

The Crime and Policing Bill 2025 and Parental Child Abduction

A Report

**by Allison Wolfreys, Lecturer in Law, The Open
University, Milton Keynes, UK**

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Introduction

Clause 104 of the Crime and Policing Bill currently before Parliament concerns the criminal offence of international parental child abduction.¹ This report will summarise the provision and explain the potential impact of this Clause on women and children who have fled overseas to escape from domestic abuse. It is argued the Government's approach is misguided as the Clause does not prioritise the well-being and best interests of children at the centre of these disputes.

To date, the House of Commons has given little attention to the Clause during its scrutiny of the Crime and Policing Bill.² In contrast on 15th December 2025 during the House of Lords Committee stage, amendments to Clause 104 were tabled by Baroness Brinton, to ensure that victims of domestic abuse would be considered within the new offence that the Government seeks to create.³ As a result of detailed responses provided by Baroness Levitt on behalf of the Government the tabled amendments were withdrawn.

¹ Reference is made throughout this report to Clause 104 of the Crime and Policing Bill, using the numbering adopted during the House of Lords Committee stage of the Bill. It is found within Part 7 of the [Crime and Policing Bill](#) (accessed 16th February 2026). The Clause was previously numbered 76 when introduced to the House of Commons.

² Discussion on the Clause at Committee stage in the House of Commons was brief and it was not debated during the Commons Report stage. [CBP-7726.pdf](#) (accessed 16th February 2026).

³ Hansard (HL) 15TH December Vol 851, Col 589.

This report includes a brief summary of the law concerning parental child abduction, then the Government's position during that debate will be examined and critically analysed.

A conclusion is reached that Parliament should omit Clause 104 entirely from the Crime and Policing Bill. If it remains as drafted, it will

- negatively and disproportionately impact women and girls;
- run counter to Government policy regarding domestic abuse and the safeguarding of children;
- undermine international co-operation as well as existing law and practice under the 1980 Hague Convention (the Convention);⁴
- unnecessarily place extra resourcing pressures onto the criminal justice system, including the additional costs of extradition, and
- not be in the best interests of children.

⁴ Hague Convention on the Civil Aspects of International Child Abduction 1980 [e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf](https://www.hcch.net/doc/publication/civildocs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf) (accessed 21st January 2026).

1. What is parental child abduction?

Parental child abduction can occur in two ways. Firstly, where one parent, without the other's consent or knowledge removes their child from their home country and having taken the child, refuses to return them.

Secondly, it can happen where the left behind parent has consented to the child being taken abroad by the other parent for an agreed period, typically for a holiday. Once abroad the taking parent then retains the child in the other country beyond the agreed period, refusing to return them. It is this second situation of retention, that Clause 104 of the Crime and Policing Bill seeks to address.

2. The civil law

In either situation, the main remedy available to left behind parents is contained in a private law international treaty, the Hague Convention on the Civil Aspects of International Child Abduction concluded on 25 October 1980 (the Convention).⁵ Created with the objective of minimising the harm that can be caused to children by the abduction event, it provides a mechanism for their swift return. Through Article 12, if there has been a wrongful removal or retention

⁵ Hague Convention on the Civil Aspects of International Child Abduction [e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf](https://www.hcch.net/doc/publications-and-materials/010) (accessed 21st January 2026).

of a child, a left behind parent can apply to the court in the taken to state for an order that the child be returned quickly to their country of habitual residence thereby resetting the status quo. The Convention is intended to operate neutrally, functioning in an even-handed way, whereby any disputes between parents about who a child shall live with or spend time with, should be decided upon by the court in the country where the child has lived for most of their life.⁶

The general consensus is that the Convention has achieved success in alleviating the prior horrors of unchecked parental child abductions.⁷ However, there is concern that it needs to remain relevant and responsive to societal change. In particular in its operation and practice, decisions taken by courts in Convention states should reflect the evidence-based research and understanding of the impact of domestic abuse upon children. Furthermore, despite its stated aim that the interests of children are of “paramount importance”⁸ we know that children are not central to Convention proceedings heard in England and Wales and that their rights are not prioritised.⁹

⁶ Within Convention proceedings the term habitual residence is used. There is a body of case law that interprets and defines this that is beyond the scope of this report. In removal cases, this will generally involve finding that the child has acquired habitual residence in the state they were living in before the removal. In retention cases it will involve finding that the child has not acquired habitual residence in the country where they was living immediately before the retention.

⁷ Freeman, M, Taylor, N Nurturing the 1980 Hague Abduction Convention in Research Handbook on International Child Abduction The 1980 Hague Convention (2023) Edited by Freeman, M and Taylor, N, Elgar UK) p 420

⁸ The preamble to the Convention provides that “The States signatory to the present Convention, firmly convinced that the interests of children are of paramount importance in matters relating to their custody”.

