



# 1996 HC Country Report

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# UNITED KINGDOM

## ANALYSIS OF THE SITUATION

### A. General situation

The provisions and requirements of the Hague Convention 1996 ('1996 HC') were implemented in the United Kingdom ('UK') through directly effective European Union ('EU') law on 1 November 2012.<sup>1</sup> Certain practical aspects of 1996 HC are domestically legislated for in the *Parental Responsibility and Measures for the Protection of Children (International Obligations) (England Wales and Northern Ireland) Regulations 2010* ('the 2010 Regulations')<sup>2</sup>, and in parts of applicable court rules. Both the [Department of Education](#) and the [Ministry of Justice](#) have provided guidance regarding the operation of the convention in the UK. The UK has in place bilateral agreements with certain countries not a party to either 1996 HC / 1980 HC, or both, for example with Pakistan and Egypt<sup>3</sup>.

The main pieces of legislation covering children's issues in the UK are: the *Children Act 1989* (for England and Wales); the *Children (Scotland) Act, 1995*; and *The Children (Northern Ireland) Order, 1995*. Associated pieces of legislation are listed in the appendices.

The following observations are made to assist in the understanding of this report. Firstly, the UK is a common law system and as such the doctrine of precedent provides that the source of

<sup>1</sup> As with other EU member states (save Denmark), the U.K. was authorised to ratify 1996 HC by the Council Decision of 5 June 2008 (2008/431/EC). *The European Communities (Definition of Treaties) (1996 Hague Convention on Protection of Children etc.) Order 2010* declared the HC-96 to be a treaty for the purpose of the *European Communities Act (1972)*. In accordance with s2 of that Act, the convention became directly effective in the UK.

<sup>2</sup> This Regulation is applicable to England, Wales, Great Britain and Northern Ireland only. The *Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010*, is the like instrument in Scotland. For the purpose of this document, both instruments will be referred to collectively as 'the 2010 Regulations', with any differences noted.

<sup>3</sup> For information on UK agreements with non convention countries, see: <https://www.gov.uk/government/collections/child-abduction>



some matters of law may be found in case law and not through legislation. Where this is relevant, the appropriate case, current to the date of this report, is referenced. Secondly, the UK has legislated<sup>4</sup> regarding any possible jurisdictional disputes between the four territories. It is recognised that this is a purely domestic issue across the UK, however may be relevant when considering where a child’s habitual residence will lie if they are to settle in the UK. Lastly it is acknowledged that at the date of preparing this report the UK remains a part of the EU. A number of issues arise here. Namely, where matters raised are relevant also to the Brussels IIa regulation (‘BIIa’), the corresponding articles will be referenced, as it remains relevant law today. Moreover, given the nature of the implementation of THC-96 into UK law it is uncertain what it’s status will be after Brexit. The [House of Commons has provided some guidance](#) on this issue, however at the moment the future status of THC-96 remains unclear.

## B. Central Authority & Competent Authorities

ASPECTS	INFORMATION
<p><b>JUDICIAL AUTHORITIES</b></p>	<p><b>England and Wales</b> has a single Family Court system competent to hear, <i>inter alia</i>, parental disputes and applications for child protection intervention. The court has differing levels of judicial officers (tribunal judges through to high court judges) and matters are allocated to the appropriate judge, on needs/complexity of the case. Family Cases in <b>Northern Ireland</b> may be heard in the High Court, County Court or Family Care Centre – dependent on the complexity of the matter. In <b>Scotland</b>, the Sheriff Court and the Sheriff Principal have jurisdiction for family matters. The Court of last resort for all of the UK territories is the UK Supreme Court.</p> <p>In <b>England, Wales and Northern Ireland</b>, the <b>Family Division of the High Court</b> (noting that Northern Ireland has it’s own High Court) is the relevant judicial authority for 1996 HC matters. In <b>Scotland</b>, it is the <b>Court of Sessions</b><sup>5</sup>. These courts have jurisdiction for:</p> <ul style="list-style-type: none"> <li>• Entertaining an application under art 25, 1996 HC for the recognition or non-recognition of a measure taken in another contracting State. (However, if this issue is raised as an incidental question in another court, that court may determine the issue.)</li> <li>• For registering a measure taken in another contracting State for enforcement under art. 26, 1996 HC.</li> <li>• Entertaining a declaration that a person does or does not have parental responsibility, and the extent of such responsibility, pursuant to art. 16, 1996 HC.</li> <li>• Applications for transfer of matters.<sup>6</sup></li> </ul> <p>Details of the UK judges on the Hague Network of Judges, can be found <a href="#">here</a>.</p>
<p><b>CENTRAL AUTHORITY (‘CA’)</b></p>	<p>The functions of the CA are discharged by<sup>7</sup>:</p> <ul style="list-style-type: none"> <li>• England – Lord Chancellor;</li> <li>• Wales – Welsh Ministers;</li> <li>• Northern Ireland – Department of Justice; and</li> <li>• Scotland – Scottish Ministers.</li> </ul> <p>In practice the contact point for England and Wales for BIIa (and England only for 1996 HC) is</p>

<sup>4</sup> Family Law Act, 1986

<sup>5</sup> Reg 8, E,W&NI , Reg 7, Scotland

<sup>6</sup> Family Procedure Rules, r12.45; Family Proceeding Rules (Northern Ireland) 1996, r.4.33; Act of Sederunt (Jurisdiction in Respect of Parental Responsibility and Measures for the Protection of Children Rules) 2011, art. 2

