

LEGISLATIVE COUNCIL BRIEF

Child Abduction and Custody Ordinance (Cap. 512)

CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION) (AMENDMENT) ORDER 1999

INTRODUCTION

At the meeting of the Executive Council on 13 April 1999, the Council ADVISED and the Chief Executive ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) Order 1999 (the Order), at Annex A, should be made.

BACKGROUND AND ARGUMENT

The Convention on the Civil Aspects of International Child Abduction (the Convention)

4. The Convention, which was signed at The Hague in 1980, is now in force in over 50 states including Australia, Canada, New Zealand, the United Kingdom and the United States.

5. The Convention provides an effective international mechanism for the swift return home of children wrongfully removed

from their habitual place of residence to another Contracting State in violation of custodial rights. It aims to establish a consistent approach in handling the growing number of international civil child abduction cases.

6. 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 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

7. 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.

8. Section 4 of the Ordinance provides that the Chief Executive shall make and publish in the Government 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.

9. Since 1 July 1997, the Convention has been ratified by the Czech Republic, which is a signatory state. The United Kingdom has

extended the Convention to the Falkland Islands (las Islas Malvinas) and the Cayman Islands. Besides, six other states (namely South Africa, Georgia, Turkmenistan, Moldova, Belarus, and Paraguay) have also acceded to the Convention. After consulting the Hong Kong Special Administrative Region Government (HKSARG), the CPG has deposited a note with the treaty depository in The Hague in September 1998 on behalf of the HKSAR, declaring acceptance of the accession to the Convention by South Africa, Georgia and Turkmenistan. The HKSARG is also seeking the assistance of CPG in declaring of the acceptance of the accession of Belarus and Moldova on behalf of the HKSAR. The HKSARG is of the view that acceptance of the accession by Paraguay should be deferred until a later date when there is a wider experience of its accession by the international community.

10. In line with the spirit of the agreement at the JLG in 1996, a certificate 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 PRC in the HKSAR, on the list of the new Contracting States and territories to be included in the Order.

THE ORDER

11. 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;
- (b) after the CPG has declared acceptance of the accession to the Convention by a new Contracting State; or
- (c) after the extension of the Convention by a Contracting State to its territories.

12. The details are as follows -

- a) Czech Republic 1 March 1998
- b) Falkland and Cayman Islands (UK) 1 June and 1 August 1998 respectively
- c) South Africa)
Georgia) 1 December 1998
Turkmenistan)

13. Based on the certificate from the CPG, we have included the above Contracting States and territories in the Order and have also taken the opportunity to replace the names of the Contracting States and territories in the Order by their official names.

PUBLIC CONSULTATION

14. As it is a routine updating exercise, public consultation on the Order is not considered necessary.

BASIC LAW IMPLICATIONS

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

HUMAN RIGHTS IMPLICATIONS

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

17. The 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.

FINANCIAL AND STAFFING IMPLICATIONS

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

BINDING EFFECT

19. The amendments will not affect the current binding effect of the existing Order.

LEGISLATIVE TIMETABLE

20. The Order will be published in the Government Gazette on 30 April 1999 and tabled in the Legislative Council on 5 May 1999 for negative vetting.

PUBLICITY

21. A press release will be issued on 29 April 1999. A spokesman will be available to answer media enquiries.

OTHERS

22. For further queries, please contact Mr Vincent Fung, Assistant Secretary for Health and Welfare, at 2973 8126.

Health and Welfare Bureau
April 1999

| | |
|---------|-----------|
| Year | 98/99 |
| Meeting | LC Rf |
| Name | 98HSE/142 |
| | 5 |

Annex A

CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION)
(AMENDMENT) ORDER 1999

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

1. Parties to Convention

Section 1(3) of the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg.) is amended by repealing everything after "and" and substituting "a Contracting State or a territory specified in the Schedule is the corresponding date specified in column 3 of the Schedule."

2. Schedule substituted

The Schedule is repealed and the following substituted -

"SCHEDULE

[s. 1]

| Column 1 | Column 2 | Column 3 |
|--------------------------------------|--|---|
| Contracting States to the Convention | Territories specified in declarations under Article 39 or 40 of the Convention | Date of coming into force of the Convention |
| Republic of Argentina | Australian States and Mainland Territories | 1 September 1997 |
| Commonwealth of Australia | | |
| Republic of Austria | | |
| Commonwealth of the Bahamas | | |
| Belize | | |
| Republic of Bosnia and Herzegovina | | |
| Democratic Republic of Burkina Faso | | |

| | | |
|----------------------|-----------------------|--------------------|
| Canada | Alberta | } 1 September 1997 |
| | British Columbia | |
| | Manitoba | |
| | New Brunswick | |
| | Newfoundland | |
| | Nova Scotia | |
| | Ontario | |
| | Prince Edward Island | |
| | Quebec | |
| | Saskatchewan | |
| | Yukon Territory | |
| | Northwest Territories | |
| Republic of Chile | | } 1 March 1998 |
| Republic of Colombia | | |
| Republic of Croatia | | |
| Republic of Cyprus | | |
| Czech Republic | | |
| Kingdom of Denmark | | } 1 September 1997 |
| (except the Faroe | | |
| Islands and | | |
| Greenland) | | |
| Republic of Ecuador | | |
| Republic of Finland | | |
| Republic of France | | |
| (for the whole of | | |
| the territory of the | | |
| Republic of France) | | |
| Republic of Georgia | | 1 December 1998 |

Federal Republic of
Germany
Hellenic Republic
(Greece)
Republic of Honduras
Republic of Hungary
Republic of Iceland
Republic of Ireland
State of Israel
Republic of Italy
Grand-Duchy of
Luxembourg
Republic of Macedonia
Republic of Mauritius
United States of
Mexico
Principauté de Monaco
Kingdom of the
Netherlands (for
the Kingdom in
Europe)
New Zealand
Kingdom of Norway
Republic of Panama
Polish Republic
(Poland)
Republic of Portugal
Romania

1 September 1997

| | | |
|--|---|--------------------|
| Federation of Saint Kitts and Nevis | } | 1 September 1997 |
| Republic of Slovenia | | |
| Republic of South Africa | | 1 December 1998 |
| Kingdom of Spain | } | 1 September 1997 |
| Kingdom of Sweden | | |
| Confédération Suisse (Switzerland) | | |
| Republic of Turkmenistan | | |
| United Kingdom of Great Britain and Northern Ireland | | 1 December 1998 |
| Cayman Islands | | 1 August 1998 |
| las Islas Malvinas (The Falkland Islands) | | 1 June 1998 |
| Isle of Man | | 1 September 1997 |
| United States of America | } | 1 September 1997". |
| Republic of Venezuela | | |
| Republic of Zimbabwe | | |

Chief Executive

1999

Explanatory Note

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

- (a) the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction that was signed at The Hague on 25 October 1980; and
- (b) the list of territories specified in declarations made by the relevant Contracting States under Article 39 or 40 of the Convention.

2. This Order also clearly specifies the date of the coming into force of the Convention as between Hong Kong and each Contracting State or territory.