

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,759 of 21st January, 2010

B. 05/10

INTERNATIONAL CHILD ABDUCTION ACT 2010

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SCHEDULE
Convention on the Civil Aspects of International Child Abduction

**THIRD SUPPLEMENT TO THE GIBRALTAR
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No. 3,759 of 21st January, 2010

B. 05/10

BILL

FOR

AN ACT to give effect in the law of Gibraltar to the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25th October 1980.

ENACTED by the Legislature of Gibraltar.

Part I
General

Title and commencement.

1. This Act may be cited as the International Child Abduction Act 2010 and comes into operation on the day appointed by the Government by notice in the Gazette.

Interpretation.

2.(1) In this Act, unless the context otherwise requires—

“Care Agency” means the Care Agency established under section 3 of the Care Agency Act 2009;

“child” means a person under the age of 16 years;

“a copy” of a document includes a legible photocopy, facsimile or other copy created by electronic means;

“Central Authority” means the authority referred to in section 5;

“duly authenticated copy” means a copy of a judicial or administrative authority document which bears the seal, or is signed by a judge or officer, of the authority which has issued it;

“the EC Regulation” means Council Regulation (EC) 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000;

“the Hague Convention” means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980;

“joint custody” has the meaning set out in Article 2(11)(b) of the EC Regulation;

“Member State” means Member State of the European Union as defined in Article 2(3) of the EC Regulation;

“non-return order” means a court order that a child should not be returned to its former state or territory of residence;

“return order” means a court order that a child should be returned to its former state or territory of residence;

“rights of custody” has the meaning given in Article 5 of the Hague Convention and includes, but is not limited to, rights under custody, residence, guardianship or care orders;

“rights of access” includes, but is not limited to, rights under a contact or access order and the meaning given in Article 5 of the Hague Convention;

“States” include territories;

“wrongful removal”, in relation to a child, has the meaning given by Article 3 of the Hague Convention; and

“wrongful retention”, in relation to a child, has the meaning given by Article 3 of the Hague Convention.

(2) Any term used, but not defined, shall be construed in accordance with the provisions of the Hague Convention.

Implementation of Hague Convention.

3.(1) The Hague Convention shall have the force of law in Gibraltar and judicial notice shall be taken of it subject to—

- (a) the provisions of this Act;
- (b) any reservations to the Hague Convention made on behalf of Gibraltar;
- (c) the EC Regulation.

(2) The text of the Hague Convention in the English language is set out for convenience of reference in the Schedule to this Act.

Contracting States to the Hague Convention.

4.(1) For the purposes of this Act, “Contracting State” means a state or territory in respect of which the Hague Convention is in force in accordance with the provisions of that Convention.

(2) In relation to proof of the matters contained in subsection (1) information, including information contained in an electronic communication or a document in electronic form, from the Ministry of Foreign Affairs of the Netherlands (as depository of the Convention) or from the Hague Conference on Private International Law shall be presumed to be correct unless otherwise proved.

Central Authority for Gibraltar.

5. The functions under the Hague Convention of a Central Authority shall be discharged in Gibraltar by the Principal Secretary of the Ministry of Family, Youth and Community Affairs.

Judicial Authority in Gibraltar.

6.(1) The court having jurisdiction in respect of applications under the Hague Convention shall be the Supreme Court.

(2) For the purpose of the Hague Convention the “judicial authority” in Gibraltar shall be the Supreme Court.

Proof of documents and evidence.

7.(1) For the purposes of Article 14 of the Hague Convention, a decision or determination of a judicial or administrative authority of a Contracting State other than Gibraltar may be proved by a 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 Articles 14 and 30 of the Hague Convention, the original or a copy of any document mentioned in Article 8 of the Hague Convention shall be sufficient evidence of anything stated in it unless the contrary is shown.

(3) Nothing in the application of rules of evidence shall apply to deny the admissibility in evidence of an electronic communication, or a document in electronic form, on the ground that it is not in its original form—

- (a) by reason only that it is in an electronic form; or
- (b) where it is the best evidence that the person or public body adducing it could reasonably be expected to obtain in all the circumstances.

Part II

Return of a Child from or to Gibraltar, Access to Children

Applications for return of a child from Gibraltar.

8.(1) An application by or on behalf of a person, institution or other body claiming that a child has been wrongfully removed to, or retained in, Gibraltar may be made to—

- (a) the Central Authority; or
- (b) the Supreme Court.

(2) An application made under subsection (1) shall contain the information and be accompanied by the documents as required by Article 8 of the Hague Convention.

(3) All applications and supporting documents shall be in English or accompanied by a translation into English.

