

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF  
THE 1996 CONVENTION**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1996 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

<b>Name of State or territorial unit:</b> <sup>1</sup>	England
<i>For follow-up purposes</i>	
Name of contact person:	Miss Gay BAILEY (Contributions Editor)
Name of Authority / Office:	Ministry of Justice
Telephone number:	+44 (0) 203334 3200
E-mail address:	gay.bailey@Justice.gov.uk

**PART I – FOR STATES PARTIES**

**Recent developments in your State**

1. Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of international child protection? Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice.

- No  
 Yes, please specify:

The 1996 Convention came into force in the U.K. with effect from 1 November 2012 supported by the Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010, SI 2010/1898, which came into force on 1 November 2012 (<http://www.legislation.gov.uk/ukxi/2010/1898/contents/made>). [Editor's note: Separate Regulations were made for Scotland.]

Procedural rules were also made. In particular, procedural rules reflecting the fact that there is a separate Central Authority for Wales under the 1996 Convention were made in the Family Procedure (Amendment No 3) Rules 2012 (<http://www.legislation.gov.uk/ukxi/2012/2046/introduction/made>).

Please note that although Wales has a separate Central Authority for this instrument, their caseload has been too small to enable them to comment.

**NOTE:** Where procedural rules are mentioned in the following document, their extent is England and Wales.

2. Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1996 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities<sup>2</sup> in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and other relevant instruments:

**From the Judiciary**

**Significant decisions include:**

Re J [2015] UKSC 70

This case concerned the jurisdiction to make an order under the 1996 Convention for a child's return to the state of habitual residence. The UK Supreme Court decided that Art 11 could be used to make a return order following an abduction. It was very likely to be a case

<sup>1</sup> The term "State" in this Questionnaire includes a territorial unit, where relevant.

<sup>2</sup> The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1996 Convention. Whilst in the majority of States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

of urgency and a return order fell within the scope of Art 11.

#### Re R [2015] UKSC 35

The issue before the Supreme Court was whether a return order should be made under the 1980 Convention. The decision is relevant to the issue under the 1996 Hague Convention of how a change in the child's habitual residence is effected. The court decided that, because habitual residence is an issue of fate, there is no rule that one parent cannot unilaterally change the habitual residence of a child (approving a previous Court of Appeal decision to this effect: Re H [2014] EWCA Civ 1101). The court also upheld the determination that the children, who had been born in France and had moved to live in Scotland for what had been intended to be a temporary stay of 12 months, had become habitually resident in Scotland after a period of 3/4 months. Accordingly, the 1980 Convention did not apply. See also OL v PQ [2017] CJEU C-111/17 on the issue of the habitual residence of a child born in a state other than that of the parents' previous habitual residence.

#### JA v TH [2016] EWHC 2535 (Fam)

This decision involved a request by an English court under Article 9 that jurisdiction be transferred from Norway to England. The Norwegian court's decision to accede to this request is currently being appealed to the Norwegian Supreme Court. The request for transfer of jurisdiction was made by ICACU [International Child Abduction and Contact Unit - the Central Authority] in November 2016. In December 2016 the Norwegian courts agreed to this request for transfer. This decision was appealed to the Norwegian Appeal Court in April 2017 and dismissed, and an appeal is currently pending before the Norwegian Supreme Court. Whilst a decision has not yet been made, this case is a good example of the process being dealt with efficiently via ICACU.

3. Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child protection:

None.

### Scope

4. Have competent authorities in your State experienced any challenges, or have questions arisen, in determining the scope of the Convention under **Article 2** (meaning of "child")\_or **Article 3** (meaning of "protective measures")?

- No  
 Yes, please specify:

Answered from the perspective of the English Central Authority only:

Article 2: The ICACU has received outgoing requests for co-operation from local authorities (social welfare authorities) (a local authority is a competent authority) in England arising out of child protection concerns about an unborn child (for example where the local authority has held a pre-birth child protection conference and may be contemplating issuing care proceedings on the birth of the child). The ICACU is not able to transmit these requests to the other central authority as there is not yet a child; the ICACU will try to put the local authority in touch with the competent authorities in the requested State and/or notify the requested Central Authority that a request for co-operation will be made once the child is born and that the request will be urgent.

