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## ISLE OF MAN

## HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

**Introduction<sup>1</sup>**

The Isle of Man, located in the Irish Sea, is a self-governing British Crown Dependency. Although it is not part of the United Kingdom, its foreign affairs and defense are a responsibility of the United Kingdom for which the Island makes an annual payment to the United Kingdom Government. The Island is not a Member State of the European Union, nor even an associate member, but it is part of its common customs territory.

The Isle of Man has an ancient Parliament, called Tynwald, claimed as the oldest continuously running legislature in the world. Tynwald consists of a popularly elected House of Keys and a Legislative Council whose members are elected primarily by the Members of the House of Keys. Its people, called the Manx, exercise extensive political and legislative independence through Tynwald.

The Manx legal system is based on English common law, although English law has no direct application to the Island. Manx laws are thus very similar to English law in areas such as crime, contract, tort, and family matters.

Under its responsibility for the external relations of the Island, the United Kingdom extends international treaties to the Isle of Man, but the Manx Government is consulted before any treaty affecting it is finalized.

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

On June 28, 1991, the United Kingdom extended the Convention on the Civil Aspects of International Child Convention to the Isle of Man with entry into force on September 1, 1991. Enabling legislation enacted by Tynwald, brought the Convention into force in the Isle of Man on October 14, 1991.

The Child Abduction and Custody Act 1985 (Isle of Man) Order 1994,<sup>2</sup> issued in the United Kingdom, provides that references in the United Kingdom statute<sup>3</sup> to orders made and proceedings brought under the Convention will have effect as if they included a reference to orders made, proceedings brought, and other things done in the Isle of Man.

The Manx legislation giving effect to the Convention is its Child Custody Act 1987.<sup>4</sup> The Act sets out the provisions of the Convention in Schedule 2 and declares the Convention to have the force of law

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<sup>1</sup> Based on Analysis Of The Isle Of Man As A Jurisdiction, Cains Advocates, Douglas, Isle of Man, Sept. 1, 2001; Home Office, Review of Financial Regulation in the Crown Dependencies, Part 4, Isle of Man, Cm. 4109-IV (1998) "Edwards Report," *available at* <http://www.archive.official-documents.co.uk/document/cm41/4109/4109.htm>.

<sup>2</sup> SI 1994/2799.

<sup>3</sup> Child Abduction and Custody Act 1985, c. 60. *See* the United Kingdom report on its application.

<sup>4</sup> Child Custody Act 1987, c. 11.

in the Island. Section 25 requires the Attorney General of the Isle of Man<sup>5</sup> to discharge functions as the Central Authority under the Convention. Section 28 authorizes the Attorney General to request the Department of Health and Social Security or a probation officer to report to him in writing with respect to any relevant matter relating to a child protected under the Convention.

Under the Convention an application may be made in the Isle of Man for the return of, or access to, a child removed or retained in breach of custody rights. The application may be made by any person who claims that a child has been removed in breach of rights of custody or access. The conditions that must be satisfied for a valid application are: the child must be under age 16; the child must have been habitually resident in a contracting country; and the retention or removal of the child must be wrongful.

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

Section 50 of the Child Custody Act 1987 makes it an offense for a parent or a person connected with a child, to take or send the child out of the Island without appropriate consent. The consent required is that of the child's mother, father (if he has parental responsibility for him), any guardian, and any person with whom he lives in accordance with a residence order. The offense is not committed if the child is taken or sent out of the Island for a period of less than 1 month.

For abduction of a child by someone other than a parent, section 51 makes it an offense to take or detain a child under the age of 16, so as to remove or keep him out from the lawful control of any person. The penalties for the offenses are, upon summary conviction (before a magistrate), imprisonment for a term not exceeding 6 months or a fine not exceeding 5,000, or both (section 53).

Manx law no longer uses terms such as, 'custody' of or 'access' to, a child. Instead, under the Children and Young Persons Act 2001, the orders which a court may make with respect to a child, include:

11(1)(a) a "residence order," that is, an order settling the arrangements to be made as to the person with whom the child is to live;

(b) a "contact order," that is, an order requiring the person with whom the child lives or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other; ...<sup>6</sup>

### **Documents required<sup>7</sup>**

For a child abducted to the Isle of Man, the Attorney General of the Island, as its Central Authority, is entitled to receive a letter signed by the applicant empowering the Attorney General, or his

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<sup>6</sup> Ch. 20, at: [www.gov.im/infocentre](http://www.gov.im/infocentre).

