

Lawful removal of the child

Avoid becoming an "abducting" parent by knowing how to move across borders with your children in a lawful way



Experience shows that in many cases, the wrongful removal or failure to return (retention of) a child results from lack of knowledge on the part of the so-called abducting parent. Usually parents do not know the conditions in which they can move across borders with their children or the steps they should take when travelling abroad with their child in a lawful way.

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Last update: 26/10/2020

Lawful removal of the child - Belgium

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Under Belgian law, the right to change the place of residence of a minor is a matter of parental authority. Therefore, only the holder (s) of parental authority over the child is/are authorised to change the place of residence of the child.

In principle, whatever the status of the parents, whether they live together or not, they exercise parental authority jointly in the interests of the child (see Articles 373 and 374 of the Civil Code).

However, if the parents decide to separate, it is possible to apply for a judicial waiver of the principle of joint exercise of parental authority. The exercise of parental authority entrusted to one of the parents by a judicial decision will then be considered exclusive. If parental authority is exercised exclusively by one of the parents, it may entail entrusting the parent who holds the rights with all the prerogatives of parental authority, including the choice of place of residence of the child. Therefore, the child may be taken to a different country without the consent of the other parent. In such circumstances, the parent who has no joint parental authority may be granted the right to personal relations nevertheless. The court may temper the exclusive exercise of parental authority by establishing exceptions that require the consent of the other parent for certain decisions related to the child. The choice of the child's residence may be one such decision, to be taken jointly if one of the parents holds exclusive parental authority.

It should also be noted that if the child is the subject of a protective ruling that involves the modification of the terms of the exercise of parental authority, that ruling must prevail. In such cases neither parent is allowed to take the child abroad.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

If parental authority is exercised jointly by both parents, the consent of both parents is required to change the place of residence of the child.

If parental authority is exercised exclusively by one of the parents, with an exception for certain decisions, such as designating the place of residence of the child, the consent of the other parent is required. Nevertheless, with respect to bona fide third parties, the existence of mutual parental agreement may be assumed.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

In the absence of an agreement between the holders of parental authority concerning the place of residence of their child, it is the duty of the territorially competent court to authorize or not the child's removal to another state.

The competent court may be notified *a priori* by a parent exercising joint parental authority in anticipation of a decision with which he or she does not agree. A parent exercising joint parental authority may also lodge an *a posteriori* appeal to challenge a decision already taken by the other parent.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Where parental authority is entrusted to only one of the parents, only the parent holding parental authority has the right to take the child to another state on holiday temporarily.

A parent who does not exercise parental authority over the child, but who has a right to personal relations, may only take the child abroad with the prior written consent of the parent with parental authority or express authorization issued by the competent court.

In the case of joint parental authority, when no decision has been taken to resolve the issue of the child's residence, both parents are allowed to travel abroad with the child. However, the place of residence of the child cannot be changed.

Finally, when a court ruling governs the child's accommodation arrangements, each parent is allowed to travel with the child only during their respective access period, unless otherwise expressly prohibited by the court.

In the latter two cases, it may be appropriate for the parent travelling with the child to obtain authorization to travel, signed by the other parent, in order to avoid any difficulties.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Where the two parents exercise the rights of custody jointly and separately, they are supposed to decide jointly on the removal of the child to another state.

Where the parents do not live together, they may reach agreement regarding the place of residence, custody and access to the child and approach the district court with jurisdiction over the child's present address to approve their agreement.

Where the parents are unable to reach agreement, the dispute is settled by the district court with jurisdiction over the child's present address, which rules on the place of residence of the child, the exercise of custody rights and access to the child.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Irrespective of whether the parents exercise the rights of custody jointly or the court has approved an agreement or has issued a decision awarding their exercise to only one of the parents and determining that the place of residence of the child is to be with that parent, the consent of the parent who does not exercise the rights of custody is also necessary for the child's removal from the territory of Bulgaria, and this consent must be given in writing with the parent's notarised signature (point 9 of Article 76 of the Bulgarian Personal Documents Act (Zakon za bulgarskite lichni dokumenti)).

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If the parents disagree about the child's removal to another state, the dispute is resolved under the procedure of Article 127a of the Family Code (Semeen kodeks) (SK), and if they disagree about the child's place of residence, the procedure of Article 127(2) or Article 59 of the SK applies.

Where the court substitutes the parent's consent to the issuing of a foreign-travel passport and a child's removal to another state (regardless of the duration of the trip), the requirement is for the existence of a specifically protected interest of the child when it is removed to another state which, in turn, necessitates that such removal should be allowed for a specified period of time, for a specified state or states within an identifiable range (e.g. the Member States of the European Union), or for an unlimited number of trips during a specified period of time, but also for specified states.

In accordance with the binding instructions for the interpretation of the law, given in Interpretative Decision No 1 of 2016 of 3 July 2017 in Interpretative Case No 1 on the docket of the General Assembly of the Civil College of the Supreme Court of Cassation for the Year 2016, the court may not definitively substitute the parent's consent and allow travel for an unlimited period of time and territory.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

The Bulgarian Personal Documents Act requires consent by the parent who does not accompany the child on the trip by means of a notarised declaration regardless of the specific circumstances of the child's removal to another state.

Such removal may be temporary, after which the child returns to Bulgaria without transferring its residence to another state. When the child travels abroad for the purposes of an excursion, holiday, visit to relatives, study, cultural or sports events, competitions, healthcare, etc. and the parties disagree, the court assesses the reason for the request. If there is no reason to believe that the child is at a specific and real risk, the court determines the parameters of the permission. In cases involving a child's temporary removal to another state, it is hardly likely that the child's right to travel would conflict with the parent's right of access, and even if such a conflict would arise, if the child's travel is in its best interest, the parent affected is supposed to tolerate such temporary restriction of his or her rights.

The purpose of the removal may also be to transfer the child's residence to another state. When examining the matters concerning a child's removal to another state and, accordingly, the issuing of the requisite personal documents, the court should not allow its permission for removal to entail a transfer of the child's residence unless the request for permission is accompanied by a request for a transfer of the child's residence. The determination of a child's place of residence reflects the child's best interests in being integrated in a family and social environment and presupposes a lasting character of the establishment.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

A parent who does not have the other parent's consent to the child's removal should have the consent of a court.

If, in the exercise of their parental responsibility, the parents fail to agree on a matter of importance for the child, especially in view of the child's interests, a decision is taken by a court on an application from one of the parents (Section 877 of Act No 89/2012, the Civil Code, as amended). The removal of a child to another country is also treated as a matter of importance.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

The long-term removal of the child (i.e. not for occasions such as holidays) always requires the consent of the other parent, unless that parent has been relieved of parental responsibility in full or in part. Parental consent is required regardless of whether a court has already ruled on parental responsibility (childcare arrangements) or whether a childcare decision has yet to be made. No distinction is made between married and unmarried parents.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If the other parent does not consent to removal, a court ruling has to take the place of such parental consent (Section 877 of Act No 89/2012, the Civil Code, as amended).

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

No, temporary removal, e.g. so that the child can spend holidays with one of the parents, is not generally treated as a matter of importance as defined by Section 877 of Act No 89/2012, the Civil Code, as amended.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

The question of where the child should live permanently is subject to legal rules about the right to determine the child's place of residence, and so forms part of the *de facto* care of the child (Section 1631(1) of the Civil Code (*Bürgerliches Gesetzbuch*, BGB)). Like care for the child's property, this falls within the scope of parental responsibility under Section 1626(1) of the Civil Code.

Permanent residence is a 'matter of substantial significance' (*Angelegenheit von erheblicher Bedeutung*) within the meaning of Section 1687(1), first sentence, of the Civil Code – unlike, possibly, a short holiday to a neighbouring European country, for example, for which the mutual agreement of both parents is necessary if the parents have joint custody. A parent therefore needs the consent of the other parent to move abroad with the child, unless they have sole custody or at least the sole right to decide residency.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

The other parent's consent to the child moving abroad is needed if the parents have joint parental responsibility (the right to decide residency) (see also answer to question 1).

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

Taking the child to live abroad is lawful if the parent who wants to move with the child has sole custody or at least the sole right to decide residency.