(4) Where the Central Authority receives an application and is satisfied—

- (a) that the Hague Convention applies, he shall, without delay—
 - (i) take action or cause action to be taken under the Hague Convention, including legal proceedings, to secure the return of the child concerned;
 - (ii) if he has reason to believe that the child is in another Contracting State, immediately transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority or applicant; or
- (b) that the Hague Convention does not apply, or has reason to believe that the child is in a State which is not a Contracting State, he shall inform the applicant immediately.

Applications for return of a child to Gibraltar.

9.(1) An application for the return of a child who has been wrongfully removed from Gibraltar to, or is being wrongfully retained in, another Contracting State may be sent to the Central Authority.

(2) Where the Central Authority receives any such application and is satisfied that the application is one to which the Hague Convention applies, he shall, without delay, take any action required to be taken under the Hague Convention to secure the return of the child concerned.

(3) Any action taken by the Central Authority referred to in subsection (2) may include, but is not limited to—

- (a) contacting and co-operating with the Central Authority of the relevant Contracting State;
- (b) contacting the Royal Gibraltar Police and any other police force;

- (c) providing information about the child as required by the Central Authority or courts of the relevant Contracting State;
- (d) applying, or assisting the applicants to apply, to the Supreme Court for a declaration that a child has been wrongfully removed from, or retained outside, Gibraltar; or
- (e) otherwise commencing legal action or causing legal action to be commenced.

Reports.

10.(1) Where the Central Authority is requested to provide information relating to a child under Article 7(d) of the Hague Convention he may—

- (a) request the Care Agency to provide a written report with respect to any matter which appears to him to be relevant;
- (b) request the Gibraltar Health Authority to provide a written report with respect to any matter which appears to him to be relevant;
- (c) request any other relevant person or body to provide a written report or information relating to the child; and
- (d) request any court in Gibraltar to send him certified copies of relevant documents including court orders and declarations and any written reports relating to the child.

(2) Any request made under sub-section (1) shall be complied with expeditiously.

Access.

11.(1) Applications to make arrangements for organising or securing the effective exercise of rights of access to the child may be presented to the Central Authority in the same way as an application for the return of a child under section 8 or section 9 as appropriate.

(2) The Central Authority may initiate or assist in the initiation of proceedings with a view to organising or protecting rights of access and

securing respect for the conditions to which the exercise of rights of access are subject.

Part III

Powers of the Court

Powers of the Court.

12.(1) On an application made to it under this Act, the Supreme Court –

(a) may make–

- (i) an order for the return of the child to its former state or territory of residence (a ‘return order’);
- (ii) an order that the child shall not be returned to its former state or territory of residence (a ‘non-return order’);
- (iii) a declaration that the child’s removal from, or retention outside, Gibraltar was wrongful;
- (iv) any other order or direction as necessary or desirable in connection with the above and shall be guided by the best interests of the child;

(b) shall act in accordance with–

- (i) the provisions of the Hague Convention; and
- (ii) where, prior to the removal or retention the child was habitually resident in a Member State, Article 11 of the EC Regulation.

(2) Where an application has been made for a return order and the Supreme Court has reason to believe that the child has been taken to another State or territory, it may stay the proceedings or dismiss the application for the return of the child.

(3) A return order or a non-return order is not a determination on the merits of any issue or dispute relating to the custody of the child.

Interim Powers of the Court.

13.(1) The Supreme Court may, at any time before an application is determined, give such interim directions and make such interim orders, including any orders under the Children Act 2009, as it thinks fit for the purpose of—

- (a) securing the welfare of the child concerned; or
- (b) preventing changes in the circumstances relevant to the determination of the application.

(2) An application for interim directions or an interim order may be made without notice to any other party where the case is one of urgency.

Effect of application under this Act on other proceedings.

14.(1) Where the Supreme Court is seised of an application under this Act, proceedings in any other court in Gibraltar relating to the same child—

- (a) shall be transferred to the Supreme Court; and
- (b) the Supreme Court shall have, in respect of those transferred proceedings, the same powers as the court previously seised of them.

(2) No final order may be made by the Court in relation to the rights of custody of a child where—

- (a) an application for return of that child has been made to the Supreme Court under this Act; or
- (b) the Supreme Court is informed that the child may have been wrongfully removed to or retained in Gibraltar and an application will be made to the Court.

(3) Subsection (2) shall cease to apply—

- (a) if the Court makes a final non-removal order in respect of the child; or

- (b) if no application has been made, such an application is not made to the Court under this Act within a reasonable time.

Termination of existing custody orders, etc.

15. Where a return order is made by the Supreme Court, any other order regarding rights of custody of the child made by a court in Gibraltar shall cease to have effect.

Power of Supreme Court to order disclosure of child's whereabouts.

16.(1) The Supreme Court may order any person whom it has reason to believe may have relevant information regarding the whereabouts of a child who is the subject of an application for a return order 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 in 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.

