



# A GUIDE TO INTERNATIONAL PARENTAL CHILD ABDUCTION TO THAILAND

This guide gives you an overview of how cases of international parental child abduction to Thailand 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 0116 255 6234.

This guide 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 usually 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 your 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 Thailand not to support the conviction of the other parent if the return of your child is ordered. However, once the case has progressed past a certain point you may not have much control over what happens next.

It is also worth noting that parental child abduction is not a criminal offence in Thailand, so even though there is an extradition arrangement between the UK and Thailand it is unlikely the Thai police will arrest and extradite the abductor back to the UK.

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 if you do not start proceedings asking for the return of your child within 12 months the court may want to know why you took so long. 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.

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

## 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 the child. An example of this would be if you agreed for your child to go on holiday or to visit family in Thailand 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 Thailand there may be nothing the British police can do.

### The role of the Foreign and Commonwealth Office and the British Embassy

The British Embassy in Thailand is able to provide specific assistance to British nationals, including travel advice, provision of lists of English-speaking lawyers and liaison with local authorities. The Embassy can also signpost you to other organisations within Thailand that may be helpful to you.

Please note that the British Embassy cannot act as mediators or negotiators between yourself and the other parent.

We encourage you to report the abduction of your child to the British Embassy or the Consular Team in the Foreign and Commonwealth Office in London as soon as possible so that they are aware of your situation and can support you accordingly.

Contact details for the FCO and British Embassy can be found at the end of this guide.

### If your child has gone missing

If your child has gone missing with the other parent and you believe they have travelled to Thailand, you can ask for help from your local police force. The police should be able to take actions such as searching within the UK, checking flight manifests, and communicating with other police forces in the UK and internationally. 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 Thailand this means you can start the necessary legal processes to seek their return. From this point the Thai police and other organisations can help to locate your child.

You should also think about anything you can do to help locate your child yourself, such as reaching out to friends and family of the other parent if possible.

Do be aware that if the police do find out exactly where your child is, they may not be able to disclose the exact address to you due to data protection and safeguarding. The police should disclose if they are in the UK or not so that you can start the necessary civil legal process.

# Your Legal Options: Applicable Treaties

## The 1980 Hague Convention

In 2016 Thailand signed and acceded to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, an international agreement that sets out how child abduction cases are to be dealt with between signatory States.

For the 1980 Hague Convention to be operational between signatory States, the older member needs to accept the accession of the new member. As of September 2017 the 1980 Convention is in force between Thailand and 52 other countries but **NOT** with the United Kingdom.

As the UK has not accepted Thailand's accession, the 1980 Hague Convention **CANNOT** be used between the two countries. If you and your child live in a country that is a 1980 Hague Convention signatory, other than the UK, it is worth checking whether you can use the Convention in your case.

As there are no international treaties relating to child abduction in place between the UK and Thailand, if you are going to pursue the return of your child from Thailand through the courts you will have to use the domestic courts in the UK and Thailand.

Even though UK court orders are not automatically enforceable in the Thai court, recent cases have shown that they can be useful and at times persuasive. It is definitely worth considering obtaining UK court orders before starting any litigation in the Thai courts for a few reasons:

- The UK orders make it clear that the UK is your child's country of habitual residence.
- The UK orders may clearly state that your child should be returned to the UK.
- Through the UK courts it may be possible to put pressure on the other parent to return your child by freezing any UK-based assets.
- If locating the whereabouts of your child is very difficult, the UK court orders can ask for information from family members, friends or other individuals living in the UK who may know where your child is.
- If the other parent is in the UK then efforts can be made to stop them leaving the UK, and greater pressure can be put on them to facilitate the return of your child.

Try to avoid any court proceedings in Thailand that relate to your child before getting UK orders. If you initiate or take part in such court proceedings in Thailand before making an application to the relevant court in the UK, you may be handing jurisdiction to the Thai courts. As a result the UK courts may not be able to issue orders relating to your child.

To start the necessary proceedings we advise that you have a conversation with a specialist solicitor in the UK. You may be entitled to legal aid to help fund proceedings in the UK. A list of specialist lawyers can be found on the [reunite](#) website, details of which are included at the end of this leaflet.

# UK Court Orders

England and Wales, Scotland and Northern Ireland are all different legal jurisdictions and have their own distinct legal systems. As a result you will need to make sure that you apply to the court in the jurisdiction your child was taken from, even if you live in a different part of the UK.