⁹ Wolfreys, A (2025) [Wolfreys, Allison](https://oro.open.ac.uk/106672/) (2025). Objecting children and party status in Hague Convention proceedings heard in England and Wales: searching for rationality and authenticity. *Child and Family Law Quarterly*, 37(3) pp. 293–310 <https://oro.open.ac.uk/106672/> (accessed 16th February 2026).

Limited defences or exceptions are available to parents who have wrongfully removed or retained children under the Convention to counter a mandated return. The key defence that is in issue in relation to domestic abuse is contained in Article 13 (1) (b), this enables a taking parent to attempt to persuade a court that a return order should not be made if

“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”¹⁰

The operation of 13 (1) (b) has been the subject of HCCH Guidance produced in 2020 in order to promote consistent interpretation and application globally. ¹¹ However the adequacy of this Guidance has attracted criticism from organisation representing those with lived experiences of domestic abuse who have taken children and been subjected to return orders [International relocation of children](#). In particular the court’s imposition of conditions placed on return such as protective orders or the acceptance of court undertakings, from the left behind parent to provide assurances for their safety once returned.

¹⁰ The Article 13(1)(b) defence or exception is used most frequently with the child objection defence, commonly referred to as Article 13 (2). Article 12 also provides a defence known as settlement, that is where more than a year has passed since the abduction event and the start of the proceedings and the child is settled in the country they have been taken to or retained within. Article 13 (1) (c) provides the defence of consent/acquiescence whereby custody rights were not exercised and there was consent to or acquiescence by the left behind parent for the child’s removal or retention.

¹¹ Hague Conference of Private International Law The 1980 Child Abduction Convention Part IV Article 13 (1) (b) A Guide to Good Practice [225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf](#)

These are subject to much criticism as to either their effectiveness or enforceability.¹²

Nevertheless, with currently 103 member states across the world, the Convention remains the primary legal instrument of response to parental child abduction. In England and Wales, applications for return under the Convention are heard in the jurisdiction of the Family Division of the High Court. If the abduction involves a country that is not a Convention state, then the case is still heard in the High Court, under the Family Court's inherent jurisdiction. Applications as explained above, can be made under Article 12 of the Convention in both removal and retention situations of parental child abduction. This is different from the criminal law sanction currently in existence that focuses only on removal.

3. The criminal law

Section 1 of the [Child Abduction Act 1984](#) makes parental child abduction through removal a criminal offence. Therefore, at the moment, a taking parent does not commit a criminal offence in the typical scenario of *retaining* children beyond a holiday period that had been agreed with the other parent, *R (Nicolaou) v Redbridge Magistrates' R v Redbridge Magistrates Court & Another*

¹² Schuz, R (2023) *The Hague Child Abduction Convention: A Critical Analysis* (Studies in Private International Law, Hart Publishing Ltd, UK).

[2012] EWHC 1647 (Admin); Family Law Hub, R v Redbridge Magistrates Court & Another [2012] EWHC 1647 (Admin), Case note, 15 July 2012.

The [Crime and Policing Bill.pdf](#) will leave the Convention untouched but will extend s 1 of the Child Abduction Act 1984 in order to plug this perceived gap in the criminal law.

4. What does Clause 104 say and why was it included?

Clause 104 of the Crime and Policing Bill, if passed will now make retention by a parent of the child abroad in these circumstances a criminal offence punishable by up to 7 years imprisonment.

This proposed change in the law stems from a 2014 Law Commission project [Simplification of the criminal law: kidnapping related offences – Law Commission](#). The primary objective of that project was to review the law relating to kidnapping and false imprisonment, bringing it into the 21st Century. Alongside these areas of law, the review concluded that the lack of criminal sanction for the retention of children in the context of parental child abduction was also problematic and a recommendation was made for a change to s1 of the Child Abduction Act 1984 to provide for this.

The [Impact Assessment](#) accompanying this particular recommendation foresaw few negative effects of the change in law. However, this conclusion was arrived at based upon anecdotal data available in 2014 with very limited global

statistics incorporated.¹³ Significantly no account was taken of the intersection between parental child abduction and domestic abuse. In particular the body of quantitative and qualitative evidence- based research regarding gender and the impact upon children of exposure to domestic abuse.

