



# PARLIMEN MALAYSIA



## **BILL**

### **Guardianship of Infants 1961**

**D.R.08/1961**

A BILL

*intituled*

An Act to provide for the Guardianship of Infants.

13

[ ]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows :

Short title  
and applica-  
tion.

1. (1) This Act may be cited as the Guardianship of Infants Act, 1961.

(2) Nothing in this Act shall apply in any State to persons professing the Muslim religion until this Act has been adopted by a law made by the Legislature of that State; and any such law may provide that—

(a) nothing in this Act which is contrary to the Muslim religion or the custom of the Malays shall apply to any person under the age of eighteen years who professes the Muslim religion and whose father professes or professed at the date of his death that religion or, in the case of an illegitimate child, whose mother so professes or professed that religion; and

(b) in the case of any other person, the provisions of this Act, so far as they are contrary to the Muslim religion, shall cease to apply to such person upon his professing the Muslim religion, if at the date of such professing he has completed his age of eighteen years or, if not having completed such age, he professes the Muslim religion with the consent of the person who under this Act is the guardian of the person of the infant.

Interpreta-  
tion.

2. (1) In this Act, unless there is anything repugnant in the context—

“Court” means the High Court or a Judge when sitting in open Court;

“infant” means a person who has not attained his majority;

“Judge” means a Judge sitting in Chambers.

## (2) (a) For the purposes of this Act—

- (i) every person professing the Muslim religion shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before; and
- (ii) every other person shall be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

(b) In computing the age of any person the day on which he was born is to be reckoned as a whole day and if he falls within sub-paragraph (i) of paragraph (a) he shall be deemed to have attained his majority at the beginning of the eighteenth anniversary of that day, and if he falls within sub-paragraph (ii) of paragraph (a) at the beginning of the twenty-first anniversary of that day.

3. The guardian of the person of an infant shall have the custody of the infant, and shall be responsible for his support, health and education.

Duties of guardian of person.

4. Subject to the rights and powers of any trustee or personal representative in whom an infant's property is vested, a guardian of the property of an infant shall have the control and management of the infant's property, and shall deal therewith as carefully as a man of ordinary prudence would deal with his own property, and may, subject to this Act, do all acts which are reasonable and proper for the realisation or protection of the infant's property.

Duties of guardian of property.

5. Subject to the provisions of section 10 the father of an infant shall be the guardian of the infant's person and property:

Father to be guardian; order of Court as to custody.

Provided that the Court or a Judge may make such order as it or he thinks fit regarding the custody of the infant, and the right of access thereto of either parent, and may vary or discharge such order at any time on the application of either parent.

6. Subject to the provisions of section 10, where an infant has no father living, the mother of the infant shall be the guardian of his person and property:

Where no father mother to be guardian; or guardian appointed by Court.

Provided that the Court or a Judge may appoint some other person to be the guardian of the infant's person and property, or either of them to act jointly with the mother.

Testamen-  
tary  
guardian.

7. If both the parents of an infant are dead, the testamentary guardian (if any) appointed by the last surviving parent shall, subject to the provisions of section 10, be the guardian of his person and property.

Guardian  
of orphan.

8. If both parents of the infant have died without appointing a testamentary guardian, any Magistrate, kathi, penghulu, police officer not below the rank of Sergeant, any person having the custody of such infant or any person with the powers of a Protector under the Children and Young Persons Ordinance, 1947, may cause such infant to be taken before the Court or a Judge and the Court or a Judge may appoint a guardian of the infant's person and property or either of them.

M.U.  
33 of 1947.

Variation  
of power  
of guardian  
of property.

9. The Court or a Judge may, in appointing any guardian of an infant's property, by order define, restrict, or extend the power and authority of the guardian in relation thereto, to such extent as is necessary for the welfare of the infant.

Removal of  
guardian.

10. The Court or a Judge may at any time remove from his guardianship any guardian, whether a parent or otherwise and whether of the person or the property of the infant, and may appoint from time to time another person to be guardian in his place.

Matters  
to be  
considered.

