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CHILD ABDUCTION

Child abduction

Abduction of children

If a child is not returned to the parent with whom he lives following an agreed visit to the other parent and abduction is suspected, the situation needs to be assessed quickly and steps taken to obtain such protection as the law offers to try to ensure that the child is returned as soon as possible. A list of relevant considerations is set below.

Has a Child Arrangements Order already been made?

If the parent with whom the child normally lives already has a Child Arrangements Order in his or her favour, this will contain a provision preventing the other parent removing the child from the UK without consent of the parent with the residence order or consent of the court. This provision can be enforced by the court by an order that the child be produced to the parent with the residence order.

If there is no order in force, a without notice application for a Child Arrangements Order and/or Prohibited Steps order could be applied for and then enforced by the court. A court has the power to order any person who may have information as to the child's whereabouts to disclose it to the court. This could be used to force relations or friends of the abductor to disclose addresses or likely destinations.

Family Law Act 1986

If a child has been removed from the jurisdiction of the English courts to another part of the UK, for example to Scotland, Isle of Man or Northern Ireland, this Act enables a Child Arrangements Order to be recognised and enforced by the local court. In order for this to be done, the order must first be registered with the appropriate court in the other part of the UK.

An application can be made under the Family Law Act 1986 as a means to locate a child. This applies in relation to 'Part I' orders, which are defined as, amongst other things:

1. A section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such an order.
2. An order made by a court in England and Wales in the exercise of the inherent jurisdiction of the High Court with respect to children
 - (i) So far as it gives care of a child to any person or provides for contact with, or the education of, a child; but
 - (ii) Excluding an order varying or revoking such an order;

Where there are proceedings for, or in relation to, a Part I order, an application can be made under FLA 1986, s 33 for an order for disclosure of a child's whereabouts.

Child Abduction Act 1984

The Child Abduction Act 1984 (CAA 1984) contains criminal offences which will be committed if a child is removed without the appropriate consents, irrespective of whether any residence order is in force:

- a) It is an offence for a parent of a child, or any person with parental responsibility for a child to take or send that child out of the UK without either the consent of all persons with parental responsibility, or the leave of the court. However, no offence is committed by a person in whose favour a Child Arrangements (Living With) Order is in force who takes or sends the child out of the UK for a period of less than a month.

There are also provisions in the Act, which apply where no such order has been made, which provide a defence if the person who removes the child either reasonably believes that he has consent, or has taken all reasonable steps to obtain it.

If, following divorce, no Child Arrangements (Living With) Order has been made, neither parent will be in contempt of court if they remove the child without the consent of the other under CA 1989 as each has parental responsibility. However, neither can take the child out of the UK for any time whatsoever without committing a criminal offence under CAA 1984, unless they obtain the appropriate consents.

(b) It is also an offence for any person, except a person with parental responsibility for a child, to take that child from any other person who has lawful control of the child without lawful authority or reasonable excuse. This will not affect married parents. However, a putative father who has not obtained parental responsibility will commit the s 2 offence, but has a defence if he can show that he had reasonable grounds for believing that he was the child's father. He will nevertheless be liable under s 1 (above) if he takes the child abroad, unless he has the mother's consent.

'Port alert' procedure

The provisions in both CA 1989 and CAA 1984 may deter a potential abductor but do not contain any practical safeguards actually to prevent a determined abductor from removing the child. The 'port alert' procedure is designed physically to prevent a child from being taken abroad. It is operated by the police on a 24-hour basis. If instituted, the police will liaise with immigration or security officials at ports and airports to try to find and stop the child from being taken abroad. The police have the power to arrest without warrant. There is no need for a Child Arrangements Order to have been obtained if the child is under 16, although if there is an order it should be produced to the police. The system is available for children over 16 only if, unusually, a Child Arrangements Order exists. The police will operate the port alert procedure only if they are satisfied that there is a real and imminent risk that

a child will be taken out of the UK. 'Imminent' is taken to mean within 24 to 48 hours, and 'real' means that the system is not being used just as insurance.

Application should be made to a police station (preferably the applicant's local station) with full details of the grounds for applying, the child, the person likely to remove the child, the applicant, the likely destination, and the likely time of travel and port of embarkation. Any other helpful information should also be given, as well as recent photographs of the child and the abductor. If the police feel that the requirements are satisfied, they will put the child's name on a stop list which is circulated to all ports and airports. The child will remain on this list for four weeks, and will then be removed unless a further application is made.

Passports

Preventing issue of a passport

If the child does not have a passport already, it is possible for an interested party to give written notice to the Passport Department of the Home Office that a passport should not be issued to a child without the consent of the court, or of both parents or others.

Surrender of passports

If the above provision is not applicable as the child already has a passport, an order can be obtained for the surrender of the relevant passport. This can be done only if there is in existence an order prohibiting or restricting the removal of the child from the UK. A without notice application for a Child Arrangements Order or a prohibited steps order may therefore need to be made.

If such an order has been obtained, the court that made the order can order any person to surrender the child's passport, or any other passport which includes details of the child. If a contact order has been made, it is possible to include a direction that the parent exercising contact must lodge his passport with his solicitor during contact visits. Care must be taken by a solicitor acting for the parent with contact in these circumstances, as if this involves giving an undertaking to the court, there will be a conflict of interest if the client subsequently requests the return of the passport in breach of any undertaking given. If the solicitor returns the passport to his client, this will be a matter of professional misconduct, as well as a contempt of court which could lead to a fine or imprisonment.