Article 3(f): The ICACU has limited experience of requests for co-operation in respect of a child's property but within that context it appears that there may be differing views about the scope of co-operation requests in relation to property. This appears to be primarily due to the different property regimes and law in relation to a child's property in Contracting States. Although protective measures dealing with the administration, conversion or disposal of a child's property are in scope, the Convention does not apply to trusts or succession and in England a child's property is held on trust.

Although the ICACU has received relatively few property requests these do present operational difficulties. It is liaising with the Ministry of Justice about how best to process these requests.

### From the Judiciary

The decision in one case concerned an appeal against a return order to a specific country, with one of the parents arguing that undertakings given in that country were not enforceable as court orders. The making of protective measures and in particular their practical enforceability are therefore issues of concern. One of the areas we find of particular difficulty is obtaining information to ascertain and understand whether protective measures will be practically protective in the requesting state [Editors note: the issue of protective measures is more likely to arise in Brussels IIa cases]

The making of protective measures and in particular their practical enforceability are issues of concern. One of the areas we find of particular difficulty is obtaining information to ascertain and understand the form of protective measures which will provide effective protection in the requesting state (especially given differences between states in terms of both form and substance).

### Jurisdiction

5. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction under **Articles 5, 6, 7 or 10**?

- No  
 Yes, please specify:

### From the Judiciary

One challenge which can arise in the context of refugee or displaced children (although not yet in the context of the 1996 Convention) is the means of obtaining information about their families or circumstances in their home state.

Again, not yet in the context of the 1996 Convention, we have experience of courts taking different (including significantly different) approaches to determining whether a child has ceased to be habitually resident in their home state. Nationality appears to hold significant weight in some cases.

One issue of concern, arising from the application of similar provisions in the EU Regulation 2201/2003, would be whether, when a court is considering exercising jurisdiction under Article 10 of the 1996 Convention, sufficient attention will be given to the need to determine whether the exercise of jurisdiction is in the "best interests" of the child.

The UK Supreme Court has given five decisions on the meaning of habitual residence (see below). Habitual residence is a question of fact and depends on the degree of integration into a social and family environment- this being the approach taken by the Court of Justice of the European Union.

One particular issue which has arisen for consideration is the extent to which a child's perspective or views are relevant. This was considered by the Supreme Court in *Re LC* [2014] UKSC 1, where the court determined that the child's views or "state of mind" were relevant. (Please note that this is not a decision made in the context of the 1996 Convention).

*A v A and another* (Children: Habitual Residence) (Reunite International Child Abduction Centre and others intervening) [2013] UKSC 60

In *Re L (A Child)* (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening) [2013] UKSC 75

In *re LC* (Children) (Reunite International Child Abduction Centre intervening) [2014] UKSC 1

In *Re R* (Children) (Reunite International Child Abduction Centre and others intervening) [2015] UKSC 35

*Re B* (A child) Habitual Residence: Inherent Jurisdiction) [2016] UKSC 4

6. Have competent authorities in your State experienced any challenges, or have questions arisen, in implementing and / or applying **Articles 8 and 9**?

- No  
 Yes, please specify:

In relation to Article 9 identifying a decision maker for the purpose of authorising

the authorities of another Contracting State to exercise jurisdiction where there are no proceedings in existence.

From the Judiciary

Please see JA v TH [2016] EWHC 2535 (Fam) referred to in Question 2. In a European Union context we have experienced difficulties in establishing the procedural route for addressing transfers of jurisdiction because different states expect this to be dealt with in different ways. Clear guidance would be extremely helpful

7. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Articles 8 and 9**?<sup>3</sup>

- No  
 Yes, please describe them and also provide a link or attach them, preferably translated into English or French:

From the Judiciary

In our court procedural rules - the Family Procedure Rules 2010, Part 12 (<http://www.legislation.gov.uk/uksi/2010/2955/contents/made>).

