

## LADY CHIEF JUSTICE'S OFFICE

### PROTECTIVE MEASURES AVAILABLE IN NORTHERN IRELAND IN THE CONTEXT OF INTERNATIONAL CHILD ABDUCTION - FACT SHEET

#### INTERNATIONAL HAGUE NETWORK JUDGES FOR NORTHERN IRELAND

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## **1. Introduction and Purpose**

This fact sheet provides information for judges, parties, parents and mediators in cases of international child abduction involving a child or children allegedly wrongfully removed from, or wrongfully retained out of, Northern Ireland when an application has been made under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (“the 1980 Convention”)<sup>1</sup>.

This document aims to provide a summary of protective measures that are available in Northern Ireland and is modelled on the fact sheets prepared by the Australian Hague Network judges, and those from England & Wales and Scotland. This fact sheet aims to assist with the process of identifying protective measures available in Northern Ireland. The information provided in this document is not exhaustive and it will not assist in every case. It is not intended to suggest any particular outcome in any application under the 1980 Convention. The manner in which the information contained here is taken into account and the determination of each application will, of course, be for the individual judge seized of the proceedings. Additionally, direct judicial communications, in particular through the International Hague Network of Judges, can be used to seek further information or assistance.

## **2. The International Hague Network of Judges**

A list of the International Hague Network of Judges (“IHNJ”) can be found on the Hague Conference on Private International Law (“HCCH”) website.<sup>2</sup>

The International Hague Network judge for Northern Ireland is Dame Siobhan Keegan, Lady Chief Justice, Royal Courts of Justice, Belfast.

## **3. Article 13(b) of the 1980 Convention**

The 1980 Convention contains several exceptions to the presumptive immediate return of a child to their habitual residence. Under Article 13(b), the requested state can deny a request to return if:

“there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation”.

Where the Article 13(b) defence, commonly referred to as the “grave risk exception”, is relied on in opposing a return application, the Guide to Good Practice (“GGP”) published by the HCCH, notes that the court should undertake

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<sup>1</sup> [Convention on the Civil Aspects of International Child Abduction, 25 October 1980.](#)

<sup>2</sup> [Members of the International Hague Network of Judges.](#)

a “step-by-step analysis”.<sup>3</sup> This Guidance may provide assistance when, as part of that analysis, the court is considering “whether adequate measures of protection are available or might need to be put in place to protect the child from the grave risk of such harm or intolerable situation when evaluating whether the grave risk exception has been established”.<sup>4</sup>

In Northern Ireland, where Article 13(b) is relied on, the parties to the application must address the issue of protective measures that are available or could be implemented, to meet or ameliorate any alleged identified risks, as early as possible in proceedings. Additionally, due to the obligation to act expeditiously (Articles 2 and 11), the courts typically determine whether Article 13(b) has been established on the basis of an assessment of risk, including as appropriate, the availability and effectiveness of relevant protective measures.

#### **4. Protective Measures**

As defined by the GGP on Article 13(1)(b), the term protective measures “is to be understood broadly as measures available to address a grave risk”.<sup>5</sup> These measures cover:

“a broad range of existing services, assistance and support including access to legal services, financial assistance, housing assistance, health services, shelters and other forms of assistance or support to victims of domestic violence, as well as responses by police and through the criminal justice system”.<sup>6</sup>

This remains reflective of the approach in Northern Ireland where protective measure are considered to be “a broad concept” which includes:

“potentially, anything which might impact on the matters relied upon in support of the Article 13(b) defence and, for example, can include general features of the home State such as access to courts and other State services”.<sup>7</sup>

Further details of the protective measures available in Northern Ireland are outlined in more depth below.

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<sup>3</sup> [1980 Child Abduction Convention Guide to Good Practice, Part VI Article 13\(1\)\(b\)](#) at p.31.

<sup>4</sup> GGP at [41].

<sup>5</sup> GGP, Glossary, p.10.

<sup>6</sup> GGP at [43].

<sup>7</sup> [C \(Children\) \(Abduction: Article 13 \(b\)\) \[2018\] EWCA Civ 2834](#), at [41].

## 5. Domestic Abuse

The relationship between the grave risk exception and domestic abuse is important to consider, with research indicating that parents often attempt to use Article 13(b) in order to refuse return in cases of domestic abuse.<sup>8</sup> This underlines the need for protective measures that can provide effective protection for victims of domestic abuse.

The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021<sup>9</sup> (“the Domestic Abuse Act”) is the legislation which addresses domestic abuse and coercive control in Northern Ireland.

Section 2(2) of the Act states that abusive behaviour includes:

- (a) behaviour directed at another person that is violent;
- (b) behaviour directed at another person that is threatening;
- (c) behaviour directed at another person, at a child of that person or at someone else that –
  - (i) has as its purpose (or among its purposes) one or more of the relevant effects, or
  - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects.

