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1991, No. 19

An Act—

- (a) To amend the Guardianship Act 1968 in order to implement the Hague Convention on the Civil Aspects of International Child Abduction; and**
(b) To provide for matters incidental thereto

[14 April 1991

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Guardianship Amendment Act 1991, and shall be read together with and deemed part of the Guardianship Act 1968 (in this Act referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

PART I

INTERNATIONAL CHILD ABDUCTION

Preliminary Provisions

2. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Applicant” means a person by or on whose behalf an application has been made under section 9 or, as the case requires, section 10 or section 12 or section 19 or section 20 of this Act:

“Central Authority” has the meaning it has in the Convention:

“Child” means a person under the age of 16 years:

“Contracting State” means a country that, under section 5 of this Act, is a Contracting State:

“The Convention” means the Convention on the Civil Aspects of International Child Abduction signed at The Hague on the 25th day of October 1980, a copy of which Convention is set out in the Schedule to this Act:

“Habitual residence”, in relation to a Contracting State that in matters relating to the custody of children has 2 or more systems of law applicable in different territorial units, means habitual residence in a territorial unit of that state:

“Law” means—

(a) In relation to a Contracting State that in matters relating to the custody of children has 2 or more systems of law applicable in different territorial units, the law of the territorial unit in that state where the relevant child habitually resides:

(b) In relation to a Contracting State that in matters relating to the custody of children has 2 or more systems of law applicable to different categories of

persons, the legal system specified by the law of that state:

“New Zealand Central Authority” or “Authority” means the Secretary:

“Person” includes any institution or other body having rights of custody in respect of a child:

“Removal”, in relation to a child, means the wrongful removal or retention of the child within the meaning of Article 3 of the Convention:

“Rights of access” means the right to visit a child; and includes the right to take a child for a limited period of time to a place other than the child’s habitual residence:

“Rights of custody” has the meaning given to that term by section 4 (1) of this Act:

“Secretary” means the Secretary for Justice:

“United Nations International Covenants on Human Rights” means—

(a) The International Covenant on Civil and Political Rights; and

(b) The International Covenant on Economic, Social, and Cultural Rights,—

adopted by the General Assembly of the United Nations on the 16th day of December 1966.

3. Application of this Part—This Part of this Act, in so far as it applies to the removal of children, applies only to removals occurring after the commencement of this Act.

4. Rights of custody—(1) For the purposes of this Part of this Act, a person has rights of custody in respect of a child if, under the law of the Contracting State in which the child was, immediately before his or her removal, habitually resident, that person has, either alone or jointly with any other person or persons,—

(a) The right to the possession and care of the child; and

(b) To the extent permitted by the right referred to in paragraph (a) of this subsection, the right to determine where the child is to live.

(2) For the purposes of this Part of this Act, an applicant who has rights of custody in respect of a child shall be deemed to be actually exercising those rights, even though the child is in the possession of another person,—

(a) If—

(i) The applicant has placed the child in the possession of that other person pursuant to the right referred to in subsection (1) (b) of this section; and

(ii) The child is intended to be in the possession of that other person for a limited period of time; or

(b) If the child is in the possession of that other person pursuant to that other person's rights of access in respect of the child.

5. Contracting States—Subject to Articles 39 and 40 of the Convention, for the purposes of this Part of this Act the Contracting States (other than New Zealand) are those countries in respect of which the Convention is for the time being in force for New Zealand.

6. Certificate of Secretary of External Relations and Trade—A certificate signed by the Secretary of External Relations and Trade and stating—

(a) That a specified country is or is not a country in respect of which the Convention is in force as between that country and New Zealand; and

(b) Where applicable, that there is in effect in respect of any specified provision of the Convention a reservation made by any Contracting State pursuant to Article 42 of the Convention—

shall, unless the contrary is proved by the production of another certificate issued under this section (being a certificate that was issued after the first-mentioned certificate was issued), for all purposes be conclusive evidence of the matters stated in the certificate.

7. New Zealand Central Authority—(1) The Secretary is hereby designated as the Central Authority for New Zealand, and for that purpose the Secretary shall have all the duties, may exercise all the powers, and shall perform all the functions, that a Central Authority has under the Convention.

(2) The Secretary shall not be made subject to any order to pay costs in relation to the exercise or performance, by the Secretary, of any of the Secretary's duties, powers, or functions as the New Zealand Central Authority.