If this is not the case and if there is disagreement between the parents on this matter, then, on the application of one of the parents, the family court (*Familiengericht*) may give one parent the right to decide the matter, under Section 1628 of the Civil Code. The Court must decide on the basis of what is in the best interests of the child, taking into account the particular circumstances and practicalities and the legitimate interests of those involved (Section 1697a of the Civil Code).

Furthermore, a parent living apart from the other may also apply to the family court under Section 1671(1) of the Civil Code to be awarded sole parental responsibility overall or sole parental responsibility for a particular issue – for example, the right to decide residency. The court will grant the application if the other parent agrees, unless the child of at least 14 years of age objects, or if removal of joint parental responsibility or partial transfer of full parental authority to the applicant is likely to be in the best interests of the child. If the court grants the application, the parent may freely decide where the child should reside.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

If a parent has sole parental responsibility, they are free to take their child abroad for short periods whenever they wish.

On the other hand, parents with joint parental responsibility must in principle take this decision jointly (Section 1627 of the Civil Code). If parents with joint parental responsibility live apart, both must decide jointly whether the planned journey is not a day-to-day matter, but a matter of substantial significance (Section 1687(1), first sentence, of the Civil Code). The parent with whom the child normally lives is entitled to decide on their own about day-to-day matters (Section 1687(1), second sentence, of the Civil Code). The other parent can decide alone only in matters of actual care under Section 1687(1), fourth sentence, of the Civil Code). The legislation does not specify which matters are of substantial significance and which are day-to-day matters or matters of actual care. This issue is to be decided according to the particular circumstances of the case. In principle, both the parent with whom the child normally lives and the parent with contact rights can decide alone on temporary removal for holidays abroad, provided that the journey is not to a remote area or to an area where there is political unrest. However, the parent with contact rights must inform the parent mainly caring for the child in advance of the purpose of the journey. The parent mainly caring for the child can take decisions alone about routine medical treatment. However, if the child is to be removed to another country for the purposes of medical treatment, this should as a rule no longer be considered a matter of routine treatment.

A parent who does not have parental responsibility does not have the right to decide where the child should live. During the time of contact, this parent has the same powers under Section 1687a of the Civil Code as the parent with joint care for the child with whom the child does not normally live (Section 1687(1), fourth sentence).

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

In general, parents have joint parental responsibility, which means that both parents exercise parental responsibility jointly and unanimously, considering the overall well-being of the child. An important principle is that parents exercise parental responsibility equally, i.e. they have equal rights and obligations with regard to their children. Parental responsibility includes the right to decide where the child should reside, including whether the child may travel abroad.

Thus, if parents have joint parental responsibility, both parents have an equal right to decide whether or not the child can be taken to another country. Therefore, as a general rule, a child cannot be taken abroad without the other parent's consent.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

If parents have joint parental responsibility, it is a general principle that the other parent's consent is always necessary.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If, in exercising joint parental responsibility, parents fail to reach an agreement on a matter significant for the child – which could also include removing the child to another state if this is necessary – the court may grant one parent the right to decide in this matter.

Thus, if one parent does not consent to the child's removal to another state, though it is necessary, the other parent may apply to the court for permission, in a specific case, to make an independent decision regarding taking the child to another state. Thereby, the court may impose additional obligations on the parent who was granted the right to decide in a specific case.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

If parents have joint parental responsibility, the same rules apply, regardless of the duration of or reason for deciding the place of residence of a child. Until joint parental responsibility is terminated or the court for instance grants one parent the right to decide where the child should reside, both parents will continue to have an equal right to decide regarding both the temporary or permanent removal of the child to another state.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Where the other parent does not have guardianship of the child and where there are no court orders prohibiting the removal of the child without the consent of the other parent.

Where no application for guardianship, custody or access has been made to the courts prior to the removal of a child/children from the jurisdiction.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Where the other parent is a guardian of the child

and/or

Where the removal of the child affects custody and/or access rights

and/or

Where a court order has specifically stated that the consent of the other parent or any other named party is required prior to the child's removal to another state.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

An application may be made to the court to permit the lawful removal of the child.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Yes.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

A parent may lawfully remove a child to another state without the consent of the other parent where the parent removing the child has sole custody rights, always provided that this does not infringe the right of the child to contact with the other parent.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Where both parents have custody rights.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If the removal of the child is necessary but the other parent does not consent to it, a court will have to consider the situation, on the basis of the interest of the child, and to decide whether or not the removal should take place.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

The rules requiring the consent of the other spouse that are outlined above apply regardless of whether the removal to another state is a temporary one for the purpose of holidays or whether it is permanent.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

If they hold sole parental responsibility, parental responsibility being the rights and obligations of parents in relation to their unemancipated children. In the case of relationship breakdown, this is entirely independent of custody and access rights.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

If the parents have shared parental responsibility, regardless of which parent has the rights of access and which has the rights of custody.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If the consent of the other parent is necessary but there is disagreement and that parent refuses to give their consent, the removal must be authorised by the judicial authority.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

The rules for temporary removals are not the same as those for permanent removals. When it comes to taking the child for normal health care, on holiday, or similar, the parent with whom the child is at that time makes the decision, whether they hold rights of custody or rights of access, whilst still respecting the contact time or visits the child must have with each parent. Only important decisions about the children's lives, such as, for example, a permanent removal, have to be authorised by the holders of parental responsibility.

The certificate of mutual consent of both parents for the minor to leave national territory can be presented at a civil guard station (*Puesto de la Guardia Civil*) or a national police station (*Comisaría de Policía Nacional*). One of the following models must be used:

(https://www.guardiacivil.es/documentos/pdfs/autorizacion_menor_extranjero/PRC_197953_Formulario_declaracion_firmada_permiso_viaje_fuer.pdf or https://sede.policia.gob.es/portalCiudadano/normativa/declaracion_permiso_viaje_menores.pdf).

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

If the parents exercise joint parental authority, each parent is allowed to travel with the child without the express consent of the other parent, except in special circumstances. However, if one of the parents explicitly withholds their consent and it is not possible to reach an agreement, an application must be made to the family court with a view to resolving the dispute.

If the parents exercise joint parental authority, one of them may not decide of their own volition to move permanently to a foreign country without the other's consent. If one parent exercises exclusive parental authority, the tacit or express consent of the other parent is not necessary, whether for holidays or a move abroad. However, they must keep the other parent informed pursuant to Article 373(2)(1) of the Civil Code, which states that a parent who does not exercise parental authority must be kept informed of important choices affecting the life of the child.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Travel for holidays:

To oppose the child's removal abroad by one of the parents, the other - if he or she is also exercising parental authority - may lodge an application with the prefecture for the child to be prohibited from leaving the country for a period of 15 days and/or apply to the family court for the child to be prohibited from leaving the country without the permission of both parents (Article 373(2)(6) of the Civil Code) until the child comes of age or a new decision is made. A prohibition on leaving the country without the permission of both parents prevents the child from leaving the country. However, the parents may give their consent to a specific trip taken by the child alone or with one of the parents by making a declaration to a law enforcement officer (normally made 5 days before the trip). If one of the parents refuses to give their consent, the other parent can apply to the court for the prohibition on leaving the country to be lifted or for exceptional permission to be given for the child to leave the country.

Travel for the purpose of changing the place of residence:

Even if there is no objection to travelling with the child abroad and no prohibition on leaving the country, the consent of the other parent is required if the purpose of such travel abroad with the child is to change the child's place of residence, unless the parent wishing to move exercises sole parental authority. In that case alone, they may move without the consent of the other parent, but they must keep them informed of this major change for the child.

If the parent disregards the other parent's lack of consent, the latter may apply for the child to be returned citing wrongful removal pursuant to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Proceedings must be instituted in the state to which the child has been removed, if necessary with the help of the central authorities established by the Convention.

Whatever the nature of removal, and apart from the specific cases of prohibition on leaving the country and objection to travelling abroad, the parent leaving the country with the child is not required to prove the explicit consent of the other parent, which is deemed to be given with respect to third parties.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If one of the parents exercising parental authority refuses to give their consent for a trip, the parent who wishes to travel with the child has the right to initiate proceedings before the court which may issue an authorisation for the child to leave the country. The same applies if the child has been prohibited from leaving the country without the permission of both parents.

