



Isle of Man

Ellan Vannin

AT 11 of 1987

CHILD CUSTODY ACT 1987



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**Isle of Man***Ellan Vannin*

CHILD CUSTODY ACT 1987

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AN ACT to amend the law relating to the jurisdiction of courts in the Island to make orders with regard to the custody of children; to make provision for the recognition and enforcement of custody orders as between the Island and the United Kingdom; to enable two Conventions relating respectively to the civil aspects of international child abduction and the recognition and enforcement of custody decisions to be extended to the Island; to amend the criminal law relating to the abduction of children; and for connected purposes.

PART I – JURISDICTION, RECOGNITION AND ENFORCEMENT

Jurisdiction of Manx courts

1 Jurisdiction in matrimonial proceedings

- (1) In proceedings for divorce, nullity of marriage or judicial separation, a court in the Island shall not have jurisdiction to make an order under section 11 of the *Children and Young Persons Act 2001* with respect to a child unless the proceedings are in respect of the marriage of the parents of the child concerned and —
- (a) they are for divorce or nullity of marriage and are continuing; or
 - (b) they are for judicial separation and are continuing, and the jurisdiction is not excluded by subsection (2); or
 - (c) they have been dismissed after the beginning of the trial but —
 - (i) the order under the said section 11 is being made forthwith, or¹
 - (ii) the application for the order was made on or before the dismissal.

- (2) For the purposes of subsection (1)(b), the jurisdiction of the court is excluded if, after the decree of judicial separation, on the relevant date proceedings for divorce or nullity of marriage are continuing in any part of the United Kingdom, except where the court in which those other proceedings are continuing has made —
- (a) an order under a provision corresponding to subsection (3), or
 - (b) an order under a provision corresponding to section 4(2) which is recorded as made for the purpose of enabling proceedings to be taken in the Island with respect to the child concerned.
- (3) Where a court —
- (a) has jurisdiction to make an order under the said section 11 in or in connection with proceedings for divorce, nullity of marriage or judicial separation, but²
 - (b) considers that it would more appropriate for matters relating to the custody of the child to be determined outside the Island,
- the court may by order direct that, while the order under this subsection is in force, no order under the said section 11 shall be made by any court in or in connection with those proceedings.³

2 Jurisdiction otherwise than in matrimonial proceedings

- (1) A court in the Island shall not have jurisdiction to make an order under section 11 of the *Children and Young Persons Act 2001* in a non-matrimonial case (that is, where the conditions in section 1(1) are not satisfied) unless on the relevant date the child concerned —
- (a) is habitually resident in the Island, or
 - (b) is present in the Island and is not habitually resident in the Island or any part of the United Kingdom,
- and, in either case, the jurisdiction of the court is not excluded by subsection (2).
- (2) For the purposes of subsection (1), the jurisdiction of the court is excluded if, on the relevant date, proceedings for divorce, nullity of marriage or judicial separation are continuing in a court in any part of the United Kingdom in respect of the marriage of the parents of the child concerned.
- (3) Subsection (2) does not apply if the court in which the other proceedings are continuing has made —
- (a) an order under a provision corresponding to section 1(3), or
 - (b) an order under a provision corresponding to section 4(2) which is recorded as made for the purpose of enabling proceedings with respect to the child concerned to be taken in the Island,

and that order is in force.⁴

3 Orders under High Court's inherent jurisdiction

The High Court shall not have jurisdiction to make a custody order within section 20(1)(b) unless —

- (a) the condition in section 2(1) is satisfied, or
- (b) the child concerned is present in the Island at the relevant date and the Court considers that the immediate exercise of its powers is necessary for his protection.⁵

4 Power of court to refuse application or stay proceedings

[P1986/55/5]

- (1) A court in the Island which has jurisdiction to make a custody order may refuse an application for the order in any case where the matter in question has already been determined in proceedings outside the Island.
- (2) Where, at any stage of the proceedings on an application made to a court in the Island for a custody order, or for the variation of a custody order, it appears to the court —
 - (a) that proceedings with respect to the matters to which the application relates are continuing outside the Island, or
 - (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside the Island,the court may stay the proceedings on the application.
- (3) The court may remove a stay granted in accordance with subsection (2) if it appears to the court that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or that those proceedings are stayed or concluded.
- (4) Nothing in this section shall affect any power exercisable apart from this section to refuse an application or to grant or remove a stay.

5 Duration and variation of custody orders

[P1986/55/6]

- (1) If a custody order made by a court in any part of the United Kingdom (or a variation of such an order) comes into force with respect to a child at a time when a custody order made by a court in the Island has effect with respect to him, the latter order shall cease to have effect so far as it makes provision for any matter for which the same or different provision is made by (or by the variation of) the order made by the court in that part of the United Kingdom.
- (2) Where by virtue of subsection (1) a custody order has ceased to have effect so far as it makes provision for any matter, a court in the Island shall not have jurisdiction to vary that order so as to make provision for that matter.

- (3) A court in the Island shall not have jurisdiction to vary a custody order if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in any part of the United Kingdom in respect of the marriage of the parents of the child concerned.⁶
- (3A) Subsection (3) shall not apply if —
- (a) the custody order was made in or in connection with proceedings for divorce or nullity of marriage in the Island in respect of the marriage of the parents of the child concerned; and
 - (b) those proceedings are continuing.⁷
- (3B) Subsection (3) does not apply if —
- (a) the custody order was made in or in connection with proceedings for judicial separation in the Island in respect of the marriage of the parents of the child concerned;
 - (b) those proceedings are continuing; and
 - (c) the decree of judicial separation has not yet been granted.⁸
- (4) Subsection (3) shall not apply if the court in which the proceedings are continuing has made —
- (a) an order under a provision corresponding to section 1(3), or⁹
 - (b) an order under a provision corresponding to section 4(2) which is recorded as made for the purpose of enabling proceedings with respect to the custody of the child concerned to be taken in the Island,
- and that order is in force.
- (5) Subsection (3) shall not apply in the case of a variation of a custody order within section 20(1)(b) if the ward is present in the Island on the relevant date and the High Court considers that the immediate exercise of its powers is necessary for his protection.
- (6) Where any person who is entitled to the actual possession of a child under a custody order made by a court in the Island ceases to be so entitled by virtue of subsection (1) then, if there is in force a supervision order under Part 4 of the *Children and Young Persons Act 2001* that order shall cease to have effect.¹⁰
- (7) [Repealed]¹¹

Enforcement of custody orders made in United Kingdom

6 Recognition of custody orders made in UK

[P1986/55/25]

- (1) Where a custody order made by a court in any part of the United Kingdom is in force with respect to a child who has not attained the age of 16, then,

subject to subsection (2), the order shall be recognised and have the same effect in the Island as if it had been made by the High Court and as if that Court had had jurisdiction to make it.

- (2) Where a custody order includes provision as to the means by which rights conferred by the order are to be enforced, subsection (1) shall not apply to that provision.
- (3) A court in the Island shall not enforce an order which is recognised in accordance with subsection (1) unless it has been registered in the High Court under section 7 and proceedings for enforcement are taken in accordance with section 9.

7 Registration of custody order in High Court

[P1986/55/27(4) and (5)]

- (1) Where the Chief Registrar receives a certified copy of a custody order made by a court in any part of the United Kingdom and sent to him under a provision corresponding to section 12 and having effect in that part, he shall forthwith cause the order, together with particulars of any variation, to be registered in the High Court in the prescribed manner.
- (2) An order shall not be registered under this section in respect of a child who has attained the age of 16, and the registration of an order in respect of a child who has not attained the age of 16 shall cease to have effect on the attainment by the child of that age.

