

SCHEDULES

SCHEDULE 9

AMENDMENTS

The Child Abduction (Northern Ireland) Order 1985 (NI 17)

120. In Article 2(2) (interpretation), at the end of sub-paragraph (c) add—

“and

- (d) references to a child’s parents and to a child whose parents were (or were not) married to each other at the time of his birth shall be construed in accordance with Article 155 of the Children (Northern Ireland) Order 1995 (which extends their meaning)”.

121.—(1) Article 3 (offence of abduction of child by parent, etc.) shall be amended as follows.

(2) In paragraph (1), for “(3)” substitute “(2A) to (3A)”.

(3) For paragraph (2) substitute the following paragraphs—

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

- (a) he is a parent of the child; or
- (b) in the case of a child whose parents were not married to each other at the time of his birth, there are reasonable grounds for believing that he is the father of the child; or
- (c) he is a guardian of the child; or
- (d) he is a person in whose favour a residence order is in force with respect to the child; or
- (e) he has custody of the child.

(2A) A person does not commit an offence under this Article by taking or sending a child out of the United Kingdom without obtaining the appropriate consent if—

- (a) he is a person in whose favour there is a residence order in force with respect to the child, and
- (b) he takes or sends him out of the United Kingdom for a period of less than one month.

(2B) Paragraph (2A) does not apply if the person taking or sending the child out of the United Kingdom does so in breach of an order under Part III of the Children (Northern Ireland) Order 1995.”.

(4) For the words in paragraph (3) from “but sub-paragraph (c)” to “1886” substitute the following paragraph—

“(3A) Paragraph (3)(c) does not apply if—

- (a) the person who refused to consent is a person—
 - (i) in whose favour there is a residence order in force with respect to the child; or
 - (ii) who has custody of the child; or

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(b) the person taking or sending the child out of the United Kingdom is, by so acting, in breach of an order made by a court in the United Kingdom.”.

(5) For paragraphs (5) and (6) substitute the following paragraph—

“(5) In this Article—

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

(a) the consent of each of the following—

- (i) the child’s mother;
- (ii) the child’s father, if he has parental responsibility for him;
- (iii) any guardian of the child;
- (iv) any person in whose favour a residence order is in force with respect to the child;
- (v) any person who has custody of the child; or

(b) the leave of the court granted under any provision of Part III of the Children (Northern Ireland) Order 1995; or

(c) if any person has custody of the child, the leave of the court which awarded custody to him;

“guardian of a child”, “residence order” and “parental responsibility” have the same meaning as in the Children (Northern Ireland) Order 1995;

and for the purposes of this Article a person shall be treated as having custody of a child if there is in force an order of a court in the United Kingdom awarding him (whether solely or jointly with another person) custody, legal custody or care and control of a child.”.

(6) In paragraph (7), for “received into or committed to the care of the Department of Health and Social Services” substitute “in the care of an authority (within the meaning of the Children (Northern Ireland) Order 1995)”.

122.—(1) Article 4 (offence of abduction of child by other persons) shall be amended as follows.

(2) In paragraph (1), for “paragraph (2), a person not falling within Article 3(2)(a) or (b)” substitute “paragraph (3), a person, other than one mentioned in paragraph (2),”.

(3) For paragraph (2) substitute the following paragraphs—

“(2) The persons are—

- (a) where the father and mother of the child in question were married to each other at the time of his birth, the child’s father and mother;
- (b) where the father and mother of the child in question were not married to each other at the time of his birth, the child’s mother; and
- (c) any other person mentioned in sub-paragraphs (c) to (e) of Article 3(2).

(3) In proceedings against any person for an offence under this Article, it shall be a defence for that person to prove—

- (a) where the father and mother of the child in question were not married to each other at the time of his birth—
 - (i) that he is the child’s father; or
 - (ii) that, at the time of the alleged offence, he believed, on reasonable grounds, that he was the child’s father; or
- (b) that, at the time of the alleged offence, he believed that the child had attained the age of 16.”.

123.—(1) The Schedule (modifications of Article 3 for children in certain cases) shall be amended as follows.

(2) In the cross-heading immediately preceding paragraph 1, for the words from “received into” to “Social Services” substitute “in the care of an authority”.

(3) In paragraph 1—

(a) in sub-paragraph (1), for the words from “received into” to “Social Services” substitute “in the care of an authority (within the meaning of the Children (Northern Ireland) Order 1995)”;

(b) in sub-paragraph (2)(a), for “Department of Health and Social Services” substitute “authority”;

(c) in sub-paragraph (2)(b), for “(3), (4) and (6)” substitute “(2A) to (4)”.

(4) In paragraph 2(2)(b), for “(3), (4) and (6)” substitute “(2A) to (4)”.

(5) In paragraph 3(2)—

(a) in head (a), for the words from “parental rights and duties” to “1987” substitute “order has been varied under Article 21 of the Adoption (Northern Ireland) Order 1987 so as to give parental responsibility to another agency”;

(b) in head (b) for “(3), (4) and (6)” substitute “(2A) to (4)”.

(6) In paragraph 4(2)(b), for “(3), (4) and (6)” substitute “(2A) to (4)”.