As the change in law was not brought into effect, the Government seeks to now tie up this loose end. It has considered the amendment and the potential impact of it afresh in the [Equalities impact assessment: Crime and Policing Bill - GOV.UK](#). Here a conclusion is reached that both men and women are equally responsible for child abduction. This is a limited however taken purely on the number of those prosecuted or convicted for parental child abduction under the current s1 Child Abduction Act 1984. Taking this narrow view has meant that the disproportionately negative impact upon women of Clause 104 of the Crime and Policing Bill has been missed.

There are robust statistical datasets produced at regular intervals for Hague states parties. Although there is no data that shows findings of abuse within individual states, the global datasets demonstrate a clear correlation between incidents of parental child abduction and domestic abuse.¹⁴ However the

¹³ See footnote 9 and 15 of [Impact Assessment](#) (accessed 16th February 2026).

¹⁴ Lowe N, Stephens, V. 'Global Report - Statistical study of applications made in 2021 under the 1980 Child Abduction Convention, Prel. Doc. No 19A', <https://assets.hcch.net/docs/bf685eaa-91f2-412a-bb19-e39f80df262a.pdf> (accessed 16th February 2026) and Lowe, N, Stephens, V., 'Statistical study of applications made in 2021 under the HCCH 1980 Child Abduction Convention-Questionnaire and guidelines. Prel. Doc. No 3 of January 2023' <https://assets.hcch.net/docs/> (accessed 16th February 2026).

Government appears to have used only domestically available criminal prosecution and sentencing rates to reach their conclusion and so therefore the gender impact of the new offence appears to have been overlooked.

5. The problems with Clause 104

Key here is understanding the difference between removing and retaining within the context of domestic abuse. Removal refers to a parent taking a child out of their country of habitual residence without consent – often secretly or suddenly. Retention usually follows a permitted holiday where the parent typically realises that returning would expose the child to harm. Most mothers only disclose abuse after reaching a safe environment, typically in their home country with support from family and professionals.¹⁵ Data tells us that women who take or retain children do so to their country of origin.¹⁶ Criminalising retention penalises the very act of seeking protection¹⁷ and takes no account of that fact that retention often reflects a delayed recognition of abuse once the parent is in a safe location.

¹⁵ See p37 “an abused parent feels safer and better supported if they are with their family in their home country.” Data in relocating parents confirms that disclosures do not take place in relocation proceedings. [International relocation of children](#) This evidence on relocation has a direct application to Convention proceedings.

¹⁶ <https://assets.hcch.net/docs/d0b285f1-5f59-41a6-ad83-8b5cf7a784ce.pdf>

¹⁷ GlobalARRK and FILIA Hague Mothers, Joint Briefing to the House of Lords Crime and Policing Bill, November 2025 [3-CP-Bill-Clause104-Full-Briefing.pdf](#) (accessed 16th February 2026).

Seeking to cure the gap in law will have a disproportionately negative impact on women who may be considering leaving situations of domestic abuse to keep themselves and their children safe. Therefore, the extension of criminalisation in Clause 104 of the Crime and Policing Bill also runs counter to the Government's stated policy towards tackling violence against women and girls. [Freedom from violence and abuse: a cross-government strategy - GOV.UK](#)

i) Gender and Domestic abuse in Convention cases – what the data tells us

When the Convention was created in 1980, parental child abduction was a new phenomenon, and although data was scant, it is widely accepted that it was aimed predominantly to prevent non-custodial fathers removing or retaining children abroad.

Through the series of global statistics regularly produced for the HCCH we know that now 75% of parents who are taking parents are women, the majority of whom are primary or joint primary carers.¹⁸ This is supported by a recent qualitative domestic research study that looked specifically at Convention cases heard in England and Wales.¹⁹ Mirroring the global picture, we see here

¹⁸ [Global Report – Statistical study of applications made in 2021 under the 1980 Child Abduction Convention](#)

¹⁹ <https://www.cafcass.gov.uk/sites/default/files/2024-08/Children%27s%20participation%20in%20Hague%20child%20abduction%20proceedings%20heard%20in%20England%20and%20Wales%20-%20A%20Report%20by%20Allison%20Wolfreys%20%28%20Final%29.pdf> (accessed 16th February 2026).

that predominantly it is mothers who are the taking parent when parental child abduction occurs. We also know that allegations of domestic abuse feature heavily in these cases. This is due to the frequent use of the exception or defence contained within s 13 (1) (b) of the Convention, whereby the taking parent submits that if ordered to return the child will be at grave risk of harm or the situation will be intolerable for them. The court can accept that this exception has been established, but it remains within the judge's discretion to order a return in any event.

In doing so the court will consider assurances offered by the left behind parent as a condition of the child's return. If accepted these are contained in undertakings or protective orders as mentioned above. Typically, this includes an assurance that the left behind parent will not seek or assist in a criminal prosecution of the taking parent on their return to the home state. The focus instead is upon the re-establishment of the status quo for the child.