The publication in April 2016 of 'Guidance for the judiciary: transfer of proceedings under Article 15 of Brussels IIA and Articles 8 and/or 9 of the 1996 Hague Convention'. This Guidance can be accessed via this link [http://www.familylaw.co.uk/system/froala\\_assets/documents/735/Judicial\\_guidance\\_-\\_cross-border\\_transfer.pdf](http://www.familylaw.co.uk/system/froala_assets/documents/735/Judicial_guidance_-_cross-border_transfer.pdf)

This document provides domestic guidance for the judiciary, of an administrative/procedural nature, as to the transfer of proceedings and the process of registration of orders.

8. Have competent authorities in your State had experience with urgent measures of protection taken under **Article 11**? (See also Question No 35.)

- No  
 Yes, please describe in which situations a competent authority in your jurisdiction has applied Article 11:

From the Judiciary

Please see Re J [2015] UKSC 70 noted in Q2 above

9. Have competent authorities in your State experienced any challenges, or have questions arisen, with respect to the application of **Article 11**?

- No  
 Yes, please describe:

From the Judiciary

There remains some uncertainty about the scope for using Art 11 in cases under the 1980 Convention (and/or Brussels IIA).

Seeking to establish what protective measures (in terms of form and substance) would be practically effective (including enforceability) in the requesting state can be difficult and time consuming.

10. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Articles 12, 13 or 14**?

- No  
 Yes, please describe:

Not that we are aware of.

## Applicable law

<sup>3</sup> See, e.g., Direct Judicial Communications - [Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications \(2013\)](#).

11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Articles 15, 16, 17 or 18**?

- No  
 Yes, please describe:

Not that we are aware of.

12. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter III**?

- No  
 Yes, please describe them:

Not that we are aware of.

### Recognition and enforcement

13. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 23** from the perspective of the requested State?

- No  
 Yes, please describe:

From the Judiciary

In *NG v OG* [2014] EWHC 4182, the English court declined to recognize a Russian custody order because the Russian court had not given the child an opportunity to be heard.

In *Re D* (recognition of Foreign Order) [2016] EWCA Civ 12, a decision under the BIIA Regulation not the 1996 convention, the English Court of Appeal upheld the decision not to recognize a Romanian custody order because it is a fundamental principle of procedure of English law that a child has a right to be heard.

Outside the scope of the 1996 Convention, we have experienced difficulties arising from differences in the orders that are available in different states, such that the orders made do not easily translate within a different legislative framework.

This also applies to difficulties which can arise, in practice, when a court is seeking to implement/enforce an order when that court cannot make any substantive changes

We have experienced such a problem with orders made under other instruments (BIIa). For example, in *Re M* [2017] EWCA Civ 891, the Court of Appeal upheld a decision that there was no practical means to enforce an Estonian court order which required the contact to be supervised by a competent child welfare authority. There is no mechanism under which authorities in England and Wales could enforce such an order.

14. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Article 24**?

- No  
 Yes, please describe and also provide a link or attach them, preferably translated into English or French:

In our court procedural rules - Family Procedure Rules 2010, Part 31.

15. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 24** (e.g., in terms of procedure, formalities, time frames, etc.)?

- No  
 Yes, please describe:

From the Judiciary

It has proved challenging to implement a "simple and rapid procedure" and arrangements have been made so that, exceptionally, application can be made via email.

In Re P [Recognition and Registration of Orders under the 1996 Hague Child Protection Convention ) [2014] EWHC 2845 (Fam) Moylan LJ gave guidance on the procedure for the recognition and registration of orders with the aim of seeking to make the process more simple and rapid. He noted that the process, set out in Part 31 of the Family Procedure Rules 2010 and Practice Direction 31A, challenged the concept of simple.

There is a clear tension between the need to implement a “simple and rapid procedure” as provided for by Art 26, and ensuring sufficient due process. It might be helpful if there was some form of certification procedure so that the receiving court could be confident that the order remains valid and enforceable.

16. Please describe the “simple and rapid procedure” (see **Article 26(2)**) in place in your State for declaring enforceable or registering for the purpose of enforcement measures of protection taken in another State Party and enforceable there, in particular:

- a) Which authority declares enforceable or registers a measure of protection taken in another State Party?
- b) What time frames are applied to ensure that the procedure is rapid?
- c) Is legal representation required?

