



# Child Abduction and Custody Act 1985

## 1985 CHAPTER 60

### PART I

#### INTERNATIONAL CHILD ABDUCTION

#### **1 The Hague Convention**

- (1) In this Part of this Act "the Convention" means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980.
- (2) Subject to the provisions of this Part of this Act, the provisions of that Convention set out in Schedule 1 to this Act shall have the force of law in the United Kingdom.

#### **2 Contracting States**

- (1) For the purposes of the Convention as it has effect under this Part of this Act the Contracting States other than the United Kingdom shall be those for the time being specified by an Order in Council under this section.
- (2) An Order in Council under this section shall specify the date of the coming into force of the Convention as between the United Kingdom and any State specified in the Order; and, except where the Order otherwise provides, the Convention shall apply as between the United Kingdom and that State only in relation to wrongful removals or retentions occurring on or after that date.
- (3) Where the Convention applies, or applies only, to a particular territory or particular territories specified in a declaration made by a Contracting State under Article 39 or 40 of the Convention references to that State in subsections (1) and (2) above shall be construed as references to that territory or those territories.

#### **3 Central Authorities**

- (1) Subject to subsection (2) below, the functions under the Convention of a Central Authority shall be discharged—
  - (a) in England and Wales and in Northern Ireland by the Lord Chancellor; and

(b) in Scotland by the Secretary of State.

- (2) Any application made under the Convention by or on behalf of a person outside the United Kingdom may be addressed to the Lord Chancellor as the Central Authority in the United Kingdom.
- (3) Where any such application relates to a function to be discharged under subsection (1) above by the Secretary of State it shall be transmitted by the Lord Chancellor to the Secretary of State and where such an application is addressed to the Secretary of State but relates to a function to be discharged under subsection (1) above by the Lord Chancellor the Secretary of State shall transmit it to the Lord Chancellor.

#### **4 Judicial authorities**

The courts having jurisdiction to entertain applications under the Convention shall be—

- (a) in England and Wales or in Northern Ireland the High Court; and  
(b) in Scotland the Court of Session.

#### **5 Interim powers**

Where an application has been made to a court in the United Kingdom under the Convention, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.

#### **6 Reports**

Where the Lord Chancellor or the Secretary of State is requested to provide information relating to a child under Article 7(d) of the Convention he may—

- (a) request a local authority or a probation officer to make a report to him in writing with respect to any matter which appears to him to be relevant;  
(b) request the Department of Health and Social Services for Northern Ireland to arrange for a suitably qualified person to make such a report to him;  
(c) request any court to which a written report relating to the child has been made to send him a copy of the report;

and such a request shall be duly complied with.

#### **7 Proof of documents and evidence**

- (1) For the purposes of Article 14 of the Convention a decision or determination of a judicial or administrative authority outside the United Kingdom may be proved by a duly authenticated copy of the decision or determination; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.
- (2) For the purposes of subsection (1) above a copy is duly authenticated if it bears the seal, or is signed by a judge or officer, of the authority in question.

- (3) For the purposes of Articles 14 and 30 of the Convention any such document as is mentioned in Article 8 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

## **8 Declarations by United Kingdom courts**

The High Court or Court of Session may, on an application made for the purposes of Article 15 of the Convention by any person appearing to the court to have an interest in the matter, make a declaration or declarator that the removal of any child from, or his retention outside, the United Kingdom was wrongful within the meaning of Article 3 of the Convention.