<sup>7</sup> Reg 8, S; Reg 9, E,W&NI. – for full contact details, see details below, or : <https://www.hcch.net/en/states/authorities/details3/?aid=132>; See also Family Proceeding Rules (Northern Ireland) 1996, r.4.28 ‘Central Authority’



	<p>the <i>International Child Abduction and Contact Unit</i> (ICACU). For the other territories (and Wales for 1996 HC) contact points are the government bodies listed above. (Contact details are provided below).</p> <p>In the event of uncertainty as to the appropriate recipient of a communication, the Lord Chancellor’s office should be contacted.</p>
<b>CHILD PROTECTION AUTHORITIES</b>	The day-to-day management for children in need of care rests with local governments, who employ child protection workers/teams. These are known as Local Authorities ('LA').
<b>ISS NETWORK MEMBER / ISS ASSISTANCE</b>	<b>ISS UK network member CFAB</b> is available to assist in the preparation of reports and other social welfare services for vulnerable children separated from their families across international borders. CFAB may be available to prepare reports on a child, or their family situation in the UK for a 1996 HC / B11a matter.
<b>OTHER ACTORS</b>	The Children and Family Court Advisory and Support Service ('CAFCASS') is a body who provides direct, or <i>Guardian ad Litum</i> ('GAL') representation for children and may be engaged by a court to do so, and/or to provide family court reports on the welfare of a child.

## C. Jurisdiction

<b>ASPECTS</b>	<b>INFORMATION</b>
<b>HABITUAL RESIDENCE</b>	<p>There is a large body of case law defining how habitual residence is determined in UK Courts, covering applications under both 1996 and 1980 HC, as well as B11a. The court is guided by precedent from both the UK Supreme Court and European Courts when making findings on habitual residence. Habitual residence is not a concrete concept, and will be determined through a detailed consideration of the child’s situation, including: their day to day life and experiences; family environment; interests and hobbies; friends; and consideration of the adults in the child’s life. The approach must be child driven. The UK courts follow CJEU case law that interprets the language of B11a for habitual residence as, that place which reflects some degree of integration by the child in a social and family environment.<sup>8</sup></p> <p>A decision on habitual residence may not be the determinative factor on whether a transfer (or acceptance) of jurisdiction is ordered. The court will also consider: the child’s particular connection with the other State; if the court in the other State would be better placed practically to hear the matter (i.e. availability of witnesses, ability for assessments to occur); and if the transfer itself would be in the best interest of the child<sup>9</sup>.</p>
<b>URGENT/ INTERIM MEASURES</b>	A LA may take urgent action to protect a child at risk, and seek orders to regularise a child’s situation pending the determination of the appropriate jurisdiction. The 2010 Regulations

<sup>8</sup> The leading UK cases on habitual residence are: *Re A (Children) (Jurisdiction: Return of Child)* [2014] 1 FLR 111 ('A v A'); *Re KL (A Child) (Abduction: Habitual Residence: Inherent Jurisdiction)* [2014] 1 FLR 772; *Re LC (Children) (Abduction: Habitual Residence: State of Mind of Child)* ("Re LC"); *AR v RN (Habitual Residence)* [2015] 2 FLR 503; and *Re B (A Child) (Habitual Residence: Inherent Jurisdiction)* [2016] UKSC 4; . For an analysis/summary of the relevant case law and principles see *B (A Minor: Habitual Residence)* [2016] EWHC 2174 (Fam) at para. 17 & 18. For European law, see *Mercredi v Chaffe* C-497/10 at 47.

<sup>9</sup> *Re N (Children)* [2016] UKSC 15 the Supreme Court considered the issue of best interests in a transfer of jurisdiction matter (as opposed to determination of an eventual outcome). The questions of whether another court is better placed to hear a matter (jurisdiction), and whether a transfer is in the best interests of a child, are separate questions and should be treated as such by the court. See also *Re M and L* [2016] EWHC 2535 (Fam) where the issue of the appropriateness of making such a request was considered. Here the Court determined that such a request should be made if it is considered, taking into account the best interests of the individual child, that the UK Court is 'better placed' to hear the matter.