Please explain:

From the Judiciary

In relation to (a) the authority is the court; (b) there is no specific timeframe but in practice this will be dealt with within at the most a few weeks; (c) No legal representation is required.

The procedure is discussed in the decision of Re P (Recognition and Registration of Orders under the 1996 Hague Child Protection Convention [2014] EWHC 2845 (Fam) noted at Question 13 above, and the procedure is governed by Part 31 of the Family Procedure Rules 2010 and Practice Direction 31A.

Any application must be made to the High Court by a Form C69 with the supporting documents noted in FPR 31.4(2)(b) and PD31A.

Applications may be made to the High Court via email and there is no fee for doing so. The application is considered by a district judge of the Principal Registry.

17. Are you aware of any challenges, or have questions arisen, in applying **Article 26** in your State?

- No  
 Yes, please describe:

In our experience, the process is assisted by direct judicial liaison confirming the authenticity of orders and the orders being sent directly through the network judges.

18. Are you aware of any challenges, or have questions arisen, in applying **Article 28** in your State?

- No  
 Yes, please describe:

From the Judiciary

We are not aware of any difficulties in the context of the 1996 Convention but in other contexts difficulties have arisen in relation to enforcement when the provisions of the order cannot in practice be implemented- please see Q14 above and Re M [2017] EWCA Civ 890 (which can be accessed via this link: <http://www.baillii.org/ew/cases/EWCA/Civ/2017/891.html> )

## Co-operation

19. Are you aware of any challenges, or have questions arisen, in applying **Article 30** in your State (e.g., in relation to the timeliness of responses to requests)?

- No  
 Yes, please describe:

As a general point, the ICACU's operational experience to date of the 1996 Hague Convention is relatively limited since it has only been in force in the UK since 1 November 2012. Also the majority of requests for co-operation which are made through the ICACU are either to or from Member States of the European Union. This means that the majority of these cases are dealt with under Council Regulation (EU) No.2201/2003 (the Brussels IIa Regulation (BIIa)) having regard to the fact that Article 60 of BIIa provides that in relations between EU Member States, BIIa takes precedence over the 1996 Convention in so far as it concerns matters governed by BIIa.

The ICACU consider that the wide scope of the 1996 Convention is helpful. However the conditional element of some of the Articles in the co-operation chapter can mean that it is difficult to work out which Article to transmit a request under.

Example: for a State to make a request for a report under Article 32(a), the child has to have a substantial connection with that State. The ICACU recently received a request under Article 32(a) from a State where an older child (habitually resident in England) had been on holiday with her boyfriend. The child protection authorities in the requesting State became involved as there was an incident of domestic violence and they were concerned about the situation of the child back in England. The request did not appear in scope of Article 32(a) as the child was only briefly in the requesting State for a holiday and, on the facts given, it was not clear that the child had a substantial connection with the requesting State. As this was an intra EU request the ICACU transmitted the request under Article 55 of BIIa but a similar situation could arise between non-EU Member States.

Because of the conditional nature of some of the co-operation provisions, the ICACU on occasion transmits a co-operation request under Article 30 (the general co-operation provision). The ICACU would welcome the views of other States about the scope of Article 30 and, in particular, when a request for co-operation is received which appears to meet the purposes of the Convention but which does not necessarily accord with the terms of a specific Article.

Lack of timeframes for a response for a request of co-operation makes it difficult for the ICACU to manage the expectations of competent authorities here and abroad. For example, the ICACU receives many requests for co-operation from English local authorities for information from another State because there are care proceedings about the child. In England, there is a statutory requirement that care proceedings must be concluded without delay and, in any event, within 26 weeks of the date of issue of the proceedings. The court can extend the 26 week time limit but only where it is necessary to enable the court to resolve the proceedings justly; an extension of time is an exception to the general rule.

The ICACU has had difficulty with requests made in the form of an email from competent authorities in England which have had to be reformulated into a request for co-operation under the Convention before it can be transmitted to the other central authority. This often has involved correspondence to and from the competent authority causing delay. To assist competent authorities, the ICACU has developed guidance notes and a form for requests for co-operation which it asks competent authorities to complete. The form also asks the competent authority to confirm whether Article 37 has been considered by the competent authority.