## **9 Suspension of court's powers in cases of wrongful removal**

The reference in Article 16 of the Convention to deciding on the merits of rights of custody shall be construed as a reference to—

- (a) making, varying or revoking a custody order, or any other order under section 1(2) of the Children and Young Persons Act 1969 or section 95(1), 97(2), 143(6) or 144 of the Children and Young Persons Act (Northern Ireland) 1968 (not being a custody order);
- (b) registering or enforcing a decision under Part II of this Act;
- (c) determining a complaint under section 3(5) or 5(4) of the Child Care Act 1980 or an appeal under section 6 or 67(2) or (3) of that Act;
- (d) determining a summary application under section 16(8), 16A(3) or 18(3) of the Social Work (Scotland) Act 1968;
- (e) making a parental rights order under section 104 of the Children and Young Persons Act (Northern Ireland) 1968 or discharging such an order, or giving directions in lieu of the discharge of such an order, under section 106(2) of that Act,

## **10 Rules of court**

- (1) An authority having power to make rules of court may make such provision for giving effect to this Part of this Act as appears to that authority to be necessary or expedient.
- (2) Without prejudice to the generality of subsection (1) above, rules of court may make provision—
  - (a) with respect to the procedure on applications for the return of a child and with respect to the documents and information to be furnished and the notices to be given in connection with any such application;
  - (b) for the transfer of any such application between the appropriate courts in the different parts of the United Kingdom;
  - (c) for the giving of notices by or to a court for the purposes of the provisions of Article 16 of the Convention and section 9 above and generally as respects proceedings to which those provisions apply;
  - (d) for enabling a person who wishes to make an application under the Convention in a Contracting State other than the United Kingdom to obtain from any court in the United Kingdom an authenticated copy of any decision of that court relating to the child to whom the application is to relate.

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## **11 Cost of applications**

The United Kingdom having made such a reservation as is mentioned in the third paragraph of Article 26 of the Convention, the costs mentioned in that paragraph shall not be borne by any Minister or other authority in the United Kingdom except so far as they fall to be so borne by virtue of the grant of legal aid or legal advice and assistance under Part I of the Legal Aid Act 1974, the Legal Aid (Scotland) Act 1967, Part I of the Legal Advice and Assistance Act 1972 or the Legal Aid Advice and Assistance (Northern Ireland) Order 1981.

## **PART II**

### RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS

## **12 The European Convention**

- (1) In this Part of this Act " the Convention " means the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20th May 1980.
- (2) Subject to the provisions of this Part of this Act, the provisions of that Convention set out in Schedule 2 to this Act (which include Articles 9 and 10 as they have effect in consequence of a reservation made by the United Kingdom under Article 17) shall have the force of law in the United Kingdom.

## **13 Contracting States**

- (1) For the purposes of the Convention as it has effect under this Part of this Act the Contracting States other than the United Kingdom shall be those for the time being specified by an Order in Council under this section.
- (2) An Order in Council under this section shall specify the date of the coming into force of the Convention as between the United Kingdom and any State specified in the Order.
- (3) Where the Convention applies, or applies only, to a particular territory or particular territories specified by a Contracting State under Article 24 or 25 of the Convention references to that State in subsections (1) and (2) above shall be construed as references to that territory or those territories.

## **14 Central Authorities**

- (1) Subject to subsection (2) below, the functions under the Convention of a Central Authority shall be discharged—
  - (a) in England and Wales and in Northern Ireland by the Lord Chancellor; and
  - (b) in Scotland by the Secretary of State.
- (2) Any application made under the Convention by or on behalf of a person outside the United Kingdom may be addressed to the Lord Chancellor as the Central Authority in the United Kingdom.
- (3) Where any such application relates to a function to be discharged under subsection (1) above by the Secretary of State it shall be transmitted by the Lord Chancellor to the

Secretary of State and where such an application is addressed to the Secretary of State but relates to a function to be discharged under subsection (1) above by the Lord Chancellor the Secretary of State shall transmit it to the Lord Chancellor.

## **15 Recognition of decisions**

- (1) Articles 7 and 12 of the Convention shall have effect in accordance with this section.
- (2) A decision to which either of those Articles applies which was made in a Contracting State other than the United Kingdom shall be recognised in each part of the United Kingdom as if made by a court having jurisdiction to make it in that part but—
  - (a) the appropriate court in any part of the United Kingdom may, on the application of any person appearing to it to have an interest in the matter, declare on any of the grounds specified in Article 9 or 10 of the Convention that the decision is not to be recognised in any part of the United Kingdom ; and
  - (b) the decision shall not be enforceable in any part of the United Kingdom unless registered in the appropriate court under section 16 below.
- (3) The references in Article 9(1)(c) of the Convention to the removal of the child are to his improper removal within the meaning of the Convention.