8 Cancellation and variation of registration

[P1986/55/28]

- (1) Where the Chief Registrar receives notice from a court in any part of the United Kingdom of the revocation or variation of a custody order registered in the High Court under section 7, he shall —
 - (a) in the case of the revocation of the order, cancel the registration, and
 - (b) in the case of the variation of the order, cause particulars of the variation to be registered in the prescribed manner.
- (2) Where an order registered under section 7 ceases (in whole or in part) to have effect in the part of the United Kingdom in which it was made, otherwise than because of its revocation or variation, the High Court may, of its own motion or on the application of any person who appears to the Court to have an interest in the matter, cancel the registration or, if the order has ceased to have effect in part, cancel the registration so far as it relates to the provisions which have ceased to have effect.

9 Enforcement

[P1986/55/29]

- (1) Where a custody order has been registered under section 7, the High Court shall have the same powers for the purpose of enforcing the order as it would have if it had itself made the order and had jurisdiction to make it; and proceedings for or with respect to enforcement may be taken accordingly.
- (2) Where an application has been made to the High Court for the enforcement of an order registered under section 7, the Court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.
- (3) The reference in subsection (1) to a custody order does not include a reference to any provision of the order as to the means by which rights conferred by the order are to be enforced.

10 Staying of enforcement proceedings

[P1986/55/30]

- (1) Where in accordance with section 9 proceedings are taken in the High Court for the enforcement of an order registered in the Court, any person who appears to the Court to have an interest in the matter may apply for the proceedings to be stayed on the ground that he has taken or intends to take other proceedings (in the Island or the United Kingdom or elsewhere) as a result of which the order may cease to have effect, or may have a different effect, in the Island.
- (2) If after considering an application under subsection (1) the High Court considers that the proceedings for enforcement should be stayed in order that other proceedings may be taken or concluded, it shall stay the proceedings for enforcement accordingly.
- (3) The High Court may remove a stay granted in accordance with subsection (2) if it appears to the Court —
 - (a) that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or
 - (b) that those other proceedings are concluded and that the registered order, or a relevant part of it, is still in force.
- (4) Nothing in this section affects any power exercisable apart from this section to grant or remove a stay.

11 Dismissal of enforcement proceedings

[P1986/55/31]

- (1) Where in accordance with section 9 proceedings are taken in the High Court for the enforcement of an order registered in the Court under section 7, any person who appears to the Court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in the part of the United Kingdom in which it was made.
- (2) If, after considering an application under subsection (1), the High Court is satisfied that the registered order has ceased to have effect, it shall dismiss the proceedings for enforcement or, if it is satisfied that the order has ceased to have effect in part, it shall dismiss the proceedings so far as they relate to the enforcement of provisions which have ceased to have effect.

*Registration of Manx custody orders in United Kingdom***12 Registration of Manx custody order in UK**

[P1986/55/27(1)- (3) and 28(1)]

- (1) Any person on whom any rights are conferred by a custody order made by a court in the Island may apply to that court for the order to be registered in any part of the United Kingdom under any provision corresponding to section 7 and having effect in that part.
- (2) An application under subsection (1) shall be made in the prescribed manner, contain the prescribed information and be accompanied by such documents as may be prescribed.
- (3) On receiving an application under this section the court which made the custody order shall, unless it appears to the court that the order is no longer in force, cause the following documents to be sent to the appropriate court in the part of the United Kingdom specified in the application, namely —
 - (a) a certified copy of the order, and
 - (b) where the order has been varied, prescribed particulars of any variation which is in force, and
 - (c) a copy of the application and of any accompanying documents.
- (4) Where a court in the Island revokes or varies an order which is registered in any part of the United Kingdom under a provision corresponding to section 7, the court shall cause notice of the revocation or variation to be given in the prescribed manner to the court in which it is registered.

*Miscellaneous and supplemental***13 Power to order disclosure of child's whereabouts**

[P1986/55/33]

- (1) Where in proceedings for or relating to a custody order in respect of a child there is not available to the court adequate information as to where the child is, the court may order any person who it has reason to believe may have relevant information to disclose it to the court.
- (2) A person shall not be excused from complying with an order under subsection (1) above by reason that to do so may incriminate him or his spouse or civil partner of an offence; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.¹²

14 Power to order recovery of child

[P1986/55/34]

- (1) Where —
 - (a) a person is required by a custody order, or an order for the enforcement of a custody order, to give up a child to another person, and
 - (b) the court which made the order imposing the requirement is satisfied that the child has not been given up in accordance with the order,the court may make an order authorising a constable to take charge of the child and deliver him to the person concerned.
- (2) The authority conferred by subsection (1) above includes authority —
 - (a) to enter and search any premises where the person acting in pursuance of the order has reason to believe the child may be found, and
 - (b) to use such force as may be necessary to give effect to the purpose of the order.
- (3) Where by virtue of section 26 of the *Family Law Act 1991* a custody order (or a provision of a custody order) may be enforced as if it were an order requiring a person to give up a child to another person, subsection (1) above shall apply as if the custody order had included such a requirement.¹³
- (4) This section is without prejudice to any power conferred on a court by or under any other enactment or rule of law.

15 Effect of orders restricting removal

[P1986/55/36]

- (1) This section applies to any order made by a court in the United Kingdom prohibiting the removal of a child from the Island, the United Kingdom or any part of the United Kingdom.
- (2) An order to which this section applies shall have effect in the Island —
 - (a) as if it had been made by the High Court, and
 - (b) in the case of an order which has the effect of prohibiting the child's removal to the Island, the United Kingdom or any part of the United Kingdom as if it had included a prohibition on his further removal to any place except one to which he could be removed consistently with the order.
- (3) The references in subsections (1) and (2) to prohibitions on a child's removal include references to prohibition subject to exceptions; and in a case where removal is prohibited except with the consent of the court, nothing in subsection (2) above shall be construed as affecting the identity of the court whose consent is required.
- (4) In this section "child" means a person who has not attained the age of 16; and this section shall cease to apply to an order relating to a child when he attains the age of 16.

16 Surrender of passports

[P1986/55/37]

- (1) Where there is in force an order prohibiting or otherwise restricting the removal of a child from the Island, the United Kingdom or any part of the United Kingdom, the court by which it was made, or the High Court (where that Court is treated under section 15 as having made it), may require any person to surrender any United Kingdom passport which has been issued to, or contains particulars of, the child.
- (2) In this section "United Kingdom passport" means a current passport issued by or on behalf of the Government of the United Kingdom.

17 Automatic restriction on removal of wards of court

[P1986/55/38]

- (1) The rule of law which (without any order of the High Court) restricts the removal of a ward of court from the Island, shall, in a case to which this section applies, have effect subject to the modifications in subsection (3).
- (2) This section applies in relation to a ward of court if —
 - (a) proceedings for divorce, nullity or judicial separation in respect of the marriage of his parents are continuing in a court in any part of the United Kingdom, or

- (b) he is habitually resident in any part of the United Kingdom, except where that part is Scotland and he has attained the age of 16.
- (3) Where this section applies, the rule referred to in subsection (1) shall not prevent —
 - (a) the removal of the ward of court, without the consent of the High Court, to the part of the United Kingdom mentioned in subsection (2), or
 - (b) his removal to any other place with the consent of either the appropriate court in that part of the United Kingdom or the court mentioned in subsection (2)(a).

