

# A GUIDE TO INTERNATIONAL PARENTAL CHILD ABDUCTION TO POLAND

This guide gives you an overview of how cases of international parental child abduction to Poland are managed, and what your options are for seeking the return of your child. We have tried to make it as clear and detailed as possible, however it is impossible to cover everything in one document.

**reunite** are not lawyers and so the information in this leaflet should not be construed as legal advice. If you need legal advice please refer to the list of specialist lawyers on our website at [www.reunite.org/lawyers](http://www.reunite.org/lawyers). You can also access ongoing practical information, advice and support from the **reunite** advice line on 0044 (0)116 255 6234.

This leaflet makes reference to the 'UK court'. Please be aware that England and Wales, Scotland, and Northern Ireland are different legal jurisdictions, and so you would need to use the court in the jurisdiction your child normally lives in.

If neither yourself nor your child are British nationals you should seek consular support from your own Foreign Ministry and Embassies, rather than the British Foreign and Commonwealth Office.

This guide was created in 2017, so please be aware that law and practice may change over time.

## What is international parental child abduction?

International parental child abduction occurs when a child is wrongfully removed or wrongfully retained away from their home country. Both wrongful removal and wrongful retention are given equal treatment in the family court of the UK and many other countries, and you can request the return of your child if they have been wrongfully removed or retained. The only real difference between the two is whether your case can be considered as a criminal matter.

## What is a wrongful removal?

A wrongful removal happens when a child is taken out of their country of **habitual residence** without the consent of everyone with **parental responsibility** or the consent of the court.

Wrongful removal of a child under the age of 16 is a criminal offence in England, Wales and Northern Ireland, and is an offence in Scotland if there is an interdict or residence order in place. This is under the Child Abduction Act 1984, which can be viewed in full at <http://www.legislation.gov.uk/ukpga/1984/37>.

If your child has been wrongfully removed and you would like the matter to be pursued by the police then you can report it to your local police force by calling the non-emergency number 101, or by visiting a police station.

Please be aware that it is highly unlikely that the police will go and recover the child for you. The police will be focused on the person who has committed the criminal offence and possibly pursuing their conviction. You may also be asked by the court of Poland not to support the conviction of the other parent if the return of your child is ordered. However once the criminal case has progressed past a certain point you may not have much control over what happens next.

Parental child abduction is only viewed as a criminal offence in Poland if the taking parent has had their parental responsibility reduced or removed by a court order. As so few abduction cases from the UK fit this description it is highly unlikely that Poland will extradite a suspected abductor.

Under UK law, **parental responsibility (PR)** is granted automatically to mothers, and to fathers who are married to the mother at the time of the child's birth.

If you are an unmarried father you will have PR for your child if you are registered on the birth certificate after December 2003 in England and Wales, April 2002 in Northern Ireland and from 2006 onward in Scotland. You can also be granted PR through a court order or formal agreement with the mother.

If you are in a same sex relationship, please seek legal advice from a specialist family lawyer as to whether or not you have PR for your child.

The country your child lives in is known as their **habitual residence**. Your child will only have one country of habitual residence and this country will have the jurisdiction to make legal decisions about them.

A child's habitual residence can change; for example if you and the other parent agree to move permanently to a different country.

Your child's place of habitual residence may also change if you do not take timely action to seek their return once they have been abducted by a parent. For example a Hague application for the return of your child may not be accepted if you do not make the application within 12 months of their abduction, without a good reason for the delay. It may be felt that your child has set down such substantial roots in the other country that their place of habitual residence has in fact changed.

However, this change in habitual residence does not automatically occur once your child has been out of the country for 12 months, it very much depends on the facts of your situation. If, for example, you have started return proceedings within that timeframe and the legal process takes longer than 12 months to conclude, this will not automatically void your Hague application but the settlement defence may be considered.

It is worth noting that your child's place of habitual residence may be different to their nationality.

*“When my child was abducted by my ex-partner to Poland I reported the abduction to my local police. They logged it as a crime and called my ex-partner to explain that they had done this. She told the police she would come back to the UK in a few weeks, which she did and brought my daughter back with her.”- Father of child abducted to Poland*

## What is a wrongful retention?

A wrongful retention occurs when a child is taken out of their country of habitual residence with the consent of everyone with parental responsibility, or the court, for an agreed period of time, but the taking parent then refuses to return your child. An example of this would be if you agreed for your child to go on holiday or to visit family in Poland for 2 weeks, but then the other parent refuses to bring them home. Wrongful retention is not currently a criminal offence under the law of the UK, so if your child has been wrongfully retained in Poland there may be nothing the British police can do.

