



Protective Measures Fact Sheet

International Hague Network
Judges for England and Wales



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Information in respect of Protective Measures available in England and Wales in the context of International Child Abduction

This fact sheet provides information for judges, parties, parents and mediators in cases of international child abduction involving a child or children allegedly wrongfully removed from, or wrongfully retained out of, England and Wales when an application has been made under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (“the 1980 Convention”).



Introduction

This document has been drafted by the Hague Network judges for England and Wales with assistance from the Ministry of Justice. The document aims to provide a summary of protective measures that are available in England and Wales. It is modelled on the fact sheet prepared by the Australian Hague Network judges.

Gathering accurate information rapidly on available protective measures and how they can be implemented can be challenging, not least because there are now over 100 contracting parties to the 1980 Convention. This fact sheet aims to assist with that process by providing an overview of measures that are available in England and Wales.

The information provided in this document is not exhaustive and it will not assist in every case. It is not intended to suggest any particular outcome in any application under the 1980 Convention. The manner in which the information contained here is taken into account and the determination of the application will, of course, be for the individual judge seised of the proceedings.

Additionally, direct judicial communications, in particular through the International Hague Network of Judges, can be used to seek further information or assistance.

The International Hague Network of Judges



The majority of contracting states to the 1980 Convention have designated at least one judge to the International Hague Network of Judges (“IHNJ”). A list of IHNJ can be found on the Hague Conference on Private International Law (“HCCH”) website.¹ The Network Judges for England and Wales are:

- Lord Justice Andrew Moylan, Judge of the Court of Appeal, Royal Courts of Justice, London
- Mr Justice Alistair MacDonald, Judge of the High Court, Family Division, Royal Courts of Justice, London

A judge who is responsible for determining a return application under the 1980 Convention may, when appropriate, request the Network Judge of their jurisdiction (the requested state) to have direct judicial communication with the Network Judge of the requesting state to gather information, including what protective measures are available or about other matters relevant to the case. Information and guidance on the role of the IHNJ is available on the HCCH website.² This guidance indicates that direct judicial communication may include discussion on *‘whether protective measures are available for the child or other parent in the State to which the child would be returned and, in an appropriate case, ensuring the available protective measures are in place in that State before a return is ordered.’*³ The judge seised of the return application may make use of the information communicated by the Network Judge of the requesting state, however, they must observe the legal and procedural rules of their own jurisdiction and maintain independence in reaching their decision on any matter at issue under the 1980 Convention.

Article 13(1)(b) of the 1980 Convention



Where the grave risk exception, set out in Article 13(1)(b) of the 1980 Convention, is relied on in opposing a return application, the Guide to Good Practice on Article 13(1)(b) published by the HCCH⁴ (“the GGP”) suggests that the court should undertake a “step-by-step

1 HCCH | The International Hague Network of Judges
(www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction/ihnj)

2 HCCH | Brochure: Direct Judicial Communications
(www.hcch.net/en/publications-and-studies/details4/?pid=6024&dtid=3)

3 Ibid, p.12

4 HCCH | Guide to Good Practice Child Abduction Convention: Part VI - Article 13(1)(b)
(<https://www.hcch.net/en/publications-and-studies/details4/?pid=7059>)

analysis".⁵ The information provided in this fact sheet may assist when, as part of that analysis, the court is considering "*whether adequate measures of protection are available or might need to be put in place to protect the child from [a] grave risk of... harm or intolerable situation when evaluating whether the grave risk exception has been established*".⁶

By way of example, in England and Wales, when Article 13(1)(b) is relied on, the parties to the application are required to address the issue of protective measures that are available or could be put in place, to meet or ameliorate any alleged identified risks, as early as possible in the proceedings.⁷ In addition, including because of the obligation to act expeditiously (Articles 2 and 11), the courts in England and Wales typically determine whether Article 13(1)(b) has been established on the basis of an assessment of risk, including as appropriate, the availability and effectiveness of relevant protective measures.



Protective Measures

Protective measures can be relevant in a range of factual circumstances which may be advanced in support of a case that the return of a child would expose him/her to a grave risk of harm or otherwise place him/her in an intolerable situation within the scope of Article 13(1)(b). Examples of matters which might be relied on are given in the GGP.⁸ These include when the taking parent relies on domestic abuse, which may be relied on independently or in conjunction with other matters or grounds under the Convention.

