

**ANSWERS TO QUESTIONS SUBMITTED BY PARTICIPANTS IN ADVANCE OF  
THE WORKSHOP 'WORKING TOGETHER – INFORMATION RESOURCES'  
30 OCTOBER 2015**

**Note:** The answers to these questions are provided for the use of participants. If they are circulated further, the following information should be given to recipients:

- The Ministry of Justice is not in a position to answer questions on an ad hoc basis. You are invited to consult the websites listed.
- The answers set out the position as known on 10 February 2016. Information may change and it is for the user to confirm the current position.
- These answers have been prepared by policy officials in England and Wales. They are not a complete statement of the policy position of any organisation or Government. They focus on care cases with an international element.
- The answers do not constitute legal advice and must not be relied on as such.
- The first place to look for information is the Knowledge Hub at [www.khub.net](http://www.khub.net) where local authorities can exchange questions and answers; it also has a library facility. The Group is called *Local Authority Forum for International Family Casework*.

## **Judiciary**

### *The role of the Central Authorities (CA)*

1. What are the contact details of the England and Wales CA?

The International Child Abduction and Contact Unit (ICACU) is the Central Authority for England and Wales under Council Regulation No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (known as Brussels IIa). Details of all Central Authorities for European Union Member States under the Brussels IIa Regulation are at

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/rc\\_jmm\\_centralauthorities\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_jmm_centralauthorities_en.htm).  
(Denmark is not party to Brussels IIa.)

ICACU is the Central Authority for applications under the 1996 Hague Protection of Children Convention for England. For Wales, the Central Authority is the Welsh Government. All central authorities for Contracting States to the 1996 Hague Protection of Children Convention are on the website of the Hague Conference on Private International Law at [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=941](http://www.hcch.net/index_en.php?act=authorities.details&aid=941). (Contracting States worldwide include all Member States of the European Union.)

The addresses of ICACU and the Central Authorities for the other jurisdictions of the United Kingdom are available in Practice Direction 12F supporting Family Procedure Rules 2010 at [http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12f](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12f).

The text of Brussels IIa is included in Part VI of The Family Court Practice and is also available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003R2201&from=EN>.

The text of the 1996 Hague Convention is included in Part VI of The Family Court Practice and is also available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=70>.

The President has issued guidance on the role of ICACU, which is available at <https://www.judiciary.gov.uk/publications/presidents-guidance-on-the-international-child-abduction-and-contact-unit-icacu-and-its-role/>.

2. What queries in relation to existing international instruments should be routed through the England and Wales CA?

ICACU can answer questions on the central authority aspects of the operation of the instruments for which it has responsibility, for child protection matters principally the 1996 Hague Protection of Children Convention and Brussels IIa (see 1).

Each instrument sets out the applications and requests which may be made, who may apply or request and what routes are available, ie whether through the central authority or another way.

#### Brussels IIa

Article 11(1)-(5) reinforce the procedures required for the operation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, through central authorities; Article 11(6) court making non-return order under 1980 Hague to send case papers to court in country of child's habitual residence either directly or through its central authority;

Article 15 court with jurisdiction which considers court in another Member State better placed to hear case can ask parties to apply there or request court there to assume jurisdiction, courts cooperating either directly or through their central authorities;

Article 54 general duty of central authorities to cooperate;

Article 55 sets out matters on which central authorities should cooperate on cases specific to parental responsibility;

Article 56 sets out requests that can be made on placement of a child in another Member State either through the central authorities or direct to the competent authority;

Article 57 holder of parental responsibility may ask central authority for assistance.

#### 1996 Hague Protection of Children Convention

Article 30 general duty of central authorities to cooperate and promote cooperation between competent authorities;

Article 31 central authorities to facilitate transfer of jurisdiction, agreed protection solutions, location of child;

Article 32 central authorities directly or through public bodies to provide reports on situation of child or invite other country to take protection measures;

Article 33 sets out requests that can be made on placement of a child in another Contracting State either through the central authorities or direct to the competent authority;

Article 34 deals with requests for information ahead of possible placement;

Article 35 requests for assistance in implementation of protection measures, assessments of a parent's suitability for access (contact);

Article 36 where child in danger, competent authorities to tell State to which child has moved.

