

LEGISLATIVE COUNCIL BRIEF

Child Abduction and Custody Ordinance (Chapter 512)

CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION) (AMENDMENT) ORDER 2002

INTRODUCTION

At the meeting of the Executive Council on 11 June 2002, the Council ADVISED and the Chief Executive ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) Order 2002 (the Order) at Annex should be made under section 4 of the Child Abduction and Custody Ordinance, to update the list of Contracting States and territories to the Convention on the Civil Aspects of International Child Abduction.

BACKGROUND AND ARGUMENT

The Convention on the Civil Aspects of International Child Abduction

2. The Convention, which was signed at The Hague in 1980, is now in force in 71 states.
3. The Convention provides an effective international mechanism for the swift return home of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights. It aims to establish a consistent approach in handling the civil aspects of the growing number of international child abduction cases.
4. An agreement was reached in the Sino-British Joint Liaison Group (JLG) in September 1996 on the extension of the Convention to Hong Kong by the United Kingdom and its continued application to the HKSAR after 30 June 1997. This has been confirmed in the notes issued by the Central People's Government

(CPG) to the treaty depository in The Hague and the United Nations Secretary-General.

The Child Abduction and Custody Ordinance

5. The Child Abduction and Custody Ordinance (the Ordinance) was enacted in May 1997 to implement the Convention after its extension to Hong Kong. The Ordinance took effect on 5 September 1997.

6. Section 4 of the Ordinance provides that the Chief Executive shall make and publish in the Gazette an Order, specifying certain states as the Contracting States to the Convention, certain territories as the territories specified in declarations made by the Contracting States under Article 39 or 40 of the Convention and the date for the coming into force of the Convention as between the HKSAR and any Contracting State or territory specified. In this connection, the Child Abduction and Custody (Parties to Convention) Order was made in January 1998. It was last amended in December 1999 to update the list of Contracting States and territories under the Convention.

7. Recently, the Convention has been ratified by the Republic of Turkey and the Slovak Republic, which are signatory States to the Convention. Canada has extended the Convention to Nunavut. The Federal Republic of Yugoslavia, one of the successor States of the former Socialist Federal Republic of Yugoslavia which became a party to the Convention on 1 December 1991, has notified that it consented to be bound by the Convention.

8. In line with the spirit of the agreement at the JLG in 1996, certification from the CPG is required prior to amending the list of Contracting States specified under the existing Order. The certificate from the CPG has been obtained via the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR, on the list of the new Contracting States and territories to be included in the Order.

THE AMENDMENT ORDER

9. According to Article 43 of the Convention, the Convention takes effect on the first day of the third calendar month –

- (a) after ratification of the Convention by a signatory state; or
- (b) after the extension of the Convention by a Contracting State to its territories.

10. Based on the certificate from the CPG, we have included the following Contracting States and territories in the Order –

(a)	The Republic of Turkey	1 August 2000
(b)	The Slovak Republic	1 February 2001
(c)	The Federal Republic of Yugoslavia	1 September 1997
(d)	Nunavut/Canada	1 January 2001

LEGISLATIVE TIMETABLE

11. The Order will be published in the Government Gazette on 21 June 2002 and tabled in the Legislative Council on 26 June 2002 for negative vetting.

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the proposed Order does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice confirms that the proposed Order is consistent with the human rights provisions of the Basic Law.

14. The proposed Order is also consistent with Article 11 of the United Nations Convention on the Rights of the Child which provides that State Parties shall take measures to combat the illicit transfer and non-return of children abroad and, to this end, shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

BINDING EFFECT OF THE LEGISLATION

15. The proposed Order will not affect the current binding effect of the Child Abduction and Custody Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

16. There may be some additional workload for the Department of Justice, Judiciary, Legal Aid Department, Social Welfare Department, Immigration Department and the Police, in dealing with abduction cases from these countries and territories. However, the number of cases is likely to be few and the additional workload can be absorbed within the existing resources.

ECONOMIC IMPLICATIONS

17. The proposed legislative amendments, which aim at updating the list of Contracting States and territories to the Convention, would provide a broader and more up-to-date framework in combating international child abduction. There should be no economic implications.

SUSTAINABILITY IMPLICATIONS

18. The proposed Order has no significant sustainability implications.

PUBLIC CONSULTATION

19. Since this is a routine updating exercise, public consultation on the proposed Order is not considered necessary.

PUBLICITY

20. A press release will be issued on 20 June 2002. A spokesman will be available to answer media enquiries.

OTHERS

21. For further enquiries, please contact Mr Kenneth CHAN, Assistant Secretary for Health and Welfare (Welfare) 1, at 2973 8126.

Health and Welfare Bureau
June 2002

Annex

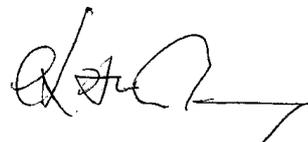
CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION)
(AMENDMENT) ORDER 2002

(Made under section 4 of the Child Abduction and Custody
Ordinance (Cap. 512) after consultation with
the Executive Council)

1. **Schedule amended**

The Schedule to the Child Abduction and Custody (Parties
to Convention) Order (Cap. 512 sub. leg.) is amended -

- (a) in columns 2 and 3, in the entry relating to
the entry of "Canada" in column 1, by adding -
"Nunavut 1 January 2001"
after -
"Northwest Territories 1 September 1997";
- (b) by adding -
"Slovak Republic 1 February 2001"
before -
"Republic of Slovenia 1 September 1997";
- (c) by adding -
"Republic of Turkey 1 August 2000"
before -
"Republic of Turkmenistan 1 December 1998";
- (d) by adding -
"Federal Republic of 1 September 1997"
Yugoslavia
after -
"Republic of Venezuela 1 September 1997".



Chief Executive

14 June 2002

Explanatory Note

This Order amends the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg.) to -

- (a) add the Slovak Republic, Republic of Turkey and Federal Republic of Yugoslavia to the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction;
- (b) add Nunavut to the list of territories specified in declarations made by the Government of Canada under Article 40 of the Convention.