

Short note provided by the Department of Justice explaining the section renumbering introduced in the attached formal version of Committee Stage amendments ("CSAs") to the Child Abduction Legislation (Miscellaneous Amendments) Bill 2013

"The formal version of CSAs seeks to amend the gazette version of the Bill and avoid changing the numbering system appearing in the Bill. For example, section 15 which is proposed to be added to the Child Abduction and Custody Ordinance (Cap. 512) by clause 9 of the Bill will be deleted and the "gap" in the numbering will not be taken over in the formal CSAs by the following provision, that is, section 16. However, if and when the Bill is enacted (with the incorporation of the changes introduced by the formal CSAs), the Department of Justice will exercise its editorial power to rearrange the numbering that appears in the formal CSAs. That is to say, the numbering of the new sections added to the Ordinance will appear in the normal sequence without being affected by certain new section numbers appearing in the Bill that has incorporated the CSAs (i.e. there will be a new section 15 and certain section numbers such as 18A, 19A and 20A will not appear)."

Child Abduction Legislation (Miscellaneous Amendments) Bill 2013

Committee Stage

Amendments to be moved by the Secretary for Labour and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>By deleting the clause and substituting—</p> <p>“3. Long title amended</p> <p>The long title, after “1980”—</p> <p>Add</p> <p>“; to combat child abduction; and to provide for related matters”.”.</p>
New	<p>By adding—</p> <p>“3A. Part 1 heading added</p> <p>Before section 1—</p> <p>Add</p> <p>“Part 1</p> <p>Preliminary”.”.</p>
4	<p>By deleting subclause (1) and substituting—</p> <p>“(1) Section 2, Chinese text, definition of 管養令—</p> <p>Repeal the full stop</p> <p>Substitute a semicolon.</p> <p>(1A) Section 2—</p> <p>Repeal the definition of <i>Rules Committee</i>.”.</p>
4(2)	<p>By deleting the proposed definition of <i>application under</i></p>

this Ordinance.

- 4(2) In the proposed definition of *prohibition order*, by deleting “15(4)” and substituting “22(3)”.
- 4(2) In the proposed definition of *recovery order*, by deleting “17(2);” and substituting “18A(2).”.
- 4(2) By deleting the proposed definition of *stop order*.
- 4(2) By adding in alphabetical order to the proposed definitions—
- “application under Part 2** (第 2 部 之 下 的 申 請)
means—
- (a) an application under the Convention; or
- (b) an application under section 16, 18 or 18A;
- authorized officer** (獲授權人員) means—
- (a) a police officer; or
- (b) an immigration officer;
- District Court** (區域法院) means the District Court established by section 3 of the District Court Ordinance (Cap. 336);
- immigration officer** (入境事務人員) means the holder of a rank specified in Schedule 1 to the Immigration Service Ordinance (Cap. 331);”.

New By adding—

“4A. Part 2 heading added

Before section 3—

Add

“Part 2

Provisions Giving Effect to the

Convention”.

4B. Section 3 amended (Convention to have force of law in Hong Kong)

Section 3—

Repeal

“Ordinance”

Substitute

“Part”.

4C. Section 4 amended (Contracting States)

Section 4(1)—

Repeal

“Ordinance”

Substitute

“Part”.’.

5 By deleting the clause.

6 In the proposed section 7—

- (a) in the heading, by deleting “**this Ordinance**” and substituting “**Part 2**”;
- (b) in subsection (1), by deleting “this Ordinance” and substituting “Part 2”.

New By adding—

“8A. Section 12 amended (rules of court)

- (1) Section 12, heading, after “**court**”—

Add

“for giving effect to Part 2”.

- (2) Section 12—

Repeal subsection (1)

Substitute

“(1) The Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4) may make rules of court for giving effect to this Part as appears to the Committee to be necessary or expedient.”.

9 In the heading, by deleting “15” and substituting “16”.

9 By deleting the proposed section 15.

9 In the proposed section 16(2)(a) and (b), in the Chinese text, by deleting “按理可” and substituting “是可在合理情況下”.

9 In the proposed section 16, by adding—

“(2A) A location order made for any applicable proceedings may also provide that the applicable information provided in compliance with the order may only be used for the applicable proceedings.”.

