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## SCHEDULES

### SCHEDULE 2

Section 12(2).

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

**Modifications etc. (not altering text)**

- C1** Sch. 2 applied (with modifications) (1.3.1997) by S.I. 1996/3156, art. 2, Sch.  
Sch. 2 applied (with modifications) (2.12.1997) by S.I. 1997/2574 art. 2, Sch.

#### *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.

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- (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;

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- (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*

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- (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.

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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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- [Sch. 3 para. 8\(ba\)](#) inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 3\(a\)](#)