

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

ADOPTION OF CHILDREN ORDER, 2001

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

ADOPTION OF CHILDREN ORDER, 2001

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

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Adoption of Children Order, 2001 and shall commence on the same date as the Islamic Adoption of Children Order, 2001.

(2) The long title of this Order is "An Order to make provision for the adoption of children in Brunei Darussalam and to provide for matters incidental thereto".

Non-application.

2. This Order shall not apply to any person who professes the Islamic religion either so as to permit the adoption of any child by such a person or so as to permit the adoption by any person of a child who according to the law of the Islamic religion is a Muslim.

Interpretation.

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

"adopted child" means a child who has been authorised by the court to be adopted or re-adopted;

"adopter" means a person authorised by an adoption order to adopt a child;

"adoption order" means an order made under section 4 authorising a person to adopt a child;

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

"court" means the High Court or any judge thereof;

"father", in relation to an illegitimate child, means the natural father;

"spouse", in relation to a woman, means her husband and, in relation to a man, means his wife.

PART II

ADOPTION ORDERS

Power to make adoption orders.

4. (1) Upon an application made by any person wishing to be authorised to adopt a child, the court may, subject to this Order, make an adoption order authorising the applicant to adopt the child.

(2) Where an application for an adoption order is made by 2 spouses jointly, the court may make the order authorising the 2 spouses jointly to adopt a child.

(3) An adoption order may be made authorising the adoption of a child by the mother or father of the child, either alone or jointly with her or his spouse.

(4) An application for an adoption order may be made in such form as the Chief Justice may approve.

(5) Except as provided in this section, no adoption order shall be made by authorising more than one person to adopt a child.

Restrictions on adoption orders.

5. (1) An adoption order shall not be made if —

(a) the applicant is under the age of 25 years; or

(b) the applicant is less than 21 years older than the child in respect of whom the application is made.

(2) Notwithstanding subsection (1), it shall be lawful for the court to make an adoption order —

(a) where the applicant is under the age of 25 years and is less than 21 years older than the child if —

- (i) the applicant and the child are within the prohibited degrees of consanguinity; or
 - (ii) there are other special circumstances which justify the making of the order;
- (b) in the case of an application by 2 spouses jointly where one of the spouses and the child are within the prohibited degrees of consanguinity, notwithstanding that the other spouse is under the age of 25 years and less than 21 years older than the child; and
- (c) in the case of an application by 2 spouses jointly where neither spouse is within the prohibited degrees of consanguinity with the child, notwithstanding that one or both the spouses are less than 21 years older than the child.

(3) An adoption order shall not be made if the sole applicant is a male and the child in respect of whom the application is made is a female, unless the court is satisfied that there are special circumstances which justify the making of the order.

(4) An adoption order shall not be made except with the consent of every person who is a parent or guardian of the child in respect of whom the application is made or who has the actual custody of the child or who is liable to contribute to the support of the child.

(5) The court may dispense with any consent required by subsection (4) if the court is satisfied —

- (a) that the person whose consent is to be dispensed with —
- (i) has abandoned, neglected or persistently ill-treated the child or cannot be found, and that reasonable notice of the application for the order has been given;
 - (ii) has persistently neglected or refused to provide maintenance to the child; or
 - (iii) is unfit by reason of any physical or mental incapacity to have the care and control of the child, that the unfitness is likely to continue indefinitely and that reasonable notice of the application for the order has been given; or
- (b) in any other special circumstances, that consent ought to be dispensed with, notwithstanding that such person may have made suitable initial arrangements for the child.

(6) An adoption order shall not be made upon the application of one of 2 spouses without the consent of the other of them.

(7) The court may dispense with any consent required by subsection (6) if it is satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(8) An adoption order shall not be made if both parents of the child are not known.

(9) Notwithstanding the provisions of any other written law to the contrary, a child both of whose parents are not known shall, until the contrary is proved, be deemed to be a Muslim for the purposes of this Order.

Matters with respect to which court to be satisfied.

6. The court, before making an adoption order, shall be satisfied that —

- (a) every person whose consent is necessary under this Order and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order, and in particular, in the case of any parent, understands that the effect of the adoption order will be to deprive him of his parental rights in respect of the child;
- (b) the order if made will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to his age and understanding; and
- (c) the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give, to the applicant any payment or other reward in consideration of the adoption, except such as the court may sanction.

Terms and conditions of adoption orders.

7. The court in any adoption order may impose such terms and conditions as the court may think fit, and in particular may require the adopter by bond or otherwise to make for the adopted child such provision, if any, as the court considers just and expedient.

Effect of adoption orders.

8. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the adopted child, in relation to his future custody, maintenance and education, including all rights to appoint a guardian or

to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child is a child born to the adopter in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain his parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

(2) If 2 spouses are the adopters, such spouses shall, in respect of the matters mentioned in subsection (1) and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

(3) If, at any time after the making of an adoption order, the adopter or the adopted child or any other person dies intestate in respect of any property, that property shall devolve in all respects as if the adopted child is the child of the adopter born in lawful wedlock and not the child of any other person.

(4) In any disposition of any property made after the date of an adoption order —

(a) any reference (whether express or implied) to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted child;

(b) any reference (whether express or implied) to the child or children of the adopted child's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted child; and

(c) any reference (whether express or implied) to a person related to the adopted child in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he is the child of the adopter born in lawful wedlock and is not the child of any other person.

