



PRESIDENT OF THE
FAMILY DIVISION

Liaison between Courts in England and Wales and British Embassies and High Commissions Abroad

Guidance from the President's Office

- (1) This guidance note describes procedures which are to be followed when a court in England and Wales exercising family jurisdiction seeks to invoke diplomatic assistance. The procedures have been agreed between the President of the Family Division and the Foreign and Commonwealth Office (FCO).
- (2) Courts exercising family jurisdiction in England and Wales regularly deal with cases where children have been wrongfully removed to a foreign country or have been retained there wrongfully, most commonly by a parent or relative. Such cases may involve abduction or removal by one or both parents with a view to forced marriage abroad, in which case a Forced Marriage Protection Order (FMPO) may be appropriate.
- (3) When the court is exercising family jurisdiction in such circumstances, diplomatic assistance may be sought, via the FCO in London, from the relevant British Embassies and High Commissions abroad.
- (4) Where the country to which the child has been taken is a party to the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 (Hague Convention), established procedures apply for the making of applications for the return of the child, via the central authority (which for England and Wales is The International Child Abduction and Contact Unit (ICACU), situated in the Office of the Official Solicitor and Public Trustee at Victory House, 30-34 Kingsway, London, WC2B 6EX, telephone 020 3681 2608, email ICACU@offsol.gsi.gov.uk.
- (5) Where the country to which the child has been taken is a party to either of the following Conventions, the court will need to consider the Convention when deciding what steps to take:

- 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children
 - 1996 Hague Convention on Jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children. Please note that for the 1996 Hague Convention, ICACU is the (operational) central authority for England and the Welsh Government is separately the central authority for Wales (Tel.: 44 (29) 2082 5512. Email: WalesCAHague1996@wales.gsi.gov.uk)
- (6) ICACU has published guidance on the assistance which can be provided in respect of the above named Conventions :
<https://www.gov.uk/government/publications/international-child-abduction-and-contact-unit-application-form>
- (7) Where however, the country concerned is not a party to any of the above Conventions, consideration will need to be given in each case as to what orders if any should be made to secure the return of the child to England and Wales.
- (8) It may be possible in appropriate cases for representatives from the relevant British Embassy, High Commission or Consulate to work with local authorities to assist in ascertaining the whereabouts of child[ren], to conduct consular checks, and to facilitate travel arrangements for the return of the child[ren] to England and Wales. Such activities will however always be subject to the requirements of the domestic law of the country in question. The FCO has sole discretion in deciding how to conduct international affairs, and the Court cannot order them to exercise consular assistance.
- (9) Before the court requests assistance from the FCO, contact should be made by telephone or email with the Child Protection Unit at the FCO, or the Forced Marriage Unit if the case involves forced marriage. This is to provide the FCO with an opportunity to clarify what level of assistance it is in a position to offer in the country concerned. The FCO will be able to identify the relevant Embassy, High Commission or Consulate to which any order or request for assistance should be directed, and to forward documents.
- (10) The FCO provides a facilitative role in relation to the return of the child but is not able to care for, take control of, or assist in procuring the return of the child. The naming of specific officials (for example Ambassadors, High Commissioners or other FCO officials) must be avoided. Instead reference should be made to ‘The Consular Department of the Foreign and Commonwealth Office’.

- (11) Consular staff are not trained to assess the welfare of a child as a professional social worker would be. Accordingly, the FCO cannot conduct welfare visits. However, in some exceptional circumstances, and with the consent of both parents, a consular visit to the child can be conducted. This would result in a brief factual summary of any discussion and observations from the visit.
- (12) The FCO is keen to co-operate in any way which is appropriate but courts and practitioners should be aware of the limited efficacy of orders which provide for the deposit of passports at an Embassy, High Commission or Consulate. It should be noted that:
 - (a) The FCO is dependent upon the co-operation of the person with parental responsibility to comply with such an order and there is nothing the FCO can do to guarantee compliance.
 - (b) If at any time the person with parental responsibility requests the return of the passports it would be inappropriate for the FCO to retain them.
 - (c) On return of the passports no further responsibility lies with the FCO in relation to the parties' future movements.
- (13) The FCO can work with local authorities and NGOs in the relevant country to assist in locating the child[ren], and to assist a local authority to return the child[ren]. However UK Social Services are not authorised to work outside of the UK and as such the primary work of returning the child should fall to in-country teams.
- (14) The FCO can grant Emergency Travel Documents (ETDs), although FCO policy states that ETDs can only be issued where all those with parental responsibility have given consent. This policy is deviated from only in exceptional circumstances. It is helpful to the FCO if the court can make it clear when an ETD may be issued with the consent of only one person with parental responsibility or, where necessary, without the consent of anyone with parental responsibility.
- (15) The FCO cannot be required to provide any financial assistance for the repatriation of a child. What can be achieved will depend on the particular circumstances of each case.
- (16) In a case where assistance can be given by the FCO, the order should provide for disclosure of relevant documents to the FCO and its representatives. A copy of all such orders should be sent to the Child Protection Unit, Foreign and Commonwealth Office, King Charles Street, London, SW1A 2AH; Consular.ChildrensPolicyOfficer@fco.gov.uk. Telephone contact may also be made via the FCO Switchboard: 020 7008 1500.