In other cases, even with such assurances or promises offered by the left behind parent, in light of the evidence and at the court's discretion, a decision is made that the children should not be ordered to return. Such decisions reflect our understanding that although children can sustain harm from the child abduction event itself²⁰ we also know far more now about the long-term

²⁰ Grief, G, Finkelstein Waters, S, "Ambiguous Reunification: A Way for Social Workers to Conceptualise the Return of Children After Abduction and Other Separations (2014) International Family Law Policy and Practice 2 (1), 25.

negative impact of exposure to domestic abuse upon children²¹ and how it may impact upon their development and sense of identity.²² Little attention was given to the co- occurrence of parental child abduction and domestic abuse until fairly recently,²³ however numerous research findings clearly link a child's exposure to adult-to-adult domestic abuse with adverse physical and psychological outcomes. Most recently we know that this exposure can manifest differently with more externalised behaviour such as physical aggression in boys and more internalised behaviours such as anxiety and sleep disorders in girls.²⁴

Clause 104 takes no account of the current issues regarding domestic abuse in the context of abduction and its impact upon the children. It also fails to look beyond the abduction event itself and the potential impact of criminalising their parent within a complex family dispute.²⁵ If mothers have left an abusive relationship and taken their children overseas, they may simply refuse to return for fear of prosecution, however through the Convention's Article 12 the children

²¹ Freeman, M (2014) Parental Child Abduction: The Long-term Effects, Centre for Law Policy and Practice.

²² Freeman, M (2020) The child perspective in the context of the 1980 Convention European Parliament: Policy Department for Citizens Rights and Constitutional Affairs.

²³ Trimmings K, Dutta, A, Honorati, C and Zupan, M (2022) Domestic Violence and Parental Child Abduction: The Protection of Abducting Mothers in Return Proceedings (Intersentia, Cambridge, UK).

²⁴ Evans, EE, Schmidt-Sane, MM, Bender, AE, Berg, KA, Holmes, MR (2024) "Children's Exposure to Intimate Partner Violence and Acceptance or Appraisals: A systemic review Journal of Family Violence"

²⁵ Lucy, B. and Sophie, M. (2023) "Maternal imprisonment: The Enduring Impact of Imprisonment on Mothers and their Children," in I. Masson and N. Booth (eds.) The Routledge Handbook of Women's Experiences of Criminal Justice. 1st ed. Routledge, pp. 364–375. Available at: <https://doi.org/10.4324/9781003202295-32>. Accessed 14th February 2026.

may be ordered to return in any event back to their country of habitual residence and in all likelihood therefore the left behind parent. The few studies that have been published to date on the aftermath of Convention cases reveal an increased risk of continuing harm to children who return to their country of habitual residence and often to an abusive father.²⁶

The reasons why parental child abductions occur are multifaceted and complex. Parental disputes are most readily dealt with within the jurisdiction of the family court, and punitive criminal sanctions will actually occasion the most harm on the children at the centre of these disputes. Within this context Clause 104 sits as a blunt instrument that will undermine the safety and best interests of children.

6.The Government’s position

A number of organisations including those working in the specialist field of international child abduction jointly wrote to Peers to address their concerns about the impact of Clause 104 in advance of the House of Lords Committee stage of the Crime and Policing Bill.²⁷

²⁶ Lindhorst, T and Edleson, JL Battered Women, Their Children and International Law: The unintended consequences of the Hague Child Abduction Convention 2012 (Northeastern University Press).

²⁷ The letter can be found here [1-CP-Bill-Clause104-Covering-Letter.pdf](#) and was written by Roz Osborne, CEO, [Globalarrk – Global Action on Relocation & Return with Kids](#) and Ruth Dineen, International Coordinator, FILIA Hague Mothers [Home - Hague Mothers](#) It was supported by the following signatories/organisations Olive Craig,, Chief

By way of response, Baroness Brinton tabled amendments 335A and 335B to Clause 104 of the Crime and Policing Bill to draw attention to the Clause and the issues raised. The substantive amendment (335A) was intended to provoke a discussion as to whether the Government had considered domestic abuse within the context of the new offence of retention in parental child abduction cases, by providing that the offence shall not be committed by a

“victim of domestic abuse within the meaning of section 1 of the Domestic Abuse Act 2021”

who either takes their child out of the UK in order to safeguard themselves or their children from domestic abuse, or with relevance to the new criminal provision, one who detains the child abroad wholly or mainly to safeguard themselves or their child from domestic abuse.”²⁸