The term "protective measures" is not found in the Convention but the GGP states that, "*the term is to be understood broadly as measures available to address a grave risk*".⁹ Protective measures are also described in the GGP as covering "*a broad range of existing services, assistance and support including access to legal services, financial assistance, housing assistance, health services, shelters and other forms of assistance or support to victims of domestic violence, as well as responses by police and through the criminal justice system*".¹⁰

5 The GGP, at p.31 et seq

6 Ibid at [41]

7 *In re T (Child) [2023] EWCA Civ 1415* (www.bailii.org/ew/cases/EWCA/Civ/2023/1415.html) and Practice Guidance: Case Management and Mediation of International Child Abduction Proceedings, issued by the President of the Family Division, 1 March 2023; ("Case Management Guidance") (www.judiciary.uk/wp-content/uploads/2023/03/Presidents-Practice-Guidance-on-Case-Management-and-Mediation-of-International-Child-Abduction-Proceedings.pdf)

8 Ibid, pp.37-49

9 The GGP, Glossary, p.10

10 The GGP, at [43]

This mirrors the approach in England and Wales in which the term “protective measures” is considered to be “a broad concept” which includes “*potentially, anything which might impact on the matters relied upon in support of the Art 13(b) defence and, for example, can include general features of the home State such as access to courts and other State services*”.¹¹

Protective measures available in England and Wales are dealt with in more detail below.



Domestic Abuse

Domestic Abuse is very broadly defined in England and Wales. Section 1 of the Domestic Abuse Act 2021¹² sets out that behaviour is abusive “if it consists of any of the following - (a) physical or sexual abuse; (b) violent or threatening behaviour; (c) controlling or coercive behaviour; (d) economic abuse ...; (e) psychological, emotional or other abuse” and that “it does not matter whether the behaviour consists of a single incident or a course of conduct”.

Section 3 of the Domestic Abuse Act 2021 expressly identifies children as the potential victims of domestic abuse. It sets out that a victim of domestic abuse can include a child who “sees or hears, or experiences the effects of, the abuse”.

The family courts in England and Wales have specific provisions which address domestic abuse, including a Practice Direction¹³ which states: “Domestic abuse is harmful to children, and/or puts children at risk of harm, including where they are victims of domestic abuse for example by witnessing one of their parents being violent or abusive to the other parent, or living in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with and being victims of domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents”. This is also reflected in judgments from the courts.

¹¹ *C (Children) (Abduction: Article 13 (b))* [2018] EWCA Civ 2834, at [43] (www.bailii.org/ew/cases/EWCA/Civ/2018/2834.html)

¹² Domestic Abuse Act 2021 (www.legislation.gov.uk/ukpga/2021/17/data.pdf)

¹³ Practice Direction 12J – Child Arrangements & Contact Orders: Domestic Abuse and Harm (www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j)

Recognition and Enforcement in England and Wales



i) Mirror Orders

As referred to in the GGP, at [47], when considering the efficacy of a proposed measure of protection, one “option may be to give legal effect to [it] by way a mirror order in the state of habitual residence”.

The jurisdiction to make these orders varies but, in most cases, a family court in England and Wales is likely to have the power to make mirror orders, either in advance of the child being returned to, or on their arrival in, England and Wales provided the proposed measures are ones which the court has jurisdiction to make (as set out in the statutes referred to further below). The court would need to be appropriately seised of the relevant proceedings and the process would be expedited if the measures were agreed.

ii) The 1996 Hague Child Protection Convention¹⁴

As referred to in the GGP, at [48], when the 1996 Convention is in force between the states involved, its provisions are relevant to the efficacy of a proposed measure of protection which falls within scope of that Convention. In particular, Article 23 provides that “measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States”, which includes measures taken under Article 11. Additionally, measures taken by the authorities of other Contracting States can be registered for the purpose of enforcement by a court in England and Wales at the request of an interested party (through the procedure provided in the Family Procedure Rules 2010, Part 31).¹⁵

The 1996 Hague Convention entered into force in England and Wales on 27 July 2012.

iii) Recognition and enforcement of protection measures issued in EU Member States

Regulation (EU) No 606/2013 is assimilated into the law of England and Wales and may also be of assistance. Authorities in England and Wales automatically recognise and enforce protection measures issued in civil matters by authorities in all EU Member States, except Denmark.

Under Article 3(1), a ‘protection measure’ is any decision, whatever it may be called, ordered by an issuing authority of an EU member state in civil (i.e. not criminal)

¹⁴ HCCH | #34 - Full text (www.hcch.net/en/instruments/conventions/full-text/?cid=70)

¹⁵ www.legislation.gov.uk/ukxi/2010/2955/part/31

matters in accordance with its national law, which imposes one or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person's physical or psychological integrity may be at risk:

- a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays;
- a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means;
- a prohibition or regulation on approaching the protected person closer than a prescribed distance.

The protected person must be an adult (18 years or over) for the measure to be in scope (Article 2(3)), and the protection measure must be accompanied by a certificate issued in the state of origin (Article 4(2)). The factual elements of the protection measure can also be adjusted to give it effect in England and Wales (Article 11 and the Family Procedure Rules 2010, Part 38).