18 Duty to furnish particulars of other proceedings

[P1986/55/39]

Parties to proceedings for or relating to a custody order shall, to such extent and in such manner as may be prescribed, give particulars of other proceedings known to them which relate to the child concerned (including proceedings instituted abroad and proceedings which are no longer continuing).

19 Habitual residence after removal without consent, etc

[P1986/55/41]

- (1) Where a child who —
 - (a) has not attained the age of 16, and
 - (b) is habitually resident in the Island or any part of the United Kingdom (in this section referred to as “the relevant country”),becomes habitually resident outside the relevant country in consequence of circumstances of the kind specified in subsection (2), he shall be treated for the purposes of this Part as continuing to be habitually resident in the relevant country for the period of one year beginning with the date on which those circumstances arise.
- (2) The circumstances referred to in subsection (1) exist where the child is removed from or retained outside, or himself leaves or remains outside, the relevant country —
 - (a) without the agreement of the person or all the persons having under the law of the relevant country the right to determine where he is to reside, or
 - (b) in contravention of an order made by a court in the Island or any part of the United Kingdom.
- (3) A child shall cease to be treated by virtue of subsection (1) as habitually resident in the relevant country if, during the period there mentioned —
 - (a) he attains the age of 16, or

- (b) he becomes habitually resident outside the relevant country with the agreement of the person or persons mentioned in subsection (2)(a) and not in contravention of an order made by a court in the Island or any part of the United Kingdom.

20 Meaning of “custody order”

[P1986/55/1, 32 and 42]

- (1) In this Part “**custody order**” means, subject to the following provisions of this section —
 - (a) an order under section 11 or 17A of the *Children and Young Persons Act 2001*,¹⁴
 - (b) an order made by the High Court in the exercise of its inherent jurisdiction relating to children so far as it gives the care and control of a child to any person or provides for contact with or the education of a child, excluding an order relating to a child of whom care or care and control is (immediately after the making of the order) vested in the Department of Health and Social Care;¹⁵
 - (c) an order made by a court in any part of the United Kingdom which is a Part I order as defined in section 1 of the Family Law Act 1986 (an Act of Parliament).¹⁶
- (2) In this Part “**custody order**” does not include an order within subsection (1) which varies or revokes a previous order within that subsection.¹⁷
- (3) Subject to subsection (4), in this Part “**custody order**” does not include an order which was made before the date of commencement of this Part, or made on or after that date in proceedings commenced before that date.¹⁸
- (4) Except in sections 1 to 5, “**custody order**” includes any order within subsection (3), or within section 1(3) of the Family Law Act 1986 (an Act of Parliament), which, if this Part or Part I of that Act, as the case may be, had been in force at all material times —
 - (a) could have been made notwithstanding this Part or that Part;
 - (b) would have been a custody order for the purposes of this Part or that Part; and
 - (c) would not have ceased to have effect by virtue of section 5 or any provision corresponding thereto,

and for this purpose references in subsection (1)(a) to any enactment, or in section 1 of that Act to any provision, shall be taken as including references to any corresponding enactment or provision previously in force.
- (5) For the purpose of subsection (3) an order made on two or more applications which are determined together shall be regarded as made on the first of those applications.

- (6) References in this Part to custody orders include references to custody orders as varied.
- (7) For the purposes of this Part each of the following orders shall be treated as varying the custody order to which it relates —
 - (a) an order which provides for a person to be allowed contact with or to be given access to a child who is the subject to a custody order, or which makes provision for the education of such a child;¹⁹
 - (b) an order under any provision mentioned in section 42(6)(b), (c) or (d) of the Family Law Act 1986 (an Act of Parliament).²⁰
- (8) Except for the purposes of sections 1 to 5, subsection (7) shall have effect as if any reference to an enactment or a provision included a reference to a corresponding enactment or provision previously in force.

21 Interpretation of Part I

- (1) In this Part —
 - “**appropriate court**”, in relation to any part of the United Kingdom, shall be construed in accordance with paragraph 1 of Schedule 1;
 - “**certified copy**” in relation to the order of a court, shall be construed in accordance with paragraph 2 of Schedule 1;
 - “**child**”, except in section 15, means a person who has not attained the age of 18;
 - “**child of the family**” shall be construed in accordance with paragraph 3 of Schedule 1;
 - “**custody order**” has the meaning given by section 20;
 - “**part of the United Kingdom**” means England and Wales, Scotland or Northern Ireland;
 - “**prescribed**” means prescribed by rules of court;
 - “**the relevant date**”, in relation to the making or variation of an order, means —
 - (a) where an application is made for an order to be made or varied, the date of the application (or the first application, if 2 or more are determined together), and
 - (b) where no such application is made, the date on which the court is considering whether to make or vary the order, as the case may be.²¹
- (2) For the purposes of this Part references to proceedings as continuing shall be construed in accordance with paragraph 4 of Schedule 1.
- (3) Any reference in this Part to a provision corresponding to a provision of this Part shall be construed in accordance with paragraph 5 of Schedule 1.
- (4) Any reference in this Part to proceedings in respect of the marriage of the parents of a child shall, in relation to a child who, although not a child of

both parties to the marriage, is a child of the family of those parties, be construed as a reference to proceedings in respect of that marriage.

- (5) References in this Part to proceedings in respect of the custody of a child include, in relation to proceedings outside the Island and the United Kingdom, references to proceedings before a tribunal or other authority having power under the law having effect there to determine questions relating to the custody of children.
- (6) The Council of Ministers may by order amend section 20, this section and Schedule 1 to take account of any change in the law of any part of the United Kingdom, but no such order shall have effect unless it is approved by Tynwald.²²

22 Application of Part I to Channel Islands etc

[P1986/55/43]

- (1) The Council of Ministers may by order modify or amend any of the foregoing provisions of this Part, for the purpose of regulating as between the Island and any of the Channel Islands or any colony the jurisdiction of courts in the Island to make custody orders, and the recognition and enforcement of such orders or orders corresponding to such orders.²³
- (2) An order under this section may contain such consequential, incidental and supplementary provisions as appear to the Council of Ministers to be necessary or expedient, and in particular may amend or repeal any enactment other than this Part which appears to the Council of Ministers to be inconsistent with, or to have become unnecessary or to require modification in consequence of, the order.²⁴
- (3) An order under this section shall not have effect unless it is approved by Tynwald.

PART II – INTERNATIONAL CHILD ABDUCTION

23 The Hague Convention

[P1985/60/1; Cm 33]

- (1) In this Part “**the Hague Convention**” means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980.
- (2) Subject to the provisions of this Part, the provisions of the Hague Convention set out in Schedule 2 shall have the force of law in the Island.

24 Contracting States

[P1985/60/2]

- (1) For the purposes of the Hague Convention as it has effect under this Part the Contracting States other than the United Kingdom shall be those for the time being specified by order of the Council of Ministers for the purposes of this section.²⁵
- (2) An order under this section shall specify the date of the coming into force of the Hague Convention as between the Island and any State specified in the order; and except where the Order otherwise provides, the Hague Convention shall apply as between the Island and that State only in relation to wrongful removals or retentions occurring on or after that date.
- (3) Where the Hague Convention applies, or applies only, to a particular territory or particular territories specified in a declaration made by a Contracting State under Article 39 or 40 of the Hague Convention, references to that State in subsections (1) and (2) shall be construed as references to that territory or those territories.

25 The Central Authority

[P1985/60/3]

- (1) The functions under the Hague Convention of a Central Authority shall be discharged in the Island by the Attorney General, except that applications made under the Hague Convention by or on behalf of a person outside the British Islands may be addressed to the Lord Chancellor as the Central Authority in the United Kingdom.
- (2) Where any such application is addressed to the Attorney General but relates to a function to be discharged under the Hague Convention by another Central Authority within the British Islands, the Attorney General shall transmit the application to that Authority.

