

No. S 42

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

CRIMINALS REGISTRATION ORDER, 2008

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

CRIMINALS REGISTRATION ORDER, 2008

In exercise of the power conferred under 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 Criminals Registration Order, 2008.

(2) The long title of this Order is "An Order to provide for the registration of criminals".

Interpretation.

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

"appropriate consent", in Part IV, has the same meaning as in section 112C of the Criminal Procedure Code (Chapter 7);

"authorised officer" means —

- (a) a police officer;
- (b) an officer of customs, as defined in section 2(1) of the Customs Order, 2006 (S39/06);
- (c) an Immigration Officer, as defined in section 2 of the Immigration Act (Chapter 17);
- (d) a prison officer, as defined in section 2 of the Prisons Act (Chapter 51);
- (e) an officer of any law enforcement agency in any case concerning an offence or alleged offence against any law which it is the function of that agency to enforce; and

(f) any other person appointed in writing by the Commissioner of Police as an authorised officer for the purposes of this Order or any provision thereof;

"body sample", in Part IV, has the same meaning as in section 112C of the Criminal Procedure Code (Chapter 7);

"DNA" means deoxyribonucleic acid;

"DNA database" means the database maintained under section 13;

"DNA information" means genetic information derived from the forensic DNA analysis of a body sample;

"finger impression" includes thumb impression and palm impression;

"other particulars", in relation to a person, means any particulars, information or description of that person, other than his registrable particulars, that may be relevant or useful in his identification;

"photograph", in relation to a person, includes the photograph of any distinguishing feature or mark on his body and an eye scan;

"register" means the register of criminals kept in accordance with section 3;

"registrable particulars" means –

- (a) particulars of any conviction, sentence, banishment, expulsion or deportation, and any name, description, photograph or finger impression of, or any document relating to, any person so convicted, sentenced, banished, expelled or deported, as the case may be;
- (b) any other particulars;
- (c) particulars of any outstanding offence taken into consideration for the purpose of determining and passing sentence on any conviction for an offence;

"Registrar" means the Registrar of Criminals, who shall be the Commissioner of Police.

PART II

REGISTRATION OF CRIMINALS

Register of criminals.

3. (1) The Registrar shall keep a register of –

(a) persons convicted of any offence within Brunei Darussalam; and

(b) persons ordered to be banished, expelled or deported from Brunei Darussalam,

and shall record therein the registrable particulars.

(2) The register shall be in such form as the Registrar may determine.

Particulars to be recorded in register.

4. Subject to section 5, the Registrar shall record in the register any registrable particulars which are sent to him under sections 7 or 9.

Discretionary power to dispense with registration.

5. (1) The Registrar may in his discretion direct, either generally or in a particular case or class of case, that any person who –

(a) has been convicted of an offence;

(b) has upon such conviction been sentenced to a fine not exceeding \$1,000 and not to imprisonment except in default of payment of the fine; and

(c) has not previously been registered as a criminal,

need not be registered under this Order.

(2) When any such direction has been given, the Registrar shall retain the registrable particulars of that person for one year and shall then destroy them:

Provided that the Registrar may, at any time before the expiration of one year, revoke the direction and thereupon he shall enter that person in the register, together with his registrable particulars, in accordance with sections 3 and 4.

PART III

TAKING OF FINGER IMPRESSIONS, PHOTOGRAPHS AND PARTICULARS

Finger impressions, photographs and particulars of person under arrest.

6. An authorised officer may —

- (a) take or cause to be taken the finger impressions and photographs of any person under arrest who is accused of any offence;
- (b) make or cause to be made a record of the registrable particulars and of any other particulars of such person; and
- (c) send any such finger impressions, photographs and record to the Registrar.

Finger impressions, photographs and particulars of convicted person.

7. When a person has been convicted of an offence, an authorised officer shall —

- (a) take or cause to be taken the finger impressions and photographs of that person;
- (b) make or cause to be made a record of —
 - (i) the particulars of the conviction and the sentence or order made in respect of that person; and
 - (ii) any other particulars of that person as the authorised officer thinks necessary; and
- (c) send such finger impressions, photographs and record to the Registrar.

Acquittal or discharge of person from whom finger impressions etc. taken under section 6.

8. Where the finger impressions, photographs and a record of registrable particulars of a person have been sent to the Registrar under section 6(c) and that person is subsequently acquitted or discharged without a conviction being recorded against him —

- (a) the authorised officer in charge of the case shall immediately inform the Registrar of the acquittal or discharge; and

(b) the Registrar shall cause such finger impressions, photographs and record to be destroyed:

Provided that this section does not apply to a person who —

- (i) has been lawfully ordered to leave Brunei Darussalam;
- [ii) is prohibited from entering Brunei Darussalam; or
- (iii) has been arrested in pursuance of any order of detention made under any written law.

Duty to submit to taking of finger impressions and photographs.

9. (1) It is the duty of every person under arrest who has been accused of an offence, convicted of an offence or ordered to be banished, expelled or deported —

(a) to submit to the taking of his finger impressions and photographs;
and

(b) to provide such registrable particulars and other particulars as may be required under this Order.

(2) Where a person to whom subsection (1) applies refuses, without reasonable excuse, to submit to the taking of his finger impressions or photograph or to provide any registrable particulars or other particulars when lawfully required by an authorised officer —

(a) he shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding one month or both; and

(b) the authorised officer may, with such assistance as is required, use such force as is reasonably necessary for the purpose of taking the finger impressions or photograph of that person.