	<p>specifically provide for LA's to make applications to UK courts in circumstances where, in accordance with arts. 8-12 of the 1996 HC, another State should or could assume jurisdiction for the matter. The specific measures provide that:</p> <ul style="list-style-type: none"> <li>• <b>Reg 5&amp;6:</b> The LA may make an application for an interim care or supervision order. If the child is subject to art. 11 &amp; 12 of 1996 HC or art 20 of BIIa then that Order will cease to have effect when, “<i>the authorities in another Contracting State with jurisdiction under the convention have taken the measures required by the situation; or measures taken by the authorities of another state are recognised in (E,W,NI,S).</i>”</li> <li>• <b>Reg 4:</b> If the LA makes an application but another contracting State has jurisdiction and it is sought that the matter remain in the UK, they must ask the High Court to exercise its power under art. 9, 1996 HC.</li> <li>• <b>Reg 3:</b> Where the Court has stayed a proceeding pending a request for another contracting State to assume jurisdiction, the stay may be removed by the court if: the authority in the other contracting State does not assume jurisdiction within the period of the stay; or, if the parties do not within the time period specified by the court make a request for an authority in the other contracting state to assume jurisdiction.</li> </ul>
<p><b>PROCEDURE FOR TRANSFER INTO JURISDICTION</b></p>	<p><i>Part 12 of the Family Procedure Rules governs the procedure for matters regarding applications about jurisdiction in <b>England and Wales</b>. Rules 4.28 – 4.39 of the Family Proceeding Rules (Northern Ireland) 1996, are the relevant rules in <b>Northern Ireland</b>. And within the Act of Sederunt (Jurisdiction in Respect of Parental Responsibility and Measures for the Protection of Children Rules) 2011 for <b>Scotland</b><sup>10</sup> (Collectively, ‘the Rules’).</i></p> <p>In <b>England and Wales</b> any application for the court to request a transfer of jurisdiction into the UK, is made to the principle registry and heard in the High Court. It is to be made without notice to any other person, and the court may then give directions as to whether any other person should be joined to the proceedings. The court will then confer with the court of the other State. If the matter is transferred, the registry must allocate the matter to the appropriate Court/Judicial officer (which is not required to remain the High Court), who must then fix a directions hearing date. The timing of transfer is a matter of agreement/discretion between the courts of the two States. (r.12.65 <b>EW</b>; r.4.33, 4.34 <b>NI</b>; arts. 3,4 <b>S</b>).</p>
<p><b>PROCEDURE FOR TRANSFER OUT OF JURISDICTION</b></p>	<p>This application can be made by one of the parties, by the CA in the other State, or on the courts own motion. When the court is considering a transfer, it must fix a date for hearing of the issue, and give directions on the manner in which submissions may be made. In Northern Ireland the matter Notification will need to be given to all parties to the proceedings (in both States, if applicable) The notice periods are as follows:</p> <ul style="list-style-type: none"> <li>• <b>Courts own Initiative:</b> not less than 5 days prior to the hearing;</li> <li>• <b>CA in another State:</b> not less than 5 days prior to the hearing, noting that the matter must be transferred to the High Court, if not already in that registry. Upon allocation the court must notify the parties to the proceedings in the other State, and the application will then be treated as if it originated in the UK.</li> <li>• <b>Party:</b> Not less than 42 days prior to the hearing, or if the application is made under <u>art 11 of BIIa (return of a child)</u>, not less than 5 days prior to the hearing.</li> </ul> <p>If there is consent, the transfer application may be determined without a hearing. If an order is made for a transfer, the court officer is required to serve a copy of the order on all parties, and the two CA's. (r.12.67 <b>EW</b>; r.4.30-4.32 <b>NI</b>; art. 5 <b>S</b>).</p>
<p><b>TRANSLATION</b></p>	<p>The rules for <b>England, Wales and Northern Ireland</b> do not specifically address the need for translation of documents filed with a transfer application. In <b>Scotland</b> any documents filed</p>

<sup>10</sup> See also, *Court of Sessions Rules* Part IV for Brussels IIa provisions.

	supporting a transfer application, must be translated into English, and certified as a true translation (if necessary). <sup>11</sup>
<b>COSTS</b>	Relevant costs for commencing proceedings and for the filing of an application in an existing proceeding in UK courts are listed in section D, below.

## D. Applicable Domestic Measures

<b>ASPECTS</b>	<b>INFORMATION</b>
<b>PARENTAL RESPONSIBILITY DEFINITION</b>	Parental responsibility is defined as “ <i>the rights, duties, powers and responsibilities which by law a parent of a child has in relation to the child and his property.</i> ” <sup>12</sup> When the mother and father of a child are married at the time of birth, they both automatically acquire parental responsibility. <sup>13</sup> In the case of an unmarried mother, or a child born through artificial insemination, the mother obtains sole parental responsibility at the child’s birth and the other parent may via: agreement; birth certificate registration; or a court order obtain it. <sup>14</sup> A child’s step-father may obtain parental responsibility through agreement or court order <sup>15</sup>
<b>PARENTAL RESPONSIBILITY MEASURES</b>	<p><u>Pre filing Requirements:</u> In England and Wales, prior to filing a court application parties are required to consider mediation and attend a ‘Mediation Information and Assessment Meeting’ – although are not required to actually complete mediation. Exceptions to this requirement include, <i>inter alia</i>, situations of urgency, family violence and risk to children.<sup>16</sup> Family mediators explain the non-court dispute resolution process and manage the mediation process carefully in order to allow both parties to reach settlements concerning their children. There is no such requirement in Scotland or Northern Ireland, however in all territories when a party is legally aided it may be a requirement of that grant of aid that they attempt mediation prior to filing a court application.</p> <p><u>Available Court Orders:</u> The relevant remedies are termed residence and contact orders in Northern Ireland and Scotland, and child arrangement orders in England and Wales. The available orders include:</p> <ul style="list-style-type: none"> <li>• <b>Live with and spend time with (E&amp;W) order:</b> Specifies where the child will live and over what periods; and, who they will otherwise spend time with, and over what periods.<sup>17</sup></li> <li>• <b>Residence order (S&amp;NI):</b> Specifies where a child will live, with whom, and for what periods.<sup>18</sup></li> <li>• <b>Contact order (S&amp;NI):</b> Specifies how and when and a child will have contact with a person they are not living with.<sup>19</sup></li> </ul>

<sup>11</sup> Act of Sederunt (Jurisdiction in Respect of Parental Responsibility and Measures for the Protection of Children Rules) 2011, art. 8; See also *Court of Sessions Rules*, r.88.4 for BIIa.

