the register and the performance of such other duties in connection therewith as may be necessary.

Appointment of Deputy Registrar

4. (1) The Minister may, with the consent of His Majesty the Sultan and Yang Di-Pertuan, appoint a Deputy Registrar of Persons with Disabilities to assist the Registrar in carrying out his functions and duties under this Order.

(2) The Deputy Registrar shall be under the general direction and supervision of the Registrar.

(3) Subject to the direction, control and supervision of the Registrar, the Deputy Registrar may exercise all the powers and functions conferred on the Registrar by or under this Order.

(4) The appointment of the Registrar and Deputy Registrar under this section shall be published in the *Gazette*.

Appointment of authorised officers

5. The Minister may appoint such number of authorised officers to carry into effect any specific provision of this Order or of any regulations made thereunder.

PART 3 REGISTRATION

Register of persons with disabilities

6. (1) The Registrar shall keep and maintain a register of persons with disabilities, which shall be in such form as the Minister may determine and shall contain the names and addresses, and such other particulars, if any, as the Minister may determine, of all persons with disabilities who are registered therein.

(2) Without prejudice to the provisions of subsection (1), the register shall contain details of every case or suspected case of abuse or neglect suffered by a person with disabilities registered therein.

Access to register

7. (1) The details entered in the register shall be furnished to any court, when so requested by the court, and to any authorised person as the Minister may determine, when any of these persons require such details for the purpose of any proceedings under this Order, or for the purpose of taking action in respect of, or providing assistance to person with disabilities.

(2) The details contained in the register may be furnished to —

(a) persons engaged in *bona fide* research, authorised by the Registrar for that purpose; and

(b) persons or classes of persons authorised by the Registrar on the grounds that their access to the register will promote the welfare and protection of any person with disabilities.

(3) The details furnished under this section shall not include any information which discloses or is likely to lead to the disclosure of the identity of any person who has made a notification under section 23.

Persons eligible for registration

8. (1) Subject to this Order, a person shall be entitled to be registered under this Order, if he has undergone a medical examination and has been certified by a medical practitioner to be a person with disabilities in accordance with the guidelines issued under subsection (2), as may be amended from time to time.

(2) For the purposes of subsection (1), the Director-General of Medical Services shall issue guidelines relating to the criteria on the determination of persons with disabilities.

(3) The Director-General of Medical Services may, from time to time, amend the guidelines as he may think fit.

Application for registration

9. (1) An application for registration under this Order shall be made to the Registrar in such form and manner and accompanied by such documents and particulars as the Registrar may determine.

(2) An application under subsection (1) may be made by —

- (a) a person eligible for registration under this Order;
- (b) his family member, guardian or any person having charge of him;
- (c) penghulu or village head; or
- (d) the medical practitioner who certified him as a person with disabilities under section 8.

(3) In subsection 2(c), "penghulu or village head" means the penghulu of a mukim or the head of a village respectively, approved and remunerated by the Government.

Power of Registrar to require additional information

10. (1) The Registrar may, in addition to such documents referred to in section 9(1), require such additional information to be supplied by the applicant within the period to be specified by the Registrar.

(2) Where a person making an application fails to supply the additional information within the specified period or such other period as may be extended by the Registrar, the application is regarded to have been withdrawn without prejudice to a fresh application being made.

Registration and refusal to register

11. (1) After considering an application under section 9 and any additional information supplied pursuant to section 10, if any, the Registrar shall —

(a) register a person to be a person with disabilities if he is satisfied that the person who is subject of the application is a person with disabilities; or

(b) refuse to register a person as a person with disabilities if he is satisfied that the person is not a person with disabilities.

(2) A person aggrieved by the decision of the Registrar under subsection (1)(b) may appeal to the Minister whose decision shall be final.

Issuance of card

12. (1) Where a person has had his name entered in the register pursuant to section 11(1)(a), the Registrar shall issue to him a card in such form as the Registrar may determine.

(2) The card issued under subsection (1) shall, unless proved to have been removed from the register under section 14, be conclusive evidence for all purposes that the person has been duly registered as a person with disabilities under this Order.

(3) The card shall be valid for a period of 3 years or such longer period as the Registrar may allow in any particular case.

(4) The card shall be surrendered to the Registrar when the name of the person with disabilities has been removed from the register under section 14.

