



When all trust breaks down between parents at the end of a relationship (marital or non-marital) a small minority of parents resort to child abduction. This situation can occur regardless of the ethnicity or nationality of the parents. There has been an increase in the abduction of children across international boundaries in recent years. This is due in part to an increase in relationships between partners of different nationalities and cheaper air travel. Parents who feel alienated and mistrustful of the other parent on the breakdown of a relationship may apply to Court to determine their rights of custody and access to their child. The Court of the habitual residence of the parties and child will determine the matter on the basis of what is in the best interests of the child. When one parent wants to return “home” with the child they should first of all clarify their legal position. Are the sole Guardians and Custodians of the children or do they share joint Guardianship or Custody. Does the other parent have legal rights in respect of the children? Even where there is no Court Order in place the circumstances of their relationship with the children may give them certain rights which are recognised under the European Convention of Human Rights.

Where parents cannot agree the Court can make a decision which might permit one parent to move away subject to rights of access in favour of the other parent. If the parent without formally declared rights has applied to Court, the Court has rights in respect of the child until the proceedings are determined. The rule of thumb is “Apply don’t fly” and it is always much wiser to take legal advice before leaving the country with the children. Child abduction is a civil offence as well as a criminal offence in Irish law.

When a parent finds that their children have been snatched away from them they are traumatised and frequently do not know what to do or where to turn. Time is of the essence in these situations. The left behind parent must focus and act as quickly as possible to protect the welfare of the child and their own parental rights.

Ireland is a signatory to both The Hague and Luxembourg Conventions and these Conventions have been incorporated into Irish domestic law by the Child Abduction and Enforcement of Custody Orders Act, 1991. Ireland also comes under Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. This Regulation has now repealed Regulation (EC) No 1347/2000.

The Civil Law Reform Division of the Department of Justice Equality and Law Reform acts as the **Central Authority for Ireland**. Their contact details are below:

Department of Justice, Equality and Law Reform
Bishop’s Square
Redmond’s Hill
Dublin 2

Phone: + 353 (1) 479-0200
Fax: + 353 (1) 479-0201
E-mail: child_abduct_inbox@justice.ie

The Central authority does not charge a fee for its services and they are very helpful and friendly. An application form for submission to the Irish Central Authority is available on the above website.

The process of getting help is quite straight forward. If a child has been removed from Ireland to another Convention country the ‘left behind parent’ can contact the Irish Central Authority or if they know where the child has been taken they can contact the Central Authority in that country. ‘Left behind parents’ from other countries can contact the Central Authority of the country from which the child has been removed or they may also contact the Irish Central Authority.

The Central Authority will help in the following ways

- Completing the application forms;
- Arranging for a translation if necessary;
- Sending the application to the Central Authority in a different country;
- Monitoring the progress of the application and
- Helping to locate the child if the left behind parent has no idea where the child has been taken.

The cost of actually sending or bringing the child back to the ‘left behind parent’ is not covered by the Central Authority.

Where Court applications are necessary the system in Ireland is that the Central Authority will provide the left behind parent with **Civil Legal Aid**. There is no means or merits tests for Legal Aid services for ‘left behind parents’ and they receive automatic legal services free of charge. Parents who have taken the child from the country of their habitual residence however may not be entitled to legal aid free of cost; they must pass the usual ‘means and merits’ test before they are granted legal services. If they are given legal services they may have to pay a legal aid contribution for those services. Both situations are however deemed ‘emergencies’ and there is no ‘waiting list’ before having eligibility for services determined. Legal assistance is not automatic for access applications made under Article 21 of the Hague Convention.

In Ireland child abduction legal services are arranged by the Irish Central Authority **exclusively** through Legal Aid Solicitors in **Law Centres** provided by the **Legal Aid Board**. The Legal Aid Board may be contacted at the following addresses;

Head Office
Quay Street,
Cahirciveen,
Co. Kerry.
Phone: 066 947 1000 LoCall: 1890 615 200
Fax: 066 947 1035
eMail: info@legalaidboard.ie

Dublin Office
47 Upper Mount Street,
Dublin 2.
Phone: 01 644 1900
Fax: 01 662 3661

Solicitors in private practice fit into the picture in Ireland in the following situations:

- Where the ‘left behind parent’ chooses not to avail of legal services through a Law Centre
- Where the parent who has removed the child to Ireland chooses to be privately represented
- Where the parent who has removed the child to Ireland is deemed not to be entitled to civil legal aid;
- Where a lawyer in another jurisdiction seeks a formal legal opinion in relation to Irish law;
- On the return of the child to Ireland where domestic Irish Court Orders are necessary and the party applying for them does not qualify for civil legal aid.
- Access applications under Article 21 of the Hague Convention which have not been legally aided;

Solicitors in private practice cannot act on “Legal Aid” in child abduction matters in Ireland and if you need legal aid and assistance you will have to apply for Legal Aid to the Legal Aid Board.

GENERAL INFORMATION:

Unless there a Court order which defines which parent has custody/ access to a child married parents in Ireland share guardianship and custody of any minor children. Unmarried parents are in a different position however and the mother of the child is automatically the sole guardian and custodian of the child. The unmarried father must be put into a joint guardianship position by legal agreement or by Court Order; he does not automatically acquire it. Ireland has also incorporated the European Convention on Human Rights into Irish domestic law at sub Constitutional level and the right to respect for family and private life of established unconventional families pursuant to Article 8 are afforded due respect. Inchoate 'rights of custody' for unmarried fathers are not as such recognised.