Costs.

17.(1) The costs of any proceedings under this Act shall be in the discretion of the Supreme Court.

(2) Without prejudice to subsection (1), the Court, in making an order for costs in proceedings under this Act—

- (a) may direct that the person who wrongfully removed or retained a child, or who prevented the exercise of rights of access in relation to a child, pay any necessary expenses incurred by or on behalf of the applicant in the proceedings, 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; and
- (b) shall otherwise have regard to the provisions of Article 26 of the Hague Convention.

Provision of documents by Gibraltar Courts.

18.(1) A court in Gibraltar shall, at the request of a person who wishes to make an application under the Hague Convention in any Contracting State or at the request of the Central Authority, and subject to any conditions specified by rules of court, give to the person—

- (a) a duly authenticated copy of any relevant court decision relating to the child including any declaration made by the Supreme Court under section 12(1)(a)(iii);
- (b) where the decision was made by a court in Gibraltar in default of appearance, the original or a copy, certified by the Registrar of the Supreme Court to be a true copy, of a document establishing that notice of the institution of proceedings was served on the person in default.

(2) A court in Gibraltar shall, at the request of the Central Authority in connection with an application under the Hague Convention, provide him with a copy of any written report relating to the child which has been provided to it.

Part IV
Police Powers

Police powers to detain child.

19.(1) The Commissioner of Police shall have the power to detain a child whom he reasonably suspects is being or is about to be removed from Gibraltar—

- (a) in breach of a court order regarding rights of custody or access to the child (whether or not such an order contains an order prohibiting the removal of the child from Gibraltar without leave of the court); or
- (b) while proceedings for an order under subsection (1)(a) are pending; or
- (c) where an application for an order under subsection (1)(a) is about to be made.

(2) Where the child is detained under this section the Commissioner of Police shall as soon as possible—

- (a) return the child to the person in favour of whom a court has ordered rights of custody unless there are reasonable grounds for believing that—
 - (i) that person will remove the child from Gibraltar; or
 - (ii) that returning of the child will place him at risk of physical or psychological harm; or
- (b) deliver the child into the care of the Care Agency.

(3) The Commissioner of Police shall as soon as possible after detaining a child inform or cause to be informed—

- (a) the parents of the child or other persons with rights of custody in respect of the child;
- (b) the Care Agency; and
- (c) the Central Authority.

(4) Where a child is delivered into the care of the Care Agency in accordance with subsection (2)(b) it shall arrange suitable care and accommodation for the child, which may include placing the child in foster care or residential care, pending the determination of an application under subsection (5) to the Supreme Court.

(5) Where a child is delivered into the care of the Care Agency in accordance with subsection (2)(b) they shall apply at the next sitting of the Supreme Court or, if the next sitting is not to be held within three days of the date of the child's delivery, at a specially arranged sitting of the Supreme Court held within three days, for directions in relation to the child's care.

(6) On application made under subsection (5) the Supreme Court may make such order, or interim order, relating to rights of custody and access in relation to the child as are in the best interests of the child in all the circumstances, taking into account any order referred to in subsection (1)

relating to the child and without prejudice to proceedings that may be pending or any application that is about to be made.

Part V
Rules and Regulations

Rules of Court.

20. The Chief Justice may make such rules of court as are appropriate for the purposes of this Act.

Regulations.

21. The Minister with responsibility for Family, Youth and Community Affairs may make regulations for—

- (a) carrying out the general purposes of this Act;
- (b) giving effect to Gibraltar's obligations under international or European Community law in relation to the subject matter of this Act; or
- (c) extending the provisions of this Act as between the United Kingdom and Gibraltar,

Provided that no regulations shall be made under paragraph (c) above without the consent of the Chief Minister.

SCHEDULE

Section 3

**HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL
CHILD ABDUCTION
(Concluded October 25, 1980)**

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions—

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are—

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

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 16 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 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective State 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 recognized 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.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organizing 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 fulfillment 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 organizing 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 23

No legalization or similar formality may be required in the context 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.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

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 authorization 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.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between parties to both Conventions. Otherwise the present Convention shall not restrict the

application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force—

- (1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
- (2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following–

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
- (2) the accessions referred to in Article 38;
- (3) the date on which the Convention enters into force in accordance with Article 43;
- (4) the extensions referred to in Article 39;
- (5) the declarations referred to in Articles 38 and 40;
- (6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
- (7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

EXPLANATORY MEMORANDUM

This Act gives effect in the law of Gibraltar to the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25th October 1980 (“the Hague Convention”).

Information about the Hague Convention and the Hague Conference on Private International Law can be found on the internet at <http://hcch.e-vision.nl/>

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