9 By deleting the proposed section 17.

9 In the proposed section 18(2)(b)(i), in the Chinese text, by deleting “該國或在該國扣留該兒童” and substituting “或扣留於該國”.

9 In the proposed section 18, by adding—

“(3A) If the Court of First Instance has made an order under subsection (3), it may do one or more of the following—

(a) vary or discharge the order;

(b) suspend the operation of a provision of

the order, and revive the operation of the provision so suspended.

- (3B) This section does not affect the powers and discretions of the Court of First Instance that are exercisable apart from this section.”.

9

By adding—

“18A. Court of First Instance may make recovery order relating to child’s return

- (1) In this section—

applicable proceedings (適用程序) means proceedings under the Convention that are commenced in Hong Kong for the return of a child to another Contracting State.

- (2) For any applicable proceedings relating to a child, the Court of First Instance may, on application, make a recovery order providing for one or more of the following—
- (a) requiring a person to return or deliver the child to another person specified by the Court (***specified person***);
 - (b) authorizing or directing a police officer to do one or more of the following for finding the child (and to do so with the assistance the officer requires and by force if necessary)—
 - (i) stop and search a vehicle, vessel or aircraft;
 - (ii) enter and search a place;
 - (c) authorizing or directing a police officer to recover the child (and to do so with the assistance the officer requires and by force if necessary);
 - (d) authorizing or directing a police officer to return or deliver the recovered child to the specified person;
 - (e) authorizing or directing a police officer to take the recovered child to, and keep

the child in, a place of safety until the return or delivery of the child to the specified person;

- (f) if the specified person cannot be contacted within a reasonable time—authorizing or directing the Director of Social Welfare to take the follow-up actions that the Director considers appropriate;
 - (g) giving directions about the day-to-day care of the child until the return or delivery of the child to the specified person.
- (3) Any of the following persons may apply for a recovery order—
- (a) a party to the applicable proceedings;
 - (b) the Secretary for Justice.
- (4) Unless otherwise directed by the Court of First Instance, the application may be made *ex parte*.”.

9 By deleting the proposed section 19.

9 By adding—

“19A. Notification of recovery orders

- (1) This section applies if a recovery order has been made in relation to a child.
- (2) For the purposes of section 20A—
 - (a) an applicant for a recovery order may notify the Director of Immigration that the order has been made; and
 - (b) an applicant for a recovery order that has been revived after suspension may notify the Director of Immigration that the order has been revived.
- (3) If an applicant has given a notification under subsection (2), the applicant must as far as

practicable inform each party to the related applicable proceedings mentioned in section 18A that the notification has been given.

- (4) A failure to comply with subsection (3) does not affect the validity of a recovery order or the operation of section 20A.
- (5) Subsection (6) applies if—
 - (a) a recovery order has been varied by the Court of First Instance; or
 - (b) a recovery order has been discharged on appeal or by the Court of First Instance, or suspended on or pending appeal.
- (6) For the purposes of section 20A, an applicant for a recovery order who has given a notification under subsection (2) must, or a person affected by the order may, notify the Director of Immigration about the matter mentioned in subsection (5)(a) or (b) (whichever is applicable).
- (7) The notification under subsection (2) or (6) must be—
 - (a) given in a manner and form specified by the Director of Immigration; and
 - (b) accompanied by the supporting documents required by the Director of Immigration.”.

9 By deleting the proposed section 20.

9 By adding—

“20A. Authorized officer may detain child being removed out of Hong Kong in breach of recovery order

- (1) An authorized officer may detain a child if the following conditions are met—
 - (a) the officer is satisfied that—
 - (i) a notification has been given under

section 19A(2), or a notification about the matter mentioned in section 19A(5)(a) has been given under section 19A(6), in relation to the child; and

(ii) no notification about the matter mentioned in section 19A(5)(b) has been given under section 19A(6) in relation to the child; and

(b) the officer reasonably suspects that the child is about to be, or is being, removed out of Hong Kong.

(2) To avoid doubt—

(a) the mere fact that the matter mentioned in section 19A(5)(b) exists does not render unlawful the exercise of the power by an authorized officer under subsection (1) if the officer is unaware of that fact; and

(b) if the officer has detained a child under subsection (1), the officer may continue to do so for as long as it is necessary for the officer to discharge the functions under subsection (3) or (4), regardless of whether the condition in subsection (1)(b) continues to be met.