8. Courts having jurisdiction to entertain applications under Convention—(1) The duties, powers, and functions that, under the Convention, are conferred or imposed on the judicial authorities of a Contracting State shall be exercised or

performed, in New Zealand, by a Family Court or a District Court.

(2) Subject to the provisions of this Part of this Act and to any rules made under section 32 (4) of the principal Act, every Family Court and every District Court shall have such jurisdiction, and shall have and may exercise such powers, as is or are reasonably necessary or expedient to enable the Court to carry out its functions and duties under the Convention.

Application for Return of Child

9. Application for return of child abducted from New Zealand—(1) Where a person claims—

- (a) That a child has been removed from New Zealand to another Contracting State; and
- (b) That the child was removed from New Zealand to that other Contracting State in breach of that person's rights of custody in respect of the child; and
- (c) That at the time of that removal those rights of custody were actually being exercised by that person, or would have been so exercised but for the removal; and
- (d) That the child was habitually resident in New Zealand immediately before the removal,—

that person may apply in writing to the Authority to have that claim transmitted to that other Contracting State.

(2) Every application under subsection (1) of this section shall be in the form prescribed by rules made under the principal Act.

(3) Where the Authority is satisfied that an application made under subsection (1) of this section is in accordance with the requirements of the Convention, the Authority shall take on behalf of the applicant any action required to be taken by the Authority under the Convention.

10. Application for return of child abducted to New Zealand—(1) Subject to sections 11 and 29 of this Act, where the Authority receives, in respect of a child, an application claiming—

- (a) That the child is present in New Zealand; and
- (b) That the child was removed from another Contracting State in breach of the applicant's rights of custody in respect of the child; and
- (c) That at the time of that removal those rights of custody were actually being exercised by the applicant, or

would have been so exercised but for the removal;
and

(d) That the child was habitually resident in that Contracting State immediately before the removal,—
the Authority shall take action under the Convention to secure the prompt return of the child to the applicant.

(2) In particular, the Authority shall take or cause to be taken all appropriate measures—

- (a) To discover where the child is; and
- (b) To ensure the safety of the child and prevent prejudice to any interested party; and
- (c) To secure the voluntary return of the child to the applicant, or to bring about an amicable resolution of the issues; and
- (d) To facilitate the making of an application under section 12 of this Act by or on behalf of the applicant.

11. Authority may request further information—

(1) Where—

- (a) An application to which section 10 (1) of this Act applies is received by the Authority; and
- (b) The application—
 - (i) Does not contain the information specified in subsection (2) of this section; or
 - (ii) Is not accompanied or supplemented by the documents referred to in subsection (3) of this section; and
- (c) The Authority considers that the fact that the application does not contain that information or is not accompanied or supplemented by those documents is likely to seriously impair the ability of the Authority to carry out its duties in respect of the application,—
the Authority may return the application to the applicant or the Central Authority by which it was transmitted, and may request that the information or documents be made available.

(2) The information to which subsection (1) (b) (i) of this section applies is as follows:

- (a) Information concerning the identity of the applicant, the child, and the person alleged to have removed the child;
- (b) The date of birth of the child;
- (c) The grounds on which the applicant's claim for the return of the child is based:

(d) Information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

(3) The documents to which subsection (1) (b) (ii) of this section applies are as follows:

(a) An authenticated copy of any decision, agreement, or other document, where it is relevant to the application:

(b) A certificate or affidavit concerning the relevant law of the Contracting State of the child's habitual residence, being a certificate or affidavit from the Central Authority of that state, or from any other competent authority of that state, or from any qualified person.

12. Application to Court for return of child abducted to New Zealand—(1) Where any person claims—

(a) That a child is present in New Zealand; and

(b) That the child was removed from another Contracting State in breach of that person's rights of custody in respect of the child; and

(c) That at the time of that removal those rights of custody were actually being exercised by that person, or would have been so exercised but for the removal; and

(d) That the child was habitually resident in that Contracting State immediately before the removal,—

that person, or any person acting on that person's behalf, may apply to a Court having jurisdiction under this Part of this Act for an order for the return of the child.

(2) Subject to section 13 of this Act, where—

(a) An application is made under subsection (1) of this section to a Court; and

(b) The Court is satisfied that the grounds of the application are made out,—

the Court shall make an order that the child in respect of whom the application is made be returned forthwith to such person or country as is specified in the order.

