

No. S 17

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

ANTI-TRAFFICKING IN PERSONS ORDER, 2019

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

ANTI-TRAFFICKING IN PERSONS ORDER, 2019

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 and long title

1. (1) This Order may be cited as the Anti-Trafficking in Persons Order, 2019.

(2) The long title of this Order is “An Order to criminalise people trafficking and for matters connected herewith or incidental thereto”.

Interpretation

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

“abduct” means in relation to an individual, to compel by force, or induce by any deceitful means, the individual to go from any place;

“abuse of a position of vulnerability” means taking advantage of the vulnerable position a person is placed in as a result of —

(a) having entered the country illegally or without proper documentation;

(b) pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance;

(c) reduced capacity to form judgments by virtue of illness, infirmity or a physical or mental disability;

“abuse of power” means any situation where a public officer uses his position or takes advantage of his position in order to commit an offence;

“child” means a person who is under 18 years of age;

“coercion” means use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to —

(a) threats of harm or physical restraint of any person;

(b) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;

(c) abuse or any threat linked to the legal status of a person;

“conveyance” means any vehicle, vessel, ship, aircraft, or any other mode of transport whether by air, sea or land;

“debt bondage” means a status or condition arising from —

(a) the pledging by a debtor of the personal services of the debtor or an individual under the debtor’s control, as security for a debt; and

(b) the reasonable value of such services not being applied towards the discharge of the debt, or the length or nature of such services not being limited or defined, respectively;

“deception” means any deception by words or by conduct as to —

(a) the nature of work or services to be provided;

(b) the conditions of work;

(c) the extent to which the person will be free to leave his place of residence;

“exploitation” includes all forms of sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;

“forced labour or services” means all work or service that is extracted from any person under the threat of any penalty and for which the person concerned has not offered himself voluntarily;

“forged travel or identity document” means a travel or identity document that —

(a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country;

(b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(c) is being improperly used by a person other than the rightful holder;

“Fund” means the Anti-Trafficking in Persons Fund established by section 44(1);

“harbour” includes giving a person shelter, food, drink, money or clothes or means or the act of supplying conveyance, or assisting a person in any way to evade apprehension;

“master” includes any person in command or having charge of any means of transport;

“Minister” means the Minister at the Prime Minister’s Office;

“organised criminal group” means a structured group of 3 or more persons existing for a period of time and acting in concert with the aim of committing one or more serious offence or offences established in accordance with this Order in order to obtain, directly or indirectly, a financial or other material benefit;

“owner” includes any part-owner, charterer or consignee in possession thereof or any duly authorised agent of any such person;

“people trafficking” means the recruitment, transportation, transfer, harbouring or receipt of a person for the purposes of exploitation as set out in section 5;

“premises” includes —

(a) a vehicle, ship, aircraft or hovercraft;

(b) an installation which is maintained, or is intended to be established for underwater exploitation or exploration;

(c) tent or other movable structure;

“public servant” shall have the same meaning as a public servant under the Penal Code (Chapter 22);

“receiving country” means any country or territory into which a trafficked person is brought or is arranged to be brought as part of an act of people trafficking;

“serious offence” means an offence under any other written law in Brunei Darussalam for which the maximum penalty is death, imprisonment for a term of not less than 6 months, fine of not less than \$1,000 or more;

“servitude”, in relation to an individual, means any condition or obligation, not authorised by any written law, to work or to render services from which the individual cannot escape or which the individual is not free to change;

“sexual exploitation” means involving the individual in prostitution, sexual servitude or the provision of any other form of sexual service, including the commission of any obscene or indecent act by the individual or the use of the individual in any audio or visual recording or representation of such act;

“shelter” means any shelter declared as such under section 41;

“slavery” means the status or condition of a person over whom control is exercised to the extent that the person is treated like property;

“trafficked person” means any person who is the victim or object of an offence of people trafficking regardless of whether that person consented or not;

“transits” means arriving and passing through Brunei Darussalam by any means of transport for the purpose of continuing journey by any means of transport to a place outside Brunei Darussalam;

“travel document” includes an internationally recognised passport, a certificate of identity and any similar document, issued by an authority recognised by the receiving country.

