



NEGARA BRUNEI DARUSSALAM

TAMBAHAN KEPADA
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BAHAGIAN II

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PART II

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The following Notification is published for general information by Command of
His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.

No. S 6

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

OFFENDERS (PROBATION AND COMMUNITY SERVICE) ORDER, 2006

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

OFFENDERS (PROBATION AND COMMUNITY SERVICE) ORDER, 2006

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

PART 1

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Offenders (Probation and Community Service) Order, 2006 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazzete*.

(2) Different dates may be appointed under subsection (1) for different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is "An Order to provide for the probation of offenders and the performance of community service and other matters connected therewith or incidental thereto".

Interpretation.

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

"approved institution" means any place declared as such under section 17;

"Chief Probation Officer" means the person appointed as such under section 3;

"community service order" means an order made under subsection (1) of section 13;

"court" does not include a court-martial;

"Minister" means the Minister of Culture, Youth and Sports;

"probation committee" means any committee appointed under section 4;

"probationer" means an offender in respect of whom a probation order is made;

"probation officer", except in Part III, means a person appointed as such under subsection (1) of section 3, and includes the Chief Probation Officer;

"probation order" means a probation order made under subsection (1) of section 5;

"probation period" means the period within which a probationer is placed under supervision by virtue of a probation order;

"volunteer probation officer", except in Part III, means a person appointed as such under subsection (2) of section 3.

(2) References to any court by which a probation order or an order for conditional discharge is made shall include, where that court no longer exists, references to a court exercising the same jurisdiction as that court.

Appointment of Chief Probation Officer etc.

3. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint a Chief Probation Officer and such number of probation officers as he may consider necessary for the purposes of this Order.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint any person, not being a police officer or in a prison officer, on such conditions as he thinks fit to be a volunteer probation officer.

(3) All persons appointed under this section shall be deemed to be public servants for the purposes of the Penal Code (Chapter 22).

(4) Notification of all appointments under this section shall be published in the *Gazette*.

(5) In subsection (2), "prison officer" has the same meaning as in section 2 of the Prisons Act (Chapter 51).

Probation committees.

4. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint a probation committee or committees consisting of such

persons as he thinks fit, who shall review the work of probation officers and volunteer probation officers in individual cases, and shall perform such other duties as may be prescribed by regulations made under this Order.

PART II

PROBATION ORDERS AND DISCHARGE

Probation order.

5. (1) Where a court before which an offender is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to do so, it may, instead of sentencing him, make a probation order requiring him to be placed under the supervision of a probation officer or a volunteer probation officer for a probation period of not less than 6 months and not more than 3 years:

Provided that where a person is convicted of an offence for which a mandatory minimum sentence of imprisonment, fine or whipping is prescribed by law, the court may make a probation order if he —

(a) has attained the age of 18 years but has not attained the age of 21 years at the time of his conviction; and

(b) has not previously been convicted of any such offence, and for this purpose subsection (1) of section 11 shall not apply to any such previous conviction.

(2) Subject to subsection (3), a probation order may, in addition, require the probationer to comply during the whole or any part of the probation period, with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the probationer and for preventing a repetition by him of the same offence or the commission of other offences.

(3) Without prejudice to the power of the court to make an order under subsection (2) of section 10, the payment of sums by way of damages for injury or of compensation for loss shall not be included among the requirements of a probation order.

(4) Without prejudice to the generality of subsection (2), a probation order may include requirements relating to the residence of the probationer:

Provided that —

(a) before including any such requirement, the court shall consider the home surroundings of the probationer; and

(b) where the order requires the probationer to reside in an approved institution, the name of the approved institution and the period for which he is required to reside there shall be specified in the probation order, and that period shall not exceed one year from the date of the probation order.

(5) Before making a probation order, the court shall explain to the offender in a language which he understands, as to the effect of the probation order (including any additional requirement under subsection (2) or (4)) and that if he fails to comply with the probation order and any requirement thereof or commits a subsequent offence during the probation period he will be liable to be sentenced for the original offence; and if the offender has attained the age of 14 years, the court shall not make the probation order unless he expresses his willingness to comply with the requirements thereof.

(6) Where a probation order is made against a female, the probation officer or volunteer probation officer shall be a woman.

(7) The court by which a probation order is made shall forthwith give a copy of the order to the Chief Probation Officer who shall give a copy thereof to —

(a) the probationer;

(b) the probation officer or volunteer probation officer who is responsible for the supervision of the probationer; and

(c) the person in charge of any institution in which the probationer was required to reside.

Discharge and amendment of probation order.

6. (1) The court by which a probation order is made may, upon application being made by the probationer or the probation officer or volunteer probation officer, discharge the probation order.