26 The judicial authority

[P1985/60/4]

The court having jurisdiction to entertain applications under the Hague Convention shall be the High Court.

27 Interim directions

[P1985/60/5]

Where an application has been made to the High Court under the Hague Convention, the Court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.

28 Reports

[P1985/60/6]

Where the Attorney General is requested to provide information relating to a child under Article 7(d) of the Hague Convention he may —

- (a) request the Department of Health and Social Care or a probation officer to make a report to him in writing with respect to any matter which appears to him to be relevant;²⁶
- (b) request any court to which a written report relating to the child has been made to send him a copy of the report;

and such a request shall be duly complied with.

29 Proof of documents and evidence

[P1986/60/7]

- (1) For the purposes of Article 14 of the Hague Convention a decision or determination of a judicial or administrative authority outside the Island may be proved by a duly authenticated copy of the decision or determination; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.
- (2) For the purposes of subsection (1) a copy is duly authenticated if it bears the seal, or is signed by a judge or officer, of the authority in question.
- (3) For the purposes of Articles 14 and 30 of the Hague Convention any such document as is mentioned in Article 8 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

30 Declarations by High Court

[P1985/60/8]

The High Court may, on an application made for the purposes of Article 15 of the Hague Convention by any person appearing to the Court to have an interest in the matter, make a declaration that the removal of any child from, or his retention outside, the Island was wrongful within the meaning of Article 3 of the Convention.

31 Suspension of court's powers in cases of wrongful removal

[P1985/60/9]

The reference in Article 16 of the Hague Convention to deciding on the merits of rights of custody shall be construed as a reference to —

- (a) making, varying or revoking a custody order, or a supervision order under section 31 of the *Children and Young Persons Act 2001*;²⁷
- (b) enforcing under section 9 a custody order within the meaning of Part I;
- (c) registering or enforcing a decision under Part III.

(d) [Repealed]²⁸

32 Rules of court

[P1985/60/10]

- (1) Rules of court may make such provision for giving effect to this Part as appears to the authority making the rules to be necessary or expedient.
- (2) Without prejudice to the generality of subsection (1), rules of court may make provision –
 - (a) with respect to the procedure on applications for the return of a child and with respect to the documents and information to be furnished and the notices to be given in connection with any such application;
 - (b) for the transfer of any such application between the High Court and a court in another part of the British Islands;
 - (c) for the giving of notices by or to a court for the purposes of the provisions of Article 16 of the Hague Convention and section 31, and generally as respects proceedings to which those provisions apply;
 - (d) for enabling a person who wishes to make an application under the Hague Convention in a Contracting State other than the United Kingdom to obtain from any court in the Island an authenticated copy of any decision of that court relating to the child to whom the application is to relate.

33 Costs of applications

[P1985/60/11]

The United Kingdom having made in respect of the Island such a reservation as is mentioned in the third paragraph of Article 26 of the Hague Convention, the costs mentioned in that paragraph shall not be borne by any public authority in the Island except so far as they fall to be so borne by virtue of the grant of legal aid under the *Legal Aid Act 1986*.

PART III – RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS

34 The Custody Convention

[P1985/60/12; Cm 8155]

- (1) In this Part “**the Custody Convention**” means the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20th May 1980.

- (2) Subject to the provisions of this Part, the provisions of the Custody Convention set out in Schedule 3 (which include Articles 9 and 10 as they have effect in consequence of a reservation made by the United Kingdom in respect of the Island under Article 17) shall have the force of law in the Island.

35 Contracting States

[P1985/60/13]

- (1) For the purposes of the Custody Convention as it has effect under this Part the Contracting States other than the United Kingdom shall be those for the time being specified by order of the Council of Ministers under this section.²⁹
- (2) An order under this section shall specify the date of the coming into force of the Custody Convention as between the Island and any State specified in the order.
- (3) Where the Custody Convention applies, or applies only, to a particular territory or particular territories specified by a Contracting State under Article 24 or 25 of the Custody Convention, references to that State in subsections (1) and (2) shall be construed as references to that territory or those territories.

36 The Central Authority

[P1985/60/14]

- (1) The functions under the Custody Convention of a Central Authority shall be discharged in the Island by the Attorney General, except that applications made under the Custody Convention by or on behalf of a person outside the British Islands may be addressed to the Lord Chancellor as the Central Authority in the United Kingdom.
- (2) Where any such application is addressed to the Attorney General but relates to a function to be discharged under the Custody Convention by another Central Authority within the British Islands, the Attorney General shall transmit the application to that Authority.

37 Recognition of decisions

[P1985/60/15]

- (1) Articles 7 and 12 of the Custody Convention shall have effect in accordance with this section.
- (2) A decision to which either of those Articles applies which was made in a Contracting State other than the United Kingdom shall be recognised in the Island as if made by a court having jurisdiction to make it in the Island but —

- (a) the High Court may, on the application of any person appearing to it to have an interest in the matter, declare on any of the grounds specified in Article 9 or 10 of the Custody Convention that the decision is not to be recognised in any part of the British Islands; and
 - (b) the decision shall not be enforceable in the Island unless registered in the High Court under section 38.
- (2A) A declaration by a court in the United Kingdom under section 15(2)(a) of the Child Abduction and Custody Act 1985 (an Act of Parliament, in this Part and in Part IV referred to as “**the U.K. Act**”) shall have the like effect in the Island as a declaration of the High Court under subsection (2)(a).³⁰
- (3) The references in Article 9(1)(c) of the Custody Convention to the removal of the child are to his improper removal within the meaning of the Custody Convention.

38 Registration of decisions

[P1985/60/16]

- (1) A person on whom any rights are conferred by a decision relating to custody made by an authority in a Contracting State other than the United Kingdom may make an application for the registration of the decision in the High Court.
- (2) The Attorney General shall assist such a person in making such an application if a request for such assistance is made by that person, or on his behalf by the Central Authority of the Contracting State in question.
- (3) An application under subsection (1) or a request under subsection (2) shall be treated as a request for enforcement for the purposes of Articles 10 and 13 of the Custody Convention.
- (4) The High Court shall refuse to register a decision if —
 - (a) the court is of the opinion that on any of the grounds specified in Article 9 or 10 of the Custody Convention the decision should not be recognised in any part of the British Islands; or
 - (b) the court is of the opinion that the decision is not enforceable in the Contracting State where it was made and is not a decision to which Article 12 of the Custody Convention applies; or
 - (c) an application in respect of the child under Part II is pending.
- (5) Where the Attorney General is requested to assist in making an application under section 16 of the U.K. Act to a court in any other part of the British Islands, he shall transmit the request to the Central Authority in that part.³¹
- (6) In this section “decision relating to custody” has the same meaning as in the Custody Convention.

39 Variation and revocation of registered decisions

[P1985/60/17]

- (1) Where a decision which has been registered under section 38 is varied or revoked by an authority in the Contracting State in which it was made, the person on whose behalf the application for registration of the decision was made shall notify the High Court of the variation or revocation.
- (2) Where the High Court is notified under subsection (1) of the revocation of a decision, it shall —
 - (a) cancel the registration, and
 - (b) notify such persons as may be prescribed by rules of court of the cancellation.
- (3) Where the High Court is notified under subsection (1) of the variation of a decision, it shall —
 - (a) notify such persons as may be prescribed by rules of court of the variation; and
 - (b) subject to any conditions which may be so prescribed, vary the registration.
- (4) The High Court, where a decision is registered under section 38, may also, on the application of any person appearing to the Court to have an interest in the matter, cancel or vary the registration if it is satisfied that the decision has been revoked or, as the case may be, varied by an authority in the Contracting State in which it was made.

