

CENTRAL AUTHORITY FOR ENGLAND & WALES

QUESTIONNAIRE - RETURN

Please read the Notes for Guidance before completing the Questionnaire.

I DETAILS OF THE APPLICANT

Surname and Forenames

Date and Place of Birth

Country of Habitual Residence

Nationality (ies)

Occupation

Relationship to Child(ren)

Address at which the applicant can
be contacted

.. Home Tel No:

.. Business No:

Name of Solicitor (if any)

Name of Firm of Solicitors

Address of Solicitors .. The International Family Law Group

.. Garrick House

.. 26 Southampton Street

.. London

.. WC2E 7RS

.. Telephone No: 020 7717 8444

.. Fax No: 020 7717 8777

II DETAILS OF CHILD(REN)

(if more than three children continue on separate page)

Surname and Forenames 1)
2)
3)

Date and Place of Birth 1)
2)
3)

Country of habitual residence
(immediately before removal) 1)
2)
3)

Passport or identity Card No. if child
holds a separate passport (if not
indicate whether child is included on
mother's or father's passport) 1)
2)
3)

Nationality(ies) 1)
2)
3)

Description
(please enclose a recent photograph) 1)
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2)
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3)
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III DETAILS OF PARENTS

MOTHER

(If mother is also the applicant there is no need to repeat personal details)

Surname and Forenames
Date and Place of Birth
Habitual Residence
Passport or Identity Card No
Nationality
Occupation

FATHER

(If father is also the applicant there is no need to repeat personal details)

Surname and Forenames
Date and Place of Birth
Habitual Residence
Passport or Identity Card No
Nationality
Occupation

Date and Place of Marriage
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Date and Place of Decree Absolute of Divorce
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IV DETAILS OF PERSON WHO HAS TAKEN OR RETAINED CHILD(REN)

(if this person is the mother or father only answer questions 5 to 8)

Surname and Forenames
Date and Place of Birth
Nationality
Occupation
Passport or Identity Card No
Relationship to child(ren)

Description
(please enclose photo if available)

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Last known address(es)
(in the country in which this person now resides)

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V PLACE WHERE THE CHILD(REN) IS (ARE) THOUGHT TO BE

Present address(es) of the child(ren) if different to those of the person who has taken the child(ren)

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Details of other persons in the country to which the child(ren) has (have) been taken who might be able to supply additional information on the whereabouts of the child(ren) e.g. names, address, telephone numbers, relationship to the child(ren) or taker of the child(ren)

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VII DETAILS OF COURT PROCEEDINGS THAT HAVE TAKEN PLACE OR ARE TAKING PLACE (EG, DIVORCE, RESIDENCE, CONTACT, WARDSHIP, ETC.)

Provide details of names of parties, name of court, case number (if known) and the stage reached (eg, decree nisi/absolute, residence order made)

ENGLAND AND WALES

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OUTSIDE ENGLAND AND WALES

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VII EVIDENCE THAT THE APPLICANT HAD RIGHTS OF CUSTODY IN RESPECT OF THE CHILD(REN) AND WAS EXERCISING THOSE RIGHTS AT THE TIME OF THE REMOVAL

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IX OTHER RELEVANT MATTERS

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X ARRANGEMENTS FOR THE RETURN OF THE CHILD(REN)

Please indicate whether the applicant is prepared to travel to the country to which the children have been taken, both to attend the court hearing if necessary, and to collect the child(ren) should the application be successful or indicate any other person who could do so on their behalf

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Does the applicant wish an application to be made to the overseas court for an order to be made that the person who has taken the child(ren) meet any additional costs incurred by them e.g. air fares

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Signature of applicant or their solicitor

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Date

Applicant's address:

Dear Sirs,

Please accept this letter as written authorization, as may be required by Article 28 of the Hague Convention of the Civil Aspects of International Child Abduction and Article 13(l)(a) of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children, empowering the Central Authority for _____ or their designated representative, to act on my behalf.