When the form is used, the ICACU usually finds that the requests for co-operation are more focused and relevant and that the request can be transmitted more quickly. The ICACU would welcome the views of requested Central Authorities on whether they have found the use of the form helpful when receiving requests for co-operation from England as from the perspective of the requesting central authority it has improved process and reduced delay.

20. In your view, would it facilitate the task of Central Authorities under **Article 30(2)** if States Parties provided information as to their laws and available services in relation to the

practical implementation of the 1996 Convention, *e.g.*, in the form of a Country Profile or a similar tool published on the HCCH website?

- No  
 Yes, please describe the type of information that would be useful to include (*e.g.*, information with respect to the availability of certain protective measures under internal law (*e.g.*, in relation to **Article 3(e)**), or the procedures applied under, *e.g.*, **Articles 23, 24, 26, 31 or 33**, or information on Central Authority services provided):

In addition to the examples referred to above, the following information would be useful:

(i) A State's position on social workers from abroad travelling to another State to undertake kinship care assessments in relation to care or other family proceedings.

(ii) Information about protective measures available in relation to a child's property.

From the Judiciary

The availability of protective measures.

A summary of the law in relation to issues arising under Article 3 such as the form and effect of orders dealing with parental responsibility including when a state authority is directly involved either by providing care or by undertaking some oversight of the care provided by the family.

21. How does your Central Authority (either directly or through public authorities or other bodies) take appropriate steps under **Article 31(b)** to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the 1996 Convention applies? Please explain:

The ICACU signposts to relevant services.

22. Have authorities in your State experienced any challenges, or have questions arisen, in applying **Article 33** (*e.g.*, has your State been requested to accept a child under a certain type of placement or institutional care that is not available under your internal law, or was insufficient information provided to you as the Requested State)?

- No  
 Yes, please describe:

The ICACU has limited experience of such requests under the Convention as the majority of these requests have been intra EU requests and processed under Article 56 of Brussels IIa.

From the Judiciary

Not directly in this context, but we have experience the requirements of orders made in one state not being available in another. One example is when the authorities in England and Wales were requested to assume the supervisory role of another state's child protection agency. There was no mechanism under which this could take place.

23. Have authorities in your State experienced any challenges, or have questions arisen, in providing or obtaining reports or information under **Articles 32, 33 or 34**?

- No  
 Yes, please describe:

Article 32(b) causes difficulty because in England a child's property is held on trust.

From the Judiciary

This is not specifically in relation to the 1996 Convention, but we have experienced difficulties in obtaining information/evidence from requested states and in understanding care arrangements in other states.

We have also encountered significant differences in the scope and manner of

social welfare/family enquiry reports - such as the extent of the enquiry and the detail contained in the report.

24. Do authorities in your State use a standard template when providing a report on the (situation of the) child under **Article 32 or 33**?

- No  
 Yes, please attach the template to your response (preferably translated into English or French):

[Please insert text here](#)

25. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 35**?

- No  
 Yes, please describe:

[We do not have experience of Art 35](#)

26. Does your State impose charges, as provided under **Article 38(1)**, for the provision of services under **Chapter V** (Co-operation)?

- No  
 Yes, for the following types of services (e.g., translation, legal assistance):

[Provision has been made for Local Authorities \(social welfare authorities\) to charge a fee for the preparation of a report about a parent under Article 35 \(2\)](#)

27. Have authorities in your State experienced any challenges, or have questions arisen, with regard to charges provided under **Article 38(1)**?

- No  
 Yes, please describe:

[No information available for Art 35 \(2\) cases.](#)

28. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, does your Central Authority provide assistance to **individuals** habitually resident in your State who request it in connection with the following matters? If so, please specify the nature of the assistance provided.

a) A request to organise or secure effective exercise of **rights of access** in another State Party (requested State)<sup>4</sup>

1. None  
 2. Assistance in obtaining information on the operation of the 1996 Convention  
 3. Assistance in obtaining information on the relevant laws and procedures in the requested State  
 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide  
 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State  
 6. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access  
 7. Assistance in providing or facilitating the provision of legal aid and advice  
 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State  
 9. Referral to other governmental and / or non-governmental organisations for assistance  
 10. Provision of regular updates on the progress of the application  
 11. Other, please specify:

[The ICACU has limited experience of these requests under the Convention as](#)

<sup>4</sup> See in this context, e.g., the [Practical Handbook](#) on the Operation of the 1996 Child Protection Convention, sections 11(E)(d) and 13(B) (2014).

the majority of the requests for access are made under Article 21 of the 1980 Hague Convention.

b) A request to secure the return to your State of a child subject to **parental abduction** where the 1980 Convention is not applicable

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained
- 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child
- 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue
- 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 10. Assistance in providing or facilitating the provision of legal aid and advice
- 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 12. Assistance in obtaining private legal counsel or mediation services
- 13. Referral to other governmental and / or non-governmental organisations for assistance
- 14. Regular updates on the progress of the application
- 15. Other, please specify:

The ICACU will explain to the parent what co-operation requests could be made in such a case. If a request is made it transmits the request to the requested Central Authority and will seek regular updates on behalf of the parent. Relevant co-operation requests may include requests for information about lawyers and the availability of legal aid (Article 30), the availability of mediation services (Article 31(b)), a request for assistance in discovering the whereabouts of the child (Article 31(c)), a request under Article 34 and/or a request under Article 36. If there is a relevant domestic order in existence, the ICACU can transmit a request for recognition and enforcement of the order.

c) A request to secure the return to your State of a **runaway child** (see **Article 31 c)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in discovering the whereabouts of a runaway child
- 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 8. Assistance in providing or facilitating the provision of legal aid and advice
- 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 10. Assistance in obtaining private legal counsel

- 11. Referral to other governmental and / or non-governmental organisations for assistance
- 12. Regular updates on the progress of the application
- 13. Other, please specify:  
[Please insert text here](#)

d) A request for a **report on the situation of a child** habitually resident in another State Party (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see **Article 32 a)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Other, please specify:  
[Please insert text here](#)

e) A request that the competent authorities of another State Party decide on the **recognition or non-recognition** of a measure taken in your State (see **Article 24)**

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in obtaining private legal counsel
- 7. Regular updates on the progress of the request
- 8. Other, please specify:  
[Please insert text here](#)

f) A request that the competent authorities of another State Party **declare enforceable or register for the purpose of enforcement** measures taken in your State (see **Article 26)**

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in obtaining private legal counsel
- 7. Regular updates on the progress of the request
- 8. Other, please specify:  
[Please insert text here](#)

29. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, if your Central Authority were to receive a request of assistance from **another Central Authority** on behalf of an individual residing abroad, in connection with the

following matters, please specify the nature of the assistance that your Central Authority provides or would provide if the situation was to arise.

a) A request to organise or secure effective **exercise of rights of access**

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or the relevant laws and procedures in your State
- 3. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access
- 4. Assistance in providing or facilitating the provision of legal aid and advice
- 5. Assistance in obtaining private legal counsel or mediation services available in your State
- 6. Referral to other governmental and / or non-governmental organisations for assistance
- 7. Regular updates on the progress of the application
- 8. Other, please specify:

The ICACU has limited experience of these requests under the Convention as the majority of the requests for access are made under Article 21 of the 1980 Hague Convention.

In relation to (4) and (5), whether legal aid is available for this or any other purpose will depend on the operation of both domestic law as to scope of civil legal aid and any applicable financial eligibility test.

b) A request to secure the return to the State of habitual residence of a child subject to parental abduction where the 1980 Convention is not applicable

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or the relevant laws and procedures in your State
- 3. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained
- 4. Assistance in taking provisional measures of protection to prevent further harm to the child
- 5. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue
- 6. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 7. Assistance in providing or facilitating the provision of legal aid and advice
- 8. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 9. Assistance in obtaining private legal counsel or mediation services
- Referral to other governmental and / or non-governmental organisations for assistance
- 10. Regular updates on the progress of the application
- 11. Other, please specify:

The ICACU will transmit any relevant request for co-operation to the appropriate competent authority in England and seek regular updates.

Relevant co-operation requests may include providing details of specialist lawyers and about the availability of legal aid (Article 30), the availability of mediation services (Article 31b), a request for assistance in discovering the whereabouts of the child (Article 31c), a request under Article 34 and/or a request under Article 36.

