



## Fact sheet: Protective Measures available in Scotland in the context of International Child Abduction



### What is this fact sheet about and who is it for?

This fact sheet provides information on protective measures available in Scotland. It has been prepared for judges, parties, parents and mediators from other jurisdictions.

It may be useful to refer to in cases of international child abduction involving a child or children allegedly wrongfully removed from, or wrongfully retained out of, Scotland when an application has been made under the [1980 Hague Convention on the Civil Aspects of International Child Abduction](#) (“the 1980 Convention”) and the requested party seeks to rely on the “grave risk exemption” under Article 13(1)(b) of the 1980 Convention when opposing a return application.

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## Definitions of terms used in this document

- “Requesting state” means the state which is requesting the return of the child to that state.
- “Requested state” means the state which has been requested to return the child to the requesting state.
- “Requesting party” means the party which is requesting the return of the child to the child’s state of habitual residence.
- “Requested party” means the party which has been requested to return the child to the requesting state.
- “Return application” means an application requesting the return of the child to the state of their habitual residence under the 1980 Convention.

## Introduction

1. This document has been drafted by the Hague Network judges for Scotland (see [“What is the Hague Network of Judges?”](#) below) with assistance from the Lord President’s Private Office.
2. This document aims to provide a summary of protective measures that are available in Scotland. It is modelled on the fact sheets prepared by the Hague Network judges from Australia and England and Wales.
3. As has been acknowledged by our counterparts in England and Wales, quickly sourcing information on what protective measures might be available in the requesting state and how they can be given effect to can be challenging, particularly as there are now over 100 contracting parties to the 1980 Convention.
4. As with any case, the determination of any application for protective measures is a matter for the judge presiding over the proceedings.
5. Direct judicial communications, in particular through the International Hague Network of Judges, can be used to seek further information or assistance.
6. The Hague Conference on Private International Law (“HCCH”) website hosts [Guidance on direct judicial communications under the 1980 Convention](#) (last accessed 16 October 2025).



7. **N.B.** The information within this document does not constitute legal advice. Third parties must treat the content of this fact sheet as general information which does not constitute any form of legal advice or recommendation upon which a specific decision may be made.

### What is the Hague Network of Judges?

8. Most of the contracting states to the 1980 Convention have designated at least one judge to the International Hague Network of Judges (“IHNJ”). The HCCH website hosts [a list of the INHJ members](#) (last accessed 16 October 2025).
9. The [Guidance on direct judicial communications under the 1980 Convention](#) explains the role of the Hague Network judges.
10. As at October 2025, the Hague Network judges for Scotland are:
- (a) The Right Hon Lady Wise, Senator of the College of Justice; and
  - (b) The Right Hon Lady Carmichael, Senator of the College of Justice.
11. Communication with the Scottish Hague Network Judges should be initiated through the Court of Session Family Court mailbox at:
- [FamilyCourt@scotcourts.gov.uk](mailto:FamilyCourt@scotcourts.gov.uk).
12. When determining a return application under the 1980 Convention, a judge may, when appropriate, request the Hague Network judge of their jurisdiction to have direct judicial communication with the Hague Network judge of the requesting state to gather information.
13. Direct judicial communication may include sharing information about:
- “whether protective measures are available for the child or other parent in the State to which the child would be returned and, in an appropriate case, ensuring the available protective measures are in place in that State before a return is ordered.”*
- [\(Guidance on direct judicial communications under the 1980 Convention \(p. 12\)\)](#)
14. A judge who is considering a return application may make use of the information provided by the Hague Network judge of the requesting state. However, the judge must observe the legal and procedural requirements of their own jurisdiction and maintain independence in reaching their decision on any matter.



## Article 13(1)(b) of the 1980 Convention

15. Article 13 of the [1980 Convention](#) provides as follows:

*“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -*

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or*
- b) 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.*

*The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.*

*In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.”*

16. The exception in Article 13(1)(b) is commonly referred to as the “grave risk exception”. The HCCH has published a [Guide to Good Practice on Article 13\(1\)\(b\)](#) (last accessed 16/10/2025). According to the Guide to Good Practice, when the requested party is relying on the grave risk exception to oppose a return application, the court should undertake a “step-by-step analysis” (p.31 onwards).

17. The information provided in the [“What protective measures are available in Scotland?”](#) section below may assist when, as part of the 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 [a] grave risk of ... harm or intolerable situation when evaluating whether the grave risk exception has been established”.*

*(Guide to Good Practice on Article 13(1)(b), p. 31)*



## What are protective measures?

18. The Guide to Good Practice on Article 13(1)(b) explains that the term “protective measures” means “*measures available to address a grave risk*” (p.10). Protective measures are described in the Guide to Good Practice (p. 34) as covering:

*“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”*).