3. When is it appropriate for a CA in another country to be contacted directly?

Brussels Ila sets out when a “competent authority” can contact the Central Authority in the requested<sup>1</sup> State directly. Depending on the circumstances of the case, either a court or a local authority can be a competent authority. See 2 above.

The 1996 Hague Convention sets out the roles of the Central Authority, an “authority”, a “competent authority” and “public authorities”. Depending on the circumstances of the case, either a court or a local authority can be an authority, a competent authority or a public authority. See 2 above.

It is a matter for the court to decide whether to go through ICACU (and so via the Central Authority of the requested State) in contacting a court in the requested State, or whether to contact the Central Authority of the requested State directly.

It may be more helpful for local authorities to make contact in the first instance through the England and Wales Central Authority. For example, this avoids the risk of duplication. If during a case the distant Central Authority and their local authority agree that their local authority may work with the local authority in England and Wales directly, it is advisable that the relevant CAs are kept informed as the case progresses.

#### 4. How long will an assessment take commissioned through the CA?

There are no time limits in the Brussels Ila Regulation and the 1996 Hague Convention. The time taken is a matter for the domestic law and procedures of the requested State.

ICACU has advised that requests for assessments should be made through them. ICACU will transmit the request to the other Central Authority. An additional duplicate application by the local authority for an assessment sent direct to the requested Central Authority by the local authority or any other organisation will cause delay.

ICACU is the primary point of contact.

#### 5. How will an assessment be commissioned?

The request for cooperation under Articles 54 to 56 of Brussels Ila or Articles 30 to 36 inclusive of the 1996 Hague Convention can best be made through the Central Authority. It will be a matter for the requested State how the request is dealt with there. ICACU may be able to provide information about whether or not social workers from England or Wales are permitted to carry out assessments in the relevant part of the requested State or whether the requested State will carry out the assessment in accordance with their domestic procedures, if the requested State is an EU Member State or Contracting State to the 1996 Hague Convention.

#### 6. Is there an agreed list of questions that the assessment will address?

No. The list of questions in the ICACU form will assist. Local authorities may wish to consider additional questions. The ICACU form and guidance are at:

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<sup>1</sup> “Requested State” is the State to which an application or request for cooperation is being made. For Brussels Ila this is another EU Member State, except Denmark. For the 1996 Hague Convention this is another Contracting State.

<https://www.gov.uk/government/publications/international-child-abduction-unit-request-for-co-operation-form>.

7. What is the name and contact details for the International Liaison Judge?

Contact with the judge should be made through the Office [IFJOffice@hmcts.gsi.gov.uk](mailto:IFJOffice@hmcts.gsi.gov.uk) or by ringing the lawyer supporting the International Liaison Judge on 020 7947 7197.

#### *The role of embassies*

8. What are the contact details for the Embassy?

The London Diplomatic List contains the addresses and contact details of all Embassies and High Commissions in London. Details can be found on gov.uk -

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/484569/London Diplomatic List - February 2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484569/London_Diplomatic_List_-_February_2016.pdf)

This website is usually updated monthly.

It is advisable for family matters to contact the Consular Section of the relevant Embassy or High Commission.

The court in England and Wales has said that good practice requires Embassies or High Commissions to be notified in certain circumstances, in accordance with the 1963 Vienna Convention on Consular Relations. The decision on what, if any, action is taken in response to a notification is a matter for the Government concerned.

The leading cases are:

*Re E (A Child)* [2014] EWHC 6 (Fam) (14 January 2014), for the Vienna Convention see paras 38-48 and in particular on good practice paras 43-48  
<http://www.bailii.org/ew/cases/EWHC/Fam/2014/6.html>;

*Re CB (A Child)* [2015] EWCA Civ 888 (06 August 2015), for the Vienna Convention see paras 70-79 and in particular on good practice para 79  
<http://www.bailii.org/ew/cases/EWCA/Civ/2015/888.html>;

*Re N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112 (2 November 2015), for the Vienna Convention see paras 23 and 24  
<http://www.bailii.org/ew/cases/EWCA/Civ/2015/1112.html>.