Application

3. This Order applies, regardless of whether the conduct constituting the offence whether in whole or in part took place within or outside Brunei Darussalam, in the following circumstances —

(a) if Brunei Darussalam is the receiving country or the people trafficking occurs in Brunei Darussalam;

(b) if the receiving country is a foreign country but the people trafficking transits in Brunei Darussalam;

(c) if the person who engages in people trafficking is a citizen of Brunei Darussalam or permanent resident; or

(d) if the trafficked person is a citizen of Brunei Darussalam or a permanent resident.

Authorised officers

4. For the purposes of this Order, the following persons are authorised officers —

- (a) an officer of the Royal Brunei Police Force;
- (b) an Immigration Officer appointed under section 3 of the Immigration Act (Chapter 17);
- (c) an officer of customs appointed under section 3(1) of the Customs Order, 2006 (S 39/2006);
- (d) an authorised officer appointed under section 3(1) of the Employment Order, 2009 (S 37/2009); or
- (e) such person or class of persons appointed by the Minister and designated by notification published in the *Gazette*.

PART II

OFFENCES

People trafficking

5. (1) Any person who recruits, transports, transfers, harbours or receives any person or persons for the purpose of exploitation by one or more of the following means —

- (a) abduction;
- (b) abuse of power or of a position of vulnerability;
- (c) deception;
- (d) fraud;
- (e) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- (f) threat;
- (g) use of force or other forms of coercion,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and not less than \$10,000 in respect of each trafficked person, imprisonment for a term of not less than 4 years but not exceeding 30 years and whipping.

(2) Where the recruitment, transportation, transfer, harbouring or receipt under subsection (1) for the purpose of exploitation is in respect of a child, it shall be considered trafficking in persons even if it does not involve any of the means referred to subsection (1), the person is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and not less than \$10,000 in respect of each trafficked child, imprisonment for a term of not less than 4 years but not exceeding 30 years and whipping with not less than 5 strokes.

(3) Where any of the following aggravating circumstances are present during the commission of an offence under this section —

(a) the offence involves serious injury or death of the trafficked person or another person, including death as a result of suicide;

(b) the offence involves a trafficked person who is particularly vulnerable such as a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition;

(c) the offence exposed the trafficked person to a life-threatening illness, including Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS);

(d) the offence involves more than one trafficked person;

(e) the offence was committed as part of the activity of an organised criminal group;

(f) the offender has been previously convicted for an offence against this Order or any regulations made thereunder;

(g) the offence was committed by a public servant in the performance of his public duties;

(h) the offender used drugs, weapons or medication in the commission of the offence;

(i) the offender used a child as an accomplice or participant in the offence;

(j) the offender used or threatened to use any form of violence against the trafficked person or his family;

(k) the offender confiscated, destroyed or attempted to destroy the travel or identity documents of the trafficked person,

the offender is liable on conviction to a fine not exceeding \$1,000,000 and not less than \$10,000 for each trafficked person, imprisonment for a term of not less than 4 years but not exceeding 30 years and whipping with not less than 5 strokes.

Sexual trafficking

6. Any person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about —

(a) the fact that the engagement will involve the provision of sexual services;

(b) the nature of sexual services to be provided;

(c) the extent to which the person will be free to cease providing sexual services;

(d) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement, the *quantum*, or the existence, of the debt owed or claimed to be owed;

(e) the fact that the engagement will involve debt bondage or the confiscation of the person's travel documents,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term of not less than 4 years but not exceeding 30 years and whipping with not less than 5 strokes.

Exploitation of trafficked person

7. Any person who —

(a) engages in; or

(b) profits from,

the exploitation of a trafficked person is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term of not less than 4 years but not exceeding 30 years and whipping.