<sup>7</sup> Section 32 provides that the procedure to be followed on applications for the return of a child and for documents, information and notices to be given may be made by rules of court. In the absence of the availability of the rules, the information provided is based on The Child Custody Act 1987, Notes for Guidance, issued by the Attorney General (copy with author).

designated representative, to act on the applicant's behalf. A court order regarding the custody of the child, if there is one, should also be submitted. If the order was issued in the absence of the person alleged to have taken the child, evidence should be provided of service to the person at the start of the proceedings that resulted in the order. It can be helpful to include a sworn affidavit or a statement in support of the application, providing evidence of the applicant's right of custody and the exercise of that right at the time of the removal of the child. A photograph of the child would also be helpful; a copy of the birth certificate will be required.

### **III. Court System and Structure<sup>8</sup> – Courts Handling the Hague Convention**

The court system consists of the High Court, whose two permanent judges are called Deemsters and which has jurisdiction over all criminal and civil matters. In more serious cases, a Deemster may sit with a jury of seven in the Court of Gaol Delivery. There is a Manx Court of Appeal and further appeals, although rarely pursued, may be brought before the Judicial Committee of the Privy Council in London.

There are also two full-time magistrates, known as the High Bailiff and the Deputy High Bailiff, who deal with summary offenses. There also is a bench of lay magistrates for less serious cases.

Under section 26 of the Act, the court having jurisdiction to entertain applications under the Hague Convention is the Manx High Court. Section 27 authorizes the Court, at any time before the application is determined, to give such interim directions as it thinks fit "for the purpose of securing the welfare of the child concerned or for preventing changes in the circumstances relevant to the determination of the application."

### **IV. Law Enforcement System**

The Child Custody Act 1987, section 47(1), grants the High Court the power to order the disclosure of a child's whereabouts from any person who it has reason to believe may have relevant information as to where the child is located. Section 47(2) provides that a person will not be excused from complying with such an order on ground that it may incriminate him or his spouse of an offense; however, an admission made in compliance will not be admissible in proceedings against either of them in proceedings for any offense other than perjury.

Where necessary criminal proceedings are backed up with civil remedies, such as an order of restraint or an injunction. Child protection services are provided by the Isle of Man Department of Health and Social Security.<sup>9</sup> Social workers will make enquiries if it is suspected that a child is suffering or likely to suffer harm and take action to safeguard or promote the child's welfare.

### **V. Legal Assistance Programs**

The United Kingdom made in respect of the Island a reservation that it will not be bound to assume any costs referred to in the second paragraph of article 26 of the Convention 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. Accordingly, a grant may be made under the Legal Aid Act 1986. For applicants seeking the return of a child abducted overseas or the enforcement of rights of access

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<sup>8</sup> Based on Edwards Report, *supra* note 1, see [www.gov.im/dhss/services/family/ch\\_pro.xml](http://www.gov.im/dhss/services/family/ch_pro.xml).

<sup>9</sup> *Id.* see [http://www.gov.im/dhss/services/family/ch\\_pro.xml](http://www.gov.im/dhss/services/family/ch_pro.xml).

to a child outside the Island, legal work undertaken in the Isle of Man may be entitled to receive legal aid under the Legal Advice and Assistance (Green Form) Scheme.<sup>10</sup>

## **VI. Conclusion**

The Edwards report stated in the context of financial regulation that “the Isle of Man has made a clear commitment to prevent, deter and punish crimes of all kinds ... and is willing to assist other jurisdictions in the pursuit of criminals and crime to the greater extent possible.”<sup>11</sup> No indication has been gained in the course of researching the issue of the domestic application of the Convention that the approach on this issue is any different from that reported on financial crimes. The Isle of Man laws, regulations, and enforcement practices in the area are similar to those in the United Kingdom.<sup>12</sup>

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<sup>10</sup> The Child Custody Act 1987, Notes for Guidance, *supra* note 5, at 4.

<sup>11</sup> Edwards Report, *supra* note 1, at 69.

<sup>12</sup> That only a negligible number of applications have been made in the Isle of Man under the Convention was confirmed by a legal officer at the Attorney General’s Chambers in Douglas.