According to section 2(3), the “relevant effects” referred to above are:

- (a) making another person dependent on, or subordinate to, them;
- (b) isolating another person from friends, family members or other sources of social interaction or support;
- (c) controlling, regulating or monitoring another person’s day-to-day activities;
- (d) depriving another person of, or restricting another person’s, freedom of action;

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<sup>8</sup> [Jessica Raffal and Valentina Shaknes, ‘The Hague Abduction Convention: left-behind parents and domestic violence’ \(2025\).](#)

<sup>9</sup> [Domestic Abuse and Civil Proceedings Act \(Northern Ireland\) 2021.](#)

- (e) making another person feel frightened, humiliated, degraded, punished or intimidated.

In addition to the Act's recognition of children as the potential victims of domestic abuse, section 9(1) states that the offence is aggravated if a relevant child is involved, for example if a child saw or heard or was present during an incident of domestic abuse.<sup>10</sup>

The impact of domestic abuse on children is well-documented and illustrated in the case law and Guidance in this jurisdiction.<sup>11</sup> It is, for instance, recognised that domestic abuse is:

“harmful to children and/or puts children at risk of harm, including where they are victims of domestic abuse, for example by witnessing one of their parents being violent or abuse to the other parent, or living in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour).”<sup>12</sup>

## 6. Recognition and Enforcement in Northern Ireland

### (i) Mirror Orders

The GGP, at [47], states that when considering the efficacy of a proposed measure of protection, “one option may be to give legal effect to [it] by a mirror order in the state of habitual residence.”

A family court in Northern Ireland may make a mirror order either in advance of the child being returned to, or on their arrival in Northern Ireland provided the protective measures are those which the court has jurisdiction to make (as set out below).

### (ii) The 1996 Hague Child Protection Convention<sup>13</sup>

As stated in the GGP, at [48], when the 1996 Convention is in force between the states involved, its provisions are relevant to the efficacy of a proposed measure of protection falling within scope of that Convention. In particular, Article 23 provides that “measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States”, which includes measures taken under Article 11. Additionally, measures taken by the authorities of other Contracting States can be registered for the purpose of enforcement by a

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<sup>10</sup> Section 9(2)(b).

<sup>11</sup> See [Guidance for the Judiciary - Family Proceedings: Domestic Abuse - 300625](#).

<sup>12</sup> *Supra*, para 2.1.

<sup>13</sup> [Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measure for the Protection of Children, 19 October 1996](#).

court in Northern Ireland at the request of an interested party (through the procedure outlined in the Family Proceedings Rules (Northern Ireland) 1996, Part VIII<sup>14</sup>).

The 1996 Hague Convention came into operation in the United Kingdom on 1 November 2012.

### **(iii) Recognition and enforcement of protection measures issued in EU Member States**

Regulation (EU) No 606/2013<sup>15</sup> allows for a direct recognition of protection orders issued as a civil law measure between Member States. It is assimilated into the law of Northern Ireland and may be of assistance. Authorities in Northern Ireland recognise and enforce protection measures issued in civil matters by authorities in all EU Member States other than Denmark.

Under Article 3(1), a ‘protection measure’ is any decision, whatever it may be called, ordered by an issuing authority of an EU member state in civil (i.e. not criminal) matters in accordance with its national law, which imposes one or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person’s physical or psychological integrity may be at risk:

- a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays;
- a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means;
- a prohibition or regulation on approaching the protected person closer than a prescribed distance.

The protected person must be an adult (18 years or over) for the measure to be in scope (Article 2(3)) and must be accompanied by a certificate issued in the state of origin (Article 4(2)). The factual elements of the protection measure can also be adjusted under Article 11 to give it effect in Northern Ireland.

## **7. Protective Measures available in Northern Ireland**

### **(i) Occupation and Non-Molestation Orders**

The two primary protective measures available under the Family Homes and Domestic Violence (Northern Ireland) Order 1998<sup>16</sup> are occupation orders (Articles

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<sup>14</sup> [The Family Proceedings Rules \(Northern Ireland\) 1996, Part VIII, Enforcement of Orders.](#)

<sup>15</sup> [Regulation \(EU\) No 606/2013 of the European Parliament and of the Council.](#)

<sup>16</sup> [Family Homes and Domestic Violence \(Northern Ireland\) Order 1998.](#)

11-18) and non-molestation orders (Article 20) which can be made in the family courts in Northern Ireland.

An occupation order regulates the occupation of the home. Orders can be sought by applicants regardless of whether they possess a legal or beneficial interest in the property.

This enables victims of domestic abuse to remain in, enter or have peaceful enjoyment of the home following relationship breakdown. An order does so by determining who should live in the property and by excluding one of the parties from living in or attending a specified area around the home (such as the left behind parent). The order can also impose on a party obligations as to:

- (i) the repair and maintenance of the dwelling-house; or
- (ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house (Article 18(1)).

