

My (Ex)-Partner Has Taken My Child Abroad Unlawfully

A Guide to International Child Abduction Under English Law

The internationalisation of families, specifically in such instances where the partners don't share the same nationality, creates major legal issues, especially where children are involved. Indeed, one of the partners could decide to leave the UK with the child/children and never return, leaving the remaining parent in a heartbreaking dilemma. Other than being very difficult emotionally, child abduction is a complex issue, one which involves family and criminal law. For instance, under English law, international child abduction is classified as a serious criminal offense but not an abduction from within the UK.

English law recognises various forms of child abduction, and the relevant legislation primarily includes the Child Abduction Act of 1984 and the International Child Abduction and Contact Unit (ICACU) in cases involving international child abduction.

What is Child Abduction?

Child abduction is the unauthorised/unlawful removal of a child under the age of 16 and/or their retention away from their lawful custodian or guardian without their consent. We are talking of an international abduction in such circumstances where the child is taken out of his or her country of residence without the consent of those with parental responsibility or an English court.

What Laws Apply?

International abductions could be covered by the 1980 Hague Convention on International Child Abduction to which the UK is a signatory. Its primary purpose is to provide a framework for the prompt return of abducted children to their country of habitual residence, thereby deterring the wrongful abduction of children across international boundaries. Each member has to designate a central authority who is responsible for implementing the Convention within its jurisdiction. These authorities facilitate communication and cooperation between member states in such abduction cases.

The Convention is, however, not a trump card and will be ineffective in the following situations, where the:

- Child's habitual residence is not in a state that is a party to the Convention.
- Child's habitual residence is the state they have been taken to.
- The parties were in agreement with the move.
- Child is now settled within their new environment.
- Child does not want to return to their country of residence and has attained the age and degree of maturity appropriate to have their own decisions taken into account (usually the age of 7 or above).
- Rights of custody are being breached.
- Other parent did not actually exercise their custodial rights.

Additionally, Article 13(b) of the Convention allows for the child to stay in the new country if he or she was exposed to physical or psychological harm or else placed in an intolerable situation.

Another international agreement is the European Convention on Recognition and Enforcement of Decisions concerning the Custody of Children and the Restoration of Custody of Children. This Convention acts in a similar manner to the Hague Convention, except that it looks at Child Arrangements Orders rather than a place of residence. The Convention is, however, superseded by the Hague Convention.

In the UK, it is a criminal offence under the Child Abduction Act 1984 for a person to send or take a child under the age of 16 outside of the UK without appropriate consent. Appropriate consent is needed from the:

- Mother of the child.
- Father of the child, if he has parental responsibility.
- Guardian of the child, if different from the mother or the father.
- Special guardian of the child, if the child is under a Special Guardianship Order.
- The holder of residence who is named in a Child Arrangements Order.
- Local Authority, if the child is in care.
- Court, if the child is detained or a ward of court.

When Are We Talking About Abduction?

Under English law, a person who is the resident parent according to a Child Arrangements Order can legally take or send the child outside the UK without the need of a special consent for up to 28 days unless expressly prohibited by the order. After that time passes, the child will be considered to have been abducted if the appropriate consent was not received. Another exception that will avoid criminal prosecution is where the person has a Special Guardianship Order for the child. Under such circumstances, they will be able to lawfully take or send the child outside of the UK without the need for appropriate consent for up to 3 months.

The person abducting the child could, however, raise three defences:

- They thought that consent was granted, or else, consent would have been granted had the other parent known all the circumstances.
- They took all reasonable steps to let the other parent know of their intention.
- If the parent who has to consent unreasonably refuses. This defence is only valid if the person who refused is not the holder of residence under a Child Arrangements Order or a Special Guardianship Order.

What Steps Can I Take?

Before the Abduction

When a parent has concerns that a child could be removed from the country, they can take various steps such as a Child Arrangements Order to determine with whom the child should live or apply to the High Court to make the child a ward of court.

In case of emergency, in such instances where there is a real risk that the child would be removed from the UK within the next 24 to 48 hours, the parent could:

- Apply to the court to have an order to prevent the child from leaving the country by granting a prohibited steps order (PSO) or a specific issues order (SIO).

- Apply for the Court to place restrictions or require that a passport be surrendered if the frequency of trips raises concerns pointing toward a perceived risk of abduction.
- Request the police to issue a port alert which will stay active for 28 days.

For those actions to be taken, there is a need for proof, which is the more complicated aspect. The breach of a prohibited steps order will be regarded as a contempt of court.

If the Child is Still in the UK

- Seek legal advice.
- Contact the police. The child will be returned if there is a court order in place.
- An urgent application to the Family Court for a specific issues order.

If the Child is Abroad

- Report the incident to the police who could employ the Child Rescue Alert Scheme if the child faces the possibility of serious harm or death.
- If the location of the child is unknown, then the police will be able to contact Interpol.
- Reach out to the International Child Abduction and Contact Unit if the child has been abducted to a country that is a signatory to the 1980 Hague Convention on International Child Abduction.
- Contact Reunite for support.
- Seek legal advice if you haven't already contacted the International Child Abduction and Contact Unit which normally designates a solicitor.

We Can Help

International child abduction is a nightmare both emotionally and legally. The steps to be taken will depend on the specifics of the situation, whether there are existing court orders in place, and the country in which the child was taken. As time is of the essence, please get in urgent contact to discuss your specific needs.