

‘Leave-Out’ Amendment — Clause 104

Amendment

Clause 104, page 134-135, line 30-39 / 1-19, leave out Clause 104.

Explanatory Statement

This amendment removes Clause 104 from the Bill. Clause 104 creates a new criminal offence of retaining a child overseas without appropriate consent.

The amendment seeks to prevent the criminalisation of victims of domestic abuse and gender-based violence who constitute the overwhelming majority of parents who retain their children in jurisdictions outside the UK in order to keep themselves and their children safe.

Given the well-documented failures of criminal, civil and family courts to correctly identify domestic abuse, and the absence of timely prosecutions or protective findings for most victims, any exemption would be unworkable and unsafe.

A leave-out amendment is therefore the only means of ensuring that survivors are not criminalised for protecting themselves and their children.

Briefing Note: Why Clause 104 must be removed in full

1. Inadequate equality impact assessment

- The [Equality Impact Assessment](#) (EIA) concluded that men and women are ‘equally responsible’ for child abduction under s.1 CAA 1984 and therefore concluded that no protected group would be disproportionately affected. This conclusion is demonstrably incorrect.
- Over 75% of Hague ‘abductions’ are by mothers (the proportion is even higher in retention cases), and at least 75% of cases involve domestic abuse.
- The impact assessment fails to identify that the demographic who ‘retain’ are different from those who ‘remove’ a child

2. The clause is unnecessary and disproportionate

- Existing civil mechanisms (including Hague Convention procedures) already govern international child retention. Criminalisation has been found to undermine these Civil return mechanisms which seek to restore previous child contact arrangements in the UK.
- Introducing a criminal offence radically shifts the balance of family law, in a way that disproportionately harms victims of domestic abuse: usually mothers and children.

3. A survivor-exemption cannot be drafted safely

- Exemptions require proof of abuse, which most survivors do not have.
- Abusers are adept at manipulating legal processes; many already initiate ‘parental abduction’ claims as a form of post-separation abuse.
- No narrowly drafted exemption can withstand real-world coercive control dynamics.

4. Most survivors have no prosecution or protective order to ‘prove’ their abuse

- The overwhelming majority of domestic abuse victims never secure a criminal conviction, protective order, or even a court finding.
- Many survivors do not recognise their experience as abuse until after they reach safety.

- Any exemption requiring evidential thresholds will therefore fail the very people it is intended to protect.

5. Courts consistently fail to identify abuse

- Recent reports from the Domestic Abuse Commissioner and the Ministry of Justice confirm serious and systemic failings across Family Courts, Magistrates' Courts and Criminal Courts in recognising domestic abuse and gender-based violence.
- Survivors, especially mothers, are routinely disbelieved, and coercive control is regularly minimised or misunderstood.
- A clause that relies on those same systems to provide verification will inevitably expose survivors to criminal risk.

6. Criminalising 'overseas retention' is dangerous for victims including children

- Many mothers who retain their children abroad do so to escape life-threatening danger or an intolerable situation - for themselves and/or their children.
- Criminalising survivors for not returning to an unsafe perpetrator-controlled jurisdiction punishes protective behaviour and places children at direct risk.
- The threat of imprisonment will deter victims from returning to the UK with their child. In this case, after the child is returned under civil law mechanisms, the child will most likely go to live with the perpetrator or in institutional state care.

In addition, this proposed amendment is directly at odds with:

- Ongoing international efforts to mitigate harm to domestic abuse survivors.
- UK domestic policy advances, including:
 - The Domestic Abuse Act 2021, which recognises children as victims in their own right.
 - The repeal of the presumption of parental involvement, affirming that a child's *safety* must always take precedence over enforced contact.