40 Enforcement of decisions

[P1985/60/18]

Where a decision relating to custody has been registered under section 38, the High Court shall have the same powers for the purpose of enforcing the decision as if it had been made by the Court; and proceedings for or with respect to enforcement may be taken accordingly.

41 Interim powers

[P1985/60/19]

Where an application has been made to the High Court for the registration of a decision under section 38 or for the enforcement of such a decision, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of any subsequent application for the enforcement of the decision.

42 Suspension of courts' powers

[P1985/60/20]

- (1) Where it appears to any court in which proceedings mentioned in subsection (2) are pending in respect of a child that —
 - (a) an application has been made for the registration under section 38, or under section 16 of the U.K. Act, of a decision in respect of the child (other than a decision mentioned in subsection (3)), or such a decision is so registered; and
 - (b) the decision was made in proceedings commenced before the proceedings which are pending,the powers of the court with respect to the child in those proceedings shall be restricted as mentioned in subsection (2) unless, in the case of an application for registration, the application is refused.
- (2) Where subsection (1) applies the court shall not —
 - (a) in the case of custody proceedings, make, vary or revoke any custody order or a supervision order under section 31 of the *Children and Young Persons Act 2001*;³²
 - (b) in the case of proceedings under section 9 for the enforcement of a custody order within the meaning of Part I, enforce that order; or
 - (c) in the case of proceedings on a complaint under section 83(3) or 85(3) of that Act, determine the complaint.
- (3) Subsection (1)(a) does not apply to a decision which is only a decision relating to custody within the meaning of section 38 by virtue of being a decision relating to rights of access.
- (4) Article 10(2)(b) of the Custody Convention shall be construed as referring to custody proceedings within the meaning of this Part.

43 Reports

[P1985/60/21]

Where the Attorney General is requested to make enquiries about a child under Article 15(1)(b) of the Custody Convention he may —

- (a) request the Department of Health and Social Care or a probation officer to make a report to him in writing with respect to any matter relating to the child concerned which appears to him to be relevant;³³
- (b) request any court to which a written report relating to the child has been made to send him a copy of the report;

and any such request shall be duly complied with.

44 Proof of documents and evidence

[P1985/60/22]

- (1) In any proceedings under this Part a decision of an authority outside the Island may be proved by a duly authenticated copy of the decision; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.
- (2) For the purposes of subsection (1) a copy is duly authenticated if it bears the seal, or is signed by a judge or officer, of the authority in question.
- (3) In any proceedings under this Part any such document as is mentioned in Article 13 of the Custody Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

45 Decisions of Manx courts

[P1985/60/23]

- (1) Where a person on whom any rights are conferred by a decision relating to custody made by a court in the Island makes an application to the Attorney General under Article 4 of the Custody Convention with a view to securing its recognition or enforcement in another Contracting State, the Attorney General may require the court which made the decision to furnish him with all or any of the documents referred to in Article 13(1)(b), (c) and (d) of the Custody Convention.
- (2) Where in any custody proceedings a court in the Island makes a decision relating to a child who has been removed from the Island, the court may also, on an application made by any person for the purposes of Article 12 of the Custody Convention, declare the removal to have been unlawful if it is satisfied that —
 - (a) the applicant has an interest in the matter and
 - (b) the child has been taken from or sent or kept out of the Island without the consent of the person (or, if more than one, all the persons) having the right to determine the child's place of residence under the law of the Island.
- (3) In this section “decision relating to custody” has the same meaning as in the Custody Convention.

46 Rules of court

[P1984/60/24]

- (1) Rules of court may make such provision for giving effect to this Part as appears to the authority making the rules to be necessary or expedient.
- (2) Without prejudice to the generality of subsection (1), rules of court may make provision —
 - (a) with respect to the procedure on applications to a court under any provision of this Part and with respect to the documents and

- information to be furnished and the notices to be given in connection with any such application;
- (b) for the transfer of any such application between the High Court and a court in another part of the British Islands;
 - (c) for the giving of directions requiring the disclosure of information about any child who is the subject of proceedings under this Part and for safeguarding its welfare.

PART IV – PROVISIONS SUPPLEMENTARY TO PARTS II AND III

47 Power to order disclosure of child's whereabouts

[P1985/60/24A; P1986/55/67]

- (1) Where —
 - (a) in proceedings for the return of a child under Part II; or
 - (b) on an application for the recognition, registration or enforcement of a decision in respect of a child under Part III;

there is not available to the High Court adequate information as to where the child is, the Court may order any person who it has reason to believe may have relevant information to disclose it to the Court.

- (2) A person shall not be excused from complying with an order under subsection (1) by reason that to do so may incriminate him or his spouse or civil partner of an offence; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.³⁴

48 Termination of existing custody orders, etc

[P1985/60/25]

- (1) Where —
 - (a) an order is made for the return of a child under Part II, or under Part I of the U.K. Act; or
 - (b) a decision with respect to a child (other than a decision mentioned in subsection (2)) is registered under section 38, or under section 16 of the U.K. Act;

any custody order relating to him shall cease to have effect.

- (2) Subsection (1)(b) does not apply to a decision which is only a decision relating to custody within the meaning of section 38 by virtue of being a decision relating to rights of access.
- (3) Where by virtue of section 25(1) of the U.K. Act an authorisation under section 26 of the Children and Young Persons Act 1969 (an Act of

Parliament) ceases to have effect, any relevant order (within the meaning of the said section 26) made by a court in the Island and to which that authorisation relates shall cease to have effect.

49 Interpretation of Parts II, III and IV

(1) In Parts II and III and this Part —

“**custody order**” means —

- (a) a residence order under section 11 of the *Children and Young Persons Act 2001*;
- (b) a care order (other than an interim order) under Part 4 of that Act;³⁵

“**custody proceedings**” means proceedings for the making, variation or revocation of any custody order;

“**the Lord Chancellor**” means the Lord High Chancellor of Great Britain;

“**the U.K. Act**” means the Child Abduction and Custody Act 1985 (an Act of Parliament).

(1A) In this Act a decision relating to rights of access means a decision as to the contact which a child may or may not have with any person.³⁶

(2) The Council of Ministers may by order modify or amend any provision of Part II or III or this Part so that any reference to the U.K. Act or any provision of that Act includes a reference to —

- (a) that Act or that provision as it has effect in any of the Channel Islands or any colony by virtue of an order under section 28(1) thereof; or
- (b) any corresponding enactment or provision having effect in any of the Channel Islands or any colony.³⁷

(3) An order under subsection (2) may contain such consequential, incidental and supplementary provisions as appear to the Council of Ministers to be necessary or expedient, and in particular may amend or repeal any enactment other than Part II or III or this Part which appears to the Council of Ministers to be inconsistent with, or to have become unnecessary or to require modification in consequence of, the order.³⁸

(4) An order under subsection (2) shall not have effect unless it is approved by Tynwald.³⁹

