

9. CHILD ABDUCTION

If you have fears that your child has been abducted, or may imminently be abducted, an excellent source of immediate help is the Organisation REUNITE which offers an Advice Line (0207 3753440) which is extremely competent and helpful, which Organisation also offers a Child Abduction Prevention pack.

THE LEGAL POSITION

In certain circumstances, a child may legally be taken out of England and Wales for a limited period by one parent without first having obtained the consent of the other parent or any other person with parental responsibility (such as, the Local Authority, if the child is in care). For example, a parent with a Residence Order may take the child out of the United Kingdom for a period of up to one month without a prior application to the Court.

The Court may, however, make a Prohibited Steps Order to prohibit a person in whose favour a Residence Order is made from taking the child abroad, particularly in cases where abduction is feared. Further more, failure or refusal to return the child to the United Kingdom once this period has expired will constitute a wrongful retention of the child for the purposes of the Hague Convention.

If you fear that your child may be abducted and there is no Court Order already in force, application can be made either for a Prohibited Steps Order (see Fact Sheet 5) or a Residence Order (see Fact Sheet 5) or an Injunction, or alternatively the child can be made a Ward of the High Court, which imposes an automatic prohibition on taking the child out of the United Kingdom.

Where there is a Contact Order (formerly known as "access") already in force, and you fear that the child may be abducted by the person exercising contact, you may apply for a variation of the Order, to provide for the contact to be supervised.

If you fear that your child might not be returned from the visit abroad, then you can ask the Court to allow the visit only on condition that the person taking the child abroad lodges a sum of money in Court – (a bond) – or a charge on property, which will be forfeit if the child is not returned.

CRIMINAL LAW

Under the Child Abduction Act 1984, it can be a criminal offence in England and Wales for a parent or Guardian of a child, or any person who has a Residence Order/Custody Order relating to the child to take or send the child under 16 out of the United Kingdom without the consent of any other person with parental responsibility who is a parent or guardian of the child, or who has a Residence Order/Custody Order relating to the child.

It is a defence for the parent removing the child to claim s/he believed the other parent had consented, would consent, or that the other parent could not be contacted or else withheld consent unreasonably.

Although abduction by a parent may be a criminal offence, the Court usually prefers as a matter of policy to deal with such conduct as a contempt of Court. A contempt of Court can be dealt with by way of a fine, imprisonment or both. The period of imprisonment is usually about a month, but in the case of serious and persistent contempt, the period may be substantially longer.

No offence is committed, however, where a child is the subject of a Residence Order/Custody Order, if the Court which made the Order has consented to the child being removed from the Country.

Child Abduction by a non-parent can include any steps taken to remove a child under 16 from the lawful control a person who has lawful control, (for example an adult who persistently encourages your child against your wishes to visit his house without lawful authority or reasonable excuse instead of going to school). This can be punishable by up to 6 months imprisonment in the Magistrates' Court and up to 7 years on indictment in the Crown Court.

An offence of Child Abduction can be founded where both parents are the abductors and the child is approaching majority. For example where a girl of almost 17 is taken against her will out of the Country, she or an interested person on her behalf could issue Wardship Proceedings seeking her return. Upon her return an Injunction could be sought to prevent further attempts.

HAGUE CONVENTION & EUROPEAN CONVENTION

The United Kingdom is party to two international conventions, the Hague Convention (on the civil aspects of international Child Abduction) and the European Convention (on the recognition and enforcement of decisions concerning Custody of children and on restoration of Custody of children).

Under those two international conventions, legal procedures have been agreed with a number of other countries to assist in the return of a child who has been abducted.

If your child has been taken to a convention country you should contact the Child Abduction Unit of the Lord Chancellor's Department: -

The Child Abduction Unit, The Lord Chancellor's Department, Official Solicitor's Office, 81 Chancery Lane, LONDON, WC2A 1DD
Telephone: (office hours) 020 7 9117047
Fax: 020 7 9117248
Telephone: (emergency applications to the Court outside office hours) 020 7 9366000

We can tell you which the convention countries are on the relevant date.

