

STATES OF JERSEY

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DRAFT CHILD ABDUCTION AND CUSTODY (JERSEY) LAW 200

**Lodged au Greffe on 7th June 2005
by the Legislation Committee**

STATES GREFFE



Jersey

DRAFT CHILD ABDUCTION AND CUSTODY (JERSEY) LAW 200

European Convention on Human Rights

The President of the Legislation Committee has made the following statement –

In the view of the Legislation Committee the provisions of the Draft Child Abduction and Custody (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Connétable D.F. Gray of St. Clement**

REPORT

In the last two decades there has been growing concern about the increase in child abductions across international frontiers. In Jersey, as in larger jurisdictions such as the United Kingdom, probable reasons for this increase include a growth in the number of international marriages, the high incidence of divorce, and an increase in foreign travel and temporary residencies abroad for work. Because of the practical advantages that the person who has actual possession of the child enjoys, there is a temptation for the parent who has been denied custody to abduct the child in the hope that the court in the country of refuge will make a more favourable order. The parent might also wish to escape justice all together.

Abduction will almost always prejudice the welfare of the child. He or she may be uprooted from a stable home life, uprooted from school and friends and maybe taken to a country which has an alien culture and a different language, and with which he or she has little connection.

The difficulties faced by the custodial parent of an abducted child are formidable. There is the delay and expense involved in tracing the child and in bringing the case before the court or relevant administrative body of the State of refuge, and that court or administrative body might have a different approach to issues of child custody than the authorities of the country from which the child was abducted. These difficulties have, in the past, led parents of abducted children to set up self-help groups such as The Children Abroad Group and to resort to employing private detectives to “snatch” the child back.

The object of the draft Law is to help parents and others with custody rights to obtain the return of abducted children. It would achieve this by enabling the United Kingdom, on the Island’s behalf, to ratify and the Island to implement two international Conventions –

- (i) The Hague Convention which requires the summary return of an abducted child to its country of habitual residence so that issues of custody can be decided there; and
- (ii) The European Convention which enables custody decisions that have already been made to be recognised and enforced.

The Hague Convention prevails should both Conventions apply to the case of an abducted child.¹

Introductory

The draft Law may be read in conjunction with the Draft Criminal Law (Child Abduction) (Jersey) Law 200- which contains criminal sanctions against child abduction. This draft Law reinforces the sanctions in that Law against people who take children abroad without permission by providing a civil procedure for securing the return of those children.

Scope of the draft Law

Under Part 2 of the draft Law the Policy and Resources Committee will by Order specify the contracting States under the Hague Convention and under the European Convention (other than the United Kingdom). The contracting States to both Conventions are listed for United Kingdom purposes in the Schedules to the child Abduction and Custody (Parties to Conventions) Order 1986 [SI 1986/1159]. The Schedules to that Order are reproduced in the Appendix to this Report.

Machinery for Enforcement

Both the Hague Convention and the European Convention require contracting States to establish central authorities to undertake the administrative arrangements necessary to secure the objects of the Conventions. The central authorities act as channels for applications under both Conventions and they are required to assist applicants with the practical problems of tracing the child and securing its return.

The draft Law provides for the functions in Jersey of the central authority to be discharged by the Attorney General.²

The Hague Convention

The Convention on the Civil Aspects of International Child Abduction was signed on 25th October 1980 at the fourteenth session of the Hague Conference on Private International Law. Article 1 of the Convention states that its objects are –

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

The wider object contained in (b) which, as regards access is given effect in Article 21 of the Convention,³ is subsidiary to the primary purpose of the Convention which is to secure the return of children under the age of 16 who have been abducted from one contracting State to another. The Convention is concerned with custody rights rather than custody decisions and Article 3 of the Convention provides that an abduction for the purposes of the Convention can occur even though there is no custody order in effect in relation to the child.

Although the Convention offers practical and financial advantages to a person whose custody rights have been breached by an abduction, it is possible for that person to take direct action in the State of refuge.⁴ An application under the Convention must be made to a central authority (i.e. the Attorney General in Jersey) and must contain the information specified in Article 8 of the Convention (q.v.). If the central authority believes that the child is being cared for in another contracting State, it must transmit the application to the central authority of that State.⁵ If the whereabouts of the child are unknown, the central authority will take steps to find it.⁶ Once this has been done, the authority will attempt to secure the voluntary return of the child.⁷ If this attempt fails, Article 7 of the Convention imposes various obligations on the authority to assist the applicant in instituting court proceedings and securing the safe return of the child.

If the child has been abducted⁸ the court of the contracting State where the child is located must order its immediate return under Article 12 of the Convention unless one of the exceptions in Article 13 is established by the abductor. The obligation to return the child arises when less than a year has elapsed from the date of the abduction to the date when the proceedings were commenced. After that period, the child has to be returned “unless it is demonstrated that the child is now settled in its new environment”.