Recovering a child abducted abroad

If the child has been removed from the UK, the abductor will have committed a criminal offence under CAA 1984, but this by itself will not bring about the return of the child. Provisions do exist to obtain an order from the country to which the child has been taken to return the child. The Child Abduction and Custody Act 1985 (CACA 1985) brought the provisions of the Hague Convention on International Child Abduction into force in this country. If a child is taken to a country which is a party to this Convention, it is possible to request the return of the child. The CACA 1985 also brought the provisions of the European Convention on Recognition and Enforcement of Custody Decisions into force. This should also mean that provided the country to which the child has been taken is a party to the Convention, an order can be obtained for the return of the child, although there are certain grounds on which the court in the country to which the child has been taken can decide that it is in the child's best interests to remain there.

Practical advice

Practical steps can be taken to prevent an abduction occurring. These could include notifying the child's school to ensure that the child will not be collected by the potential abductor, in serious cases refusing to allow unsupervised contact, suspending contact, an application for a Residence and/or a Prohibited Steps order, an

application for an injunction or non-molestation order, ensuring that the child's passport is kept safe and ensuring that the telephone number of the local police station is kept to hand.

If the court give the absent parent permission to take the child abroad then the court can require that person to provide a bond and or surety which is returned to them upon their return to this country.

Tipstaff

The Tipstaff is the enforcement officer of the High Court. He enforces orders directed to him by the High Court such as the following:

Location order

A location order is an order directed to the Tipstaff to locate the child and seize any travel documents in respect of the child and the respondent. A location order can be served on any person that the Tipstaff reasonably believes may know the child's whereabouts. Tipstaff do not act as an enquiry agent.

Passport order

A passport order is usually used in a situation where the applicant is fearful of an abduction imminently taking place and wishes to prevent it by seizing the travel documents of the child and potential abductor.

Collection order

A collection order directs the Tipstaff to collect the child from whomever they may be with and to place the child in the custody of the applicant, another named person or in the local authority's care pending further directions being given by the court at a subsequent hearing.

Disclosure orders

If a parent suspects or knows that the child has been brought into this jurisdiction, but does not know the exact location of the child, the parent may:

1. Seek a location order to obtain the initial protection such an order provides, for example, a port alert will be issued immediately by the Tipstaff pending receipt of information about the child's address,
2. alongside a location order, seek a disclosure order directed to government agencies and others that may have information about the child's or the respondent's whereabouts.



Child abduction (hague convention countries)

Parents from countries that are signatories to the Hague Convention can make an application seeking a return of the abducted child back to the child's place of habitual residence:

1. Via the central authority of their own country, or
2. Directly to the central authority in this jurisdiction, or
3. Directly through a solicitor who is on the England and Wales central authority's panel of solicitors.

The child abduction charity, Reunite, has produced country guides currently in relation to Poland and the non-Hague Convention countries, India and Pakistan and Thailand.

Central authority

The Central Authority for England and Wales is the Lord Chancellor and his duties are carried out by the International Child Abduction and Contact Unit (ICACU).

Public funding

The applicant is entitled to public funding without means or merits testing if their case is registered with the ICACU.

The application and principles applied

The applications must be made in the High Court and issued in the Principal Registry. The application must be heard by a High Court judge.

In making the choice as to a return, the court must focus on the individual child and the individual circumstances of the case. Factors considered will include:

1. The degree of connection with each country.
2. The effect on the primary carer.
3. The length of time the child has spent in each country.

However, in all cases, the courts paramount concern is of the welfare of the child involved.

Child abduction mediation scheme

On the 13 March 2018 the President of the Family Division issued [Practice guidance on case management and mediation in child abduction proceedings](#).

The guidance also notes that, amongst other things, that:

1. Participation in the child abduction mediation scheme is voluntary and without prejudice to the parties' right to invite the court to determine the issues between them—an

unwillingness to enter into mediation will not have an effect on the outcome of the proceedings, and

Child abduction (non-hague convention countries)

An application is made under the inherent jurisdiction for the return of the child and must be made in the Principal Registry of the Family Division and heard in the High Court.

When a child has been made a ward of the court a declaration should be obtained that the child has been abducted and that the English court has jurisdiction over the child's welfare.



Child abduction—enforcement (non-hague convention cases)

Once an order has been made, it is important that the order is served upon the respondent.

If the respondent has property, assets or capital in this jurisdiction then consideration should be given to freezing these assets, particularly if the respondent is aware of the proceedings but has not complied with return orders.

Confiscation (Sequestration) proceedings may also be considered in respect of the respondent's assets and property.

If the respondent does not return the child to the jurisdiction then the applicant could consider issuing committal proceedings for contempt of court if the respondent is in the jurisdiction or issuing proceedings in the other country to obtain a return if the respondent remains outside the jurisdiction.

The Foreign and Commonwealth Office

The Foreign and Commonwealth Office (FCO) child abduction section deals with child abduction cases involving countries that are not signatories to the 1980 Hague Convention. The FCO will only be able to assist if the child is a British citizen.

Bilateral agreements

Bilateral agreements are in place with Pakistan and Egypt to deal with child abduction cases concerning these countries.



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