(3) A Court hearing an application made under subsection (1) of this section in relation to the removal of a child from a Contracting State to New Zealand may request the applicant to obtain an order from a Court of that state, or a decision of a competent authority of that state, declaring that the removal was wrongful within the meaning of Article 3 of the Convention

as it applies in that state, and may adjourn the proceedings for that purpose.

(4) Where—

(a) An application is made to a Court under subsection (1) of this section in respect of a child; and

(b) The Court—

(i) Is not satisfied that the child is in New Zealand; or

(ii) Is satisfied that the child has been taken out of New Zealand to another country,—

the Court may dismiss the application or adjourn the proceedings.

13. Grounds for refusal of order for return of child—

(1) Where an application is made under subsection (1) of section 12 of this Act to a Court in relation to the removal of a child from a Contracting State to New Zealand, the Court may refuse to make an order under subsection (2) of that section for the return of the child if any person who opposes the making of the order establishes to the satisfaction of the Court—

(a) That the application was made more than 1 year after the removal of the child, and the child is now settled in his or her new environment; or

(b) That the person by or on whose behalf the application is made—

(i) Was not actually exercising custody rights in respect of the child at the time of the removal, unless that person establishes to the satisfaction of the Court that those custody rights would have been exercised if the child had not been removed; or

(ii) Consented to, or subsequently acquiesced in, the removal; or

(c) That there is a grave risk that the child's return—

(i) Would expose the child to physical or psychological harm; or

(ii) Would otherwise place the child in an intolerable situation; or

(d) 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 the child's views; or

(e) That the return of the child is not permitted by the fundamental principles of New Zealand law relating to the protection of human rights and fundamental freedoms.

(2) In determining whether subsection (1) (e) of this section applies in respect of an application made under section 12 (1) of this Act in respect of a child, the Court may consider, among other things,—

- (a) Whether or not the return of the child would be inconsistent with any rights that the child, or any other person, has under the law of New Zealand relating to political refugees or political asylum;
- (b) Whether or not the return of the child would be likely to result in discrimination against the child or any other person on any of the grounds on which discrimination is not permitted by the United Nations International Covenants on Human Rights.

(3) On the hearing of an application made under subsection (1) of section 12 of this Act in respect of a child, a Court shall not refuse to make an order under subsection (2) of that section in respect of the child by reason only that there is in force or enforceable in New Zealand a custody order relating to that child, but may have regard to the reasons for the making of that order.

14. Applications to be dealt with expeditiously—

(1) Where an application is made to a Court under section 12 (1) of this Act, the Court shall, so far as it is practicable, give priority to the proceedings in order to ensure that they are dealt with expeditiously.

(2) Where—

- (a) An application is made to a Court under section 12 (1) of this Act in respect of a child; and
- (b) The application is not determined within the period of 6 weeks commencing on the date on which the application is made,—

the Authority may, and shall if requested by the applicant or the Central Authority of the Contracting State from which the child was removed, request the Registrar of the Court to supply a statement of the reasons why the application has not been determined within that period, and the Registrar shall as soon as practicable supply the statement to the Authority.

(3) The Authority shall send a copy of the statement to the applicant or, as the case may require, the Central Authority of the relevant Contracting State.

15. Interim powers—Where an application is made under section 12 (1) of this Act to any Court, 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.

16. No order relating to custody to be made until application determined—Where an application is made to a Court under section 12 (1) of this Act in respect of a child, the Court shall not, while those proceedings are pending, make any order or decision relating to the custody of that child in any other proceedings that are before that Court (whether those proceedings were commenced before, after, or at the same time as, the application was made), and the Court may adjourn those other proceedings pending the determination of the application.

17. Custody of child where application dismissed—(1) Where, on an application made to a Court under subsection (1) of section 12 of this Act in respect of a child, the Court refuses to make an order under subsection (2) of that section for the return of the child, the Court may, on application by any party to the proceedings or of its own motion, make such interim or permanent order with respect to the custody of the child as it thinks fit.

(2) Any order made under subsection (1) of this section may be made subject to such conditions as the Court thinks fit.

18. Request for declaration that child wrongfully removed—A Court that has jurisdiction under this Part of this Act may, if requested by the Central Authority of another Contracting State, make an order declaring that the removal of a child from New Zealand to that Contracting State was wrongful within the meaning of Article 3 of the Convention.