19. Protective measures may be advanced in support of a case that the return of a child would expose that child to a grave risk of harm or otherwise place that child in an intolerable situation within the scope of Article 13(1)(b). Examples of matters which might be relied on are given in the Guide to Good Practice. These include when the requested party relies on domestic abuse only or in conjunction with other matters or grounds under the Convention.

20. Details of the measures available in Scotland can be found in [“What protective measures are available in Scotland?”](#) below.

## The 1996 Hague Child Protection Convention (“the 1996 Convention”)

21. When the [1996 Convention](#) is in force between the states involved, its provisions are relevant to the effectiveness of a proposed measure of protection which falls within scope of that Convention (p. 35, Guide to Good Practice).

22. Article 23 of the 1996 Convention 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.

23. Additionally, measures taken by the authorities of other Contracting States can be registered for the purpose of enforcement by a court in Scotland at the request of an interested party (through the procedure provided in Chapter 62, Part XIV of the [Rules of the Court of Session 1994](#)). The 1996 Hague Convention entered into force in Scotland on 27 July 2012.



## What protective measures are available in Scotland?

### Criminal proceedings

#### *Offence of domestic abuse and aggravation of other offences*

24. Police Scotland has a duty to take action in respect of incidents of domestic abuse which includes the power to arrest a suspected perpetrator.
25. A person commits an offence under Scots law if the person ("A") engages in a course of behaviour which is abusive of A's partner or ex-partner ("B"); a reasonable person would consider the course of behaviour likely to cause B to suffer physical or psychological harm; and A either intends by the course of behaviour to cause B to suffer such harm or is reckless as to whether the course of behaviour has such an effect ([section 1, Domestic Abuse \(Scotland\) Act 2018](#)).
26. [Section 2 of the 2018 Act](#) goes on to explain what abusive behaviour includes and what the relevant effects of such behaviour might be. Section 2 recognises that behaviour carried out by A, directed to a child of B, can have a number of effects, including making B dependent, or subordinate to A, frightening, humiliating, degrading or punishing B. Section 2 therefore acknowledges that perpetrators may use children as a tool to abuse victims.
27. [Section 3 of the 2018 Act](#) makes clear that an offence under section 1(1) can be constituted by a course of behaviour engaged in by A, even if the course of behaviour occurs wholly or partly outside the UK. The person accused of such an offence can be prosecuted, tried and punished for the offence in Scotland provided A is habitually resident in Scotland or a UK national (defined in section 3(4)).
28. [Section 5](#) creates a statutory aggravation in relation to a child. This means that, if in proceedings for an offence under section 1(1), the offence is proven to be aggravated (i.e. made more serious) by reason of involving a child, because A has directed behaviour at a child or made use of a child in directing behaviour towards B (section 5(1) and (2)). The court must state on conviction that the offence is so aggravated, record the conviction in a way that shows the offence is so aggravated, take the aggravation into account in determining the appropriate sentence and explain the reasons for a difference or no difference in the sentence arising from the aggravation (section 5(7)).
29. Under [section 1\(1\)\(a\) of the Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#), an offence can be aggravated by involving abuse of the partner or ex-partner of the person committing the offence, provided such aggravation is proved. The court must take the aggravation into account in determining the appropriate sentence (section 1(5), 2016 Act).





30. [Section 234ZA of the Criminal Procedure \(Scotland\) Act 1995](#) requires that, where the court is presiding over a case in which a person is accused of an offence under section 1(1) of the 2018 Act or an offence aggravated as described in section 1(1)(a) of the 2016 Act, the court must consider whether to make a non-harassment order in the person's case (section 234ZA(4)), 1995 Act). If it decides not to make a non-harassment order, it must explain the basis for not making the order (section 234ZA(4)(c), 1995 Act).

### *Bail conditions*

31. Before determining whether a person should be remanded in custody or granted bail pending trial, the sheriff or judge shall, after giving the accused person and the prosecutor an opportunity to be heard, admit or refuse bail ([section 22A, Criminal Procedure \(Scotland\) Act 1995](#)). If a person is granted bail, a set of conditions will apply. These include standard conditions and may also include bespoke 'special' conditions. [Section 24 of the 1995 Act](#) sets out the standard conditions. These include "does not behave in a manner which causes, or is likely to cause, alarm or distress to witnesses" (section 24(5)(ca), 1995 Act). Very often, there will be a special condition that the accused must not approach, or contact, or attempt to contact, the complainer (victim). Occasionally, if rarely, a special condition may be imposed not to approach or contact the parties' children.
32. Special conditions can include anything that the court deems necessary to make sure the standard conditions are observed by the accused. For example, a condition that the accused person "does not enter or seek to enter 'street name where victim resides'" ([Police Scotland Bail Process National Guidance v3.00 p4](#) (last accessed 23/10/2025)).

