



BERMUDA
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INTERNATIONAL CHILD ABDUCTION ACT 1998

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WHEREAS it is expedient to provide for the application in Bermuda of the Hague Convention on the Civil Aspects of International Child Abduction:

[Words of enactment omitted]

[Effective by notice in Official Gazette]

Citation

1 This Act may be cited as the International Child Abduction Act 1998.

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Definitions

2 In this Act—

"child" means a child who has not attained the age of 16 years;

"the Convention" means the Convention on the Civil Aspects of International Child Abduction which as signed at the Hague on 25th October 1980;

"the Court" means the Supreme Court;

"custody order" means an order made under any statutory provision relating to the custody of, or access to, a child.

Convention to have force of law in Bermuda

3 Subject to the provisions of this Act, the provisions of the Convention set out in the Schedule shall have the force of law in Bermuda.

Contracting States

4 (1) For the purposes of the Convention as it has effect under this Act the Contracting States shall be those for the time being specified in an order under this section.

(2) An order under this section shall be made by the Attorney-General and shall specify the date of the coming into force of the Convention as between Bermuda and any state specified in the order; and except when the order otherwise provides, the Convention shall apply as between Bermuda 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) shall be construed as references to that territory or those territories.

(4) An order under this section is subject to the negative resolution procedure.

Central authority

5 The functions under the Convention of a Central Authority shall be discharged by the Attorney-General.

Judicial authorities

6 The court having jurisdiction to entertain applications under the Convention shall be the Supreme Court.

Interim powers

7 Where an application has been made to the Court 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.

Reports

8 Where the Attorney-General is requested to provide information relating to a child under Article 7(d) of the Convention he may—

- (a) request the Department of Child and Family Services to make a report to him in writing with respect to any matter which appears to him to be relevant;
- (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 such a request shall be duly complied with.

Proof of documents and evidence

9 (1) For the purposes of Article 14 of the Convention a decision or determination of a judicial or administrative authority outside Bermuda 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) 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.

Declarations by Supreme Court

10 The Court 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 that the removal of any child from, or his retention outside, Bermuda was wrongful within the meaning of Article 3 of the Convention.

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Suspension of court's powers in cases of wrongful removal

11 The reference in Article 16 of the Convention to deciding on the merits of rights of custody shall be construed as a reference to making, varying, revoking or enforcing a custody order.

Rules of court

12 (1) The Court may make such provision for giving effect to this Act as appears to the Court to be necessary or expedient.

(2) Without prejudice to the generality of subsection (1), 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 giving of notices by or to a court for the purposes of the provisions of Article 16 of the Convention and section 11 and generally as respects proceedings to which those provisions apply;
- (c) for enabling a person who wishes to make an application under the Convention in a Contracting State other than Bermuda to obtain from any court in Bermuda an authenticated copy of any decision of that court relating to the child to whom the application is to relate.

Cost of applications

13 Bermuda 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 Bermuda except so far as they fall to be so borne by virtue of the grant of legal aid under the Legal Aid Act 1980 [*title 8 item 37*].

Termination of existing custody orders, etc.

14 Where an order is made for the return of a child under this Act, any custody order relating to him shall cease to have effect.

Commencement

15 This Act comes into force on such day as the Minister responsible for child and family services may appoint by notice published in the Gazette.

SCHEDULE (section 2)

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL
CHILD ABDUCTION

CHAPTER I—SCOPE OF THE CONVENTION

Article 3

The removal or the retention of a child is to be considered wrongful where—

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of the removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention—

- (a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- (b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

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CHAPTER II—CENTRAL AUTHORITIES

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III—RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

- (a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;
- (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by—

- (e) an authenticated copy of any relevant decision or agreement;
- (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- (g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

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Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested state has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention with the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the

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judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

CHAPTER IV—RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of cooperation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V—GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the

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judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.