#### *Requests for information*

9. Who are the relevant points of contact when trying to establish the law and procedure in another country? This is particularly relevant when dealing with non-Contracting States.

It is a matter for parties and/or their representatives to decide what action they wish to take to obtain evidence on the law and procedure of a country which is outside the EU and a non-Contracting State to the 1996 Hague.

Some information on the law and procedure of EU Member States is available on the e-Justice portal on the Europa website at

[https://e-justice.europa.eu/content\\_ejn\\_in\\_civil\\_and\\_commercial\\_matters-21-en.do](https://e-justice.europa.eu/content_ejn_in_civil_and_commercial_matters-21-en.do).

It is important to note that in EU terms “civil” includes “family”.

This should be available in the language of the Member State whose law and procedure is described. If the translation into English is not available now, it will be at a later date.

ICACU may be able to provide some information on law and procedure if the requested State is an EU Member State or Contracting State to the 1996 Hague Convention.

10. Practice and process of obtaining information, including court documents, from various EU countries, especially those with which the UK experiences many cases e.g. Poland, Spain.

Information which can be requested under Brussels IIa or the 1996 Hague Protection of Children Convention should be requested either through the Central Authority or otherwise, as provided for in the instrument.

Where another EU Member State does not consider the documents concerned to fall within the provisions of Brussels IIa, that Member State may ask for an application to be made under the EU Taking of Evidence Regulation, Council Regulation (EC) No 1206/2001. <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001R1206&from=EN>.

The central body in England and Wales for this instrument is the Senior Master of the Queen’s Bench Division, supported by the Foreign Process Section:

<https://www.gov.uk/guidance/service-of-documents-and-taking-of-evidence>

<http://www.justice.gov.uk/courts/rcj-rolls-building/queens-bench/foreign-process>.

ICACU may be able to provide information on whether or not a specific EU Member State will require a request for information on a particular subject to be made under the provisions of Brussels IIa or under the Taking of Evidence Regulation.

11. What are the expected timescales in obtaining information from another Contracting State or country?

See answer 4. ICACU may be able to provide information on possible timescales in other EU Member States or Contracting States to the 1996 Hague Convention.

Under the Taking of Evidence Regulation the requested court should take action on the request within 90 days.

12. The role of Local Authorities in England and Wales when dealing with an international case.

The Department for Education has published guidance for local authorities in

Cross-border child protection cases: the 1996 Hague Convention October 2012

<https://www.gov.uk/government/publications/cross-border-child-protection-cases-the-1996-hague-convention>;

Advice on placement of looked after children across Member States of the European Union  
January 2013

<https://www.gov.uk/government/publications/placement-of-looked-after-children-in-eu-member-states>;

Working with foreign authorities: child protection cases and care orders July 2014 (issued September 2014)

<https://www.gov.uk/government/publications/child-protection-working-with-foreign-authorities>.

Lincolnshire County Council has published guidance in  
Working with foreign authorities in child protection cases July 2015

[http://lincolnshirechildcare.proceduresonline.com/chapters/p\\_work\\_foreign\\_auth.html](http://lincolnshirechildcare.proceduresonline.com/chapters/p_work_foreign_auth.html).

The Welsh Government has published

Handling cross-border child protection cases: A 'key steps' guide for local authorities, health boards and NHS Trusts in Wales at

<http://gov.wales/topics/health/socialcare/safeguarding/?lang=en>.

Information is also available in the judgments shown at answer 8.

13. How are family members located overseas?

It is a matter for the local authority considering an application to place the child abroad with a family member to seek information from the parents of the child about other family members abroad. If enough information is available to enable the country concerned to make enquiries, a request for cooperation can be made. (See answer 2. above)

14. How are existing records obtained from other jurisdictions? E.g. police, criminal, medical information. In particular:

For criminal records see answers 17 *et seq* below. For obtaining evidence for use in court proceedings see answers 10 and 11 above.

15. To whom are requests for Article 55 documents, such as social services records, police statements and documents from previous court proceedings to be addressed?

Requests for cooperation under Article 55 should be addressed to ICACU. It will be for the requested state to decide whether the documents requested can be disclosed. The request should be focussed, relevant and practical.