## The role of the British Embassy

The British Embassy in Warsaw are able to provide specific assistance to British nationals, including travel advice, provision of lists of English-speaking lawyers and liaison with local authorities. An example of this liaison is if you have a court order issued by the Polish court which is not being enforced, the Embassy may additionally be able to make representations to the local authorities.

The Embassy are not able to provide legal advice, and does not normally become involved until the legal process reaches its conclusion as the Embassy cannot intervene in legal proceedings.

## If your child has gone missing

If your child and their other parent are missing, and you believe that they may have travelled to Poland, you can report them as missing to your local police force who should be able to help locate them. Even if the police are not able to pin-point exactly where your child is, if they can confirm that your child is in fact in Poland this means you can start legal proceedings to seek their return.

Once it is confirmed that your child is in Poland, the Polish police, the Polish Central authority and other organisations can help to locate your child more accurately. You should also think about anything you can do to help locate your child, such as reaching out to friends and family of the other parent for information if possible.

**Foundation ITAKA** is an NGO in Poland that helps to search for missing people and provides psychological and legal support to their families. Since 2009 ITAKA has been providing support in cases of international parental child abduction.

# Your Options: Applicable Treaties

## 1980 Hague Convention on the Civil Aspects of Child Abduction

Poland is a signatory to the 1980 Hague Convention on the Civil Aspects of Child Abduction. This is the primary mechanism used to request the return of a child (under the age of 16) to their country of habitual residence after they have been wrongfully removed or retained in Poland. The 1980 Hague Convention is an international treaty that has been signed and ratified by over 90 countries to ensure the swift return of a child to their country of habitual residence after a wrongful removal or retention, subject to minimal specified defences.

The 1980 Hague Convention is in force between the UK and Poland, but also between Poland and many other countries that have ratified the 1980 Convention. If you and your child have been living permanently outside of the UK, including in a Crown Dependency or British Overseas Territory, you can confirm whether the 1980 Hague Convention can be used in your case by speaking with the **reunite** advice line or consulting the table on the Hague Permanent Bureau's website at <https://www.hcch.net/en/instruments/conventions/status-table/acceptances/?mid=639>.

Although there are many countries that are signed up to the 1980 Hague Convention, you can only use the Convention if it is in force between the country the child was taken from and the country they have been taken to. For example, the UK, Poland and Thailand have all signed up to the 1980 Hague Convention. The UK and Poland have ratified with each other and so the 1980 Hague Convention can be used. However, Poland and Thailand have not ratified with each other and so the Hague process cannot be used.

## Council Regulation (EC) No 2201/2003 – Brussels IIa

As Poland is a member of the European Union (EU) it is also bound by a piece of European law known as Brussels II revised, Brussels IIa, or Brussels II bis. This European law allows for orders relating to parental responsibility from one EU country to be recognised and enforced in another EU country. While the UK remains a member of the EU, this mechanism can be used between the UK and Poland.

It may be worth considering using Brussels IIa if you have, for example, an order from the UK stating that your child lives with you. Brussels IIa would allow for your order to be recognised and enforced, and theoretically allow for your child to be ordered back into your care. However, this process may be more expensive than using the 1980 Hague Convention route and is not used in many cases.

## 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

Poland is also a signatory to the 1996 Hague Convention, which is totally different to the 1980 Hague Convention. Similar to Brussels IIa above, this Convention allows court orders relating to a child to be recognised from one signatory state to another, but is not limited to EU countries. The 1996 Hague Convention is in force between the UK and Poland, but if you and your child have been permanently living outside of the UK you can check if the 1996 Convention can be used in your situation by checking the Hague Permanent Bureau's website at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>

### Will Brexit affect my options?

At the moment it is difficult to predict the full impact that leaving the EU will have on international family law. What is known is that it will not affect the 1980 or 1996 Hague Conventions as these are thoroughly independent of the EU.

As Brussels IIa is a piece of EU legislation, there is the possibility that the UK will not remain under this Regulation, and so it could not be used between the UK and Poland. However, it will still be able to be used if you and your child are habitually resident in a remaining EU State, and your child is abducted to another EU State.

### How do I know which option is best in my case?

If you are not certain which route to take, please contact the **reunite** advice line or contact a specialist solicitor.