The Convention is designed to secure the immediate return of the abducted child and is based on the assumption that the question of the merits of the custody dispute are best left to the State of the child’s habitual residence. If an investigation as to the merits of the case is being undertaken in the State to which the child has been abducted, those proceedings must stay on the court being notified of the abduction.⁹

The European Convention

The Council of Europe Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children was opened for signature at the twelfth Conference of European Ministers of Justice on 20th May 1980. The object of the Convention is to give a person who has obtained a decision in a contracting State relating to the custody of a child under 16 the right to apply for that decision to be recognised and enforced in another contracting State. Recognition and enforcement of an enforceable custody decision can only be refused if one of the grounds set out in Article 9 or 10 of the Convention is established.¹⁰

If a person who has obtained a custody order in a foreign contracting State wishes to have that order enforced in the Island an application for registration must be made to the Royal Court. The Attorney General, as the central authority for the Island, must offer the applicant such assistance as is provided for in Article 5 of the Convention if a request for assistance is made by the applicant or by the central authority for the contracting State where the custody order was made.¹¹ This assistance might include taking steps to discover the whereabouts of the child, securing the recognition or enforcement of the decision and, if enforcement is granted, arranging for the safe return of the child.

It is for the courts of the contracting State and not for the central authority to consider whether a decision should be registered and, if the decision is registered, how it should be enforced. Decisions registered in Jersey will be enforced as if they had been made here.¹²

Conclusion

The explanatory note accompanying this *projet* explains the detailed provisions of the draft Law. If approved, the Law will mark a significant departure from the existing reliance of the Royal Court on the customary law in this field. It will enable the Island to co-operate with all contracting States (listed in the Appendix hereto) and the Island in turn to secure co-operation from those States. The procedures will be clearly set out as will the criteria

according to which applications will be determined. The potential for protracted litigation will be curtailed and with this will abate the cost and above all the delay and uncertainty associated with the restoration of abducted children to their custodial parent.

This fundamental reform is long overdue. When implemented, it will finally enable the Island to take its place in the wider international community and play a full part in combating cross-border abduction of children.

Financial/manpower implications

It is foreseeable that some additional work may be incurred in the Law Officers Department to give effect to this legislation and indeed if that were not so the legislation would be unnecessary. It is not anticipated that this legislation will have such a significant impact by itself that any further staff will be needed by the Attorney General though only the passage of time will show whether or not that is correct.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 3rd June 2005 the Legislation Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Legislation Committee the provisions of the Draft Child Abduction and Custody (Jersey) Law 200- are compatible with the Convention Rights.

Note

^[1] See Article 17(4)(c) of the draft Law and the Explanatory Note relating thereto.

² See Articles 5 and 15 of the draft Law.

³ See the text of the relevant provisions of the Hague Convention in Schedule 1 to the draft law.

⁴ See Article 29 of the Convention.

⁵ See Article 9 of the Convention.

⁶ See Article 7(a) of the Convention.

⁷ See Article 7(c) of the Convention.

⁸ As defined in Article 3 of the Convention.

⁹ Article 16 of the Convention.

^[10] See the text of Articles 9 and 10 in Schedule 2 to the draft Law.

^[11] See Article 17 of the draft Law.

^[12] See Article 19 of the draft law.

**CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD
ABDUCTION, THE HAGUE, 25TH OCTOBER 1980**

<i>Contracting States to the Convention</i>	<i>Territories specified in Declarations under Articles 24 or 25 of the Convention</i>	<i>Date of Coming into Force of Convention as between the United Kingdom and the State or Territory</i>
Argentina	–	1st June 1991
Australia	Australian States and mainland Territories	1st January 1987
Austria	–	1st October 1988
The Bahamas	–	1st January 1994
Belarus		1st October 2003
Belgium	–	1st May 1999
Belize	–	1st October 1989
Bosnia and Herzegovina	–	1st December 1991
Brazil		1st March 2005
Burkina Faso	–	1st November 1992
Canada	Ontario	1st August 1986
	New Brunswick	1st August 1986
	British Columbia	1st August 1986
	Manitoba	1st August 1986
	Nova Scotia	1st August 1986
	Newfoundland	1st August 1986
	Prince Edward Island	1st August 1986
	Quebec	1st August 1986
	Yukon Territory	1st August 1986
	Saskatchewan	1st November 1986
	Alberta	1st February 1987
	Northwest Territories	1st April 1988
Chile	–	1st May 1994
China	Honk Kong Special Administrative Region	1st September 1997
	Macau Special Administrative Region	1st March 1999
Colombia	–	1st March 1996
Croatia	–	1st December 1991
Cyprus	–	1st February 1995
Czech Republic	–	1st March 1998

Table continued

<i>Contracting States to the Convention</i>	<i>Territories specified in Declarations under Articles 24 or 25 of the Convention</i>	<i>Date of Coming into Force of Convention as between the United Kingdom and the State or Territory</i>
Denmark	—	1st July 1991
Ecuador	—	1st June 1992
Estonia	—	1st October 2003
Fiji	—	1st October 2003
Finland	—	1st August 1994
France	—	1st August 1986
Georgia	—	1st October 1997
Germany	—	1st December 1990
Greece	—	1st June 1993
Honduras	—	1st March 1994
Hungary	—	1st September 1986
Iceland	—	1st November 1996
Ireland	—	1st October 1991
Israel	—	1st December 1991
Italy	—	1st May 1995
Latvia	—	1st October 2003
Lithuania	—	1st March 2005
Luxembourg	—	1st January 1987
Macedonia	—	1st December 1991
Malta	—	1st March 2002
Mauritius	—	1st June 1993
Mexico	—	1st October 1991
Monaco	—	1st February 1993
Netherlands	—	1st September 1990
New Zealand	—	1st October 1991
Norway	—	1st April 1989
Panama	—	1st May 1994
Peru	—	1st October 2003
Poland	—	1st November 1992
Portugal	—	1st August 1986
Romania	—	1st February 1993
St. Kitts and Nevis	—	1st August 1994
Serbia and Montenegro	—	1st December 1991