## **16 Registration of decisions**

- (1) A person on whom any rights are conferred by a decision relating to custody made by an authority in a Contracting State other than the United Kingdom may make an application for the registration of the decision in an appropriate court in the United Kingdom.
- (2) The Central Authority in the United Kingdom shall assist such a person in making such an application if a request for such assistance is made by him or on his behalf by the Central Authority of the Contracting State in question.
- (3) An application under subsection (1) above or a request under subsection (2) above shall be treated as a request for enforcement for the purposes of Articles 10 and 13 of the Convention.
- (4) The High Court or Court of Session shall refuse to register a decision if—
  - (a) the court is of the opinion that on any of the grounds specified in Article 9 or 10 of the Convention the decision should not be recognised in any part of the United Kingdom;
  - (b) the court is of the opinion that the decision is not enforceable in the Contracting State where it was made and is not a decision to which Article 12 of the Convention applies; or
  - (c) an application in respect of the child under Part I of this Act is pending.
- (5) Where the Lord Chancellor is requested to assist in making an application under this section to the Court of Session he shall transmit the request to the Secretary of State and the Secretary of State shall transmit to the Lord Chancellor any such request to assist in making an application to the High Court.
- (6) In this section " decision relating to custody" has the same meaning as in the Convention.

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## **17 Variation and revocation of registered decisions**

- (1) Where a decision which has been registered under section 16 above is varied or revoked by an authority in the Contracting State in which it was made, the person on whose behalf the application for registration of the decision was made shall notify the court in which the decision is registered of the variation or revocation.
- (2) Where a court is notified under subsection (1) above of the revocation of a decision, it shall—
  - (a) cancel the registration, and
  - (b) notify such persons as may be prescribed by rules of court of the cancellation.
- (3) Where a court is notified under subsection (1) above of the variation of a decision, it shall—
  - (a) notify such persons as may be prescribed by rules of court of the variation ; and
  - (b) subject to any conditions which may be so prescribed, vary the registration.
- (4) The court in which a decision is registered under section 16 above may also, on the application of any person appearing to the court to have an interest in the matter, cancel or vary the registration if it is satisfied that the decision has been revoked or, as the case may be, varied by an authority in the Contracting State in which it was made.

## **18 Enforcement of decisions**

Where a decision relating to custody has been registered under section 16 above, the court in which it is registered shall have the same powers for the purpose of enforcing the decision as if it had been made by that court; and proceedings for or with respect to enforcement may be taken accordingly.

## **19 Interim powers**

Where an application has been made to a court for the registration of a decision under section 16 above or for the enforcement of such a decision, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application or, in the case of an application for registration, to the determination of any subsequent application for the enforcement of the decision.

## **20 Suspension of court's powers**

- (1) Where it appears to any court in which such proceedings as are mentioned in subsection (2) below are pending in respect of a child that—
  - (a) an application has been made for the registration of a decision in respect of the child under section 16 above (other than a decision mentioned in subsection (3) below) or that such a decision is registered; and
  - (b) the decision was made in proceedings commenced before the proceedings which are pending,the powers of the court with respect to the child in those proceedings shall be restricted as mentioned in subsection (2) below unless, in the case of an application for registration, the application is refused.
- (2) Where subsection (1) above applies the court shall not—

