

LEGISLATIVE COUNCIL BRIEF

Child Abduction and Custody Ordinance
(Chapter 512)

**Child Abduction and Custody (Parties to Convention)
(Amendment) Order 2010**

INTRODUCTION

At the meeting of the Executive Council on 8 June 2010, the Council ADVISED and the Chief Executive (CE) ORDERED that the Child Abduction and Custody (Parties to Convention) (Amendment) Order 2010 (the Amendment Order) at Annex should be made under section 4 of the Child Abduction and Custody Ordinance (Chapter 512) (the Ordinance) with the effect of –

- (a) adding four countries, namely the Republic of Albania, the Republic of Armenia, the Republic of San Marino and the Republic of Seychelles (the four newly acceding States), to the list of Contracting States in the Child Abduction and Custody (Parties to Convention) Order (Chapter 512A) (the Order); and
- (b) replacing the Federal Republic of Yugoslavia (FRY) in the list of Contracting States in the Order with Montenegro and the Republic of Serbia.

JUSTIFICATIONS

2. Pursuant to section 4 of the Ordinance, Contracting States to the Hague Convention on the Civil Aspects of International Child Abduction (the Convention) have to be specified in an order made by CE and published in the Gazette for the purpose of implementing the Convention between the Hong Kong Special Administrative Region (HKSAR) and other Contracting States under the Ordinance. The Order was first made by CE in January 1998. From time to time, there are new States acceding

to the Convention. The newly acceding State will require acceptance of its accession by an existing Contracting State in order for a convention relation between the two States to be established.

3. If the Administration is satisfied that a newly acceding State has met our criteria for inclusion in the Order*, we shall request the Central People's Government (CPG) to deposit a declaration of acceptance of the accession. The four newly acceding States have recently become Parties to the Convention and met our criteria for inclusion in the Order. With the consent from CPG, the Administration considers it necessary to add them to the list of Contracting States in the Order.

4. Meanwhile, it is noted that FRY, which has changed its name to "Serbia and Montenegro" and subsequently dissolved into "Montenegro" and the "Republic of Serbia" in 2006, is still on the list of Contracting States in the Order. It is understood that the rights and obligations of the former FRY under the Convention have been succeeded to by Montenegro and the Republic of Serbia. Opportunity is taken to replace FRY with Montenegro and the Republic of Serbia in the Order. With the consent of CPG, Montenegro and the Republic of Serbia are added to, and FRY is deleted from, the list of Contracting States in the Order.

EFFECTIVE DATES

5. According to Article 38 of the Convention, the Convention will enter into force between an acceding State and a Contracting State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance. CPG deposited with the depository of the Convention (the Ministry of Foreign Affairs of the Kingdom of the Netherlands) the declaration of acceptance on behalf of HKSAR of the accession of the four newly acceding States on 7 January 2010. The Convention has therefore entered into force between HKSAR and the four newly acceding States on 1 April 2010. Accordingly, the Amendment Order specifies 1 April 2010 as the date on which the Convention comes into force as between Hong Kong and the four newly acceding States.

*Note The criteria established by the HKSAR Government include, among other things, whether the State has designated a Central Authority to handle cases under the Convention and whether there has been any adverse information on the legal system of the State, etc.

6. For Montenegro and the Republic of Serbia, since they have succeeded to the rights and obligations of FRY under the Convention and will replace FRY in the Order, the dates of the coming into force of the Convention as between Hong Kong and these two States as stated in the Order are the same as that of FRY (i.e. 1 September 1997).

7. The effective dates of the coming into force of the Convention as between Hong Kong and the four newly acceding States, Montenegro and the Republic of Serbia are all before the expiry of the standard negative vetting period of 28 days (or 28 plus 21 days of extended negative vetting period). This is to ensure full compliance with Article 38 of the Convention.

OTHER OPTIONS

8. There is no alternative option as the proposal has to be implemented by legislative means.

THE AMENDMENT ORDER

9. The Amendment Order amends the Schedule to the Order to add the four newly acceding States and replace FRY with Montenegro and the Republic of Serbia as Contracting States to the Convention so that the Convention will apply as between HKSAR and those six States.

LEGISLATIVE TIMETABLE

10. The legislative timetable will be –

Publication in the Gazette	18 June 2010
Tabling at the Legislative Council for negative vetting	23 June 2010

IMPLICATIONS OF THE PROPOSAL

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance and has no economic, productivity, environmental or sustainability implications.

12. As for the financial and civil service implications, since the number of cases involving the four newly acceding States is expected to be very few, any additional workload on the relevant agencies including the Department of Justice, Judiciary, Legal Aid Department, Social Welfare Department, Immigration Department and the Police will be absorbed within their existing resources.

PUBLIC CONSULTATION

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

PUBLICITY

14. A press release will be issued on 18 June 2010. A spokesman from the Labour and Welfare Bureau will be available to answer media enquiries.

BACKGROUND

15. The Convention, which was signed at Hague in 1980 and is now in force in 82 States, provides an effective international mechanism for the swift return 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.

16. An agreement was reached at the Sino-British Joint Liaison Group in September 1996 on the extension of the Convention to Hong Kong by the United Kingdom and its continued application to HKSAR after 30 June 1997. The People's Republic of China is a Contracting State

to the Convention but the Convention only applies to HKSAR and Macao SAR, not to the Mainland.

17. Any State / place may accede to the Convention in accordance with Article 38 of the Convention. Article 38 also provides that the accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession.

Enquiries

18. Any enquiries on this brief should be addressed to Mr Parson LAM, Assistant Secretary for Labour and Welfare (Welfare)1A, at 2810 3932.

Labour and Welfare Bureau
15 June 2010

**CHILD ABDUCTION AND CUSTODY (PARTIES TO
CONVENTION) (AMENDMENT) ORDER 2010**

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

1. Schedule amended

(1) The Schedule to the Child Abduction and Custody (Parties to
Convention) Order (Cap. 512 sub. leg. A) is amended by adding –

“Republic of Albania 1 April 2010”

before –

“Republic of Argentina 1 September 1997”.

(2) The Schedule is amended by adding –

“Republic of Armenia 1 April 2010”

before –

“Commonwealth of Australian States and 1 September 1997”.
Australia Mainland Territories

(3) The Schedule is amended by adding –

“Montenegro 1 September 1997”

before –

“Kingdom of the 1 September 1997”.
Netherlands (for the
Kingdom in Europe)

(4) The Schedule is amended by adding –

“Republic of San Marino 1 April 2010

Republic of Serbia 1 September 1997”

after –

“Federation of Saint Kitts 1 September 1997”.
and Nevis

- (5) The Schedule is amended by adding –
“Republic of Seychelles 1 April 2010”
before –
“Slovak Republic 1 February 2001”.
- (6) The Schedule is amended by repealing –
“Federal Republic of 1 September 1997”.
Yugoslavia

Chief Executive

2010

Explanatory Note

This Order amends the Schedule to the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg. A) to add the Republic of Albania, the Republic of Armenia, Montenegro, the Republic of San Marino, the Republic of Serbia and the Republic of Seychelles as Contracting States to the Convention on the Civil Aspects of International Child Abduction so that the Convention will apply between Hong Kong and those 6 States.

2. This Order also deletes the Federal Republic of Yugoslavia from the Schedule.