

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 26 October 1979.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

*Hon. Mr McLay*

## GUARDIANSHIP AMENDMENT

### ANALYSIS

Title	22E. Registered Overseas custody orders not to be enforced in certain circumstances
1. Short Title and commencement	22EA. Evidence of orders made in overseas countries
2. New sections inserted	22F. Costs of returning a child
<i>Enforcement of Overseas Custody Orders</i>	22G. Evidence
22A. Registration of overseas custody orders	22H. Proof of documents
22B. Effect of registration	22I. Depositions to be evidence
22C. Exercise of jurisdiction in respect of child subject to registered overseas custody order	22J. Prescribed overseas countries
22D. Variation or discharge of registered overseas custody order	<i>Transmission of New Zealand Orders Overseas</i>
	22K. Enforcement of New Zealand orders overseas
	3. Consequential amendments Schedule

### A BILL INTITLED

#### An Act to amend the Guardianship Act 1968

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, 5 as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Guardianship Amendment Act 1979, and shall be read together with and deemed part of the Guardianship Act 1968\* (hereinafter referred to as the principal Act).

10

*New*

(2) This Act shall come into force on the 1st day of January 1980.

**2. New sections inserted**—The principal Act is hereby amended by inserting, after section 22, the following headings and sections:

15

\*Reprinted 1973, Vol. 2, p. 1527  
Amendment: 1977, No. 115

***"Enforcement of Overseas Custody Orders*****"22A. Registration of overseas custody orders—**

(1) Where—

“(a) A certified copy of an overseas custody order; and

“(b) A certificate—

“(i) Which is signed by an officer of a Court  
in the overseas country in which the order was  
made; and“(ii) Which contains a statement that the  
order is, at the date of the certificate, enforceable 10  
in the overseas country; and“(c) Written information tending to show that the child  
who is the subject of the order, or a parent of that  
child, or a person having the right of custody of,  
or access to, that child, is present in New Zealand 15  
or is proceeding to, or is about to proceed to, New  
Zealand—

have been transmitted to the Secretary, he shall send the documents to the Registrar of a Magistrate's Court.

“(2) The Registrar of the Magistrate's Court shall register 20  
the order by filing a certified copy of the order in the Court.

“(3) Where the Registrar of a Magistrate's Court receives  
the documents *(referred to)* described in subsection (1) of  
this section other than from the Secretary, the Registrar may  
register the order if he is satisfied that the nature of the 25  
documents is such that they would, if they had been trans-  
mitted to the Secretary, have been sent to the Registrar by  
the Secretary.

*Struck Out*

“(4) Nothing in this section precludes a Court having 30  
jurisdiction under this Act from receiving evidence of an  
order made in an overseas country (whether or not such a  
country is a prescribed overseas country) with respect to  
the custody of, or access to, a child.

“22B. Effect of registration—Subject to sections 22C and 35  
22E (1) of this Act, where an overseas custody order is  
registered in a Court *(pursuant to)* under section 22A of this  
Act and so long as the registration is not cancelled, the order  
may be enforced, varied, or discharged as if it were an order  
made by that Court under this Act.

- “22c. Exercise of jurisdiction in respect of child subject to registered overseas custody order—**(1) Where an overseas custody order is registered in *(a Court pursuant to)* New Zealand under section 22A of this Act and that order relates
- 5 to custody or access or both, *(a)* no Court in New Zealand (other than in proceedings under section 19 of this Act) shall *(not)*, in respect of any matter determined by the overseas custody order, exercise jurisdiction in relation to the child who is the subject of the order unless—
- 10 “(a) Every person having rights of custody or access in relation to the child pursuant to the overseas custody order consents to the exercise of jurisdiction by the Court in the proceedings; or
- 15 “(b) The Court is satisfied that there are substantial grounds for believing that the welfare of the child will be adversely affected if the Court does not exercise jurisdiction in the proceedings.
- “(2) Where a Court in New Zealand exercises jurisdiction in proceedings for the custody of, or access to, a child who
- 20 is the subject of an overseas custody order that is registered in New Zealand under section 22A of this Act, the Court shall not make an order with respect to the custody of, or access to, the child unless the person who instituted the proceedings satisfies the Court—
- 25 “(a) That the welfare of the child is likely to be adversely affected if the order is not made; or
- “(b) That there has been such a change in the circumstances of the child that the order ought to be made.
- 30 “(3) Where a Court in New Zealand exercises jurisdiction in proceedings for the custody of, or access to, a child and does so without notice of the existence of an overseas custody order relating to that child which is registered in New Zealand under section 22A of this Act, any order which is made
- 35 by the Court on or after the date of the registration of the overseas custody order and which is in respect of any matter determined by the overseas custody order is of no effect.
- “22d. Variation or discharge of registered overseas custody order—**(1) Where a Court exercising jurisdiction *(pursuant to)* under sections 17 and 22B of this Act makes an order varying or discharging an overseas custody order, the Registrar of the Court so exercising jurisdiction—

