

**Act on International Enforcement of Decisions
concerning Custody etc.
(International Child Abduction)
(Consolidation Act no 375 of 06/04/10)**

Act No 793 of 27 November 1990 on international enforcement of decisions concerning custody, etc. (international child abduction) with the changes which follows from section 1 of Act No 387 of 28 May 2003, section 13 of Act No 434 of 8 May 2006 and section 2 of Act No 500 of 6 June 2007.

Chapter 1

Scope of the Act

1.-(1) This Act shall apply to recognition and enforcement of foreign decisions concerning custody, the child's place of residence and the rights of access, cf. Chapter 3. Further, the Act shall apply to the return of children who have been wrongfully removed to this country or retained here, cf. Chapter 4. Furthermore this Act shall apply to legal aid to the holder of custody of a child who has been wrongfully removed from Denmark to abroad or is being wrongfully retained there, cf. Chapter 6 a.

(2) This Act shall apply to children under the age of 16 years.

(3) Recognition and enforcement under Chapter 3 can take place on the basis of judgments, orders and decisions made by a court or an administrative authority or on the basis of agreements approved by an administrative authority.

2.-(1) Sections 3-9, 12-13, 15(1), 16-18 and 20 shall apply in relation to States which have acceded to the European Convention of 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

(2) Sections 3, 10-12 and 14-20 shall apply in relation to States which have acceded to the Hague Convention of 1980 on the Civil Aspects of International Child Abduction.

(3) Sections 20 a-20 d shall apply in cases where a child has been wrongfully removed from Denmark to abroad or is being wrongfully retained there, regardless whether this state has acceded to the in sections (1) and (2) mentioned conventions.

(4) This Act shall not apply in relation to Finland, Iceland, Norway or Sweden to the extent other provisions apply.

(5) Based on an agreement, which may contain derogations from the provisions of the European Convention or the Hague Convention, with a State which has not acceded to the European

Convention or the Hague Convention, the Minister of Justice may determine that the Act shall also apply with the necessary changes to the relationship between Denmark and that State.

Chapter 2

Central authority

3.-(1) The central authority shall:

- 1) receive and transmit communications under the Conventions;
- 2) co-operate with the central authorities of the other States which have acceded to the Conventions; and
- 3) fulfil the duties which are otherwise imposed by the Conventions on the central authority.

(2) The Minister of Justice shall designate who is the central authority in this country, and can lay down detailed rules on its function.

Chapter 3

Recognition and enforcement in accordance with the European Convention

4.-(1) A decision on custody, on the child's place of residence or on the rights of access given in a State which has acceded to the European Convention shall be recognised in this country.

(2) A decision as mentioned in subsection (1) may be enforced in this country on application if it can provide the basis for enforcement in the State in which the decision was given (the State of origin), cf., however, sections 5-8.

(3) Where, at the time of the removal of a child to another country, there was no enforceable decision given in a Convention State, any subsequent decision, declaring the removal to be wrongful, given in a Convention State shall be treated as equivalent to a decision under subsection (1).

5. A decision under section 4 given in the absence of the defendant can only be recognised or enforced in this country if:

- 1) the defendant was duly served with a writ of summons or received an equivalent document in sufficient time to enable the party to arrange for his defence, or a writ of summons or an equivalent document could not be served or received by the party because he had concealed his whereabouts from the other party; and

2) the competence of the authority giving the decision under section 4 was founded on the habitual residence of the defendant, on the last common habitual residence of the child's parents, at least one parent being still habitually resident there, or on the habitual residence of the child.

6. A decision under section 4 cannot be recognised or enforced if:

- 1) the effects of the decision will be manifestly incompatible with the fundamental Danish principles of the law relating to the family and children;
- 2) by reason of a change in the circumstances the effects of the decision are manifestly no longer in accordance with the welfare of the child;
- 3) at the time when the proceedings were instituted in the State of origin, the child was a national of or habitually resident in this country and no such connection existed with the State of origin;
- 4) at the time when the proceedings were instituted in the State of origin, the child was a national both of the State of origin and of this country and was habitually resident in this country; or
- 5) according to the law of the State of which the child is a national or in which the child is habitually resident, the child is entitled to determine its place of residence.

7.-(1) A decision given under section 4 cannot be recognised or enforced in this country if it is incompatible with a decision given in this country pursuant to proceedings begun before the submission of the application for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.

(2) A decision given in a country other than the State of origin and which can be enforced here shall be treated as equivalent to a decision given in this country under subsection (1).