In Northern Ireland it is not a criminal offence to breach an occupation order. Without a power of arrest, the breach is dealt with as a contempt of court.

A non-molestation order prohibits a person from molesting an applicant and/or a child. The term “molesting” has a broad meaning. The order can prevent domestic abuse, stalking and harassment by including provisions prohibiting a person from contacting or attempting to contact another person by telephone or social media or otherwise. It can also prohibit a person from attending certain places.

Breach of a non-molestation order is a criminal offence (Article 25), and it is not necessary for the police to obtain a warrant before an arrest can be made.

A proven breach of an occupation order and/or of a non-molestation order is a contempt of court for which a person can be fined or imprisoned.

## **(ii) Undertakings**

The court can accept undertakings from a party in the same terms as, but instead of, non-molestation and occupation orders. They are voluntary and are formal promises to the court. A proven breach of an undertaking is a contempt of court for which a person can be fined or imprisoned. An undertaking given to a foreign court is not enforceable in Northern Ireland in the same way unless the court in Northern Ireland decided that it was a measure within the scope of the 1996 Hague Child Protection Convention, which was therefore capable of recognition and enforcement under that Convention.

Undertakings can include the following:

- Not to harass, intimidate or threaten the returning/left behind parent;

- Not to use violence or threaten violence;
- Not to instigate or support any civil or criminal proceedings against the taking parent arising from the wrongful removal/retention;
- Surrendering a parent's and/or a child's passport(s)/travel documents to the court or some other person;
- To pay for the travel costs associated with returning the child and the taking parent;
- Not to attend the airport at which the returning parent and child are due to arrive;
- To make maintenance payments for a specified period;
- To provide accommodation or financial support to help the child(ren) and the taking parent find suitable housing;
- Not to interfere with educational arrangements;
- To assist the returning parent in obtaining legal representation in the country of return/habitual residence;
- Not to seek to remove the child from the returning parent's care until the first on notice hearing in the country of return/habitual residence;
- To assist the taking parent to obtain appropriate permissions under applicable immigration rules.

### **(iii) Domestic abuse legislation**

Section 1 of the Domestic Abuse Act creates a specific offence of domestic abuse. This legislation has the effect of criminalising coercive and controlling behaviour.

Under section 14, a person who commits this offence is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both); or, on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

### **(iv) Parental Responsibility Orders**

Several orders relating to the exercise of parental responsibility for children may be made under Article 8 of the Children (Northern Ireland) Order 1995<sup>17</sup> ("the Children Order").

#### *(a) Residence Order*

This order settles the arrangements to be made as to the person with whom a child is to live.

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<sup>17</sup> [The Children \(Northern Ireland\) Order 1995](#).

(b) *Contact Order*

This order requires the person with whom the child lives, or is to live, to allow the child to visit or stay with the person named in the order, or otherwise for that person and the child to have contact.

(c) *Prohibited Steps Order*

This order prohibits a parent (or anyone else) without parental responsibility for a child from taking a step without the consent of the court. This can include expressly prohibiting a parent from removing a child from the other parent and/or from Northern Ireland.

(d) *Specific Issue Order*

This order entitles the court to give directions for the purposes of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child. This can include education and medical matters.

In considering whether to make any order under Article 8, the court shall regard the welfare of the child as the paramount consideration (Article 3 of the Children Order).

**(v) Financial Orders**

The court may order a parent to pay maintenance and/or a lump sum for the benefit of a child under Schedule 1 of the Children Order.

The court may order either party to a marriage to pay maintenance to the other party under Article 29 of the Matrimonial Causes (Northern Ireland) Order 1978<sup>18</sup>. If there are divorce proceedings, there are additional powers.

**(vi) Passports**

The court has power to order a parent to surrender their and a child's passport to the court or some other person for safe keeping.

**(vii) General Protection**

In Northern Ireland, each Health and Social Care Trust has a general duty to safeguard and promote the welfare of children who are in need within their area (Article 18 of the Children Order) and a duty to investigate where there is

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<sup>18</sup> [Matrimonial Causes \(Northern Ireland\) Order 1978](#).

reasonable cause to suspect that a child who lives in the Trust's area is suffering, or is likely to suffer, significant harm (Article 66 of the Children Order).

Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that a child may be at risk of significant harm, the court may direct the relevant Trust to undertake an investigation of the child's circumstances (Article 56 of the Children Order). The Trust should then consider whether to apply to the court for an order, provide services or assistance for the child or family, or take any other action.

## **8. Court Proceedings**

In the course of proceedings involving children, the family court can order a report to be written when it needs more information about the child(ren)'s welfare and what action is in their best interests (Article 4 of the Children Order). This report can consider issues including where the child should live, the wishes and feelings of the child, whether the child has suffered or is at risk of suffering harm, parenting capacity, and so forth.

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