Application for Access to Child

19. Application for access to child outside New Zealand—(1) Where a person claims—

- (a) To have rights of access in respect of a child; and
- (b) That the child is habitually resident in a Contracting State; and
- (c) That the child is present in a Contracting State other than New Zealand,—

that person may apply in writing to the Authority to have that claim transmitted to that other Contracting State.

(2) Every application under subsection (1) of this section shall be in the form prescribed by rules made under the principal Act.

(3) Where the Authority is satisfied that an application made under subsection (1) of this section is in accordance with the requirements of the Convention, the Authority shall take on behalf of the applicant any action required to be taken by the Authority under the Convention.

20. Application for access to child in New Zealand—Where the Authority receives, in respect of a child, an application in which the applicant claims—

- (a) To have rights of access in respect of a child; and
- (b) That the child is habitually resident in New Zealand; and
- (c) That the child is present in New Zealand,—

the Authority shall make such arrangements as may be appropriate to organise or secure the effective exercise of the applicant's rights of access.

Miscellaneous Provisions

21. Translation to accompany application—Every application under section 9 or section 19 of this Act in respect of a child shall be accompanied by a translation of the application, being a translation—

- (a) Into the official language or one of the official languages of the Contracting State to which the application is intended to be sent; or
- (b) If that Contracting State has made a reservation under Article 42 of the Convention objecting to the use of English, into French.

22. Evidentiary provisions—(1) In determining whether, under the law of a Contracting State, an applicant has rights of custody in respect of a child, a Court may, notwithstanding anything in sections 37 to 41 of the Evidence Act 1908, take direct notice of—

- (a) The law of that Contracting State;
- (b) Any decision or determination of a judicial or administrative authority of that Contracting State, whether or not formally recognised in that state;
- (c) Any agreement having legal effect under the law of that Contracting State.

(2) For the purposes of subsection (1) of this section, a decision or determination of a judicial or administrative authority outside New Zealand 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.

(3) For the purposes of subsection (2) of this section, a copy is duly authenticated if it purports to bear the seal, or purports to be signed by a judge or officer, of the authority in question.

23. Legal representation—(1) Where—

- (a) An application is made under section 9 or section 10 or section 12 or section 19 or section 20 of this Act; and
- (b) The applicant is not represented by a barrister or solicitor,—

the Authority shall, where the circumstances so require, appoint a barrister or solicitor to represent the applicant for the purposes of the application, including (in the case of an application made under section 10 or section 12 of this Act) any proceedings under section 12 of this Act.

(2) The provisions of subsections (3) to (7) of section 30 of the principal Act shall, so far as applicable and with all necessary modifications, apply with respect to a barrister or solicitor appointed under subsection (1) of this section as if that barrister or solicitor were appointed under that section.

24. Preventing concealment of whereabouts of child—

(1) Where an application made under section 10 of this Act in respect of a child is received by the Authority, a District Court Judge or, if no District Court Judge is available, any Registrar (not being a member of the Police) may, on application in writing made on oath, where there are reasonable grounds for believing that any person will attempt to conceal the whereabouts of the child in order to defeat the claim of the applicant, issue a warrant authorising any member of the Police or a Social Worker, either by name or generally, to take possession of the child and place it in the care of some suitable person pending the order or further order of the Court having jurisdiction in the case.

(2) Subsections (4) to (6) of section 19 of the principal Act shall, so far as applicable and with all necessary modifications, apply in relation to every warrant issued under subsection (1) of this section as if every such warrant were a warrant issued under subsection (1) of that section.

25. Preventing removal of child to defeat application—

(1) This section applies where any District Court Judge or, if no District Court Judge is available, any Registrar (not being a

member of the Police) is satisfied that there are reasonable grounds for believing that any person is about to take a child out of New Zealand with intent to defeat the claim of any person who has made, or is about to make, an application under section 10 or section 12 or section 20 of this Act, or to prevent any order made under section 12 (2) of this Act from being complied with.

(2) Where this section applies, the District Court Judge or Registrar—

(a) May exercise, in respect of that child, the power referred to in paragraph (a) of subsection (1) of section 20 of the principal Act; and

(b) May exercise, in respect of that child, or the person believed to be about to take the child out of New Zealand, or both, the power referred to in paragraph (b) of that subsection,—

and the provisions of subsections (1A) and (2) of that section, so far as applicable and with all necessary modifications, shall apply accordingly.