Trafficked person in transit

8. Any person who brings in transit a trafficked person through Brunei Darussalam by land, sea or air, or otherwise arranges or facilitates such act is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term of not less than 4 years but not exceeding 30 years and whipping.

Consent of trafficked person irrelevant

9. For the purposes of sections 5(1), 5(2), 5(3), 6, 7 and 8, it shall not be a defence if the trafficked person has consented to people trafficking.

Forgery of travel or identity document

10. Any person who —

- (a) makes;
- (b) obtains;
- (c) gives;
- (d) sells; or
- (e) possesses,

a forged travel or identity document for the purpose of facilitating the commission of an offence of people trafficking is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

Obligation of owner etc. of conveyance

11. (1) Any person being the owner, operator or master of any conveyance that engages in the conveyance of goods or people for commercial gain shall ensure that every person travelling on board is in possession of travel documents for the lawful entry of that person into the receiving country or transit country, and if not, shall refuse to convey such person.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

(3) In any proceedings for an offence under this section, it shall be a defence for such owner, operator or master to prove that —

(a) he has reasonable grounds to believe that the travel documents of the person referred to in subsection (1) are travel documents required for lawful entry of that person into the receiving country or transit country;

(b) the person referred to in subsection (1) possessed travel documents required for lawful entry to the receiving country or transit country when that person boarded, or last boarded, the conveyance to travel to the receiving country or transit country; or

(c) the entry of the person referred to in subsection (1) into the receiving or transit country occurred only because of illness or injury to that person, stress of weather or any other circumstances beyond the control of such owner, operator or master.

(4) Any person convicted of an offence under this section is liable to pay the costs of the trafficked person's removal from the receiving country or transit country.

(5) Where there is no prosecution or conviction under this section, the owner, operator or master of the conveyance used shall be jointly and severally liable for all expenses incurred by the Government in respect of the maintenance of the trafficked person and his removal from Brunei Darussalam and such expenses shall be recoverable as a debt due to the Government.

(6) In this section, "transit country" means the country from which, or into or through which, a trafficked person, is brought or travels through by air, land or sea or temporarily remains in as part of an act of people trafficking.

Recruitment of persons

12. Any person who knowingly recruits, or agrees to recruit another person to participate in the commission of an offence of people trafficking is guilty of an offence and liable on conviction to a fine not exceeding \$50,000 and imprisonment for a term not exceeding 10 years.

Attempts, abetment and conspiracy

13. (1) Whoever attempts to commit any offence punishable under this Order or any regulations made thereunder, or abets the commission of such offence, shall be punished with the punishment provided for such offence.

(2) Any person who conspires with another person to commit an offence against this Order or any regulations made thereunder is guilty of the offence of conspiracy to commit that offence and may be punished as if the offence to which the conspiracy relates had been committed.

Offences by bodies corporate

14. Where an offence against this Order or any regulations made thereunder has been committed by a company, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the company, firm, society or other body of persons or has purporting to act in such capacity is deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Facilitating the commission of people trafficking

15. Any person being the owner, occupier, lessee or person in charge of —

(a) any premises, room or place, knowingly permits a meeting to be held in that premises, room or place; or

(b) any equipment or facility that allows for recording, conferencing or meetings by means of technology, knowingly permits that equipment or facility to be used,

for the purpose of committing an offence against this Order is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

Providing financial services or facilities for people trafficking

16. (1) Any person who, directly or indirectly, provides or makes available financial services or facilities —

(a) intending that the services or facilities will be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of an offence of people trafficking, or for the purpose of benefiting any person who is committing or facilitating the commission of an offence of people trafficking; or

(b) knowingly or having reasonable grounds to believe that, in whole or in any part, the services or facilities will be used by or will benefit any person involved in an offence of people trafficking,

is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

(2) For the purposes of subsection (1), “financial services or facilities” include the services or facilities offered by lawyers or accountants acting as nominees or agents for their clients.

PART III

ENFORCEMENT

Powers of arrest and investigation

17. (1) An authorised officer may arrest without warrant any person who he reasonably believes has committed an offence against this Order or any regulations made thereunder.