If there is a relevant domestic order in existence in the requesting State, the ICACU can provide information about the process for making an application for recognition and enforcement of that order.

c) A request to secure the return of a runaway child (see **Article 31 c)**)

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or on the relevant laws and procedures in your State
- 3. Assistance in discovering the whereabouts of a runaway child
- Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 4. Assistance in providing or facilitating the provision of legal aid and advice
- Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 5. Assistance in obtaining private legal counsel
- 6. Referral to other governmental and / or non-governmental organisations for assistance
- 7. Regular updates on the progress of the application
- 8. Other, please specify:

d) A request for a report on the situation of a child habitually resident in your State (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see **Article 32 a)**)

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or on the relevant laws in your State
- 3. Preparing and transmitting the requested report
- 4. Transmission of the request to the competent authorities in your State
- 5. Other, please specify:

[Please insert text here](#)

e) A request that the competent authorities of your State decide on the recognition or non-recognition of a measure taken in another State Party (see **Article 24**)

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or relevant laws in your State
- 3. Transmission of the request to the competent authorities in your State
- 4. Assistance in obtaining private legal counsel
- 5. Other, please specify:

[In relation to \(4\) above please see the answer to question 29\(a\)](#)

f) A request that the competent authorities of your State declare enforceable or register for the purpose of enforcement measures taken in another State Party (see **Article 26**)

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or relevant laws in your State
- 3. Transmission of the request to the competent authorities in your State
- 4. Assistance in obtaining private legal counsel
- 5. Other, please specify:

[In relation to \(4\) please see the answer to question 29\(a\)](#)

30. Where the habitual residence of a child present in your State cannot be established, have authorities in your State used any of the provisions of **Chapter V** in determining the child's place of habitual residence?

- No
- Yes, please specify:

[Not known. It is understood that domestic law provisions would be used.](#)

From the Judiciary

No experience yet.

31. Are you aware of any challenges, or have questions arisen, in applying any other provisions under **Chapter V** in your State?

- No  
 Yes, please describe:  
[Please insert text here](#)

32. Have judges in your State used direct judicial communications in cases falling under the 1996 Convention?

- No  
 Yes, please specify in relation to which specific matters (e.g., transfer of jurisdiction, placement of a child):

From the Judiciary

We have considerable experience of direct judicial communication (notably with Australia) on matters such as the placement of children, obtaining evidence and/or reports, and obtaining information about previous court orders

### General provisions

33. Has your State experienced any challenges, or have questions arisen, in relation to requests under **Article 40** for the delivery of a certificate indicating the capacity in which a person having parental responsibility or entrusted with protection of the child's person or property is entitled to act and the powers conferred upon him or her?

- No  
 Yes, please describe:  
[Please insert text here](#)

34. Which authorities in your State are competent to issue such certificates? Please specify:

### Special categories of children

#### Children subject to international parental abduction

35. Have authorities in your State experienced any challenges, or have questions arisen, in relation to the application of the 1996 Convention in cases of child abduction where the 1980 Convention was not applicable (see Question Nos 28 b) and 29 b) above)?

- No  
 Yes, please describe:

From the Judiciary

See (referred to above) *Re J (A Child) (1996 Hague Convention) (Morocco) [2015] UKSC 70* in which a child was moved by the mother from Morocco to England without the father's consent. The Court of Appeal found that there was no jurisdiction under the 1996 Convention. However this decision was reversed by the Supreme Court, which found that there was jurisdiction under Art 11 in cases of wrongful removal, where the child was present but not habitually resident in England

36. In cases of child abduction where both the 1980 Convention and the 1996 Convention were applicable, have authorities in your State made use of provisions under the 1996 Convention in addition to or instead of provisions of the 1980 Convention?

- No  
 Yes, please specify the provisions and explain:

See *B v B (Abduction: BIIA) [2014] EWHC 1804 Fam.* In this case protective

measures were ordered under Art 11 in conjunction with a return order under the 1980 Convention.

37. In cases of parental child abduction, whether or not the 1980 Convention is applicable, have authorities in your State used the co-operation provisions in **Chapter V** of the 1996 Convention to determine whether adequate measures of protection are available in the State of the habitual residence of the child (e.g., to facilitate the safe return of the child)?