<sup>12</sup> *Children Act 1989*, s3; *The Children (Northern Ireland) Order 1995*, s6. Note the *Children Scotland Act 1995* at ss1 and 2 provide more prescriptive provisions on what constitutes rights and responsibilities.

<sup>13</sup> s2 *Children Act 1989*; s3 *Children (Scotland) Act*; and s5 *The Children (Northern Ireland) Order 1995*.

<sup>14</sup> s4 & 4ZA *Children Act 1989*; s4 & 5 *Children (Scotland) Act*; and s35 *The Children (Northern Ireland) Order 1995*. N.b. The Northern Ireland Legislation does not specifically mention artificial insemination.

<sup>15</sup> s4A *Children’s Act 1989*. Nb. There is no specific section regarding step-parents in the Northern Ireland or Scottish Acts.

<sup>16</sup> *Children and Families Act, 2014* s10; see also : [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/489124/family-mediation-leaflet.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/489124/family-mediation-leaflet.pdf)

<sup>17</sup> *Children Act 1989*, s1.

<sup>18</sup> *Children (Scotland) Act 1995*, s11(2)(b); and *The Children (Northern Ireland) Order 1995*, s8(1)

<sup>19</sup> *Children (Scotland) Act*, s11(2)(c); and s3 *The Children (Northern Ireland Order)*.



	<ul style="list-style-type: none"> <li>• <b>Prohibited steps orders:</b> Injuncts one parent from taking specified steps which would ordinarily be within their parental responsibility, without the consent of the court.<sup>20</sup></li> <li>• <b>Specific Issues Orders:</b> Governs specific questions which have arisen, or may arise, in relation to the child.<sup>21</sup></li> </ul>
<p><b>CHILD PROTECTION MEASURES</b></p>	<p>LA's in all territories are statutorily empowered to take steps to protect children that they suspect are, or are likely to be, at risk of serious harm in their home environment. The measures can only be made once a court finds that a child is suffering, or is likely to suffer, significant harm in the absence of intervention.<sup>22</sup> The measures include:</p> <ul style="list-style-type: none"> <li>• <b>Assessment Order:</b> Permits a LA to assess a child's/family's situation and enforce any relevant person to produce the child, and comply with any directions in the order. During the period of the order the child may only be kept away from their home if it is necessary for the assessment to occur, and is expressly directed by the court. The order is limited to 7 days.<sup>23</sup></li> <li>• <b>Emergency Care and Protection Order:</b> Permits the short-term removal of a child, and an assessment of the child's situation. Such orders can remain in place for a period of no more than 8 days, and can be renewed once.<sup>24</sup></li> <li>• <b>Family Assistance Order:</b> This order is available in any family proceeding (i.e. including proceedings between private parties) and requires the relevant LA to make an officer available to provide advice assistance to: a parent; special guardian; any person with whom a child is living; or the child themselves. This order can only be made with the consent of all parties involved, including the relevant authority (excepting the child). It can be made on the courts own motion and remains in place for a period of 12 months, unless a shorter time is specified.<sup>25</sup></li> <li>• <b>Supervision Order:</b> Provides for the compulsory supervision of a child's care by a child protection officer/r for a specified period. If deemed appropriate, the court has the discretion to make the more intrusive Care Order upon an application for a Supervision Order. This order cannot be made for a child above the age of 17, or 16 in the case of a child who is married.<sup>26</sup></li> <li>• <b>Care Order:</b> This intrusive measure bestows parental responsibility for a child upon a LA, and allows the LA to determine how any other person may exercise their existing parental responsibility. Such an order can only be made once a court has considered a permanency plan for a child.<sup>27</sup> It is this kind of order that would authorise an alternative care placement. Applications for both Care and Supervision orders must be heard expeditiously, with England and Wales prescribing a time limit of 26 weeks<sup>28</sup>.</li> <li>• <b>Secure Accommodation Order:</b> Authorises the keeping of a child under the care of a LA in a secure facility, and the restriction of that child's liberty. This is a measure of last resort and requires court oversight and limited time orders.<sup>29</sup></li> <li>• <b>A Special Guardianship Order:</b> This order is uniquely in the England &amp; Wales Act (although there are provisions for non parents to take guardianship for children in the other Acts).<sup>30</sup> It can be made in favour of someone (not a parent) who is at least 18 years of age,</li> </ul>

<sup>20</sup> *Children Act 1989*, s8; *Children (Scotland) Act*, s11(2)(f); and *The Children (Northern Ireland) Order 1995*, s8(1).

<sup>21</sup> *Children Act 1989*, s8; *Children (Scotland) Act*, s11(2); and *The Children (Northern Ireland) Order 1995*, s8(1).

<sup>22</sup> Excepting family assistance, and special guardianship orders – which are in the case of the former less intrusive, and in the case of the latter a long term measure and are likely to be made after the risk issue has been addressed in a primary child protection proceeding.

<sup>23</sup> *Children Act 1989*, s43; *Children (Scotland) Act*, s55; and *The Children (Northern Ireland) Order 1995*, s62.

<sup>24</sup> *Children Act 1989*, ss44-45; and *The Children (Northern Ireland) Order 1995*, s63, 64. Nb. This provision is not in the Scottish Act.

<sup>25</sup> *Children Act 1989*, and *The Children (Northern Ireland) Order 1995*, s16. Nb. This provision is not in the Scottish Act.