(2) A court may, upon application being made by the probationer or the probation officer or volunteer probation officer, amend the probation order by cancelling any of its requirements or by inserting therein (either in addition to or in substitution of any of those requirements) any other requirement as if it was then being made by that court in accordance with section 5:

Provided that —

(a) the court shall not amend a probation order by reducing the probation period or by extending that period so as to exceed 3 years from the date when the probation order was originally made; and

(b) the court shall not amend a probation order so as the probationer is required to reside in an approved institution for a total period exceeding one year.

(3) Where the court proposes to amend a probation order under this section otherwise than upon the application of the probationer, it shall summon the probationer to appear before the court; and if the probationer has attained the age of 14 years, the court shall not amend a probation order unless he expresses his willingness to comply with the requirements of the probation order as amended:

Provided that this subsection shall not apply to an order cancelling any requirement of the probation order or reducing the period of any requirement.

(4) Where a court discharges or amends a probation order under this section, the court shall forthwith give copies of the discharging or amending order to the Chief Probation Officer who shall give a copy thereof to —

(a) the probationer;

(b) the probation officer volunteer probation officer; and

(c) the person in charge of any institution in which the probationer was required to reside by the probation order as originally made or as amended.

(5) A volunteer probation officer shall not make an application for the discharge or an amendment of a probation order under subsection (1) or (2) without the prior written approval of the Chief Probation Officer.

(6) Where a probation order, whether as originally made or as amended, requires a probationer to reside in an approved institution for a period exceeding 6 months from the date of the probation order as originally made or as amended, the probation officer or volunteer probation officer shall, as soon as possible after the expiration of 6 months from that date, report to the court on the case.

(7) On receipt of the report, the court shall review the probation order for the purpose of considering whether to cancel the requirement as to residence or to reduce the period thereof, and may, if it thinks fit, amend the probation order accordingly without the necessity for any application in that behalf.

(8) Where a probationer is sentenced under this Order for the offence for which he was placed on probation, the probation order shall cease to have effect.

(9) In this section, "probation officer" and "volunteer probation officer" mean respectively the probation officer and volunteer probation officer responsible for the supervision of the probationer.

Breach of requirements of probation order.

7. (1) If at any time during the probation period it appears to the court that the probationer has failed to comply with any requirement of the probation order, the court may issue a summons requiring him to appear before it.

(2) If it has been proved to the court that a probationer has failed to comply with any requirement of the probation order, the court may, without prejudice to the continuance of the probation order, impose on him a fine not exceeding \$1,000 or may —

(a) if the probation order was made by a Court of a Magistrate, deal with the probationer for the offence in respect of which the probation order was made in any manner in which he could have been dealt with as if he had just been convicted before it of that offence;

(b) if the probation order was made by the High Court or an Intermediate Court, commit him to custody or release him on bail (with or without sureties) until he appears or can be brought before that court by which the probation order was made.

(3) Where paragraph *(b)* of subsection (2) applies to the case —

(a) the Court of a Magistrate shall send to the High Court or the Intermediate Court (as the case may be) a certificate signed by a magistrate certifying that the probationer has failed to comply with such requirements of the probation order as may be specified in the certificate together with such other particulars of the case as the magistrate considers to be desirable; and a certificate purporting to be so signed shall be admissible before the court to which it is sent as evidence of such failure to comply; and

(b) where the probationer appears or is brought before the High Court or an Intermediate Court and it has been proved to that court that he has failed to comply with any requirements of the probation order, that court may deal with him for the offence in respect of which the probation order was made in any manner in which he could have been dealt with as if he had just been convicted before it of that offence.

Absolute and conditional discharge.

8. (1) Where a court before which an offender is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is not expedient to impose punishment and that a probation order is not appropriate, it may make an order discharging him absolutely, or if it thinks fit, make an order of conditional discharge discharging him subject to the condition that he does not commit any offence during such period of conditional discharge, not exceeding one year from the date of the order, as may be specified therein:

Provided that where a person is convicted of an offence for which a mandatory minimum sentence of imprisonment, fine or whipping is prescribed by law, the court may make an order discharging him absolutely or an order of conditional discharge if he —

(a) has attained the age of 18 years but has not attained the age of 21 years at the time of his conviction; and

(b) has not previously been convicted of any such offence, and for this purpose subsection (1) of section 11 shall not apply to any such previous conviction.

(2) Before making an order of conditional discharge, the court shall explain to the offender in a language which he understands that if he commits another offence during the period of conditional discharge he shall be liable to be sentenced for the original offence.

(3) Where an offender who is conditionally discharged under this section is subsequently sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

Commission of further offence.

9. (1) If it appears to a court that a probationer or an offender against whom an order of conditional discharge has been made has been convicted by any court of an offence committed during the probation period or during the period of conditional discharge (as the case may be), the court by which the probation order or the order of conditional discharge was made may summon that probationer or offender to appear before it or may issue a warrant for his arrest.