- No  
 Yes, please explain:

[From the Judiciary](#)

[We cannot currently identify a specific case but we have used these provisions.](#)

38. In cases of parental child abduction, have competent authorities in your State taken measures of protection under **Article 11**, as an alternative to measures of protection in the form of mirror orders or undertakings, to facilitate the safe return of the child? (See also Question No 5.)

- No  
 Yes, please explain:

[See Q36](#)

#### Children subject to international relocation

39. Are you aware of any use being made of provisions of the 1996 Convention in cases where a parent wishes to relocate with his or her child to another State?

- No  
 Yes, please explain:

[From the Judiciary](#)

[When relocating between England and Wales and Australia. As a general proposition, the fact that contact orders would be enforceable under the 1996 Convention, would be a relevant consideration when the court is considering relocation applications.](#)

#### International access / contact cases involving children

40. Are you aware of any use being made of provisions of the 1996 Convention, including those under **Chapter V**, in lieu of or in connection with an application under **Article 21** of the 1980 Convention?<sup>5</sup>

- No  
 Yes, please explain:

[Please insert text here](#)

#### Unaccompanied, separated, and internationally displaced children

41. Are you aware whether authorities in your State have used the provisions of the 1996 Convention in relation to the protection of internationally displaced children (such as refugee children, trafficked children, sexually exploited children, or unaccompanied children) and / or children whose habitual residence cannot be established?

- No  
 Yes, please specify:

[Please insert text here](#)

#### **Miscellaneous**

42. Is there any other comment that your State wishes to make relating to the practical operation of the 1996 Convention? If so, please specify:

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<sup>5</sup> The [Explanatory Report](#) (Lagarde) on the 1996 Convention notes that co-operation under Article 35(1) between authorities of States Parties with respect to rights of access “serves in a certain way to complete and reinforce the co-operation, which is not always effective, provided for the same purpose between Central Authorities” under Article 21 of the 1980 Convention. Explanatory Report, paragraph 146 (1997).

The Convention is invaluable in relation to dealing with cross-border child protection issues because of its broad scope. Since 1 November 2012, the ICACU has received wide ranging requests for cross border co-operation from the competent authorities in England. These requests are primarily from local authorities (which have responsibility for child protection services) and the court but requests have also been made by a probation officer (sharing information about child protection issues), a national children's charity, a hospital (where a child receiving serious medical treatment was removed cross border) and a prison (sharing information about child protection issues).

The ICACU has enjoyed good co-operation with other central authorities including Albania, Australia and the Dominican Republic in particular.

From the Judiciary

We echo the observation made by ICACU.

## **PART II – FOR NON-STATES PARTIES**

43. Is your State currently considering signing and ratifying or acceding to the 1996 Convention?

- No  
 Yes

44. In considering how your State would implement the 1996 Convention, have you encountered any issues of concern?

- No  
 Yes, please explain:

[Please insert text here](#)

## **PART III – FOR BOTH STATES PARTIES AND NON-STATES PARTIES**

45. Are there any particular issues that your State would like the Special Commission meeting to discuss in relation to the 1996 Convention? Please specify and list in order of priority:

- (i) [The ambit of Article 30 and the value of the ICACU request form. See comment at 19 above.](#)  
(ii) [The scope of property requests. See comment at 4 above.](#)

From the Judiciary

1. [Scope of Art 11](#)

2. [Extent to which protective measures made in one state are enforceable as a matter of practice in another state. Tied to this is improving the information available as to what protective measures are available in different states](#)

3. [Time frames for responses to requests for information/assistance](#)

4. [A concern arises from the application of similar provisions in the EU Regulation 2201/2003 and whether, when the court is considering exercising jurisdiction on a basis other than habitual residence \(under Article 10 of the 1996 Convention\), sufficient attention is given to the need to determine whether this exercise of jurisdiction is 'in the best interests of the child'.](#)

46. Do you have any observations or comments to share concerning the Practical Handbook on the Operation of the 1996 Child Protection Convention? Please specify:

[Both the central authority and the judiciary believe it is a very useful resource.](#)

