

## APPENDIX 8

# **Family Division: Liaison between Courts in England and Wales and British Embassies and High Commissions Abroad**

[28 November 2003]

1. This guidance note describes procedures which are to be followed when a court in England and Wales exercising family jurisdiction seeks to invoke diplomatic assistance. The procedures have been agreed between the President of the Family Division and the Foreign and Commonwealth Office ('the FCO').
2. Courts exercising family jurisdiction in England and Wales regularly deal with cases where children have been wrongfully removed to a foreign country or have been retained there wrongfully, most commonly by a parent or relative. Such cases may involve abduction or removal with a view to forced marriage abroad.
3. The jurisdiction in question may arise under the Child Abduction and Custody Act 1985, the Children Act 1989, in wardship, or under the inherent jurisdiction. The case will frequently (though not necessarily) be dealt with in the High Court because of its international aspects. Diplomatic assistance may be sought, via the FCO in London, from the relevant British Embassies and High Commissions abroad.
4. Where the country to which the child has been taken is a party to the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25th October 1980 ('the Hague Convention'), established procedures apply for the making of applications for the return of the child, via the Central Authority (which for England and Wales is situated in the Office of the Official Solicitor and Public Trustee at 81 Chancery Lane, London WC2A 1DD, DX: 0012 London Chancery Lane, telephone 020 7911 7127, fax 020 7911 7105).
5. Where however the country concerned is not a Hague Convention Contracting State, there may be difficulty in securing the return of children to England and Wales from that country. In many circumstances such children remain habitually resident in England and Wales under English law notwithstanding their physical absence. There may however be no

effective legal mechanism in the country concerned for the enforcement of any order for return made by the courts of England and Wales.

6. It may be possible in appropriate cases for representatives from the relevant British Embassy, High Commission or Consulate to assist in ascertaining the whereabouts of children, to conduct interviews, and to facilitate travel arrangements for return to England and Wales. Such activities will however always be subject to the requirements of the domestic law of the country in question.
7. If in any case the court wishes to investigate the practicability of seeking such assistance, contact should be made by telephone or fax with the Head of the Consular Directorate at the FCO. Such contact should ideally be made before the order is finalised, not least to avoid the risk of arousing unrealistic expectations. The FCO may be in a position to clarify what level of assistance it is in a position to offer in the country concerned. The FCO will be able to identify the relevant Embassy, High Commission or Consulate to which any order or request for assistance should be directed, and to forward documents.
8. It has been found that in many cases an order modelled upon that made in *Re KR (Abduction: Forcible Removal by Parents)* [1999] 4 All ER 954, [1999] 2 FLR 542 has proved effective. Specimen provisions for an order derived from that case and for other situations are reproduced in the Schedule.
9. The FCO provides a facilitative role in relation to the return of a child but is not able to care for or take control of the child. The naming of specific officials (for example Ambassadors or High Commissioners) must be avoided.
10. The FCO is keen to co-operate in any way which is appropriate but judges and practitioners should be aware of the limitations of orders which seek to prevent the abduction of children by providing for the deposit of passports at an Embassy, High Commission or Consulate. It must be noted that:
  - (a) The FCO is dependent upon the co-operation of the parent to comply with such an order and there is nothing the FCO can do to guarantee compliance.
  - (b) If at any time the parent requests the return of the passports it would be inappropriate for the FCO to retain them.
  - (c) On return of the passports no further responsibility lies with the FCO in relation to the parties' future movements.
11. Orders are usually silent on the subject of funding. The FCO is unable to be financially responsible for the repatriation of a child. What can be achieved will depend on the particular circumstances of each case.