- “(a) Shall forward to the Court, or to the appropriate authority, in the prescribed overseas country—
- “(i) Three certified copies of the order varying or discharging the overseas custody order and the reasons for the variation or discharge; and
- “(ii) Such further material as the Court directs; and
- “(b) Unless he is the Registrar of the Court in which the overseas custody order is registered, shall forward to the Registrar of that Court a copy of the order varying or discharging the overseas custody order.
- “(2) The Registrar of the Court in which the overseas custody order is registered shall, on receiving notice of the discharge or variation of that order, note his records accordingly, and, where the overseas custody order is discharged, shall cancel the registration of that order.

**“22E. Registered Overseas custody orders not to be enforced in certain circumstances—**(1) Where a Court is satisfied that an overseas custody order—

- “(a) Was not, at the time of its registration in New Zealand, enforceable in the country in which it was made; or
- “(b) Has, since its registration in New Zealand, ceased to be enforceable in the country in which it was made,—

the Court shall not enforce that order under section 19 of this Act and shall not exercise jurisdiction in respect of that order (*pursuant to*) under sections 17 and 22B of this Act.

“(2) Where the Registrar of a Court in which an overseas custody order is registered (*believes*) is satisfied that the order is not enforceable in the prescribed overseas country in which it was made and (*this belief is based on*) is so satisfied by—

- “(a) Documentary evidence received by him; or
- “(b) The refusal of a New Zealand Court, on the grounds set out in subsection (1) of this section,—

“(i) To enforce the order under section 19 of this Act; or

“(ii) To exercise jurisdiction (*pursuant to*) under sections 17 and 22B of this Act in respect of the order,—

the Registrar shall cancel the registration of the order and shall inform the Court in the prescribed overseas country that he has done so.

*New*

“(3) For the purposes of subsection (1) of this section, an overseas custody order is not unenforceable in the country in which it was made solely by reason of the fact that the child to whom the order relates or any other person affected by the order is no longer in that country.

“22EA. Evidence of orders made in overseas countries—Nothing in section 22A of this Act shall preclude a Court from receiving evidence of an order made in an overseas country (whether or not that country is a prescribed overseas country) with respect to the custody of, or access to, a child.

“22F. Costs of returning a child—Where a Court, for the purpose of enforcing a right of custody conferred by an overseas custody order (*issues*) that is registered in New Zealand issues or has issued in relation to any child, a warrant under section 19 (1) of this Act, the Court may, if it thinks just, make, against any person who has knowingly abducted the child, or is deliberately holding the child, in contravention of the overseas custody order, an order for the payment of the whole or part of the cost of returning the child to the person entitled to custody under the overseas custody order, which cost may include the cost and travelling expenses of any necessary escort.

“22G. Evidence—Where an application (*pursuant to*) under either sections 17 and 22B or section 22F of this Act is heard in a Magistrate’s Court, the evidence of any person beyond New Zealand may be taken in accordance with the rules of the Supreme Court covering the examination of witnesses beyond New Zealand and the provisions of the Code of Civil Procedure, as far as they are applicable and with all necessary modifications, shall apply.

“22H. Proof of documents—(1) For the purposes of section 19 and sections 22A to 22G of this Act, any document purporting to be signed by any Judge, Magistrate, or officer of a Court in any prescribed overseas country shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it; and the officer of a Court by whom a document purports to be signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

“(2) **(Every)** Any document purporting to be signed, certified, or verified by any of the persons mentioned in subsection (1) of this section shall be admitted in evidence in proceedings for the purposes of section 19 or sections 22A to 22F of this Act if it appears to be relevant to those proceedings.

5

**“22I. Depositions to be evidence—**Depositions taken for the purposes of any of the provisions of section 19 or sections 22A to 22F of this Act in a Court in any prescribed overseas country may be received in evidence in proceedings for the purposes of any of the provisions of section 19 or sections 22A to 22F of this Act.

10

**“22J. Prescribed overseas countries—**(1) The Governor-General may from time to time, by Order in Council, declare any country outside New Zealand to be a prescribed overseas country for the purposes of this Act.

15

*New*

“(1A) Any Order in Council made under subsection (1) of this section may specify the Courts of the overseas country in relation to which the order is to have effect or may otherwise modify the application of that order to that other country.

“(2) Any Order in Council made under subsection (1) of this section may be revoked or varied by a subsequent Order in Council.