Yours faithfully

Signature

Name of Applicant
(block capitals)

Date:

COUNTRIES IN WHICH THE HAGUE AND EUROPEAN CONVENTIONS ARE IN FORCE
WITH THE UNITED KINGDOM AS AT 1ST SEPTEMBER 2003

| | | | | |
|------------------------|-------|----------|----------|----------|
| Argentina | Hague | | 01.06.91 | |
| Australia | Hague | | 01.01.87 | |
| Austria | Hague | European | 01.10.88 | 01.08.86 |
| Bahamas | Hague | | 01.01.94 | |
| Belarus | Hague | | 01.09.03 | |
| Belgium | Hague | European | 01.05.99 | 01.08.86 |
| Belize | Hague | | 01.10.89 | |
| Bosnia and Herzegovina | Hague | | 07.04.92 | |
| Bulgaria | | European | | 01.10.03 |
| Burkina Faso | Hague | | 01.08.92 | |
| Canada (most states) | Hague | | 01.08.86 | |
| Chile | Hague | | 01.05.94 | |
| Colombia | Hague | | 01.03.96 | |
| Croatia | Hague | | 01.12.91 | |
| Cyprus (Southern) | Hague | European | 01.02.95 | 01.10.86 |
| Czech Republic | Hague | European | 01.03.98 | 01.07.00 |
| Denmark | Hague | European | 01.07.91 | 01.08.91 |
| Ecuador | Hague | | 01.04.92 | |
| Estonia | Hague | European | 01.09.03 | 01.09.01 |
| Finland | Hague | European | 01.08.94 | 01.08.94 |
| Fiji | Hague | | 01.09.03 | |
| France | Hague | European | 01.08.86 | 01.08.86 |
| Georgia | Hague | | 01.12.97 | |
| Germany | Hague | European | 01.12.90 | 01.02.91 |
| Greece | Hague | European | 01.06.93 | 01.07.93 |
| Honduras | Hague | | 01.03.94 | |
| Hong Kong | Hague | | 01.09.97 | |
| Hungary | Hague | | 01.09.86 | |
| Iceland | Hague | European | 01.11.96 | 01.11.96 |
| Ireland | Hague | European | 01.10.91 | 01.10.91 |
| Israel | Hague | | 01.12.91 | |
| Italy | Hague | European | 01.05.95 | 01.06.95 |
| Latvia | Hague | European | 01.09.03 | 01.08.02 |
| Liechtenstein | | European | | 01.08.97 |
| Lithuania | | European | | 01.05.03 |
| Luxembourg | Hague | European | 01.01.87 | 01.08.86 |
| Macao | Hague | | 01.03.99 | |
| Macedonia | Hague | European | 01.12.91 | 01.03.03 |

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|-----------------------|-------|----------|----------|----------|
| Malta | Hague | European | 01.03.02 | 01.02.00 |
| Mauritius | Hague | | 01.06.93 | |
| Mexico | Hague | | 01.09.91 | |
| Monaco | Hague | | 01.02.93 | |
| Netherlands | Hague | European | 01.09.90 | 01.09.90 |
| New Zealand | Hague | | 01.08.91 | |
| Norway | Hague | European | 01.04.89 | 01.05.89 |
| Panama | Hague | | 01.12.91 | |
| Peru | Hague | | 01.09.03 | |
| Poland | Hague | European | 01.11.92 | 01.03.96 |
| Portugal | Hague | European | 01.08.86 | 01.08.86 |
| Romania | Hague | | 01.02.93 | |
| Serbia and Montenegro | Hague | European | 27.04.92 | 01.05.02 |
| Slovenia | Hague | | 01.06.94 | |
| Slovakia | Hague | European | 01.02.01 | 01.09.01 |
| South Africa | Hague | | 01.12.97 | |
| Spain | Hague | European | 01.09.87 | 01.08.86 |
| St Kitts & Nevis | Hague | | 01.08.94 | |
| Sweden | Hague | European | 01.06.89 | 01.07.89 |
| Switzerland | Hague | European | 01.08.86 | 01.08.86 |
| Turkey | Hague | European | 01.08.00 | 01.06.00 |
| Turkmenistan | Hague | | 01.05.98 | |
| Uruguay | Hague | | 01.09.03 | |
| U.S.A. | Hague | | 01.07.88 | |
| Uzbekistan | Hague | | 01.09.03 | |
| Venezuela | Hague | | 01.01.97 | |
| Zimbabwe | Hague | | 01.07.95 | |

CHILD ABDUCTION AND CUSTODY ACT 1985

NOTES FOR GUIDANCE FOR THOSE SEEKING THE RETURN OF A CHILD WHO HAS BEEN ABDUCTED OVERSEAS OR THE ENFORCEMENT OF RIGHTS OF ACCESS TO A CHILD OUTSIDE THE UNITED KINGDOM OR THE REGISTRATION AND ENFORCEMENT OF A COURT ORDER

1. Child Abduction and Custody Act 1985

The Child Abduction and Custody Act 1985 came into force on 1st August 1986. The Act has enabled the UK to ratify the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the European Convention of 20th May 1980 on the Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children.

