

## Your guide to international child abduction

### What is international child abduction?

International child abduction is the unlawful removal or retention of a child outside of the jurisdiction they were habitually residing in. Habitual residence can sometimes be difficult to determine, so obtaining specialist legal advice is essential.

This guide covers the circumstances where the child(ren) has/have been abducted by the other parent or a relative, or you worry that this may occur. However, this guide is merely an overview. If your child(ren) has/have been abducted, the specific circumstances of your case should be discussed with your lawyer, as the legal action taken will depend largely on whether the abduction is to or from a Hague or non-Hague Convention country. The 1980 Hague Convention on Civil Aspects of International Child Abduction (1980 Hague Convention) is an agreement between various countries that can help return an abducted child who is under 16 years old to the country they usually live in.

This is a highly complex area, the specifics of which fall outside the scope of this guide.

### Steps to take if a child has already been abducted

If your child has been abducted to somewhere outside of their usual jurisdiction, you should take immediate action and seek specialist legal advice.

It is important to give your lawyer all details of the circumstances surrounding the retention or removal of the child(ren). Provide them with copies of all relevant communication with the abductor.

**It is important to collate useful material and information that your lawyer or the relevant authorities are likely to need**, both in relation to the child(ren) and the suspected abductor, such as:

- Recent photographs or a detailed physical description (including any distinguishing features), or both;
- Details of the abduction, including the date of the child(ren)'s departure from the UK, flight details or itinerary, where the child(ren) was/were taken, and the legal relationship between you and the other parent at the time of the abduction;
- Any ongoing medical conditions for which treatment is required;
- Full name, date and place of births;
- Passport numbers and date of issue (if known), details of any ID cards held and all nationalities;
- Full names and contact details of friends, family members or other persons in the UK and abroad who may be able to provide details of the location of the child(ren);
- Any existing court orders in force in relation to the child(ren); and
- Birth certificates for the child(ren), marriage certificate and separation or divorce agreements.

**You should contact the police.** Child abduction may constitute a criminal offence. In certain circumstances the police can obtain important information more quickly than you could yourself.

**Contact Reunite.** Reunite is a UK charity, offering support and information about international parental child abduction. Reunite operates a telephone advice line and offers a mediation service. This can be helpful, especially where children have been abducted to a country that is not a signatory to the 1980 Hague Convention. They can also send you a pack explaining how you can do your best to prevent your child being abducted, if it hasn't yet happened.

**Seek advice from the Foreign, Commonwealth and Development Office (FCDO) Consular Directorate and any relevant embassy, high commission or consulate.** The FCDO can help in various ways and should check if the country the child(ren) have been taken to operates the 1980 Hague Convention.

**If your child has been taken to a country that operates the 1980 Hague Convention with the UK you should contact your UK Central Authority (a government department set up to administer the Convention).**

If you are resident abroad you should contact your relevant Central Authority. The International Child Abduction and Contact Unit (ICACU) is the relevant authority if the child(ren) were habitually resident in England or Wales at the time they were retained in a country that is a signatory to the 1980 Hague Convention. They will process your application, send it to their counterpart central authority abroad and can provide practical advice on steps to take to recover children who have been wrongfully removed to, and from England and Wales.

If your child has been taken to a country that the UK does not operate the 1980 Hague Convention with, or your application under the Convention was refused, you can:

- Try to come to an agreement with the other parent;
- Start legal proceedings in the courts overseas to have your court order recognised by a foreign court or to seek a new court order under the laws of that country. A lawyer from that country can advise you on your options; or
- File for criminal charges against the abducting parent, either in the UK or in the other country – however this may stall efforts to get your child back, and some countries do not regard parental child abduction as a criminal act and provide advice on the options available to you. In respect of a non-Hague Convention country, starting legal proceedings in the courts of the country concerned may be your only option if you cannot come to an agreement with the person who has abducted your child.

If your child has dual nationality a child may be a dual national if they were born or lived overseas or if one of their parents holds the nationality of another country. Dual nationality may limit what the FCDO can do to help if your child has been taken to the country of their other nationality, as the local authorities may view your child only as a national of that country.

### **Steps to take if a child has not yet been abducted**

If your child has not yet been abducted but you fear that they could be, consider the next steps carefully with your lawyer, which may include court proceedings or other protective measures.

### **Preventative measures using the court**

There are several orders that can provide protection against the risk of abduction.

**A specific issue or prohibited steps orders** can be applied for under section 8 of the Children Act 1989 (CA 1989). For example, a parent could be prohibited from taking their child(ren) out of the jurisdiction, or they could be restricted in their ability to take the child(ren) to places outside their home.