(5) Where an adopted child or the spouse or issue of an adopted child takes any interest in any property under a disposition by the adopter or under any intestacy, or where an adopter takes any interest in any property under a disposition by an adopted child or the spouse or issue of an adopted child, or under the intestacy of an adopted child or the spouse or issue of an adopted child, any estate or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

(6) For the purposes of any written law for the time being in force in Brunei Darussalam relating to the provision of compensation to families for loss occasioned by the death of a person caused by actionable wrong, a person shall be deemed to be the parent or child of the deceased person notwithstanding that he is only related to him in consequence of adoption; and accordingly, in deducing any relationship which under the provisions of any such written law is included within the meaning of the expressions "parent" and "child", an adopted child shall be treated as being the child of the adopter born in lawful wedlock and not the child of any other person.

(7) Notwithstanding anything in this section, trustees or personal representatives may convey or distribute any property to or among the persons entitled thereto without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of that conveyance or distribution; but nothing in this subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

(8) Where an adoption order is made in respect of a child who has been previously adopted, the previous adoption shall be disregarded for the purposes of this section in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition made after that date.

(9) For the purposes of any law relating to marriage, an adopter and the child whom he has been authorised to adopt under an adoption order and all children and adopted children of the adopter shall be deemed to be within the prohibited degrees of consanguinity; and this subsection shall continue to have effect notwithstanding that some person other than the adopter is authorised by a subsequent order to adopt the same child.

(10) For the purposes of this section, "disposition" means an assurance of any interest in any property by any instrument whether *inter vivos* or by will.

Interim orders.

9. (1) Upon any application for an adoption order, the court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Order) giving the custody of the child to the applicant for a period not exceeding 2 years by way of a probationary period upon such terms as regards provision for the maintenance, education and supervision of the welfare of the child and otherwise as the court may think fit.

(2) All such consents as are required in respect of an adoption order shall be necessary in respect of an interim order, but subject to a like power on the part of the court to dispense with any such consent.

Subsequent orders.

10. An adoption order or an interim order may be made in respect of a child who has already been the subject of an adoption order and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the child for all the purposes of this Order.

Attendance before court.

11. (1) An adoption order or an interim order shall not be made unless all parties (including the child to be adopted) attend before the court.

(2) The court may dispense with the attendance of any party (including the child) if it is satisfied that special circumstances exist which render it unnecessary or inexpedient for that party to attend before the court.

(3) The court shall have power in its discretion to direct that any party (including the child) attend separately and apart from the other party.

Effect of failure to comply with terms and conditions of adoption order.

12. When an adoption order is made by the court in respect of a child and thereupon the adopter persistently ill-treats the child or fails to comply with any term or condition imposed in the adoption order which may affect adversely the welfare of the child, the court may, taking into account the welfare of the child, order the child to be taken from him and handed over to any other person or any institution.

PART III

MISCELLANEOUS

Jurisdiction and procedure.

13. (1) The court having jurisdiction to make an adoption order under this Order shall be the High Court.

(2) All applications made under this Order shall be heard and determined otherwise than in open court.

Guardian *ad litem*.

14. For the purpose of any application under this Order, the court may appoint some person or body to act as guardian *ad litem* of the child upon the hearing of the application. The guardian *ad litem* shall investigate the circumstances of the child and the applicant and all other matters relevant to the proposed adoption in order to safeguard the interests of the child by providing the requisite information to the court.

Restriction on payments.

15. It shall not be lawful for any adopter or for any parent or guardian, except with the sanction of the court, to receive any payment or other reward in consideration of the adoption of any child under this Order or for any person to make or give, or agree to make or give, to any adopter or to any parent or guardian any such payment or reward.

Registration of adopted children.

16. Where an adoption order has been made, it shall be registered in accordance with the Registration of Adoptions Act (Chapter 123).

***De facto* adoptions.**

17. If, at the commencement of this Order, any child is in the custody of and is being brought up, maintained and educated by any person or by 2 spouses jointly as his or their own child under any *de facto* adoption, and has for a period of not less than 2 years before such commencement been in such custody, and has been so brought up, maintained and educated, the court may, upon the application of such person or spouses and notwithstanding that the applicant is a male and the child is a female, make an adoption order authorising him or them to adopt the child without requiring the consent of any parent or guardian of the child to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the child that no such consent should be required and that an adoption order should be made.

Power to make rules.

18. (1) The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules —

- (a) prescribing all matters which are required or convenient to be prescribed by this Order, including the prescription of fees; and
- (b) generally for giving effect to the objects and purposes of this Order and the due administration thereof.

{2} Such rules may make different provision as respect different classes of case to which they apply, and may include such incidental, consequential and supplementary provisions as the Chief Justice considers necessary or expedient.

Transitional and saving.

19. (1) Any proceedings relating to the adoption of a child which had been commenced but not completed before the commencement of this Order shall be continued and disposed of as if this Order had not been made.

(2) Nothing in this Order shall affect the validity of any adoption order made before the commencement of this Order under any written law.

Repeals.

20. All statutes of general application of England relating to the adoption of children, so far as they are in force in Brunei Darussalam, by virtue of section 2 of the Application of Laws Act (Chapter 2), shall cease to apply in Brunei Darussalam, but without prejudice to anything done thereunder before the commencement of this Order.

Made this 18th. day of Zulkaedah 1421 Hijriah corresponding to the 12th. day of February, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM