

## SCHEDULE

### PROVISIONS OF THE CHILD ABDUCTION AND CUSTODY ACT 1985 AS EXTENDED TO THE CAYMAN ISLANDS

## PART II

### RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS

**12.**—(1) In this Part of this Schedule “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 Schedule, the provisions of that Convention set out in Appendix B to this Schedule (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 Cayman Islands.

#### **Contracting States.**

**13.**—(1) For the purposes of the Convention as it has effect under this Part of this Schedule the Contracting States shall be the United Kingdom and those for the time being specified by an Order in Council under section 13(1) of the United Kingdom Child Abduction and Custody Act 1985.

(2) An Order in Council under that 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. On the same date the Convention shall come into force as between the Cayman Islands and that State.

(3) Where the Convention applies, or applies only, to a particular territory or particular territories specified by a Contracting State under Articles 24 or 25 of the Convention references to that State in sub-paragraphs (1) and (2) above shall be construed as references to that territory or those territories.

#### **Central Authority.**

**14.** The functions under the Convention of a Central Authority shall be discharged in the Cayman Islands by the Attorney-General.

#### **Recognition of decisions.**

**15.**—(1) Articles 7 and 12 of the Convention shall have effect in accordance with this paragraph.

(2) A decision to which either of those Articles applies which was made in a Contracting State other than the Cayman Islands shall be recognised in the Cayman Islands as if made by a court having jurisdiction to make it there but—

- (a) the Grand Court 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 the Cayman Islands; and
- (b) the decision shall not be enforceable in the Cayman Islands unless registered in the Grand Court under paragraph 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.

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### **Registration of decisions.**

16.—(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 Cayman Islands may make an application for the registration of the decision in the Grand Court.

(2) The Central Authority in the Cayman Islands 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 sub-paragraph (1) above or a request under sub-paragraph (2) above shall be treated as a request for enforcement for the purposes of Articles 10 and 13 of the Convention.

(4) The court shall refuse to register a decision if—

- (a) it 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 the Cayman Islands;
- (b) it 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 Schedule is pending.

(5) In this paragraph “decision relating to custody” has the same meaning as in the Convention.

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

17.—(1) Where a decision which has been registered under paragraph 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 Grand Court of the variation or revocation.

(2) Where the court is notified under sub-paragraph (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 the court is notified under sub-paragraph (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 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.

### **Enforcement of decisions.**

18. Where a decision relating to custody has been registered under paragraph 16 above, the Grand Court 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.

### **Interim powers.**

19. Where an application has been made to the Grand Court for the registration of a decision under paragraph 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.

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

**20.**—(1) Where it appears to any court in which such proceedings as are mentioned in sub-paragraph (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 paragraph 16 above other than a decision mentioned in sub-paragraph (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 sub-paragraph (2) below unless, in the case of an applicant for the registration, the application is refused.

(2) Where sub-paragraph (1) above applies the court shall not in the case of custody proceedings make, vary, or revoke any custody order, or any other order under section 31 of the Children Law, 1995.

(3) The decision referred to in sub-paragraph (1) above is a decision which is only a decision relating to custody within the meaning of paragraph 16 of this Schedule 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 Schedule.

#### **Reports.**

**21.** Where the Attorney-General is requested to make enquiries about a child under Article 15(1) (b) of the Convention he may—

- (a) request the Minister for the time being responsible for Social Services 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 or to arrange for a suitably qualified person to make such a report to him;
- (b) 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.

#### **Proof of documents and evidence.**

**22.**—(1) In any proceedings under this Part of this Schedule a decision of an authority outside the Cayman Islands 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 sub-paragraph (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 Schedule 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.

#### **Decisions of Cayman Islands courts.**

**23.**—(1) Where a person on whom any rights are conferred by a decision relating to custody made by a court in the Cayman Islands makes an application to the Attorney-General under Article

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4 of the Convention with a view to securing its recognition or enforcement in another Contracting State, the Attorney-General 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 Cayman Islands makes a decision relating to a child who has been removed from the Cayman Islands, 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 Cayman Islands 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 Cayman Islands.

(3) In this section "decision relating to custody" has the same meaning as in the Convention.

#### **Rules of court.**

**24.**—(1) An authority having power to make rules of court may make such provision for giving effect to this Part of this Schedule 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 the Grand Court under any provision of this Part of this Schedule 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 giving of directions requiring the disclosure of information about any child who is the subject of proceedings under this Part of this Schedule and for safeguarding its welfare.