(3) The authorised officer shall send a copy of such finger impressions, photographs and registrable particulars to the Registrar.

PART IV

TAKING OF BODY SAMPLES

Body samples may be taken from arrested persons, convicted persons and prisoners.

10. (1) Subject to this Part, a body sample may be taken for forensic DNA analysis from any person who, on or after the commencement of this Order –

(a) has been arrested and accused of an offence;

(b) has been convicted of an offence; or

(c) is serving a term of imprisonment in connection with an offence for which he has been convicted.

(2) A body sample may be taken from a person under subsection (1) in addition to any finger impression or photograph taken under Part III.

(3) Notwithstanding subsection (2), if the consent of the parent or guardian of a person who has not attained the age of 18 years is refused without reasonable excuse or cannot be obtained despite all reasonable efforts but he is still willing to give the body sample, the body sample may be taken from him with the approval of a magistrate.

Body samples given voluntarily.

11. (1) Subject to subsections (2) and (3), any person who –

(a) was present at the scene of an offence when it was committed; or

(b) is being questioned in connection with the investigation of an offence,

may voluntarily consent to a body sample being taken from him for forensic DNA analysis.

(2) No body sample shall be taken under subsection (1.) unless consent is given for the taking of the sample.

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Persons permitted to take body samples.

12. (1) A body sample may only be taken by –

(a) a person registered under the Medical Practitioners and Dentists Act (Chapter 112);

(b) a police officer who has received training for that purpose; or

(c) any other suitably qualified or trained person authorised by the Commissioner of Police for that purpose.

(2) Before taking a body sample, the person permitted under subsection (1) to take it must satisfy himself that such taking will not endanger the person from whom it is to be taken.

(3) The fact that a body sample has been taken under this section shall be recorded by the person taking it in such form and manner as may be required by the Commissioner of Police.

(4) Where a person from whom a body sample is lawfully required under this Part refuses, without reasonable excuse, to give a body sample or to allow it to be taken from him, or who otherwise hinders or obstructs the taking of a body sample is guilty of an offence under section 186 of the Penal Code (Chapter 22) and the person permitted under subsection (1) to take the body sample may, with such assistance as is required, use such force as is reasonably necessary for the purpose of taking that sample.

DNA database.

13. (1) The Registrar may maintain (whether in computerised form or otherwise) a DNA database in which shall be stored all DNA information derived from a body sample taken under this Part, section 112A of the Criminal Procedure Code (Chapter 7) or under any other written law.

(2) Any information stored in the DNA database may be used —

(a) for forensic comparison with any other DNA information in the course of an investigation of an offence;

(b) for any proceedings for any offence;

(c) for administering the DNA database for the purposes of this Part;
and

(d) for such other purposes as may be prescribed.

PART V

MISCELLANEOUS

Evidence.

14. (1) (a) Any finger impression, photograph or registrable particulars recorded in the register;

(b) any record from the DNA database;

(c) any certificate or report purporting to have been compiled from particulars recorded in the register or DNA database under this Order; and

(d) any document purporting to be a report upon any matter or thing relating to finger impressions or DNA information submitted to the Registrar,

shall, if produced from proper custody and authenticated by the signature of the Registrar or such other officer as may be empowered in that behalf by him, be admissible in evidence in any court, and shall be sufficient proof of the facts thereon stated or appearing unless the same is disproved.

(2) A previous conviction in any place outside Brunei Darussalam may be proved by the production of a certificate purporting to be authenticated by –

(a) the signature of a police officer in the country or territory where the conviction was had; or

(b) the signature of a person or authority authorised in that country or territory to keep fingerprints or criminal records,

containing a copy of the sentence or order, and the fingerprints of the person so convicted, and by production either of evidence that the fingerprints of the person so convicted are those of the accused person, or a certificate purporting to be signed by or on behalf of the Registrar that the fingerprints or photograph thereof of the person previously convicted have been compared to the fingerprints or photograph of the accused person and that they are those of the same person.

(3) Any certificate issued in accordance with this section shall, until the contrary is proved, be evidence of all the facts stated therein without proof that the officer purporting to sign it did in fact sign it and was empowered to do so.

Form of certificates etc.

15. Any certificate or other document required to be granted or issued under this Order shall be in such form as the Registrar may determine.

Rules.

16. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including anything required to be or which may be prescribed under this Order and for the due administration thereof.

Repeal of Enactment E. 17 of 1956.

17. The Fingerprints Enactment, 1956 and all subsidiary legislation made thereunder is repealed.

Saving.

18. The Registrar shall have the custody of all records of criminals and particulars which would be registrable particulars under this Order kept or maintained immediately before the commencement of this Order by the Fingerprint Bureau under the Fingerprints Enactment, 1956 (E. 17 of 56), and such records and particulars taken, received or registered in accordance with any written law, whether in force or not, shall be deemed to have been duly taken or received and, when registered, shall, for all purposes of this Order, be deemed to be comprised in and form part of the register maintained under this Order.

Made this 24th. day of Rabiulawal, 1429 Hijriah corresponding to the 1st. day of April, 2008 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

Dicetak oleh PENGIRAN HAJI ZAINAL ABIDIN BIN PENGIRAN SERI WIJAYA
PENGIRAN HAJI AHMAD, Pemangku Pengarah Percetakan,
di Jabatan Percetakan Kerajaan, Bandar Seri Begawan BB3510, Negara Brunei Darussalam.

Harga B\$5.00