(3) If an immigration officer detains a child under subsection (1), the officer must as soon as practicable transfer the child into the charge of a police officer.

(4) If a police officer detains a child under subsection (1) or a child is transferred into the charge of a police officer under subsection (3)—

(a) the police officer must as soon as practicable take the child to, and keep the child in, a place of safety until the return or delivery of the child to a person specified in the recovery order; and

(b) if the person cannot be contacted within a reasonable time, the Director of Social

Welfare is to take the follow-up actions that the Director considers appropriate.”.

New By adding—

“9A. Part 3 added

Before Schedule 1—

Add

“Part 3

**Other Provisions Combating Child
Abduction in Hong Kong**

**22. Court of First Instance or District Court
may make order prohibiting removal of
child out of Hong Kong without consent**

- (1) This section applies to a child who is under the age of 18 if—
 - (a) a court order concerning the custody of or access to the child is in force; or
 - (b) proceedings concerning the custody of or access to the child are pending in a court.
- (2) A person must not remove the child out of Hong Kong without the consent of the following persons (whether or not a parent of the child)—
 - (a) if the court order is in force—the person, or each of the persons, who has the custody of or access to the child under the order or who is exercising the rights of that custody or access; or
 - (b) if proceedings concerning the custody of or access to the child are pending in a court—each party to the

proceedings.

- (3) To prevent a person from breaching subsection (2), a person specified in subsection (2)(a) or (b) may apply to the court for an order prohibiting the removal of the child out of Hong Kong except—
 - (a) with the leave of the court; or
 - (b) on compliance with the terms specified in the order.
- (4) If an order has been made under subsection (3), the court that made the order may do one or more of the following—
 - (a) vary or discharge the order;
 - (b) suspend the operation of a provision of the order, and revive the operation of the provision so suspended.
- (5) Subsection (4) does not affect the powers and discretions of the court that are exercisable apart from that subsection.
- (6) Unless otherwise directed by the court, the application under subsection (3) may be made *ex parte*.
- (7) This section does not affect the effect of any other order.
- (8) In this section—

child (兒童)—

- (a) in relation to a court order made by the Court of First Instance in the exercise of its jurisdiction relating to a ward of court under section 26 of the High Court Ordinance (Cap. 4), or any proceedings related to the exercise of that jurisdiction—means the infant

who is the subject of that order or those proceedings;

- (b) in relation to a court order made under section 10(1), 11(1)(a), 12(a) or 13(1)(b) or (3) of the Guardianship of Minors Ordinance (Cap. 13), or any proceedings related to an application under that section—means the minor who is the subject of that order or those proceedings;
- (c) in relation to a court order made under section 5(1)(b) of the Separation and Maintenance Orders Ordinance (Cap. 16), or any proceedings related to an application under that section—means a child of the marriage who is the subject of that order or those proceedings;
- (d) in relation to a court order made under section 48(1) of the Matrimonial Causes Ordinance (Cap. 179), or any proceedings related to an application under that section—means a child who is the subject of that order or those proceedings; or
- (e) in relation to a court order made under section 19(1) or 20(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), or any proceedings related to an application under that section—means a child of the family who is the subject of that order or those proceedings;

court (法院)—

- (a) in relation to a court order

made by the Court of First Instance, or any proceedings pending in the Court—means the Court of First Instance; or

- (b) in relation to a court order made by the District Court, or any proceedings pending in the Court—means the District Court.

23. Notification of prohibition orders

- (1) This section applies if—
 - (a) a prohibition order has been made in relation to a child; or
 - (b) an application for a prohibition order in relation to a child is pending, and the date for the hearing of the application has been fixed by the court.
- (2) For the purposes of section 24—
 - (a) an applicant for a prohibition order may notify the Director of Immigration that the order has been made or, if the application is pending, the date for the hearing of the application has been fixed by the court; and
 - (b) an applicant for a prohibition order that has been revived after suspension may notify the Director of Immigration that the order has been revived.
- (3) If an applicant has given a notification under subsection (2), the applicant must as far as practicable inform the following persons that the notification has been given—
 - (a) if a court order concerning the custody of or access to the child is in force—the person, or

each of the persons, who has the custody of or access to the child under the order or who is exercising the rights of that custody or access; or