(2) If a probationer, or an offender against whom an order of conditional discharge has been made by the High Court or an Intermediate Court, is convicted and dealt with by a Court of a Magistrate in respect of an offence committed during the probation period or during the period of conditional

discharge, the Court of a Magistrate may commit him to custody or release him on bail (with or without sureties) until he appears or can be brought before the court by which the probation order or the order of conditional discharge was made; and if it does so the Court of a Magistrate shall send to that court a copy of the minute of the conviction entered in the register, signed by the magistrate.

(3) Where it has been proved to a court by which a probation order or an order of conditional discharge was made that the offender has been convicted and dealt with in respect of the offence committed during the probation period or during the period of conditional discharge, as the case may be, that court may deal with him for the offence in respect of which the probation order or order of conditional discharge was made in any manner in which he could have been dealt with as if he had just been convicted before it of that offence.

(4) If a probationer or an offender against whom an order of conditional discharge has been made by a Court of a Magistrate is convicted before any court in respect of an offence committed during the probation period or during the period of conditional discharge, such court may deal with him for the offence in respect of which the order was made in any manner in which the Court of a Magistrate by which the order was made could have dealt with him as if he had just been convicted before it of that offence.

Supplementary provisions as to probation and discharge.

10. (1) Without prejudice to paragraph (d) of subsection (1) of section 51 of the Children and Young Persons Order, 2006, any court may, on making a probation order or an order of conditional discharge under this Order, if it thinks it expedient for the purpose of the reformation of the offender, allow any person who consents to do so to give security for the good behaviour of the offender.

(2) A court may, on making a probation order, an order of conditional discharge or an order discharging an offender absolutely, without prejudice to its power of awarding costs against him, order the offender to pay compensation to any person as it thinks reasonable; but, in the case of an order made by a Court of a Magistrate, the compensation shall not exceed \$1000.

(3) An order for the payment of compensation may be enforced in like manner as an order for the payment of costs by the offender; and where the court, in addition to making an order for the payment of compensation to any person, orders the offender to pay to that person any costs, the order for the payment of compensation and for the payment of costs may be enforced as if they constitute a single order for the payment of costs.

(4) When a court makes an order under this section, then if the offender —

(a) has not attained the age of 14 years, the order shall be enforced against the parent or guardian of the offender;

(b) has attained the age of 14 years but has not attained the age of 18 years, the order may be enforced either against the parent or guardian of the offender or against the offender, as the court thinks fit.

Effects of probation and discharge.

11. (1) Subject to subsection (2), a conviction for the offence in respect of which an order is made placing the offender on probation or discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under this Order:

Provided that where an offender who has attained the age of 18 years at the time of his conviction for an offence for which he is placed on probation or conditionally discharged is subsequently sentenced under this Order for that offence, this subsection shall cease to apply to that conviction.

(2) Without prejudice to subsection (1), the conviction of an offender who is placed on probation or discharged absolutely or conditionally shall be disregarded for the purposes of any other written law which imposes any disqualification or disability upon convicted persons, or which authorises or requires the imposition of any such disqualification or disability.

(3) Subsections (1) and (2) shall not affect —

(a) any right of any such offender to appeal against his conviction or to rely thereon in bar of any subsequent prosecution for the same offence; or

(b) the re-vesting or restoration of any property in consequence of any order made on the conviction of any such offender.

PART III

COMMUNITY SERVICE ORDERS

Interpretation of this Part.

12. In this Part, "probation officer" and "volunteer probation officer" mean respectively the probation officer and volunteer probation officer responsible for the supervision of the probationer.

Community service order.

13. (1) Where a probationer is convicted of an offence punishable with imprisonment, the court before which he is convicted may, in addition to a probation order, make a community service order, requiring him to perform unpaid work.

(2) The number of hours which a probationer may be required to work under the community service order shall be specified in the order and shall be not less than 40 and not more than 240.

(3) A court shall not make a community service order unless it has first considered a report about the probationer and his circumstances and is satisfied that he is a suitable person to perform work under such an order.

(4) Where a court makes community service orders in respect of 2 or more offences of which the probationer has been convicted, it may direct that the hours of work specified in any of these orders shall be concurrent with or additional to those specified in any other of such orders:

Provided that the total of those hours which are not concurrent shall not exceed the number specified in subsection (2).

(5) Before making a community service order, the court shall explain to the probationer in a language which he understands —

(a) the purpose and effect of the order and in particular the requirements of the order as specified in section 14;

(b) the consequences which may follow under section 15 if he fails to comply with any of those requirement; and

(c) that the court has power to review the order on the application of the probationer or the parents or guardian of a youthful offender, the Chief Probation Officer or the probation officer.

