

**Child Abduction Legislation (Miscellaneous
Amendments) Ordinance 2014**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 16 OF 2014



Carrie LAM
Acting Chief Executive
27 November 2014

An Ordinance to amend the Child Abduction and Custody Ordinance and other enactments to provide for combating child abduction and for better implementing the Convention on the Civil Aspects of International Child Abduction, and for related matters.

[]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

Part 2

Amendments to Child Abduction and Custody Ordinance

2. Child Abduction and Custody Ordinance amended

The Child Abduction and Custody Ordinance (Cap. 512) is amended as set out in this Part.

3. Long title amended

The long title, after “1980”—

Add

“; to combat child abduction; and to provide for related matters”.

4. Part 1 heading added

Before section 1—

Add

“Part 1

Preliminary”.

5. Section 2 amended (interpretation)

(1) Section 2, Chinese text, definition of 營養令—

Repeal the full stop

Substitute a semicolon.

(2) Section 2—

Repeal the definition of *Rules Committee*.

(3) Section 2—

Add in alphabetical order

“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 15, 16 or 17;

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);

place of safety (安全地方) includes a place listed in the Schedule to the Protection of Children and Juveniles (Places of Refuge) Order (Cap. 213 sub. leg. B);

prohibition order (禁止離境令) means an order made under section 21(3);

recovery order (返還令) means an order made under section 17(2).”.

6. Part 2 heading added

Before section 3—

Add

“Part 2

Provisions Giving Effect to the Convention”.

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

Section 3—

Repeal

“Ordinance”

Substitute

“Part”.

8. Section 4 amended (Contracting States)

Section 4(1)—

Repeal

“Ordinance”

Substitute

“Part”.

9. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Powers of Court of First Instance in applications under Part 2

(1) Before an application under Part 2 is determined, the Court of First Instance may do one or more of the following—

- (a) give an interim direction as the Court thinks fit for securing the welfare of the child concerned, or for preventing changes in the circumstances relevant to determining the application;
 - (b) require the personal attendance of a person specified by the Court, including either or both of the parents of the child, at the hearing of the application.
- (2) This section does not affect the powers and discretions of the Court of First Instance that are exercisable apart from this section.”.

10. Section 8 amended (reports)

Section 8—

Repeal

everything before “may—”

Substitute

“For discharging a Central Authority’s functions in relation to a child under Articles 7 and 21 of the Convention, the Secretary for Justice”.

11. Section 9 amended (proof of documents and evidence)

Section 9(1), after “For the purposes of”—

Add

“section 16, and”.

12. 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.”.

13. Sections 15 to 20 added

After section 14—

Add

“15. Court of First Instance may make location order relating to child’s whereabouts

(1) In this section—

applicable information (適用資料), in relation to a child, means information about the child’s whereabouts or other circumstances relevant to locating the child;

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

(2) For any applicable proceedings relating to a child, the Court of First Instance may, on application, make a location order providing for one or more of the following—

- (a) requiring a person to provide the Court with applicable information that the person has or may reasonably obtain about the child;
- (b) requiring a public officer to provide the Court with applicable information that the officer has or may reasonably obtain in an official capacity about the child.

-
- (3) 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.
 - (4) Any of the following persons may apply for a location order—
 - (a) a party to the applicable proceedings;
 - (b) the Secretary for Justice.
 - (5) Unless otherwise directed by the Court of First Instance, the application may be made *ex parte*.
 - (6) The Court of First Instance may make a location order despite the production of the child before a judicial or administrative authority, or the Central Authority, of Hong Kong or another Contracting State.
 - (7) A person to whom a location order applies must comply with it, regardless of whether or not—
 - (a) there is any restriction imposed by a law or agreement concerning the disclosure of the applicable information; or
 - (b) the applicable information is subject to legal professional privilege.
 - (8) A person is not excused from complying with a location order only because doing so may incriminate the person or the person's spouse.
 - (9) However, a statement made by a person in compliance with a location order is not admissible in evidence against the person, or against the person's spouse, in proceedings for an offence other than perjury.
- 16. Court of First Instance may make order prohibiting removal of child from Hong Kong except to habitual residence, etc.**
- (1) In this section—

home state (本國), in relation to a child, means the Contracting State of the child's habitual residence.