- (b) if proceedings concerning the custody of or access to the child is pending in the court—each party to the proceedings.
- (4) A failure to comply with subsection (3) does not affect the validity of a prohibition order or the operation of section 24.
- (5) Subsection (6) applies if—
 - (a) a prohibition order has been varied on appeal or by the court that made the order;
 - (b) a prohibition order has been discharged or suspended on appeal or by the court that made the order;
 - (c) an application for a prohibition order has been rejected or withdrawn;
 - (d) the court that made the prohibition order has granted the leave under section 22(3)(a); or
 - (e) for a prohibition order that is made subject to an exception mentioned in section 22(3)(b)—the court that made the order has certified that the terms specified in the order have been complied with.
- (6) For the purposes of section 24, an applicant for a prohibition order who has given a notification under subsection (2) must, or a person affected by the order or the

application may, notify the Director of Immigration about the matter mentioned in subsection (5)(a), (b), (c), (d) or (e) (whichever is applicable).

- (7) The notification under subsection (2) or (6) must be—
 - (a) given in a manner and form specified by the Director of Immigration; and
 - (b) accompanied by the supporting documents required by the Director of Immigration.

24. Authorized officer may detain child being removed out of Hong Kong in breach of prohibition order

- (1) An authorized officer may detain a child if the following conditions are met—
 - (a) the officer is satisfied that—
 - (i) a notification has been given under section 23(2), or a notification about the matter mentioned in section 23(5)(a) has been given under section 23(6), in relation to the child; and
 - (ii) no notification about any of the matters mentioned in section 23(5)(b), (c), (d) or (e) has been given under section 23(6) in relation to the child; and
 - (b) the officer reasonably suspects that the child is about to be, or is being, removed out of Hong Kong.
- (2) To avoid doubt—
 - (a) the mere fact that any of the

matters mentioned in section 23(5)(b), (c), (d) or (e) exists does not render unlawful the exercise of the power by an authorized officer under subsection (1) if the officer is unaware of that fact; and

- (b) if the officer has detained a child under subsection (1), the officer may continue to do so for as long as it is necessary for the officer to discharge the functions under subsection (3) or (4), regardless of whether the condition in subsection (1)(b) continues to be met.
- (3) If an immigration officer detains a child under subsection (1), the officer must as soon as practicable transfer the child into the charge of a police officer.
- (4) If a police officer detains a child under subsection (1) or a child is transferred into the charge of a police officer under subsection (3)—
 - (a) the police officer must as soon as practicable take the child to, and keep the child in, a place of safety until—
 - (i) the arrival of, and the return of the child to, the person specified in subsection (5); or
 - (ii) in any other case—the Director of Social Welfare is to take the follow-up actions that the Director considers appropriate; and
 - (b) if the person specified in subsection (5) cannot be contacted within a reasonable

time, the Director of Social Welfare is to take the follow-up actions that the Director considers appropriate.

- (5) For subsection (4)(a)(i) and (b), the following person is specified—
 - (a) the person who—
 - (i) has sole custody of the child under a court order; and
 - (ii) is not the person who attempts to remove the child out of Hong Kong;
 - (b) if 2 or more persons have joint custody of the child under a court order, and one of them attempts to remove the child out of Hong Kong—the other person, or one of the other persons; or
 - (c) if proceedings concerning the custody of the child are pending in a court—the applicant for the prohibition order.

25. Rules of court for giving effect to Part 3

- (1) The Rules Committee may make rules of court for giving effect to this Part as appears to the Committee to be necessary or expedient.
- (2) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4), or section 72 of the District Court Ordinance (Cap. 336), includes power to make rules of court for the purposes of this Part.
- (3) In this section—

Rules Committee (規則委員會) means—

- (a) the Rules Committee

constituted under section 55 of the High Court Ordinance (Cap. 4); or

- (b) the District Court Rules Committee established under section 17 of the District Court Ordinance (Cap. 336).”.”.

- 18(2) In the proposed section 5(1A), by deleting “of a competent court in proceedings under the Hague Convention on an anonymous basis” and substituting “, in which the identity of a person referred to is kept anonymous, of a competent court in proceedings under the Hague Convention”.