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- (a) in the case of custody proceedings, make, vary or revoke any custody order, or any other order under section 1(2) of the Children and Young Persons Act 1969 or section 95(1), 97(2), 143(6) or 144 of the Children and Young Persons Act (Northern Ireland) 1968 (not being a custody order);
  - (b) in the case of proceedings on a complaint under section 3(5) or 5(4) of the Child Care Act 1980 determine, that complaint;
  - (c) in the case of proceedings on an appeal under section 6 or 67(2) or (3) of that Act, determine that appeal;
  - (d) in the case of proceedings in respect of a summary application under section 16(8), 16A(3) or 18(3) of the Social Work (Scotland) Act 1968, determine that application; or
  - (e) in the case of proceedings on a complaint under section 104(1) of the Children and Young Persons Act (Northern Ireland) 1968 or on an application under section 106(2) of that Act, make a parental rights order under section 104 or, as the case may be, discharge or give directions in lieu of the discharge of such an order under section 106(2) of that Act.
- (3) The decision referred to in subsection (1) above is a decision which is only a decision relating to custody within the meaning of section 16 of this Act by virtue of being a decision relating to rights of access.
- (4) Paragraph (b) of Article 10(2) of the Convention shall be construed as referring to custody proceedings within the meaning of this Act.
- (5) This section shall apply to a children's hearing within the meaning of Part III of the Social Work (Scotland) Act 1968 as it does to a court.

## **21 Reports**

Where the Lord Chancellor or the Secretary of State is requested to make enquiries about a child under Article 15(1)(b) of the Convention he may—

- (a) request a local authority or a probation officer to make a report to him in writing with respect to any matter relating to the child concerned which appears to him to be relevant;
- (b) request the Department of Health and Social Services for Northern Ireland to arrange for a suitably qualified person to make such a report to him ;
- (c) request any court to which a written report relating to the child has been made to send him a copy of the report ;

and any such request shall be duly complied with.

## **22 Proof of documents and evidence**

- (1) In any proceedings under this Part of this Act a decision of an authority outside the United Kingdom may be proved by a duly authenticated copy of the decision; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.
- (2) For the purposes of subsection (1) above a copy is duly authenticated if it bears the seal, or is signed by a judge or officer, of the authority in question.
- (3) In any proceedings under this Part of this Act any such document as is mentioned in Article 13 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

**23 Decisions of United Kingdom courts**

- (1) Where a person on whom any rights are conferred by a decision relating to custody made by a court in the United Kingdom makes an application to the Lord Chancellor or the Secretary of State under Article 4 of the Convention with a view to securing its recognition or enforcement in another Contracting State, the Lord Chancellor or the Secretary of State may require the court which made the decision to furnish him with all or any of the documents referred to in Article 13(1)(b), (c) and (d) of the Convention.
- (2) Where in any custody proceedings a court in the United Kingdom makes a decision relating to a child who has been removed from the United Kingdom, the court may also, on an application made by any person for the purposes of Article 12 of the Convention, declare the removal to have been unlawful if it is satisfied that the applicant has an interest in the matter and that the child has been taken from or sent or kept out of the United Kingdom without the consent of the person (or, if more than one, all the persons) having the right to determine the child's place of residence under the law of the part of the United Kingdom in which the child was habitually resident.
- (3) In this section " decision relating to custody " has the same meaning as in the Convention.

**24 Rules of court**

- (1) An authority having power to make rules of court may make such provision for giving effect to this Part of this Act as appears to that authority to be necessary or expedient.
- (2) Without prejudice to the generality of subsection (1) above, rules of court may make provision—
  - (a) with respect to the procedure on applications to a court under any provision of this Part of this Act and with respect to the documents and information to be furnished and the notices to be given in connection with any such application;
  - (b) for the transfer of any such application between the appropriate courts in the different parts of the United Kingdom;
  - (c) for the giving of directions requiring the disclosure of information about any child who is the subject of proceedings under this Part of this Act and for safeguarding its welfare.

**PART III**

## SUPPLEMENTARY

**25 Termination of existing custody orders, etc.**

- (1) Where
  - (a) an order is made for the return of a child under Part I of this Act; or
  - (b) a decision with respect to a child (other than a decision mentioned in subsection (2) below) is registered under section 16 of this Act,any custody order relating to him shall cease to have effect.