<sup>26</sup> *Children Act 1989*, ss31-4; *Children (Scotland) Act*, s52; and *The Children (Northern Ireland) Order 1995*, s50-1, 54. Nb: the Scottish Act provides explicit conditions required for a measure of supervision.

<sup>27</sup> *Children Act 1989*, ss31-2,35-6; *Children (Scotland) Act*, s57-62; and *The Children (Northern Ireland) Order 1995*, s50-3,

<sup>28</sup> See *Children Act 1989*, s32

<sup>29</sup> *Children Act 1989*, s25; *Children (Scotland) Act*, ss70(9A), 75; and *The Children (Northern Ireland) Order 1995*, s44.

<sup>30</sup> See s7, in the Scottish Act and ss106-17 in the NI Act.



	including LA foster parents.
<b>STANDING TO APPLY</b>	<p><u>Parental Responsibility Measures:</u> In each jurisdiction, parents (including those not formally granted parental responsibility) have automatic standing to apply for an order. Other persons may apply with leave of the court. In granting leave, the court will consider the nature of the application and the relationship between the applicant and the child. In both Northern Ireland and England &amp; Wales<sup>31</sup> where a parent (father or other parent by virtue of an artificial insemination procedure) is granted residence of a child, the court must also ensure that he or she has parental responsibility for that child. This is not necessary for a contact order. The Scottish Act is explicit in providing that parental responsibility may be stripped from a person, or conversely imposed upon a person.<sup>32</sup> It is noted that orders can be made only for a child below the age of 16 years, although for a child above that age an order may be made in exceptional circumstances, or an existing order may be varied or revoked.<sup>33</sup></p> <p><u>Child Protection Measures:</u> In Northern Ireland, England and Wales – excepting special guardianship and family assistance orders (which may be made on the courts own motion) – only a LA or an authorised person (being an officer of the National Society for the Protection of Cruelty to Children, or any person authorised by the Secretary of State)<sup>34</sup> may make the application. The Scottish provision regarding child protection orders allows, ‘any person’ to make an application if they are concerned that a child is, or is likely to, suffer significant harm.’<sup>35</sup></p>
<b>COSTS</b>	<p>In England and Wales the filing fee for commencing any: parenting order; special guardianship; secure accommodation; assessment order; and emergency protection proceeding is £215.<sup>36</sup> An application for a care or supervision order is £2,055.<sup>37</sup> In Northern Ireland, the fee is £100 in the High Court, and £75 in the County Court.<sup>38</sup> In Scotland the fee is £166 pounds.<sup>39</sup></p> <p>In all courts there may be further fees for filing interim/interlocutory applications and/or hearing fees. In England and Wales, the fee is £50 (if filed by consent or without notice) and £155 (if filed on notice). The cost of an appeal is £125. In Northern Ireland fees are £75 in the High Court or £57.50 in the County Court and for an appeal, £75 in the County Court, and £100 in the High Court. In Scotland fees are £54, or £166 for an appeal.<sup>40</sup></p> <p>It is noted that the above costs are reflective of court fees only. Retaining legal representation, or providing alternative care to a child are also likely to be costs associated with a proceeding under 1996 HC. These costs are subjective (i.e. will depend on the length of the court proceeding/type and time period of care provision), and as such are not estimated here.</p>

## E. Recognition of Existing Measures

<sup>31</sup> S12 in both Acts.

<sup>32</sup> S11(2), *Children Scotland Act 1995*.

<sup>33</sup> *Children Act 1989*, s9(7); *Children (Scotland) Act*, s11(2)(f); and *The Children (Northern Ireland) Order 1995*, s9(7).

<sup>34</sup> See for example ss31(1),(9) of the *Children Act 1989*.

<sup>35</sup> *Children (Scotland) Act 1995*, s57(1) – subsection (2) deals with applications by a Local Authority.

<sup>36</sup> *The Family Proceedings Fees (Amendment) Order 2014*, Schedule 1, 2.1 (i)(h)(n)(o).

<sup>37</sup> *Ibid*, Schedule 1, 2,2.

<sup>38</sup> *The Family Proceedings Fees (Amendment) Order (Northern Ireland) 2007*, Schedule, 4. Nb : Fees will be updated annually as of 1 April 2017 – see <http://www.legislation.gov.uk/nisr/2017/17/schedule/made>

<sup>39</sup> *The Court of Session etc. Fees Order 2015*, Schedule 2, B3 – this fee will increase to £169 as of 1 April 2017 (schedule 3).

<sup>40</sup> *The Family Proceedings Fees (Amendment) Order 2014*, Schedule 1, 5.1,5.3, 6.1; *The Family Proceeding Fees (Amendment) Order (Northern Ireland) 2007*, Schedule, 4., q), r); *The Court of Session etc. Fees Order 2015*, Schedule 2, B3, B21.