16. How long do requests for Article 55 documents take?

See answer 4.

17. To whom are requests for criminal records checks to be addressed?

For records from other Member States, to the UKCA-ECR (UK Central Authority for the Exchange of Criminal Records) by writing to [international.request@acro.pnn.police.uk](mailto:international.request@acro.pnn.police.uk) (see also answer 20 below).

The website is at [https://www.acro.police.uk/ukca\\_ecr.aspx](https://www.acro.police.uk/ukca_ecr.aspx).

18. How long do requests for criminal records take?

Under the Council Decision, UKCA would normally expect to hear back from the distant central authority in 10 working days, with a possibility of extension if more details are needed. Local authorities are invited to consult UKCA about overall times.

19. Are fees payable for requests for criminal records?

Yes. Local authorities are invited to consult UKCA/ACRO about current fees. For background information on their international work see the most recent (2014-2015) annual report on the ACRO Criminal Records Office website at [https://www.acro.police.uk/acro\\_std.aspx?id=1395](https://www.acro.police.uk/acro_std.aspx?id=1395).

20. Is there a prescribed form for requests for criminal records?

Yes for requests from other EU Member States. For queries about how to make a request, for further information and to ask for a request form contact:

ACRO International Requests Mailbox: [international.request@acro.pnn.police.uk](mailto:international.request@acro.pnn.police.uk).

Alternatively the ACRO team can be contacted directly on 01489 569808.

21. Where can I find information concerning existing EU legislation which deals with the exchange of criminal records?

Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States is on the Europa website at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009F0315&from=EN>.

22. Can this information concerning existing EU legislation be used for family proceedings as well as criminal?

The Framework Decision permits requests to be made outside the context of criminal proceedings by authorised bodies.

It is a matter for parties and/or their representatives to consider what evidence is to be put before the court.

23. How does one obtain new evidence? In particular, in cases where the Local Authority wish to explore placing a child with a relative in x country, at the conclusion of care proceedings:

a. Are UK qualified social workers able to carry out the assessment?

It is a matter for the country where the assessment is to be carried out whether or not they will permit foreign social workers to carry out assessments. ICACU should be contacted in the first instance if the country concerned is party to Brussels IIa or the 1996 Hague Protection of Children Convention. For those countries, ICACU will forward the request for cooperation to the relevant Central Authority, which will deal with the request according to their domestic law and procedures.

Local authorities may wish to exchange information about their experience with non-EU or non-1996 Hague Convention countries. ICACU cannot assist.

Local Authorities may find it helpful to find out early in the process (pre-proceedings) whether it is possible to travel to another country and carry out an assessment. It is suggested to contact ICACU for information if the country concerned is party to Brussels IIa or the 1996 Hague Protection of Children Convention.

b. What are the existing mechanisms and practicalities of carrying out assessments abroad?

This will depend on the country concerned, see answer 23a. It is suggested to contact ICACU for information if the country concerned is party to Brussels IIa or the 1996 Hague Protection of Children Convention.

c. Who can undertake this and how?

This will depend on the country concerned. It is suggested to contact ICACU for information if the country concerned is party to Brussels IIa or the 1996 Hague Protection of Children Convention.

d. How is the expense of this to be met?

It is a matter for the parties to consider how the costs of the case will be met. If a party has a legal aid certificate, it is a matter for the Legal Aid Agency whether the cost of an assessment is covered by the legal aid certificate.

e. Is this legal?

It is a matter for the country where the assessment is to be carried out whether or not they will permit foreign social workers to carry out assessments. ICACU should be contacted in the first instance if the country concerned is party to Brussels IIa or the 1996 Hague Protection of Children Convention.

f. Which Local Authorities have experience of carrying out assessments in which countries?

- Local authorities may wish to exchange information among themselves on this subject. The Knowledge Hub is at [www.khub.net](http://www.khub.net) and the Group is called *Local Authority Forum for International Family Casework*.

g. Who carried out those assessments? (names of in-house SW or ISW)

It may not be possible for local authorities to disclose personal details of employees.

h. What were the practical difficulties, if any?

