

CAYMAN ISLANDS



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PRACTICE DIRECTION No. 16/2014
(GCR O.1, r.12)

INTERNATIONAL CHILD ABDUCTION (INCLUDING 1980 HAGUE CONVENTION)



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Part 1

1. Introduction

- 1.1 This Practice Direction explains what to do if a child has been brought to, or kept in, the Cayman Islands without the permission of anyone who has rights of custody in respect of the child in the country where the child was habitually resident immediately before the removal or retention. It also explains what to do if a child has been taken out of, or kept out of, the Cayman Islands without the permission of a parent or someone who has rights of custody in respect of the child. These cases are called “international child abduction cases” and are dealt with in the Grand Court. This Practice Direction also explains what to do if you receive legal papers claiming that you have abducted a child.
- 1.2 If you have rights of custody in respect of a child and the child has been brought to the Cayman Islands without your permission, or has been brought here with your permission but the person your child is staying with is refusing to return the child, then you can apply to the Grand Court for an order for the return of the child.
- 1.3 How you make an application to the Grand Court, what evidence you need to provide and what orders you should ask the court to make are all explained in this Practice Direction.
- 1.4 If your child is under 16 years of age and has been brought to the Cayman Islands from a country which is a party (a “State party”) to the 1980 Hague Convention on the Civil Aspects of International Child Abduction (“the 1980 Hague Convention”) then you can make an application to the Grand Court for an order under that Convention for the return of your child to the State in which he or she was habitually resident immediately before being removed or being kept away. This is explained in Part 2 below.
- 1.5 If your child is over 16 years of age and under 18, or has been brought to England or Wales from a country which is not a State party to the 1980 Hague Convention, then you can make an application for the return of your child under the inherent jurisdiction of the Grand Court with respect to children. In exercising this jurisdiction over children, the Grand Court will make your child’s welfare its paramount consideration. How to make an application under the inherent jurisdiction of the Grand Court with respect to children is explained in Part 3 below.
- 1.6 It might be necessary for you to make an urgent application to the court if you are not sure where your child is, or you think that there is a risk that the person who is keeping your child away from you might take the child out of the Cayman Islands or hide them away.

Part 4 below explains how to make an urgent application to the Grand Court for orders to protect your child until a final decision can be made about returning the child and also how to ask for help from the police and government agencies if you think your child might be taken out of the country.

PART 2

2. Hague Convention Cases

- 2.1 States which are party to the 1980 Hague Convention have agreed to return children who have been either wrongfully removed from, or wrongfully retained away from, the State where they were habitually resident immediately before the wrongful removal or retention. There are very limited exceptions to this obligation.
- 2.2 “Wrongfully removed” or “wrongfully retained” means removed or retained in breach of rights of custody in respect of the child attributed to a person or a body or an institution. “Rights of custody” are interpreted very widely (see paragraph 2.12 below).
- 2.3 The text of the 1980 Hague Convention and a list of Contracting States (that is, State parties) can be found on the website of The Hague Conference on Private International Law at <http://www.hcch.net>. The Cayman Islands are a party to the Convention.
- 2.4 In each State party there is a body called the Central Authority whose duty is to help people use the 1980 Hague Convention.
- 2.5 If you think that your child has been brought to, or kept in, the Cayman Islands, and your State is a State party to the 1980 Hague Convention, then you should get in touch with your own Central Authority who will help you to send an application for the return of your child to the Central Authority for Cayman Islands. However, you are not obliged to contact your own Central Authority. You may contact the Central Authority for the Cayman Islands directly, or you may simply instruct attorneys at law in the Cayman Islands to make an application for you.
- 2.6 The Central Authority for the Cayman Islands

The Central Authority for the Cayman Islands is located in the Office of the Solicitor General/Attorney General and its contact details are as follows:

DMS House
Genesis Close, George Town
PO Box 907
Grand Cayman KY1-1103
CAYMAN ISLANDS
Tel: (345) 946-0022
Fax: (345) 946-0019
Contact: Suzanne Bothwell
Email: Suzanne.Bothwell@gov.ky

In an emergency (including out of normal working hours) contact should be made with the Grand Court on: **(345) 323 0341**

2.7 What the Central Authority will do

When the Central Authority receives your application for the return of your child, unless you already have a legal representative in the Cayman Islands whom you want to act for you, it will send your application to an attorney at law whom it knows to be experienced in international child abduction cases and ask them to take the case for you. You will then be the attorney at law's client and the attorney at law will make an application for public funding to meet your legal costs if you are unable to pay. The attorney at law will then apply to the Grand Court for an order for the return of your child

2.8 Applying to the Grand Court - The Form and Content of Application

An application to the Grand Court for an order under the 1980 Hague Convention must be made in the Registry of the Family Division in Form C53 (attached).

2.9 The application must include –

- (a) the names and dates of birth of the children;
- (b) the names of the children's parents or guardians;
- (c) the whereabouts or suspected whereabouts of the children;
- (d) the interest of the applicant in the matter (e.g. mother, father, or person with whom the child lives and details of any order placing the child with that person);
- (e) the reasons for the application;
- (f) details of any proceedings (including proceedings not in the Cayman Islands, and including any legal proceedings which have finished) relating to the children;
- (g) where the application is for the return of a child, the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is thought to be.

