

2010 No. 213

CHILDREN AND YOUNG PERSONS

**The Parental Responsibility and Measures for the Protection of
Children (International Obligations) (Scotland) Regulations
2010**

Made - - - - *25th May 2010*

Laid before the Scottish Parliament *26th May 2010*

Coming into force in accordance with regulation 1(2)

The Scottish Ministers, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972 in relation to private international law (a), and all other powers enabling them to do so, make the following Regulations:

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010.
- (2) These Regulations come into force on the day on which the Convention enters into force for the United Kingdom, which date will be notified in the London, Edinburgh and Belfast Gazettes.
- (3) These Regulations extend to Scotland.

Interpretation

2. In these Regulations—

“Children’s Hearing” has the meaning given by section 93(1) of the Children (Scotland) Act 1995(b);

“Contracting State” means a state party to the Convention;

“the Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996(c);

“the Council Regulation” means Council Regulation (EC) No. 2201/2003(d) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and section 27 of the Legislative and Regulatory Reform Act 2006 (c.51). The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. The Secretary of State was designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to private international law (S.I. 2008/1792, art. 2).

(b) 1995 c.36.

(c) Cm 7727.

(d) O.J. No. L 338, 22.12.03, pp.1-29.

“local authority” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994(a);

“member State” means a member State of the European Union which is bound by the Council Regulation;

“the Principal Reporter” means the Principal Reporter within the meaning given in section 93(1) of the Children (Scotland) Act 1995;

“public authority” means a body whose functions are wholly or mainly of a public nature.

Power of court to recall sist under Article 8

3.—(1) This regulation applies where—

- (a) a court has exercised its power under Article 8 of the Convention to request an authority of another Contracting State to assume jurisdiction in relation to an application, and
- (b) the court has sisted proceedings on the application, and
- (c) Part 1 of the Family Law Act 1986(b) does not apply in relation to the application.

(2) The court may recall a sist granted in order for it to exercise its powers under Article 8 of the Convention, and withdraw any request made by it under that Article to an authority in another Contracting State to assume jurisdiction, if—

- (a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the sist, or
- (b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.

Local authorities: application to court to make request under Article 9

4.—(1) This regulation applies where—

- (a) a local authority in Scotland wishes to make an application for a permanence order in respect of a child under section 80 of the Adoption and Children(Scotland)Act 2007(c); and
- (b) the authorities of another Contracting State have jurisdiction in respect of the child under the Convention.

(2) The local authority must make an application to the court requesting the court to exercise its power under Article 9 of the Convention (request to competent authority of the Contracting State of the habitual residence of the child for authorisation to exercise jurisdiction).

Principal Reporters: application to refer a child to Children’s Hearing

5.—(1) This regulation applies where—

- (a) the Principal Reporter is obliged to refer a child to a Children’s Hearing under section 65(1) of the Children (Scotland) Act 1995; and
- (b) the authorities of another Contracting State have jurisdiction in respect of the child under the Convention.

(2) The Principal Reporter must through the Central Authority in Scotland make an application to the competent authority of the Contracting State in exercise of his power under Article 9 of the Convention (request to competent authority of the Contracting State of the habitual residence of the child for authorisation to exercise jurisdiction).

(a) 1994 c.39.
(b) 1986, c.55.
(c) 2007, asp 4, as amended by S.S.I. 2010/21.

Application of Article 15

6. The reference to Chapter II of the Convention in Article 15(1) of the Convention is to be read as including a reference to Chapter II of the Council Regulation.

Judicial authorities

7.—(1) The Court of Session is to have jurisdiction to entertain an application under Article 24 of the Convention for recognition, or non-recognition, of a measure taken in another Contracting State.

(2) But where the recognition or non-recognition of a measure is raised as an incidental question in another court, that court may determine the issue.

(3) The Court of Session is also to have jurisdiction—

- (a) to register a measure taken in another Contracting State for enforcement under Article 26 of the Convention, and
- (b) to entertain an application for a declarator—
 - (i) that a person has, or does not have, parental responsibility for a child by virtue of Article 16 of the Convention, or
 - (ii) as to the extent of a person's parental responsibility for a child by virtue of that Article.

Central Authority in Scotland

8.—(1) The functions under the Convention of a Central Authority in Scotland are to be discharged by the Scottish Ministers.

(2) If a person outside the United Kingdom does not know to which Central Authority in the United Kingdom a communication should be addressed, the person may address it to the Lord Chancellor.

Information sharing

9.—(1) Paragraph (2) applies if the Central Authority in Scotland receives a request for assistance under Article 31(c) of the Convention (either directly or via another Central Authority in the United Kingdom).

(2) The Scottish Ministers may request information from—

- (a) a local authority in Scotland, or
- (b) a Health Board or Special Health Board (constituted by Order under section 2 of the National Health Service (Scotland) Act 1978^(a)).

(3) A person who receives a request for information under this regulation must comply with the request as soon as reasonably practicable (but this is subject to Article 37 of the Convention).

Requests for information under Council Regulation

10.—(1) This regulation applies if the designated Central Authority in Scotland under Article 53 of the Council Regulation receives a request for information from another member State under Article 55(a)(i) of the Council Regulation.

(2) The designated Central Authority in Scotland may request information from—

- (a) a local authority in Scotland,
- (b) the Principal Reporter,

(a) 1978, c.29.

- (c) a safeguarder in respect of the child appointed under section 41(1)(b) of the Children (Scotland) Act 1995, or
 - (d) a Health Board or Special Health Board (constituted by Order under section 2 of the National Health Service (Scotland) Act 1978).
- (3) A person who receives a request for information under this regulation must comply with the request as soon as reasonably practicable.