Executive, Women’s Aid Harriet Wistrich, Solicitor & Director, Centre for Women’s Justice Dr Elizabeth Dalgarno, Director & Founder, Shera Research Group, Vivienne Hayes OBE, CEO, Women’s Resource Centre Sally Jackson, Global Lead for ending male violence, FiliA Rachel Horman-Brown, KC (hon), Watson Ramsbottom Solicitors Jo Gough, CEO, RISE UK Dr Emma Katz, Senior Lecturer in Criminology, Edge Hill University Zoe Dronfield, Campaigner, Survivor & Trustee, Paladin National Stalking Advocacy Services Dr Rachael Grey, CEO, Project Lighthouse Imogen Tutt, Senior Public Affairs & Policy Officer, Safe Lives Nik Peasgood, Chief Executive, Leeds Women’s Aid Sarah Hill, CEO, IDAS - Independent Domestic Abuse Services Dr Shonagh Dillon, CEO, Aurora New Dawn Liz Mack, CEO, Advance Yasmin Khan, CEO, Staying Put Stephanie Futter-Orel, Executive Director, WAVE (Women Against Violence Europe) Adama Sira Le Blay, Co-president, European Network of Migrant Women.

²⁸ The full text of 335A provides : Clause 104, page 133, line 39, at end insert— “(1B) A person does not commit an offence under subsection (1A) where—(a) the person is a victim of domestic abuse within the meaning of section 1 of the Domestic Abuse Act 2021, and (b) the act of detaining the child outside the United Kingdom was attributable wholly or mainly to safeguarding themselves or the child from domestic abuse.(1C) In determining whether subsection (1B) applies, the court must have particular regard to—(a) any evidence of domestic abuse directed towards the parent or

The tabled amendments were discussed on the 15th December 2025 during the Committee Stage of the House of Lords.

The Government did not support the amendments, with full reasons presented by Baroness Levitt.²⁹ Welcoming the chance to explain the reasons for the inclusion of Clause 104, the Government's commitment to safeguarding was restated. In summary the Government's response was organised around three main areas. The first was the ongoing work being carried out by the Law Commission.

i) The Law Commission review

The Government submitted that the tabled amendments would add a statutory defence of domestic abuse to the criminal law offences contained in s1 of the Child Abduction Act 1984. To do so, it was stated would be premature due to the current ongoing work being carried out by the Law Commission who are currently reviewing defences in domestic abuse cases as part of a project reviewing the law of homicide and sentencing provisions.

the child, and (b) any risk that return of the child would expose the parent or child to further abuse Clause 335B provides for the definition of the age of a child as under 16.

²⁹Hansard HL, Deb, 15th December 2025, Vol 851 Col 593,594 and 595., Here Baroness Levitt also tabled her own amendments 336,496,521 and 549 for the Government to extend the provisions contained in Clause 104 to Northern Ireland that as subsequently agreed (Col 597).

Acknowledging that the primary focus of that review is homicide, Baroness Levitt explained however, that any findings or recommendations made during the Law Commission's work here may have wider implications on how defences operate more broadly where crimes occur within the context of domestic abuse.

This Review of the Law of Homicide is welcome. It seeks to reflect the current understanding of the effects of domestic abuse on, for example defences and partial defences to murder. It is needed due to the acknowledged gender disparities for murders committed in a domestic context. [Law of homicide – Law Commission](#) and incorporates the Domestic Homicide and Sentencing Review [Domestic Homicide Sentencing Review and government response – GOV.UK](#)

The argument that appears to be advanced by the Government is that although the Law Commission's brief is not to incorporate international child abduction cases in their review, the Amendment to Clause 104 would create a bespoke defence that might have implications for other criminal proceedings. It is difficult to see how this argument works as any such provisions or recommendations made by the Law Commission are in any event likely to be tailored and bespoke to individual criminal offences as a blanket defence of domestic abuse across all criminal offences would be impossible to achieve.

Furthermore the outcome of the Law Commission Review on Defences in criminal proceedings is likely to be published in 2028 and there will be some time before this translates into specific provisions in law. In contrast the Crime and Policing Bill is likely to be finalised during 2026. If, (and this was not stated) it is the Government's view that the Amendment as drafted was problematic as it employs the current definition of domestic abuse contained in the Domestic

Abuse Act 2021, that may in due course be amended, then any new subsequent statutory definition of domestic abuse could be retrospectively incorporated by way of a straightforward statutory amendment.

Overall, therefore this strand of argument was unconvincing. The second strand of the Government's response relates to procedural safeguards within the criminal law system.

ii) Deterrence and prosecutorial discretion

Baroness Levitt reminded the House that following an arrest, criminal prosecutions do not necessarily take place but are subject to a two-stage test applied by the Crown Prosecution Service (CPS). First there has to be sufficient evidence to bring a prosecution for a particular offence and, even if this is satisfied, a prosecution would only be brought if it was in the public interest to do so.