PART V – MISCELLANEOUS AND SUPPLEMENTAL

Kidnapping

50 Abduction of child by parent etc

- (1) Subject to subsection (4), a person connected with a child under the age of 16 commits an offence if he takes or sends the child out of the Island without the appropriate consent.
- (2) A person is connected with a child for the purposes of this section if —
 - (a) he is a parent of the child; or
 - (b) in the case of an illegitimate child, there are reasonable grounds for believing that he is the father of the child; or
 - (c) he is a guardian of the child; or
 - (ca) he is a special guardian of the child; or⁴⁰
 - (d) the child lives or is to live with him in accordance with a residence order.
- (3) In this section “the appropriate consent”, in relation to a child, means —
 - (a) the consent of the child’s mother, the child’s father (if he has parental responsibility for him), any guardian of the child, any special guardian of the child, and any person with whom he lives or is to live in accordance with a residence order; or⁴¹
 - (b) the leave of the court granted under or by virtue of any provision of Part II of the *Family Law Act 1991*; or
 - (c) where a residence order is in force with respect to the child, the leave of the court by which the residence order was made (or, in the case of an order made by a court of summary jurisdiction, the leave of any other court of summary jurisdiction).
- (4) A person does not commit an offence under this section by taking or sending a child out of the Island without obtaining the appropriate consent if —
 - (a) he is a person in whose favour there is a residence order in force with respect to the child, and he takes or sends the child out of the Island for a period of less than one month; or⁴²
 - (b) he is a special guardian of the child and he takes or sends the child out of the Island for a period of less than three months;⁴³unless by so doing he is in breach of an order under Part II of the *Family Law Act 1991*.
- (5) Where, in proceedings for an offence under this section, there is sufficient evidence to raise an issue as to the application of subsection (4), it is for the prosecution to prove that the subsection does not apply.

- (6) In the case of a child of a description specified in column 1 of Schedule 4 —
 - (a) the reference in subsection (1) to the appropriate consent shall be construed as a reference to the corresponding matter specified in column 2 of that Schedule; and
 - (b) subsections (3) to (5) do not apply.
- (7) In this section and section 51 “guardian”, “parental responsibility” and “residence order” have the same meanings as in the *Family Law Act 1991*.
- (8) In this section and section 51 “special guardian” has the meaning in the *Children and Young Persons Act 2001*.^{44 45}

51 Abduction of child by other persons

- (1) Subject to subsection (3), a person, other than one mentioned in subsection (2), commits an offence if, without lawful authority or excuse, he takes or detains a child under the age of 16 —
 - (a) so as to remove him from the lawful control of any person having lawful control of the child; or
 - (b) so as to keep him out of the lawful control of any person entitled to lawful control of the child.
- (2) This section does not apply to —
 - (a) the child’s father and mother, in the case of a legitimate child;
 - (b) the child’s mother, in the case of an illegitimate child;⁴⁶
 - (c) a guardian of the child;
 - (ca) a special guardian of the child; or⁴⁷
 - (d) a person with whom the child lives or is to live in accordance with a residence order.
- (3) In proceedings for an offence under this section, it is a defence for the person accused to prove —
 - (a) in the case of an illegitimate child, that he is the child’s father or that, at the time of the alleged offence, he believed on reasonable grounds that he was the child’s father; or
 - (b) that, at the time of the alleged offence, he believed that the child had attained the age of 16.⁴⁸

52 Meaning of “taking” etc

[P1984/37/3]

For the purposes of this Part a person shall be regarded as —

- (a) taking a child, if he causes or induces the child to accompany him or any other person or causes the child to be taken;
- (b) sending a child, if he causes the child to be sent;

- (c) detaining a child, if he causes the child to be detained or induces the child to remain with him or any other person.

53 Penalties etc

[P1984/37/4]

- (1) A person guilty of an offence under this Part shall be liable —
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both;⁴⁹
 - (b) on conviction on information, to imprisonment for a term not exceeding 7 years or to a fine, or to both.
- (2) No prosecution for an offence under section 50 shall be instituted except by or with the consent of the Attorney General.

Supplemental

54 Minor and consequential amendments

- (1) The enactments specified in Schedule 5 are amended in accordance with that Schedule.
- (2) [Repealed]⁵⁰

55 Short title and commencement

- (1) This Act may be cited as the Child Custody Act 1987.
- (2) This Act shall come into operation on such day or days as the Governor in Council may by order appoint.⁵¹

SCHEDULE 1

MEANING OF CERTAIN EXPRESSIONS IN PART I

Section 21

“Appropriate court”

1. In Part I **“the appropriate court”** means —
 - (a) in relation to England and Wales, Her Majesty’s High Court of Justice in England;
 - (b) in relation to Scotland, the Court of Session;
 - (c) in relation to Northern Ireland, Her Majesty’s High Court of Justice in Northern Ireland.

Certified copy of a court order

2. (1) In Part I **“certified copy”** —
 - (a) in relation to the order of a court in the Island, means a copy certified by the proper officer of the court to be a true copy of the order or of the official record of the order;
 - (b) in relation to the order of a court in the United Kingdom, has the meaning given by section 42(1) of the Family Law Act 1986 (an Act of Parliament).
- (2) In sub-paragraph (1)(a) **“the proper officer”** means —
 - (a) in relation to the High Court, the Chief Registrar;
 - (b) in relation to a court of summary jurisdiction, the clerk of the court.

“Child of the family”

3. (1) In respect of any proceedings (other than proceedings in Scotland), in Part I **“child of the family”** means any child who has been treated by both parties as a child of their family, except a child who has been boarded out with those parties —
 - (a) in the Island, by the Department of Health and Social Care;⁵²
 - (b) in England and Wales, by a local authority or voluntary organisation;
 - (c) in Northern Ireland, by the Department of Health and Social Services or a voluntary organisation.
- (2) In respect of proceedings in Scotland, in Part I **“child of the family”** means any child of one of the parties who has been accepted as one of the family by the other party.

Continuing proceedings

4. (1) For the purposes of Part I, proceedings (other than proceedings in Scotland) for divorce, nullity or judicial separation in respect of the marriage of the parents of a child shall, unless they have been dismissed, be treated as continuing until the child concerned attains the age of 18 (whether or not a decree has been granted and whether or not, in the case of a decree of divorce or nullity of marriage, that decree has been made absolute).

(2) For the purposes of Part I, matrimonial proceedings in a court in Scotland which has jurisdiction in those proceedings to make a custody order with respect to a child shall, unless they have been dismissed or decree of absolvitor has been granted therein, be treated as continuing until the child concerned attains the age of 16.

Corresponding provisions

5. Any reference in Part I to a provision corresponding to an enactment specified in column 1 of the following Table shall be construed, in relation to England and Wales, Scotland or Northern Ireland, as a reference to the provision of the Family Law Act 1986 (an Act of Parliament) specified in column 2, 3 or 4 respectively of the Table.

TABLE

Provision of Part I	Provision of 1986 Act of Parliament		
	England and Wales	Scotland	Northern Ireland
Section 1(3)	section 2A(4)	section 13(6)*	section 21(5)
Section 4(2)	section 5(2)	section 14(2)	section 22(2)
Section 5	section 6	section 15	section 23
Section 7	section 27(4) and (5)	section 27(4) and (5)	section 27(4) and (5)
Section 12	section 27(1), (2) and (3)	section 27(1), (2) and (3)	section 27(1), (2) and (3)

*Any reference to an order under section 13(6) of the 1986 Act does not include a reference to an order made by virtue of section 13(6)(a)(i) of that Act.⁵³

SCHEDULE 2

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Section 23(2)

CHAPTER I-SCOPE OF THE CONVENTION

Article 3

The removal or the retention of a child is to be considered wrongful where —

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of sixteen years.