(2) When any person is arrested by an authorised officer, such officer shall comply with the provisions of section 33 of the Criminal Procedure Code [Chapter 7].

(3) In any case relating to the commission of any offence against this Order or any regulations made thereunder, an authorised officer shall have the same powers of investigation of a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).

Powers of search

18. (1) An authorised officer may without a warrant —

(a) enter and search any premises; and

(b) stop and search any conveyance and person, whether in a public place or not,

if he has reason to believe that any evidence of the commission of an offence against this Order or any regulations made thereunder is likely to be found on such premises or person or in such conveyance and may seize any evidence so found.

(2) No woman shall be searched under this section except by a woman.

Access to computerised data

19. (1) Any authorised officer conducting a search under this Order shall be given access to computerised data whether stored in a computer or otherwise.

(2) For the purposes of subsection (1), the authorised officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required for his access to enable comprehension of the computerised data.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence, to a further fine not exceeding \$2,000 for each day during which the offence continues after conviction.

(4) In this section, “computer” means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Power to examine persons

20. (1) An authorised officer may, by notice in writing, require any person whom he believes to be acquainted with the facts and circumstances of the case to —

- (a) attend before him for examination;
- (b) produce before him any movable property, record, report or document; or
- (c) furnish him a statement in writing setting out such information as he may require.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence, to a further fine not exceeding \$2,000 for each day during which the offence continues after conviction.

Power to intercept telecommunications

21. (1) Notwithstanding the provisions of any other written law, if the Public Prosecutor considers that it is likely to contain any information which is relevant for the purpose of any investigation into an offence against this Order, he may, on the application of an authorised officer, authorise the officer —

- (a) to intercept, detain and open any postal article in the course of transmission by post;
- (b) to intercept any message transmitted or received by any telecommunication; or
- (c) to intercept, listen to and record any conversation by any telecommunication, and listen to the recording of the intercepted conversation.

(2) When any person is charged with an offence against this Order, any information obtained by an authorised officer under subsection (1), whether before or after such person is charged, shall be admissible at his trial in evidence.

(3) An authorisation by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorisation is given, the Public Prosecutor shall, as soon as practicable, reduce the authorisation into writing.

(4) A certificate by the Public Prosecutor stating that the action taken by the authorised officer under subsection (1) had been authorised by him under that subsection shall be conclusive evidence that it had been so authorised, and such certificate shall be admissible in evidence without proof of signature thereof.

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related thereto, of any thing done under subsection (1)(a), (b) or (c).

(6) In this section —

“postal article” has the same meaning as in section 2 of the Post Office Act (Chapter 52);

“Public Prosecutor” means the Public Prosecutor personally;

“telecommunication” has the same meaning as in section 2 of the Telecommunications Order, 2001 (S 38/2001).

Provision of telecommunication records

22. Any telecommunications authority established in Brunei Darussalam shall provide telecommunication records of a person under investigation for committing or attempting to commit an offence against this Order if required to do so by any authorised officer.

False statements, information etc.

23. Any person who, being required to make any statement or furnish any information or document under this Order —

(a) makes any statement or furnishes any information or document which is false or misleading in a material particular; and

(b) knows or ought reasonably to know that, or is reckless as to whether, it is false or misleading in a material particular,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Obstruction

24. Any person who assaults, obstructs, impedes, hinders, interferes or fails to comply with any lawful demand of an authorised officer in the performance of his functions under this Order is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 2 years or both.

Cost of holding conveyance, movable property etc. seized

25. Where any conveyance, movable property, record, report, document or human organ seized under this Order is held in the custody of the authorised officer pending completion of any proceedings in respect of an offence against this Order, the cost of holding such conveyance, movable property, record, report or document or human organ in custody shall, in the event of any person being found guilty of an offence, be a civil debt due to the Government by such person and shall be recoverable accordingly.