Staff there will take brief details over the telephone, and will send you a questionnaire to complete which will require further information. Alternatively, we can obtain one for you. You should complete the questionnaire and return it with photographs of the missing child and of the person who has taken the child, and any other relevant information which may explain the circumstances of the abduction and which may help locating the child.

In order to take advantage of this, you need to fulfil the following criteria: -

- 1) The child must be under 16
- 2) The child must have been ordinarily living in the United Kingdom (habitual residence) prior to the abduction
- 3) You must have been exercising rights of Custody/Residence or access/contact in relation to the child
- 4) The country concerned must be a Convention Country at the relevant date.
- 5) The European Convention can only be used if you have a Court Order made by a Court in England or Wales

The Child Abduction Unit will arrange for the application to be translated, if necessary, and will send it by fax and air mail to the central authority of the Country to which the child has been taken.

The Child Abduction Unit will be able to give you information regarding legal costs in specific countries. Under the conventions, in many countries no payment for legal proceedings is required. In the USA there is no Legal Aid system. However efforts are made by the American Central Authority to provide legal representation for applicants either at a reduced rate or free of charge.

Expenses incurred returning the child are not covered by the Conventions, but you may request in the questionnaire that an order for travel costs be made against the person who has removed or retained the child.

The normal rule is that a child should be returned to his or her country of habitual residence. This presumes the child's best interests are usually secured by having his or her future determined in the jurisdiction of habitual residence, and sparing the child the distress and disruption which he or she will be liable to suffer if one parent abducts the child from the home jurisdiction in order to secure a tactical advantage. However having said that, the Court's duty is to make the child's welfare paramount. If the child ordinarily lives (is habitually resident) in a different country, the English Court should not return a child automatically to the Court of habitual residence unless it can be satisfied that the child's welfare will be protected by that foreign Court. The Court will consider the child's background, the age of the child, the links with the country from which the child is being taken, any differences in education, language and social customs and the length of time since any order was made.

Countries have different ways of hearing cases and taking evidence. Some provide financial assistance to you, others do not. In some countries it is the Central Authority that makes the application for the return order, in other, the application is made by the aggrieved parent through local lawyers, or through the public prosecutor.

ABDUCTION TO A NON-CONVENTION COUNTRY

It is important to establish as soon as possible what your parental rights are under the local law of the Country to which your child has been taken. You should obtain legal advice about the laws and practice for the country concerned.

The consular division of the Foreign and Commonwealth Office can help by providing a list of local lawyers who correspond in English.

Their address is: -

Foreign & Commonwealth Office, Consular Division, 1 Palace Street, LONDON, SW1E 5HE
Telephone: 020 7 2701500 Fax: 020 7 2384545

You may be able to get Legal Aid in the country to which your child has been taken. You should discuss this with your lawyer in that particular country.

The following Commonwealth Office can also: -

- * Approach Local Authorities for help in tracing the whereabouts of the child
- * Once the child is located, obtain a Welfare Report if the other parent consents
- * With the permission of the UK Court, draw to the attention of the Local Authorities the existence of any UK Court Orders
- * Help establish and keep open lines of communication between parent and child

ABDUCTION TO AN UNKNOWN LOCATION

You should alert your local Police Station, first by telephone and then in person. You will be asked to give a statement.

Where threat of removal of your child from England and Wales is real and imminent, the police will institute a Port Alert. This means that your child's name will be circulated to all UK points of departure.

A 24 hour service is provided by the police who liaise with immigration officers at the ports in an attempt to identify children at risk of removal.

A Court Order is not necessary for the police to act in England and Wales in respect of a child under 16. They will only require a statement which gives evidence of your rights in relation to your child.

Where the child is between the ages of 16 and 18 it will be necessary to have an order which restricts or restrains removal or confers custody.