Table continued

<i>Contracting States to the Convention</i>	<i>Territories specified in Declarations under Articles 24 or 25 of the Convention</i>	<i>Date of Coming into Force of Convention as between the United Kingdom and the State or Territory</i>
Slovakia		1st February 2001
Slovenia	—	1st June 1994
South Africa	—	1st October 1997
Spain	—	1st September 1987
Sweden	—	1st June 1989
Switzerland	—	1st August 1986
Turkey		1st August 2000
Turkmenistan	—	1st May 1998
United States of America	—	1st July 1988
Uruguay		1st October 2003
Uzbekistan		1st October 2003
Venezuela	—	1st January 1997
Zimbabwe	—	1st July 1995

**EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF
DECISIONS CONCERNING CUSTODY OF CHILDREN AND ON
RESTORATION OF CUSTODY OF CHILDREN, LUXEMBOURG, 20TH MAY,
1980**

<i>Contracting States of the Convention</i>	<i>Territories specified in Declarations under Articles 24 or 25 of the Convention</i>	<i>Date of Coming into Force of Convention as between the United Kingdom and the State or Territory</i>
Argentina	–	1st June 19991
Austria	–	1st August 1986
Belgium	–	1st August 1986
Cyprus	–	1st October 1986
Denmark	–	1st August 1991
Finland	–	1st August 1994
France	–	1st August 1986
Germany	–	1st February 1991
Greece	–	1st July 1993
Iceland	–	1st November 1996
The Republic of Ireland	–	1st October 1991
Italy	–	1st June 1995
Liechtenstein	–	1st August 1997
Luxembourg	–	1st August 1986
Malta	–	1st February 2000
Netherlands	–	1st September 1990
Norway	–	1st May 1989
Poland	–	1st March 1996
Portugal	–	1st August 1986
Spain	–	1st August 1986
Sweden	–	1st July 1989
Switzerland	–	1st August 1986

Note: In addition to the above list both the Czech Republic (as of 1 July 2000) and Turkey (as of 1 June 2000) have ratified the Convention.

Explanatory Note

The object of this draft Law is to help parents and others with custody rights to obtain the return of abducted children. It achieves this by enabling Jersey to ratify and implement two international Conventions: the Hague Convention, which requires the summary return of an abducted child to its country of habitual residence so that issues of custody can be decided there, and the European Convention, which enables custody decisions that have already been made to be recognized and enforced.

Part 1 – Preliminary

Articles 1 and 2 contain the interpretation provisions. *Article 2* lists the orders to be included within the definition of “custody order” and includes care and residence orders under the Children (Jersey) Law 2002 and equivalent orders made under legislation repealed by that Law. There is power for the States to amend the definition by Regulations.

Part 2 – The Hague Convention

Article 3 identifies the relevant Hague Convention and provides that those Articles of the Convention that are set out in *Schedule 1* shall have the force of law in Jersey.

Article 4 provides for the designation of Contracting States by Order of the Policy and Resources Committee and the date on which the Convention will take effect as between each of those States and Jersey. It allows for Orders retrospectively to apply the Convention to wrongful removals or retentions of children if agreement can be reached with the contracting States concerned. Provision is made in respect of contracting States where the Convention applies, or applies only, to a particular territory or particular territories of that State.

Article 5 provides that the Attorney General shall discharge the functions under the Convention of a Central Authority. Following precedents in other Hague Conventions, this Convention requires States to designate a Central Authority to “discharge the duties which are imposed by the Convention upon such Authorities” (Article 6 of the Convention). A major function of Central Authorities is to assist parents and their legal advisers with the practical problem of tracing the child and in obtaining the return of the child from the foreign country. Central Authorities, which are designated to act as a channel for application under the Convention, must co-operate to secure the prompt return of the child and, in particular, comply with the provisions of Article 7 of the Convention.

Article 6 confers jurisdiction to entertain applications under the Convention on the Royal Court.

Article 7 enables the Royal Court, where an application has been made to it under the Convention, to give interim directions to secure the welfare of the child and to prevent changes in the child’s circumstances.

In order that the Attorney General may comply with a request from a Contracting State under Article 7(d) of the Convention for information about a child, *Article 8* enables the Attorney General to obtain a report on the social background of the child, or to obtain a copy of a report from any court to which a written report on the child has been made.

Article 9 deals with the reception in evidence of documents provided with an application. In particular, it provides that a decision of a judicial or administrative authority outside Jersey may be proved by an authenticated copy of the decision and that a document provided in accordance with Article 8 of the Convention may be accepted as sufficient evidence of anything stated in it.

Article 10 enables an applicant to obtain a declaration that the removal of a child from, or the child’s retention outside, Jersey is wrongful. Under Article 15 of the Convention, the Central Authority is required to assist the applicant to obtain the declaration.

Article 11, read with Article 16 of the Convention, prohibits the determination of any issue arising from proceedings set out in paragraph (l) where notice of a wrongful removal or retention of a child has been received from another contracting State. The prohibition lasts until the application under the Convention has been determined, unless it is not made within a reasonable time following receipt of the notice. The States are

empowered to amend the list of proceedings.

Article 12 limits the liability of any public authority in Jersey to meet the legal costs of applicants to the extent that they are met by the provision of legal aid.

Part 3 – The European Convention

Article 13 identifies the relevant European Convention and provides that those Articles of the Convention that are set out in *Schedule 2* shall have the force of law in Jersey.