Similarly, if the child's removal is in fact a change of residence, the parent who wishes to move with the child must apply to the family court of the child's place of residence before travelling if the other parent exercising parental authority refuses to give their consent.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

As indicated above, a distinction should be made between temporary removal and permanent removal. Reference will be made to the points set out above.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

The following situations must be differentiated in terms of the circumstances under which a parent may lawfully remove the child to another state without the other parent's consent:

a) when the parent with whom the child is living wants to lawfully remove the child to another state, and

b) when the parent with whom the child is not living but with whom the child has a personal relationship, wants to lawfully remove the child to another state.

a) The parent with whom a child is living may, after divorce, as part of their everyday parental care of the child, lawfully remove the child to another state (e.g. on a one-day excursion), under the condition that this does not jeopardise the right of the other parent to establish a personal relationship with the child, as provided for in Articles 95 and 119 of the Family Proceedings Act (*Obiteljski zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), No 103/15, hereinafter: ObZ 2015). That is to say, irrespective of whether the parents are jointly or individually responsible for the child's care and upbringing, each of them has the right to independently make everyday child-related decisions when the child is in their care (Article 110 ObZ 2015). If, after divorce, the parents are jointly responsible for a child's care and upbringing (Article 104 ObZ 2015), then decisions that are important for the child must be made consensually (Article 108 ObZ 2015). Taking into account that an occasional trip to another country (e.g. a one-day excursion) does not entail intent to change the child's permanent or temporary residence and is therefore not among the exhaustive list of significant individual rights of the child as referred to in Article 100 ObZ 2015, the provisions of Article 99(2) ObZ 2015 should therefore be applied appropriately. The same applies to a case where the parent with whom the child is living after the divorce has partial individual responsibility for parental care (Article 105 ObZ 2015). However, if the parent with whom the child is living after the divorce has, on the grounds of a court order, sole individual responsibility for parental care, then he or she does not require the consent of the other parent in order to temporarily remove the child to another state (Article 105(5) ObZ 2015).

b) If the parent with whom a child is not living after the divorce, but with whom the child maintains a personal relationship, decides to lawfully remove the child to another state, then he or she may do so under the condition that this is a temporary stay in another country (e.g. a one-day excursion), taking place during the time the parent has the right to maintain a direct personal relationship with the child (Article 121 ObZ 2015) and on condition that this right has not been prohibited or restricted by a court order (Articles 123-126 ObZ 2015). That is to say, irrespective of the fact whether the parents are jointly or individually responsible for the child's care and upbringing, each of them has the right to independently make everyday child-related decisions when the child is in their care (Article 110 ObZ 2015). If, after divorce, the parents are jointly responsible for the child's care and upbringing (Article 104 ObZ 2015), then decisions that are important for the child must be made consensually (Article 108 ObZ 2015). Taking into account that a temporary stay in another state during the time the parent has the right to maintain a direct personal relationship with the child (e.g. a one-day excursion) does not entail intent to change the child's permanent or temporary residence and is therefore not among the exhaustive list of significant individual rights of the child as referred to in Article 100 ObZ 2015, the provisions of Article 99(2) ObZ 2015 should therefore be applied appropriately. The same applies to a case where the parent with whom the child is living after the divorce has partial individual responsibility for parental care (Article 105 ObZ 2015), since the parent establishing a direct personal relationship with the child has the freedom and the right to represent the child in everyday matters during the time the child is in his or her care (pursuant to Articles 110 and 112, and in conjunction with Article 105(1) ObZ 2015).

In these situations, the importance of the provisions of Article 111 ObZ 2015 should be emphasised. That is to say, both parents, irrespective of whether they are jointly or individually responsible for parental care, are obliged to mutually exchange information on the child, which includes information on the possible removal of the child abroad. As well as this being a legal obligation of the parents, the crossing of a state border requires personal and other documents which the child, or each of the parents, should bring with them.

In the event that one of the parents feels that the other parent might abuse such a temporary removal of the child, he or she is permitted to require the court to impose one of the actions set out in Article 418 ObZ 2015 in an out-of-court proceeding to ensure that the decision on establishing a personal relationship between the parent and child is enforced, or to impose one of the actions of Article 419 ObZ 2015, which ensures the safe return of a child.

The most desirable solution is that parents reach a consensual agreement on these and similar matters, which they may then regulate in their agreement on joint parental care (Article 106(3) ObZ 15).

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Any (permanent) removal of the child to another state which would serve to change the permanent or temporary residence of the child requires the consent of both parents. Irrespective of whether the parents are jointly responsible for the child's care and upbringing or whether one of them has partial individual responsibility, the parent who removes the child and thus changes the child's permanent or temporary residence must obtain the written consent of the other parent to do so (Articles 100 and 108 ObZ 2015). However, if the parent with whom the child is living after the divorce has sole individual responsibility for parental care, then he or she does not require the consent of the other parent to remove the child to another state for the purpose of changing the child's permanent or temporary residence (Article 105(5) ObZ 15).

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If a parent, by removing the child to another state, wants to change the child's permanent or temporary residence, and is unable to obtain the written consent of the other parent, then, in an out-of-court proceedings, the court determines which of the parents represents the best interest of the child in this matter (Articles 100(5) and 478(1) ObZ 2015). A mandatory out-of-court counselling procedure must take place prior to initiating these out-of-court proceedings, the purpose of which is to have experts from the Department of Social Services try to help the parents reach an agreement on the matter (Article 481 ObZ 2015 - out-of-court proceedings of mandatory counselling as a procedural requirement for initiating the proceedings of Article 100(5) ObZ 2015). If in the course of mandatory counselling the parents are unable to reach an agreement, the matter will be decided on by a court of law in an out-of-court proceeding that will particularly focus on: the age and opinion of the child, the child's right to establish a personal relationship with the other parent, the willingness and readiness of the parents to cooperate in the exercise of their parental rights, the personal circumstances of the parents, the distance between the places of permanent or temporary residence of the parents and the place where the child could relocate, as well as the traffic connections between these places and the parent's right to freedom of movement (Article 484 ObZ 2015).

However, it should be emphasised that if one of the parents has sole individual responsibility for parental care of the child, then he or she does not require the consent of the other parent in order to remove the child to another state for the purpose of changing the child's temporary or permanent place of residence, i.e. in such an event the opposition of the other parent has no legal effect (Article 105(5) ObZ 2015).

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

As stated in the responses to questions 1-3, ObZ 2015 governs the rights and obligations of parents differently, depending on whether it is a temporary removal of the child to another state (e.g. a one-day excursion which does not jeopardise the rights of the other parent) or a permanent removal of the child to another state with the purpose of changing the child's place of permanent or temporary residence.

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1 Under what circumstances may a parent lawfully remove the child to another State without the other parent's consent?

A parent may remove a child to another State without the other parent's consent, or against the other parent's wishes, when the removing parent has sole parental responsibility for the child or where a court measure allows such removal.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another State?

When both parents have parental responsibility and have joint custody of the child, the consent of both parents is required for removal of the child to another State.

3 If the other parent does not consent to the child's removal to another State, though it is necessary, how can the child be removed lawfully to another State?

If the other parent does not consent to the child's removal, or opposes it, the parent wishing to remove the child must apply to the competent judicial authority for permission to do so; this may be the court supervising guardianship of the place of residence of the child or the court before which proceedings relating to parental responsibility are ongoing.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

For the temporary transfer of the child abroad, the reasons for such a transfer need to be examined. If it is just for a short holiday, the issue can be regarded as an everyday matter which can be decided without the authorisation of both parents.

If the temporary transfer is prompted by more significant reasons, such as medical care for the child, the authorisation of both parents with parental responsibility is required. If there is any disagreement, the matter must be settled by the court.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

A parent with sole custody can lawfully remove a child to another state without the other parent's consent.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Where both parents exercise joint custody of an underage child, the other parent's consent is necessary to remove the child to another state. Removal without consent also constitutes a criminal offence under Chapter 154 of the Criminal Code.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

A child can be removed to another state without the consent of one of the parents with joint custody on the basis of a relevant judgment by the family court.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

In the absence of consent for temporary or permanent removal, a court judgment is required. In the presence of consent, there is no specific document used to grant that consent.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

If a court has ruled that the child's place of residence is in another state, the parent removing the child for permanent residence in that state does not need the consent of the other parent.

A parent may lawfully remove a child for permanent residence in another state without the consent of the other parent where the parent removing the child has sole custody rights established on the basis of an agreement between the parents or a court ruling.