Local authorities may wish to exchange information among themselves on this subject.

i. Is there a need for a database of SW's with language skills, local connections etc willing to carry out assessments in various countries. Who would create and maintain the database?

There are no resources available from government departments to fund a database. It may not be possible for local authorities to disclose personal details of employees.

24. Clarification on how and what types of information can be requested under EC Regulation 1206/2001 -'taking of evidence'

See the text of the Regulation, link at answer 10 for the procedure, also the Civil Procedure Rules 1998 Part 34 and PD34A and Family Procedure Rules 2010 Part 24 and PD24A. The types of information are matters of evidence for use in judicial proceedings, see Article 1(2).

<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part34>,  
[http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part34/pd\\_part34a](http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part34/pd_part34a);

[http://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_24](http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_24);  
[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_24a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_24a).

25. Implementation of a court order. In particular, in cases where the Local Authority wish to explore placing a child with a relative in x country, at the conclusion of care proceedings:

a. are there statutory or non-statutory provisions to provide support to the placement? Please provide as much detail as possible?

Once a child has been placed in another Member State or Contracting State the responsibility for the child falls on that State. Any support to the placement will be a matter for the domestic law and procedure of that country.

b. How would a UK Child Arrangements Order or Special Guardianship Order be interpreted?

These orders are made in England and Wales only. A child arrangements order sets out with whom a child shall live or have contact, and when. These can be explained as replacing residence and contact orders, sometimes known internationally as custody and access orders. These orders can be recognised and enforced internationally.

It is a matter for the requested State to decide how it treats a Special Guardianship Order. It is suggested to contact ICACU for information if the country concerned is party to Brussels IIa or the 1996 Hague Protection of Children Convention.

c. Explain the legal framework under which the child might be placed with the relative for adoption?

Adoption falls outside the scope of Brussels IIa and the 1996 Hague Protection of Children Convention. Reference should be made to Chapter 6 of the Adoption and Children Act 2002 and, in cases falling under the 1993 Hague Intercountry Adoption Convention, to the information on the Hague Conference website

<https://www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption>.

The Department for Education leads on adoption for England and the Welsh Government leads on adoption for Wales. This is not a matter for ICACU.

<https://www.gov.uk/topic/schools-colleges-childrens-services/adoption-fostering>

<https://www.gov.uk/guidance/intercountry-adoption-information-for-adoption-agencies>

<http://gov.wales/topics/health/socialcare/adoption/?lang=en>

d. Would the child need to be physically present and living with the relative before the application is made?

Check the relevant legislation. This is not a matter for ICACU.

e. What is the legal framework within which a child, habitually resident in the UK, presently in interim state care with foster carers, could be placed with the relative in x country?

If this is a placement for adoption, check the relevant legislation and case law. This is not a matter for ICACU.

f. What are the time frames for the above?

If this is a placement for adoption, check the relevant legislation and case law. This is not a matter for ICACU.

26. If the court wishes to transfer a child in interim care to x country, either pursuant to Article 15 or Article 13, what is the procedure for your courts to assume jurisdiction and how long is the time scale before the child can be physically moved?

Under Article 15 of Brussels IIa, the court with jurisdiction in a case may, if they consider that a court of another Member State with which the child has a particular connection would be better placed to hear the case or part of it, and where this is in the best interests of the child, either stay the case and ask the parties to apply to the court in the other Member State to ask that court to assume jurisdiction or itself request the court in the other Member State to assume jurisdiction. The court in the other Member State can also ask to assume jurisdiction.

It is a matter for the parties to decide if they wish to apply to the court in the other Member State asking it to assume jurisdiction. It is a matter for that court when seised to decide whether or not they will accept jurisdiction, following a request either from the court with jurisdiction or from the parties. The court with jurisdiction will set a time limit for seisure under Article 15(4). Once seised the requested court may accept jurisdiction within six weeks under Article 15(5). Subsequent proceedings will be under national law, which may or may not include time limits.

The transfer of jurisdiction to hear the case is not the same as the physical transfer of the child. If the court in the other Member State assumes jurisdiction, the parties in the case may wish to consider awaiting the outcome of those proceedings before making arrangements for the physical transfer of the child, since it will be open to the court making the substantive decision to decide that the child should stay where they are and not move to the country in which the court has assumed jurisdiction.

