

QUESTIONNAIRE ON PREVENTIVE MEASURES

The questionnaire which appears below is addressed to States Parties to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and some Non-Governmental Organisations. It should be emphasised that respondents are also invited to identify and comment upon matters concerning preventive measures, which are not addressed specifically in the questionnaire. Where information is available on web sites, please feel free to merely state the web site address.

The Permanent Bureau requests responses to the questionnaire to be sent to the Permanent Bureau, if possible in electronic form. Responses should be received no later than 1 April 2003.

QUESTIONS

A. LEGISLATION AND COURT ORDERS

1. Please give details of any civil legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.

Section 4 of the Passports Act 1992 provides that -

(1) -

(2) -

(3) *The Minister may refuse to issue a New Zealand passport in any of the following cases:*

(b) (iii) The applicant is required by an order made by any New Zealand Court to remain in New Zealand, or to refrain from obtaining a passport, or to surrender a passport:

2. Please give details of any criminal legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.

Section 210 of the Crimes Act 1961 refers to the kidnapping of children.

Abduction of child under 16-

(1) *Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to deprive any parent or guardian or other person having the lawful care or charge of any child under the age of 16 years of the possession of the child, or with intent to have sexual intercourse with any child being a girl under that age, unlawfully-*

(a) Takes or entices away or detains the child: or

(b) Receives the child, knowing that the child has been so taken or enticed away or detained.

(2) *It is immaterial whether or not the child consents, or is taken or goes at the child's own suggestion, or whether or not the offender believed the child to be of or over the age of 16.*

(3) *No one shall be convicted of an offence against this section who gets possession of any child, claiming in good faith a right to the possession of the child.*

3. Please give details of any court orders which can be obtained during, for example, divorce or custody proceedings which prohibit, restrict or criminalise removal or retention of a child.

Section 20 of the Guardianship Act 1968 provides for the following preventive measures to be taken;

[20.Preventing removal of children from New Zealand— [[(1)Any High Court Judge or District Court Judge or, if no High Court Judge or District Court Judge is available, any Registrar of the High Court or of a District Court (not being a constable) who has reason to believe that any person is about to take a child out of New Zealand with intent to defeat the claim of any person who has applied for or is about to apply for custody of or access to the child, or to prevent any order of any Court (including an order registered under section 22A of this Act) as to custody of or access to the child from being complied with,—

(a)May issue a warrant directing any constable or Social Worker to take the child (using such reasonable force as may be necessary) and place it in the care of some suitable person pending the order or further order of the Court having jurisdiction in the case; and

(b)May, in addition, order that any tickets or travel documents (including the passport) of the child, or of the person believed to be about to take the child out of New Zealand, or of both, be surrendered to the Court for such period and upon such conditions as the Court thinks fit.]]

[[((1A)[Section 19B] of this Act shall apply, with all necessary modifications, in relation to every warrant issued under subsection (1)(a) of this section as if every such warrant were a warrant issued under section 19(1) of this Act.]]

(2)Any person against whom an order under subsection (1)(b) of this section is in force may apply to the Court for the discharge of the order, and the Court, in its discretion, may discharge the order accordingly.

(3)Every person commits an offence and is liable on summary conviction to fine not exceeding \$500 or to imprisonment for a term not exceeding 3 months or to both who, without the leave of the Court, takes or attempts to take any child out of New Zealand—

(a)Knowing—

(i)That proceedings are pending or are about to be commenced under this Act in respect of the child; or

(ii)That an order of any Court (including an order registered under section 22A of this Act) conferring custody of or access to the child on any other person is in force; or

(b)With intent to prevent any order of any Court (including an order registered under section 22A of this Act) as to custody of or access to the child from being complied with.

(4)No proceedings for contempt of Court shall be taken against any person in respect of any act to which this section applies.]

These orders can be obtained ex parte and after hours.

4. Do you have any comments relating to relocation orders?

The New Zealand Central Authority is unfortunately not in a position to comment as the Authority performs a facilitative role only.

5. Do you have any other comments relating to legislative provisions, court orders or administrative measures including any comments on the effectiveness of these provisions, and how often they are used in practice?

6. Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained out-of-hours and *ex parte*?

The above orders may be obtained ex parte.

B. BORDER CONTROLS

1. Please give details of any rules or procedures relating to the issuance or withdrawal of passports which may help to prevent removal or retention.

Section 20 of the Guardianship Act 1968 allows the Court to prohibit the issue of a passport or direct that a passport already issued be surrendered.

Section 4 of the Passports Act 1992 requires the Minister not to issue a passport in cases where a Court Order has been made preventing the issue of a passport

2. Please give details of any rules or procedures relating to the issuance or withdrawal of visas which may help to prevent removal or retention.

There are none that the Central Authority is aware of.

3. Are you aware of any co-operative arrangements with other States with regard to children who maintain more than one nationality?

No

4. Are there any foreign States which it is possible for nationals from your State to enter without a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?

No

5. Are there any foreign States whose nationals can enter your State without a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?

There are none

6. Please give details of any port alert or similar emergency systems which can operate to prevent removal from your jurisdiction including the conditions required to put these procedures into effect.