ASPECTS	INFORMATION
APPLICABLE LAW / RULES	<p>Practice Direction 31A, and Part 31 of the Rules (<b>EW</b>), rules 8.33-8.63 (<b>NI</b>), and the <i>Rules of the Court of Sessions</i> 1994, Part XIV govern the recognition and enforcement of measures made by another contracting State. In accordance with art. 23(1), 1996 HC and art. 22, BIIa an order made in another Member/contracting State is automatically recognised in the UK. A request can be made for that measure to be formally recognised (registered) in the jurisdiction, and conversely that it be formally not recognised (r31.4,31.6-7 <b>EW</b>; r.8.36 – 8.41 <b>NI</b>; r62.98). Explicitly in Northern Ireland, the rules require that a translation of the judgment to be registered is provided with any application (r.8.36(3)).</p> <p>Where a court declares that a measure should be recognised, it is automatically registered and rendered enforceable. On making this decision (or a decision not to recognise a measure), the relevant parties must be served with notice of the courts decision as soon as is practicable (r31.11 <b>EW</b>; r8.50 <b>NI</b>; r.62.101 <b>S</b>). Where the measure under consideration is being appealed, the application for recognition may be stayed (r31.9 <b>EW</b>; r.8.48 <b>NI</b>) and any enforcement may be stayed (r31.16 <b>EW</b>; r.8.54 <b>NI</b>). A decision to recognise/not recognise an order may be appealed (r31.15 <b>EW</b>; r.8.53 <b>NI</b>).<sup>41</sup></p>
PROCEDURE	<p>The provisions in the Rules governing filing an application for recognition are somewhat confusing and onerous. In <b>England and Wales</b> the case of <i>Re P (Recognition and Registration of Orders under the 1996 Hague Child Protection Convention)</i> [2014] EWHC 2845 (Fam) provides some clarity. The court determined that the complex requirements regarding notice of the application, and provision for extensive documentation was excessive. Although His Honour recognised that the provisions of the rules should be taken into account by the allocated judge, <b>he prescribes a simple procedure</b> for filing the application (at 34-5) – by completing a <a href="#">Form C69</a> and emailing it to: <a href="mailto:rcj.familyhighcourt@hmcts.gsi.gov.uk">rcj.familyhighcourt@hmcts.gsi.gov.uk</a>.</p> <p>In <b>Northern Ireland</b>, any application is to be filed with the Master of the court, with the: judgement; documents proving the enforceability of the judgment in the legal system of the State where it was made; description of the opportunities for the child to be heard in the court; details of any measures previously taken in a non – 1996 HC State; the grounds for the original order; information that proper communication has occurred between States regarding any alternative care placement (if relevant); and providing an address for service. (r.8.37, 8.39)</p> <p>In <b>Scotland</b> The application is to be filed under <a href="#">Form 62.98</a>. It is to include a copy of the judgment; and a statement that the application complies with art. 23, 1996 HC.</p> <p>It is noted that in circumstances where it is anticipated that an order will need to be recognised and enforced in the UK, Judges encourage: communication between the jurisdictions in the original proceeding; that the Hague network of judges be utilised; and that checks be made about the enforceability of Orders prior to their making (see for example <i>Re P</i> at 36-38).</p>
TRANSLATION	<p>In <b>England, Wales and Northern Ireland</b> the person filing the application, should ensure that the judgment to be registered, and any other documents filed with the court, are filed with a copy of the document translated into English (if necessary), with a statement affirming that the translation is accurate.<sup>42</sup> The <b>Scottish</b> Rules are silent on the need for translation with seeking recognition or enforcement.</p>
COSTS	<p>There is <u>no fee</u> associated with this application.</p>

<sup>41</sup> Note that the Scottish rules do not explicitly address stays or appeal.

<sup>42</sup> Family Law Rules, Practice Direction 31A, Part 2.2-3; *Family Proceeding Rules (Northern Ireland)* 1996, rules, 8.36(3)(4).



## F. Cooperation with other States

ASPECTS	INFORMATION
<p><b>INFORMATION SHARING</b></p>	<p>When the CA receives a request for information pursuant to art. 31(c), 1996 HC or art. 53, BIIa, it may ask that the relevant local bodies (LAs, health board, NHS trust, Sec. of State) furnish them with information. The body must comply with the request as soon as reasonably practicable. Although, may refuse to comply if art. 37, 1996 HC applies (disclosing information would in the opinion of the information holder, be likely to place the child person, property, or family member in danger).<sup>43</sup></p>
<p><b>REQUESTS FOR ASSISTANCE</b></p>	<p>CA's can receive and make requests for co-operation with other contracting States, and can make administrative determinations as to whether the requests are within the scope of the convention. A court order is not required for CA's to accept and respond to such requests. The CA's are administrative units, and cannot provide legal advice.<sup>44</sup> In making a request for co-operation, the ICACU has a <u>required form</u>, and asks the following:<sup>45</sup></p> <ul style="list-style-type: none"> <li>• That the request be relevant, focussed, timely and practical.</li> <li>• That there be specification as to whether the request is being made under BIIa or 1996 HC.</li> <li>• That the request be made as early as practicably possible.</li> <li>• A sealed copy of any relevant orders be provided.</li> <li>• Clear background information, including full name(s) and date(s) of birth of the child(ren) and any relevant adults, and an explanation of the family relationship – inclusive of genogram in complex family structures.</li> <li>• That any background information, include an:             <ul style="list-style-type: none"> <li>○ Explanation of any technical language or acronyms.</li> <li>○ If a kinship care assessment is requested, information on what the child protection authority or court would seek to be covered, and as much information as possible to assist in locating the family members.</li> <li>○ Any relevant court documents – and only those documents that are relevant, not necessarily the entire bundle.</li> </ul> </li> <li>• That if any court permission is required to disclose information or documents to the receiving CA, that that application be made promptly.</li> </ul>
<p><b>ASSESSMENT</b></p>	<p>In accordance with arts. 32(a), 33 (Art. 56 BIIa) and 35(1)(2) 1996 HC the relevant CA's may arrange for reports to be completed.</p> <ul style="list-style-type: none"> <li>• <b>Art 32(a) – Where a child is present/habitually resident in the UK:</b> The CA may request a report from a LA, public authority (Northern Ireland), Welsh Family Proceedings Officer or an officer of the Children and Family Court Advisory and Support Service ('CAFCASS') (the latter two being bodies who provide direct, or GAL representation for children).<sup>46</sup></li> <li>• <b>Art 33 / Art 56 - Where an alternative care placement in the UK is proposed:</b> The relevant LA must consult with, and provide through, their CA a report to the corresponding CA.<sup>47</sup> If</li> </ul>

<sup>43</sup> Regulations 2010, regs.9,10, 14(E,W,NI), 13(S).

