
STATUTORY INSTRUMENTS

1985 No. 1638 (N.I. 17)

NORTHERN IRELAND

**The Child Abduction
(Northern Ireland) Order 1985**

<i>Made</i>	30th October 1985
<i>Laid before Parliament</i>	14th November 1985
<i>Coming into Operation</i>	31st December 1985

At the Court of Saint James, the 30th day of October 1985

Present,

The Counsellors of State in Council

Whereas Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 27th day of September 1985, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas this Order in Council operates only so as to make for Northern Ireland provision corresponding to Part I of the Child Abduction Act 1984:

1984 c. 37

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness The Prince Edward, being authorised thereby by the said Letters Patent, and in pursuance of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 12 of the Child Abduction Act 1984) and of all other powers enabling Her Majesty, and by and with the advice of Her Majesty's Privy Council, do on Her Majesty's behalf order, and it is hereby ordered as follows:—

1974 c. 28

Title and commencement

1.—(1) This Order may be cited as the Child Abduction (Northern Ireland) Order 1985.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

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Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

1954 c. 33 (1)

(2) For the purposes of this Order—

- (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;
- (b) a person shall be regarded as sending a child if he causes the child to be sent; and
- (c) a person shall be regarded as detaining a child if he causes the child to be detained or induces the child to remain with him or any other person.

Offence of abduction of child by parent, etc.

3.—(1) Subject to paragraphs (3) and (7), a person connected with a child under the age of 16 commits an offence if he takes or sends the child out of the United Kingdom without the appropriate consent.

(2) A person is connected with a child for the purposes of this Article if—

- (a) he is a parent or guardian of the child; or
- (b) there is in force an order of a court in Northern Ireland 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) A person does not commit an offence under this Article by doing anything without the consent of another person whose consent is required under the foregoing provisions if—

- (a) he does it in the belief that the other person—
 - (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 the other person but has been unable to communicate with him; or
- (c) the other person has unreasonably refused to consent,

but sub-paragraph (c) does not apply where what is done relates to a child who is the subject of a custody order made by a court in Northern Ireland, or where the person who does it acts in breach of any direction under section 3(3) of the Guardianship of Infants Act 1886.

1886 c. 27

(4) Where, in proceedings for an offence under this Article, there is sufficient evidence to raise an issue as to the application of paragraph (3), it shall be for the prosecution to prove that that paragraph does not apply.

(5) In this Article—

“the appropriate consent”, in relation to a child, means—

(a) the consent of each person—

(i) who is a parent or guardian of the child; or

(ii) to whom custody of the child has been awarded (whether solely or jointly with any other person) by an order of a court in Northern Ireland; or

(b) if the child is the subject of such a custody order, the leave of the court which made the order; or

(c) the leave of the court granted on an application for a direction under section 3(3) of the Guardianship of Infants Act 1886;

1886 c. 27

“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; and

a reference to a custody order or an order awarding custody includes a reference to an order awarding legal custody and a reference to an order awarding care and control.

(6) In the case of a custody order made by a court of summary jurisdiction, the definition of “the appropriate consent” in paragraph (5) shall be construed as if the reference in sub-paragraph (b) to the court which made the order included a reference to a court of summary jurisdiction sitting in the same petty sessions district as that court.

(7) This Article shall have effect subject to the provisions of the Schedule in relation to a child who is received into or committed to the care of the Department of Health and Social Services or committed to the care of a fit person or who is committed to a place of safety or who is the subject of proceedings or an order relating to adoption or who is subject to a training school order.

Offence of abduction of child by other persons

4.—(1) Subject to paragraph (2), a person not falling within Article 3(2)(a) or (b) commits an offence if, without lawful authority or reasonable excuse, he takes or detains a child under the age of 16—

(a) so as to remove him from the lawful control of any person having lawful control of the child; or

(b) so as to keep him out of the lawful control of any person entitled to lawful control of the child.

(2) In proceedings against any person for an offence under this Article, it shall be a defence for that person to show that at the time of the alleged offence—

(a) he believed that the child had attained the age of 16; or

(b) in the case of an illegitimate child, he had reasonable grounds for believing himself to be the child’s father.

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Penalties and prosecutions

5.—(1) A person guilty of an offence under this Order shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(2) No prosecution for an offence under Article 3 shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Restriction on prosecutions for offence of kidnapping

6. Except by or with the consent of the Director of Public Prosecutions for Northern Ireland no prosecution shall be instituted for an offence of kidnapping if it was committed—

- (a) against a child under the age of 16; and
- (b) by a person connected with the child, within the meaning of Article 3.