8. Proceedings relating to recognition or enforcement under section 4 may be adjourned by an order if:

- 1) an ordinary form of review of the decision has been commenced in the State of origin;
- 2) proceedings relating to the custody of the child or rights of access, commenced before the proceedings in the State of origin were instituted, are pending in this country; or
- 3) 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.

9. In connection with the enforcement of a decision relating to a right of access under section 4, the Bailiff's Court may make a decision on the extent and exercise of such right of access.

Chapter 4

Return in accordance with the Hague Convention

10.-(1) Children removed wrongfully to this country or retained here wrongfully shall on application be returned to the person from whom the child is retained if the child immediately before the removal or retention was habitually resident in a State which has acceded to the Hague Convention.

(2) The removal or the retention of a child is wrongful where:

- 1) it is in breach of rights of custody whether attributed to a person, an institution or another 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
- 2) at the time of removal or retention those rights were actually exercised or would have been so exercised but for the wrongful removal or retention.

11. Return under section 10(1) may be refused if:

- 1) at the date of the lodging of an application for return with the Bailiff's Court one year has elapsed since the removal or retention and the child is now settled in its new environment;
- 2) 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;
- 3) the child objects to being returned and has attained an age and a degree of maturity at which it is appropriate to take account of its views; or
- 4) the return would not be permitted by the fundamental principles of this country relating to the protection of human rights and fundamental freedoms.

Chapter 5

Procedure

12.-(1) An application for enforcement of a decision relating to custody of a child, the child's place of residence, or rights of access under section 4 or the return of a child under section 10(1) shall be lodged with the Bailiff's Court.

(2) Applications to the Bailiff's Court shall be drawn up in Danish or be accompanied by a translation into Danish. Documents in foreign languages which are enclosed shall be translated into Danish unless the court does not find it necessary.

13.-(1) An application for enforcement of a decision under section 4 shall contain information about the likely whereabouts of the child in this country, and proposals as to how the child can be returned to the holder of custody.

(2) The application shall be accompanied by a certified transcript of the decision, documentary evidence that the conditions for recognition and enforcement under section 5 are satisfied and documentary evidence that the decision can provide the basis for enforcement in the State of origin.

14.-(1) An application for the return of a child under section 10(1) shall contain information about the applicant, the child and the person who is alleged to have removed or retained the child, and the child's date of birth. It shall contain the grounds on which the applicants claim for return of the child is based and information about the likely whereabouts of the child in this country.

(2) The application shall be accompanied by the documents relied upon.

(3) During the proceedings relating to return under section 10(1), the Bailiff's Court may order that a decision be obtained from an authority in the State of the habitual residence of the child immediately before the removal or retention that the removal or retention was wrongful. However, this shall only apply if such a decision can be obtained in that State.

15.-(1) Proceedings relating to enforcement of a decision under section 4 and to return under section 10(1) shall be proceeded with as expeditiously as possible.

(2) Where no decision has been reached in proceedings under section 10(1) within six weeks from the date when the application for return was lodged with the Bailiff's Court, the court of the requesting State, shall have the right to request a statement of the reasons for the delay.

16. The Bailiff's Court shall, in cases concerning enforcement of a decision after section 4 or in cases concerning the return of a child after section 10 (1), have a conversation with the child following the rules in section 537 (2) in the Administration of Justice Act.

17.-(1) In proceedings under section 4 or section 10(1) the Bailiff's Court may on application determine that during the proceedings the child shall be placed with either of the parents or in a neutral place decided by the social authorities where this is found to be necessary.

(2) The decision, which shall be given by order, shall apply until the final decision has been given in the proceedings.

18.-(1) Otherwise proceedings shall be subject to the provisions of Chapter 45, 46 and 48 a of the Danish Administration of Justice Act.

(2) The Bailiff's Court shall assign an attorney-at-law to the party who has lodged the application. Fees and reimbursement of expenses incurred in connection with the assigned attorney-at-law shall be subject to the same rules as in cases where free legal aid is granted, cf. Part 31 of the Danish Administration of Justice Act.

18 a.- The Minister of Justice shall upon application designate a number of attorneys-at-law who are considered to be especially capable for appointment in cases under section 18 (2).

Chapter 6

Decisions relating to custody

19.-(1) Where an application for the return of a child has been made under section 10(1), no decision can be given in proceedings relating to custody or the child's residence in this country until the application has been considered.