11. The Court or a Judge, in exercising the powers conferred by the foregoing provisions of this Act, shall have regard primarily to the welfare of the infant and shall, where the infant has a parent or parents, consider the wishes of such parent or both of them, as the case may be.

Production  
of infant.

12. A Judge may, for the purpose of any application under this Act, direct that any person appearing to have the custody of an infant shall produce the infant in the Judge's Chambers, or at such other place as he may appoint, and he may make such order for the temporary custody and protection of the infant as he thinks fit.

Placing  
infant in  
custody of  
guardian.

13. Where an infant leaves, or is removed from, the custody of his lawful guardian, the Court or a Judge may order that he be returned to such custody, and for the purposes of enforcing such order, may direct an officer of the Court to seize the person of the infant and deliver him into the custody of his lawful guardian.

Security to  
be given.

14. (1) Where a person is appointed by the Court to be the guardian of an infant's property he shall, unless the Judge otherwise orders, give security in such sum as may be appointed for the due performance of his duties as such guardian.

(2) Such security shall be given in the manner prescribed for the time being in the case of receivers appointed by the Court; and the guardian so appointed shall pass his accounts at such periods as may be ordered, and shall pay in any balance certified to be due from him into Court in the manner prescribed in the case of receivers.

**15.** (1) A guardian of the property of an infant shall not, without the leave of the Court or a Judge—

Limitation  
of guardian's  
powers.

(a) sell, charge, mortgage, exchange, or otherwise part with the possession of any of the movable or immovable property of the infant; or

(b) lease any land belonging to the infant for a term exceeding one year.

(2) Any disposal of an infant's property in contravention of this section may be declared void, and on such declaration the Judge may make such order as appears requisite for restoring to the infant's estate the property so disposed of.

(3) The Court or a Judge shall not make any order under sub-section (2) unless it is necessary or advisable in the interests of the infant.

**16.** A guardian of the property of an infant shall not, unless in any case the Court or a Judge otherwise orders, be empowered to give a good discharge for any legacy or other capital monies payable to or receivable by an infant.

Guardian  
may not  
give dis-  
charge for  
capital  
property.

**17.** (1) A guardian of the property of an infant may make reasonable provision out of the income of such property for his maintenance and education, having regard to his station in life; but no sum exceeding three hundred dollars per month may be so applied without the leave of the Court or a Judge.

Guardian  
may support  
infant out  
of income.

(2) Where the income of the infant's property in the hands of the guardian is insufficient for such purpose, or money is required for the infant's advancement, a Judge may order that provision for such purpose be made out of the capital of the infant's property, and for such purpose may authorise the sale, charge or mortgage of any part of the infant's property and give such directions in regard thereto as may be necessary in the interests of the infant.

**18.** (1) If it appears that, having regard to the station in life of an infant and to the value of his property and to all the circumstances of the case, it would be expedient that the capital property of the infant should be made available for his maintenance, education or advancement in such

Special  
order in case  
of small  
estate.

manner as to avoid the expense of applications to the Court, a Judge may, instead of appointing a guardian of the property of the infant, order that all the property of the infant, of whatsoever description, shall be placed in the hands of a person to be appointed by the Judge, with full power to deal with and apply the same for the purpose aforesaid in his sole and uncontrolled discretion; and in such case the receipt of the person so appointed shall be a good discharge to any person making any payment or transfer of any property to him on behalf of the infant.

(2) Any person so appointed may be ordered by the Court or a Judge to render an account of his dealings with the infant's estate.

(3) The Court or a Judge may for any sufficient reason discharge any order, or revoke any appointment, made under sub-section (1), and may appoint another person with the same power or such greater or less power as may appear advisable, or may appoint a guardian of the infant's property.

Application  
for opinion,  
etc.

**19.** Any guardian may apply to a Judge for his opinion, advice or discretion on any question respecting the management or administration of the infant's property.

Exception  
for money  
paid into a  
subordinate  
court.

**20.** (1) Nothing in this Act shall apply to any money paid into a subordinate court to the credit of an infant in any action or proceeding in a subordinate court, or to any money in a subordinate court ordered to be transferred to the credit of an infant, but the same shall be dealt with according to rules of court unless the Court or a Judge shall in any case otherwise order.