### *Domestic abuse protection notices and domestic abuse protection orders*

33. The [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) was passed by the Scottish Parliament on 17 March 2021 and received Royal Assent on 5 May 2021. As at October 2025, the 2021 Act is **not yet in force**. Once in force, the 2021 Act will enable domestic abuse protection notices ("DAPNs") to be made by Police Scotland ([sections 4-7](#)) and domestic abuse protection orders ("DAPOs") to be made by the sheriff court ([sections 8-18](#)).
34. The following types of behaviour will result in the commission of an offence under the 2021 Act:
- (a) failure to do something which the person is required to do by a DAPN ([section 7\(1\)\(a\)](#));
  - (b) doing anything which the person is prohibited to do by the DAPN (section 7(1)(b));



- (c) failure to do something which the person is required to do by a DAPO or interim DAPO ([section 17\(1\)\(a\)](#));
- (d) doing anything which the person is prohibited from doing by such an order ([section 17\(1\)\(b\)](#)).

35. Once in force, [section 19](#) will provide that, for the avoidance of doubt, nothing in a court order which regulates contact with, or the residence of, a child limits the requirements or prohibitions that can be imposed by a notice or order under Part 1 of the 2021 Act. Section 19 will also provide that it is not a defence to a charge of committing an offence under section 7(1) or 17(1) that person A was doing something which person A was entitled to do by virtue of such an order by the court.

## Family proceedings

### *Occupancy orders*

36. By default, where a couple is married, and one spouse is entitled, or permitted by a third party, to occupy a matrimonial home (“the entitled spouse”) and the other spouse is not so entitled or permitted (“the non-entitled spouse”), the non-entitled spouse has two rights. First, if the spouse is in occupation of the home, the spouse has a right to continue to occupy it. Second, if the spouse is not in occupation, the spouse has a right to enter into and occupy the matrimonial home (see [section 1\(1\), Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#)). These rights include the right to occupy / continue to occupy with any child of the family (section 1(1A), 1981 Act).

37. Where there is an entitled and a non-entitled spouse, or where both spouses are entitled or permitted by a third party to occupy a matrimonial home, either spouse may apply to the court for an order:

- (a) declaring the occupancy rights of the applicant spouse;
- (b) enforcing the occupancy rights of the applicant spouse;
- (c) restricting the occupancy rights of the non-applicant spouse;
- (d) regulating the exercise by either spouse of their occupancy rights;
- (e) protecting the occupancy rights of the applicant spouse in relation to the other spouse.

[\(section 3\(1\), 1981 Act\)](#)

38. The court shall make such order relating to the application as appears to it to be just and reasonable having regard to all the circumstances of the case including:

- (a) the conduct of the spouses to each other and otherwise;
- (b) the respective needs and financial resources of the spouses;





- (c) the needs of any child of the family;
- (d) the extent to which the matrimonial home / its furniture and plenishings are used in connection with a trade, business or profession of either spouse; and
- (e) whether the entitled spouse has offered to make available to the non-entitled spouse any suitable alternative accommodation.

(section 3(3), 1981 Act)

39. The court may make interim orders as appropriate (section 3(4), 1981 Act).

#### *Exclusion orders*

40. [Section 4\(1\)](#) of the 1981 Act enables either spouse to apply to the court for an exclusion order suspending the occupancy rights of the other spouse in a matrimonial home. If the court makes the order, it can:

- (a) grant a warrant ejecting the other spouse from the home; or
- (b) grant an interdict (i.e. order preventing a person from doing something) prohibiting:
  - (i) the other spouse from entering the home without express permission from the spouse who applied to the court; or
  - (ii) the removal by the non-applicant spouse, except with the written consent of the applicant or by a further order of the court, any furniture and plenishings in the matrimonial home (section 4(4)).

41. The court may also make interim orders as appropriate (section 4(6)).

42. Other aspects of the exclusion order may include, but are not limited to, an interdict prohibiting the non-applicant spouse from entering or remaining in a specified area in the vicinity of the matrimonial home (section 4(5)).

#### *Matrimonial interdict*

43. [Section 14 of the 1981 Act](#) defines matrimonial interdicts as orders which restrain or prohibit any conduct of one spouse towards the other spouse or a child of the family, or which prohibit a spouse from entering or remaining in certain locations, including a matrimonial home or any school attended by a child in the care of the application spouse. Civil partners can seek equivalent interdicts known as relevant interdicts ([section 113, Civil Partnership Act 2004](#)).