# 1980 Hague Convention – so how does it work?

To start the 1980 Hague Convention return process you will need to contact the **Central Authority** in the country your child has been taken from and they will send you a form to complete which will also specify any supporting documents you will need to provide.

If you would like legal advice or help with filling in the Hague form, specialist lawyers with experience of child abduction cases can be found on the **reunite** website at [www.reunite.org/lawyers.asp](http://www.reunite.org/lawyers.asp).

## What happens once my application is accepted?

Once you have completed and returned your form to your Central Authority, they will transmit your application to the Polish Central Authority. Unless the other parent agrees to voluntarily return your child, your case will be heard in a Polish court where a Judge will make a decision as to whether or not to order the return of your child.

In Poland any Regional Court that is in the Division for Families and Juveniles can hear 1980 Hague Convention cases. This means almost any family Judge can hear a Hague Convention case and so there may be some Judges who may have little training or experience of hearing Hague Convention cases. It is most likely that your case will be heard by the family court that is geographically closest to where your child is.

## The Hague Hearing

A decision under the 1980 Hague Convention is not decided on welfare grounds; the Judge should be looking at whether your child is habitually resident in another country, and if a wrongful removal or retention has occurred. If these two grounds are satisfied, the Judge will consider whether any of the defences apply that would prevent a return from being ordered.

Each country signed up to the Hague Convention has a **Central Authority**, which is an administrative body that handles Hague applications.

The Central Authorities are mainly an administrative service, and they cannot provide legal advice or support. They can request updates on your case and pass these on to you, but they cannot force anything to happen.

Each country within the UK has a different Central Authority, so you need to make sure you contact the correct one.

Contact details for each of the UK's Central Authorities can be found at the end of this leaflet in the 'Useful Contacts' section.

There are a limited number of defences available under the 1980 Hague Convention. These include:

- The parent requesting the return of the child was not exercising their parental rights at the time of the wrongful removal or retention.
- The parent requesting the return of the child has **consented** to, or **acquiesced** to, the removal or retention of the child.
- The child is at grave risk of harm if returned, or a return would place the child in an intolerable situation
- The child objects to returning and the child has attained an age and degree of maturity at which it is appropriate for their views to be taken into account.
- Hague proceedings commenced one year after the child was wrongfully removed or retained, and the child is settled in their new environment.

**Consent** can be argued by the abducting parent if you agreed to your child going to live in Poland permanently before they were taken there. The other parent would need to provide evidence of your consent, which can be given through written means such as email or text message, or through your actions, such as physically helping them to move.

**Acquiescence** is you giving implied consent to your child remaining in Poland permanently after they have been taken there. This would be through your words or actions after the abduction, such as sending over your child's belongings to Poland, signing for your child to start school in Poland, or setting up a long-term contact schedule that involves you visiting your child in Poland. Do be careful when doing or agreeing to anything that may be seen as you consenting that your child can live in Poland and so could contribute to an acquiescence defence.

If you are unsure about whether your actions could be seen as consent or acquiescence, please speak with your lawyer or the **reunite** advice line

## Lawyers and other professionals - their role in Hague proceedings

Legal representation is not compulsory for Hague Convention cases in Poland but it is highly recommended that you are represented in any court hearings.

Free or reduced rate legal assistance is available in Poland when applying under the 1980 Hague Convention for a return. To access this assistance you must make a legal aid application using a form provided by the Polish Central Authority, which your local Central Authority will send to you. A decision as to whether you are entitled to legal aid will then be made based on your income. If you are successful, legal aid will contribute to legal, mediation and translation costs, but not necessarily the cost of an interpreter if you decide to attend court hearings in Poland. If you are entitled to free or reduced rate assistance you may not be able to choose which lawyer acts for you and there is no guarantee that the lawyer provided to you will have a lot of experience with Hague Convention cases.

If you are not entitled to free or reduced rate legal aid then you can instruct your own private lawyer in Poland. A list of specialist lawyers can be found on the **reunite** website at [www.reunite.org/lawyers.asp](http://www.reunite.org/lawyers.asp). The Foreign and Commonwealth Office and the British Embassy in Warsaw have compiled a list of English speaking lawyers which can be found at <http://www.gov.uk/government/publications/poland-list-of-lawyers>. Legal costs will vary depending on the fees your lawyer may charge and the length and complexity of your case. If your case goes to appeal then more legal costs may be incurred.