EU custody/ access/ or care orders (residence/contact) orders are enforceable in Ireland by virtue of Council Regulation (EC) No 2201/2003 of 27 November 2003.

Other court orders regarding custody are not automatically enforceable in Ireland, but will be taken into account as a courtesy, if presented to the Irish court during a custody hearing in Ireland.

The child of an Irish citizen automatically acquires Irish citizenship regardless of where the birth occurred (with a few exceptions). The signatures of both parents are required on an application for an Irish passport for a minor child.

The Non-Fatal Offences against the Persons Act, 1997 makes child abduction a criminal offence. Section 16 of the 1997 Act applies to a parent, guardian, or a person to whom custody of a child under the age of 16 has been granted by a court. Section 17 of the 1997 Act applies to persons not covered in Section 16, which would include non-custodial parents. Abduction by other persons is covered by Section 17. Both Section 16 and Section 17 prescribe prison terms, as well as fines, for convicted offenders.

Through An Garda Síochána (the police) the Central Authority can detain a child it suspects is about to be or is being removed from the state in a breach of an order of the High Court. When this occurs, the Gardai must return the child to the person who had been awarded custody or access to the child at the earliest opportunity. If the child in question is in the custody of the Health Service Executive (HSE) the Gardai must return the child immediately to the HSE. When this occurs, the Gardai are required to inform the child's parent, the person acting in loco parentis, or the Central Authority, as soon as possible.

The Passport Act, 2008 deals with the regulation of passports in Ireland. This Act came into effect on the 1 November 2008. It provides a comprehensive legislative basis for the issuing and regulation of passports in Ireland. It is directive in relation to the requirements necessary before a passport for a child is issued. If the parents are not joint guardians a passport may be issued to the sole guardian however regard is had to the 'circumstances of the case' if the other parent has not signed the application form. Where the parents are joint guardians, a passport will not be issued without the consent of both or a Court Order dispensing with the consent of one of them. However provision is also made for an application by one joint guardian for a passport for the purposes of "securing the welfare of the child". The application may be made without the formal consent of the other guardian in exceptional circumstances. For example where the whereabouts of the other guardian are unknown. In such circumstances however a passport will not be issued **unless** the other joint guardian **has not** notified the Minister in writing that he or she objects to the issue of a passport for the child. Such an application may also be made by "any other person who has an interest in the welfare of the child" in exceptional circumstances for the purposes of securing the welfare of the child. A parent who objects to or wishes to be notified of an application for the issuing of a passport to the other parent may write to the Minister for Foreign Affairs

formally putting them on notice of his or her interest in the matter.

The statistics indicate that almost twice as many children are abducted into Ireland as are removed from the country. A total of 170 cases were handled by the Central Authority of Ireland in 2006. These included 59 cases carried over from 2005, as well as the 111 new ones in 2006. Two thirds of cases related to children abducted into Ireland. The balance related to children abducted from the state to other jurisdictions. The Irish Courts ordered the return of children in 27 cases. A further 56 cases were withdrawn or voluntarily settled.

A breakdown of countries show the greatest number of abductions related to England and Wales (48), followed by the US (13). Several cases related to abductions into Ireland from the Czech Republic, Latvia, Poland and Hungary.

Organisations which can assist parents who have children abducted to countries which are not members of the Hague Convention:

ICPAC (the Irish Centre for Parentally Abducted Children)

43 Molesworth Street,
Dublin 2;
www.banotti.ie
Tel: +353 (0)1- 6620667

Reunite International

P.O Box 7124,
Leicester
LE1 7XX.
Advice Line: 0044(0) 16 2556 234
Tel +44(0) 116 2555 34
Fax: +44 (0) 116 2556 370
E-mail: reunite@dircon.co.uk

PROTECTIVE/PREVENTIVE MEASURES

There are some proactive steps that can be taken to prevent or minimise the risk of child abduction:

- Secure a court order (for custody/ joint custody or access with prohibition on removal from the jurisdiction and passport restriction);

- If there is agreement to take the child out of the jurisdiction for a holiday define clearly the extent of the stay, the place where the parent and child will be during the period abroad, and put in place contact arrangements.
- If there is consent to re-locate generally then define precisely the access/contact arrangements to be put in place for the non-residential parent;
- Secure the advance recognition of the domestic order for rapid enforcement;
- If the child has an individual passport ensure that it is secure;
- If the child does not currently have a passport alert the passport authority that you require to be notified of any application for one, before it is issued;
- If the child has dual citizenship write to the non-Irish embassy requesting that a passport not be issued without notification to you;
- In urgent situations where child abduction is feared an “all ports alert” can be issued (this involves all air and sea ports being put on notice of a possible imminent abduction).
- Make sure that you have the child’s birth certificate, and a current photograph of the child and the other parent.
- If you have real reason to suspect that a child may be about to be abducted you should contact a solicitor and An Garda Síochána as a matter of urgency.

If you would like to discuss how RDJ might help you, please contact any member of Ronan Daly Jermyn Family Law Department.:

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