Therefore, as she went on to explain, in deciding whether or not to prosecute a parent under this new offence the relevance and context of domestic abuse within the relationship would be considered. For example, prosecutors must consider the background to an offence, including whether the alleged offender, was a victim of domestic abuse. As such any decisions would be subject to this prosecutorial discretion and an assessment of all of facts and situation in the

round.³⁰ Finally, she advanced that as a further safeguard if both the evidential and public interest stages support a prosecution, the consent of the Director of Public Prosecution would also be required to proceed.

Such assurances appear reasonable and make clear that the Clause is intended to act as a deterrent. However, the Government response illustrates that the Clause creates more uncertainty in order to plug this perceived gap in the criminal law. A new offence is being created in law, yet any action taken will be dependent upon a complaint being made and the police making an arrest that may or may not proceed to prosecution. This is of course the case in most criminal matters. This will be of little comfort to those parents seeking to leave abusive relationships if they believe that criminal proceedings can and may be brought against them by the state through the CPS. The potential for prosecution or threat of it will add a further layer to the recognised psychological, social and environmental barriers³¹ that exist to prevent women leaving abusive relationships particularly women from minority groups.³²

³⁰ Hansard HL Deb 15th December Vol 89 Col 594.

³¹ Anderson, M.A., Gillig, P.M., Sitaker, M. *et al.* "Why Doesn't She Just Leave?": A Descriptive Study of Victim Reported Impediments to Her Safety. *Journal of Family Violence* 18, 151–155 (2003). <https://doi.org/10.1023/A:1023564404773> (accessed 14th February 2026).

³² For a discussion of minority groups and how staying within or leaving an abusive relationship is shaped by unequal access to resources see Barrios, V.R, Khaw, L.B.L. Bermea, A., Hardesty, J.L (2021) Future Directions in Intimate Partner Violence Research: An intersectionality Framework for Analyzing Women's Processes of Leaving Abusive Relationships *Journal of Interpersonal Violence*, 36 (23/24). <https://doi-org.libezproxy.open.ac.uk/10.1177/0886260519900939> (accessed 14th February 2026).

At present MoJ data provides that very few prosecutions lead from arrests being made under the current s1 Child Abduction Act 1984.³³ The Government appears to suggest that by their assurance that the actual use of the provision will be the exception rather than the norm. It is questionable whether the Government intends therefore by this provision to increase the prosecution rate. Within their sights is the small number of parents who were cited in the 2014 report who may be using the loophole in the law to evade prosecution.³⁴ This is not only disproportionate but also based upon a lack of data and evidence to support it.³⁵

Clause 104 will also have resourcing implications. It is acknowledged that deterrence has a part to play in the criminal justice system. However, the new offence will be costly for police and CPS to consider, and the resourcing

³³ Quarterly Statistics produced by the MoJ provide the following data for year between 2018-2025. The number of prosecutions for s1 offences under the Child Abduction Act 1984 is low but growing. In 2018 this stood at only 12, increasing in 2024 to 16 and now to 20 in 2025, the highest number of prosecutions in the reporting period. However, of these, during the same period the conviction rates significantly declined (83.3% in 2018 to 20% in 2025). There may be many reasons for this significant reduction however as ever there are resourcing implications in the pursuing prosecutions in these cases. As to gender there were an equal number of men and women at 51 each who were prosecuted, with the highest number of women prosecuted within 2025. Prosecuted under s 1 of the CAA 1984, a total number in the period of females prosecuted across the whole period was equal with a total of 51 men and 51 women who were prosecuted, with women significantly outweighing men in the reporting period to 2025.

³⁴ [Law Commission Simplification of Criminal Law: Kidnapping and Related Offences HC 797](#) p 47 citing Alfred Dubbs MP Hansard (HC) 6th April 1984 Vol 57.

³⁵ [Impact Assessment](#) and reliance upon anecdotal data (accessed 14th February 2026).

provisions within the already stretched police and the CPS. appear to have been overlooked by the Government.

The impact assessment for the 2014 Law Commission recommendations also noted that criminalising the retention of a child abroad by a parent would result in an increased number of UK extradition requests to bring those suspected of the offence for trial. Yet, no consideration appears to have been given to the possible extradition costs that will be incurred in returning parents who have retained their children abroad under the new offence to extradite them and bring them to trial.

It was noted however at that time that these costs are likely to be offset by the corresponding savings resulting from a reduction in family proceedings under the Convention. This intersection between the civil and criminal remedies was addressed albeit speculatively as that one may save costs and reduce the costs in Convention cases.