44. Where a spouse or civil partner has secured a matrimonial or relevant interdict (including an interim order), the [Protection from Abuse \(Scotland\) Act 2001](#) enables a power of arrest to be attached to it ([section 1, 2001 Act](#)). The police may arrest a person without warrant if there is reasonable cause for suspecting that person to be in breach of an interdict to which a power of arrest has been attached and, were the person not arrested, there would be a risk of abuse or further abuse by that person in breach of the interdict ([section 4, 2001 Act](#)).
45. There are separate statutory provisions providing for occupancy rights for those in civil partnerships that are equivalent to those available to spouses ([sections 101-111](#), Civil Partnership Act 2004). Cohabiting couples (living together as if husband and wife) who are both entitled to occupy the family home have all of the rights narrated at paragraph 36 above ([section 18\(3\), 1981 Act](#)). Where one cohabitant is not so entitled, that cohabitant can apply to the court for a six-month period of occupancy rights (section 18(1), 1981 Act).

### *Section 11 orders*

46. [Section 11 of the Children \(Scotland\) Act 1995](#) makes provision for an application to be made to either the sheriff court or the Court of Session in relation to parental rights, parental responsibilities, guardianship or the administration of a child's property. The court may make any order under section 11(1) as it thinks fit, including:
- (a) an order depriving a person of some or all of the person's parental responsibilities or parental rights in relation to a child;
  - (b) an order—
    - (i) imposing upon a person (provided the person is at least sixteen years of age or is a parent of the child) such responsibilities; and
    - (ii) giving that person such rights;
  - (c) an order regulating the arrangements as to—
    - (i) with whom; or
    - (ii) if with different persons alternately or periodically, with whom during what periods,a child under the age of sixteen years is to live (*Residence Order*);
  - (d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age and a person with whom the child is not, or will not be, living (*Contact Order*);



- (e) an order regulating any specific question which has arisen, or may arise, in connection with parental rights, parental responsibilities, guardianship or the administration of a child's property (*Specific Issue Order*);
- (f) an action prohibiting the taking of any step of a kind specified in the interdict in the fulfilment of parental responsibilities or the exercise of parental rights relating to a child or in the administration of a child's property;
- (g) an order appointing a judicial factor to manage a child's property or remitting the matter to the Accountant of Court to report on suitable arrangements for the future management of the property; or
- (h) an order appointing or removing a person as guardian of the child.

(section 11(2), 1995 Act)

47. In considering whether or not to make an order under subsection (1) and what order to make, the court shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all (section 11(7)(a), 1995 Act). In carrying out the duties imposed in subsection (7)(a), the court shall have regard in particular to:

- (a) the need to protect the child from—
  - (i) any abuse; or
  - (ii) the risk of any abuse,which affects, or might affect, the child;
- (b) the effect such abuse, or the risk of such abuse, might have on the child;
- (c) the ability of a person—
  - (i) who has carried out abuse which affects or might affect the child; or
  - (ii) who might carry out such abuse,to care for, or otherwise meet the needs of, the child; and
- (d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person



who has (or, by virtue of an order under subsection (1), would have) those responsibilities.

([section 11\(7A\) and \(7B\)](#))

48. Further, the court shall, taking account of the child's age and maturity, so far as practicable, give the child an opportunity to indicate whether the child wishes to express views, if the child does so wish, give the child an opportunity to express them, and have regard to such views as the child may express (section 11(7)(b), 1995 Act).

### Orders for aliment

49. [Section 1 of the Family Law \(Scotland\) Act 1985](#) makes provision for aliment (financial support). In Scotland, aliment is owed by: husbands to wives and vice versa; a partner in a civil partnership to the other partner; a father or mother to that father or mother's child; and a person to a child who has been accepted by the person as a member of that person's family (section 1(1), 1985 Act). [Section 2 of the 1985 Act](#) makes provision for claims of aliment in the Court of Session or sheriff court. These claims can be standalone or made as part of other proceedings, such as divorce proceedings.

### Other civil proceedings

50. Once in force, [section 22](#) of the Domestic Abuse (Protection) (Scotland) Act 2021 will amend [section 14 of the Housing \(Scotland\) Act 2001](#). These changes will enable landlords to raise proceedings in the sheriff court to recover possession of their rented property from a person ("T"), where T has engaged in abusive behaviour of their partner or ex-partner ("P"), and instead offer a tenancy to P.

### Local authorities

51. Local authorities have duties to safeguard and promote the children in their area who are in need, and so far as is consistent with that duty, promote the upbringing of such children by their families by providing a range and level of services appropriate to the children's needs ([section 22, Children \(Scotland\) Act 1995](#)).

### UN Convention on the Rights of the Child ("UNCRC")

52. [The United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) incorporated the [UNCRC](#) into Scots law and makes related provision to ensure compliance with duties relating to the Convention.

53. Article 3(1) of the Convention provides as follows:

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*



54. Given the terms of [section 6\(1\) and \(4\) of the 2024 Act](#), it is unlawful for the court to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements (the rights and obligations from the Convention, the first optional protocol and the second optional protocol ([section 1\(2\), 2024 Act](#))).

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