12. In a case where assistance can be given by the FCO, the order should provide for disclosure of relevant documents to the FCO and its representatives. A copy of all such orders should be sent to the Director of Consular Services, Foreign and Commonwealth Office, Spring Gardens, London, SW1A 2PA; telephone: 020 7008 0212; fax 020 7008 0152. Telephone contact may also be made via the FCO Switchboard: 020 7008 3000; Director of Consular Services: 020 7008 0175; or PA to Director of Consular Services: 020 7008 0212.
13. If the order relates to Pakistan a copy should in addition be sent to the Clerk to the Rt Hon. Lord Justice Thorpe, the liaison judge nominated for the purposes of the judicial protocol made on 17th January 2003, [2003] Fam Law 199. The Clerk's contact details are: Royal Courts of Justice, Strand, London WC2A 2LL, DX 44450 Strand RCJ, telephone 020 7947 7432, fax 020 7947 6408.

Elizabeth Butler-Sloss  
President

## SCHEDULE

### Specimen Provisions for Orders

AND WHEREAS [AB] is a Ward of this Honourable Court and is a British citizen; born in and domiciled in the United Kingdom; and currently [believed to be] travelling outside England and Wales with a United Kingdom passport

AND WHEREAS in consequence of the fact that this Court has ordered that [AB] remain a Ward of this Court while (until [s]he attains the age of 18 years on [date]) [s]he remains a minor, this Court is empowered and required to exercise its custodial jurisdiction over him/her and to ascertain his/her best interests and to facilitate and protect those best interests

AND WHEREAS it appears from an order made in [details of proceedings] on [date] (of which a copy is attached) that [AB] was habitually resident in England and Wales [on [date]/at the time [s]he was removed from this jurisdiction]

AND WHEREAS this Honourable Court is anxious to protect and secure his/her well-being and best interests and to ensure that [s]he may freely express his/her wishes concerning his/her country and place of residence

AND WHEREAS this Honourable Court is anxious to ensure that [s]he is not induced or coerced into contracting any marriage or betrothal against his/her will

AND WHEREAS this Honourable Court is satisfied that all interested parties are before the Court including CAFCASS (the Child and Family Court Advisory and Support Services) appointed by the Court to represent the Ward

AND WHEREAS this Honourable Court having heard oral evidence from [ ] is of the view that serious grounds exist in the present circumstances to question whether this Honourable Court's Ward [AB] is able freely to express his/her views and wishes and in particular with regard to his/her country of residence

AND WHEREAS this Honourable Court has in the interests of [AB] determined that [s]he should so soon as practicable return/be returned to England and Wales

IT IS ORDERED that every person within the jurisdiction of this Court who is in a position to do so shall co-operate in assisting and securing the immediate return to England and Wales of [AB], a Ward of this Honourable Court

AND NOW THEREFORE THIS COURT RESPECTFULLY REQUESTS any person not within the jurisdiction of this Court who is in a position to do so to co-operate in assisting and securing the immediate return to England and Wales of the Ward [AB]

AND THIS COURT RESPECTFULLY INVITES all judicial and administrative bodies in the State of [ ] to render assistance in establishing the whereabouts of the Ward of this Honourable Court and in arranging for him/her to be placed in contact with and facilitating his/her travel to the British Embassy/High Commission/Consulate at [ ] with a view to his/her immediate return to the United Kingdom

AND IN THE EVENT that the said [AB] discloses to the British Embassy/High Commission/Consul (or their authorised representative) at [ ] that [s]he wishes unequivocally to return to England and Wales, [s]he do so return; and that in that event the judicial and administrative authorities of the State of [ ] be respectfully invited to take all such actions as may facilitate such return.

AND NOW THEREFORE THIS COURT RESPECTFULLY REQUESTS all judicial, administrative and law enforcement authorities of the Islamic Republic of Pakistan to use their best endeavours to assist in taking any steps which may to them appear necessary and appropriate in locating, safeguarding and facilitating the return to England and Wales of the said minor child[ren] pursuant to the laws of the Islamic Republic of Pakistan and in accordance with the Protocol made on the 17th January 2003 in London and signed by the Honourable Chief Justice of the Supreme Court of Pakistan and by the Right Honourable The President of the Family Division of the High Court of Justice of England and Wales.