It is the impact upon Convention cases and the international implications that are currently being ignored by the Government by ploughing ahead with Clause 104.

iii) The civil law should be the primary response (International cooperation)

It was made clear through Baroness Levitt that criminal prosecution under Clause 104 is intended to sit alongside and supplement existing civil remedies.³⁶ The Government was at pains to point out that the new criminal provision was not intended to undermine the Convention and that the civil law through the operation of the Convention is best placed to deal with parental child abduction cases. She highlighted that the UK continues to work with other Convention countries sharing information and international co-operation to ensure that the Convention operates effectively to facilitate the safe return of children.

Parental child abduction cases raised against the backdrop of domestic abuse undoubtedly raise difficult questions regarding judicial practices, the conflict of national legislations, cross border implementation and recognition. In an attempt to clarify the approach to be taken, as mentioned above, the Guide to Good Practice on Article 13 (1)(b) was published in 2020.³⁷

The Government has participated in two specially convened forum discussions in South Africa and most recently Brazil in order to contribute to the

³⁶ House of Lords Hansard 15th December 2025 Column 595.

³⁷ Hague Conference on Private International Law "Guide to Good Practice under the HCCH Convention of 25th October on the Civil Aspects of International Child Abduction – Part VI Article 13 (1) (b) [225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf](#) (accessed 10th February 2026).

understanding and application of the Convention where domestic abuse is alleged and used under the Convention's Article 13 (1) (b).³⁸

There does appear to be a Government commitment to participate in sharing best practice internationally and have a voice in deepening developments in where domestic abuse features in parental child abduction and the operation of the Convention. This is evidenced by the Government's active participation in the Brazil forum where Government officials were active on steering committees and senior judges from England and Wales and Scotland spoke at formal sessions.

The Government support for the championing of the issue internationally was recently highlighted by Alex Davis-Jones MP Parliamentary Under Secretary of State who stated that

"In supporting the Forum, the Government wished to provide a useful opportunity to share perspectives and best practice internationally, and to facilitate meaningful collaboration between States Parties, advocacy groups, judges, central authorities, practitioners and other experts on the issues raised."³⁹

³⁸ [HCCH | Second Forum on Domestic Violence and the 1980 Child Abduction Convention – with a focus on the Operation of Article 13\(1\)\(b\) \(Fortaleza, Brazil | 27-30 October 2025\)](#) (accessed 13th February 2026).

³⁹ Letter dated 19th December 2025 from Alex Davies- Jones MP Parliamentary Under Secretary of State, Ministry of Justice MOJ Ref ADR 128569 to Ruth Dineen FiLiA Hague Mothers and Roz Osborne GlobalARRK.

Pushing forward with the agenda of criminalisation does not fit readily with this policy, nor does it align with HCCH published recommendations.

Special Commissions of the Hague Convention are held periodically in order to monitor and agree best practice on its practical operation and by consensus Conclusions and Recommendations (C&R) are reached by states parties.

The impact of criminal prosecutions upon the Convention's civil aspects of child abduction was discussed at meetings of the Special Commission in 2001 and 2006. Here, attention was drawn within the conclusions and recommendations to the negative impact of criminal prosecutions upon the overriding objective of the return of children.

“The Special Commission underlines that Central Authorities should inform left-behind parents of the implications of instituting criminal proceedings including their possible adverse effects on achieving the return of the child.”⁴⁰

Furthermore, there is an obligation upon the state to promote amicable settlement, by looking more progressively beyond the abduction event

⁴⁰Special Commission 2006 C & R 1.8.4 reaffirming C& r 5.2 of Special Commission 2001 C & R 5.2 reaffirmed.

“The Central Authorities should also inform the left-behind parent of the alternative means available to resolve the dispute amicably.”⁴¹

Practically, bolstering the criminal sanctions in this jurisdiction misaligns with this approach, and does not centre the needs and best interests of children.

7. Children’s best interests

There is compelling evidence to show that substantial harm is caused to children by their exposure to domestic abuse. This is acknowledged within the legal framework of Convention cases heard within the jurisdiction of England and Wales.⁴² We also know that children can experience trauma from the abduction event itself. However, trauma informed approaches are not used currently in how children are treated and their views considered in the legal arena when cases are heard within this jurisdiction.⁴³

Clause 104 has the potential to compound such trauma for children who are the centre of a parental dispute. Taken to fruition the Clause will result in a child

⁴¹ Special Commission 2006 C & R.1.8.4.