27. Are there established links and contacts in England and Wales for where to direct queries to in relation to international adoption?

See answer 25. c.

28. Establishing the current procedures in recognising and enforcing orders under the 1996 Hague Convention and how this can be done as effectively and efficiently as possible?

See Family Procedure Rules 2010 Part 12 Chapter 6 Section 2.

[http://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_12](http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_12)

29. What are the similarities and differences of 1996 Hague Convention with Brussels Ila?

Brussels Ila must be used between Member States for matters covered by the Regulation. The 1996 Hague Convention applies between Member States in matters of applicable law, which is not covered in Brussels Ila.

30. Is there any common EU understanding on the time frame for assessments commissioned through the Central Authority?

No. See answer 4.

31. Is there any work underway to agree timescales across Europe?

No. The Ministry of Justice has raised the issue of timescales with the European Commission. It is a matter for the Commission to decide whether or not they will propose timescales as part of their revision of Brussels Ila in 2016.

#### *General queries*

32. Is there any merit in commissioning generic advice on some of these questions?

No. Advice must be specific to the individual case.

a. Which Government Department should commission it?

Not applicable.

b. Does this information exist in reliable form in Advices from counsel in individual cases?

Not applicable. Advice must be specific to the individual case. Legal advice is subject to confidentiality requirements.

c. How could this information be collated in redacted form?

Not applicable.

33. How should the piecemeal expertise on the above questions held by LA's, LA legal departments, solicitors and counsel be best harnessed?

By the exchange of information between local authorities.

34. Is there merit in extending the remit of Frequently Asked Questions to other non-EU jurisdictions?

This is a matter for those exchanging information if they have relevant details. Local authorities and others may consider that it would be more beneficial to build up knowledge on EU Member States and 1996 Hague Convention Contracting States before looking more widely if this is needed.

*Odd questions*

35. How does one obtain a visa for foreign residents wishing to come to the UK to be assessed on their suitability to live with a child?

The policy on entry to the UK is a matter for the Home Office; the requirements of UK Visas and Immigration are at <https://www.gov.uk/browse/visas-immigration>.

In an individual case, it is a matter for the relevant individual to apply for a visa from outside the UK in accordance with the UK visa regime requirements for their situation, see link above.

a. Can this be made simpler?

The policy on entry to the UK is a matter for the Home Office.

36. How does one issue an all ports alert warning when the child is in imminent danger of being abducted by the abducting parent?

The parent (or their legal representative) with information that their child is about to be unlawfully removed from the UK should go to their local police station (or any police station in the most urgent cases) with their information. The police will institute an all ports warning ("port alert") if they are satisfied there is a real and imminent threat of the child being unlawfully removed from the UK.

The procedure is set out in Practice Direction 12F supporting Part 12 of Family Procedure Rules 2010 at [http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12f](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12f).

37. When this country does not have jurisdiction to deal with the welfare of the child and the child is present here how can we ensure the safe return of the child to their country of habitual residence?

The court in England and Wales does have jurisdiction to take measures for the protection of the child who is present here, under Chapter II of the Family Law Act 1986.

Measures may be taken under Article 20 of Brussels IIa when another Member State has jurisdiction as to the substance of the matter.

Measures may be taken under Article 11 of the 1996 Hague Convention when another Contracting State or non-Contracting State has jurisdiction.

The practical arrangements for the child's travel are a matter for the parties. This can be when the court of the country of the child's habitual residence with jurisdiction has decided where the child will live.

## **Local Authorities**

38. Local authorities would like guidance on practical aspects of implementing their obligations under Brussels IIa. In particular:

a. What orders do Local Authorities need to obtain in Court proceedings and when?

Requests for cooperation to ICACU under Brussels IIa or the 1996 Hague Convention do not require an order of the court before they can be made. Any orders to be made under Part IV of the Children Act 1989 are a matter for local authorities.

