

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

EMERGENCY (GUARDIANSHIP OF INFANTS) ORDER, 1999

ARRANGEMENT OF SECTIONS

Section

1. Citation, commencement and long title.
2. Non-application.
3. Interpretation.
4. Welfare of infant to be paramount consideration.
5. Equal right of mother to apply to court.
6. Power of court to make, discharge or amend orders for custody and maintenance of infants.
7. Rights of surviving parent as to guardianship.
8. Power of father and mother to appoint testamentary guardians.
9. Dispute between joint guardians.
10. Enforcement of orders for payment of money.
11. Removal of guardian.
12. Matters to be considered.
13. Variation of trusts for maintenance of infant.
14. Production of infant.
15. Placing infant in custody of guardian.
16. Security to be given.
17. Limitation of guardian's powers.
18. Guardian may not give discharge for capital property.
19. Guardian may support infant out of income.

20. Special order in case of small estate.
21. Application for opinion etc.
22. Exception for money paid into a subordinate court.
23. Rules.
24. Saving.

No. S 31

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

EMERGENCY (GUARDIANSHIP OF INFANTS) ORDER, 1999

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 —

1. (1) This Order may be cited as the Emergency (Guardianship of Infants) Order, 1999 and shall come into force on 1st. day of August, 1999. Citation, commencement and long title.

(2) The long title of this Order is "An Order to provide for the guardianship of infants, and to provide for matters incidental thereto".

2. This Order shall not apply in any matter if any of the parties professes the Islamic religion. Non-application.

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

"court" means the High Court or a judge thereof when sitting in open court;

"judge" means a judge of the High Court sitting in chambers.

(2) Any reference in this Order to "this Order" shall be deemed to include reference to any other law in force in Brunei Darussalam before the commencement of this Order, in relation to the guardianship of infants.

4. Where in any proceedings before the court 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 thereof is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration and, save in so far as such welfare otherwise requires, the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father. Welfare of infant to be paramount consideration.

5. 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. Equal right of mother to apply to court.

Power of court to make, discharge or amend orders for custody and maintenance of infants.

6. The court may, upon the application of either parent or of any guardian appointed under this Order, make such orders as it may think fit regarding the custody of such infant, the right of access thereto and the payment of any sum towards the maintenance of the infant and may alter, vary or discharge such order on the application of either parent or of any guardian appointed under this Order.

Rights of surviving parent as to guardianship.

7. (1) On the death of the father of an infant, the mother, if surviving, shall, subject to the provisions of this Order, be guardian of the infant, either alone or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian appointed by the father is dead or refuses to act, the court may, if it thinks fit, appoint a guardian to act jointly with the mother.

(2) On the death of the mother of an infant, the father, if surviving, shall, subject to the provisions of this Order, be guardian of the infant, either alone or jointly with any guardian appointed by the mother. When no guardian has been appointed by the mother, or if the guardian appointed by the mother is dead or refuses to act, the court may, if it thinks fit, appoint a guardian to act jointly with the father.

(3) Where an infant has no parent, no guardian of the person and no other person having parental rights with respect to him, the court may, on the application of any person, if it thinks fit, appoint the applicant to be the guardian of the infant.

Power of father and mother to appoint testamentary guardians.

8. (1) The father of an infant may by deed or will appoint any person to be guardian of the infant after the father's death.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after the mother's death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant so long as the mother or father remains alive, unless the mother or father objects to the guardian so acting.

(4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the infant, the guardian may apply to the court.

(5) If an application is made under subsection (4), the court may either refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the infant, and in the latter case may make such order regarding the custody of the infant and the right of access thereto of the mother or father as, having regard to the welfare of the infant, the court may think fit.

(6) If an application is made under subsection (4), the court may further order that the mother or father shall pay to the guardian towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

(7) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(8) A guardian who has been appointed by the court to act jointly with a surviving parent shall continue to act as guardian after the death of the surviving parent. 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.

9. (1) Where two or more persons act as joint guardians of an infant and 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 dispute as it may think proper.

Dispute
between joint
guardians.

(2) If an application is made under subsection (1), the court shall, in addition to any other of its powers, have power —

(a) to make such orders regarding the custody of the infant and the right of access thereto of the mother or father as, having regard to the welfare of the infant, the court may think fit;

(b) to order the mother or father to pay towards the maintenance or education of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable; and

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

10. (1) When the court has made any order under this Order for payment of money, it shall, in addition to any other powers for enforcing compliance with the order, have power, if there is any pension or income payable to the person against whom the order was made which is capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as the court may think fit of any such pension or income be attached and paid to the persons named by the court.

Enforcement of
orders for
payment of
money.

(2) An order made under subsection (1) shall be an authority to the person by whom such pension or income is payable to make the payment so ordered. The receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

(3) This section shall be binding on the Government.

Removal of guardian.	11. The court or a judge may remove any guardian from his guardianship and may appoint another guardian in his place.
Matters to be considered.	12. The court or a judge, in exercising the powers conferred by this Order, 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.
Variation of trusts for maintenance of infant.	13. Where an infant is, by an order of the court made under this Order, removed from the care of any person who is entitled under any trust to receive any sum of money in respect of the maintenance of the infant, the court may order the whole or any part of the sum so payable under the trust to be paid to the person to whose care the infant is committed, to be applied by that latter person for the benefit of the infant in such manner as, having regard to the terms of the trust, the court may direct.
Production of infant.	14. A judge may, for the purpose of any application under this Order, 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 the judge may appoint. The judge may make such order for the temporary custody and protection of the infant as he thinks fit.
Placing infant in custody of guardian.	15. 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. For the purposes of enforcing such order, the court or judge may direct the sheriff to seize the person of the infant and deliver him into the custody of his lawful guardian.
Security to be given.	16. (1) A person appointed by the court as the guardian of an infant's property shall, unless the judge otherwise orders, give security in such sum as may be specified by the court 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 prepare his accounts at such periods as may be ordered, and shall pay any balance certified to be due from him into court in the manner prescribed for receivers.
Limitation of guardian's powers.	17. (1) A guardian of the property of an infant shall not, without the leave of the court or a judge — (a) sell, 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 (1) unless it is necessary or advisable in the interests of the infant.

18. 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 not give discharge for capital property.

19. (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 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 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.

20. (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 in that person to deal with and apply the same for such purpose in his sole and uncontrolled discretion. In such a 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.

Special order in case of small estate.

(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.

21. A guardian may apply to a judge for his opinion, advice or direction on any question respecting the management or administration of the infant's property.

Exception for
money paid into
a subordinate
court.

22. Nothing in this Order 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 ordered to be transferred to the credit of an infant, but the same shall be dealt with according to such rules as may apply thereto, unless in any case the court or a judge otherwise orders.

Rules.

23. The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules generally for the carrying out of the provisions of this Order.

Saving.

24. Any proceedings relating to the guardianship of an infant 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.

Made this 19th. day of Rabiulawal, 1420 Hijriah corresponding to 3rd. day of July, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM