

LEGISLATIVE COUNCIL BRIEF

Child Abduction and Custody Ordinance (Cap. 512)

CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION) (AMENDMENT) (No. 2) ORDER 1999

INTRODUCTION

At the meeting of the Executive Council on 30 November 1999, the Council ADVISED and the Chief Executive ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) (No. 2) Order 1999 (the Order), at Annex, should be made.

BACKGROUND AND ARGUMENT

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

2. The Convention, which was signed at The Hague in 1980, is now in force in over 50 states.

3. 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.

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 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 (the Ordinance)

5. 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 amended in April 1999 to update the list of Contracting States and territories under the Convention.

7. Recently the Convention has been ratified by the Kingdom of Belgium, which is a signatory state. The United Kingdom has extended the Convention to Montserrat and Bermuda, and Portugal has extended the Convention to Macau. In addition, two states, namely the Republic of Belarus and the Republic of Moldova, have acceded to the Convention. After consulting the HKSAR Government (HKSARG), the CPG has deposited a note with the treaty depository in The Hague on behalf of the HKSAR, declaring acceptance of the accession to the Convention by the Republic of Belarus and the Republic of Moldova.

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. Two certificates from the CPG have 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 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;
- (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.

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

- | | | |
|----|------------------------------|--------------|
| a) | The Kingdom of Belgium | 1 May 1999 |
| b) | Montserrat and Bermuda (UK)) | 1 March 1999 |
| c) | Macau (Portugal)) | |
| d) | Republic of Belarus) | 1 June 1999 |
| | Republic of Moldova) | |

11. The relationship between HKSAR and Macau under the Convention will cease when Macau becomes a Special Administrative Region of the People's Republic of China on 20 December 1999 as the Convention will not apply between different territorial units of the same Contracting State. Therefore, section 2 of the amendment Order removes Macau from the Order with effect from 20 December 1999. We will contact the future Macau SAR Government, when it is formed, on the future arrangements between the two territories.

PUBLIC CONSULTATION

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

BASIC LAW IMPLICATIONS

13. 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

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

15. 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.

BINDING EFFECT

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

FINANCIAL AND STAFFING IMPLICATIONS

17. 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, the

number of cases is likely to be few and the additional workload can be absorbed within existing resources.

LEGISLATIVE TIMETABLE

18. The Order will be published in the Government Gazette on 3 December 1999 and tabled in the Legislative Council on 8 December 1999 for negative vetting.

PUBLICITY

19. A press release will be issued on 3 December 1999. A spokesman will be available to answer media enquiries.

OTHERS

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

Health and Welfare Bureau
November 1999

**CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION)
(AMENDMENT) (NO. 2) ORDER 1999**

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

1. Schedule substituted

The Schedule to the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg.) 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		1 September 1997
Commonwealth of Australia	Australian States and Mainland Territories	1 September 1997
Republic of Austria		1 September 1997
Commonwealth of the Bahamas		1 September 1997
Republic of Belarus		1 June 1999
Kingdom of Belgium		1 May 1999
Belize		1 September 1997
Republic of Bosnia and Herzegovina		1 September 1997
Democratic Republic of Burkina Faso		1 September 1997
Canada	Alberta	1 September 1997

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

Hellenic Republic (Greece)	1 September 1997
Republic of Honduras	1 September 1997
Republic of Hungary	1 September 1997
Republic of Iceland	1 September 1997
Republic of Ireland	1 September 1997
State of Israel	1 September 1997
Republic of Italy	1 September 1997
Grand-Duchy of Luxembourg	1 September 1997
Republic of Macedonia	1 September 1997
Republic of Mauritius	1 September 1997
United States of Mexico	1 September 1997
Republic of Moldova	1 June 1999
Principauté de Monaco	1 September 1997
Kingdom of the Netherlands (for the Kingdom in Europe)	1 September 1997
New Zealand	1 September 1997
Kingdom of Norway	1 September 1997
Republic of Panama	1 September 1997
Polish Republic (Poland)	1 September 1997
Republic of Portugal	1 September 1997
Macau	1 March 1999
Romania	1 September 1997

Federation of Saint Kitts and Nevis	1 September 1997
Republic of Slovenia	1 September 1997
Republic of South Africa	1 December 1998
Kingdom of Spain	1 September 1997
Kingdom of Sweden	1 September 1997
Confederation Suisse (Switzerland)	1 September 1997
Republic of Turkmenistan	1 December 1998
United Kingdom of Great Britain, and Northern Ireland	1 September 1997
Bermuda	1 March 1999
Cayman Islands	1 August 1998
las Islas Malvinas (The Falkland Islands)	1 June 1998
Isle of Man	1 September 1997
Montserrat	1 March 1999
United States of America	1 September 1997
Republic of Venezuela	1 September 1997
Republic of Zimbabwe	1 September 1997".

2. Schedule amended

(1) The Schedule, as substituted by section 1, is amended in the entry relating to "Republic of Portugal", by repealing -

"Macau 1 March 1999".

(2) Subsection (1) shall come into operation on 20 December 1999.

Chief Executive

1999

Explanatory Note

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

- (a) add the Republic of Belarus, Kingdom of Belgium and Republic of Moldova to the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction;
- (b) add Macau, Bermuda and Montserrat to the list of territories specified in declarations made by the Republic of Portugal and United Kingdom of Great Britain and Northern Ireland respectively under Article 39 or 40 of the Convention.

2. Section 2 removes Macau from the list of territories specified in declarations under Article 39 or 40 of the Convention from 20 December 1999 following the reunification of Macau on that date.