⁴² In *Re E (Children) (international Abduction)* [2011] UKSC27, [2012] 1 AC 144 and its subsequent judgment in *Re S (A Child) (Abduction: Rights of Custody)* that removed the exceptionality requirement [para 31] found in earlier judgments regarding Article 13 (1) (b) such as *TB v JB (Abduction: Grave risk of harm)* [2001] 2 FL 4 515 The approach taken has been described as the evaluative approach where the assumptions are made regarding the maximum level of risk on order to determine the risk to the child See *Re A-M (A child) (1980 Hague Convention)* [2021] EWCA Civ 98.

⁴³ Wolfreys, A (2025) [Wolfreys, Allison](https://oro.open.ac.uk/106672/) (2025). Objecting children and party status in Hague Convention proceedings heard in England and Wales: searching for rationality and authenticity. *Child and Family Law Quarterly*, 37(3) pp. 293–310 <https://oro.open.ac.uk/106672/> (accessed 16th February 2026).

losing their primary carer thereby adding to the barriers for recovery for children who have been exposed to domestically abusive or coercively controlling relationships whilst their parents were living together. Through recent policy announcements we can see evidence that the Government does understand the impact of domestic abuse and controlling behaviour on the well-being and safety of children. In particular, following representations by domestic abuse campaigners and bereaved parents, and attention being paid within the [Presumption of parental involvement review - GOV.UK](#) the law will be repealed as it runs counter to the Government's stated policy for the protection of children from exposure to domestic abuse.⁴⁴ [Government action to protect children from abusive parents - GOV.UK](#)⁴⁵

Policy makers must realise that while possible criminal prosecution can be a good deterrent they complicate matters to a point that they will affect the best

⁴⁴ The assumption that the involvement of both parents in a child's life will further the child's welfare), which is contained in S1(2A) of the Children Act 1989.

⁴⁵ See [Government action to protect children from abusive parents - GOV.UK](#) (accessed 14th February 2026)where Levitt K,C states

"The horrors of domestic abuse can scar a child for life. It is apparent from our research that the presumption of parental involvement can, in some cases, lead to contact being ordered even in cases where there has been domestic abuse. Our priority must always be children's welfare. Being a parent is a privilege not a right: the only right which matters is a child's right to safety, and this government is determined to ensure that that is at the heart of every decision made about each and every child".

interest of the child. [HCCH Guide to Good Practice No III on Preventive measures](#)⁴⁶

8. Conclusion

The extension of criminalisation through Clause 104's amendment to the Child Abduction Act 1984 should be omitted from the Crime and Policing Bill. It is not sufficient to rely upon prosecutorial discretion for its use or any additional sentencing guidelines that may be produced from findings that arise from the Law Commission's ongoing work on defences to domestic homicide.⁴⁷

The Government should instead redouble its efforts to work with other jurisdictions, by continuing to share best practice through existing international private law networks, in particular by prioritising the needs and rights of children at the centre of these cases.⁴⁸ The European Parliament has recently paid close attention to the research and policy in parental child abduction cases heard in

⁴⁶ See paragraph 31 where criminal proceedings "can hinder applications under the Convention" citing also *Sonderup v. Tondelli* 2001 (1) SA 1171 (CC) INCADAT: HC/E/ZA 309; and *Re M. and J. (Abduction)* (International Judicial Collaboration) [1999] 3 FCR 721 INCADAT: HC/E/UKe 266.

⁴⁷ In the alternative, if Clause 104 is retained, rather than using the definition of domestic abuse contained in DDA 2021 as tabled by Amendment 335A, an alternative form of words should be written into the new offence to protect victims of domestic abuse. An example is s 1(1) of the Criminal Damage Act 1971 where "without lawful excuse" is provided for within the definition of the offence.

⁴⁸ Wolfreys, A. Access to justice: objecting children as parties in Hague Convention cases heard in England and Wales, *International Journal of Law, Policy and the Family*, Volume 40, Issue 1, 2026. ebaf051, <https://doi.org/10.1093/lawfam/ebaf051> (accessed 17th February 2026).

England and Wales and we need to continue to build on this work.⁴⁹ There are a variety of reasons why parental child abductions takes place and we have an international responsibility to ensure the wellbeing of children who are returned. We need to deepen our knowledge of the complex interplay between parental child abduction, gender and domestic abuse in order to understand why these abductions take place at all.

Bolstering criminal law sanctions deflects from these efforts, is a poor use of resources and works against the best interests of children and the Government's stated policy aim to protect women and girls.

⁴⁹ Freeman, M Lessons Learned and Ways Forward [The 1980 Hague Convention](#) (accessed 17th February 2026)
Policy Department for Justice, Civil Liberties and Institutional Affairs – Directorate General for Citizens' Rights, Justice and Institutional Affairs PE 778.850 January 2026.