*“Enforcement of New Zealand Orders Overseas*

25

**“22K. Enforcement of New Zealand orders overseas—**

(1) Where an order (not being an interim order or an order made ex parte) made by a Court in New Zealand with respect to the custody of, or access to, a child may be enforced in a prescribed overseas country under provisions corresponding to the provisions of sections 22A and 22B of this Act, the registrar of the Court in which the order was made, or last varied, or filed in accordance with section 26 of this Act shall, if so requested in writing by or on behalf of a person having rights of custody or access in relation to the child pursuant to the order, send to the Secretary for transmission to an appropriate Court or authority in that country—

30

“(a) Three certified copies of the order; and

35

“(b) Such information and material (if any) as the Registrar possesses for ascertaining the identity and whereabouts of the child and any other person who is subject to the order; and

5

*Struck Out*

“(c) A statement that the order is enforceable in New Zealand and a request in writing that the order be made enforceable in that prescribed overseas country; and

10

*New*

“(c) A statement that the order is enforceable in New Zealand; and

“(ca) A request in writing that the order be made enforceable in that prescribed overseas country; and

15

“(d) Such other documents and information as he believes are necessary for securing the enforcement of the order in that prescribed overseas country.

20

“(2) Where a Court in a prescribed overseas country has made an order in proceedings for the custody of, or access to, a child, being proceedings to which provisions corresponding to subsections (1) and (2) of section 22c of this Act apply, a Court in New Zealand may thereafter treat the order as (an overseas custody order) if it were an overseas custody order registered in New Zealand and may exercise

25

jurisdiction accordingly in respect of the order.

“(3) Where a Court exercises jurisdiction (pursuant to) under subsection (2) of this section, the Registrar of the Court shall forthwith forward to the Court in the prescribed overseas country—

30

“(a) Three certified copies of the further order of the Court and the reasons for the order; and

“(b) Such further material as the Court directs.

“(4) Where a person has rights of custody or access in relation to a child (pursuant to) under an order made by a

35

Court in New Zealand, nothing in this section prevents that person from—

“(a) Obtaining certified copies of the order; or

“(b) Applying to a Court or other appropriate authority

40

in an overseas country (whether or not it is a prescribed overseas country) for enforcement or registration and enforcement of the order in that country.

*Guardianship Amendment*

"(5) Registration in an overseas country of an order for custody of, or access to, a child which is made in New Zealand does not prevent the expiry of that order or its variation or discharge pursuant to this Act."

**3. Consequential amendments**—(1) The principal Act is hereby amended in the manner indicated in the Schedule to this Act. 5

(2) Section 27 of the Department of Social Welfare Act 1971 is hereby consequentially amended by repealing subsections (1) and (2). 10

**SCHEDULE**  
**CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT**

Section 3 (1)

Section Amended	Amendment
Section 2 .....	<p>By repealing this section, and substituting the following section:</p> <p>“2. <b>Interpretation</b>—(1) In this Act, unless the context otherwise requires,— “‘Certified copy’, in relation to an order of a Court, means a copy certified by the proper officer of the Court to be a true copy of the order: “‘Child’ means a person under the age of 20 years: “‘Country’ includes any State, territory, province, or other part of a country: “‘Court’ means a Court having jurisdiction in the proceedings by virtue of section 4 of this Act: “‘Director-General’ means the Director-General of Social Welfare under the Department of Social Welfare Act 1971: “‘Magistrate’s Court’ means a Magistrate’s Court presided over by a Magistrate appointed under the Domestic Proceedings Act 1968 to exercise the domestic jurisdiction of the Court: “‘Near relative’ means a step-parent, grandparent, aunt, uncle, brother, or sister; and includes a brother or sister of the half-blood as well as of the full-blood:</p> <p style="text-align: right;"><i>Struck Out</i></p> <p>“‘Overseas custody order’ means an order made by a Court in a prescribed overseas country, being— “(a) An order for custody of, or access to, a child; or “(b) An order varying or discharging an order of the kind referred to in <u>paragraph (a)</u> of this definition:</p>

**SCHEDULE—continued****CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—continued**

Section Amended	Amendment
<b>Section 2—continued</b>	<p style="text-align: center;"><b>New</b></p> <p>“‘Overseas custody order’—</p> <p>“(a) Means an order made by a Court in a prescribed overseas country, being—</p> <p>“(i) An order for custody of, or access to, a child; or</p> <p>“(ii) An order that varies or discharges or is made in substitution for an order for custody of, or access to, a child; but</p> <p>“(b) Does not include—</p> <p>“(i) An interim order or an order made ex parte; or</p> <p>“(ii) An order which is made by a Court in a prescribed overseas country and which varies or discharges or is made in substitution for an order, made in New Zealand, that is registered or is otherwise enforceable in the prescribed overseas country:</p> <p>“‘Prescribed’ means prescribed by rules of Court or regulations or Order in Council:</p> <p>“‘Prescribed overseas country’ means—</p> <p>“(a) The United Kingdom; or</p> <p>“(b) Australia; or</p> <p>“(c) Any State or Territory of Australia; or</p> <p>“(d) Any other country outside New Zealand that is declared by Order in Council to be a prescribed overseas country for the purposes of this Act; and,</p> <p style="text-align: right;"><u>for the purposes of this para-</u></p>