Power to request report on child’s situation

11.—(1) This regulation applies where a Central Authority thinks it appropriate to provide a report on the situation of a child under Article 32(a) of the Convention.

- (2) The Scottish Ministers may—
 - (a) request a written report on the situation of the child from a local authority in Scotland, or
 - (b) if a written report has been provided to a court in relation to the child, request a copy of the report from the court.

(3) A person in Scotland who receives a request for a report under this regulation must comply with the request as soon as reasonably practicable (but this is subject to Article 37 of the Convention).

Local authorities and Children’s Hearings: placement of child in another Contracting State

12.—(1) This regulation applies if a local authority or Children’s Hearing in Scotland is contemplating—

- (a) placing a child in another Contracting State, within the meaning given by Article 33 of the Convention, or
- (b) placing a child in another member State, within the meaning given by Article 56 of the Council Regulation.

(2) This regulation applies if a Children’s Hearing is contemplating—

- (a) making a supervision requirement under section 70(3)(a) of the Children (Scotland) Act 1995 requiring a child to reside in another Contracting State, within the meaning given by Article 33 of the Convention, or
- (b) making a supervision requirement under section 70(3)(a) of the Children (Scotland) Act 1995 requiring a child to reside in another member State, within the meaning given by Article 56 of the Council Regulation.

(3) The local authority, or in the case of the Children’s Hearing the Principal Reporter, whichever has jurisdiction under Articles 5 to 10 of the Convention or Articles 8 to 14 of the Council Regulation, as the case may be (“the authority”)—

- (a) must provide through the Central Authority in Scotland a report to the Central Authority, or other competent authority, of the other Contracting State in accordance with Article 33(1) of the Convention, if the authority is exercising jurisdiction under the Convention, or
- (b) must consult the Central Authority, or other competent authority, of the other member State in accordance with Article 56 of the Council Regulation, if the authority is exercising jurisdiction under the Council Regulation.

Power to respond to a request under Article 34

13. A public authority in Scotland may provide information in response to a request communicated to it by the Central Authority under Article 34 of the Convention.

Services under Article 35

14.—(1) The Scottish Ministers may charge a reasonable fee in respect of the provision of a service under Article 35 (1) or (2) of the Convention.

(2) A request under Article 35(2) of the Convention is to be made to the local authority in whose area the parent making the request resides.

(3) A local authority in Scotland may charge a reasonable fee for the provision of information or evidence under Article 35(2).

(4) A fee is “reasonable” for the purposes of this regulation if the income from fees of that kind equates as nearly as possible to the costs of providing the service to which the fees relate (including a reasonable share of expenditure which is referable only partly or only indirectly to the provision of that service).

Amendments to other enactments

15. The Schedule contains amendments to other enactments consequential on the entry into force of the Convention for the United Kingdom.

St Andrew’s House,
Edinburgh
25th May 2010

KENNY MACASKILL
A member of the Scottish Executive

SCHEDULE

Regulation 15

Consequential amendments

Child Abduction and Custody Act 1985

1. In section 9 of the Child Abduction and Custody Act 1985(a) (suspension of court's powers in cases of wrongful removal), after paragraph (b) insert—

“(ba) registering or enforcing a decision under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996 (“the 1996 Convention”), except where provisions of the 1996 Convention are invoked in accordance with Article 50 of the 1996 Convention;”.

Family Law Act 1986

2. The Family Law Act 1986(b) is amended as follows.

3.—(1) In section 14(2) (power of court to refuse application or sist proceedings)—

- (a) after paragraph (a) leave out “or”,
- (b) after paragraph (b) leave out “or”,
- (c) after paragraph (c) insert—

“; or

(d) that it should exercise its powers under Article 8 of the Hague Convention (request to authority in another Contracting State to assume jurisdiction),” and

- (d) after “Article 15” in the words following paragraph (c), insert “of the Council Regulation or Article 8 of the Hague Convention”.

(2) After section 14(2) insert—

“(3) The court may recall a sist granted in order for it to exercise its powers under Article 8 of the Hague Convention, and withdraw any request made by it to an authority in another Contracting State to assume jurisdiction, if—

- (a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the sist, or
- (b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.”.

4. In section 17A, after “Council Regulation” insert “and are subject to the Hague Convention”.

5. In section 42(1) (interpretation), after the definition of “the Council Regulation” insert—

““the Hague Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996.”.

(a) 1985, c.60, as amended.

(b) 1986, c.55, as amended.

EXPLANATORY NOTE

(This note is not part of the Order)

These regulations implement in relation to Scotland the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996 (“the Convention”).

The Convention was proposed by the Hague Conference both to replace the 1961 Hague Protection of Minors Convention and to reinforce the operation of the 1980 Hague Child Abduction Convention. The Convention establishes uniform rules on jurisdiction, choice of law and the recognition and enforcement of judgments in relation to measures for the protection of children and their property. These include custody and access orders and certain public law orders relating to the care of children outside the family. The intention is to avoid having to re-litigate decisions in the jurisdiction of recognition and enforcement and to avoid conflicting decisions in international cases.

The Convention emphasises cooperation, both between central authorities processing applications and between competent authorities (such as courts) in Contracting States taking measures for the protection of children. For example, the Convention increases the effectiveness of any temporary measures ordered by a judge under the 1980 Convention returning a child to the country from which the child was wrongfully taken or retained, by making those orders enforceable until the authorities in the country to which the child is returned are able to put in place necessary measures of protection. This should provide better continuity of protection for children across international borders.

Although the effect of section 2(1) of the European Communities Act 1972 is that the Convention will apply directly, without further legislation, these regulations make amendments to existing provisions and new provisions deemed desirable to facilitate the working of the Convention in the Scottish legal system.

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