## If your child has been abducted from England or Wales

If your child has been abducted from England or Wales any court hearings in the UK must be in front of a High Court judge who has sufficient powers to hear international cases and issue **Wardship Orders**. The majority of child abduction cases are heard by the High Court at the Royal Courts of Justice in London, but occasionally High Court judges go out 'on circuit' to other courts around the country, and so some cases can be heard in other major cities.

Orders in child abduction cases can be sought from the High Court on an emergency basis as such cases are given priority.

The key orders that you will be looking to have issued by the High Court are a Wardship Order and a **Return Order**.

Other orders may be possible and helpful but this very much depends on the facts of your situation. For further advice tailored to your case please speak with a specialist solicitor and the **reunite** advice line.

In the majority of cases, any orders will be served on the other parent regardless of whether they are in the UK or in Thailand. This service can be carried out by the court **Tipstaff** in the UK, by a **process server** in Thailand, or by other means that the judge thinks is appropriate, including email. In certain circumstances the judge will allow for the order not to be served on the other parent straight away. An example of this would be when it is thought the other parent is planning to come back to the UK for whatever reason and it is feared that the court orders will deter them from doing so.

A **Wardship Order** makes your child a 'Ward of the Court', which means that the court holds a degree of legal responsibility for your child. This makes it very clear that the High Court feels it has jurisdiction to decide on matters relating to your child.

A **Return Order** is an order that states that your child is to be returned to England or Wales. This is not necessarily a return back to the family home or a specific part of the country, unless stated within the order. Depending on what the judge thinks is appropriate in your case, a date may be given by which your child must be returned, or it is stated that the return is to happen as soon as possible. A **Penal Notice** may be attached to the order, which means that if the other parent does not comply with the order they risk punishment, which can include a prison sentence for being in contempt of the court.

The **Tipstaff** is the enforcement officer of the High Court and has the power to enforce court orders issued by the High Court if ordered to do so. He has two deputies and can delegate his power to police officers to carry out enforcement work on his behalf.

A **Process Server** is a private company that officially serves court orders on the other parent.

A **Tipstaff Order** is the name given to a number of court orders issued by the High Court that order the Tipstaff to take certain actions, such as removing the passport of a alleged abductor.

If the other parent is in the UK you should also ask the court for an appropriate **Tipstaff Order** so that any passports or travel documents belonging to the other parent can be removed when they are served with the court papers. If the other parent is outside of the UK you should also ensure that the court issues an incoming port alert for your child and the other parent. This will mean that they will be flagged up when they enter the UK so that court papers can be served and travel documents removed. These measures may prevent the other parent from leaving the UK again.

If the other parent is in the UK or returns to the UK without your child they will have the opportunity to contest the orders you have applied for. If the judge does not feel there is good reason for your child to remain in Thailand they will issue a date by which they want your child to be returned. It is best if the other parent is not allowed to go and collect your child as they may not return. Instead, ask if they can organise for a family member or trusted friend to bring your child back to the UK or if you can go and collect them.

If the other parent does not do as the court has ordered they will be in contempt of the court and may be liable to prosecution and imprisonment.

## **If your child has been abducted from Scotland**

Scotland is a separate legal jurisdiction from England & Wales and Northern Ireland. As a result you will need to seek the appropriate orders from the Scottish courts. Scotland does not issue Wardship Orders but the court can issue similar orders that show your child was habitually resident in Scotland and should be returned.

## **If your child has been abducted from Northern Ireland**

Northern Ireland is also a separate legal jurisdiction from England & Wales and Scotland. Northern Ireland does issue Wardship Orders in a similar style to the High Court of England & Wales but you will have to apply to the relevant court in Northern Ireland.

## **If your child has been abducted from a country outside of the UK**

If your child does not live in the UK you will need to speak with a specialist lawyer in the country you are living in to see what court orders are available in that jurisdiction or if the 1980 Hague Convention can be used in your case. You may need an order that demonstrates that your child was habitually resident in that country and preferably includes that your child needs to be returned.

There are a number of specialist lawyers detailed on **reunite's** lawyers listing which can be found on the **reunite** website. Similarly the Foreign and Commonwealth Office keep details of English speaking lawyers in other countries.



# Into the Thai Courts

Once you have court orders from the UK you will probably need to start court proceedings in Thailand to ask for the return of your child. In some instances the removing parent will return a child once they have been served with the UK orders, but in other cases you will have to use the Thai court process.