A parent may lawfully remove a child for permanent residence in another state without the consent of the other parent where the custody rights of the other parent have been suspended by a decision of the family tribunal (*bāriņtiesa*) or have been withdrawn by a court ruling.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

A parent whose custody rights have not been suspended or withdrawn may lawfully remove a child for permanent residence in another state with the consent of the other parent who has custody rights (joint or sole).

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If the other parent does not consent to the child's removal, the parent wishing to remove the child for permanent residence in another state may apply to a court with a request to establish that the child's place of residence is in the state to which this parent wants to remove the child.

If the other parent does not consent to the child's removal, the parent wishing to remove the child for permanent residence in another state may apply to a court with a request to establish sole custody rights for him/her.

If the other parent does not consent to the child's removal, the parent wishing to remove the child for permanent residence in another state may apply to the family tribunal with a request to suspend the custody rights of the other parent (where there are objective reasons) or may apply to a court with a request to withdraw the custody rights of the other parent (where there are objective reasons).

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

For permanent removal see answers to the previous questions.

In the case of temporary removal the consent of the other parent is not required.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Removal of the child to another state without the other parent's consent is only possible on a temporary basis (e.g. for a holiday). Changing the state of residence requires either consent from the other parent or a ruling by the court that has established the child's place of residence in the foreign state.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

If the parents are married, and not divorced, whether they live together or separately, consent from both of them is necessary to change the country of residence of the child.

If the parents are divorced, and the child's place of residence has been established with one of the parents, moving with the child to live permanently in a foreign state also requires the other parent's consent, because establishment of residence with one parent does not grant that parent more rights with respect to the child, unless the court has ruled otherwise.

If the parents are unmarried and the child's place of residence has not been established with either of them, it is presumed that the rights of the parents are equal and the consent of both parents is required to change the state of residence of the child.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If it is impossible to obtain consent from the other parent, the parent moving to another state must apply to a court with a request to establish the child's place of residence and the arrangements for access to the child. Where the place of residence has been established, the parent must apply for a change in the arrangements for access to the child.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Lithuanian legislation does not require additional consent from a parent for the temporary removal of a child to another state.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

As a general rule a parent does not require the consent of the other parent to remove a child to another state temporarily. If the parents have joint parental authority, either of them can travel with the child without the express consent of the other. If by way of exception one parent has sole parental authority, the presumed or express consent of the other parent is not necessary.

If a parent does not hold parental authority but has rights of access and can have the child to stay, that parent does not need the consent of the other parent to remove the child for temporary visits to another state during periods of access and when they are having the child to stay. The other parent's consent is not required for short-term temporary removals (for instance crossing the border to go shopping) or longer temporary removals (for instance for holidays) provided that the child is removed during periods when the removing parent is exercising rights of access and can have the child to stay.

The identity or other documents that need to be taken for temporary removals vary depending on the legal requirements of the country to which the child is being taken.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

If they have joint parental authority, both parents must consent to any permanent removal of the child and to any **temporary** removal of the child **for serious reasons** (for instance for major medical treatment). A transfer of address (*domicile*) or habitual residence (*résidence*) is considered to be a permanent removal and requires the consent of both parents. If one parent has sole parental authority, the other parent's agreement is not required. However, at the request of the other parent, the right of access may be adapted.

For reasons of proof, the parents' consent must be in writing. The document may be drawn up by the parents. If the host state so requires, the parents may ask a court to put their consent on record.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If one parent refuses to consent to a child's removal to another state, an application for permission to take the child abroad will have to be made to the judge specialising in family matters (the *juge aux affaires familiales*) at the district court (*tribunal d'arrondissement*).

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

As mentioned under sections 1 to 3, the provisions differ depending on whether the child is to be removed temporarily or permanently.

A minor travelling abroad who is not accompanied by a parent must have authorisation to leave the country (given in the form of a document by which a parent authorises their child to leave Luxembourg).

Parents can obtain an authorisation form from their municipal offices (the offices of the *commune*). Most municipalities ask for payment of a fee to cover the administrative costs of issuing these forms. The amount of the fee varies from one municipality to another.

Although the forms are not mandatory, many foreign authorities require them if a child is to be admitted into their territory.

Even if the child is accompanied by one parent, it is nevertheless worth bringing an authorisation given by the other parent, as some countries may require it.

Links

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Last update: 10/01/2020

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

A) In general, a **parent** may remove his or her child to another state **short-term** and **without the intent to remain** without the consent of the other parent. Such cases may include:

- the parents exercise parental responsibility jointly;
- one of the parents exercises parental responsibility based on an agreement between the parents or a court decision, but the other parent's parental responsibility has not been restricted or revoked by the court;
- the child is removed to another state by the parent under his or her right of access during the time specified for direct contact with the child, *except* if the consent of the other parent is required under a court or public guardian authority decision.

B) A **parent** may remove the child to another state **even for the long-term or with the intent to remain** without the consent of the other parent, if the parental responsibility of the other parent has been restricted or revoked by the court.

C) In the following cases the **guardian** may also lawfully remove a child to another state without the consent of the parent, provided that the public guardian authority has not restricted his or her right to do so:

- **for the short-term** and **without the intent to remain**, if the child is placed with a foster family;
- if the child is placed with a third person and the parent's parental responsibility has therefore been suspended.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

A) If a **parent** removes the child to another state **for the long-term or with the intent to remain**, the consent of the other parent is necessary. Such cases may include:

- the parents exercise parental responsibility jointly;
- one of the parents exercises parental responsibility based on an agreement between the parents or a court decision, but the other parent's parental responsibility has not been restricted or revoked by the court;

B) If the child is placed with a foster family, the **guardian** may only remove the child to another state **for the long-term** or **with the intent to remain** with the parent's consent.

Departure for another state in the pursuit of studies, work or other similar purpose may be deemed **for the long-term**.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If the other parent has not given his or her consent to the removal of the child to another state, the parent may request a decision by the public guardian authority in this matter. In such cases a decision by the public guardian authority permitting the removal of the child to another state replaces the other parent's consent.

A parent requesting the designation of a place of residence in another state must attach to his or her application documents proving that the child's education, maintenance, care and the pursuit of his or her studies are ensured in the other state (thus, in particular, an environment assessment issued by the foreign authority, certificate of school attendance, parent's income certificate, declaration of acceptance). At the parent's request, the public guardian authority will arrange for an environment assessment to be obtained. If the parent has not yet taken up work in the other state, the public guardian authority may accept a declaration from the parent about his or her expected income in lieu of an income certificate.

While adjudicating the dispute, the public guardian authority considers whether it is possible to enforce a court or public guardian authority decision settling the maintenance of direct contact between the child and the parent living separately in the absence of an international treaty or reciprocity.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

As indicated under point 1., if the trip abroad is not for the long-term, the parent may remove the child to another state even without the consent of the other parent. In such cases the general conditions for crossing the border need to be fulfilled for the child to travel abroad (for instance, the child must have a valid passport).

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Circumstances vary according to the situation but the commonest one is that consent need not be sought from the other parent when the latter's residence is unknown. Section 56(5) of the Civil Code provides that the court may deprive any parent of the rights of parental authority and, therefore, in that case the parent having the care and custody of the child does not need to ask for the consent of that parent so deprived of his or her rights.

However, the parent should always ensure that he or she may transfer a child to another State without the consent of the other parent by requesting authorisation from the competent court, i.e. the Civil Court (Family Section).

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

For a parent to transfer a child under national law, the consent of the other parent is always necessary, particularly when the other parent has a right which will be infringed when the child is transferred. Such rights include the right of access and the right to participate in the decisions concerning the child's life (and this includes the place, the environment and the culture where the child is to be brought up). In this situation the parent who does not give his or her consent may oppose the transfer on numerous grounds, for instance that such a transfer would deprive him or her of access.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

Children may be transferred to another State without the other parent's consent if this is authorised by the competent court.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Yes, the same rules apply for a temporary transfer. A parent's consent may be given as follows:

I, the undersigned, who is the parent of _____ (name, surname, date of birth, identity card number of minor) authorise that my son/daughter (choose applicable) leaves the Island of Malta for the purpose of _____ (reason to leave island) and that the such period shall be for an indefinite period/ for the duration of _____ (time period)(choose applicable).