Renewal of card

13. (1) Every person with disabilities issued with a card under section 12 who desires to renew his card shall make an application for the renewal three months prior to the end of the period referred to in section 12(3).

(2) A registered person with disabilities who makes an application pursuant to subsection (1) shall have his name retained in the register.

(3) For the purposes of this section, sections 8, 9, 10 and 11 apply.

Removal of name from register

14. The Registrar shall remove from the register the name and other particulars of a registered person with disabilities who —

(a) has died;

(b) has ceased to be a person with disabilities;

(c) has failed to make an application for renewal of his card under section 13(1).

Cessation to be person with disabilities

15. A person to whom a card has been issued under this Order shall cease to be a person with disabilities where a medical practitioner is satisfied upon medical examination performed on such person and certifies that such person is no longer a person with disabilities within the meaning of this Order.

Restoration

16. Where a name removed from the register under section 14(c) has been restored, such restoration shall, if the Registrar so directs, have effect from the date of the removal of the name.

Amendments to register

17. (1) Any person who has been registered as a person with disabilities may personally, or any person on his behalf may, make an application to amend the particulars in the register relating to such person with disabilities.

(2) An application under subsection (1) shall be made in such form as the Registrar may determine which is made available to any applicant.

(3) Where the Registrar is satisfied that the application is proper, the Registrar shall proceed to make the necessary amendment in the register.

(4) The Registrar may, in relation to any application made under subsection (1), require any additional information to be supplied by the applicant within the period to be specified by the Registrar or such other extended period.

(5) Where the applicant fails to supply the additional information required under subsection (4), the application is regarded to have been withdrawn without prejudice to a fresh application being made.

PART 4

OFFENCES AGAINST PERSONS WITH DISABILITIES

Interpretation of this Part

18. For the purposes of this Part —

“abandon” means to desert or knowingly forsake a person with disabilities under circumstances in which a reasonable person would continue to provide care and custody;

“abuse of a person with disabilities” means —

(a) the intentional infliction of physical or emotional injury upon a person with disabilities;

(b) an intentional act that could reasonably be expected to result in physical or emotional injury to a person with disabilities;

(c) an intentional act that causes the life of a person with disabilities to be endangered, health to be injured or pre-existing physical and mental condition to deteriorate; or

(d) the active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or emotional injury to a person with disabilities;

“grievous bodily harm” has the same meaning as in the Penal Code (Chapter 22):

“person having charge of a person with disabilities” means a person who has a duty to provide for a person with disabilities’ health and personal care at the person with disabilities’ place of residence, including but not limited to food, nutrition, shelter, hygiene, prescribed medication and medical care and treatment, and includes any of the following —

(a) a parent, spouse, adult child or other relative by blood or marriage who resides with or resides in the same building with or regularly visits the person with disabilities, and who knows or reasonably should know of such person’s physical or mental impairment, and knows or reasonably should know that such person is unable to adequately provide for his own health and personal care;

(b) a person who is employed by the person with disabilities or by another to reside with or regularly visits the person with disabilities and provide for such person’s health and personal care;

(c) a person who has agreed for consideration to reside with or regularly visit the person with disabilities and provide for such person’s health and personal care;

(d) a person who has been appointed by a court of competent jurisdiction to provide for the person with disabilities’ health and personal care;

(e) a person who has been entrusted with or has assumed responsibility for the care of a person with disabilities;

“physical or emotional injury” includes injury from sexual abuse.

Abuse of persons with disabilities

19. A person who knowingly or wilfully abuses a person with disabilities without causing grievous bodily harm to the person with disabilities is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 10 years with or without whipping not exceeding 10 strokes or both.

Aggravated abuse of persons with disabilities

20. (1) A person who commits aggravated abuse on a person with disabilities is guilty of an offence and liable on conviction to a fine not exceeding \$30,000, imprisonment for a term not exceeding 15 years with or without whipping not exceeding 12 strokes or both.

(2) For the purposes of subsection (1), “aggravated abuse on a person with disabilities” occurs when a person does any of the following —

(a) wilfully tortures, maliciously punishes or wilfully and unlawfully confines a person with disabilities; or

(b) knowingly or wilfully abuses a person with disabilities and in so doing causes grievous bodily harm to the person with disabilities.