The Public Law Outline in Practice Direction 12A supporting Family Procedure Rules 2010 sets out the steps to be taken including, in a case with an international element, as a first step, consideration of whether a request needs to be made to a Central Authority, see Stage 1 Day 2 Issue and Allocation. Further reference to action in cases with an international element is made elsewhere in the Public Law Outline:

[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a)

b. How do Local Authorities contact other CAs?

See answer 3.

c. What type of information can Local Authorities obtain from CAs?

See answer 2.

d. How do Local Authorities request information from other countries?

Local authorities can make requests through ICACU to Member States of the European Union (except Denmark) and to Contracting States to the 1996 Hague Convention (including Denmark).

e. How should local authorities go about organising travel arrangements for children in their care who are being returned to other jurisdictions.

The practical arrangements for the child's travel are a matter for the parties. This is not a matter for ICACU.

39. How should Local Authorities respond to requests from other jurisdictions for cooperation? In particular when the child is not habitually resident in England and Wales?

Brussels IIa and the 1996 Hague Convention are binding on the UK. Local authorities should provide the information requested.

40. What are Local Authorities' legal duties under Brussels IIa and 1996 Hague Convention?

Brussels IIa and the 1996 Hague Convention apply to the relevant public authorities or other bodies in the UK in the same way as they apply to the relevant public authorities or other bodies in other Member States or Contracting States.

## Brussels IIa

Local authorities are required to assist central authorities, preferably through ICACU, or a holder of parental responsibility, with information under Article 55. Local authorities are required to respond with decisions through ICACU to courts in other Member States making requests under Article 56, except in the case of proposed mental health placements in England where the decision will be made by the Department of Health.

Local authorities which are parties to proceedings may be invited to take action by the court under Article 15.

Local authorities may apply for the recognition or refusal of recognition of a judgment under Article 21. Local authorities which are parties to proceedings may appeal a decision on registration for enforcement under Article 33, or apply for a stay under Article 35. Local authorities may apply for partial enforcement under Article 36.

Local authorities with parental responsibility may apply for recognition and enforcement of a judgment under Article 40(2). Local authorities with parental responsibility may apply for assistance under Article 55 in accordance with the working method set out in Article 57(1).

## 1996 Hague Convention

Under the 1996 Hague Convention, local authorities may have a role in relation to Articles 7, 8, 9, 23(2)(c), 24, 26, 28, 31, 32, 33, 34, 35, 36 and 37. Articles 36 and 37 are explained below.

Article 36 provides that in any case where the child is exposed to a serious danger, if a competent authority, including a local authority, has taken measures to protect the child, or is considering taking protection measures, and learns that the child has gone to another country, the competent authority must inform the authorities of that country (whether or not that country is a Contracting State) of the danger involved and the protection measures taken or under consideration.

Article 37 requires that an authority must not request or transmit any information covered by the cooperation provisions of the 1996 Hague Convention if it considers that to do so would be likely to place the child or the child's property in danger or be a serious threat to the liberty or life of a member of the child's family.

41. What can be done to improve and promote existing DfE guidance for Local Authority social workers on international case work?

It is planned that in addition to appearing on the Department for Education pages of the gov.uk website, the revised DfE guidance currently in preparation by DfE will be available on the Law Society website, the ADCS website and the Knowledge Hub.

42. How can Local Authorities' experiences of international case work be shared most effectively with other Local Authorities?

Local Authorities may wish to exchange information between themselves.

## **Summary of links**

*Knowledge Hub Group - Local Authority Forum for International Family Casework – [www.khub.net](http://www.khub.net).*

*Council Regulation 2201/2003, known as Brussels IIa -*

Text of Regulation:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003R2201&from=EN>;

Central Authorities:

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/rc\\_jmm\\_centralauthorities\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_jmm_centralauthorities_en.htm)

*1996 Hague Protection of Children Convention –*

Text of Convention: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=70>;

Central Authorities: [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=941](http://www.hcch.net/index_en.php?act=authorities.details&aid=941).

*Council Regulation 1206/2001, Taking of Evidence -*

Text of Regulation:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001R1206&from=EN>.

England and Wales central body:

<http://www.justice.gov.uk/courts/rcj-rolls-building/queens-bench/foreign-process>.