Release of conveyance, movable property etc. under bond

26. (1) Where any conveyance, movable property, record, report or document has been seized under this Order, an authorised officer may temporarily return such conveyance, movable property, record, report or document to the owner on security or bond being furnished to the satisfaction of such authorised officer and subject to such conditions as such authorised officer may impose, that the conveyance, movable property, record, report or document shall be surrendered to him on demand.

(2) Any person who fails to —

(a) surrender on demand to an authorised officer the conveyance, movable property, record, report or document temporarily returned to him under subsection (1); or

(b) comply with or contravenes any of the conditions imposed under subsection (1),

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both, and any security or bond being furnished shall be forfeited.

PART IV

PROCEDURE IN COURT

Offences to be non-bailable and seizable

27. Every offence against this Order or any regulations made thereunder is non-bailable and seizable for the purposes of the law relating to criminal procedure.

Consent of Public Prosecutor

28. No prosecution for any offence against this Order shall be instituted except with the consent in writing of the Public Prosecutor.

Evidence through video link

29. Evidence of a trafficked person shall be heard through a video link or behind a screen out of the view of the accused.

Evidence of trafficked child

30. The inquiry into and trial where the trafficked person is a child shall be conducted in camera.

Taking of evidence before trial

31. (1) Subject to subsection (2), where an application is made by the Public Prosecutor or the accused to a court for the evidence of a witness to be taken at any time before the date on which a criminal matter is fixed for trial, the court shall take the evidence of the witness appearing before it.

(2) An application under subsection (1) can only be made if it is shown with respect to the witness that it is not reasonably practicable to secure his attendance at the time fixed for the trial.

(3) The proceedings under this section must be conducted in the presence of the accused and co-accused, if any.

(4) The witness called by a party to give evidence in the proceedings under this section may be cross-examined by any other party to the proceedings, after which the witness may be re-examined by the party calling him to give evidence.

(5) Any statement of a witness taken in proceedings under this section may be given in evidence in any trial under this Order (whether or not by the same judge hearing the proceedings) although the person is not called as a witness.

Admissibility of statements

32. Notwithstanding any written law to the contrary, for the purposes of any proceedings under this Order —

(a) any statement made by any person to an authorised officer in the course of an investigation under this Order; and

(b) any document, or copy of any document, seized from any person by an authorised officer in exercise of his powers under this Order, shall be admissible in evidence in any proceedings under this Order before any court, where the person who made the statement or the document or the copy of the document —

- (i) is dead;
- (ii) cannot be traced or found;
- (iii) has become incapable of giving evidence; or
- (iv) whose attendance cannot be procured without an amount of delay or expense which appears to the court unreasonable.

Past sexual behaviour irrelevant

33. In a prosecution for trafficking in persons, evidence of a trafficked person's past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the trafficked person engaged in other sexual behaviour or to prove the trafficked person's sexual predisposition.

Movement or conveyance of trafficked person irrelevant

34. In a prosecution for any offence against this Order, the prosecution need not prove the movement or conveyance of the trafficked person but that the trafficked person was subject to exploitation.

Penalties to be cumulative

35. For the avoidance of any doubt, where more than one penalty is prescribed for an offence against this Order, the use of the word "and" shall signify that the penalties shall be inflicted cumulatively.

Application of fines

36. In respect of the fines imposed for the contravention of sections 5(1), 5(2), 5(3), 6, 7 and 8 or for an abetment of or conspiracy or attempt to commit such offences, the court may upon the application of the Public Prosecutor and, if it thinks fit, direct that the whole or any part of such fine be paid as compensation to the trafficked person.

Forfeiture of conveyance, movable property etc.

37. (1) All conveyance, movable property, record, report, document or any human organ seized in the exercise of any power conferred under this Order are liable to forfeiture.

(2) The court trying any person accused of an offence under this Order may at the conclusion of the trial, whether he is convicted or not, order that the conveyance, movable property, record, report, document or any human organ seized from that person be forfeited.