(3) In subsection (2)(a), “confine” includes caging or restraining a person with disabilities.

Neglect of persons with disabilities

21. (1) A person having charge of a person with disabilities who wilfully or by culpable negligence neglects a person with disabilities is guilty of an offence and liable on conviction to a fine not exceeding \$30,000, imprisonment for a term not exceeding 15 years with or without whipping not exceeding 12 strokes or both.

(2) For the purposes of subsection (1), “neglect of a person with disabilities” occurs when a person does any of the following —

(a) fails to perform acts that he knows or reasonably should know are necessary to preserve the life or health of the person with disabilities and that failure causes the person’s life to be endangered, health to be injured or pre-existing physical or mental condition to deteriorate;

(b) fails to provide the care, supervision and services necessary to maintain the physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine and medical services that a reasonable person would consider essential for the wellbeing of the person with disabilities;

(c) abandons the person with disabilities;

(d) fails to make a reasonable effort to protect a person with disabilities from abuse, neglect or exploitation by another person.

(3) The neglect of a person with disabilities may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or emotional injury, or a substantial risk of death, to a person with disabilities.

(4) Nothing in this section imposes criminal liabilities on any person who made a good faith effort to provide for the health and personal care of a person with disabilities, but through no fault of his own was unable to provide such care.

Offences by body corporate etc.

22. (1) Where an offence against this Order or any regulations made thereunder committed by a body corporate is proved —

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any act or default on his part,

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

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

(3) Where an offence against this Order or any regulations made thereunder committed by a partnership is proved —

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any act or default on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where an offence against this Order committed by a limited liabilities partnership is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, a partner or manager of the limited liabilities partnership, the partner or manager, as the case may be, as well as the partnership is guilty of that offence and liable to be proceeded against and punished accordingly.

(5) Where an offence against this Order committed by an unincorporated association (other than a partnership) is proved —

- (a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or
- (b) to be attributable to any act or default on the part of such an officer or a member,

the officer or member as well as the unincorporated association is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In this section —

(a) “officer” —

- (i) in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or
- (ii) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of the president, secretary or member of the committee and includes any person purporting to act in any such capacity;

(b) “partner” includes a person purporting to act as a partner.

(7) Regulations may provide for the application of any provision of this section, with such modifications as the Registrar considers appropriate, to any body corporate, limited liabilities partnership or unincorporated association formed or recognised under the written law of a country or territory outside Brunei Darussalam.

PART 5

PROCEDURE ON REPORT OF ABUSE AND NEGLECT

Notification relating to persons with disabilities in need of care or protection

23. (1) Any person who knows or has reason to suspect that a person with disabilities is in need of care or protection may notify the Registrar, any authorised officer or a police officer of the facts and circumstances on which his knowledge or suspicion is based.

(2) Any person who is in a position of trust or authority towards a person with disabilities who knows or has reason to suspect that a person with disabilities is in need of care or protection shall immediately notify the Registrar, any authorised officer or a police officer of the facts and circumstances on which his knowledge or suspicion is based.

(3) Any person who fails to comply with subsection (2) is guilty of an offence and shall on conviction be released on a bond on conditions to be determined by the court.

(4) Any person who fails to comply with any of the conditions of the bond provided for in subsection (3) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 2 years or both.

Duty of member of family to inform

24. (1) Any member of the family of a person with disabilities who believes on reasonable grounds that a person with disabilities is physically or emotionally injured as a result of being ill-treated, neglected or abused, shall immediately notify the Registrar, any authorised officer or a police officer.

(2) Any member of the family who fails to comply with subsection (1) is guilty of an offence and shall on conviction be released on a bond on conditions to be determined by the court.

(3) Any member of the family who fails to comply with any of the conditions of the bond provided for in subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 2 years or both.

Powers of Registrar, authorised officers and police officers

25. (1) Where the Registrar, an authorised officer or a police officer receives any notification under section 23, the Registrar, authorised officer or police officer may visit any person with disabilities in the care of a person having charge of such person for the purpose of ascertaining his safety, health and wellbeing.

(2) For the purposes of subsection (1), any person having charge of a person with disabilities shall be legally bound to produce the person with disabilities for the inspection of the Registrar, an authorised officer or a police officer and in the event of his refusing to do so is guilty of an offence and liable on conviction to a fine not exceeding \$4,000.

