

SCOTTISH EXECUTIVE

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Our ref: 2007/0018992

26 June 2007

Thank you for your letter of 23 May 2007 to the Lord Advocate about your constituent Mr Robert Bennett. I am replying because as Minister for Community Safety I am responsible for family law in Scotland.

It would be inappropriate for me to comment on the details of this case. However, I can tell you that the Scottish provisions of the Child Abduction Act 1984 - referred to in the case Deans v Deans - are different from those that apply in England and Wales. In that case the Scottish court recognised that under section 6(1)(b) of the 1984 Act the English court order would have to be overturned before the children could leave the UK.

There is no requirement in the English provisions of the 1984 Act to take account of a Scottish interdict prohibiting removal of a child from the UK. The Lord Chancellor may be able to explain the English provisions and procedures in more detail.

I understand that the 1984 Act began as a private member's bill and was originally meant to extend only to England and Wales. The Scottish offence was added later in order to prevent someone from taking a child across the border to Scotland to then take the child outwith the UK. Section 6(1)(b) was designed to close a perceived loophole in the English offence, but may have had further consequences that Parliament did not foresee. I will consider the implications of this difference between the Scottish and English provisions.

I hope that you find this helpful in responding to your constituent, and suggest that he take independent legal advice on the options open to him now.

INVESTOR IN PEOPLB