Protective Measures Available in England and Wales



i) Occupation and Non-Molestation Orders

The main protective measures available under the **Family Law Act 1996 ("FLA 1996")**¹⁶ are 'occupation orders' (ss.33-40) and 'non-molestation orders' (s.42) which can be made by the family courts in England and Wales.

An **occupation order** regulates the occupation of a home. The order can exclude a person (such as the left-behind parent) from the home and its vicinity. The order can also impose on a party "obligations as to - (i) the repair and maintenance of the dwelling-house; or (ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house" (s.40).

A power of arrest can be attached to an occupation order (s.47). This gives the police the power to arrest a person if they have "reasonable cause for suspecting [that person] to be in breach of" the order.

A **non-molestation order** is an order which prohibits a person from molesting an applicant and/or a child. The term 'molesting' has a wide meaning. The order can include provisions prohibiting a person from contacting or attempting to contact another person by telephone or social media or otherwise. It can also prohibit a person from entering a specified area.

16 Family Law Act 1996 (www.legislation.gov.uk/ukpga/1996/27/data.pdf)

Breach of a non-molestation order is a criminal offence (s.42A). It is an arrestable offence and it is not necessary for the police to obtain a warrant before an arrest can be made.

A proven breach of an occupation order and of a non-molestation order is also a contempt of court for which a person can be fined or imprisoned by the family court.

ii) Undertakings

The court can accept undertakings from a party. For example, (subject to the comments in the next paragraph) they can be given in the same terms as, but instead of, non-molestation and occupation orders. They are voluntary (a party cannot be compelled to give them) and can be given without any admission. They are formal promises to the court and certain formalities are required at the time the undertakings are given to the court.

Undertakings can be accepted by the court in lieu of an occupation order, unless it would be necessary to attach a power of arrest (in which case an order must be made). Undertakings can be accepted by the court in lieu of a non-molestation order, except where the respondent has used or threatened violence against the applicant and/or relevant child, or in circumstances where the court considers that the criminal consequences under s.42A (Offence of breaching non-molestation order) are required to protect the applicant and/or relevant child in the event of breach.

A proven breach of an undertaking is a contempt of court for which a person can be fined or imprisoned. A power of arrest cannot be attached to an undertaking but an undertaking is enforceable as if the court had made an occupation order or a non-molestation order in terms corresponding to those of the undertaking (s.46(4) FLA 1996) and, accordingly, a warrant of arrest can be issued.

An undertaking given to a foreign court is not enforceable in England and Wales in the same way (as described above) as an undertaking given to the court in England and Wales (unless the court in England and Wales decided that it was a measure within the scope of the 1996 Hague Child Protection Convention, which was therefore capable of recognition and enforcement under that Convention).

Undertakings can include the following:

- Not to harass, intimidate or threaten the returning/left behind parent;
- Not to use violence or threaten violence;
- Not to instigate or support any civil or criminal proceedings against the taking parent arising from the wrongful removal/retention;
- Surrendering a parent's and/or a child's passport(s)/travel documents to the court or some other person;

- To pay for the travel costs associated with returning the child and the taking parent;
- Not to attend the airport at which the returning parent and child are due to arrive;
- To make maintenance payments for a specified period;
- To provide accommodation or financial support to help the child(ren) and the taking parent find suitable housing;
- Not to interfere with educational arrangements;
- To assist the returning parent in obtaining legal representation in the country of return/habitual residence;
- Not to seek to remove the child from the returning parent's care until the first on notice hearing in the country of return/habitual residence;
- To assist the taking parent to obtain appropriate permissions under applicable immigration rules.

iii) Domestic Abuse Protection Orders

Family (and other) courts have been given the power to make Domestic Abuse Protection Orders (s.27 of the **Domestic Abuse Act 2021** ("DAA 2021")).¹⁷ Such an order can "impose any requirements that the court considers necessary to protect the person for whose protection the order is made from domestic abuse or the risk of domestic abuse" (s.25). At present, these orders are being trialled in certain locations¹⁸ and are not yet available nationally. Such an order can provide that a person "(a) may not contact the person for whose protection it is made; (b) may not come within a specified distance of any premises in England or Wales in which that person lives; (c) may not come within a specified distance of any other specified premises, or any other premises of a specified description, in England or Wales".

iv) Parental Responsibility Orders

A number of orders relating to the exercise of parental responsibility for children can be made under the **Children Act 1989** ("CA 1989").¹⁹

(a) Child Arrangements Order (s.8)

This is an order which stipulates where and with whom a child lives and/or what, if any, contact (access) a person has with a child.

¹⁷ Domestic Abuse Act 2021 (www.legislation.gov.uk/ukpga/2021/17/data.pdf)

¹⁸ DAPOs were commenced on 27 November 2024 in Greater Manchester, Croydon, Bromley and Sutton and now include Cleveland (5 March 2025) and North Wales (28 April 2025)

¹⁹ Children Act 1989 (www.legislation.gov.uk/ukpga/1989/41/contents)

(b) **Prohibited Steps Order (s.8)** ("PSO")

This order can prohibit a parent (or anyone else) from taking a step without the court's consent. The provisions of such an order can include expressly prohibiting a parent from removing a child from the other parent and/or from England and Wales.