- (2) This section applies to a child if—
 - (a) a judicial or administrative authority of the child's home state has made an order providing for the child to be taken to Hong Kong temporarily (whether or not also to another jurisdiction) for enabling a person to exercise the rights of access to the child; or
 - (b) all of the following conditions are met—
 - (i) a judicial or administrative authority of a Contracting State has made a decision or other determination that the child has been wrongfully removed to or retained in that State within the meaning of Article 3 of the Convention;
 - (ii) that authority has made an order providing for the return of the child to the child's home state via Hong Kong (whether or not also via another jurisdiction);
 - (iii) the child is in, or will be entering, Hong Kong in transit on return to the child's home state.
- (3) The Court of First Instance may, on application by the Secretary for Justice, make an order prohibiting the removal of the child from Hong Kong to a jurisdiction other than—
 - (a) the child's home state; or
 - (b) another jurisdiction as may be specified in the order mentioned in subsection (2)(a) or (b)(ii).
- (4) 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.
- (5) This section does not affect the powers and discretions of the Court of First Instance that are exercisable apart from this section.
- (6) The Secretary for Justice may make an application under this section on request by the Central Authority of a Contracting State.
- (7) Unless otherwise directed by the Court of First Instance, the application may be made *ex parte*.

17. 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*.

18. 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 19—
 - (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 17 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 19.
- (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 19, 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.

19. 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 18(2), or a notification about the matter mentioned in section 18(5)(a) has been given under section 18(6), in relation to the child; and
 - (ii) no notification about the matter mentioned in section 18(5)(b) has been given under section 18(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 18(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.

20. Stay of custody application pending determination of proceedings under the Convention

- (1) In this section—

custody application (管養權申請), in relation to a child, means an application relating to the merits of rights of custody of the child;

rights of custody (管養權) has the same meaning as in the provisions of the Convention set out in Schedule 1;

specified authority (指明當局) includes the Court of First Instance, the District Court, and a juvenile court within the meaning of the Juvenile Offenders Ordinance (Cap. 226).

- (2) If a party to proceedings under the Convention in relation to a child knows that a custody application in relation to that child is pending in a specified authority, that party must file in the Registry of the High Court a notice containing a statement that sets out—
- (a) the nature of the custody application; and
 - (b) that specified authority.
- (3) On receipt of that notice, the Registrar of the High Court must—
- (a) give the specified authority notification of the proceedings under the Convention; and
 - (b) subsequently give that authority notification of the result of those proceedings.
- (4) On receipt by the specified authority of the notification under subsection (3)(a)—

- (a) all further proceedings in the custody application are to be stayed until the final determination or final disposal of the proceedings under the Convention; and
- (b) the specified authority must give the parties to that application notice of the stay.”.

14. Part 3 added

Before Schedule 1—

Add

“Part 3

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

21. 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.

22. 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 23—
 - (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 23.
- (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 21(3)(a); or
 - (e) for a prohibition order that is made subject to an exception mentioned in section 21(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 23, 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.

23. 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 22(2), or a notification about the matter mentioned in section 22(5)(a) has been given under section 22(6), in relation to the child; and
 - (ii) no notification about any of the matters mentioned in section 22(5)(b), (c), (d) or (e) has been given under section 22(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 22(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.

24. 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).”.

15. Schedule 1 amended (Convention on the Civil Aspects of International Child Abduction)

Schedule 1—

Repeal

“[s. 3]”

Substitute

“[ss. 3 & 20]”.

Part 3

Amendments to Rules of the High Court

16. Rules of the High Court amended

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in this Part.

17. Order 121 amended (Child Abduction and Custody Ordinance (Cap. 512))

(1) Order 121, rule 2(1)—

Repeal

“Subject to”

Substitute

“Except as provided in the Ordinance and in”.

(2) Order 121—

Repeal rule 10

Substitute

“10. Stay of custody application pending determination of proceedings under the Convention (O. 121, r. 10)

(1) A notice filed under section 20(2) by a party to proceedings under the Convention must be verified by an affidavit sworn by that party or a person duly authorized to swear it on behalf of that party.