As there are no bilateral treaties in place between Thailand and the UK, a UK court order is not automatically directly enforceable in Thailand. However, UK court orders can be persuasive and support your argument that your child should be returned to the UK.

Apart from the 1980 Hague Convention there is no specific legal process to consider child abduction cases. As a result, all non-Hague cases will be viewed as custody disputes and so if you would like your child to be returned to the UK you will have to apply for sole custody and permission to remove your child back to the UK.

Usually a case for sole custody would be filed at the Juvenile and Family Court or Division closest to where your child is.

The court of Thailand focuses very keenly on the best interests of the child when deciding on custody. To put together the strongest case you and your lawyers should consider why it is in your child's best interests for them to live in the UK, and have evidence to support these claims. Considerations such as the child's education and future opportunities may be seen as incredibly important.

As the law around parental responsibility is different in Thailand, fathers who have not been married to the mother when the child was abducted may find the legal process a bit more difficult. The courts may want evidence of paternity such as a DNA test, or you may need to be recognised as your child's legal parent before you can ask for full custody.

In **reunite's** experience there is a huge inconsistency in the amount of time it has taken the Thai court to decide a child custody case. We have experienced cases where a decision has been made in three months, while other cases take years to resolve.

## The wishes of the child

If your child is over the age of 8 they will be interviewed as part of a custody process to find out what their views are. These thoughts will then be taken into consideration by the judge when making their decision.

The feelings and wishes of the child may be more persuasive the older and more mature they are.

## Interpreters

All Thai court hearings will be conducted in Thai and the court does not provide translators or interpreters. Therefore if you attend court hearings and do not speak Thai it may be best to hire a private interpreter to attend court with you so you understand what is happening.

Details of interpreters compiled by the FCO can be found at <https://www.gov.uk/government/publications/thailand-list-of-lawyers>

There are two levels of appeal in the Thai court system from the Juvenile and Family Court, firstly to the Appeal Court and finally the Supreme Court. Appeals lodged by either party increase the length of time your case will take to be resolved and the costs involved. There can be long waiting lists for court dates in the appeal courts, and the highest court a parent can appeal to is the Supreme Court. To be granted leave to appeal to the Supreme Court it must be demonstrated that your case contains a 'significant matter' that the Supreme Court needs to decide.

### **If a return IS ordered by the Thai Court**

If an order is granted for your child to be delivered into your care and to return to the UK, there will usually be a date by which this should happen included in the order. If you are granted sole custody it is most likely that you will have to go and collect your child from Thailand. If an alternative arrangement is reached, or ordered, you may be asked to help facilitate the return of your child to the UK. This may include paying for flight tickets for your child and the other parent, or by ensuring that the other parent has somewhere to live temporarily on return to the UK.

If you are granted sole custody and permission to remove, the other parent may be able to appeal. This may add expense and will add time on to the process. The other parent will usually have one month to submit an appeal, unless something different is written in the order. After this time, if an appeal has not been lodged and the return has not happened you can ask the court for help in enforcing the order for return.

### **If a return order IS NOT ordered by the Thai Court**

If you are not successful in obtaining custody and permission to take your child out of Thailand you may have the opportunity to appeal this decision. Appealing will add time and expense to the proceedings but may result in a more favourable decision. There will be a time frame in which you will need to submit an appeal.

If you do not wish to appeal the order it may be that you are able to have a contact arrangement put into place. This can be done through the court or through agreement with the other parent.

It is worth noting that mediation can be considered at any point in the legal process as a way of avoiding further litigation and coming to an arrangement that potentially both parents are satisfied with. There is further information about mediation towards the end of the guide.



## Lawyers and other professionals

It is advisable to use a lawyer who has experience of international children's cases, particularly in child abduction cases as child abduction is a niche area of family law. **reunite** maintains a list of specialist lawyers based in the UK and overseas which can be found on the **reunite** website at <http://www.reunite.org/lawyers>.

The Foreign and Commonwealth Office also has a list of English speaking lawyers in Thailand but these may not have experience of child abduction cases. The list can be found at <https://www.gov.uk/government/publications/thailand-list-of-lawyers>.

### UK

In the UK legal aid is available to cover legal costs incurred in the UK in child abduction cases, and it is granted on a means and merits basis. This means that the Legal Aid Agency will take into account your income, outgoings, assets and the merits of your case when deciding whether or not to award legal aid. Legal aid applications are usually completed and sent to the Legal Aid Agency through the lawyers you wish to instruct, so for further information speak with a specialist lawyer. A legal aid application will usually take around 4 weeks to be decided.

