

The 1980 Hague Convention on Child Abduction in England & Wales

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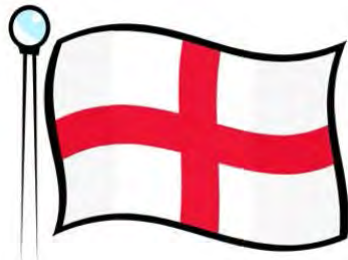
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Hague cases in England & Wales



England & Wales



- 1980 Hague Convention implemented by the Child Abduction and Custody Act 1985.
- England & Wales, Scotland and Northern Ireland each have their own separate Central Authority and each implement the Convention through their own domestic law.
- The Central Authority for England & Wales is the International Child Abduction and Contact Unit (ICACU). Their address is: Central Authority for England and Wales, Official Solicitor and Public Trustee, Victory House, 30-34 Kingsway, London WC2B 6EX.
- In England & Wales, proceedings are always heard at High Court level.

Bringing a Hague Case



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Documents



- Succinct outline of the relevant facts confirming that:
 - children are habitually resident in the home state; **and**
 - the removal or retention was in breach of a custody.
- Not necessary for there to be a prior foreign order before making an application in the receiving state.
- However, where there have been prior orders, it is advisable to provide them when making an application.
- It is never advisable for a parent to wait until they have orders from the home state before initiating the Hague process.

Procedure



- The left behind parent would normally contact the Central Authority in their home state and complete the application form which will then be passed to the receiving state.
- A left behind parent can also directly contact a specialist lawyer in the country the child is taken to.
- In cases of emergency, it is possible to make an application direct to the Central Authority in the receiving state.
- In all cases it will be necessary to provide a copy of the child's birth certificate. If this cannot be obtained immediately, you should not delay in making an application. (It can always be filed later.)
- Information including names, dates of birth, nationalities, date of marriage / divorce and details of *all* passports held by the children must be given.

Financing a Hague Application



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Financing



- Automatic Legal Aid for Applicants (regardless of their means), providing the case is approved by the Central Authority.
- ICACU maintains a list of specialist solicitors and will allocate the case to a member of that lawyers' panel or to a solicitor chosen by the Applicant.
- Defendants may be entitled to public funding subject to their financial means. They will only be entitled to legal aid if they have insufficient means (both capital and income).
- If a return is ordered, Legal Aid will not cover the costs of the flights for returning the child or of replacement passports. However, the court may make an order requiring the abducting parent to pay those costs.

Attendance at court



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Attendance at Court



- It is not normally necessary for the pursuing parent to come to London for the proceedings unless it is ordered that there should be oral evidence.
- It is very unusual to have oral evidence in Hague Convention cases. Where it does occur, it is normally in cases where consent and / or acquiescence has been raised as a defence.
- Where a court has ordered an Applicant's attendance, Legal Aid will cover reasonable economy fares and reasonable accommodation costs.

Timings



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Timings



- Child abduction cases take priority in the court listing. The aim is for all cases to be dealt with within 6 weeks.
- If the case cannot be dealt with within 6 weeks, the Central Authority can insist that an explanation be given.
- The average case time is 6 to 10 weeks.
- Proceedings begin in the urgent applications court which sits every day.
- An out of hours Judge for urgent cases is available at evenings, weekends and holidays.
- The Defendant parent is never given notice of the first hearing to the urgent applications court.

Overseas evidence



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Evidence of overseas law



- The court in England and Wales may make a request pursuant to Article 15 that the court in the home state make a declaration as to whether or not the removal was wrongful.
- English public funding is not available for the purposes of those proceedings although may be covered by public funding in the home state.
- There is an obligation on the Central Authorities to assist in obtaining an Article 15 declaration.
- In some cases the English Court will ask for expert evidence on the law in the home state (by way of an affidavit of laws).

Provisions for return



Provisions for return



- In cases where the children have been abducted by a primary carer, the court will set out provisions that should apply upon the child's immediate return i.e. who should accompany the child and who should pay for flights pending the matter coming before the court in the home state.
- The purpose of the Hague Convention is to return the children to the country from which they have been wrongfully removed or retained and it is not a custody decision.
- Save in cases where there has been a clear kidnap / abduction, the court normally prefers that the abducting parent return with the children.
- The Orders and arrangements are limited in time and are not intended to fetter or impede the jurisdiction of the court of the home state.
- The Court will seek to meet defences of 'intolerable situation' by the provision of 'safe harbour' orders and undertakings (e.g. an undertaking not to molest the other party or an order to provide interim maintenance).

Mediation



Mediation



- Increasingly used in England.
- Should not be used as a replacement for a court application. Mediation can occur in parallel to court proceedings.
- Without prejudice: discussions during mediation cannot be disclosed within the court proceedings unless the parties have reached a binding agreement.
- The Reunite International Child Abduction Centre is a non-profitable organisation in the United Kingdom which uses an accelerated mediation model. See www.reunite.org.
- Public funding can be made available for the mediation process.

Children's wishes



CAFCASS



- In appropriate cases with older children, a child can instruct their own lawyer, usually for children aged 12 or over.
- Where a defence of child's objections (Article 13) is raised, the court may order that the High Court CAFCASS team (welfare officers) carry out an interview with the child and prepare a report.
- The objection must relate to a return to the specific country and not a return to a specific parent.
- The English court does not automatically join the children as a party when an objection defence is raised.
- A CAFCASS officer may also be asked to prepare a short report where a defence of settlement under Article 12 is raised.

Experts



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Experts



- Reports from child psychologists, psychiatrists etc. will not be ordered or allowed save in exceptional circumstances.
- The Article 13 defence – grave risk of physical, psychological or other harm or intolerable situation – has a very high threshold to meet. The burden of proof in making out a defence is on the Defendant. The court will very rarely hear oral evidence on Article 13 defences.

Appeals



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Appeals

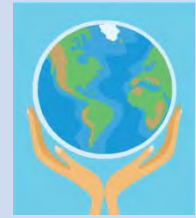


- There is no appeal as of right in England.
- Permission to appeal to the Court of Appeal is required.
- Appeals are expedited.
- Appeals to the Supreme Court are rare.

Non-Convention cases



Non-Convention cases



- Where a child is abducted to England from a non-Convention country, proceedings for the children's return can and should still be made.
- The proceedings will be in the High Court under the Inherent Jurisdiction.
- The Court will apply summary return principles of law, similar to the Hague.
- There is no Central Authority for non-Hague cases.

Some statistics...



The Hague Conference special commissions meeting in June 2011

- 69% of taking persons are mothers
- 72% of taking persons are the sole or joint primary carer of the child
- 51% of taking persons are from the same nation as the requested state
- The rate of a parent withdrawing their application for return of their child has increased to 18% (from the prior analysis at the 2006 Special Commission meeting)
- The most frequent reason for refusing to return the child to the child's habitual residence was the 13(b) defense, which has increased markedly
- On average a Central Authority held a case 76 days before the case was sent to court
- On average a court took 153 days to dispose of a case

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