

## THE INTERNATIONAL FAMILY LAW GROUP

### iGuides to family law and practice

#### Taking a child on holiday

David Hodson

The necessity to obtain permission to take a child abroad for a holiday or similar temporary removal is not commonly known or appreciated. It often depends on what Children Act orders have been made. This applies whether a day trip to Calais, a fortnight in Florida or the whole of the summer holidays in Islamabad.

#### Married (including now separated) parents, unmarried mothers and unmarried with parental responsibility and no children orders

If the parents are or were married (i.e. both have parental responsibility) or unmarried and the father has parental responsibility and there are no residence orders or other restriction orders made, neither parent can take a child on holiday abroad outside of the United Kingdom without the written consent of the other parent or any others with parental responsibility. If consent is refused, an application to the court for a s8 specific issue order should be made for permission for the holiday. The court will often give approval if it is satisfied that the arrangements are reasonable and the child will be safely returned.

Where a special guardianship order is in force, no one may remove a child from the United Kingdom without the written consent of every one with parental responsibility or leave of the court although a special guardian may remove the child for up to three months, s14C (3 and 4) CA

#### One parent has a residence order

The situation is different where one parent has a residence order. A person with a residence order can take a child abroad for up to a month without the written consent of the other parent, s13 (2) and (1)(b) CA. The parent without a residence order or any other person (or the parent with a residence order if the absence is for more than a month) cannot take a child abroad without the consent of everyone with parental responsibility. However for the parent with a residence order, it is good practice and responsible parenting to endeavour to agree the arrangements in advance with the other parent. If consent is unreasonably withheld, application should be made to the court which will often give approval if it is satisfied that the arrangements are reasonable and the child will be safely returned.

#### Unmarried parents and father without parental responsibility

If the mother alone has parental responsibility and there are no residence orders concerning the child, permission is not strictly needed by her to take a child abroad on holiday or other temporary period. However yet again it is responsible parenting to consult and reach agreement with the other parent and to keep the other parent informed of the child's whereabouts whilst abroad. A father without parental responsibility can apply for parental responsibility and so may then object to the temporary removal as a s8 prohibited steps order

#### Good Practice aspects

It may be good practice to include in a temporary removal order (i.e. permission for a holiday abroad) a declaration that the child's habitual residence is in England. Alternatively, where previously no residence order had been needed on the basis of the no order principle, it may now be good practice to obtain one.

If the other (non primary residence) parent unreasonably refuses permission for a holiday abroad and a court application is needed and then successfully obtained, it would be then wise also to seek a residence order to avoid these difficulties occurring in the future.

In almost all cases it is responsible parenting to endeavour to agree holiday or similar arrangements in advance with the other parent to avoid misunderstandings, problems with contact, accusations of abduction and other applications to the court.

In the normal course of events, permission for a holiday abroad by the other parent is invariably given by a court. But it is good practice that such permission should be recorded in writing, stating where the child will be staying and giving the date of departure and return and details of the flight (or other method of transport). Contact telephone numbers should also be provided.

When applying to the court for permission, the court will want to know the circumstances of the proposed trip, evidence of the date of departure and manner of return. It may want details of a landline telephone number so that contact can be maintained with the parent remaining in this country and for emergencies. If there are suspicions of a non return, especially if going to a non Hague Convention country, some security might be necessary.

Information a parent or court may need before permission for a foreign holiday:

- circumstances of the proposed trip
- the date of departure
- date of return
- landline telephone number so contact can be maintained with the parent remaining in this country and for emergencies
- some security might be necessary especially if going to a non Hague Convention country,
- details of where the child will be staying
- details of with whom the child will be staying if not either parent
- others travelling on the trip, including adults and other children

Sometimes a parent with a residence order may want to take a child abroad for a longer time than just a month, perhaps the whole of a summer holiday or perhaps for extended family events surrounding a family wedding, funeral or similar. Again, if permission is not given by the other parent, an application will need to be made to the court for permission. The court will want to know full details as before but specifically the return date, arrangements for any education, ongoing contact with the parent remaining here and to be satisfied that the child will be returned to the jurisdiction.

If grandparents and other family members want to take a child abroad, permission will be needed from both parents with parental responsibility, not just from one parent.

Where the approval of a holiday may require consideration of the law and procedures in foreign countries and/or putting in place mirror orders, it should ordinarily be dealt by a judge of the Family Division: Re K (removal from the jurisdiction: practice) 1999 2 FLR 1084. Although this was a request for only a summer holiday in Bangladesh, the court looked at the consequences of a non return and what security could be put in place, especially as there was the possibility of competing legislation with two legal systems and cultures. Notarised agreements and mirror orders should be explored through expert evidence. In Re L (removal from the jurisdiction: holiday) 2001 1 FLR 241, during disputed residency proceedings the mother wanted to take the child on holiday to the United Arab Emirates including a visit to family members. The court gave her permission subject to conditions which included a £50,000 bond to be released on the child's return, the date of return to be in the court order, the mother, father and eldest brother to enter into a solemn declaration on the Koran guaranteeing the safe return of the child and the mother to provide the father with dates of the journey and copies of the tickets.

In Re N (leave to remove: holiday) 2006 2 FLR 1124, permission was given for a nine-year-old child to travel to Slovakia, unaccompanied, the year after the court case in order to stay with the maternal grandmother but only on the basis that during the summer in which the case was concluded the mother took the child herself to Slovakia to prepare the child for the unaccompanied visit. It would seem that a parent with a residence order can send, as well as take personally, a child abroad for up to a month but responsible parenting again dictates that the other parent and everyone else with parental responsibility should be told in advance, and then can object or seek conditions. The court also took into account that Slovakia was a Hague Convention country.

