



# **LAWS OF MALAYSIA**

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REPRINT

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**Act 351**

## **GUARDIANSHIP OF INFANTS ACT 1961**

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**GUARDIANSHIP OF INFANTS ACT 1961**

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## **LAWS OF MALAYSIA**

### **Act 351**

## **GUARDIANSHIP OF INFANTS ACT 1961**

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### **ARRANGEMENT OF SECTIONS**

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#### Section

1. Short title and application
2. Interpretation
3. Duties of guardian of person
4. Duties of guardian of property
5. Equality of parental rights
6. Rights of surviving parent as to guardianship
7. Power of parent to appoint testamentary guardian
8. Guardian of orphan
- 8A. Protector to be temporary guardian of abandoned infant
9. Variation of power of guardian of property
10. Removal of guardian
11. Matters to be considered
12. Production of infant
13. Placing infant in custody of guardian
14. Security to be given
15. Limitation of guardian's powers
16. Guardian may not give discharge for capital property
17. Guardian may support infant out of income
18. Special order in case of small estate
19. Application for opinion, *etc.*
- 19A. Dispute between joint guardians

## Section

- 19B. Enforcement of orders for payment of money
- 20. Exception for money paid into a subordinate court
- 21. Rules of Court

**LAWS OF MALAYSIA****Act 351****GUARDIANSHIP OF INFANTS ACT 1961**

An Act to provide for the guardianship of infants.

[23 March 1961]

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

**Short title and application**

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

(2) This Act shall apply to the States of \*Peninsular Malaysia only.

(3) Nothing in this Act shall apply in any State to persons professing the religion of Islam 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 religion of Islam or the custom of the Malays shall apply to any person under the age of eighteen years who professes the religion of Islam 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, this Act, so far as they are contrary to the religion of Islam, shall cease to apply to such person upon his professing the religion of Islam, 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 religion of Islam with the consent of the person who under this Act is the guardian of the person of the infant.

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\*NOTE—All references to “West Malaysia” shall be construed as reference to “Peninsular Malaysia”—see the Interpretation (Amendment) Act 1997 [*Act A996*], subsection 5(2).

**Interpretation**

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

“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;

“Protector” means—

- (a) the Director General of Social Welfare;
- (b) the Deputy Director General of Social Welfare;
- (c) a Divisional Director of Social Welfare, Department of Social Welfare;
- (d) the State Director of Social Welfare of each of the States,

and includes any Social Welfare Officer appointed under any law regulating the appointment of a Protector.

(2)(a) For the purpose of this Act—

- (i) every person professing the religion of Islam 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 subparagraph (a)(i) he shall be deemed to have attained his majority at the beginning of the eighteenth anniversary of that day, and if he falls within subparagraph (a)(ii) at the beginning of the twenty-first anniversary of that day.

**Duties of guardian of person**

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 property**

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 realization or protection of the infant's property.

**Equality of parental rights**

5. (1) In relation to the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal.

(2) The mother of an infant shall have the like powers of applying to the Court in respect of any matter affecting the infant as are possessed by the father.

**Rights of surviving parent as to guardianship**

6. On the death of a parent of an infant, the surviving parent, if any, shall, subject to this Act, be guardian to the infant either alone or jointly with any guardian appointed by the deceased parent, and—

(a) if no guardian has been appointed by the deceased parent;  
or

(b) in the event of the death or refusal to act of the guardian or guardians appointed by the deceased parent,

the Court may, if it thinks fit, appoint a guardian to act jointly with the surviving parent.

**Power of parent to appoint testamentary guardian**

7. (1) A parent of an infant may by deed or will appoint any person to be guardian of the infant after that parent's death.

(2) Any guardian appointed under subsection (1) shall act jointly with the surviving parent, if any, but if—

(a) the surviving parent objects to the guardian so acting; or

- (b) the guardian considers that the surviving parent is unfit to have the custody of the infant,

the guardian may apply to the Court and the Court may—

- (aa) refuse to make any order (in which case the surviving parent shall remain the sole guardian of the infant);
- (bb) make an order that the guardian shall act jointly with the surviving parent; or
- (cc) make an order that the guardian shall be the sole guardian of the infant.

(3) If the Court makes an order under paragraph (2)(cc), the Court may make—

- (a) such order regarding the custody of the infant and the right of access of the surviving parent to the infant as, having regard to the welfare of the infant, the Court thinks fit; and
- (b) an order requiring the surviving parent to pay to the guardian such periodical sums towards the maintenance or education of the infant as the Court may consider reasonable having regard to the means of that surviving parent.

