

Taking a child abroad

This document provides general guidance regarding an application for leave to remove children permanently from the jurisdiction. Your lawyer will be able to provide specific advice based on your circumstances.

Can I move to live abroad with the children?

If you are separated or divorced and want to move abroad permanently with your children, you must obtain written consent from the other parent and/or any other person who has parental responsibility for the child. If the other parent will not agree, you can apply to the court for permission (this is known as a leave to remove or relocation application).

Making an application to court

If you are intending to make a relocation application, it is very important that you have thought through all the practicalities of what life will be like for you and the children in the new country. A court will want to know about your plans, which you will have to set out in a detailed statement. You will need to cover information such as:

- Your proposed living arrangements.
- Details of work and your family plans in the new country.
- Where your child or children will go to school.
- Healthcare arrangements.
- Your plans for how they will see and keep contact with the parent and wider family who remain in this country.
- The financial viability of the move.
- What it would mean for you if you were stopped from going.

Your solicitor will assist you with preparing your statement. Your solicitor may also want to obtain statements from other family members who have close involvement with the children and who support your move.

Objecting to a proposed relocation

If your former spouse or partner has made an application to relocate your children to another country and you want to object to it, you will need to explain to the court why you do not agree, setting out the details in a statement. You will need to cover things such as:

- The current contact you have with the children and how this will be affected by a move overseas practical difficulties in contact if the children are allowed to move.

- Any problems you can see with the proposed living or educational arrangements for the children.
- The wishes of the children as you understand them.
- The effect on you of a move.

Your solicitor will assist you with preparing your statement. Your solicitor may also want to obtain statements from other family members who have close involvement with the children and who oppose the move.

The court's approach

When the court considers an application to relocate, the judge hearing the case has to consider a checklist of things before coming to a decision. The judge's primary concern is the welfare of the children. To help him or her decide whether the move is in the child's best interests the judge will consider:

- The wishes and feelings of the children concerned to far as they can be ascertained, and bearing in mind each child's age and understanding. The children's physical, emotional and educational needs.
- The likely effect on the children of any change in their circumstances.
- The children's age, sex, background and relevant characteristics.
- The risk of the children suffering harm.
- How capable each parent is of meeting the children's needs.

The judge will consider how permission or refusal to relocate will affect the parents and the children, and will consider the parents' plans and whether the wish to relocate and opposition to it are genuine.

The judge may well be assisted in reaching a conclusion by a Cafcass officer. This is a social worker appointed by the court who will speak to both parents, and possibly also to the children (depending on their ages), then make a recommendation to the court. It is often difficult to predict the outcome of court proceedings for leave to remove.

For more advice on these issues contact a member of the family team on 0345 128 6960 or email welcome@freeths.co.uk.