2. The Hague and European Conventions

The Purpose of the Hague Convention is to enforce rights of custody over a child who has been taken or kept overseas in breach of those rights, and to secure the return of a child to the UK. The Convention also enables a person in the UK to enforce rights of access to a child overseas.

The purpose of the European Convention is to enforce orders relating to custody where a child has been kept or taken overseas in breach of those orders, and to enforce orders relating to access.

English law no longer uses the term “custody rights”, “custody orders”, “access rights“, “access order”, but the Convention uses these terms to mean rights or orders relating to the care of the child and decisions on where the child shall live, and rights or orders relating to contact with the child including taking the child for a limited period of time to a place other than the child’s habitual residence.

3. The countries concerned

On pages 9 and 10 is a list of countries who have contracted to one or both of the Conventions. The dates in brackets are the dates on which the Conventions came into force between the UK and those countries. This date is important as the Hague Convention will not apply to children who were taken overseas before then and, depending on the country to which the child has been taken, the European Convention may not apply either.

If the child has been taken to a country in which neither of the Conventions is in force, then no formal action can be taken by the Child Abduction Unit.

4. Applications that can be made

Under the Hague Convention:-

- (i) for the return of a child removed or retained in breach of rights of custody
- (ii) for organising or securing rights of access to a child removed in breach of those rights.

Under the European Convention:-

- (i) for the recognition and enforcement of a custody (residence) order or access (contact) order.

5. Who may apply

Under the Hague Convention:-

- (i) any person who has parental responsibility for a child who claims that a child has been removed or retained in breach of their rights of custody.
- (ii) any person who claims that a child has been removed in breach of their rights to have contact with that child.

Under the European Convention:-

- (i) any person who has obtained a court order that they should have residence of the child may apply for that order to be recognised and enforced (this includes orders made after the abduction provided that such orders also declare the removal of the child to be unlawful).
- (ii) any person who has a court order giving them contact may apply for that order to be recognised and enforced.

6. Conditions which must be satisfied by applications under the Conventions

Under the Hague Convention:-

If the application is for enforcement of rights of custody and return of the child:-

- (i) the child must be aged under 16;
- (ii) the child must have been habitually resident in the UK before they were removed or retained from the country and taken to another contracting country;
- (iii) the permanent removal or retention of the child from the UK was without the consent or approval of the left-behind parent, who has parental responsibility for the child

and has not been sanctioned by an order of the court.

If the application is for organising or securing rights of access:-

- (i) the child must be aged under 16;
- (ii) the applicant parent is being denied access to the child;
- (iii) the child resides in another contracting country

Under the European Convention:-

- (i) the child must be aged under 16;
- (ii) at the time of the removal from the UK the applicant parent must have a custody (residence) or access (contact) order made in the UK giving them residence of, or contact with the child;
- (iii) the child must have been removed in breach of that order to another contracting country, or the order granting access (contact) to the parent has been breached;
- (iv) if, at the time of the removal there is no custody (residence) order in force, the Convention may apply to an order made after the child was removed if it also contains a declaration that the removal of the child was unlawful.

7. How do the Conventions work

Every country which has ratified one or both of the Conventions has set up a Central Authority. In the UK three Central Authorities have been set up. They are:-

1. England and Wales - Child Abduction Unit, Department of Constitutional Affairs, 81 Chancery Lane, London WC2A 1DD

Tel: 020 7911 7045 or 7047
Fax: 020 7911 7248

2. Northern Ireland - Northern Ireland Court Service, Windsor House, 9-15 Bedford Street, Belfast BT2 7LT

Tel: 02890 328 594
Fax: 02890 439 110

3. Scotland - Scottish Executive Justice Department, Civil Justice and International Division, St Andrews House, Regent Road, Edinburgh EH1 3DG

Tel: 0131 244 4827
Fax: 0131 244 4848

The appropriate Central Authority in the UK applies, on behalf of the applicant parent, to the corresponding Central Authority to which the child has been taken. The requested Central Authority or their designated representative should, on receipt of the application, take immediate steps to:-

discover the whereabouts of the child;

act to prevent any possible harm to the child;

initiate or facilitate the instruction of judicial or administrative proceedings in that country with a view to obtaining the return of the child to the UK, or the effective organising or securing of rights of access to the child;

provide or facilitate the provision of legal aid and advice.