(3) The Registrar, an authorised officer or a police officer shall report to a Magistrate every case of abuse or neglect as described in sections 19, 20 and 21 which may come to his knowledge.

Powers of court

26. (1) If it appears to the Magistrate, on the report of the Registrar, an authorised officer or a police officer that a person with disabilities is abused or neglected, the court may send a summons for the attendance of the person having charge of the person with disabilities, and after due inquiry make an order for the person with disabilities to be sent to a medical practitioner for examination and medical treatment.

(2) Without prejudice to subsection (1) and in addition to any other powers exercisable under any other written law, the court may make an order —

(a) for the person having charge of the person with disabilities to enter into a bond to exercise proper care and charge for a period specified by the court to be reasonable under all the circumstances;

(b) to place the person with disabilities in the care and charge of a fit person for a period specified by the court to be reasonable under all the circumstances;

(c) without making any other order or in addition to an order under paragraph (a) or (b), to place the person with disabilities under the supervision of a Community Development Officer, or some other person appointed for the purpose by the court, for a period specified by the court to be reasonable under all the circumstances.

(3) A court may, in making any order under subsection (2), impose such conditions or give such directions as it may consider appropriate for the purpose of ensuring the safety, health and wellbeing of the person with disabilities, and any person who fails to comply with or contravenes any of these conditions or directions is guilty of an offence and liable on conviction to a fine not exceeding \$4,000.

(4) No order under subsection (2) shall be made without giving the person having charge of the person with disabilities an opportunity to attend and be heard.

(5) Notwithstanding subsection (4), an order under subsection (2) may be made if the person having charge of the person with disabilities, having been required to attend, has failed to do so or cannot be found within a reasonable time.

(6) In this section, "fit person" means a person whom the court, having regard to the character of the person, thinks competent to provide care, protection and supervision of a person with disabilities.

Protection of informants

27. (1) No person who makes any notification under section 23 to the Registrar, any authorised officer or police officer that a person with disabilities is neglected or ill-treated shall incur any liability for defamation or otherwise in respect of the making of such notification.

(2) The making of any notification that a person with disabilities is neglected or ill-treated shall not, in any proceedings before any court or in any other respect, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

(3) Any person appearing as a witness in any proceedings in any court or tribunal or before a person authorised by law to hear evidence —

(a) shall not be compelled to disclose the identity of, or any information likely to lead to the disclosure of the identity of, any person who has made a notification that a person with disabilities is in need of protection; and

(b) shall not be compelled to produce, and shall not produce, any report or document which identifies, or is likely to identify, any person who has made a notification that a person with disabilities is neglected or ill-treated.

(4) Subsection (3) does not apply where a notification that a person with disabilities is neglected or ill-treated is tendered in evidence, or evidence in respect of such notification is given, by person who made such notification.

(5) If in any proceedings before a court for an offence under this Order, the court, after full inquiry into the case, is satisfied that any person who has made a notification under subsection (1), wilfully made a statement which he knew or believed to be false or did not believe to be true, or if in any proceedings the court is of the opinion that justice cannot be fully done, between the parties thereto without the disclosure of the name of the person who has made the notification, the court may require full disclosure concerning the person who has made the notification.

PART 6 GENERAL

Power of Minister

28. The Minister may, with the consent of His Majesty the Sultan and Yang Di-Pertuan, invite such persons or body of persons as he thinks fit to advise and make recommendations to the Minister on any matter arising out of the administration, functions and enforcement of this Order.

Obligation of secrecy

29. (1) Except for any of the purposes of this Order and for the purposes of any civil or criminal proceedings under any written law, no person shall disclose any information which has been obtained by him in the course of his duties in pursuance of this Order.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 2 years or both.

Protection against suit and legal proceedings

30. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against —

(a) the Registrar or Deputy Registrar;

(b) any police officer; or

(c) any authorised officer lawfully acting on behalf of the Minister,

in respect of any act done or omission by him in good faith in the discharge of his duties under this Order.

Regulations

31. The Minister may, with the consent of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order or any regulations made thereunder, and for the due administration thereof.

Made this 12th. day of Zulkaedah, 1442 Hijriah corresponding to the 23rd. day of June, 2021 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

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