STATUTORY INSTRUMENTS

1985 No. 1638 (N.I. 17)

The Child Abduction (Northern Ireland) Order 1985

- - - - - - *30th October 1985*

Title and commencement

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

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

Interpretation

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

(2) For the purposes of this Order—

(a) a person shall be regarded as taking a child if he causes or induces the child to accompany him or any other person or causes the child to be taken;

(b) a person shall be regarded as sending a child if he causes the child to be sent;[F1]. . .

(c) a person shall be regarded as detaining a child if he causes the child to be detained or induces the child to remain with him or any other person**[**[F1] and**]**

[[F1](d) references to a child's parents and to a child whose parents were (or were not) married to **[**[F2], or civil partners of,**]** 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).**]**

F1 1995 NI 2

F2 Words in art. 2(2)(d) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **34(2)** (with regs. 6-9)

Offence of abduction of child by parent, etc.

3.—(1) Subject to paragraphs**[**[F3] (2A) to (3A)**]** and (7), a person connected with a child under the age of 16 commits an offence if he takes or sends the child out of the United Kingdom without the appropriate consent.

[[F3](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 **[**F4, or civil partners of,**]** 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.**]**

(3) A person does not commit an offence under this Article by doing anything without the consent of another person whose consent is required under the foregoing provisions if—

(a) he does it in the belief that the other person—

(i) has consented; or

(ii) would consent if he was aware of all the relevant circumstances; or

(b) he has taken all reasonable steps to communicate with the other person but has been unable to communicate with him; or

(c) the other person has unreasonably refused to consent,

[F3(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

(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.**]**

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

[F3(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.**]**

(7) This Article shall have effect subject to the provisions of the Schedule in relation to a child who is**[**F3 in the care of an authority (within the meaning of the Children (Northern Ireland) Order 1995**]**F5. . . or who is committed to a place of safety or who is the subject of proceedings or an order relating to adoption or who is subject to a**[**F5 juvenile justice centre**]** orderF6.

F3 1995 NI 2
F4 Words in art. 3(2)(b) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **34(3)** (with regs. 6-9)
F5 1998 NI 9
F6 prosp. inserted by 2002 c. 26

Offence of abduction of child by other persons

4.—(1) Subject to**[**F7 paragraph (3), a person, other than one mentioned in paragraph (2),**]** commits an offence if, without lawful authority or reasonable excuse, he takes or detains a child under the age of 16—

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

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

[F7(2) The persons are—

(a) where the father and mother of the child in question were married to **[**F8, or civil partners of,**]** 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 **[**F9, or civil partners of,**]** 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 **[**F10, or civil partners of,**]** 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.**]**

F7 1995 NI 2
F8 Words in art. 4(2)(a) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **34(4)(a)** (with regs. 6-9)