Article 14 provides for the designation of Contracting States by Order of the Policy and Resources Committee and the date on which the Convention will take effect between each of those States and Jersey. Provision is also made in respect of contracting States where the Convention applies, or applies only, to a particular territory or particular territories specified by that State.

Article 15 designates the Attorney General as the Central Authority for Jersey. As is the case with Central Authorities established for the purposes of the Hague Convention, Central Authorities established for the purposes of the European Convention deal only with administrative matters and are primarily concerned with helping applicants to overcome the practical difficulties of enforcing custody decisions.

Article 16 provides for a decision relating to the custody of a child given in a Contracting State other than the U.K. to be recognised in Jersey as if it had been made by the Royal Court. Such a decision is not enforceable in Jersey unless it has been registered under *Article 17* of the draft Law. *Article 16* also provides a mechanism for challenging recognition on any of the grounds set out in Articles 9 and 10 of the Convention.

Article 17 enables a person who has been granted custody rights by a judicial or administrative authority in a Contracting State other than the U.K. to apply to the Royal Court to have the decision registered. The Attorney General must assist that person to make the application if a request for assistance is made by that person or by the Central Authority of the contracting State in question. Such applications and requests are treated as requests for enforcement for the purposes of Articles 10 and 13 of the Convention. The Court must refuse to register a decision if on any of the grounds specified in Article 9 or 10 of the Convention the decision should not be recognized in Jersey, or if the decision is not enforceable in the Contracting State where it was made and is not a decision to which Article 12 of the Convention applies. In order to avoid the rare possibility of conflicting applications being made simultaneously under both the Hague Convention and the European Convention, the application should also be refused if an application under Part 2 is pending. The Hague Convention therefore takes priority over the European Convention.

Article 18 enables the Royal Court to cancel or vary the registration of a custody decision that has been registered under *Article 17* above if the decision has been varied or revoked by a judicial or administrative authority in the contracting State where the decision was originally made. The Court has a duty to cancel or vary the registration if it is notified of the decision by the person on whose behalf the application for registration was made. It has a discretion to take such action if an application is made by an interested person.

Article 19 provides that when a decision has been registered in the Royal Court under *Article 17* above, it will be capable of being enforced as if it were an order of the Royal Court.

Article 20 enables the Royal Court, where an application has been made to it for the registration or enforcement of a custody decision made in a contracting State, to give interim directions to secure the welfare of the child or to prevent changes in the child's circumstances.

Article 21 provides that no custody proceedings or proceedings for enforcement of a U.K. custody order under the Child Custody Jurisdiction (Jersey) Law 200- shall be resolved after an application has been made for the registration of a custody decision under *Article 17* (other than a decision relating solely to rights of access) or after such a decision has been registered if the decision was made in proceedings commenced before the custody proceedings or the proceedings for enforcement were instituted.

Article 22 enables the Attorney General, if requested, to make enquiries under Article 15(1)(b) of the Convention to obtain a report on the social background of the child, or to obtain a copy of a report from any court to which a written report on the child has been made.

Article 23 provides that a decision of a judicial or administrative authority in a foreign contracting State may be proved by an authenticated copy of the decision and that a document provided under Article 13 of the Convention shall be sufficient evidence of anything stated in it.

Article 24 empowers the Attorney General to require a Jersey court to furnish certain documents on an application being made to it under Article 4 of the Convention by a person who wishes to have a custody decision recognized or enforced in another contracting State. It also, for the purposes of Article 12 of the Convention, enables the Jersey Court to declare in custody proceedings that the removal of a child from Jersey was unlawful.

Part 4 – Supplementary

Article 25 empowers the Royal Court, in proceedings for the return of a child or on an application for the recognition, registration or enforcement of a decision in respect of a child, to require any person who it has reason to believe may have information relevant to where the child is to disclose that information to the Court. Failure to comply is punishable as a contempt. A person is not excused from complying with an order of the Court under *Article 25* by reason that to do so may incriminate the person or the person's spouse of an offence, but a statement or admission made is not admissible in evidence against either of them except in proceedings for perjury.

Article 26 provides for a variety of orders made in respect of children by the Royal Court to cease to have effect when an order is made under *Part 2* or a custody decision is registered under *Part 3*. This Article avoids confusion where conflicting orders in respect of a child's custody would otherwise continue to have effect.

Article 27 provides for declarations of courts in the United Kingdom to have like effect in Jersey as a declaration of the Royal Court under *Article 16* that a decision relating to custody is not to be recognized in any part of the British Islands.

Article 28 empowers the Superior Number of the Royal Court to make rules of court for the purposes of the draft Law.

Article 29 changes references to the Policy and Resources Committee and the Health and Social Services Committee respectively to the Chief Minister and the Minister for Health and Social Services as a consequence of the move to Ministerial government.

Article 30 is the usual Article of citation and contains an Appointed Day Act provision. The commencement of Article 29, however, is linked to the commencement of the relevant provision of the States of Jersey Law 2005.

Schedule 1 contains the provisions of the Convention on the Civil Aspects of International Child Abduction which are to have the force of law in Jersey.

Schedule 2 contains the provisions of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children which are to have the force of law in Jersey.