You do not need to be present at a hearing in Poland unless your lawyer advises it is necessary or beneficial to your case. It may be possible for you to 'attend' the hearing by videoconference or telephone call. Similarly, you may be asked to meet with, or communicate with, a **court psychologist**.

The voice of a child in court proceedings will be heard at the discretion of the Judge involved and will depend on the age and maturity of the child. A child's voice can be heard through a direct interview with the Judge deciding the case. Saying this, **reunite** is aware of cases where the voices of children as young as 4 have been used as a reason for ordering a non-return, and the opinion and reports of court psychologists have also been taken into account.

If you are attending any hearings and would like an interpreter then it may be possible to organise this through your lawyer, through the court, or there is information about interpreters available on the European Justice website at:

[https://e-justice.europa.eu/content\\_find\\_a\\_legal\\_translator\\_or\\_an\\_interpreter-116-pl-en.do?member=1](https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-pl-en.do?member=1)

In the experiences of parents, full Hague proceedings in Poland (without an appeal) may cost between £1,000 and £10,000.

**Court psychologists** are usually from the Court Opinion Makers Specialists (Opiniodawcze Zespoły Specjalistów Sadowych) sometimes known as "OZSS", and they are sometimes instructed by the court to assess whether the child would be at grave risk of harm if returned to their country of habitual residence.

## How long will the court process take?

In **reunite**'s experience there is an inconsistency across cases as to how long the process in the Polish court takes, the way in which judicial decisions are made, and the outcomes of cases. This appears to be because any family court can hear a Hague Convention case.

For example, some cases are considered in a straightforward manner and have been decided within 2 - 3 months following the submission of the Hague application. In other cases the courts erroneously undertake an in-depth welfare analysis, involving multiple hearings and meetings with court psychologists, and have taken up to 3 years for a first decision to be made.

## What happens once a decision is made?

Once a decision has been made in your Hague case, if either parent is unhappy with the outcome then they may appeal this decision to a higher court. An appeal will cause delay and potentially add expense to your case.

## If a return is ordered

If a return is ordered the court may order '**undertakings**'.

### Enforcing a return order

If the Judge orders that your child should return home, the other parent will usually be given a deadline to appeal or facilitate the return of your child. However, unfortunately we are aware of a number of cases where abducting parents have refused to comply with a return order and have 'gone on the run' with the child and disappeared. There is an enforcement process in Poland but this could involve multiple additional court hearings and if the other parent makes a great effort to disappear with your child it can be incredibly difficult to locate them.

If you have the opportunity to collect your child and return home from Poland quickly, you do need to consider this. It may seem harsh or sudden for your child, but it may protect your child from further distress and will save you time and money at a later date.

'When you know [the other parent] go with your gut feeling about how they will respond'- *Father of child abducted to Poland*

**Undertakings** are promises that are made before the court to help ensure the safe return of your child. For example as the left-behind parent you may be asked to pay for your child's travel home, and maybe that of the other parent. You may be asked to agree not to remove your child from the other parent's care once they return home, nor to support a criminal conviction. These undertakings are only enforceable if registered in the courts of the country the child is returning to, and only valid up to the first hearing in the child's home country. From that point on the home courts can make any orders they feel necessary for your child.

## The Role of the Court Curator

When there is an order for the return of a child and the other parent does not comply with it, the court can instruct a family curator to help enforce the order. The curator can help to remove a child from one parent and return them to another, as written in a court order, but their powers are limited. For example, a curator does not have the power to force entry into a property where the child may be. This does impact how successful the curators and the enforcement process are.

### Passports and Emergency Travel Documents

There have been cases where a child has been returned to the left-behind parent for the purposes of a return to their country of habitual residence, but the child's passport has been lost, stolen, destroyed or the other parent has refused to hand it over.

The British Embassy are only able to issue Emergency Travel Documents (ETDs) with the consent of everyone with PR, or if there is an order from a court requesting the creation of such travel documents without the consent of everyone with PR. If you think this could be an issue in your case, it is worth speaking with the FCO and a specialist lawyer in the UK for further advice and to possibly start the process of asking the court for the necessary order.

## If a non-return is ordered

If a non-return is ordered in your case you may be able to appeal to a higher court. There is only one level of appeal in the Polish courts for Hague cases.