The court must look not just at the risk of non return but at the magnitude of the impact on the child of any non return. See comments in Re K (removal from the jurisdiction: practice) above. As a consequence, some important protection orders may be appropriate, not only due to the risk of non return but because of the consequences.

### Anxiety about an abduction

It is not unusual, particularly in families with international connections, for there to be an anxiety that the other parent has taken the child abroad if, for instance, the parent and child are late returning after a contact visit or it has been difficult to get in touch with the other parent at any stage. The courts receive not infrequent applications where children have gone missing from the family home or wherever they were staying with the primary parent or contact parent. The application is for a prohibited steps order that the child shall not be taken from the jurisdiction. These orders are made without notice and at speed merely to maintain the jurisdictional status quo. Telephone applications can be made through the out of hours judiciary service. If it is not possible to locate a parent who has not returned the child, urgent steps need to be taken for a location order.

It is not difficult to leave England for the remainder of the European Union. It is often much easier to leave a number of other European Union countries for the rest of the world than it is to leave England for the rest of the world, for instance by way of documentary evidence, passports, travel arrangements etc. It can therefore be crucially important to prevent the child leaving England. Any delay in an application can result in the child being taken out of England and may then result in great difficulty in locating the child and securing return.

Nevertheless, if it is known that the child has been taken initially to a European Union country, there are considerable resources and facilities in place to track and locate a child in the hope of securing a return before departure to the rest of the world.

### Steps to be taken if there is a fear of a non return after any agreed foreign holiday

Failure to return a child after an agreed period abroad is an abduction. If there is an anxiety that the parent seeking permission for a holiday abroad may not return the child, certain steps can be put in place before departure.

Protective steps if fear of a non return after a trip abroad

- Financial bonds;
- Undertakings;
- Mirror orders;
- Air tickets and passports lodged temporarily in the foreign country
- no application to obtain or seek a passport in the holiday destination
- A Declaration as to the child's country of Habitual Residence;
- Ward of Court;
- Prohibited Steps Order to prevent the removal;

- Solemn oath by the parent taking the child abroad and other family members:
- Other safeguards used in child abduction cases, see “A Practical Guide to International Family Law” (Jordans 2008) by David Hodson

**Financial bonds;** A sum of money (usually quite substantial) is paid into Court by the parent wishing to take a child abroad to ensure compliance with the order. It is certainly used in wardship and other proceedings. It should only be used when there is a real danger of the non return of the child. The bond is returned once the parent has returned to the jurisdiction. If for any reason the child is not returned, this money may be made available to the ‘left behind’ parent to cover subsequent legal fees or flight costs in order to attempt to secure the return of the child to his place of habitual residence. See example in Re: S (Removal from Jurisdiction) [1999] 1 FLR 850

**Undertakings;** A formal promise to the Court made by the parent who seeks to leave the jurisdiction with the child that she will return with the child at a particular time or via a particular route or on a specified day. They are of limited value if there is a fear that the other parent may simply abandon this country so they are of more use where the other parent has ongoing and material connections in this country and property here.

**Mirror orders;** This is when a Court order is put in place in the jurisdiction where the child is to travel for a holiday or period of contact, setting out when the child is to be returned and that the courts in this country have jurisdiction to determine all issues in respect of the child, and in particular to specify the details of the child’s return. The child’s habitual residence should be recorded. In serious risk cases, it is advisable to put these orders in place before the proposed departure. These mirror orders are also used in contact arrangements in relocation cases.

**Air tickets and passports lodged with High Commission in the holiday destination;** In some situations this is possible but at the very least, it is reasonable for the ‘left behind’ parent to receive copies of the air tickets. Such documents could also be handed to a lawyer practising in the country of the proposed holiday destination. However electronic tickets and other air ticketing arrangements can now make this an ineffective remedy. In any event it does not prevent other travel tickets being obtained or other documents used instead of passports.

**An order that there will be no application made to obtain or seek a passport in the holiday destination;** This is made under s8 Children Act 1989 for a Prohibited Steps Order that the parent leaving the jurisdiction does not apply for a passport whilst she is away for either herself or the child. Again, this can be of limited effect if the other parent plans to abandon this jurisdiction. However the order can be lodged with the government, relevant passport office and embassy abroad. In most cases, countries are very co-operative.

**A Declaration made as to the children’s country of Habitual Residence;** This is a declaration in this jurisdiction that the child’s country of habitual residence is this country. This should save any issue arising on this point whilst the parent and child are away if court proceedings are commenced in the other country

**Ward of Court;** In extreme and serious cases, consider making the child a Ward of Court. This will pass the responsibility for the child to the High Court resulting in no orders or action being taken affecting that child without permission being first obtained from the High Court.

**Prohibited Steps Order to prevent the removal;** Under s8 Children Act 1989, an order of this nature will prevent the holiday or any departure from the jurisdiction taking place until satisfactory and workable conditions or arrangements are put in place in the other jurisdiction.

Solemn oath can be made by the parent taking the child abroad and other family members: see Re L (removal from the jurisdiction: holiday) above

In summary, it is good practice and responsible parenting to obtain the agreement of the other parent

before taking a child abroad for a holiday or other temporary removal, whatever the status of the court orders in existence. If there is any suspicion of non return, appropriate protective orders should be obtained before the holiday starts. In extreme circumstances, mirror orders should be obtained in the other country. Non return after an agreed holiday abroad is an abduction.

This is taken from “A Practical Guide to International Family Law” (Jordans 2008) by David Hodson, with acknowledgement. Further details can be found within the book and from David Hodson

David Hodson  
dh@davidhodson.com  
07973 890648

This iGuide is for information only and a specialist legal advice should always be taken. For further details contact The International Family Law Group at 020 3178 5668 and [www.iflg.uk.com](http://www.iflg.uk.com)  
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