If you have to pay privately for UK orders the price will vary depending on the lawyers you use, the orders you apply for and the complexity of your case. The average price quoted is around £3,000, but costs can be much more or much less than this figure.

You can make an application to the High Court and represent yourself if necessary. If you are considering self-representing it is worth speaking with **reunite** and other organisations for advice and support.

### Thailand

In theory there is also legal aid available in Thailand under the country's Constitution, but normally only Thai nationals are able to access this legal aid. In all of the cases **reunite** has known about, the parents have had to pay privately or find a lawyer that is willing to work on a **pro bono** basis.

If you have to pay privately for legal representation this can vary greatly depending on the experience of your lawyers, the complexity of your case and how many hearings are needed before your case is resolved. **reunite** has known costs range from £2,000 to over £100,000. As every case is unique and the cost of a lawyer can vary greatly it is worth discussing possible fees with your lawyer before you instruct them.

Legal work that is undertaken without charge is described as '**pro bono**' work.

## The British Embassy - 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 is only able to issue Emergency Travel Documents (ETDs) with the consent of everyone with PR, or if there is an order from a UK 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 UK court for the necessary order.

## Mediation

Mediation is a 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. Any agreement reached through mediation can be made into a formalised, legally binding court order. Mediation can run alongside court proceedings so you do not have to choose one route or the other.

In Thailand mediation and negotiation has been used as an alternative to court action for generations. Mediation has become more formalised in recent years with the establishment of the Thai Mediation Centre and the regulation of the mediation process as a whole.

Mediation prior to and during court proceedings can be organised through the court that would hear your case or through the Thai Mediation Centre. The Thai Mediation Centre is part of the Alternative Dispute Resolution Office, which is part of the Office of the Judiciary.

When selecting a mediator please ensure that you use qualified mediators, and make sure that they have experience of international children's cases.

**reunite** has its own mediation service that specialises in cases of international parental child abduction and international cases involving children. Such mediation can take place over Skype, so there is no need for both parents to be in the same country. If you would like more information on the **reunite** mediation service, please contact the mediation team on +44 (0)116 255 5345.

Please note that the British Embassy cannot act as mediators or negotiators.

## Other sources of support

### reunite advice line

The **reunite** advice line provides ongoing practical advice, information and support on child abduction and the international movement of children. The advice line is a confidential service and advice line co-ordinators will remain in contact with you until a resolution is reached in your case.

### Foreign and Commonwealth Office (FCO)

If you or your child is a British National you are able to report their abduction to the consular division of the Foreign and Commonwealth Office. The FCO will then liaise with Embassies overseas to see what support can be provided for you.

If you live outside of the UK you can report the abduction of your child directly to your local British Embassy, High Commission or Consulate, who can again liaise with other organisations and the British Embassy in Thailand and provide support.

## Travelling to Thailand

You may be asked or advised to travel to Thailand to participate in court proceedings.

If you are a British passport holder you do not need to apply for a visa if you plan to stay in Thailand for 30 days or less. If for any reason you need to extend your stay you will need to seek permission from a Thai Immigration Office. If you know that you will be in Thailand for more than 30 days you will need to apply for a visa before travelling. Further information about visas for British nationals can be found in the FCO's Travel Advice website at <https://www.gov.uk/foreign-travel-advice/thailand/entry-requirements>.

It is also worth checking the FCO's Travel Advice for any security concerns or other possible issues relating to the part of Thailand you will be travelling to.

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

# Useful Contacts

## reunite International Child Abduction Centre

Advice Line Telephone: 0044 (0)116 255 6234

Mediation/Administration Telephone: 0044 (0)116 255 345

Website: [www.reunite.org](http://www.reunite.org)

## Foreign and Commonwealth Office Consular Team

Telephone: 0044 (0)207 008 1500

## British Embassy in Bangkok

Telephone: 0066 (0) 2305 8333

Website: <https://www.gov.uk/world/organisations/british-embassy-bangkok>

## British Passport Office Advice Line

Telephone: 0044 (0)300 222 0000

## Thai Mediation Centre, The Alternative Dispute Resolution Office

Telephone: 0066 (0) 2541 2298-9

Email: [thaiarbitration@inet.co.th](mailto:thaiarbitration@inet.co.th)

# 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 the **reunite** advice line for ongoing advice, information and support.