(c) **Specific Issue Order (s.)** ("SIO").

By this order, the court can give directions determining a specific question that has arisen, or that may arise, in connection with any aspect of parental responsibility for a child. This can include education and medical matters.

v) Financial Orders

The court has specific power to make certain financial orders (in addition to those referred to above in occupation orders).

The family court can order a parent to pay maintenance and/or a lump sum for the benefit of a child, under the CA 1989, Schedule 1.

The family court can order either party to a marriage to pay maintenance to the other party, under s.27 of the Matrimonial Causes Act 1973. There are additional powers if there are divorce proceedings.

vi) Passports

The court has power to order a parent to surrender their and a child's passports to the court or some other person for safe keeping.

vii) General Protection

In England and Wales, a number of public (and private/charitable) bodies work together to safeguard and promote the welfare of children and vulnerable adults. Statutory duties are imposed on healthcare services, local authorities and the police to safeguard and promote the welfare of children: s.11 of the Children Act 2004. This fact sheet briefly examines the role of local authorities and the police.

Local Authorities: A local authority has a general duty to safeguard and promote the welfare of children within their area (s.17 CA 1989) and has a duty to investigate where there is reasonable cause to suspect that a child who lives or is found in their area is suffering or is likely to suffer, significant harm (s.47 CA 1989). If the court, in the course of existing welfare proceedings, considers a child is at risk of significant harm, it may order a report under s.37 CA 1989. The purpose of a s.37 report is for the local authority to investigate the child's circumstances and consider whether it should apply for an order, provide services or assistance for the child or family, or take any other action.

Police: The Police have a duty to take action in respect of incidents of domestic abuse which includes the power to arrest a suspected perpetrator.

Under the Crime and Security Act 2010, a senior police officer may issue a Domestic Violence Protection Notice ('DVPN') to a person ('P') if there are reasonable grounds for believing P has been violent, or threatened violence, towards an associated person and the DVPN is necessary to protect that person from P (s.24). The Notice is designed to provide immediate protection for the victim. Once a DVPN has been issued, a police officer must apply to the magistrates' court for a Domestic Violence Protection Order ('DVPO') (s.27) within 48 hours and the court may make a DVPO if they find, on a civil standard, that P has been violent, or threatened violence, and that the DVPO is necessary to protect that person from P (s.28). A DVPN is an emergency non-molestation and eviction notice which lasts for 48 hours; a DVPO can extend this period by up to 28 days.

Domestic Abuse Protection Notices: New powers have been provided under the DAA 2021 (referred to above in respect of court orders) which are expected, in due course, to replace DVPNs and DVPOs. They are in the process of being implemented and, at present, are only available in certain areas in England and Wales (see footnote 18). They provide that a senior police officer may give a domestic abuse protection notice to a person (P) which prohibits that person "from being abusive towards a person aged 16 or over to whom P is personally connected" (s.22). The notice may also provide that P "(a) may not contact the person for whose protection the notice is given; (b) may not come within a specified distance of any premises in England or Wales in which that person lives" (s.23). P can be arrested by a police officer, without a warrant, if they have "reasonable grounds for believing that a person is in breach of a domestic abuse protection notice" (s.27).



Court Proceedings

Information on arrangements for the listing of family proceedings in England and Wales can be the subject of direct judicial communications, in particular through the IHJ.

In the course of proceedings concerning children, the family court can order a report to be written by the Children and Family Court Advisory and Support Service ('Cafcass') in England or CAF/CASS Cymru in Wales (under s.7 CA 1989). A Cafcass report will be ordered by the court when it needs more information about the child(ren)'s welfare and what action is in their best interests. The court can order a s.7 report to consider a broad range of issues, including where the child should live, the wishes and feelings of the child, whether the child has suffered or is at risk of suffering harm, parenting capacity, and so forth.

A child can be joined as a party to the proceedings if the court considers this is in the best interests of the child (Family Procedure Rule ('FPR') 16.2(1))²⁰.

Mediation between parties is strongly encouraged. Under FPR Part 3²¹, the court must at every stage in proceedings consider whether non-court dispute resolution is appropriate (r.3.3(1)). The court can adjourn proceedings and give directions regarding mediation where appropriate (r.3.4).

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20 Part 16 – Representation of children and reports in proceedings involving children
(www.justice.gov.uk/courts/procedure-rules/family/parts/part_16)

21 Part 3 – Non-court dispute resolution – Justice UK
(www.justice.gov.uk/courts/procedure-rules/family/parts/part_03)

This fact sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Court cannot provide legal advice.



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