(4) If guardians are appointed by deed or will by both parents of an infant, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(5) A guardian appointed by the Court under section 6 to act jointly with the surviving parent shall continue to act as guardian after the death of the surviving parent, but if the surviving parent has appointed a guardian, the guardian appointed by the Court shall act jointly with the guardian appointed by the surviving parent.

### **Guardian of orphan**

8. If both parents of an infant have died without appointing a testamentary guardian, any Magistrate, *penghulu*, police officer or Protector may cause the infant to be taken before the Court, and the Court shall appoint a guardian of the infant's person and property or either of them.

**Protector to be temporary guardian of abandoned infant**

**8A.** (1) If an infant—

- (a) has been abandoned by his parent or guardian; or
- (b) has no parent or guardian,

and no other suitable person is willing and able to care for him, the Court—

- (aa) shall appoint a Protector to be a temporary guardian of the infant's person and property or either of them until such time as a guardian of the infant's person and property can be appointed;
- (bb) shall determine the extent of the powers and duties of the Protector as a temporary guardian in relation to the infant's person and property; and
- (cc) may impose such other terms and conditions as, having regard to the welfare of the infant, the Court thinks fit.

(2) Subsection (1) shall apply whether or not an infant is placed—

- (a) in a place of safety; or
- (b) in the care, custody and control of a foster parent,

pursuant to any law relating to the care and protection of an infant.

(3) Section 4 shall not apply to a temporary guardian appointed under this section.

**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 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.

**Limitation of guardian's powers**

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

- (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 subsection (2) unless it is necessary or advisable in the interests of the infant.

### **Guardian may not give discharge for capital property**

**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 moneys payable to or receivable by an infant.

### **Guardian may support infant out of income**

**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 one thousand ringgit per month may be so applied without the leave of the Court or a Judge.

(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 authorize 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.

### **Special order in case of small estate**

**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 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 subsection (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.

#### **Dispute between joint guardians**

**19A.** (1) If two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the Court for its direction, and the Court may make such order regarding the matters in difference as it may think proper.

(2) The powers of the Court under subsection (1) shall include the power to—

- (a) make such order regarding the custody of the infant and the right of access of the parents or of either of them to the infant as, having regard to the welfare of the infant, the Court thinks fit;
- (b) order the parents or either of them to pay such periodical sums towards the maintenance or education of the infant as the Court may consider reasonable having regard to the means of such parents or parent; and

- (c) vary or discharge any order previously made under this section.

### **Enforcement of orders for payment of money**

**19B.** (1) If the Court has made an order under this Act for the payment of money and there is any income or pension capable of being attached payable to the person against whom the order is made, the Court shall, in addition to any other powers for enforcing compliance with the order, have power—

- (a) after giving the person an opportunity of being heard; and
- (b) on being satisfied that the person has without reasonable cause failed to make any payment which he is required by the order to make,

order the income or pension to be attached as to the whole or part of the amount payable under the order and the amount attached to be paid to the person named by the Court.

(2) An order under this section shall be an authority to the person by whom the income or pension is payable to make the payment in accordance with the order and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the payer.

(3) This section shall be binding on any person or body, including the Government.

### **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 High Court.

**Rules of Court**

**21.** The Rule Committee may make rules to carry 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 this Act.

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**LAWS OF MALAYSIA****Act 351****GUARDIANSHIP OF INFANTS ACT 1961**

## LIST OF AMENDMENTS

| Amending law | Short title                                     | In force from |
|--------------|-------------------------------------------------|---------------|
| Act 160      | Malaysian Currency (Ringgit)<br>Act 1975        | 29-08-1975    |
| Act A1066    | Guardianship of Infants<br>(Amendment) Act 1999 | 01-10-1999    |

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**LAWS OF MALAYSIA****Act 351****GUARDIANSHIP OF INFANTS ACT 1961****LIST OF SECTIONS AMENDED**

| Section | Amending authority   | In force from            |
|---------|----------------------|--------------------------|
| 2       | Act A1066            | 01-10-1999               |
| 5       | Act A1066            | 01-10-1999               |
| 6       | Act A1066            | 01-10-1999               |
| 7       | Act A1066            | 01-10-1999               |
| 8       | Act A1066            | 01-10-1999               |
| 8A      | Act A1066            | 01-10-1999               |
| 17      | Act 160<br>Act A1066 | 29-08-1975<br>01-10-1999 |
| 19A     | Act A1066            | 01-10-1999               |
| 19B     | Act A1066            | 01-10-1999               |