Court Orders made pursuant to section 20 of the Guardianship Act are entered on to the customs border control computer system by the Interpol Section of the New Zealand Police if requested to do so. An alert is raised when an attempt is made to depart New Zealand with the subject child.

7. Please give details of any specific duties on air carriers / ferries relating to the carriage of children.

Not known

8. Do you have any other comments relating to border controls, including any comments on the effectiveness of these measures to prevent removal or retention and how often they are used in practice?

The alerts are extremely effective and widely used. New Zealand's population is just 4 million and there are currently 5108 alerts on the NZ border control system (currently known as CAPPS)

C. INFORMATION FOR PARENTS

1. Please give details of any web pages, and provide copies of any brochures, or information packs or similar which contain information or advice on preventive measures and which are available to parents in your State. Who provides this information?

The New Zealand Department for Courts website contains information on preventive measures for parents

There is in addition a pamphlet published by the New Zealand Department of Internal Affairs.

2. When was this information compiled? When was it last updated? How is the information made available?

*The information contained on the website was compiled in 1999
The pamphlet was published in 1997*

3. Do you have any other comments relating to information for parents, including any comments on whether such information is effective in preventing abductions?

In my experience information on the Convention is obtained from media publicity given to high profile cases. In a small country like NZ an article in a metropolitan daily will be read by a larger percentage of the population than eg in the UK. Citizen Advice Bureaux and other voluntary agencies also have knowledge of the Convention and the contact details of the Central Authority. Parents are encouraged to call the Central Authority for information.

D. TRAINING AND EDUCATION FOR PROFESSIONALS

1. Please give details of any training or education that is available in your State for professionals (including, Central Authority personnel, lawyers, mediators, police officers, port or airport authorities and social workers) as a means of assisting them to operate preventive measures.

The New Zealand Law Society is responsible for the training of the legal profession. In May this year two senior barristers, experienced in Hague Child Abduction cases are running a series of seminars throughout New Zealand. The previous seminars were conducted in 1995. Almost every Family Law Conference in NZ devotes some conference time to Hague Convention papers.

With respect to state servants each department is responsible for the training of its own personnel. The Department for Courts has held a forum for Counsel who accept appointments to act on behalf of applicants from other Contracting States.

2. Who provides this training and education?

See Q1

3. What form does this training take and how regularly does it occur?

See Q1

4. Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of preventing abduction?

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E. PUBLICITY

1. Please give details of any means used to publicise the Convention or the work of the Central Authority.

Web-site

Pamphlet

The occasional newspaper/magazine articles which however are not instigated by the Central Authority

2. Please give details of any means used to publicise other preventive measures operating in your State.

As for Q1

3. Do you have any other comments relating to publicity, including any comments on the effectiveness of publicity regarding preventive measures?

The Central Authority has not been particularly pro-active in terms of publicising preventative measures. The law which gives the Court to power to make an order to prevent the removal of a child from New Zealand and to direct that passports and travel documents be surrendered has been effect since 1980, before New Zealand acceded to the Convention in 1991.

F. CO-OPERATION

1. Please give details of any co-operative agreements existing between different agencies within your State, either formally or informally, with regard to preventive measures How did this co-operation develop?

The Interpol Section of the New Zealand Police enters names of children subject to Orders Preventing Removal on the Customs Department Border Control computer system when requested to do so by lawyers representing applicants. Interpol first agreed to carry out this task when New Zealand acceded to the Child Abduction Convention in 1991. There is also excellent co-operation at an informal level in respect of advice on the movement of specific children in and out of New Zealand.

The Central Authority has no written protocols with other state agencies however it enjoys an excellent relationship with the International Division of the Department of Child Youth & Family, the Passport Division of the Department of Internal Affairs and the Immigration Department.

2. Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies How did this co-operation develop?

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3. Please provide details (including contact details, web sites etc.) of all agencies in your State which have a role to play in preventing the removal or retention of children.
The e-mail address of the Officer in the Interpol Office is Wade.Mickelson@police.govt.nz
The e-mail address of the Officer in the Passports Section of the Department of Internal Affairs is Paul.Badco@dia.govt.nz
4. Do you have any other comments relating to co-operation, including any comments on the effectiveness of such agreements?

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G. OTHER INFORMATION

1. Please provide any other information which may be relevant to the issue of preventive measures and their effectiveness.
See below
2. Please provide details of any other bodies or authorities in your State who may have information useful to this research.

The Ministry of Justice may be in a position to assist

3. Have you any general comments to make regarding preventive measures?

Factors which have resulted in a continuing decline in NZ cases are:

New Zealand has a population of only four million and is made up of a number of islands. Children departing the country must leave through an airport.

The NZ Judiciary takes its international obligations very seriously and the Family Court Bench is very familiar with Convention principles. You will note that there is a relatively high return rate for abductions to New Zealand.

The New Zealand Law Society runs training seminars on the Convention for lawyers practising in the Family Court. They are well attended and thus clients get quality advice on the issues of relocation outside New Zealand.

As already pointed out, publicity given some returns reaches a greater percentage of the population than would be the case in a country with a larger population.

The stability of Central Authority and other Government Agency personnel involved in Convention work may also act indirectly as a preventive measure.

Probably unique to New Zealand is the fact that over 50% of its abductions in and out concern one country, Australia. The Convention operates well in both countries and co-operation is excellent at all levels.