(2) The affidavit must be filed at the same time as the notice.”.

(3) Order 121, after rule 11—

Add

“12. Application for an order under section 16 (O. 121, r. 12)

- (1) An application for an order under section 16 must be supported by an affidavit sworn by—
 - (a) the applicant; or
 - (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible, state the following—
 - (a) the particulars of the request made by the requesting Contracting State;
 - (b) the particulars of any relevant order, decision or determination of a judicial or administrative authority of the requesting Contracting State;
 - (c) the particulars of the travel arrangements of the child and accompanying persons, including the dates of arrival and departure, and contact details while they are in Hong Kong; and
 - (d) if the child is in, or is being taken to, Hong Kong temporarily for enabling a person to exercise the rights of access to the child—
 - (i) the basis for believing that the child may be wrongfully removed from Hong Kong to a jurisdiction other than the one mentioned in section 16(3)(a) or (b); or
 - (ii) if that person consents to the making of the order sought—the particulars of the consent.
- (3) In addition, the affidavit must, as far as possible, exhibit the following—
 - (a) a copy of the relevant order, decision or determination of the judicial or administrative authority of the requesting Contracting State; and
 - (b) all other relevant documents.

- (4) The affidavit must be filed at the same time as the application.
- (5) However, for an urgent case, the affidavit may be filed as soon as possible after the application.

13. Searching for, inspecting and obtaining copies of documents filed in proceedings under the Ordinance (O. 121, r. 13)

- (1) Unless otherwise directed by the Court, a party to any proceedings under the Ordinance or the party's solicitor, or the Secretary for Justice, may do one or more of the following—
 - (a) have a search in the Registry made for a document filed in the Registry in those proceedings;
 - (b) inspect or obtain a copy of the document.
 - (2) Except as provided in paragraph (1), if a document is filed in the Registry in any proceedings under the Ordinance (other than an order made in open court)—
 - (a) the document is not open to inspection by any person without leave of the Court; and
 - (b) no copy of the document, or of an extract from the document, may be taken by, or issued to, any person without leave of the Court.”.
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Part 4

Amendments to Matrimonial Causes Ordinance and its Subsidiary Legislation

Division 1—Matrimonial Causes Ordinance

18. Matrimonial Causes Ordinance amended

The Matrimonial Causes Ordinance (Cap. 179) is amended as set out in this Division.

19. Section 48D added

In Part VII, after section 48C—

Add

“48D. Order for prohibiting removal of child out of Hong Kong

- (1) This section applies to a child of the family as defined by section 2(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) who is under the age of 18.
- (2) If a parent of the child is a party to any proceedings under this Ordinance, that parent may apply to the court for an order prohibiting the removal of the child out of Hong Kong, or out of the custody, care or control of a person named in the application, except—
 - (a) with the leave of the court; or
 - (b) on compliance with the terms specified in the order.
- (3) Unless otherwise directed by the court, the application may be made *ex parte*.”.

Division 2—Matrimonial Causes Rules

20. Matrimonial Causes Rules amended

The Matrimonial Causes Rules (Cap. 179 sub. leg. A) are amended as set out in this Division.

21. Rule 94 amended (removal of child out of Hong Kong, etc.)

Rule 94—

Repeal paragraph (2).

Part 5

Amendments to Judicial Proceedings (Regulation of Reports) Ordinance

- 22. Judicial Proceedings (Regulation of Reports) Ordinance amended**
The Judicial Proceedings (Regulation of Reports) Ordinance (Cap. 287) is amended as set out in this Part.
- 23. Section 5 amended (publication of information relating to proceedings in private)**
- (1) After section 5(1)(a)—
Add
“(ab) subject to subsection (1A), where the proceedings are brought under the Child Abduction and Custody Ordinance (Cap. 512);”.
- (2) After section 5(1)—
Add
“(1A) The publication of a judgment, in which the identity of a person referred to is kept anonymous, of a competent court in proceedings under the Hague Convention is not of itself contempt of court if—
(a) none of the parties to those proceedings objects to that publication; and
(b) the court has made an order authorizing that publication.”.
- (3) After section 5(3)—
Add
“(4) In subsection (1A)—

Hague Convention (《海牙公約》) means the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980.”.