(6) The court by which a community service order is made shall forthwith give a copy of the order to the probationer and to the probation officer or volunteer probation officer.

(7) The Minister may by order published in the *Gazette* amend this section by varying the number of hours for the time being specified in subsection (2).

(8) Nothing in subsection (1) shall prevent a court by which a community service order is made in respect of any offence from imposing any disqualification on the probationer.

Obligations of probationer subject to community service order.

14. (1) A probationer in respect of whom a community service order is made shall —

(a) forthwith report to the probation officer or volunteer probation officer;

(b) notify him of any change of address;

(c) perform for the number of hours specified in the order such work at and such times as he may be instructed by the probation officer or volunteer probation officer; and

(d) perform that work in a satisfactory manner.

(2) Subject to section 16, the work required under a community service order shall be performed within one year from the date of the order.

(3) The order shall, unless revoked by the court, remain in force until the probationer has performed the required work for the number of hours specified in it.

(4) The instructions given under paragraph (c) of subsection (1) shall, so far as practicable, be such as to avoid any conflict with the probationer's religious beliefs and any interference with the times at which he usually works or attends any educational establishment.

Breach of requirements of community service order.

15. (1) If it appears to the court that the probationer has failed to comply with any of the requirements of subsection (1) of section 14, the court may summon him to appear before it or may issue a warrant for his arrest.

(2) If the court is satisfied that the probationer has failed without reasonable excuse to comply with any of such requirements, it may —

(a) without prejudice to the continuation of the community service order, impose on him a fine not exceeding \$1,000; or

(b) revoke the order and deal with him for the offence in respect of which the order was made in any manner in which he could have been dealt with for the offence by the court which made the order.

(3) a person sentenced under paragraph (b) of subsection (2) may appeal to the High Court against the sentence.

(4) A fine imposed under subsection (2) shall be deemed to be a fine imposed on a conviction.

Amendment and revocation of community service order.

16. (1) A court may, having regard to the circumstances which have arisen since the community service order was made, grant an extension to the period of 12 months specified in subsection (2) of section 14, on the application of the probationer, the probation officer or the volunteer probationer.

(2) Where an application is made under subsection (1), the court may, instead of exercising its power under that subsection —

(a) revoke the order; or

(b) revoke the order and deal with the probationer for the offence in respect of which the order was made in any manner in which he could have been dealt with for the offence by the court which made the order.

(3) A person sentenced under paragraph (b) of subsection (2) may appeal to the High Court.

(4) If a probationer in respect of whom a community service order is in force is convicted of any offence before a court, that court may —

(a) revoke the order; and

(b) direct that the uncompleted part of such order shall be performed at the conclusion of any sentence imposed by that court.

(5) If a court purposes to exercise its powers under subsection (1) or (2) otherwise than on the application of the probationer, it shall summon him to appear before it and may, if he fails to appear in answer to the summons, issue a warrant for his arrest.

PART IV

MISCELLANEOUS

Approved institutions.

17. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, declare by notification published in the *Gazette*, any place to be an approved institution for the reception of probationers who may be required to reside therein under a probation order.

Regulations.

18. 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 and for the due administration thereof, and in particular and without prejudice to the generality of such power, the regulations may provide for —

- (a) the duties of the Chief Probation Officer;
- (b) the duties of the probation officers and volunteer probation officers;
- (c) the constitution and duties of probation committees;
- (d) the regulation, management and inspection of approved institutions;
- (e) the forms to be used and the form of records to be kept under this Order;
- (f) the fees to be imposed for any act, matter or thing to be done or observed under this Order.

Amendment of Chapter 7.

19. The Criminal Procedure Code (Chapter 7) is amended —

- (a) by repealing section 263 and by substituting the following new section therefore —

"Offenders may be dealt with as provided by Offenders (Probation and Community Service) Order, 2006.

263. When any person, not being a youthful offender, is convicted before any criminal court of an offence punishable by fine, imprisonment or both, and whether or not the law under which that conviction was made provides that fine, imprisonment or both shall be imposed upon the person so convicted, the court may, instead of sentencing him to a fine or imposing any term of imprisonment in default of payment of the fine, or to a sentence of imprisonment of any kind, deal with him as provided by the Offenders (Probation and Community Service) Order, 2006.";

- (b) by repealing section 263A.

Made this 17th. day of Zulhijjah, 1426 Hijriah corresponding to the 18th. day of January, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

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

Dicetak oleh AWANG MOHIDIN BIN HAJI DAUD, Pengarah Percetakan,
di Jabatan Percetakan Kerajaan, Bandar Seri Begawan BB3510, Negara Brunei Darussalam.

Harga B\$5.00