<sup>44</sup> For further details on the role of the CA in the UK, see for example: <https://www.judiciary.gov.uk/publications/presidents-guidance-on-the-international-child-abduction-and-contact-unit-icacu-and-its-role/>

<sup>45</sup> *ibid* at page 4,5; See also, *Family Proceeding Rules (Northern Ireland) 1996*, rules, 4.37-8.

<sup>46</sup> *Ibid.* reg 12 (E,W,NI), 11(S) . NB : the Scottish reg. explicitly contemplates the provision of any report already prepared / provided to a court concerning the child

<sup>47</sup> *Ibid* reg 13 (E,W,NI), 12(S)

	<p>the request is received through a Court, the Court must immediately notify the relevant CA. If a proceeding is pending the Court is required to fix a directions hearing.<sup>48</sup> If a Court seeks to make such a request of a CA in another State, the domestic CA must be notified.<sup>49</sup></p> <ul style="list-style-type: none"> <li>• <b>Art 35 – Assistance is assessing suitability of, or implementing, contact with a parent in the UK:</b> The CA may provide such a service, and charge a reasonable fee for same.<sup>50</sup></li> </ul> <p>Where it is possible to engage an external expert body to undertake any assessment, the ISS network may be able prepare such assessments on a child's/family's situation either within the UK, or if a placement is proposed outside of the UK in that other country.</p>
<b>TRANSLATION</b>	<p>For <b>England and Wales</b>, the ICACU will arrange translation of any documents accompanying a request for assistance, but notes that there is limited funding in this regard.<sup>51</sup> The <b>Northern Ireland and Scottish</b> rules are silent as to whether or not a translation is required of documents related to a request for assistance, or whose responsibility the translation is.</p>
<b>COSTS</b>	<p>The Regulations 2010 provide for the charging of a fee only in relation to art. 35 reports. The fee defined as: <i>“reasonable” for the purposes of this regulation if the income from fees of that kind, the costs of providing the service to which the fees relate (including a reasonable share of expenditure partly or only indirectly to the provision of that service).</i><sup>52</sup></p>

## G. International Family Mediation ('IFM')

<b>ASPECTS</b>	<b>INFORMATION</b>
<b>RELEVANT LEGAL PRINCIPLES</b>	<p>The Family Law Act of 1996 and the European Directive of 2011 on alternative dispute resolution in civil, commercial and family matters explicitly encourage and refer to the recourse to a peaceful alternative settlement of cross-border family conflicts and cases of parental child abduction.</p>
<b>ACCREDITATION / REGULATION</b>	<p>In the UK, family mediation is legally recognised, commonly implemented and encouraged by the State. Family mediators are regulated and governed by six (6) member organisations, all of whom are members of the Family Mediation Council (FMC). The FMC provides the Code of Practice for family mediators and sets the minimum standards for practice requirements in family mediation. Together with the Law Society, the FMC is responsible for the accreditation of family mediators. Such accreditation qualifies the mediators to conduct legal aid mediations<sup>53</sup>. Only qualified mediators, approved by the FMC or the Law Society should be used. Relevant lists of authorised mediators can be found at the FMC or the Law Society.<sup>54</sup></p>
<b>ACCESS TO IFM</b>	<p>Recourse and access to IFM in concert with legal and administrative procedures is in the process of being formalised, professionalised and promoted across the world. Today, specialised mediation services may either run in parallel to, and in coordination with, mechanisms under 1980 and 1996 HC (as well as the BIIa), or CAs may refer cases they consider appropriate for mediation to organisations specialising in IFM (including ISS members offering</p>

<sup>48</sup> Family Procedure Rules, r12.69

<sup>49</sup> Ibid, r12.70

<sup>50</sup> Regulations 2010, reg 16 (E,W,NI), 14(S).

<sup>51</sup> See CA Guidance, at <https://www.judiciary.gov.uk/publications/presidents-guidance-on-the-international-child-abduction-and-contact-unit-icacu-and-its-role/> pages 4,5.

<sup>52</sup> Regulations 2010, reg 16 (E,W,NI), 14(S).

<sup>53</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419977/mediation-guidance-manual-mar-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419977/mediation-guidance-manual-mar-2015.pdf) ; <https://checklegalaid.service.gov.uk/scope/diagnosis/n43n14> ;

<sup>54</sup> [www.fmc.org.uk](http://www.fmc.org.uk) ; <http://thefma.co.uk/about-the-fma/history/>; <http://www.lawsociety.org.uk>



cross-border family mediation). In the UK, there is a longstanding and well-established cooperation between Reunite International, a specialised IFM structure and administrative and legal authorities.