- (17) If the order relates to the 2003 UK-Pakistan Protocol on Child Contact and Abduction, a copy should in addition be sent by email to Karen.Wheller@judiciary.gsi.gov.uk. Telephone enquiries regarding the operation of the Protocol may be made of Karen Wheller on 0207 947 7225.
- (18) Attached is a Schedule of specimen provisions which may be included in orders principally directed to cases where a child has been wrongfully removed to/retained in a foreign country.

The Rt Hon Sir James Munby

President of the Family Division

April 2016

Schedule

Specimen Provisions for Orders

AND WHEREAS [AB] is a Ward of this Honourable Court and is a British citizen; born in and domiciled in the United Kingdom; and currently [believed to be] travelling outside England and Wales with a United Kingdom passport

AND WHEREAS in consequence of the fact that this Court has ordered that [AB] remain a Ward of this Court while (until [s]he attains the age of 18 years on [date]) [s]he remains a minor, this Court is empowered and required to exercise its custodial jurisdiction over him/her and to ascertain his/her best interests and to facilitate and protect those best interests

AND WHEREAS it appears from an order made in [details of proceedings] on [date] (of which a copy is attached) that [AB] was habitually resident in England and Wales [on [date]/at the time [s]he was removed from this jurisdiction]

AND WHEREAS this Honourable Court is anxious to protect and secure his/her wellbeing and best interests and to ensure that [s]he may freely express his/her wishes concerning his/her country and place of residence

AND WHEREAS this Honourable Court is anxious to ensure that [s]he is not induced or coerced into contracting any marriage or betrothal against his/her will

AND WHEREAS this Honourable Court is satisfied that all interested parties are before the Court including CAFCASS (the Child and Family Court Advisory and Support Services) appointed by the Court to represent the Ward

AND WHEREAS this Honourable Court having heard oral evidence from [] is of the view that serious grounds exist in the present circumstances to question whether this Honourable

Court's Ward [AB] is able freely to express his/her views and wishes and in particular with regard to his/her country of residence

AND WHEREAS this Honourable Court has in the interests of [AB] determined that [s]he should so soon as practicable return/be returned to England and Wales

IT IS ORDERED that every person within the jurisdiction of this Court who is in a position to do so shall co-operate in assisting and securing the immediate return to England and Wales of [AB], a Ward of this Honourable Court

AND NOW THEREFORE THIS COURT RESPECTFULLY REQUESTS any person not within the jurisdiction of this Court who is in a position to do so to co-operate in assisting and securing the immediate return to England and Wales of the Ward [AB]

AND THIS COURT RESPECTFULLY INVITES all judicial and administrative bodies in the State of [] to render assistance in establishing the whereabouts of the Ward of this Honourable Court and in arranging for him/her to be placed in contact with and facilitating his/her travel to the British Embassy/High Commission/Consulate at [] with a view to his/her immediate return to the United Kingdom

AND IN THE EVENT that the said [AB] discloses to the British Embassy/High Commission/Consul (or their authorised representative) at [] that [s]he wishes unequivocally to return to England and Wales, [s]he do so return; and that in that event the judicial and administrative authorities of the State of [] be respectfully invited to take all such actions as may facilitate such return

AND NOW THEREFORE THIS COURT RESPECTFULLY REQUESTS all judicial, administrative and law enforcement authorities of the Islamic Republic of Pakistan to use their best endeavours to assist in taking any steps which may to them appear necessary and appropriate in locating, safeguarding and facilitating the return to England and Wales of the said minor child[ren] pursuant to the laws of the Islamic Republic of Pakistan and in accordance with the Protocol made on 17 January 2003 in London and signed by the Honourable Chief Justice of the Supreme Court of Pakistan and by the Right Honourable The President of the Family Division of the High Court of Justice of England and Wales

Other Examples of Helpful Wording

FOR THE AVOIDANCE OF DOUBT the Foreign and Commonwealth Office and/or Her Majesty's Passport Office may grant a passport, travel document or emergency travel document to [names of child/ren] without the consent of [name of parent/mother/father]

PERMISSION IS HEREBY GIVEN to the Foreign and Commonwealth Office of the United Kingdom to share the information disclosed to them in accordance with paragraph [X] above with [named bodies/persons] [and any other relevant agency]