(3) Where there is no prosecution with regard to any offence under this Order —

(a) in the case of any human organ seized, it shall be deemed to be forfeited; and

(b) in the case of the conveyance, movable property, record, report or document seized, the authorised officer shall serve a notice in writing to the last known address of the person from whom the conveyance, movable property, record, report or document was seized.

(4) The notice in subsection (3)(b) shall specify that if there is no prosecution in respect of such conveyance, movable property, record, report or document and that such conveyance, movable property, record, report or document shall be forfeited at the expiration of one calendar month from the date of service of the notice unless a claim is made by the person from whom the conveyance, movable property, record, report or document was seized.

(5) Upon receipt of the notice issued under subsection (3)(b), any person asserting that he is the owner of any conveyance, movable property, record, report or document seized under this Order which is not liable to forfeiture may, personally or by his agent authorised in writing by him, give written notice to the authorised officer in whose possession the conveyance, movable property, record, report or document is held.

(6) Upon receipt of a notice under subsection (5), the authorised officer who made the seizure shall refer the matter to the court for its determination.

(7) The court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the conveyance, movable property, record, report or document and the person from whom it was seized to appear before the court, and upon their appearance or default to appear, due service of the summons being proved, the court shall proceed to the examination of the matter, and on proof that such conveyance, movable property, record, report or document was the subject matter of or was used in the commission of an offence under this Order, shall order the conveyance, movable property, record, report or document to be forfeited or may, in the absence of such proof, order the release of such conveyance, movable property, record, report or document to the person entitled to it.

(8) Any conveyance, movable property, record, report, document or any human organ forfeited or deemed to be forfeited shall be disposed of in any manner as the authorised officer deems fit.

Protection of identity of trafficked persons

38. (1) No person shall publish or cause to be published any material which —

(a) reveals the name or address; or

(b) includes any particulars which may lead to the identification,

of any trafficked person in respect of whom the offence is alleged to have been committed.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of \$10,000, imprisonment for a term not exceeding 3 years or both.

(3) For the purposes of subsection (1), “material” includes a photograph.

Agent provocateur

39. (1) Notwithstanding any written law to the contrary, in any proceedings against any person for an offence against this Order, no *agent provocateur*, whether he is an authorised officer or not, shall be presumed to be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person.

(2) Notwithstanding any written law to the contrary, a conviction for any offence against this Order solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

Protection of informants

40. (1) Except as hereinafter provided, no complaint as to an offence or any proceedings under this Order shall be admitted in evidence in any civil or criminal proceedings whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceedings whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passage to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery.

PART V

CARE AND PROTECTION OF TRAFFICKED PERSONS

Shelter

41. The Minister may, by notification published in the *Gazette*, declare any place to be a shelter for the purposes of this Order.

Removing or helping trafficked person to escape from shelter

42. (1) If a trafficked person is placed in a shelter, any person who —

(a) removes the trafficked person from such shelter without lawful authority;

(b) knowingly assists or induces, directly or indirectly, a trafficked person to escape from such shelter; or

(c) knowingly harbours, conceals, or prevents from returning to such shelter a trafficked person who has escaped, or knowingly assists in so doing,

is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 3 years or both.

(2) If any trafficked person who is placed in a shelter is removed without lawful authority, or escapes, from such shelter, he may be retaken by any authorised officer and immediately returned to such shelter.

Assistance to trafficked persons

43. (1) The Director may provide to a trafficked person such assistance as the Director considers appropriate in the particular circumstances of the case, including —

(a) shelter;

(b) temporary accommodation;

(c) counselling services;

(d) medical and psychological assistance; and

(e) employment, educational and training opportunities.

(2) The Minister may —

- (a) appoint any public officer; or
- (b) authorise in writing any other person,

to perform the Director's function under subsection (1), subject to such conditions and limitations as the Director may specify.

(3) For the avoidance of doubt, any appointment or authorisation under subsection (2) does not restrict or prevent the Director from exercising the functions under subsection (1).

(4) Any person appointed or authorised under subsection (2) is deemed to be a public servant within the meaning of the Penal Code (Chapter 22).