(2) If during the proceedings on custody or the child's place of residence in this country the central authority states that the child is staying unlawfully here, cf. section 10(2), without any application for return of the child under section 10(1) having been lodged, the court can give no decision on custody or the child's residence unless there has been reasonable time for making such an application.

20.-(1) If a child who is habitually resident in this country is removed to another country or retained there, the Minister of Justice or any one authorised for the purpose may on application from the person holding the custody of the child decide that the removal is wrongful.

(2) During proceedings to bring the joint custody of a child to an end, the court may decide on the basis of a claim that the child has wrongfully left the country, cf. 3 (2) in the Act on Parental Responsibility

(3) If the place of residence of the person that the case concerns is unknown and if no information about the place of residence can be obtained, a decision under subsections (1) and (2) may be given no matter whether the person concerned has not been served with a writ of summons or any other equivalent document in the proceedings.

Chapter 6 a

Legal aid

20 a.- (1) Upon application, the Minister of Justice may grant legal aid to the person holding custody of a child, who has been wrongfully removed from Denmark to another country or is wrongfully retained there, to cover costs related to acts of a legal nature carried out for the purpose of the return of the child.

(2) Legal aid may only be granted if the child had its habitual residence in Denmark when wrongfully removed or retained.

(3) In special cases, the Minister of Justice may grant legal aid to cover costs related to acts of a legal nature carried out for the purpose of the return of a child even though the conditions of subsections (1) and (2) are not satisfied.

(4) The Minister of Justice may lay down detailed rules on the administration of the scheme, including on the contents of applications for legal aid.

20 b. - (1) Legal aid comprises compensation from the Treasury for:-

- 1) reasonable expenses for an attorney-at-law;
- 2) other reasonable expenses necessary in connection with acts of a legal nature,

including travel expenses and expenses for translation and legalisation of documents;

and

3) legal costs which the person in question is ordered by the court to pay to the other party.

(2) Legal aid may be limited to certain expense items. Moreover, an upper limit for the compensation may be specified, possibly divided among certain expense items.

(3) Legal aid only comprises costs for which no compensation is given under the rules of free legal representation or the like in the country to which the child has been wrongfully removed and which are not covered by the applicant's legal expense insurance.

(4) The State is subrogated to the legal aid recipient's claim for compensation from the wrongful remover or others for expenses covered by the legal aid.

20 c. Any grant of legal aid may be revoked if the assumptions on which it was based prove to be non-existent or to have lapsed.

20 d. Upon application, the Minister of Justice shall appoint a number of attorneys-at-law whom the Minister can recommend to persons holding custody of a child in cases of wrongful removal of the child.

Chapter 7

Commencement etc.

21.-(1) The date of entry into force of this Act shall be fixed by the Minister of Justice¹. Different dates of entry into force of the provisions on recognition and enforcement in accordance with the European Convention and the provisions on return in accordance with the Hague Convention may be fixed.

(2) Section 10 shall only apply in cases where the wrongful removal or retention took place after the Act entered into force in relation to the State in which the child was habitually resident or staying immediately before the removal or retention.

22. Omit

23. Omit

24.-(1) This Act shall not apply to the Faroe Islands and Greenland.

(2) The Act may by Royal Decree be made effective for the Faroe Islands subject to such deviations as are dictated by the special circumstances of the Faroe Islands.

(3) Sections 1-22 may by Royal Decree be made effective for Greenland subject to such deviations as are dictated by the special circumstances of Greenland.

Act No 434 of 8 May 2006 on the Hague Child Protection Convention² contain the following entry into force provisions:

Section 15

- (1) The Act takes effect on 1 January 2007, cf. however (2) and (3)
- (2) Section 7³, and section 13⁴ takes effect on 1 July 2006
- (3) Omit

Act No 500 of 6 June 2007 (Procedure on legal process on custody and enforcement)⁵ contain the following entry into force provisions:

Section 7

- (1) The Act takes effect on 1 October 2007

Ministry of Justice, 6 April 2010

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Official Notes

¹ By Executive Order No 453 of 18 June 1991 the Act has been put into force as of 1 July 1991

² The amendment to the Act concerns section 18 a.

³ The entry into force provision concerns Danish Act on custody and access section 3.

⁴ The entry into force provision concerns section 18 a.

⁵ The amendment to the Act concerns i.e. sections 8, 9 and 16 and section 18 (1), section 19 (1) and (2) and section 20 (2)