An appeal would need to be lodged within specific timeframes, which should be set out within the order that is given. If you are applying for a return based on the merits of the decision that was made, you would need to apply for the grounds of the decision within 7 days, and then you would have a further 14 days to apply for the appeal. Alternatively you could launch an appeal within 21 days of the hearing without first finding out the grounds of the decision. If you are unsure about appealing you can seek advice from a lawyer or the **reunite** advice line.

## Brussels IIa – Article 11 mechanism

You may also be able to use Article 11 of Brussels IIa to ask the British court to review the decision made by the Polish court in 1980 Hague proceedings and for the British court to issue their own return order if appropriate.

*"My Hague application for the return of my son from Poland was not successful. I started proceedings in the English High Court under Brussels IIa, which my ex-partner also took part in. The court ordered that it would be in my son's best interest to come back to the UK to live with me as my ex said she had to stay in Poland. She did return my son and he now lives with me all the time." - Father of child abducted to Poland*

## Contact Arrangements

If you do not wish to appeal the decision you can ask for a contact arrangement to be put in place directly through the courts in Poland, or through making an application through the Central Authorities under Article 21 of the 1980 Hague Convention.

## Mediation

Mediation is a voluntary process by which one or two trained mediators would meet with yourself and the other parent to discuss the long-term arrangements for your child and help you to reach workable solutions that are acceptable to you both and which are focused on the best interests of your child. Any agreement reached through mediation should be made into a formalised, legally binding court order. Mediation should run alongside any ongoing Hague or court proceedings and should not delay the proceedings.

When selecting a mediator please ensure that you use qualified mediators, and make sure that they have experience of international children's cases, specifically with the 1980 Hague Convention if your child has been abducted.

**reunite** has its own mediation service that specialises in cases of international parental child abduction and international children's cases. If you would like more information on the **reunite** mediation service, please contact the mediation team on 0044 (0)116 255 5345.

There are also mediation services in Poland that may be able to help. A directory of family mediators based in Poland can be found on the websites of mediation organisations such as:

Polish Mediation Centre: <http://mediator.org.pl/>

The Association of Family Mediators: <http://www.smr.org.pl/>

The Polish Association of Mediators: <http://www.mediacje-ksm.pl/>

# Travelling to Poland

You may be asked to travel to Poland for court hearings or to meet with a psychologist. If you travel to Poland on a British passport you will not need to apply for a visa but you will need to ensure that your passport is valid for the duration of your stay.

If you have dual British-Polish nationality, you would need to enter and exit Poland on your Polish Passport

For further information please see the Foreign Office travel advice at <https://www.gov.uk/foreign-travel-advice/poland>

Should you need assistance from the British Embassy while in Poland, their contact information can be found at <https://www.gov.uk/government/world/organisations/british-embassy-warsaw>

## Useful Contacts

- reunite Advice Line: 0044 (0)116 255 6234 Website: [www.reunite.org](http://www.reunite.org)
- The International Child Abduction and Contact Unit (ICACU) (Central Authority for England and Wales): 0044 (0)203 681 2608 Website: <https://www.gov.uk/return-or-contact-abducted-child>
- Scottish Central Authority and International Law Team (Central Authority for Scotland): 0044 (0)131 244 4827  
Website: <http://www.gov.scot/Topics/Justice/law/17867/fm-children-root/18533>
- Northern Ireland Courts and Tribunal Service (Central Authority for Northern Ireland): 0289 072 8808 Website: <http://www.courtsni.gov.uk/en-GB/Services/ChildAbduction/Pages/InternationalChildAbduction.aspx>
- Polish Central Authority: 0048 (22) 239 0870
- British Passport Office Advice Line: 0044 (0)300 222 0000
- Foundation ITAKA: 0048 (22) 654 70 70 Website: <http://www.zaginieni.pl/home-english/>
- British Embassy in Warsaw: 0048 (22) 311 0000  
<file:///Website/> <https://www.gov.uk/government/world/organisations/british-embassy-warsaw>
- Foreign and Commonwealth Office Consular Team: 0044 (0)207 008 1500

## What you can do now

- Start collecting information about your child and the abducting/retaining parent that may be useful at a later date such as name, date of birth, nationality, physical description etc.
- Make sure you have copies of important documents such as birth certificates and marriage certificates.
- Keep copies of any communication between yourself and the other parent that is conducted through email, text message or any sort of instant messenger. These conversations could be used as evidence if needed.
- If possible keep open channels of communication with the other parent and with members of their family.
- If you have not already done so, contact **reunite** for ongoing advice, information and support.