Article 5

For the purposes of this Convention —

- (a) “**rights of custody**” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;
- (b) “**rights of access**” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

CHAPTER II-CENTRAL AUTHORITIES

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures —

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention.
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III-RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain —

- (a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;
- (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by —

- (e) an authenticated copy of any relevant decision or agreement;
- (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- (g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative

authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested state has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

CHAPTER IV-RIGHTS OF ACCESS*Article 21*

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities

shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V- GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units —

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

SCHEDULE 3

EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING CUSTODY OF CHILDREN

Section 34(2)

Article 1

For the purposes of this Convention:

- (a) “**child**” means a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed;
- (b) “**authority**” means a judicial or administrative authority;
- (c) “**decision relating to custody**” means a decision of an authority in so far as it relates to the care of the person of the child, including the right to decide on the place of his residence, or to the right of access to him;
- (d) “**improper removal**” means the removal of a child across an international frontier in breach of a decision relating to his custody which has been given in a Contracting State and which is enforceable in such a State; “improper removal” also includes:
 - (i) the failure to return a child across an international frontier at the end of a period of the exercise of the right of access to this child or at the end of any other temporary stay in a territory other than that where the custody is exercised;
 - (ii) a removal which is subsequently declared unlawful within the meaning of Article 12.

Article 4

(1) Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognised or enforced in another Contracting State may submit an application of this purpose to the central authority in any Contracting State.

(2) The application shall be accompanied by the documents mentioned in Article 13.

(3) The central authority receiving the application, if it is not the central authority in the State addressed, shall send the documents directly and without delay to that central authority.

(4) The central authority receiving the application may refuse to intervene where it is manifestly clear that the conditions laid down by this Convention are not satisfied.

(5) The central authority receiving the application shall keep the applicant informed without delay of the progress of his application.

Article 5

(1) The central authority in the State addressed shall take or cause to be taken without delay all steps which it considers to be appropriate, if necessary by instituting proceedings before its competent authorities, in order:

- (a) to discover the whereabouts of the child;
- (b) to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child or of the applicant;
- (c) to secure the recognition or enforcement of the decision;
- (d) to secure the delivery of the child to the applicant where enforcement is granted;
- (e) to inform the requesting authority of the measures taken and their results.

(2) Where the central authority in the State addressed has reason to believe that the child is in the territory of another Contracting State it shall send the documents directly and without delay to the central authority of that State.

(3) With the exception of the cost of repatriation each Contracting State undertakes not to claim any payment from an applicant in respect of any measures taken under paragraph (1) of this Article by the central authority of that State on the applicant's behalf, including the costs of proceedings and, where applicable, the costs incurred by the assistance of a lawyer.

(4) If recognition or enforcement is refused, and if the central authority of the State addressed considers that it should comply with a request by the applicant to bring in that State proceedings concerning the substance of the case, that authority shall use its best endeavours to secure the representation of the applicant in the proceedings under conditions no less favourable than those available to a person who is resident in and a national of that State and for this purpose it may, in particular, institute proceedings before its competent authorities.

Article 7

A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State.

Article 9

- (1) (Recognition and enforcement may be refused) if:
- (a) in the case of a decision given in the absence of the defendant or his legal representative, the defendant was not duly served with the

document which instituted the proceedings or an equivalent document in sufficient time to enable him to arrange his defence; but such a failure to effect service cannot constitute a ground for refusing recognition or enforcement where service was not effected because the defendant had concealed his whereabouts from the person who instituted the proceedings in the State of origin;

- (b) in the case of a decision given in the absence of the defendant or his legal representative, the competence of the authority giving the decision was not founded:
 - (i) on the habitual residence of the defendant; or
 - (ii) on the last common habitual residence of the child's parents, at least one parent being still habitually resident there, or
 - (iii) on the habitual residence of the child;
- (c) the decision is incompatible with a decision relating to custody which became enforceable in the State addressed before the removal of the child, unless the child has had his habitual residence in the territory of the requesting State for one year before his removal.

(3) In no circumstances may the foreign decision be reviewed as to its substance.

Article 10

(1) (Recognition and enforcement may also be refused) on any of the following grounds:

- (a) if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed;
- (b) if it is found that by reason of a change in the circumstances including the passage of time but not including a mere change in the residence of the child after an improper removal, the effects of the original decision are manifestly no longer in accordance with the welfare of the child;
- (c) if at the time when the proceedings were instituted in the State of origin;
 - (i) the child was a national of the State addressed or was habitually resident there and no such connection existed with the State of origin;
 - (ii) the child was a national both of the State of origin and of the State addressed and was habitually resident in the State addressed;
- (d) if the decision is incompatible with a decision given in the State addressed or enforceable in that State after being given in a third State, pursuant to proceedings begun before the submission of the

request for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.

(2) Proceedings for recognition or enforcement may be adjourned on any of the following grounds:

- (a) if an ordinary form of review of the original decision has been commenced;
- (b) if proceedings relating to the custody of the child, commenced before the proceedings in the State of origin were instituted, are pending in the State addressed;
- (c) if another decision concerning the custody of the child is the subject of proceedings for enforcement or of any other proceedings concerning the recognition of the decision.

Article 11

(1) Decisions on rights of access and provisions of decisions relating to custody which deal with the rights of access shall be recognised and enforced subject to the same conditions as other decisions relating to custody.

(2) However, the competent authority of the State addressed may fix the conditions for the implementation and exercise of the right of access taking into account, in particular, undertakings given by the parties on this matter.

(3) Where no decision on the right of access has been taken or where recognition or enforcement of the decision relating to custody is refused, the central authority of the State addressed may apply to its competent authorities for a decision on the right of access if the person claiming a right of access so requests.

Article 12

Where, at the time of the removal of a child across an international frontier, there is no enforceable decision given in a Contracting State relating to his custody, the provisions of this Convention shall apply to any subsequent decision, relating to the custody of that child and declaring the removal to be unlawful, given in a Contracting State at the request of any interested person.

Article 13

(1) A request for recognition or enforcement in another Contracting State of a decision relating to custody shall be accompanied by:

- (a) a document authorising the central authority of the State addressed to act on behalf of the applicant or to designate another representative for that purpose;
- (b) a copy of the decision which satisfies the necessary conditions of authenticity;
- (c) in the case of a decision given in the absence of the defendant or his legal representative, a document which establishes that the

defendant was duly served with the document which instituted the proceedings or an equivalent document;

- (d) if applicable, any document which establishes that, in accordance with the law of the State of origin, the decision is enforceable;
- (e) if possible, a statement indicating the whereabouts or likely whereabouts of the child in the State addressed;
- (f) proposals as to how the custody of the child should be restored.

Article 15

(1) Before reaching a decision under paragraph (1)(b) of Article 10, the authority concerned in the State addressed:

- (a) shall ascertain the child's views unless this is impracticable having regard in particular to his age and understanding; and
- (b) may request that any appropriate enquiries be carried out.

(2) The cost of enquiries in any Contracting State shall be met by the authorities of the State where they are carried out.

Requests for enquiries and the results of enquiries may be sent to the authority concerned through the central authorities.

Article 26

(1) In relation to a State which has in matters of custody two or more systems of law of territorial application:

- (a) reference to the law of a person's habitual residence or to the law of a person's nationality shall be construed as referring to the system of law determined by the rules in force in that State or, if there are no such rules, to the system of law with which the person concerned is most closely connected;
- (b) reference to the State of origin or to the State addressed shall be construed as referring, as the case may be, to the territorial unit where the decision was given or to the territorial unit where recognition or enforcement of the decision or restoration of custody is requested.

(2) Paragraph (1)(a) of this Article also applies *mutatis mutandis* to States which have in matters of custody two or more systems of law of personal application.