Jersey

DRAFT CHILD ABDUCTION AND CUSTODY (JERSEY) LAW 200

Arrangement

Article

PART 1

PRELIMINARY

- 1 Interpretation
- 2 Custody orders

PART 2

INTERNATIONAL CHILD ABDUCTION

- 3 The Hague Convention
- 4 Contracting States
- 5 The Central Authority
- 6 The Judicial Authority
- 7 Interim powers
- 8 Reports
- 9 Proof of documents and evidence
- 10 Declaration of the Court
- 11 Suspension of the Court's powers in case of wrongful removal
- 12 Cost of applications

PART 3

RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS

- 13 The European Convention
- 14 Contracting States
- 15 The Central Authority
- 16 Recognition of decisions
- 17 Registration of decisions
- 18 Variation and revocation of registered decisions
- 19 Enforcement of decisions
- 20 Interim powers
- 21 Suspension of court's powers
- 22 Reports
- 23 Proof of documents and evidence
- 24 Decisions of Jersey courts

PART 4

SUPPLEMENTARY

<u>25</u>	<u>Power to order disclosure of child's whereabouts</u>
<u>26</u>	<u>Termination of existing custody orders, etc.</u>
<u>27</u>	<u>Declarations by United Kingdom courts</u>
<u>28</u>	<u>Rules of Court</u>
<u>29</u>	<u>Amendments consequential upon move to Ministerial government</u>
<u>30</u>	<u>Citation and commencement</u>

SCHEDULE 1

PROVISIONS OF THE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION HAVING FORCE OF LAW IN JERSEY

SCHEDULE 2

THE PROVISIONS OF THE EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING CUSTODY OF CHILDREN AND ON RESTORATION OF CUSTODY OF CHILDREN HAVING FORCE OF LAW IN JERSEY



Jersey

DRAFT CHILD ABDUCTION AND CUSTODY (JERSEY) LAW 200

A LAW to enable two international Conventions relating respectively to the civil aspects of international child abduction and to the recognition and enforcement of custody decisions to be extended to Jersey.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

PRELIMINARY

1 Interpretation

In this Law, unless the context otherwise requires –

“Children Law” means the Children (Jersey) Law 2002^[1]

“Court” means the Royal Court;

“custody order” means any order mentioned in Article 2(1);

“custody proceedings” means any proceedings in which a custody order may be made, varied or revoked;

“decision relating to custody” has the same meaning as in the European Convention;

“decision relating to rights of access” means a decision as to the contact which a child may, or may not, have with any person;

“European Convention” means the Convention described in Article 13;

“Hague Convention” means the Convention described in Article 3;

“prescribed” means prescribed by Rules of Court under Article 13 of the Royal Court (Jersey) Law 1948;^[2]

“probation officer” means a délégué appointed pursuant to the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée;^[3]

“United Kingdom Act” means the Child Abduction and Custody Act 1985 of the United Kingdom.

2 Custody orders

- (1) The following are custody orders for the purposes of this Law –
 - (a) a care order under the Children Law (as defined by Article 1 of that Law, read with Schedule 5 to that Law);
 - (b) a residence order (as defined by Article 1 of the Children Law);
 - (c) an order under Article 25 of the Matrimonial Causes (Jersey) Law 1949^[4] or Article 26 of the Children (Jersey) Law 1969 with respect to the custody of a child;
 - (d) an order under Article 25 of the Matrimonial Causes (Jersey) Law 1949 placing a child under the protection of the court;
 - (e) an order under Article 2 or 5 of the Separation and Maintenance Orders (Jersey) Law 1953^[5] with respect to the legal custody of a child; and
 - (f) any order of the Court in the exercise of its inherent jurisdiction in so far as it gives the care and control of a child to any person.
- (2) The States may by Regulations amend paragraph (1) by making additions to or deletions from the list of orders therein set out.

PART 2

INTERNATIONAL CHILD ABDUCTION

3 The Hague Convention

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

4 Contracting States

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

5 The Central Authority

The functions under the Convention of a Central Authority shall be discharged in Jersey by the Attorney General.

6 The Judicial Authority

The judicial authority having jurisdiction in Jersey to entertain applications under the Convention shall be the Royal Court.

7 Interim powers

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

8 Reports

- (1) Where the Attorney General is requested to provide information relating to a child under Article 7(d) of the Convention the Attorney General may –
 - (a) request the Health and Social Services Committee or a probation officer to make a report to the Attorney General in writing with respect to any matter that appears to the Attorney General to be relevant;
 - (b) request any court in Jersey to which a written report relating to the child has been made to send the Attorney General a copy of the report,
and such a request shall be duly complied with.
- (2) A request pursuant to paragraph (1)(b) may be addressed to the Judicial Greffier.

9 Proof of documents and evidence

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

10 Declaration of the Court

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

11 Suspension of the Court's powers in case of wrongful removal

- (1) The reference in Article 16 of the Convention to deciding on the merits of rights of custody shall be construed as a reference to –
 - (a) making, varying or revoking –
 - (i) a custody order, or

- (ii) a supervision order under Article 24 of the Children Law;
 - (b) enforcing under Article 13 of the Child Custody (Jurisdiction) (Jersey) Law 200^[6] a Part 1 order within the meaning of Article 1(1) of that Law; or
 - (c) registering or enforcing a decision under Part 3.
- (2) The States may by Regulations amend paragraph (1) by making additions to or deletions from the list of proceedings.

12 Cost of applications

The United Kingdom having made in respect of Jersey such a reservation as is mentioned in the 3rd paragraph of Article 26 of the Convention, the costs mentioned in that paragraph shall not be borne by any public authority in Jersey except so far as they fall to be so borne by virtue of the grant of a legal aid certificate.