## Comments of the ISS/IRC

The UK has well implemented the measures of 1996 HC into their domestic law, in all territories. The UK has shown a keenness to use the Hague network of judges to best facilitate 1996 HC and has comprehensively legislated to address the provisions of the convention – albeit in some places the applicable rules / regulations are somewhat convoluted and difficult to navigate.

The courts in the UK have shown a willingness to use the provisions of 1996 HC to meet the best interests of a child in circumstances where no other remedies are available. For example, in *In the Matter of J (a child)* [2015] UKSC 70, the UK Supreme Court has held that it is open to the Courts to use the provisions of art. 11, 1996 HC (the taking of measures of protection in cases of urgency) in cases of wrongful removal under 1996 HC (if it is appropriate in all circumstances of the case).

Given the manner in which 1996 HC became law, as well as the influence of European law on UK legal concepts (including for example how a child’s habitual residence, or best interests is assessed by a court) it will be necessary to closely watch over the negotiation period for Brexit for any indication as to how (if, at all) 1996 HC will be affected.

## LEGISLATION

### A. International Instruments

INTERNATIONAL INSTRUMENTS (Calibri 11/capital letters/orange/full)	Signature (S) / Ratification (R) / Accession (A) / In Force (F)	Website
United Nations Convention on the Rights of the Child (1989)	19 April 1990 (S) 16 December 1991 (R) 15 January 1992 (F)	<a href="https://www.gov.uk/government/publications/united-nations-convention-on-the-rights-of-the-child-uncrc-how-legislation-underpins-implementation-in-England">https://www.gov.uk/government/publications/united-nations-convention-on-the-rights-of-the-child-uncrc-how-legislation-underpins-implementation-in-England</a>
Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (1993)	19 November 1984 (S) 19 May 1986 (R) 1 August 1986 (F)	<a href="http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=69">http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=69</a>
Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996)	1 April 2003 (S) 27 July 2012 (R) 1 November 2012 (F)	<a href="http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=70">http://www.hcch.net/index_en.php?act=conventions.status&amp;cid=70</a>

### B. Regional instruments



REGIONAL INSTRUMENTS	Signature (F) / Ratification (R) / Accession (A) / In Force (F)	Website
COUNCIL REGULATION (EC) 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, repealing Regulation (EC) No 1347/2000	1 March 2005 (F)	<a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133194">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133194</a>
Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters	13 June 2008 (F)	<a href="http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&amp;from=EN">http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&amp;from=EN</a>

## C. Domestic Legislation

LAW/REGULATION	Access
The Children Act 1989	English (e)
Children (Scotland) Act 1995	English (e)
The Children (Northern Ireland) Order 1995	English (e)
Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Northern Ireland) Regulations 2010	English (e)
Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010	English (e)
Family Procedure Rules 2010 (England & Wales)	English (e)
Family Proceeding Rules (Northern Ireland) 1996	English (e)
Act of Sederunt (Jurisdiction in Respect of Parental Responsibility and Measures for the Protection of Children Rules) 2011 (Scotland)	English (e)
Rules of the Court of Sessions 1994 (Scotland) (Part IV, XIV, Chapter 88)	English (e)
Family Law Act 1986	English (e)
Children and Families Act 2014	English (e)
The Family Proceedings Fees (Amendment) Order 2014	English (e)
The Family Proceeding Fees (Amendment) Order (Northern Ireland) 2007	English (e)
The Court of Session etc. Fees Order 2015	English (e)

## ACTORS



## **CENTRAL AUTHORITIES:**

### ENGLAND:

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## **APPENDICES**

### **A. Other sources of information**

#### ❖ UK Government

- Department for Education  
<https://www.gov.uk/government/organisations/department-for-education>
- Ministry of Justice  
<http://webarchive.nationalarchives.gov.uk/20130128112038/http://www.justice.gov.uk/downloads/protecting-the-vulnerable/official-solicitor/international-child-abduction-and-contact-unit/1996-hague-convention-guide.pdf>



- House of Commons  
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7764>
- Family Mediation Council  
<https://www.familymediationcouncil.org.uk/family-mediation/assessment-meeting-miam/>

❖ **UK Law Sources**

- UK Legislation database  
<http://www.legislation.gov.uk>
- Family Law Week – Case Law Resource  
<http://www.familylawweek.co.uk/site.aspx?i=ho0>

❖ **THC-1996**

- HCCH Contacts for UK CA's  
<https://www.hcch.net/en/states/authorities/details3/?aid=941>
- HCCH UK country profile  
<https://www.hcch.net/en/publications-and-studies/details4/?pid=5367&dtid=42>
- HCCH Practical Handbook on the Operation of the 1996 Hague Child Protection Convention  
<https://assets.hcch.net/upload/handbook34en.pdf>

❖ **BIIA**

- European Commission Practice Guide for the Application of the Brussels IIa Regulation  
[http://ec.europa.eu/justice/civil/files/brussels\\_ii\\_practice\\_guide\\_en.pdf](http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_en.pdf)

❖ **International Family Mediation**

- HCCH Guide to Good Practice: MEDIATION (1980 HC)  
[https://assets.hcch.net/upload/guide28mediation\\_en.pdf](https://assets.hcch.net/upload/guide28mediation_en.pdf)
- Website dedicated to International Family Mediation providing information and resources country by country  
[www.ifm-mfi.org](http://www.ifm-mfi.org)
- Guide to International Family Mediation  
<http://www.iss-ssi.org/index.php/en/what-we-do-en/mediation-en#1-1-project-1-a-guide-to-international-family-mediation>

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