SCHEDULE 4

MODIFICATIONS OF SECTION 50 FOR CHILDREN IN CARE ETC.

Section 50(6)

Description of child

“Appropriate consent”

- | | |
|---|--|
| 1. A child in the care of the Department of Health and Social Care (except a child falling within entry 3, 4 or 5 below). | The consent of the said Department. ⁵⁴ |
| 2. A child committed to a place of safety under section 35 or 59 of the <i>Children and Young Persons Act 1966</i> or section 24 of the <i>Adoption Act 1984</i> . | The leave of a court of summary jurisdiction. |
| 3. A child the subject of a pending application for an adoption order under section 1 of the <i>Adoption Act 1984</i> or for an order under section 43 of that Act. | The leave of the High Court. |
| 4. A child the subject of an order under the said section 43. | The leave of the High Court. |
| 5. A child the subject of a pending application for a residence order under section 9 of the <i>Family Law Act 1991</i> . | If the application is pending in the High Court, the leave of the High Court; otherwise, the leave of a court of summary jurisdiction. ⁵⁵ |

SCHEDULE 5

MINOR AND CONSEQUENTIAL AMENDMENTS

Section 54(1)

[Sch 5 amended by Family Law Act 1991 Sch 6 and by Matrimonial Proceedings Act 2003 Sch 6, and amends the following Acts —

Children and Young Persons act 1966 q.v.

Children and Young Persons Act 1969 q.v.]

Acts of Parliament

7. (1) In the Visiting Forces Act 1952 (an Act of Parliament), as it has effect in the Island, at the end of paragraph (b) of the Schedule insert —

“(viii) Part V (child abduction) of the *Child Custody Act 1987*;”.

(2) In section 1(5) of the Internationally Protected Persons Act 1978 (an Act of Parliament), as it has effect in the Island, before the definition of “act” insert —

“abduction” does not include an offence under section 1 of the Child Abduction Act 1984 or any corresponding provision in force in Scotland or Northern Ireland;”.

(3) In the Suppression of Terrorism Act 1978 (an Act of Parliament), as it has effect in the Island, —

(a) in section 4(1)(a)(i), omit “69,”;

(b) at the end of section 4(1)(a) insert —

“(v) section 51 of the *Child Custody Act 1987*; or”; and

(c) in Schedule 1, after paragraph 11A insert —

“11B. An offence under section 2 of the Child Abduction Act 1984 (abduction of child by person other than parent etc.) or any corresponding provision in force in Scotland or Northern Ireland.”.

SCHEDULE 6⁵⁶

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ Subpara (i) amended by Statute Law Revision Act 2017 s 29. [Editorial note: this amendment is to be treated as having always had effect.]

² Para (a) amended by Statute Law Revision Act 2017 s 29. [Editorial note: this amendment is to be treated as having always had effect.].

³ S 1 substituted by Children and Young Persons Act 2001 Sch 12.

⁴ S 2 substituted by Children and Young Persons Act 2001 Sch 12.

⁵ S 3 substituted by Children and Young Persons Act 2001 Sch 12.

⁶ Subs (3) substituted by Children and Young Persons Act 2001 Sch 12.

⁷ Subs (3A) inserted by Children and Young Persons Act 2001 Sch 12.

⁸ Subs (3B) inserted by Children and Young Persons Act 2001 Sch 12.

⁹ Para (a) amended by Children and Young Persons Act 2001 Sch 12.

¹⁰ Subs (6) amended by Family Law Act 1991 Sch 5 and by Children and Young Persons Act 2001 Sch 12.

¹¹ Subs (7) repealed by Family Law Act 1991 Sch 6.

¹² Subs (2) amended by Civil Partnership Act 2011 Sch 14.

¹³ Subs (3) amended by Family Law Act 1991 Sch 5.

¹⁴ Para (a) amended by Children and Young Persons Act 2001 Sch 12 and by Children and Young Persons (Amendment) Act 2011 s 6.

¹⁵ Para (b) amended by SD155/10 Sch 6 and by SD2014/08.

¹⁶ Subs (1) substituted by Family Law Act 1991 Sch 5.

¹⁷ Subs (2) substituted by Family Law Act 1991 Sch 5.

¹⁸ Subs (3) substituted by Family Law Act 1991 Sch 5.

¹⁹ Para (a) amended by Family Law Act 1991 Sch 5.

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- ²⁰ Para (b) amended by Family Law Act 1991 Sch 6.
- ²¹ Definition of ‘the relevant date’ added by Family Law Act 1991 Sch 5.
- ²² Subs (6) amended by GC155/91).
- ²³ Subs (1) amended by GC155/91.
- ²⁴ Subs (2) amended by GC155/91.
- ²⁵ Subs (1) amended by GC155/91.
- ²⁶ Para (a) amended by Statute Law Revision Act 1992 Sch 1, by SD359/11 and by SD2014/08.
- ²⁷ Para (a) substituted by Children and Young Persons Act 2001 Sch 12.
- ²⁸ Para (d) repealed by Children and Young Persons Act 2001 Sch 13.
- ²⁹ Subs (1) amended by GC155/91.
- ³⁰ Subs (2A) inserted by Statute Law Revision Act 1992 Sch 1.
- ³¹ Subs (5) amended by Statute Law Revision Act 1992 Sch 1.
- ³² Para (a) substituted by Children and Young Persons Act 2001 Sch 12.
- ³³ Para (a) amended by Statute Law Revision Act 1992 Sch 1, by SD359/11 and by SD2014/08.
- ³⁴ Subs (2) amended by Civil Partnership Act 2011 Sch 14.
- ³⁵ Definition of ‘custody order’ substituted by Children and Young Persons Act 2001 Sch 12.
- ³⁶ Subs (1A) inserted by Family Law Act 1991 Sch 5.
- ³⁷ Subs (2) substituted by Children and Young Persons Act 2001 Sch 12.
- ³⁸ Subs (3) added by Children and Young Persons Act 2001 Sch 12.
- ³⁹ Subs (4) added by Children and Young Persons Act 2001 Sch 12.
- ⁴⁰ Para (ca) inserted by Adoption Act 2021 Sch 3.
- ⁴¹ Para (a) amended by Adoption Act 2021 Sch 3.
- ⁴² Para (a) substituted by Adoption Act 2021 Sch 3.
- ⁴³ Para (b) substituted by Adoption Act 2021 Sch 3.
- ⁴⁴ Subs (8) inserted by Adoption Act 2021 Sch 3.
- ⁴⁵ S 50 substituted by Family Law Act 1991 Sch 5.
- ⁴⁶ Para (b) amended by Children and Young Persons Act 2001 Sch 12.
- ⁴⁷ Para (ca) inserted by Adoption Act 2021 Sch 3.
- ⁴⁸ S 51 substituted by Family Law Act 1991 Sch 5.
- ⁴⁹ Para (a) amended by Fines and Penalties Act 2024 Sch 5.
- ⁵⁰ Subs (2) repealed by Statute Law Revision Act 1992 Sch 2.
- ⁵¹ ADO (whole Act) 14/10/1991 (GC162/91).
- ⁵² Para (a) amended by SD155/10 Sch 6 and by SD2014/08.
- ⁵³ Table amended by Family Law Act 1991 Sch 5 and by Children and Young Persons Act 2001 Sch 12.
- ⁵⁴ Item 1 amended by GC140/90, by SD359/11 and by SD2014/08.
- ⁵⁵ Item 5 amended by Family Law Act 1991 Sch 5.
- ⁵⁶ Sch 6 repealed by Statute Law Revision Act 1992 Sch 2.