(5) In this section, "Director" means the Director of the Department of Community Development.

PART VI

ANTI-TRAFFICKING IN PERSONS FUND

Anti-Trafficking in Persons Fund

44. (1) There is hereby established a fund called the Anti-Trafficking in Persons Fund.

(2) The Fund shall be administered and managed by the Permanent Secretary.

Money to be paid into Fund

45. (1) The Minister, may authorise the payment into the Fund of such sum or sums as may be necessary to set up or maintain it, and any such payments shall be charged on and paid out of the Consolidated Fund.

(2) The Fund shall consist of —

(a) all amounts contributed by the Government towards the establishment or maintenance of the Fund from the Consolidated Fund or any other sources;

(b) all sums recovered under or in satisfaction of a judgment of any court under this Order;

(c) subject to section 36, all fines imposed by any court under this Order.

(3) For the purposes of this Order, monies paid into the Fund do not form part of the Consolidated Fund.

Purposes of Fund

46. (1) Subject to subsection (2), monies in the Fund shall be applied for the following purposes —

(a) compensation to trafficked persons;

(b) financing the cost of repatriation of trafficked persons;

(c) to enable the appropriate law enforcement agencies to continue their fight against people trafficking;

(d) the promotion of information and education of the public in preventing, suppressing or otherwise of people trafficking;

(e) rewards to any person in preventing or suppressing people trafficking; or

(f) such other purposes as the Minister may consider necessary or expedient for giving effect to and carrying out the provisions of this Order.

(2) The Permanent Secretary shall consult the Attorney General before applying the Fund for any of the purposes set out in subsection (1).

(3) Monies paid into the Fund, while not being applied for any of the purposes set out in subsection (1), shall be placed in the name of the Fund, in a current or deposit account, with one or more banks selected by the Permanent Secretary, and any interest earned on such monies while held in any such account shall be credited to such account.

(4) The accounts of the Fund shall be audited at least once annually by the Auditor General and the duly audited accounts shall be presented to the Minister of Finance.

(5) In this section and section 44(2), “Permanent Secretary” means the Permanent Secretary to the Office of the Prime Minister.

PART VII

GENERAL

Immunity from criminal prosecution

47. A trafficked person shall not be liable to criminal prosecution in respect of —

- (a) his illegal entry into Brunei Darussalam;
- (b) his period of unlawful residence in Brunei Darussalam; or
- (c) his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering Brunei Darussalam,

where such acts are the direct consequence of an offence of people trafficking that is alleged to have been committed or was committed.

Offender deemed to be prohibited immigrant

48. A person, not being a citizen of Brunei Darussalam, convicted for any offence against this Order or any regulations made thereunder is deemed to be a prohibited immigrant under section 8 of the Immigration Act (Chapter 17).

Regulations

49. (1) The Minister may, with the approval 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 any other thing for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Repeal of S 82/2004

50. Subject to section 51, the Trafficking and Smuggling of Persons Order, 2004 is hereby repealed.

Transitional and savings provision

51. (1) On the date of commencement of this Order, the Trafficking and Smuggling of Persons Fund established by section 19 of the repealed Trafficking and Smuggling of Persons Order, 2004 (S 82/2004) shall be known as the Anti-Trafficking in Persons Fund established under section 44 and all monies which immediately before the commencement of this Order was vested in the

6th. JULY, 2019

Trafficking and Smuggling of Persons Fund shall be transferred to and shall vest in the Anti-Trafficking in Persons Fund without further assurance.

(2) Anything done or made under the repealed Trafficking and Smuggling of Persons Order, 2004 and in force immediately before the date of commencement of this Order and so far as it is not inconsistent with this Order shall continue to be in force as if done under this Order, until it is amended, or repealed under this Order.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, make such other transitional and savings provisions as he may consider necessary and expedient.

Made this 3rd. day of Zulkaedah, 1440 Hijriah corresponding to the 6th. day of July, 2019 at our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

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