26. Enforcement of order for return of child—

(1) Where, in any proceedings under section 12 of this Act, a Court makes an order under subsection (2) of that section for the return of a child, a Family Court or a District Court may at any time, on the application of any party to those proceedings or of its own motion, issue a warrant authorising any member of the Police or any Social Worker or any other person named in the warrant to take possession of the child and to deliver the child to any person or authority named in the warrant for the purpose of returning the child in accordance with the order.

(2) The powers conferred on a Court by subsection (1) of this section may, if the Court thinks fit, be exercised on the making of an order under section 12 (2) of this Act for the return of a child.

(3) Subsections (4) to (6) of section 19 of the principal Act shall, so far as applicable and with all necessary modifications, apply in relation to every warrant issued under subsection (1) of this section as if every such warrant were a warrant issued under subsection (1) of that section.

27. Security for costs, etc.—Subject to section 30 (7) of the principal Act (as applied by section 23 of this Act), no person who makes an application under section 9 or section 10 or section 12 or section 19 or section 20 of this Act shall be required to provide any security, bond, or deposit for the

purpose of guaranteeing the payment of, or to make any payment towards, the costs or expenses of or incidental to any proceedings relating to that application.

28. Costs of returning child—(1) Where a Court makes an order under section 12 (2) of this Act for the return of a child, the Court may, if it thinks just, make an order directing that the whole or part of any costs of or incidental to returning the child in accordance with the order, including the cost and travelling expenses of any necessary escort, shall be paid by the person who removed the child to New Zealand.

(2) Where a Court makes an order under section 12 (2) of this Act for the return of a child, and the whole or part of any costs of or incidental to returning the child in accordance with the order (including the cost and travelling expenses of any necessary escort) are paid by the Crown, the Court may, on the application of the Authority, order the person who removed the child to New Zealand to refund to the Crown such amount as the Court specifies in respect of the costs so paid by the Crown, and the amount ordered to be refunded shall be a debt due to the Crown by that person and shall be recoverable accordingly in any Court of competent jurisdiction.

(3) Where—

- (a) An application is made under section 10 of this Act in respect of any child; and
- (b) The child is returned voluntarily to the applicant; and
- (c) That return is due, in whole or in part, to the intervention of the Authority; and
- (d) Any costs of or incidental to returning the child (including the cost and travelling expenses of any necessary escort) are paid by the Crown or by any other person (other than the person who removed the child to New Zealand),—

a District Court may, on the application of the Authority (in any case where a refund of those costs is sought on behalf of the Crown), or (in any other case) of that other person, order the person who removed the child to New Zealand to refund to the Crown or, as the case may be, that other person, such amount as the Court specifies in respect of the costs so paid by the Crown or that other person, and the amount ordered to be refunded shall be a debt due to the Crown or, as the case may be, that other person by the person who removed the child to New Zealand, and shall be recoverable accordingly in any Court of competent jurisdiction.

(4) A copy of any order made under this section may be lodged in the High Court, and on being so lodged, the order shall be deemed, as from the date on which it is lodged, to be an order of the High Court, and shall—

- (a) For the purposes of execution, be of the same force and effect; and
- (b) Carry interest on the amount payable under the order; and
- (c) Be subject to the same control over its execution by the High Court,—

as if it had been an order originally made in the High Court and entered on the date on which it is so lodged.

(5) The High Court, if it thinks fit, may at any time, on application, and on such terms (if any) as it thinks just, set aside the lodging of an order under subsection (4) of this section.

29. Unfounded applications—(1) Nothing in this Part of this Act requires the Authority to take any action in respect of any application where it is manifest that the requirements of the provisions of this Part of this Act that are applicable to the application have not been fulfilled or complied with, or that the application is otherwise not well founded.

(2) Where, pursuant to this section, the Authority refuses to take any action in respect of an application, the Authority shall forthwith inform the applicant or, as the case may require, the Central Authority through which the application was transmitted, of the grounds for the refusal.

(3) Where, pursuant to this section, the Authority refuses to take any action in respect of an application, any person aggrieved by that refusal may appeal to a District Court or a Family Court against that refusal.

(4) On any appeal under subsection (3) of this section the Court may—

- (a) Make such order as may be just; or
- (b) Refer the matter back to the Authority with directions to reconsider the whole or any specified part of the matter.

(5) The decision of the Court on any appeal under subsection (3) of this section shall be final.