(2) In this section "subordinate court" means any court subordinate to the Supreme Court.

Rules of  
Court.

**21.** The Rule Committee may make rules to carry the provisions of this Act into effect and, without prejudice to the generality of such power, may by such rules provide for the manner in which applications to the Court or a Judge are to be made, and generally for all matters of procedure and other incidental matters arising out of the provisions of this Act.

Repeal of  
S.S. Ord.  
Cap. 50.

**22.** The Guardianship of Infants Ordinance of the Straits Settlements is hereby repealed.

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## EXPLANATORY STATEMENT

The Guardianship of Infants Ordinance (Cap. 50) of the Straits Settlements operates in the States of Penang and Malacca only, and there is no special enactment in other States governing the guardianship of infants, although by virtue of the Civil Law Ordinance, 1956, resort may be had to the common law of England. The common law of England with regard to guardianship and custody of infants has, however, been greatly changed by legislation, the underlying principle of which is that the welfare of the child should be the paramount consideration, and that the rights of the father should not be considered superior to those of the mother, if they operate to the detriment of the child.

2. The absence of any special enactment in the States of the Federation (other than Malacca and Penang) governing the question of guardianship has given rise to many difficulties in matters of procedure, detail and definition. This Bill, which is based on the existing Straits Settlements Ordinance, in force in Malacca and Penang, seeks to fill this gap in the laws. It is emphasised, however, that the measure can only apply to persons professing the Muslim religion if the Act is adopted by a law made by a State Legislature; and any such law may provide that nothing in the measure which is contrary to the Muslim religion shall apply to any child of parents professing the Muslim religion: see *clause 1 (2)*.

3. *Clause 2* contains the necessary definitions, and in *clause 2 (2) (a)* "majority" is given the same meaning as in the Age of Majority Enactment of the Federated Malay States. *Clause 3* places upon the guardian of an infant the duty of caring for the infant and it will be noted that, by definition in *clause 2*, an infant is any person who has not attained his age of majority.

4. *Clause 4* defines the duties of the guardian with regard to an infant's property, and *clause 5* appoints the father of an infant as the guardian of an infant: but power is reserved in the same clause to the High Court or a Judge thereof to protect the right of custody or access by the mother and, by *clause 10*, to appoint another person as guardian if circumstances so require. If an infant's father is dead, or if an infant is illegitimate, the mother will be the guardian (*clause 6*), subject to the power of the Court to appoint another person to act with (proviso to *clause 6*) or in place of the mother (*clause 10*) if the interests of the infant so require.

5. *Clause 7* provides that if an infant is left an orphan, and his last surviving parent appointed a guardian by will, that guardian shall be the infant's guardian, unless and until the Court shall appoint another (*clause 10*); and *clause 8* sets out the persons empowered to bring an orphaned infant before the Court, where there is no parental or testamentary guardian, in order that a proper guardian may be appointed. *Clauses 9 to 14* set out the powers of the Court, *clause 11* in particular emphasising that the fundamental object of the measure is the welfare of the infant. *Clauses 15 and 16* limit the guardian's powers with regard to an infant's property: he may not sell any property or give long leases of any immovable property of the infant, without leave of the Court. *Clauses 17 and 18* permit a guardian to use an infant's income, subject to certain safeguards, for the infant's maintenance, and empower the Court to permit in appropriate circumstances an infant's capital to be applied for his education or maintenance. *Clause 17* requires the leave of the Court or a Judge for provision out of income in excess of \$300 per month: this figure of \$300 is an increase of \$200 over the sum at present allowed under existing law, but it is considered that in view of the change in the value of money since the law was first promulgated, the figure of \$300 per month is a reasonable one. *Clause 19* gives a guardian the right to seek the advice of a Judge upon the management of an infant's property; *clause 20* excepts from the Bill money paid into a subordinate court to the credit of an infant; *clause 21* confers a power to make rules and *clause 22* repeals the Guardianship of Infants Ordinance of the Straits Settlements.

[CLR. 6.]