Signature followed by the name, surname, i.d. card number of parent

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Last update: 16/10/2017

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

A parent may lawfully remove the child to another State without the other parent's consent only if the parent has sole custody of the child.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

The other parent's consent is necessary for the child's removal to another State if the parents have joint custody of the child.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If the child's removal to another State is necessary, but the other parent with joint custody of the child does not consent, application can be made to the court for alternative consent (Article 253A, Book I of the Dutch Civil Code (*Nederlands Burgerlijk Wetboek*)).

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Yes, in the Netherlands the same rules apply to temporary removal and permanent removal of a child. Click here for the relevant form: ['toestemming om te reizen'](#) (in Dutch). ['consent letter for minors travelling abroad'](#) (in English)

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Lawful removal of the child - Austria

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

1.1 Reference should first be made to the comprehensive amendment of the law governing the parents-child relationship by the 2013 Act amending the law governing the parent-child relationship and the law on names (*Kindschafts- und Namensrecht*-

Änderungsgesetz 2013) (BGBl I 2013/15), which entered into force in Austria on 1 February 2013. Since then, rules on residence are to be found in section 162 of the General Civil Code (*Allgemeines bürgerliches Gesetzbuch* – ABGB), although these rules should not be read in isolation, but in the broader context of other provisions of the law governing the parent-child relationship.

1.2 A parent may in any case remove the child to another State without the consent of the other parent if the parent removing the child firstly has been awarded sole custody; secondly, has notified the other parent in advance; and, thirdly, the remaining parent did not then express opposition within a reasonable time and did not accordingly petition the court for withdrawal or restriction of custody. If the other parent does petition the court, the court must decide whether or not removal is lawful. To safeguard the decision on the change of residence, the court may also impose a prohibition on departure with the child (Section 107(3), fourth sentence, Conflict Resolution Act (*Außerstreitgesetz* – AußStrG)).

A statement made by the parent not awarded custody concerning the move abroad must be taken into consideration by the other parent if the wish expressed in that statement is more in line with the child's best interests.

If the parent awarded sole custody of the child has not notified the other parent of the planned move – he or she is obliged to give notification in essential matters (Section 189(1), first sentence, ABGB, which in any case includes moving abroad) – or if he or she moves abroad in spite of significant opposition expressed by the other parent, this is nevertheless (in the absence of legal custody of the other parent) not a breach of custody law within the meaning of Article 3 of the Hague Convention on Child Abduction, but only an infringement of the provisions of Austrian family law governing the internal relationship between the parents, which may entail consequences under family law (from simple caution to switch of custody).

1.3 If the parents have both been awarded custody, they must, as far as is feasible and possible, exercise custody by mutual agreement (Section 137(2), last sentence, ABGB).

A distinction has to be made between situations in which the child is removed abroad by (a) the parent in whose household the child is mostly looked after or (b) the other parent in whose household the child therefore is not mostly looked after. A parent in whose household the child is not mostly looked after in any case acts unlawfully within the meaning of Article 3 of the Hague Convention on Child Abduction. For the parent in whose household the child is mostly looked after, the legal situation is more complex:

Section 189(1), first sentence, ABGB, cited above, on the obligation to notify the other parent in essential matters, also applies where both parents have been awarded custody (Section 189(5) ABGB). As for whether failure to notify the other parent, who has also been awarded custody, in accordance with Section 189(5) in conjunction with Section 189(1), first sentence, ABGB is sufficient on its own to constitute a breach of custody law within the meaning of Article 3 of the Hague Convention on Child Abduction, expert opinions are divided. The Austrian Supreme Court of Justice has recently confirmed that this is the case (6Ob 170/16t).

The statement of the parent in whose household the child is not looked after must also be considered here, if the wish expressed in it is more in line with the child's best interests. Irrespective of being termed an unlawful breach of custody law within the meaning of the Hague Convention on Child Abduction, the failure to provide notification may constitute conduct in the internal relationship which is in breach of Austrian family law and entail the above-mentioned consequences.

1.4 If both parents have been awarded custody, without it being established in whose household the child is to be mostly looked after, the agreement of the other parent must be obtained. In the absence of the consent of the other parent, application for a decision may be made to the guardianship court (*Pflegschaftsgericht*) with jurisdiction. In its decision, the court has to take into account both the best interests of the child and the rights of the parents to protection from violence and to freedom of movement and freedom to pursue a professional activity (Section 162(3) ABGB). Here too, however, vis-à-vis third parties, each parent has powers of representation only for as long as the custody (in the field of the right to determine the child's residence) has not been finally or provisionally revoked.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

In any case, the consent of the other parent is necessary if the parent removing the child either (a) has not been awarded custody or (b) has been awarded custody, but the child is not mostly looked after in his or her household.

In cases where (a) the parent in whose household the child is mostly looked after or (b) the parent with sole custody wishes to move to another State with the child, he or she must comply, in the internal relationship, with the obligation to notify pursuant to Section 189 ABGB (see response to question 1) and consider the view of the notified parent, if it is more in line with the best interests of the child.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

3.1. If the parents have both been awarded custody, without it being established in whose household the child is to be mostly looked after, the parent wishing to transfer his or her residence abroad, without the consent of the other parent, must apply to the guardianship court with jurisdiction. In its decision on authorisation, the court has to take into account both the best interests of the child and the rights of the parents to protection from violence and to freedom of movement and freedom to pursue a professional activity (Section 162(3) ABGB).

3.2. If the parent wishing to move abroad with the child has not been awarded custody at all or if the child is not cared for mostly in his or her household, he or she may apply to the court for withdrawal or restriction of the custody of the other parent (and the – possibly also only partial – transfer of custody to himself or herself). Especially as a less severe remedy compared to revocation of custody, the court could also revoke legally necessary rights of consent and approval or substitute a legally necessary consent or approval, if there are no justified reasons for the refusal (Section 181(1) ABGB).

3.3. The parent awarded custody, in whose household the child is mostly cared for, must notify the other parent and give him or her the opportunity to express his or her view (Section 189 ABGB), but notifying him or her and consent are not a prerequisite for departure.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Also in relation to a temporary removal in the case of joint custody, the parents must, as far as is feasible and possible, exercise custody by mutual agreement (Section 137(2), last sentence, ABGB). However, evidence of this mutual agreement is not a prerequisite for departure.

However, the requirement for mutual agreement could entirely lawfully not apply, for example if a spontaneous weekend visit to grandparents abroad were to be made and the other parent in any case did not intend to have any contact with the child during this time (here it would not at all be feasible to reach a mutual agreement).

The same applies in cases where the other parent merely has to be informed (Section 189(1) ABGB), but it depends on the circumstances of the individual case (for instance the duration, destination and purpose of the trip) whether the temporary removal is to be considered an essential matter at all.

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Last update: 20/03/2020

Lawful removal of the child - Poland

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Parental responsibility is inherently exercised jointly by both parents. This follows from Article 97(2) of the Polish Family and Guardianship Code (*kodeks rodzinny i opiekuńczy*), pursuant to which the parents decide jointly in essential matters concerning a child and, if they fail to come to an agreement, these matters are decided upon by a guardianship court (*sąd opiekuńczy*). Only in less important matters concerning a child can each parent decide independently without having to consult the other parent and obtain their consent. According to the case-law of Polish courts, taking a child abroad, both permanently and temporarily, even on holiday, is considered an essential matter.