30. Other provisions not affected—Nothing in this Part of this Act prevents a Court, at any time, from making an order for the return of a child to a Contracting State otherwise than pursuant to the provisions of this Part of this Act.

PART II

AMENDMENTS TO PRINCIPAL ACT

31. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing paragraph (a) of the definition of the term “prescribed overseas country”.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that—

(a) The repeal effected by subsection (1) of this section shall not affect any overseas custody order made by a Court in the United Kingdom and registered under section 22A of the principal Act—

(i) Before the commencement of this Act; or

(ii) After the commencement of this Act in accordance with paragraph (b) of this subsection,—
and the provisions of the principal Act shall continue to apply in relation to any such order as if the United Kingdom were a prescribed overseas country for the purposes of the principal Act; and

(b) Where, before the commencement of this Act, a certified copy of an overseas custody order made by a Court in the United Kingdom has been received by the Secretary or by the Registrar of a District Court for the purposes of registration under section 22A of the principal Act, that order may, notwithstanding the repeal effected by subsection (1) of this section, but subject in all other respects to the requirements of that section, be registered under that section.

32. Jurisdiction of Courts—(1) Section 4 (1) of the principal Act is hereby amended by omitting the words “and to sections 9, 12, 19, and 20 of this Act”, and substituting the words “, to sections 9, 12, 19, and 20 of this Act, and to Part I of the Guardianship Amendment Act 1991”.

(2) Section 4 (3) of the principal Act is hereby amended by inserting, after the words “section 19 of this Act”, the words “or an application under section 12 of the Guardianship Amendment Act 1991”.

(3) Section 4 (4) of the principal Act is hereby amended—

(a) By inserting, after the words “Family Court Judge” where they first appear, the words “or, in any proceedings under Part I of the Guardianship Amendment Act 1991 before a District Court, a District Court Judge”:

- (b) By inserting, after the words “Family Court Judge” where they appear for the second time, the words “or District Court Judge”:
- (c) By inserting, after the words “Family Court” where they last appear, the words “or, as the case may require the District Court”.

33. Enforcement of New Zealand orders overseas—

Section 22L (1) of the principal Act (as inserted by section 2 of the Guardianship Amendment Act 1979) is hereby amended by inserting, immediately before the words “Where an order”, the words “Subject to section 22LA of this Act,”.

34. Restrictions on right to make request under section 22L—The principal Act is hereby amended by inserting, after section 22L (as so inserted), the following section:

“22LA. (1) A request may be made to the Registrar under section 22L of this Act in respect of an order relating to the custody of, or access to, a child if, and only if,—

“(a) In the case of a request made by or on behalf of a person having rights of custody in relation to the child pursuant to the order, the person by or on whose behalf the request is made—

“(i) Believes, on reasonable grounds, that another person will apply, in a prescribed overseas country, for custody of the child; or

“(ii) Is unable to have the order enforced in New Zealand because the child was removed from New Zealand, without the consent of that person, during the course of the proceedings in which the order was made:

“(b) In the case of a request made by or on behalf of a person having rights of access in relation to the child pursuant to the order, the person by or on whose behalf the request is made believes, on reasonable grounds, that it is necessary to register the order in a prescribed overseas country in order to ensure that the person’s rights of access may be enforced in that country.

“(2) Where any request is made to the Registrar under section 22L of this Act, the Registrar may require the person by or on whose behalf the request is made to supply to the Registrar such evidence in support of that request as may be necessary to enable the Registrar to determine whether or not the requirements of this section, as they relate to the making of

that request, are met, and the Registrar may refuse to take any further action on that request until that evidence is so supplied.”

35. Welfare of child paramount—Section 23 (3) of the principal Act is hereby amended by adding the words “or of Part I of the Guardianship Amendment Act 1991”.

36. Reports from other persons—Section 29A (1) of the principal Act is hereby amended by inserting, after the words “or access”, the words “, or on any application made under section 12 (1) of the Guardianship Amendment Act 1991”.

SCHEDULE

Section 2

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

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.

SCHEDULE—*continued**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 organisations 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 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 organising 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;

SCHEDULE—*continued*

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 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,

SCHEDULE—*continued*

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.

SCHEDULE—*continued**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 fulfilment of any conditions to which the exercise of

SCHEDULE—*continued*

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.

SCHEDULE—*continued*

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

SCHEDULE—*continued*

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.

SCHEDULE—*continued*

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 reservations 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.

SCHEDULE—*continued*

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.