PART 3

RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS

13 The European Convention

- (1) In this Part “Convention” means the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children signed in Luxembourg on 20th May 1980.
- (2) Subject to this Part, the provisions of the Convention set out in Schedule 2 (which include Articles 7 and 10 of the Convention as they have effect in consequence of a reservation made by the United Kingdom in respect of Jersey under Article 17 thereof) shall have the force of law in Jersey.

14 Contracting States

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

15 The Central Authority

The functions under the Convention of a Central Authority shall be discharged in Jersey by the Attorney General.

16 Recognition of decisions

- (1) Articles 7 and 12 of the Convention shall have effect in accordance with this Article.
- (2) A decision to which either of those Articles of the Convention applies which was made in a Contracting State other than the United Kingdom shall be recognized as if made by the Court save that –

- (a) the Court may, on the application of any person appearing to it to have an interest in the matter, declare on any of the grounds specified in Article 9 or 10 of the Convention that the decision is not to be recognised in Jersey; and
 - (b) the decision shall not be enforceable in Jersey unless registered in the Court under Article 17.
- (3) For the purposes of this Part the references in Article 9(1)(c) of the Convention to the removal of the child are to the child's improper removal within the meaning of the Convention.

17 Registration of decisions

- (1) A person on whom any rights are conferred by a decision relating to custody made by an authority in a Contracting State other than the United Kingdom may make an application for the registration of the decision in the Court.
- (2) The Attorney General shall assist such a person in making such an application if a request for such assistance is made by the person or on the person's behalf by the Central Authority of the Contracting State in question.
- (3) An application under paragraph (1) or a request under paragraph (2) shall be treated as a request for enforcement for the purposes of Articles 10 and 13 of the Convention.
- (4) The Court shall only register a decision if –
 - (a) it considers that, on any of the grounds specified in Article 9 or 10 of the Convention, the decision should be recognised in Jersey;
 - (b) it considers that the decision is enforceable in the Contracting State where it was made and is a decision to which Article 12 of the Convention applies; or
 - (c) an application in respect of the child under Part 2 is not pending.

18 Variation and revocation of registered decisions

- (1) Where a decision which has been registered under Article 17 is varied or revoked by an authority in the Contracting State in which it was made, the person on whose behalf the application for registration of the decision was made shall notify the Court of the variation or revocation.
- (2) Where the Court is notified under paragraph (1) of the revocation of a decision, it shall–
 - (a) cancel the registration; and
 - (b) notify the cancellation to such persons as may be prescribed.
- (3) Where the Court is notified under paragraph (1) of the variation of a decision, it shall–
 - (a) notify the variation to such persons as may be prescribed; and
 - (b) subject to any conditions which may be prescribed, vary the registration.
- (4) Where a decision has been registered under Article 17, the Court may also, on the application of any person appearing to the Court to have an interest in the matter, cancel or vary the registration if it is satisfied that the decision has been revoked or, as the case may be, varied by an authority in the Contracting State in which it was made.

19 Enforcement of decisions

Where a decision relating to custody has been registered under Article 17, the Court shall have the same powers for the purpose of enforcing the decision as if the Court had made the decision and action for or with respect to enforcement may be taken accordingly.

20 Interim powers

Where an application has been made to the Court for the registration of a decision under Article 17 or for the enforcement of such a decision, the Court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of any subsequent application for the enforcement of the decision.

21 Suspension of court's powers

- (1) Where it appears to any court in Jersey in which proceedings mentioned in paragraph (2) are pending in respect of a child that –
 - (a) an application has been made for the registration under Article 17, or under section 16 of the United Kingdom Act, of a decision in respect of the child or that such a decision is registered; and
 - (b) the decision was made in proceedings commenced before the proceedings which are pending, the powers of the court with respect to the child in those proceedings shall be restricted as mentioned in paragraph (2) unless, in the case of an application for registration, the application is refused.
- (2) Where paragraph (1) applies the court shall not –
 - (a) in the case of custody proceedings, make, vary or revoke any –
 - (i) custody order, or
 - (ii) supervision order under Article 24 of the Children Law; or
 - (b) in the case of proceedings under Article 13 of the Child Custody (Jurisdiction) (Jersey) Law 200- for the enforcement of a Part I order within the meaning of Article 1(1) of that Law enforce that order.
- (3) Paragraph (1) does not apply to a decision that is only a decision relating to custody within the meaning of Article 17 by virtue of being a decision relating to rights of access.
- (4) For the purposes of this Part Article 10(2)(b) of the Convention shall be construed as referring to custody proceedings within the meaning of this Law.

22 Reports

- (1) Where the Attorney General is requested to make enquiries about a child under Article 15(1)(b) of the Convention the Attorney General may –
 - (a) request the Health and Social Services Committee or a probation officer to make a report to the Attorney General in writing with respect to any matter relating to the child concerned which appears to the Attorney General to be relevant;
 - (b) request any court in Jersey to which a written report relating to the child has been made to send the Attorney General a copy of the report,and any such request shall be duly complied with.
- (2) A request pursuant to paragraph (1)(b) may be addressed to the Judicial Greffier.

23 Proof of documents and evidence

- (1) In any proceedings under this Part a decision of an authority outside Jersey may be proved by a duly authenticated copy of the decision; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.
- (2) For the purposes of paragraph (1) a copy is duly authenticated if it bears the seal, or is signed by a judge or officer, of the authority in question.