In the light of Article 97(2) of the Family and Guardianship Code, a parent may take a child abroad without the other parent's consent only if:

- a) the other parent has been deprived of parental responsibility over the child by decision of a Polish court (Article 111 of the Family and Guardianship Code);
- b) the parental responsibility of the other parent has been suspended by decision of a Polish court (Article 110 of the Family and Guardianship Code);
- c) the other parent has limited parental responsibility over the child (Article 109 of the Family and Guardianship Code). The court decides how parental responsibility is to be limited by applying the measure that will best serve the child's interest. In particular, the parent whose parental responsibility has been limited may be deprived of the right to co-decide in essential matters concerning the child or in some of these matters. If a parent has been deprived of the right to co-decide, for example, about the child's habitual residence by such a judgment, then that parent will not be able to oppose a change of the child's habitual residence in Poland to habitual residence abroad.
- d) the parents' rights and obligations towards the child have been changed following a judgment handed down in proceedings for divorce (Article 58(1) and (1a) of the Family and Guardianship Code), marriage annulment (Article 51(1) and (1a), read in conjunction with Article 21 of the Family and Guardianship Code) or separation (Article 58(1) and (1a), read in conjunction with Article 61³(1) of the Family and Guardianship Code). This also applies to decisions delivered in paternity proceedings (Article 93(2) of the Family and Guardianship Code), in proceedings for amendment of a judgment on parental responsibility and the manner of exercising this responsibility given in proceedings for divorce, separation, marriage annulment or establishment of parentage (Article 106 of the Family and Guardianship Code) and in proceedings for entrusting the exercise of parental authority to one of the parents in cases where they do not live together (Article 107(1) and (2) of the Family and Guardianship Code). In particular, in such cases the court may entrust the exercise of parental responsibility to one of the parents and limit the other parent's rights to specific obligations and rights towards the child. If a divorce court entrusts the exercise of parental responsibility to one of the parents and limits the parental responsibility of the other parent, then, although such a judgment does not deprive the other parent of parental responsibility over the child, that parent may exercise their rights and obligations only in so far as the court permits them to do so. If the court does not confer the right to co-decide about the child's residence on the other parent, then, in principle, the parent to whom the exercise of parental responsibility has been entrusted decides about the child's residence on their own (see, however, point 2).
- e) the other parent has been deprived of the right to co-decide about changes in the child's residence by a judgment of a foreign court recognised in Poland.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

The other parent's consent is necessary in all cases not listed in the previous point. This includes situations where a parent has full parental responsibility, or their parental responsibility has been limited but they have not been deprived of the right to co-decide about the child's residence. Polish case-law goes even further in this respect. As the Supreme Court (*Sąd Najwyższy*) explained in its decision of 10 November 1971 in case III CZP 69/71 *in order for a child to be taken abroad permanently by the parent to whom the exercise of parental authority has been entrusted in divorce proceedings, it is necessary to obtain the permission of the court dealing with guardianship matters as long as the other parent who was granted the right to supervise the upbringing of the child has not provided a statement of consent for the child to go abroad*. Thus, if the court has not conferred on the other parent the right to co-decide about the child's habitual residence, for example in divorce proceedings, in the light of the quoted decision the other parent may still demand the return of the child if they would be unable to exercise their right to contact the child. In its decision of 3 March 1985 in Case III CRN 19/85, the Supreme Court held that *taking a child abroad on holiday, being an essential matter, requires the consent of both parents who exercise parental responsibility or, failing such consent, a decision of the court dealing with guardianship matters*.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

In such cases, an application must be lodged with the guardianship court in Poland for substitute consent for a child to go abroad. Applications for such consent may be lodged by parents who have not been deprived of parental responsibility or whose parental responsibility has not been suspended. Applications may be lodged by the applicants themselves: in such cases Polish law does not require parties to be represented by a lawyer before the court. The court with subject-matter jurisdiction to consider these applications is the district court (*sąd rejonowy*) (family and juvenile division) as the court of first instance, while the court with territorial jurisdiction is the court of the place where the child resides or is staying.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

As mentioned above, taking a child abroad for a short period of time requires the consent of the other parent.

Consent forms for taking a child abroad (permanently or temporarily) are not used in Poland. Consent can therefore be given in any form. However, it seems advisable to obtain written consent, which could serve as evidence in any proceedings for the return of a child based on the 1980 Hague Convention. The assistance of a Polish advocate, attorney at law or civil law notary may be useful in preparing such consent.

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Last update: 13/07/2020

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Both parents are responsible for dealing with issues of particular importance (Articles 1901, 1902, 1911 and 1912 of the Civil Code (*Código Civil*)).

When parents break up (divorce or separation), both of them remain responsible for issues of particular importance (Article 1906 (1) of the Civil Code), unless the court, based on a reasoned decision, decides that responsibility should be exercised by only one parent, or when the joint exercise of responsibility is deemed not to be in the best interests of the child (Article 1906(2) of the Civil Code).

There is no specific definition of 'issues of particular importance'. They refer to a limited range of aspects in the life of a child or to serious and uncommon existential issues relating to the child's core rights.

The location or selection of where a child's life will be centred, in other words, choosing where he or she will live is an issue of particular importance. Both parents are responsible for this decision; in the event of parental disagreement on this matter, the child's place of residence will be determined by the court (Article 1906(5) of the Civil Code).

Therefore, one parent may lawfully remove a child to another state without the consent of the other parent only when he or she has exclusive parental responsibility or the child's place of residence has been determined or changed by a court, allowing removal to another state.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Consent is required whenever both parents exercise responsibility, as is currently the general rule under Article 1906(1) of the Civil Code.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If one of the parents does not consent to the removal of a child to another state and both parents exercise responsibility, such removal of a child to another state may only take place through a judicial decision (Article 1906(5) of the Civil Code).

In such an event, the proceedings must be brought before the court or court division with territorial jurisdiction and with jurisdiction for matters relating to families and minors (see Articles 122 to 125 of Law No 62/3013 on the Organisation of the Judicial System); the proceedings will take the form set out in the rules governing civil guardianship proceedings approved by Law No 141/2015 (see Articles 3, 9 and 67 thereof).

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

In legal theory and case-law, temporary removal for holidays or leisure has not been considered as an issue of particular importance where removal does not require changes to the place where a child's life is centred. Exceptions include removal to countries in armed conflict, countries which are notably unsafe or countries affected by pandemics, thus placing the health and safety of the child at risk.

However, health care has been considered as an issue of particular importance, requiring the agreement of both parents, depending on the specific health care in question and the repercussions such care could have on the child's core rights. It may involve significant medical treatment (chemotherapy, experimental therapies) or the need to accompany the child because he or she does not understand the language used by medical staff or the medical staff may find it hard or impossible to obtain exact information from the child on symptoms, thus requiring translation.

When health care of such importance requires the temporary removal of the child, if both parents agree to the treatment, this agreement extends to the removal of the child.

Forms

The Aliens and Borders Service (SEF) has model forms for the removal of minors. They can be found at the following links:

<https://www.sef.pt/pt/pages/conteudo-detalle.aspx?nID=73>

Model form (removal of a Portuguese minor):

<http://www.sef.pt/documentos/56/AUTORIZACAO%20DE%20SAIDA%20DE%20MENORES%20DE%20TERRITORIO%20NACIONAL.doc>

Model form (removal of a foreign minor):

<http://www.sef.pt/documentos/56/AUTORIZACAO%20DE%20SAIDA%20DE%20MENORES%20DE%20TERRITORIO%20NACIONAL.doc>

Applicable legislation

Rules governing civil guardianship proceedings - http://www.pgdlisboa.pt/leis/lei_mostra_estrutura.php?tabela=leis&artigo_id=&nid=2428&nversao=&tabela=leis&so_miolo=

Civil Code - http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&tabela=leis

Note:

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Last update: 11/09/2020

Lawful removal of the child - Romania



Please note that the original language version of this page [ro](#) has been amended recently. The language version you are now viewing is currently being prepared by our translators.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

According to Article 30 of Law No 248/2005 on the regime of free movement of Romanian citizens abroad, a child (who is a minor and) who is the holder of an individual travel document or identity card and who is travelling abroad together with either parent may leave the territory of Romania without the other parent's statement being required, provided that the accompanying parent provides proof that the child has been entrusted to him or her under a final and irrevocable court judgment (definitivă și irevocabilă) or that he or she exerts parental authority alone under a final and irrevocable court judgment (or under a final court judgment for proceedings initiated from 15 February 2013 onwards).

It is not necessary to provide a statement from a parent whose parental rights have been terminated or a parent who has legally been declared missing under the law, if the accompanying parent provides proof of this fact.

The border police allow accompanied minors to exit Romania if the accompanying parent justifies the need to travel abroad with the fact that the minor child is to receive medical treatment that is unavailable within the territory of Romania, in the absence of which the minor's life or health is seriously endangered if he or she shows supporting documents in this respect, which are issued or endorsed by Romanian healthcare authorities and stating the period and the state(s) where that medical treatment is to be given, even if consent has not been given by both parents, the other parent, the surviving parent or the legal representative. Likewise, the border police allow accompanied minors to exit Romania if the accompanying parent provides proof that the minor child is travelling for studies or official competitions by showing the appropriate documents indicating the period and state(s) where those studies are to be conducted or competitions are to be held, even if only one of the parents has given their consent.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

The other parent's consent is required in order to remove a child to another Member State, where parental authority is exercised jointly by both parents.

