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## FALKLAND ISLANDS

## HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

**Introduction**

The Falkland Islands, located in the South Atlantic, are an Overseas Territory of the United Kingdom, although the Islands are still claimed by Argentina.<sup>1</sup> The Queen has supreme authority over the Islands, which is exercised by a Governor on her behalf, upon the advice and assistance of the Legislative and Executive Councils.

**I. Domestic Laws and Regulations Implementing the Hague Convention**

The Islands are internally governed, with the exception of defense and foreign affairs, which remain the responsibility of the United Kingdom. As such, the United Kingdom extends international treaties to the Falkland Islands, as it did with the Hague Convention on the Civil Aspects of International Child Abduction on March 26, 1998. The Convention entered into force in the Falkland Islands on June 1, 1998. When the United Kingdom extended the Convention to the Falkland Islands, the Embassy of the Argentine Republic responded with a declaration stating that it rejected the extension to the Falkland Islands.<sup>2</sup>

Legislation implementing the Convention is the Child Abduction and Custody (Falkland Islands) Order 1996.<sup>3</sup>

**II. Domestic Laws Regarding Child Abduction and Parental Visitation****A. Child Abduction**

The common law of England, as of 1989, was imposed in the Falkland Islands by the Crimes Ordinance 1989.<sup>4</sup> This has resulted in the English common law offense of kidnapping being a crime in the Falkland Islands. Certain provisions of the United Kingdom's Child Abduction Act 1984 were also applied to the Falkland Islands by the Crimes Ordinance 1989.<sup>5</sup> This has resulted in the abduction, sale, or trafficking of children under the age of 16 in the Falkland Islands being an offense.

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<sup>1</sup> Argentina invaded the Falkland Islands on Apr. 2, 1982. See the resulting United Nations Resolutions 2065 (XX), 3160 (XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21 and 41/40.

<sup>2</sup> Argentina refers to the Falkland Islands as the *Islas Malvinas*. Hague Convention on Private International Law, Full Status Report Convention #28, available at <http://www.hech.net/E/status/status.html>.

<sup>3</sup> Child Abduction and Custody (Falkland Islands) Order 1996, SI. 1996/3156. This served to implement certain provisions of the law implementing the Convention into the national law of the United Kingdom (the Child Abduction and Custody Act 1985, c. 60 (Eng.)) into the national law of the Falkland Islands.

<sup>4</sup> Crimes Ordinance (Title 23.1), §3, refer to The Revised Laws of the Falkland Islands, vers. 2.

<sup>5</sup> Child Abduction Act 1985, c. 37 (Eng.) applied to the Falkland Islands by the Crimes Ordinance (Title 23.1), §7, with the exceptions of §§6 - 10, 11(1-2, 4-5), 12, & 13(2-3).

## B. Parental Visitation

The Supreme Court and Magistrates Court of the Falkland Islands appear to be the designated courts that deal with cases of guardianship of children.<sup>6</sup> In child custody cases, the court making the decision is required to “regard the welfare of the minor as the first and paramount consideration, and will not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.”<sup>7</sup> In cases of custody disputes, the court can grant an order regarding to whom the custody of the child should go to and provide rights of access for the remaining parent.<sup>8</sup>

## III. Court System and Structure – Courts Handling Hague Convention

The Supreme Court of the Falkland Islands is the only court with jurisdiction to handle applications under the Convention.<sup>9</sup> Any appeals from the Supreme Court, at its discretion, go to the Judicial Committee of the Privy Council in the United Kingdom.<sup>10</sup>

### A. Family Proceedings Generally

In all cases involving children, the laws of the Falkland Island and the policy of the government require that the best interests of the child be a primary consideration. In private law proceedings, the courts usually require a report from a court appointed welfare officer that considers what the best interests of the child are. In cases where the court decides on the upbringing of a child, the child’s wishes and feelings are required to be heard.<sup>11</sup> However, due to the small and close-knit population of the Falkland Islands, “the removal of a child from its family environment will rarely be justified in principle of what is in the best interests of the child.”<sup>12</sup>

Parents that are married at the birth of the child, or at any point since the conception of the child, have shared parental responsibility. The shared responsibility of both parents does not dissolve or move to a sole parent in the occurrence of separation or divorce. It can only be absolved upon the adoption of the child or an order of the court. Unmarried fathers do not have parental responsibility, but this can be granted through an agreement with the mother, or a court order.<sup>13</sup>

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<sup>6</sup> The Guardianship of Minors Ordinance (Title 38(1).2), §1.

<sup>7</sup> *Id.* §3.

<sup>8</sup> *Id.* §12.

<sup>9</sup> *Supra* note 3, ¶ 4.

<sup>10</sup> JERRY DUPONT, *THE COMMON LAW ABROAD*, 2001

<sup>11</sup> United Nations, Convention on the Rights of the Child, Committee on the Rights of the Child, addendum, Overseas Dependent Territories and Crown Dependencies of the United Kingdom of Great Britain and Northern Ireland, CRC/C/41/Add.9 Feb. 2000, at 45.

<sup>12</sup> *Id.* at 44.

<sup>13</sup> *Id.*, referring to the Children Ordinance 1994.

## **B. Under the Convention**

Once an application has been made the Supreme Court has the authority to give interim directions as it sees fit to “secure the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.”<sup>14</sup> The court has the authority to make a declaration in respect of an application under article 15 of the Convention that the removal of the child from the Falkland Islands, or retention outside of the Falkland Islands is wrong within the meaning of article 3 of the Convention.<sup>15</sup>

## **IV. Law Enforcement System**

The Central Authority responsible for administering the Convention is the Governor of the Falkland Islands, who is appointed by the Queen of the United Kingdom.<sup>16</sup>

## **IV. Legal Assistance Programs**

The reservation made by the United Kingdom extends to the Falkland Islands to the extent that the Governor of the Falkland Islands, or any authority in the Falkland Islands, is not responsible for the costs of applications under the Convention. However, assistance can be provided through “a grant of legal aid or legal assistance from funds appropriated from the Consolidated Fund of the Falkland Islands.”<sup>17</sup>

## **VI. Conclusion**

In the Falkland Islands, the overriding principles in dealing with cases affecting children is that the best interests of the child will prevail. The islands small, close knit population has resulted in decisions affecting children being taken with the traditional family model in mind. However, there do not appear to be any reported applications under the Convention in the Falkland Islands.

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<sup>14</sup> *Supra* note 3, ¶ 5.

<sup>15</sup> *Id.* ¶ 8.

<sup>16</sup> The Governor, Government House, Stanley, Falkland Islands.

<sup>17</sup> *Supra* note 3, ¶ 11.