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—*continued*

Section Amended	Amendment
Section 2— <i>continued</i>	<p>graph, the Cook Islands, Niue, and Tokelau shall each be deemed to be a country outside New Zealand;</p> <p>“‘Secretary’ means the Secretary for Justice;</p> <p>“‘Social Worker’ means a Social Worker under the Department of Social Welfare Act 1971;</p> <p>“‘Supreme Court’ includes a Judge thereof;</p> <p>“‘Upbringing’ includes education and religion.</p> <p>“(2) For the purposes of the definition of the term ‘overseas custody order’ in subsection (1) of this section, ‘custody’ has the meaning given to it by section 3 of this Act.”</p>
Section 19	<p>By repealing subsections (1) and (2), and substituting the following subsections:</p> <p>“(1) Where any person is entitled to the custody of a child, whether pursuant to this Act or to the order of a Court (including an order that is registered (<i>pursuant to</i>) under section 22A of this Act), the Court may at any time, on the application of the person so entitled to custody, issue a warrant authorising any constable or Social Worker or any other person named in the warrant to take possession of the child and to deliver him to the person entitled to custody or to some other person or authority (including a person in or from a prescribed overseas country) named in the warrant on behalf of the person entitled to custody.</p> <p>“(Provided that) (1A) Where more than one person is entitled to the custody of a child no warrant issued under (<i>this subsection</i>) subsection (1) of this section shall authorise the removal of the child from the possession of one of those persons and the delivery of him to another of them.</p>

**SCHEDULE—continued****CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—continued**

Section Amended	Amendment
Section 19— <i>continued</i>	<p>“(2) The Court may at any time, on the application of the person entitled to access to a child (<i>pursuant to</i>) under an order of a Court (including an order that is registered (<i>pursuant to</i>) under <u>section 22A</u> of this Act) issue a warrant authorising any constable or Social Worker or any other person named in the warrant to take possession of the child and deliver him to the person entitled to access in accordance with the order.”</p> <p>By inserting in subsection (8), after the words “of its own motion”, the words “, but subject to <u>subsections (1) and (2)</u> of section 22c of this Act.”.</p> <p style="text-align: right;"><i>Struck Out</i></p>
Section 20 ....	<p>By inserting in subsection (1), and also in subsection (2), after the words “any order of any Court”, the words “(including an order that is registered pursuant to section 22A of this Act)”.</p>
<i>New</i>	
Section 20 ....	<p>By repealing this section, and substituting the following section:</p> <p>“20. Preventing removal of children from New Zealand—(1) Any Judge or Magistrate or, if no Judge or Magistrate is available, any Registrar of the Supreme Court or of a Magistrate’s Court (not being a constable) who has reason to believe that any person is about to take a child out of New Zealand with intent to defeat the claim of any person who has applied for or is about to apply for custody of or access to the child, or to prevent any order of any Court (including an order registered under <u>section 22A</u> of this Act) as to custody of or access to the child from being complied with,—</p> <p>“(a) May issue a warrant directing any constable or Social Worker to take the child (using such reasonable force as may be necessary) and place it in the care</p>

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—*continued*

Section Amended	Amendment
<i>New</i>	
Section 20— <i>continued</i>	<p>of some suitable person pending the order or further order of the Court having jurisdiction in the case; and</p> <p>“(b) May, in addition, order that any tickets or travel documents (including the passport) of the child, or of the person believed to be about to take the child out of New Zealand, or of both, be surrendered to the Court for such period and upon such conditions as the Court thinks fit.</p> <p>“(2) Any person against whom an order under subsection (1) (b) of this section is in force may apply to the Court for the discharge of the order, and the Court, in its discretion, may discharge the order accordingly.</p> <p>“(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 3 months or to both who, without the leave of the Court, takes or attempts to take any child out of New Zealand—</p> <p>“(a) Knowing—</p> <ul style="list-style-type: none"> <li>“(i) That proceedings are pending or are about to be commenced under this Act in respect of the child; or</li> <li>“(ii) That an order of any Court (including an order registered under <u>section 22A</u> of this Act) conferring custody of or access to the child on any other person is in force; or</li> </ul> <p>“(b) With intent to prevent any order of any Court (including an order registered under <u>section 22A</u> of this Act) as to custody of or access to the child from being complied with.</p> <p>“(4) No proceedings for contempt of Court shall be taken against any person in respect of any act to which this section applies.”</p>

*Guardianship Amendment*SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—*continued*

Section Amended	Amendment
<i>New</i>	
Section 23 .....	By inserting in subsection (3), after the words "provisions of", the words " <u>section 22C of this Act or of</u> ".
Section 32 .....	By repealing subsection (3).