After the application has been received by the overseas Central Authority, although the Child Abduction Unit is entitled to be kept informed of the progress of the application, responsibility for securing the success of the application lies with the overseas authority.

There is nothing in the Conventions to prevent an applicant parent in this country

applying direct to an overseas Central Authority, or applying directly to the Courts in the country to which the child has been taken, if the application is under the Hague Convention, if they so wish.

8. How is the application paid for?

a) Legal work undertaken in this country:-

(i) applicant parents may be entitled to receive public funding in the form of “legal help”, to enable them to instruct a solicitor in this country to assist them with making this application;

(ii) if it is necessary for an application to bring further court proceedings in this country (i.e. to obtain a declaration that the removal of the child from the UK was unlawful) they may be eligible to receive public funding for those proceedings.

b) Legal and other costs incurred on their behalf in the contracting country to which the application has been sent:-

Under the Hague Convention:-

(i) an applicant parent under the Hague Convention is generally not required to make any payment towards the costs and expenses of proceedings or the participation of legal counsel or advisers. However, some countries have entered a reservation under the Hague Convention whereby an applicant parent may have to make some financial contribution towards the payment of

these fees. The Child abduction Unit retains information on how each of the other Central Authorities operates;

- (ii) an applicant parent will usually be required to meet the cost of repatriating the child to the UK. However if an applicant parent so desires, it may be possible for an application to be made to the overseas court for an order that the abducting parent meets those costs.

Under the European Convention:-

An applicant parent is not required to meet any costs incurred on his behalf save for the cost of repatriating the child.

9. How to apply?

Enclosed with these Notes for Guidance is a Questionnaire. This should be completed and returned to the Child Abduction Unit. The information will be passed on by the Child Abduction Unit to the Central Authority of the country to which the child has been taken. It is obviously in the interests of the applicant parent to provide as much information as possible, in particular where there may be problems finding the child.

10. Documents to be returned with the Questionnaire

Letter of Authorization: The Central Authority of the country to which the child has been taken to is entitled to receive a letter signed by the applicant empowering it, or its designated representative, to act on behalf of the applicant parent. A letter of authorization is enclosed with the Questionnaire. This should be signed and dated with the applicant's home address written in the space provided and returned by the applicant parent.

Court Order: If there is a court order for residence or contact in force, a copy of it must be returned with the Questionnaire. Unless the applicant parent or their solicitor already hold an office copy of the order, sealed with the seal of the court that made the order, it may be necessary for them to ask the court for a copy. These are available free of charge from the court if it is told that it is required for making an application under the Child Abduction and Custody Act 1985. In some instances, a copy certified by a judge may be required.

Evidence of Service: If the court order for residence or contact was given in absence of the person alleged to have taken the child overseas or his legal representative, evidence should be provided, if this is available, that the person was served the document which commenced those proceedings (e.g. if the order was made in divorce proceedings a copy of the signed acknowledgement of service form should be provided). This evidence may be required by the overseas court.

Affidavit: It can be helpful if the applicant parent swears an affidavit or makes a statement in support of their application which provides evidence of their rights of custody (parental responsibility) and the fact that those rights were being exercised at the time of the removal

or retention of the child, and as much background information as possible. If affidavits already exist as part of evidence in civil proceedings which are relevant to the application, please enclose a copy with the application (but check that any permission required to use these affidavits is obtained). The Child Abduction Unit will arrange for these documents to be translated where necessary.

Photographs: Photographs of the child(ren) and the person taking the child(ren) overseas are very helpful. Photographs will not be returned, so should be copies if they have sentimental value. In the absence of photographs, a detailed description of the persons involved is required.

Birth Certificates: The Central Authority overseas will require copies of the child(ren)'s birth certificates. Photocopies are acceptable, but must be the A4 sized version with full details of both parents.

11. Further information

Further information about the Conventions and assistance in completing the enclosed Questionnaire can be obtained from the Child Abduction Unit at the address set out in section 7 of the Notes for Guidance or can be found on the website: www.offsol.demon.co.uk