

**SUBORDINATE LEGISLATION IN RESPECT OF THE HAGUE CONVENTION
ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION ACT,
1996 (ACT NO. 72 OF 1996)**

Regulations in terms of Section 11 of The Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996) published in Government Notice No. R. 1282 of 1 October 1997 (Government Gazette No. 18322):

“The Minister of Justice has, under section 5 of the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996), made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates—

“**applicant**” means any person, institution or body vested with parental authority that applies for assistance under the Convention;

“**Chief Family Advocate**” means the Chief Family Advocate referred to in section 3 of the Act;

“**Family Advocate**” means a Family Advocate contemplated in section 4 of the Act;

“**respondent**” means a person who removed or retained a child, or who prevented the exercise of rights of access; and

“**the Act**” means the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996).

Representation of applicant

2. An application for assistance made by an applicant to the Chief Family Advocate shall, unless the contrary is proved, be deemed to constitute authorisation by the applicant of the Chief Family Advocate or a Family Advocate to exercise any power and perform any duty conferred or imposed on him or her under the Convention, and to appear on the applicant's behalf in any proceedings that may be necessary under the Convention.

Appointment of persons by the Chief Family Advocate

3. (1) Where no Government department can grant the assistance sought or where the Chief Family Advocate considers it necessary to give effect to the provisions of the Convention he or she may, subject to any condition he or she may deem appropriate, appoint any person or persons to assist him or her, or a Family Advocate, to exercise any power or perform any duty conferred or imposed upon the Chief Family Advocate under the Convention.

(2) The appointment and any conditions thereof shall be in writing and a certified copy or duplicate original thereof shall be handed to the person concerned: Provided that in urgent cases the appointment may be made orally but shall subsequently be confirmed in writing without delay.

Obstruction of Chief Family Advocate, Family Advocate or person appointed

4. Any person who hinders or obstructs the Chief Family Advocate, a Family Advocate or a person appointed by the Chief Family Advocate in terms of regulation 3 in the exercise of his or her powers or the performance of any duty conferred or imposed on him or her under the Convention, the Act or these regulations shall be guilty of an

offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

Court appearances

5. The Chief Family Advocate or a Family Advocate shall appear on behalf of an applicant in any court proceedings that may be necessary to give effect to the provisions of the Convention, where the applicant does not—

- (a) qualify for legal aid in terms of the Legal Aid Act, 1969 (Act No. 22 of 1969), read with Article 25 of the Convention; or
- (b) wish to appoint a legal representative of his or her choosing.

Fees of Chief Family Advocate or Family Advocate

6. The Office of the Family Advocate shall, where the Chief Family Advocate or a Family Advocate appears on behalf of an applicant in any court proceedings, be entitled to the following fees:

- (a) Appearance in court by the Chief Family Advocate or a Family Advocate: R300,00 per day.
- (b) Per hour or part of an hour actually spent by the Chief Family Advocate or a Family Advocate on the perusal, consideration or drafting of any legal process, subject to a maximum amount of R300,00 per day: R50,00.
- (c) Per hour or part of an hour actually spent by the Chief Family Advocate or a Family Advocate in consultation with any witness, subject to a maximum amount of R300,00 per day: R50,00.

Fees of person appointed by Chief Family Advocate

7. (1) Any person appointed in terms of regulation 3 who is not an officer in the Public Service shall for assistance thus rendered by him or her be entitled to the following remuneration:

(a) Where he or she is a tracing agent or some other person appointed to locate a child or any other person: R280,00 if such child or other person is located.

(b) Where he or she is a social worker or some other person appointed to investigate and report on the social background, living conditions or other circumstances of a child or to obtain any other information or to harbour, keep safe or escort a child and, for the purposes of rendering such assistance—

(i) is obliged to rent overnight accommodation or is absent for a period of 24 hours or longer from the city or town where he or she normally works or resides:

(aa) an all-inclusive amount of R65,00 per day; or

(bb) the actual expenses reasonably incurred by him or her in respect of accommodation and meals, and a special compensation of R20,00 per day for incidental expenses;

ii) is absent for a period of less than 24 hours from the city or town where he or she normally works or resides and is not obliged to rent overnight accommodation: an all-inclusive amount of R40,00 per day;

(iii) makes use of public transport: an amount equal to the actual cost of such transport for the forward and the return journey by the shortest convenient route: Provided

that the Chief Family Advocate shall first give his or her consent for the mode of public transport to be used;

- (iv) makes use of private transport: an amount for the forward and the return journey by the shortest convenient route calculated at R1,10 per kilometre in the case of a vehicle with an engine swept volume of 2 150 cm³ or less, R1,14 per kilometre in the case of a vehicle with an engine swept volume from 2 151 cm³ to 2 500 cm³, inclusive, R1, 27 per kilometre in the case of a vehicle with an engine swept volume from 2 501 cm³ to 3 500 cm³, inclusive, or R1, 42 per kilometre in the case of a vehicle with an engine swept volume exceeding 3 500 cm³.

(2) When submitting a claim for actual expenses incurred by him or her in respect of meals and accommodation, the person shall submit the necessary receipts, vouchers or any other proof in support of his or her expenses to the Registrar of the High Court.

(3) The decision of the Registrar of the High Court regarding the amounts payable in terms of this regulation shall be final.

Recovery of expenditure

8. (1) Where an application for the return of a child has been successful, the Chief Family Advocate may recover from the applicant the expenses incurred or to be incurred by the Chief Family Advocate in bringing about the return of the child.

(2) Where an application for the return of a child or concerning rights of access has been successful and no order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant by

the Chief Family Advocate, the Chief Family Advocate may recover such expenses or costs from the respondent.

(3) Any expenses or costs recovered by the Chief Family Advocate in terms of subregulation (1) or (2) shall accrue to the State Revenue Fund.

(4) Where an application for the return of a child or concerning rights of access has been successful and an order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant by the Chief Family Advocate or to pay the fees of the Chief Family Advocate contemplated in regulation 6, such expenses, costs or fees shall accrue to the State Revenue Fund.

Title

9. These regulations shall be called the Hague Convention on the Civil Aspects of International Child Abduction Regulations, 1997, and shall come into operation on 1 October 1997.”