

## Child law - abduction

Child Abduction is the removal or retention by one parent, either in contravention of a Court Order or without consent of the other parent. This may be within this jurisdiction (i.e. England & Wales) or this may be international child abduction.

A large number of countries are now signatories to The Hague Convention under which the child is returned to the jurisdiction from which he/she was snatched, until the case reaches its conclusion.

In the event of abduction to a Hague convention country non-means tested Legal Aid may be available to institute proceedings.

Following abduction, firstly the Lord Chancellor's Department must be informed of the details of the child, details of the abductor and details of the address where the child may be located. Orders to assist the application abroad must then be sought in the Courts under the Child Abduction and Custody Act 1985. These Orders can be declaratory, i.e. that the rights of custody of the complainant parent have been breached. The Court will expect that it can easily be shown that the child's place of habitual residence from where the child was removed or retained is England.

Orders can also be made against bank accounts that might facilitate the continuation of the abduction itself, against telephone companies to check if the abductor has phoned friends or family, or an Order requesting the attendance at Court of a friend or family member who might know of the whereabouts of the child.

A Port Alert Order may be made to alert ports and airports that an adult may be attempting to abduct a child. Other Orders

include an Order for extradition to bring the abductor back to England or an application to commit the abductor on his return.

The relief sought where the abduction is to a non-convention country, is the same as that to a signatory to The Hague Convention, but the procedure will be that of Wardship or to the inherent jurisdiction of the Court. The problems with non-convention countries are that they may not acknowledge the validity of an English Court Order.

It should be remembered that abductions can also take place to Scotland or Northern Ireland, those countries being outside the jurisdiction of England and Wales. The English High Court can transfer the English proceedings within two days of their institution, to the Court of Sessions in Scotland, or to the High Court of Northern Ireland.

Once the defendant has received the applicant's Summons he/she must file a defence. The matters to which the Court will pay particular attention are psychological harm, an intolerable situation, no rights of custody, no place of habitual residence, and acquiescence. The Court will also consider if the child objects to being returned and if the child is of sufficient age and maturity for his views to be taken into account by the court.

TS&P have experience of dealing with children abducted to New Zealand, Australia, Greece, Switzerland and other countries. We can also advise parents who are fearful of abduction and recommend measures they can take to lessen the risk/and be prepared in the event that an abduction takes place.

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## Child law - abduction (continued)

This information sheet has been prepared to highlight some key issues relating to child abduction. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2001 and may be affected by subsequent changes in the law.

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