- (3) In any proceedings under this Part any such document as is mentioned in Article 13 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

24 Decisions of Jersey courts

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

PART 4

SUPPLEMENTARY

25 Power to order disclosure of child's whereabouts

- (1) Where –
 - (a) in proceedings for the return of a child under Part 2; or
 - (b) on an application for the recognition, registration or enforcement of a decision in respect of a child under Part 3,there is not available to the Court adequate information as to where the child is, the Court may order any person who it has reason to believe may have relevant information to disclose it to the Court.
- (2) A person shall not be excused from complying with an order under paragraph (1) by reason that to do so may incriminate the person or the person's spouse, 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.

26 Termination of existing custody orders, etc.

- (1) Where –
 - (a) an order is made for the return of a child under Part 2 or under Part I of the United Kingdom Act; or
 - (b) a decision with respect to a child is registered under Article 17 or under section 26 of the United Kingdom Act,any custody order relating to the child shall cease to have effect.
- (2) Paragraph (1)(b) does not apply to a decision that is only a decision relating to custody within the meaning of Article 17 by virtue of being a decision relating to rights of access.
- (3) Where, by virtue of section 25(1) of the United Kingdom Act, an authorization under section 26 of the Children and Young Persons Act 1969 of the United Kingdom ceases to have effect, any relevant

order (within the meaning of section 26 of that Act) made by a court in Jersey and to which the authorization relates shall cease to have effect.

27 Declarations by United Kingdom courts

A declaration by a court under section 15(2)(a) of the United Kingdom Act shall have the like effect in Jersey as a declaration of the Court under Article 16(2)(a).

28 Rules of Court

- (1) The power to make Rules of Court under Article 13 of the Royal Court (Jersey) Law 1948 shall include a power to make such provision for giving effect to this Law as appears to be necessary or expedient.
- (2) Without prejudice to the generality of paragraph (1) and any other provision of this Law, Rules of Court may make provision –
 - (a) with respect to the procedure on applications to the Court under any provision of this Law and with respect to the documents and information to be furnished and the notices to be given in connection with any such application;
 - (b) for the giving of notices by or to the Court for the purposes of the provisions of Article 16 of the Hague Convention and Article 11 of this Law, and generally as respects proceedings to which those provisions apply;
 - (c) for enabling a person who wishes to make an application under the Hague Convention outside Jersey but in a Contracting State to obtain from the Court an authenticated copy of any decision of the Court relating to the child to whom the application is to relate; and
 - (d) for the giving of directions requiring the disclosure of information about any child who is the subject of proceedings under Part 3 and for safeguarding the child's welfare.

29 Amendments consequential upon move to Ministerial government

- (1) In Articles 4(1) and 14(1) for the words "Policy and Resources Committee" there shall be substituted the words "Chief Minister".
- (2) In Articles 8(1)(a) and 22(1)(a) for the words "Health and Social Services Committee" there shall be substituted the words "Minister for Health and Social Services".

30 Citation and commencement

- (1) This Law may be cited as the Child Abduction and Custody (Jersey) Law 200~~0~~.
- (2) This Law, apart from Article 29, shall come into force on such day as the States may by Act appoint and different days may be appointed for different provisions of this Law.
- (3) Subject to paragraph (4), Article 29 shall come into force, in respect of any provision that it amends on the same day as that provision.
- (4) If a provision of this Law that is amended by Article 29 is in force on the commencement of Article 42(3) of the States of Jersey Law 2005,^[7] Article 29 shall come into force, in respect of the provision, on the same day as Article 42(3).

SCHEDULE 1

(Article 3(2))

PROVISIONS OF THE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION HAVING FORCE OF LAW IN JERSEY

CHAPTER I – SCOPE OF THE CONVENTION

Article 3

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

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

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

Article 4

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

Article 5

For the purposes of this Convention –

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

CHAPTER II – CENTRAL AUTHORITIES

Article 7

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

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

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the

application of the Convention;

- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

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

The application shall contain –

- (a) information concerning the identity of the applicant, of the child and of the other 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.

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 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 24

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

Article 26

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

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

Article 31

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

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

Article 32

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

SCHEDULE 2

(Article 13(2))

THE PROVISIONS OF THE EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING CUSTODY OF CHILDREN AND ON RESTORATION OF CUSTODY OF CHILDREN HAVING FORCE OF LAW IN JERSEY

Article 1

For the purposes of this Convention:

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

Article 4

- (1) Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognised or enforced in another Contracting State may submit an application for this purpose to the central authority in any Contracting State.
- (2) The application shall be accompanied by the documents mentioned in Article 13.
- (3) The central authority receiving the application, if it is not the central authority in the State addressed, shall send the documents directly and without delay to that central authority.
- (4) The central authority receiving the application may refuse to intervene where it is manifestly clear that the conditions laid down by this Convention are not satisfied.
- (5) The central authority receiving the application shall keep the applicant informed without delay of the progress of his application.

