



# Child Abduction Act 1984

## 1984 CHAPTER 37

### PART II

#### OFFENCE UNDER LAW OF SCOTLAND

#### **6 Offence in Scotland of parent, etc. taking or sending child out of United Kingdom**

- (1) Subject to subsections (4) and (5) below, a person connected with a child under the age of sixteen years commits an offence if he takes or sends the child out of the United Kingdom—
- (a) without the appropriate consent if there is in respect of the child—
    - (i) an order of a court in the United Kingdom awarding custody of the child to any person; or
    - (ii) an order of a court in England, Wales or Northern Ireland making the child a ward of court;
  - (b) if there is in respect of the child an order of a court in the United Kingdom prohibiting the removal of the child from the United Kingdom or any part of it.
- (2) A person is connected with a child for the purposes of this section if—
- (a) he is a parent or guardian of the child ; or
  - (b) there is in force an order of a court in the United Kingdom awarding custody of the child to him (whether solely or jointly with any other person); or
  - (c) in the case of an illegitimate child, there are reasonable grounds for believing that he is the father of the child.
- (3) In this section, the " appropriate consent " means—
- (a) in relation to a child to whom subsection (1)(a)(i) above applies—
    - (i) the consent of each person
      - (a) who is a parent or guardian of the child ; or
      - (b) to whom custody of the child has been awarded (whether solely or jointly with any other person) by an order of a court in the United Kingdom; or

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- (ii) the leave of that court;
  - (b) in relation to a child to whom subsection (1)(a)(ii) above applies, the leave of the court which made the child a ward of court;
- Provided that, in relation to a child to whom more than one order referred to in subsection (1)(a) above applies, the appropriate consent may be that of any court which has granted an order as referred to in the said subsection (1)(a); and where one of these orders is an order referred to in the said subsection (1)(a)(ii) no other person as referred to in paragraph (a)(i) above shall be entitled to give the appropriate consent.
- (4) In relation to a child to whom subsection (1)(a)(i) above applies, a person does not commit an offence by doing anything without the appropriate consent if—
    - (a) he does it in the belief that each person referred to in subsection (3)(a)(i) above—
      - (i) has consented ; or
      - (ii) would consent if he was aware of all the relevant circumstances; or
    - (b) he has taken all reasonable steps to communicate with such other person but has been unable to communicate with him.
  - (5) In proceedings against any person for an offence under this section it shall be a defence for that person to show that at the time of the alleged offence he had no reason to believe that there was in existence an order referred to in subsection (1) above.
  - (6) For the purposes of this section—
    - (a) a person shall be regarded as taking a child if he causes or induces the child to accompany him or any other person, or causes the child to be taken; and
    - (b) a person shall be regarded as sending a child if he causes the child to be sent.
  - (7) In this section " guardian " means a person appointed by deed or will or by order of a court of competent jurisdiction to be the guardian of a child.

## **7 Power of arrest**

A constable may arrest without warrant any person whom he reasonably suspects of committing or having committed an offence under this Part of this Act.

## **8 Penalties and prosecutions**

A person guilty of an offence under this Part of this Act shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum as defined in section 74(2) of the Criminal Justice Act 1982, or both ; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

## **9 Proof and admissibility of certain documents**

- (1) For the purposes of this Part of this Act, a document duly authenticated which purports to be—
  - (a) an order or other document issued by a court of the United Kingdom (other than a Scottish court) shall be sufficient evidence of any matter to which it relates;

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- (b) a copy of such an order or other document shall be deemed without further proof to be a true copy unless the contrary is shown, and shall be sufficient evidence of any matter to which it relates.
- (2) A document is duly authenticated for the purposes of—
- (a) subsection (1)(a) above if it purports to bear the seal of that court;
  - (b) subsection (1)(b) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of that court to be a true copy.

## **10 Evidence**

In any proceedings in relation to an offence under this Part of this Act it shall be presumed, unless the contrary is shown, that the child named in the order referred to in section 6(1) above, or in any copy thereof, is the child in relation to whom the proceedings have been taken.