You should provide the police with as much as the following information as possible:

- 1) The name, sex, date of birth, description, nationality and passport number of the child
- 2) Details of the person likely to remove the child including name, age, description, nationality, passport number, relationship to the child and whether the child is likely to assist him or her
- 3) Your own name, relationship to child, nationality and telephone number
- 4) The likely designation
- 5) The likely time of travel and port of embarkation
- 6) The reason you are seeking a port alert (either the child is subject to a Court Order or a criminal offence of child abduction is being committed)
- 7) Details of the person to whom the child should be returned if intercepted.

STEPS TO PREVENT REMOVAL FROM THE UK

If you have parental responsibility for a child or a Court Order relating to Residence, Contact or Guardianship or if you have applied for such an Order, you should take the following steps: -

- 1) Alert your local Police Station. Where threat of removal is real and imminent, the police will circulate your child's name to all UK points of departure via the Police National Computer

A Court Order is not necessary for the police to act in England and Wales, if your child is under 16, they will only require a statement which gives evidence of your rights in relation to your child.

However if the child is aged 16 or 17, then in most cases a Court Order in respect of the child is needed.

- 2) Write to your Regional Office of the UK Passport Agency, asking them not to grant Passport facilities to the child.

The passport department of the Home Office can agree not to provide passport facilities in respect of the child either without leave of the Court or the consent of the other parent, guardian or person in whose favour a Residence Order is made, or the consent of the person to whom care and control has been granted, or the consent of the mother in the case of unmarried parents.

The Passport Office will usually need to see a Court Order such as a Residence Order, Prohibited Steps Order or Wardship Order.

However Court Orders are not necessary in the case of unmarried mothers wishing to lodge an objection.

For passport enquiries the address of the United Kingdom Passport Agency is: -

Clive House, Petty France, LONDON, SW1H 9HD
Telephone: 020 7 2718629

You may telephone first if you think that an application for a Passport has already been made or soon will be.

- 3) Contact REUNITE; International Child Abduction Centre, PO Box 24875, LONDON, E1 6FR. Telephone 020 7 3753440 (the National Council of Abducted Children) for a Child Abduction Prevention Pack.

Where you believe a child is about to arrive in England by air and you seek an Order for the return of a child, you can apply to Court to have information to enable you to meet the aeroplane. The Judge should be asked to include in his or her Order a direction that the airline operating the flight and the immigration officer at the appropriate airport, should supply such information to you.

- 4) If the other parent is not a British National, consider writing a letter to the Embassy or Consulate of his/her country, asking those Officials not to issue a Passport to your child. They are not obliged to comply with your request, but may do so voluntarily.

ABDUCTION TO SCOTLAND AND NORTHERN IRELAND

Scotland and Northern Ireland have different legal systems from England and Wales.

A party wishing to have an Order enforced in another part of the UK should apply to the Court which made the Order. That Court will then send the papers to the appropriate Court in the other part of the UK which will then register it.

The Court may order the return of the child and also order Passports to be surrendered, the disclosure of the child's whereabouts or may give special authority to an Officer of the Court to ensure the recovery of the child.

ABDUCTION WITHIN ENGLAND AND WALES

Often on the breakdown of a relationship, one parent can "snatch" a child from the other parent and refuse to return them.

Where the child is very young, the Court will usually return the child to the former carer, unless there is credible evidence that either the care of that parent or the practical arrangements for the child meant that the pre-existing situation would be a danger to the child. The presumption is in favour of giving the child back. However having said that, that presumption can be overturned because the children's interest are paramount and there is nothing automatic about the return of the child pending a Court hearing and the preparation of a Welfare Report.

The parent taking the child will have to demonstrate a genuine concern for the welfare of the child.

FURTHER ASSISTANCE

We shall be pleased to assist you if you have further enquiries, or you require our assistance obtaining or completing the Questionnaire referred to or if you want further information about the countries in which the Hague and European Conventions are in force and the operative dates, we should be pleased to assist you.

DUNN & BAKER – HERE TO HELP YOU
dunnandbaker.co.uk

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.