Guidance: <https://www.gov.uk/guidance/service-of-documents-and-taking-of-evidence>.

*Council Framework Decision 2009/315/JHA on exchange of information on Criminal Records*

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Text of Decision:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009F0315&from=EN>.

*Family Procedure Rules 2010 –*

1996 Hague procedures Chapter 6 Part 12:

[http://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_12](http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_12).

Public Law Outline PD12A:

[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a).

UK Central Authorities for Brussels IIa and 1996 Hague and port alert procedure PD12F:

[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12f](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12f).

Evidence Part 24: [http://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_24](http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_24);

Evidence PD24A:

[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_24a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_24a).

*Civil Procedure Rules 1998 -*

Evidence Part 34: <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part34>;

Evidence PD34A:

[http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part34/pd\\_part34a](http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part34/pd_part34a).

*Judgments -*

*Re E (A Child)* [2014] EWHC 6 (Fam) (14 January 2014)

<http://www.bailii.org/ew/cases/EWHC/Fam/2014/6.html>;

*Re CB (A Child)* [2015] EWCA Civ 888 (06 August 2015)

<http://www.bailii.org/ew/cases/EWCA/Civ/2015/888.html>;

*Re N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112 (2 November 2015)

<http://www.bailii.org/ew/cases/EWCA/Civ/2015/1112.html>.

*Role of ICACU -*

President's Guidance: <https://www.judiciary.gov.uk/publications/presidents-guidance-on-the-international-child-abduction-and-contact-unit-icacu-and-its-role/>.

Request for cooperation form and guidance:

<https://www.gov.uk/government/publications/international-child-abduction-unit-request-for-co-operation-form>

*Criminal Records –*

UKCA-ECR address: [UKCA@acro.pnn.police.uk](mailto:UKCA@acro.pnn.police.uk);

UKCA-ECR website: [https://www.acro.police.uk/ukca\\_ecr.aspx](https://www.acro.police.uk/ukca_ecr.aspx);

ACRO Annual Report 2014-15: [https://www.acro.police.uk/acro\\_std.aspx?id=1395](https://www.acro.police.uk/acro_std.aspx?id=1395);

ACRO International Request e-mail: [international.request@acro.pnn.police.uk](mailto:international.request@acro.pnn.police.uk).

*Department for Education guidance –*

The 1996 Hague Convention October 2012

<https://www.gov.uk/government/publications/cross-border-child-protection-cases-the-1996-hague-convention>;

Placement across the European Union January 2013

<https://www.gov.uk/government/publications/placement-of-looked-after-children-in-eu-member-states>;

Working with foreign authorities July 2014

<https://www.gov.uk/government/publications/child-protection-working-with-foreign-authorities>.

*Lincolnshire –*

Working with foreign authorities:

[http://lincolnshirechildcare.proceduresonline.com/chapters/p\\_work\\_foreign\\_auth.html](http://lincolnshirechildcare.proceduresonline.com/chapters/p_work_foreign_auth.html).

*Welsh Government –*

Handling cross-border child protection cases:

<http://gov.wales/topics/health/socialcare/safeguarding/?lang=en>.

*Embassies and High Commissions in London –*

London Diplomatic list:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/484569/London\\_Diplomatic\\_List\\_-\\_February\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484569/London_Diplomatic_List_-_February_2016.pdf)

*Family law and procedure in EU Member States –*

EU e-justice portal European Judicial Network (EJN) :

[https://e-justice.europa.eu/content\\_ejn\\_in\\_civil\\_and\\_commercial\\_matters-21-en.do](https://e-justice.europa.eu/content_ejn_in_civil_and_commercial_matters-21-en.do).

*Adoption –*

1993 Hague Convention:

<https://www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption>.

DfE guidance adoption England

<https://www.gov.uk/topic/schools-colleges-childrens-services/adoption-fostering>

DfE Guidance intercountry adoption:

<https://www.gov.uk/guidance/intercountry-adoption-information-for-adoption-agencies>

Welsh Government guidance:

<http://gov.wales/topics/health/socialcare/adoption/?lang=en>.

*UK immigration policy and procedure -*

Visa and Immigration: <https://www.gov.uk/browse/visas-immigration>.