COLLAS CRILL

Are we nearly there...? Travelling with children after divorce or separation

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As Covid restrictions and quarantines continue to lift, holiday planning has bounced back and family holidays are thankfully back on the agenda.

While there is much to organise when travelling abroad with your family, if you are a separated parent or you have a different surname to that of your children there are some additional factors to consider when planning your trip. This article answers common questions from parents and carers when navigating travel bookings post-separation.

Do I need permission from my ex-partner to travel abroad with our child or children after divorce and, if so, why?

In the majority of cases, yes you do. Any person who has parental responsibility for the child or children will need to give their permission for the child or children to travel abroad. The only exception to this is where the parent or carer who is travelling with the child or children has a residence order stating that the child or children lives with them, and there is no other term within the order which means that permission must be sought. In this situation, the parent or carer may then take the child or children abroad for up to 28 days without permission, but it is often in the best interests of the children to confirm your plans in writing to your ex-partner in any event.

Failing to obtain permission, where necessary, is a criminal offence and may lead to criminal charges for child abduction.

How do I know if I have parental responsibility for my children?

Parental responsibility is automatically given to mothers and is given to fathers who are either named on the birth certificate of the child or married to the mother when the child is born. Parental responsibility can also be granted via court order or by entering into a Parental Responsibility Agreement.

If you are the only parent with parental responsibility and there are no orders in place, permission is not needed from your ex-partner to travel abroad with your child. It is however recommended that you advise them of your plans.

If I do need permission, how do I get it?

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Permission can (and should) be obtained in writing. You can do this yourself, or through your Advocate if more appropriate.

What documents might I need?

Preparation is key; we recommend travelling with some or all of the following where possible:

- A copy of the written consent from the other parent regarding the travel abroad;
- Proof of your own relationship with the child or children, such as their birth certificate;
- Your final order of divorce, or your marriage certificate, if your surname is different from your child or children's;
- Contact details of the other parent of the child/children; and
- The specific details surrounding your trip.

What limits are there, or may there be, on travelling abroad?

Save for anything agreed between you and the other parent or carer, there is arguably not much limitation to your trip, provided you have any relevant permission (if required) from any person with parental responsibility for your child/children. As already discussed, where permission is not required, the time limit for travelling abroad without permission is 28 days albeit we would recommend informing your ex-partner or other parent in any event.

What can I do if my ex won't agree to the trip?

If your ex-partner has parental responsibility for the child or children and refuses to provide consent for the trip, and you do not have a sole residence order, then you will likely need to make an application to the court for permission to temporarily remove the children from Guernsey and travel with them, in order to avoid any potential criminal proceedings.

In such a scenario the paramount consideration for the Court is the welfare of the children and, in most cases, the Court will likely require cogent reasons as to why it should not grant the permission sought provided that there are no concerns regarding the return of the child/children to the Island or any other safety concerns in respect of the destination and travel plans.

This article was first published in Aurigny's inflight magazine, En Voyage, in October 2022. Click here to view the publication, this article is on page 75.

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