Thus, parents exercise parental authority jointly and equally, regardless of whether the parents were married when the child was born.

In the case of divorce, the parents have joint parental authority, unless otherwise decided by the court. If sound reasons exist and taking into account the best interests of the child, the court may decide that parental authority should be exercised only by one of the parents.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

Whenever misunderstandings arise between the parents with regard to the exercise of their rights or the fulfilment of their parental duties, a supervising court rules in the best interests of the child, after having heard the parents and taken into account a psychological-social report. Thus, the other parent's consent to a child travelling abroad may be substituted by the court judgment.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Law No 248/2005 on the regime of free movement of Romanian citizens abroad does not distinguish between temporary and final removal. There is no standard parental consent form for removal of the minor child accompanied by the other parent. The law provides that the statement must indicate the parent's consent to the trip concerned to the country(ies) of destination and to the travel period.

If a child leaves the territory of Romania together with a person other than his or her parents, a statement must be produced and it must include both parents' consent to that trip taken by the child to the country(ies) of destination, to the travel period, as well as giving the details of that accompanying person. The statement must also include, as well the purpose of the travel, the route followed to the country of destination, a statement on whether the minor child is to remain in the country of destination, in which case also indicating the person to whom the minor child is to be entrusted, and whether the child is to return together with an accompanying person, whose details must also be given if that person is other than that with whom the child left Romania. The standard statement form for parental consent to a minor child leaving the country accompanied by another adult is included below.

The statements indicated above must be drawn up in two originals and must be authenticated in Romania by the notary public and abroad by the diplomatic missions or consular posts of Romania or, if such statements have been made before foreign authorities, they must meet the requirements for legalisation under the law or have the apostille affixed in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. An original of the statement is to be kept by the accompanying person and the second original is attached to the minor's passport.

Relevant files

[Statement Form for Parents' Consent to the Minor Child's Leaving the Country Accompanied by Another Adult](#)

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Last update: 15/03/2017

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

A parent may legally relocate a child to another country without the consent of the other parent when that other parent has had their parental right or contractual capacity removed. When one parent has had their parental right or contractual capacity removed, the parental right is thereby held exclusively by the other parent (Article 115 of the Marriage and Family Relations Act/*Zakon o zakonski zvezi in družinskih razmerjih*).

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

The consent of the other parent to the relocation of a child to another country is always required, except in cases where the parental right is held exclusively by the other parent.

Under the Marriage and Family Relations Act, the parental right is held jointly by the father and mother (third paragraph of Article 4).

Parents exercise their parental right by common consent in accordance with the interests of the child (first paragraph of Article 113 of the Marriage and Family Relations Act). The exercise of the parental right includes a decision on which country a child resides in.

When parents do not live together and are not both in charge of the child's care and upbringing, they both decide by common consent, in accordance with the interests of the child (second paragraph of Article 113 of the Marriage and Family Relations Act), on issues which have a significant influence on the child's development; these issues include the relocation of a child to another country.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If the parents fail to reach agreement on the exercise of the parental right, a Social Work Centre assists them in reaching an agreement. A Social Work Centre also assists the parents in reaching an agreement when they are unable to reach agreement on issues which have a significant influence on the child's development, and when they do not live together and are not both in charge of the child's care and upbringing.

If, even with the assistance of a Social Work Centre, the parents fail to agree on issues which have a significant influence on the child's development, the court decide on the matter in a non-litigious procedure at the request of one or both parents. The proposal must be accompanied by proof from a competent Social Work Centre stating that the parents attempted to reach agreement on the exercise of the parental right with its assistance. Before the court gives its ruling, it is obliged to seek the opinion of a Social Work Centre on the child's interests. The court also considers the child's opinion if it is expressed by the child him/herself, or by a person the child trusts and who has been chosen by the child him/herself, and provided the child is capable of understanding its significance and consequences.

The above is taken from Article 113 of the Marriage and Family Relations Act.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Where the issue of a significant influence on a child's development arises in relation to the temporary relocation of a child, the same rules apply to the temporary relocation as to relocation for a longer period.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Where this only concerns a short-term stay for the purpose of e.g. short-term study, visiting relatives, a camp or holiday, etc. What is important is that neither the child nor the parent intends for the child to settle permanently in the other state.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Where this concerns a permanent move abroad.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

It is essential to refer to a guardianship court (*poručenský súd*), which will decide on this important question of parental responsibility. Specifically the court can consent to the child's moving abroad permanently.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

See above. There are no such forms.

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

The child's guardians and the making of decisions relating to the child are regulated by the Act on Child Custody and Right of Access (*laki lapsen huollosta ja tapaamisoikeudesta*) (361/1983).

If only one parent has custody of the child, that parent decides on matters relating to the child, including where the child lives, and may therefore essentially take the child to another State without the other parent's consent.

If the parents have joint custody of the child, they are jointly responsible for the duties inherent in custody and make the decisions concerning the child together.

If the parents have joint custody of the child, a court may decide on the distribution of responsibilities between them. In other words, it may issue a decision granting the decision-making power in relation to specific custody duties to only one parent. The court may order in the custody decision that one of the parents alone may decide where the child lives.

If the court has ordered in its decision that only one custodian may exercise the power to decide where the child lives, that custodian may take the child to another State without the other parent's consent.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

If the parents have joint custody of the child, neither parent can essentially take the child to another State without the other parent's consent.

Please also see the answer to the previous question.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

If one parent does not consent to the child being taken to another State, the matter may be brought before the court for a decision.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

There are no special rules in Finland concerning temporary removal, e.g. for holidays, and there are no forms that are used to give consent.

A decision by the court concerning the right of access to the child may contain provisions as to whether a parent may travel abroad with the child during such access.

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Last update: 01/06/2020

Lawful removal of the child - Sweden

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-



1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

If a child has two guardians, a joint decision is essentially required on matters relating to the child's personal affairs, including both short trips abroad and any permanent move. If the child lives with only one of the two guardians, however, the parent with whom the child lives will be regarded as having the right to decide where the child will live in his or her free time, including short visits abroad, as long as this does not infringe any right that the child may have to contact with the other guardian.

A parent who is the sole guardian has the right to take the child with him or her on journeys abroad, or to move abroad permanently with the child, without the other parent's consent. If the child is entitled to contact with the other parent, however, this should be borne in mind by the parent who is the child's guardian. The other parent, with whom the child has the right of contact, may apply for enforcement of the contact decision in the child's new country of residence, where this is possible under the rules of the new country of residence. This other parent may also apply for access under the Hague Convention of 1980, if that Convention applies to the country in which the child resides. If a sole guardian does not abide by an access decision, and thus does not satisfy the child's need for close, good contact with both parents, this usually has a bearing on how a Swedish court would assess the matter of custody in the event of any subsequent legal dispute. The parents thus have joint responsibility for ensuring that access works well.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

As may be seen from the response to question 1, parents who are both guardians may make joint decisions on matters relating to the child, including any stay abroad. It also follows from the response to question 1 that, even if only one of the parents is a guardian, there are certain situations where that guardian should adapt any short or permanent stays abroad to the child as decided with regard to the child's right of contact with the other parent. Removing a child unlawfully may constitute a crime under Swedish law.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

Where a guardian has joint custody of the child together with the other parent, there is an opportunity for that guardian to make a decision alone in certain situations with regard to custody of the child. This opportunity is conditional upon the other guardian being prevented by absence, illness or another reason from being involved in making any decisions that may not without difficulty be postponed. Nor may decisions of crucial importance for the child's future be taken in this way, unless required to be so in the best interests of the child. There is also an opportunity for the local authority's social affairs committee to decide on psychiatric or psychological treatment, even if only one guardian consents to it, if this is necessary in the best interests of the child.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

The same provisions apply to a parent who is a sole guardian. If the child lives with only one of the two guardians, the parent with whom the child lives will be regarded as having the right to decide where the child will live in his or her free time, including short visits abroad (please see the response to question 1). A guardian who has joint custody of the child with the other parent may also, following a decision by the local authority's social affairs committee, take the child abroad for psychiatric or psychological treatment without the other parent's consent (please see the response to question 3).

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Last update: 09/03/2015

Lawful removal of the child - England and Wales

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- 4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.



1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

The law of England and Wales makes provision for the lawful removal of the child from the UK. A child arrangements order is an order from the court determining with whom a child should live or spend time. Section 13(2) of the [Children Act 1989](#) allows a person with a child arrangements order (formerly known as both residence and contact orders) concerning the child to remove the child from the UK for a period of less than one month (for example for a holiday).