Consequential amendments and repeals

1952 c. 67 7.—(1) At the end of paragraph 1(b) of the Schedule to the Visiting Forces Act 1952 (definition of “offence against the person”), there shall be inserted, appropriately numbered—

“() the Child Abduction (Northern Ireland) Order 1985.”.

1968 c. 34 (N.I.) (2) In Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968—

- (a) for the words “55 or 56” there shall be substituted the words “or 55”; and
- (b) at the end there shall be added—

“Any offence under the Child Abduction (Northern Ireland) Order 1985”.

1981 NI 2 (3) After paragraph 1 of Schedule 1 to the Firearms (Northern Ireland) Order 1981, there shall be inserted—

“1A. Offences under the Child Abduction (Northern Ireland) Order 1985 (abduction of children).”.

(4) The following provisions are hereby repealed—

- 1861 c. 100 (a) section 56 of the Offences against the Person Act 1861;
- (b) in paragraph 1 of Schedule 1 to the Firearms (Northern Ireland) Order 1981, the words “section 56 (child stealing or abduction)”.

G. I. de Deney,
Clerk of the Privy Council.

SCHEDULE

Article 3(7).

MODIFICATIONS OF ARTICLE 3 FOR CHILDREN IN CERTAIN CASES

*Children received into or committed to care of
Department of Health and Social Services or committed
to the care of a fit person*

- 1.—(1) This paragraph applies in the case of a child who is received into or committed to the care of the Department of Health and Social Services or committed to the care of a fit person in Northern Ireland.
- (2) Where this paragraph applies, Article 3 shall have effect as if—
- (a) the reference in paragraph (1) to the appropriate consent were a reference to the consent of the Department of Health and Social Services or the fit person in whose care the child is; and
 - (b) paragraphs (3), (4) and (6) and the definition of “the appropriate consent” in paragraph (5) were omitted.

Children in places of safety

- 2.—(1) This paragraph applies in the case of a child who is committed to a place of safety in Northern Ireland in pursuance of—
- (a) section 14 of the Adoption Act (Northern Ireland) 1967; or 1967 c. 35 (N.I.)
 - (b) section 8(1), 18(1), 27(2), 32(1), 99, 101(1) or (3), or 143(7) of the Children and Young Persons Act (Northern Ireland) 1968. 1968 c. 34 (N.I.)
- (2) Where this paragraph applies, Article 3 shall have effect as if—
- (a) the reference in paragraph (1) to the appropriate consent were a reference to the leave of the juvenile court sitting in the petty sessions district in which the place of safety is or the applicant for the consent is resident; and
 - (b) paragraphs (3), (4) and (6) and the definition of “the appropriate consent” in paragraph (5) were omitted.

Adoption

- 3.—(1) This paragraph applies in the case of a child—
- (a) who is the subject of a pending application for an adoption order; or
 - (b) who is the subject of an order under section 38 of the Adoption Act (Northern Ireland) 1967 relating to adoption abroad or of a pending application for such an order.
- (2) Where this paragraph applies, Article 3 shall have effect as if—
- (a) the reference in paragraph (1) to the appropriate consent were a reference—
 - (i) in a case within sub-paragraph (1)(a), to the leave of the court to which the application was made; and
 - (ii) in a case within sub-paragraph (1)(b), to the leave of the court which made the order or, as the case may be, to which the application was made, and
 - (b) paragraphs (3), (4) and (6) and the definition of “the appropriate consent” in paragraph (5) were omitted.
- (3) In this paragraph “adoption order” means an order under section 1(1) of the Adoption Act (Northern Ireland) 1967.

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Children subject to training school orders

4.—(1) This paragraph applies in the case of a child who is subject to a training school order, except where he is lawfully living with his parents or either of them.

(2) Where this paragraph applies, Article 3 shall have effect as if—

- (a) the reference in paragraph (1) to the appropriate consent were a reference to the consent of the managers of the training school; and
- (b) paragraphs (3), (4) and (6) and the definition of “the appropriate consent” in paragraph (5) were omitted.

(3) In this paragraph “training school order” has the same meaning as in section 180(1) of the Children and Young Persons Act (Northern Ireland) 1968.

1968 c. 34 (N.I.)

Cases within paragraphs 1 and 3

5. In the case of a child falling within both paragraph 1 and paragraph 3, the provisions of paragraph 3 shall apply to the exclusion of those in paragraph 1.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes for Northern Ireland provision corresponding to the Child Abduction Act 1984. It amends the criminal law relating to the abduction of children by replacing the offence of child stealing under section 56 of the Offences against the Person Act 1861 with 2 new offences, one to deal with the abduction of a child from the United Kingdom by a parent or other person connected with the child, the other to deal with abduction of a child from the lawful control of another person by a person not connected with the child.

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