Article 5

- (1) The central authority in the State addressed shall take or cause to be taken without delay all steps which it considers to be appropriate, if necessary by instituting proceedings before its competent authorities, in order:
 - (a) to discover the whereabouts of the child;
 - (b) to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child or of the applicant;
 - (c) to secure the recognition or enforcement of the decision;
 - (d) to secure the delivery of the child to the applicant where enforcement is granted;

- (e) to inform the requesting authority of the measures taken and their results.
- (2) Where the central authority in the State addressed has reason to believe that the child is in the territory of another Contracting State it shall send the documents directly and without delay to the central authority of that State.
- (3) With the exception of the cost of repatriation, each Contracting State undertakes not to claim any payment from an applicant in respect of any measures taken under paragraph (1) of this Article by the central authority of that State on the applicant's behalf, including the costs of proceedings and, where applicable, the costs incurred by the assistance of a lawyer.
- (4) If recognition or enforcement is refused, and if the central authority of the State addressed considers that it should comply with a request by the applicant to bring in that State proceedings concerning the substance of the case, that authority shall use its best endeavours to secure the representation of the applicant in the proceedings under conditions no less favourable than those available to a person who is resident in and a national of that State and for this purpose it may, in particular, institute proceedings before its competent authorities.

Article 7

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

Article 9

- (1) [Recognition and enforcement may be refused] if:
 - (a) in the case of a decision given in the absence of the defendant or his legal representative, the defendant was not duly served with the document which instituted the proceedings or an equivalent document in sufficient time to enable him to arrange his defence; but such a failure to effect service cannot constitute a ground for refusing recognition or enforcement where service was not effected because the defendant had concealed his whereabouts from the person who instituted the proceedings in the State of origin;
 - (b) in the case of a decision given in the absence of the defendant or his legal representative, the competence of the authority giving the decision was not founded:
 - (i) on the habitual residence of the defendant; or
 - (ii) on the last common habitual residence of the child's parents, at least one parent being still habitually resident there, or
 - (iii) on the habitual residence of the child;
 - (c) the decision is incompatible with a decision relating to custody which became enforceable in the State addressed before the removal of the child, unless the child has had his habitual residence in the territory of the requesting State for one year before his removal.
- (3) In no circumstances may the foreign decision be reviewed as to its substance.

Article 10

- (1) [Recognition and enforcement may also be refused] on any of the following grounds:
 - (a) if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed;
 - (b) if it is found that by reason of a change in the circumstances including the passage of time but not including a mere change in the residence of the child after an improper removal, the effects of the original decision are manifestly no longer in accordance with the welfare of the child;
 - (c) if at the time when the proceedings were instituted in the State of origin:
 - (i) the child was a national of the State addressed or was habitually resident there and no

- such connection existed with the State of origin;
- (ii) the child was a national both of the State of origin and of the State addressed and was habitually resident in the State addressed;
- (d) if the decision is incompatible with a decision given in the State addressed or enforceable in that State after being given in a third State, pursuant to proceedings begun before the submission of the request for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.
- (2) Proceedings for recognition or enforcement may be adjourned on any of the following grounds:
 - (a) if an ordinary form of review of the original decision has been commenced;
 - (b) if proceedings relating to the custody of the child, commenced before the proceedings in the State of origin were instituted, are pending in the State addressed;
 - (c) if another decision concerning the custody of the child is the subject of proceedings for enforcement or of any other proceedings concerning the recognition of the decision.

Article 11

- (1) Decisions on rights of access and provisions of decisions relating to custody which deal with the rights of access shall be recognised and enforced subject to the same conditions as other decisions relating to custody.
- (2) However, the competent authority of the State addressed may fix the conditions for the implementation and exercise of the right of access taking into account, in particular, undertakings given by the parties on this matter.
- (3) Where no decision on the right of access has been taken or where recognition or enforcement of the decision relating to custody is refused, the central authority of the State addressed may apply to its competent authorities for a decision on the right of access, if the person claiming a right of access so requests.

Article 12

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

Article 13

- (1) A request for recognition or enforcement in another Contracting State of a decision relating to custody shall be accompanied by:
 - (a) a document authorising the central authority of the State addressed to act on behalf of the applicant or to designate another representative for that purpose;
 - (b) a copy of the decision which satisfies the necessary conditions of authenticity;
 - (c) in the case of a decision given in the absence of the defendant or his legal representative, a document which establishes that the defendant was duly served with the document which instituted the proceedings or an equivalent document;
 - (d) if applicable, any document which establishes that, in accordance with the law of the State of origin, the decision is enforceable;
 - (e) if possible, a statement indicating the whereabouts or likely whereabouts of the child in the State addressed;
 - (f) proposals as to how the custody of the child should be restored.

Article 15

- (1) Before reaching a decision under paragraph (1)(b) of Article 10, the authority concerned in the State addressed:
 - (a) shall ascertain the child's views unless this is impracticable having regard in particular to his age and understanding; and
 - (b) may request that any appropriate enquiries be carried out.
- (2) The cost of enquiries in any contracting State shall be met by the authorities of the State where they are carried out.

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

Article 26

- (1) In relation to a State which has in matters of custody two or more systems of law of territorial application:
 - (a) reference to the law of a person's habitual residence or to the law of a person's nationality shall be construed as referring to the system of law determined by the rules in force in that State or, if there are no such rules, to the system of law with which the person concerned is most closely connected;
 - (b) reference to the State of origin or to the State addressed shall be construed as referring, as the case may be, to the territorial unit where the decision was given or to the territorial unit where recognition or enforcement of the decision or restoration of custody is requested.
- (2) Paragraph (1)(a) of this Article also applies *mutatis mutandis* to States which have in matters of custody two or more systems of law of personal application.

[1] Chapter 12.200.

[2] Chapter 07.770.

[3] Chapter 08.020.

[4] Chapter 12.650.

[5] Chapter 12.800.

[6] P.107/2005.

[7] Volume 2005, page 367.