This is consistent with section 1(4) of the [Child Abduction Act 1984](#) which provides that a person does not commit an offence by taking or sending the child out of the UK if they are a person in whose favour there is a child arrangements order in force and the removal is for less than a month.

Where there is no child arrangements order in force, a parent with sole parental responsibility can lawfully remove a child from the UK without permission from the other parent. However, the other parent who does not have parental responsibility may prevent the removal of a child from the jurisdiction by applying to the courts in England and Wales for a prohibited steps order. They may also apply to the courts for a court order relating to parental responsibility. "Parental responsibility" is defined in section 3(1) of the Children Act 1989.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Section 13 of the Children Act 1989 requires that where a child arrangements order is in force with respect to a child, no one may remove the child from the UK without the written consent of every person who has parental responsibility for the child, or the permission of the court.

Furthermore, section 1 of the Child Abduction Act 1984 provides that a parent (and specified other people which includes a person who is a guardian of the child, a person in whose favour a child arrangements order is in force with respect to the child or a person with whom the child lives) commits an offence (abduction of a child) if he or she takes or sends a child outside of the UK without the appropriate consent (which means the consent of the child's mother and the child's father if he has parental responsibility – or consent of specified other people referred to above).

Where there is no child arrangements order in place but more than one person has parental responsibility for the child, no person with parental responsibility for that child is allowed to remove the child from the UK without the consent of the other holders of parental responsibility or the permission of the court.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

A parent with a child arrangements order concerning the child and who is seeking to remove the child permanently from the UK can lawfully relocate with the child without the intervention of the court if they have the written consent of the other parent with parental responsibility or anyone else with parental responsibility. If consent is refused, an application to the court will need to be made for permission to remove the child from England and Wales on a permanent basis (section 13(1) of the Children Act 1989).

If there is no child arrangements order in place, a person who has parental responsibility for the child and who is seeking to remove the child permanently from the UK must apply to the court for permission if consent from anyone else with parental responsibility is refused.

In England and Wales the paramount consideration and determining factor in international relocation cases will always be the welfare of the child. Judges sitting in the Family Courts will take into account all the information available to them in each case before arriving at an independent judgment. They will seek first and foremost to make decisions that are in the best interests of the child concerned. The child's welfare will always be the court's paramount consideration in determining such cases. The Children Act 1989 provides statutory protection to safeguard the welfare of children in cases of relocation from England and Wales.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

The response to question 1 above sets out the provisions for lawful removal of a child from the UK for a period of less than one month. A person with a child arrangements order in favour of the child can take the child abroad for **less than one month** and will therefore not need the permission of the other parent to take the child on holiday.

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Last update: 27/01/2020

Lawful removal of the child - Northern Ireland

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

The law of Northern Ireland makes provision for the lawful removal of the child from the UK. Article 13(1) of the [Children \(Northern Ireland\) Order 1995](#) allows a person with a residence (custody) order in respect of a child to remove the child from the UK for a period of less than one month.

This is consistent with Article 3(2A) of the [Child Abduction \(Northern Ireland\) Order 1985](#) which provides that a person does not commit an offence by taking or sending the child out of the UK if s/he is a person in whose favour there is a residence order in force and the removal is for less than a month (provided there is no order prohibiting the removal of the child).

If there is no residence order in force and the mother has sole parental responsibility she can lawfully remove the child from the UK without the permission of the father. However, a father who does not have parental responsibility may endeavour to prevent the removal of his child from the jurisdiction by applying to the courts in Northern Ireland for a prohibited steps order. He may also apply to the courts for an order which confers parental responsibility ("parental responsibility" is defined in Article 6(1) of the Children (Northern Ireland) Order 1995) or a residence order (if the court grants a residence order in his favour it must also grant a parental responsibility order) .

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Article 13 of the Children (Northern Ireland) Order 1995 provides that, if a residence order is in force with respect to a child, no one may remove the child from the UK for more than a month without the written consent of every person who has parental responsibility for the child, or the permission of the court.

Furthermore, Article 3(1) of the Child Abduction (Northern Ireland) Order 1985 provides that a person who is connected with a child commits an offence (abduction of a child) if s/he takes or sends the child outside of the UK without the appropriate consent.

Where there is no residence order in place but more than one person has parental responsibility for the child, no person with parental responsibility for that child is allowed to remove the child from the UK without the consent of the other holders of parental responsibility or the permission of the court.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

A parent with a residence order concerning the child and who is seeking to remove the child permanently from the UK can lawfully relocate with the child without the intervention of the court if they have the written consent of the other parent with parental responsibility or anyone else with parental responsibility. If consent is refused, an application to the court will need to be made for permission to remove the child from Northern Ireland on a permanent basis (Article 13(1) of the Children (Northern Ireland) Order 1995).

In the UK the paramount consideration and determining factor in international relocation cases will always be the welfare of the child. Judges sitting in the Family Courts in Northern Ireland will take into account all the information available to them in each case before arriving at an independent judgment. They will seek first and foremost to make decisions that are in the best interests of the child concerned.

If there is no residence order in place, a person who has parental responsibility for the child and who is seeking to remove the child permanently from the UK should always seek the other parent's consent or the permission of the court to do so. Otherwise s/he will prompt a complaint of child abduction.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

The response to question 1 above sets out the provisions for lawful removal of a child from the UK for a period of less than one month. A person with a residence order in favour of the child can take the child abroad for **less than one month** and will therefore not need the permission of the other parent to take the child on holiday.

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Last update: 03/02/2020

[Lawful removal of the child - Scotland](#)

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-



1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Either with specific consent from the Scottish courts or in circumstances where the other parent's consent isn't required (see answer to question 2 below)

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Consent by the other parent is necessary where the parent "for the time being has and is exercising" in relation to the child either of the following parental rights:

- To have the child living with you or otherwise to regulate the child's residence.
- If the child is not living with you to maintain personal relations and direct contact with the child on a regular basis.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

(See answer to Question 1).

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Yes.

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Lawful removal of the child - Gibraltar

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 - 4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.
-



1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Section 30 of the Children Act 2009 allows a person with a residence order concerning the child to remove the child from Gibraltar for a period of less than one month.

Where there is no residence order in force, a parent with sole parental responsibility can lawfully remove a child from Gibraltar without permission from the other parent. However, the other parent who does not have parental responsibility may prevent the removal of a child from the jurisdiction by applying to the court for a prohibited steps order.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

Section 30 of the Children Act 2009 requires that where a residence order is in force with respect to a child, no one may remove the child from Gibraltar (other than for a period of up to 1 month) without the written consent of every person who has parental responsibility for the child, or the permission of the court.

Furthermore, section 184 of the Crimes Act 2011 provides that a parent (and specified other people which includes a person who is a guardian of the child, a person in whose favour a residence order is in force with respect to the child or a person who has custody of the child) commits an offence (abduction of a child) if he or she takes or sends a child outside of Gibraltar without the appropriate consent (which means the consent of the child's mother and the child's father if he has parental responsibility – or consent of specified other people referred to above).

Where there is no residence order in place but more than one person has parental responsibility for the child, no person with parental responsibility for that child is allowed to remove the child from Gibraltar without the consent of the other holders of parental responsibility or the permission of the court.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

A parent with a residence order concerning the child and who is seeking to remove the child permanently from Gibraltar can lawfully relocate with the child without the intervention of the court if they have the written consent of the other parent with parental responsibility or anyone else with parental responsibility. If consent is refused, an application to the court will need to be made for permission to remove the child from Gibraltar on a permanent basis (section 30 of the Children Act 2009).

The paramount consideration and determining factor in international relocation cases will always be the welfare of the child. Judges will take into account all the information available to them in each case before arriving at an independent judgment. They will seek first and foremost to make decisions that are in the best interests of the child concerned.

Furthermore, where there is no residence order in place, a person who has parental responsibility for the child and who is seeking to remove the child permanently from Gibraltar must apply to the court for permission if consent from anyone else with parental responsibility is refused.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

The response to question 1 above sets out the provisions for lawful removal of a child from Gibraltar for a period of less than one month. A person with a residence order in favour of the child can take the child abroad for **less than one month** and will therefore not need the permission of the other parent to take the child on holiday.

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