**Child arrangements orders (CAO)** can be made under section 8 of the CA 1989. If a party holds a CAO which regulates the child(ren)'s living arrangements, then the relevant child(ren) may not be removed from the UK without the consent of all holders of parental responsibility, or order of the court (section 13(1), CA 1989) (save that the holder of a CAO regulating the child(ren)'s living arrangements is not prevented from removing the child(ren) for less than one month (Section 13(2), CA 1989)).

**Tipstaff location orders** in the High Court are routinely made at the initial stage of incoming child abduction proceedings. These location orders provide protection against further abduction. The Tipstaff can also take responsibility for obtaining a port alert.

A collection order may be made, which allows the Tipstaff to take any relevant child(ren) and return them to the care of someone else.

**Family Law Act 1986 (FLA 1986)** orders that the court can make include the power to order disclosure of the child(ren)'s whereabouts, to order the police to take charge of and deliver the child(ren) to a named person and the power to order the surrender of UK passports and the High Court can make orders and injunctions

under the inherent jurisdiction, including requiring the surrender of foreign passports.

**An application for wardship** could be made, which automatically makes the child(ren) a ward on issue (except when they are in care). If the child(ren) is/are made a ward, the court's permission is required for the following:

- Any important step in the child(ren)'s life.
- To remove the child(ren) from the jurisdiction of England and Wales.

**The High Court can make wide-ranging third-party disclosure orders** to assist in locating a missing or abducted child.

## Control of passports

The court may make an order under section 37 of the FLA 1986 requiring any person to surrender any UK passport that has been issued to, or contains particulars of, the child(ren) where the court makes an order prohibiting or otherwise restricting the child(ren)'s removal from:

- The UK.
- Any specified part of the UK.
- A specified dependent territory.

HM Passport Office (HMPO) will only act to prevent a UK passport or replacement passport being issued where it has been served with a court order that does either of the following:

- Expressly requires a UK passport to be surrendered.
- Expressly prohibits the issue of any further UK passport facilities to the child(ren) without the consent of the court, or the holder of such an order.

Therefore, where such an order is made, HMPO must be served with a copy of the order on the same day (if possible), or at the latest the following day, by the applicant. A copy of the court order must be attached to the letter. Delay in sending the letter to HMPO must be kept to an absolute minimum.

Following service on HMPO of an order either expressly requiring a UK passport to be surrendered by, or expressly prohibiting the issue of any further UK passport facilities to the child(ren), HMPO will maintain a prohibition on issuing a passport, or further passport facilities until the child(ren)'s 16th birthday. The order should state that a passport must not be granted or applied for without the consent of the court or the holder of the order.

## Other preventative measures

**The police should be notified** as a child abduction may constitute a criminal offence under the Child Abduction Act 1984 (and other potential offences include kidnapping and false imprisonment). This may cause the police to take preventative action by arresting the suspect, if they have reasonable grounds for suspecting that a person is attempting to commit, or is about to commit, this offence.

**A port alert system** may be implemented by the police. The police can contact the National Border Targeting Centre and ask them to alert all UK points of departure to try to prevent the abduction.

The Family Court also has the power to make a freestanding port alert order and it is usually made without notice to the potential abductor.

**Contact the other parent's Embassy, High Commission or Consulate.** If your child's other parent holds another nationality, they may be able to obtain a passport from their own Embassy, High Commission or Consulate for the child(ren) in this country. You or your lawyer should write to the Embassy, High Commission or Consulate of the other parent's nationality asking them not to issue a passport to your child. They do not have to agree to your request but they may do so voluntarily.

**Publicity** can sometimes assist in tracing and recovering the child(ren). However, there must be caution exercised if there are already court proceedings in place concerning the child(ren). The court's permission must be sought first.

## Holiday protective measures

Where one party wants to take the child(ren) on holiday to another country, but the other party is concerned that the child(ren) will not be returned, it may be possible to insist on protective measures to ensure that the child(ren) is/are returned at the required time. For example, a party may be required to do any of the following:

- Lodge a financial bond.
- Give undertakings.
- Swear an oath on a relevant holy book.
- Obtain "mirror orders" in the other jurisdiction.

Typically, this type of approach is only justified regarding travel to non-Hague Convention countries and specialist foreign legal advice is usually required.

However, the effectiveness of protective measures will depend on the facts. In some circumstances it might be reasonable to request extra safeguards in respect of a proposed holiday to a Hague Convention country; but this would depend on the facts and the risks involved in the particular case.

It cannot be stressed enough how much urgent specialist legal advice is required in any instances of potential or actual international child abduction.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.