

10 things you need to know if you want to move abroad with your children or go on holiday: leave to remove

1. Everyone with Parental Responsibility must consent to a child leaving the England and Wales. This applies whether the child is going on holiday or for relocation on a permanent basis. This is the case even if you need to move abroad for work, for example to live as an ex-patriate abroad.
2. To remove a child from England and Wales without the consent of that child's parents and other persons or bodies with Parental Responsibility or "parental custody", is Child Abduction.
3. There is one exception to this rule that applies when it comes to holidays rather than relocation. If a parent has a Child Arrangements Order stating that a child should live with them (or a Residence Order), they can take the child from the jurisdiction for up to one month without the consent of other individuals with Parental Responsibility. This exception does not override any other provisions in the Order. What this means is that even where there is an order for a child to live with parent A, if there is another order (either within that same order or in another court order) for parent A to facilitate the child spending time with parent B every other weekend, parent A cannot remove the child from the jurisdiction for a month because they would be in breach of the court order for the child to spend time with parent B, and they would be unable to rely on this exception.
4. If the parent or other persons whose consent is required to take the child to another country will not give their consent, the parent seeking to remove the child will need to apply to the court for an order granting them Leave to Remove the child from the jurisdiction.
5. An Application for leave to remove is a private law application and it is likely that before issuing your application you will need to attend a Mediation Information and Assessment Meeting. Your solicitor can assist you with arranging this.
6. When deciding whether to grant an application for leave to remove the court will make a decision based on what is in your child's best interests. In making its decision the court will consider:
 - (a) The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
 - (b) his physical, emotional and educational needs;
 - (c) the likely effect on him of any change in his circumstances;
 - (d) his age, sex, background and any characteristics of his which the court considers relevant;
 - (e) any harm which he has suffered or is at risk of suffering;

RAYDEN SOLICITORS

www.raydensolicitors.co.uk

ST ALBANS: T 01727 734260 | The Limes, 32-34 Upper Marlborough Road, St Albans, Herts AL1 3UU
BERKHAMSTED: T 01442 819144 | 1 Claridge Court, Lower Kings Road, Berkhamsted, Herts HP4 2AE
E info@raydensolicitors.co.uk

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- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
 - (g) the range of powers available to the court in the proceedings in question.
7. If you are applying for leave to remove in order to go on holiday, you should think about what additional reassurance you can offer the parent or other person who will not consent to the trip, for example, you could offer financial security, such as a bond, particularly if the holiday is to a non 1980 Hague Convention country.
8. In weighing-up best interests in a situation where a parent seeks to relocate permanently (or for a lengthy period) the following principles apply:
- (a) The child's welfare remains paramount.
 - (b) The court will undertake a global holistic welfare evaluation by weighing up all the relevant factors, looking at the case as a whole, to determine where your child's welfare interests lie.
 - (c) Each case will be decided on its own individual circumstances.
 - (d) There is no presumption in favour of either parent.

This is not an exhaustive list but some points from the recent trends in case law

9. Before applying for leave to remove it is important to have in place a very detailed plan as to what will happen if your application is granted. It is helpful to consider practical matters such as:
- (a) Where the child will live.
 - (b) Where the child will go to school; is a school place available?
 - (c) If your family is religious, is the religion practised in the country you wish to go to, and where is the nearest place of worship.
 - (d) What healthcare will be in place for your child?
10. The court will consider carefully how the child will maintain a relationship with the parent they are leaving behind and also any other family members.

You will need to be able to propose a plan for:

- (a) How often you will facilitate the child spending time with their other parent and/or relatives they will leave behind.
- (b) What the practical arrangements for funding the costs of travel, and, if needed, accommodation.
- (c) Between face to face visits, how often the child may speak with their other parent and/or relatives, perhaps via Skype or face time.

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