- (2) The decision referred to in subsection (1)(b) above is a decision which is only a decision relating to custody within the meaning of section 16 of this Act by virtue of being a decision relating to rights of access.
- (3) In section 17 of the Children and Young Persons Act 1969 (termination of supervision orders) at the end there shall be added—
- “(c) in the case of an order made by virtue of section 1 of this Act, if an event mentioned in paragraph (a) or (b) of section 25(1) of the Child Abduction and Custody Act 1985 occurs with respect to the child.”
- (4) In Schedule 3 to the Children and Young Persons Act (Northern Ireland) 1968 after paragraph 2 there shall be inserted—
- “2A A supervision order made by virtue of section 95(1)(d) or, in the case of a child or young person committed to the care of a fit person under Part V, sections 143 (6) (d) or 144 shall cease to have effect if an event mentioned in paragraph (a) or (b) of section 25(1) of the Child Abduction and Custody Act 1985 occurs with respect to the child”.
- (5) In section 5(2) of the Child Care Act 1980 (circumstances in which resolutions under section 3 vesting parental rights and duties in a local authority cease to have effect)—
- (a) the word " or" at the end of paragraph (b) shall be omitted; and
- (b) at the end there shall be inserted the words “or
- (d) an event mentioned in paragraph (a) or (b) of section 25(1) of the Child Abduction and Custody Act 1985 occurs with respect to the child”.
- (6) In section 16 of the Social Work (Scotland) Act 1968 (assumption of parental rights and powers by local authority) in subsection (11) after paragraph (d) there shall be inserted the words “; or
- (e) an event mentioned in paragraph (a) or (b) of section 25(1) of the Child Abduction and Custody Act 1985 occurs with respect to the child.”
- (7) At the end of section 106 of the Children and Young Persons Act (Northern Ireland) 1968 there shall be inserted—
- “(3) A parental rights order shall cease to have effect if an event mentioned in paragraph (a) or (b) of section 25(1) of the Child Abduction and Custody Act 1985 occurs with respect to the child.”

## **26 Expenses**

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Lord Chancellor or the Secretary of State by virtue of this Act; and
- (b) any increase attributable to this Act in the sums so payable under any other Act.

## **27 Interpretation**

- (1) In this Act " custody order " means any such order or authorisation as is mentioned in Schedule 3 to this Act and " custody proceedings " means proceedings in which an

order within paragraphs 1, 2, 5, 6, 8 or 9 of that Schedule may be made or in which any custody order may be varied or revoked.

- (2) For the purposes of this Act " part of the United Kingdom " means England and Wales, Scotland or Northern Ireland and " the appropriate court", in relation to England and Wales or Northern Ireland means the High Court and, in relation to Scotland, the Court of Session.
- (3) In this Act " local authority " means—
  - (a) in relation to England and Wales, the council of a non-metropolitan county, a metropolitan district, a London borough or the Common Council of the City of London; and
  - (b) in relation to Scotland, a regional or islands council.

## **28 Application as respects British Islands and colonies**

- (1) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order shall extend, subject to such modifications as may be specified in the Order, to—
  - (a) the Isle of Man,
  - (b) any of the Channel Islands, and
  - (c) any colony.
- (2) Her Majesty may by Order in Council direct that this Act shall have effect in the United Kingdom as if any reference in this Act, or in any amendment made by this Act, to any order which may be made, or any proceedings which may be brought or any other thing which may be done in, or in any part of, the United Kingdom included a reference to any corresponding order which may be made or, as the case may be, proceedings which may be brought or other thing which may be done in any of the territories mentioned in subsection (1) above.
- (3) An Order in Council under this section may make such consequential, incidental and supplementary provision as Her Majesty considers appropriate.
- (4) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **29 Short title, commencement and extent**

- (1) This Act may be cited as the Child Abduction and Custody Act 1985.
- (2) This Act shall come into force on such day as may be appointed by an order made by statutory instrument by the Lord Chancellor and the Lord Advocate; and different days may be so appointed for different provisions.
- (3) This Act extends to Northern Ireland.