2.10 The application should be accompanied by all relevant documents including (but not limited to) –

- (a) an authenticated copy of any relevant decision or agreement;
- (b) a certificate or an affidavit from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State.

2.11 As the applicant you may also file a statement in support of the application, although usually your attorney at law will make and file a statement for you on your instructions. The statement must contain and be verified by a statement of truth in the following terms:

“I make this statement knowing that it will be placed before the court, and I confirm that to the best of my knowledge and belief its contents are true.”

2.12 Rights of Custody

“Rights of custody” includes rights relating to the care of the child and, in particular, the right to determine the child’s place of residence. Rights of custody may arise by operation of law (that is, they are conferred on someone automatically by the legal system in which they are living) or by a judicial or administrative decision or as a result of an agreement having legal effect. The rights of a person, an institution or any other body are a matter for the law of the State of the child’s habitual residence, but it is for the State which is being asked to return the child to decide: (i) if those rights amount to rights of custody for the purposes of the 1980 Hague Convention; (ii) whether at the time of the removal or retention those rights were actually being exercised; and (iii) whether there has been a breach of those rights.

- 2.13 In the Cayman Islands a father who is not married to the mother of their child does not necessarily have “rights of custody” in respect of the child. An unmarried father in the Cayman Islands who has parental responsibility for a child has rights of custody in respect of that child. In the case of an unmarried father without parental responsibility, the concept of rights of custody may include more than strictly legal rights and where immediately before the removal or retention of the child he was exercising parental functions over a substantial period of time as the only or main carer for the child he may have rights of custody. An unmarried father can ask the Central Authority or his legal representative for advice on this. It is important to remember that it will be for the State which is being asked to return the child to decide if the father’s circumstances meet that State’s requirements for the establishment of rights of custody.
- 2.14 Sometimes, court orders impose restrictions on the removal of children from the country in which they are living. These can be orders under the Children Law (2012 Revision) (“section 10” orders) or orders under the inherent jurisdiction of the Grand Court (sometimes called “injunctions”). Any removal of a child in breach of an order imposing such a restriction would be wrongful under the 1980 Hague Convention.
- 2.15 The fact that court proceedings are in progress about a child, does not of itself give rise to a prohibition on the removal of the child by a parent with sole parental responsibility unless:
- (a) the proceedings are Wardship proceedings in the Cayman Islands (in which case removal would breach the rights of custody attributed to the Grand Court and fathers with no custody rights could rely on that breach); or
 - (b) the court is actually considering the custody of the child, because then the court itself would have rights of custody.

Defending Abduction Proceedings

- 2.16 If you are served with an application - whether it is under the 1980 Hague or the inherent jurisdiction of the Grand Court - you must not delay. You must obey any directions given in any order with which you have been served, and you should seek legal advice at the earliest possible opportunity, although neither you nor the child concerned will automatically be entitled to legal aid.

- 2.17 It is particularly important that you tell the court where the child is, because the child will not be permitted to live anywhere else without the permission of the court, or to leave the Cayman Islands, until the proceedings are finished.
- 2.18 It is also particularly important that you present to the court any defence to the application which you or the child might want to make at the earliest possible opportunity, although the orders with which you will have been served are likely to tell you the time by which you will have to do this.
- 2.19 If the child concerned objects to any order sought in relation to them, and if the child is of an age and understanding at which the court will take account of their views, the court is likely to direct that the child is seen by an officer of the Department of Children and Family Services. You should cooperate in this process. Children are not usually made parties to abduction cases, but in certain exceptional circumstances the court can make them parties so that they have their own separate legal representation. These are all matters about which you should seek legal advice.

PART 3

3. Non-Convention Cases

- 3.1 Applications for the return of children wrongfully removed or retained away from States which are not parties to the 1980 Hague Convention or in respect of children to whom that Convention does not apply, can be made to the Grand Court under its inherent jurisdiction with respect to children. Such proceedings are referred to as “non-Convention” cases. In proceedings under the inherent jurisdiction of the Grand Court with respect to children, the child’s welfare is the court’s paramount consideration. The extent of the court’s enquiry into the child’s welfare will depend on the circumstances of the case; in some cases the child’s welfare will be best served by a summary hearing and, if necessary, a prompt return to the State from which the child has been removed or retained. In other cases a more detailed enquiry may be necessary (see *Re J (Child Returned Abroad: Convention Rights)* [2005] UKHL 40; [2005] 2 FLR 802).
- 3.2 Every application for the return of a child under the inherent jurisdiction must be made in the Registry of the Family Division and heard in the Grand Court.
- 3.3 The Form and Content of the Application
- An application for the return of a child under the inherent jurisdiction must be made in Form C54 (attached) and must include the information in paragraph 2.9 above.
- 3.4 You must file a statement in support of your application, which must exhibit all the relevant documents. The statement must contain and be verified by a statement of truth in the following terms:

“I make this statement knowing that it will be placed before the court, and confirm that to the best of my knowledge and belief its contents are true.”

PART 4

4. General Provisions

- 4.1 When a child has been abducted and a judge considers that publicity may help in tracing the child, the judge may adjourn the case for a short period to enable representatives of the Press to give the case the widest possible publicity.

DATED this 30th day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice