

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.

Name of State or territorial unit:¹	Ireland
<i>For follow-up purposes</i>	
Name of contact person:	James Whelan
Name of Authority / Office:	Central Authority, Department of Justice & Equality
Telephone number:	+35314790200
E-mail address:	internationalchildabduction@justice.ie

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:

Section 2(4A) of the Guardianship of Infants Act, 1964, as inserted by Section 43(c) of the Children and Family Relationship Act 2015 provides that certain un-married fathers may automatically become guardians of their children. This occurs where the un-married father has lived with the child's mother for a period of at least 12 consecutive months – three of which must be consecutive with both mother and child. This consecutive 12 month period can occur at any time until the child is 18 years old.

The above provision commenced in law on 18 January 2016 and is not retrospective. Therefore, it is possible that from 18 January 2017 certain un-married fathers have acquired guardianship over their child(ren). If there is a disagreement over whether guardianship rights have been acquired by the un-married father under this provision, either party can apply to the Irish courts for a declaration.

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 authorities² 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:

DPP -v- Moustafa Ismaeil [2012] IECCA 36 – Finnegan J.

Following trial in the Circuit Court, the appellant was convicted of a single count of child abduction contrary to Section 17 of the Non-Fatal Offences Against the Person Act 1997. Following the break-up of a marriage between the appellant's brother and his wife, the appellant abducted the couple's son and took him to live with his brother's family in Egypt. The child had been dressed as a young girl and presented as the appellant's daughter in order to evade immigration and passport control. The child now remains in Egypt with the Ismaeil family and the child's mother has only been able to visit him on a number of occasions.

The sentencing Judge described the crime as "appalling" and one demanding the full rigours of the law. In noting that a maximum sentence of 7 years was provided for under the Act, the sentencing Judge reduced the sentence by 1 year having regard to the following: the relatively good previous character of the appellant, the acknowledgment that custody may

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

² 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.

prove more onerous for him on account of his nationality and the fact that he had not presented a false account to the jury (he had not given evidence).

The Court of Criminal Appeal considered whether the offence in question was one capable of attracting the maximum sentence. The appellant made submissions to the effect that maximum sentences should only be applied where the conduct is at the highest end of seriousness capable of being envisaged for the particular offence.

However, in finding the offending calculated and intentional, and in particular the permanent nature of the child's abduction, the Court of Criminal Appeal stated that the case fell within the very worst category of offences under the section and precisely the type of case envisaged by Section 29 of the Criminal Justice Act 1999 which might have attracted a maximum sentence even on a guilty plea. The Court of Criminal Appeal noted the infringements of the mother's constitutional rights and queried whether 7 years was even a sufficient penalty for such offences. The sentence was found to be entirely proportionate and the appeal was dismissed.

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:

There has been extensive reform of family law in this State in recent years to place a greater emphasis on recognising the rights of the child to the society of both his or her parents. The Children and Family Relationships Act 2015, which was enacted in April 2015, is a child-centred Act which addresses the rights of children to legal security, to the care of their parents and important adults in their lives, and to equality before the law. Step-parents, civil partners and cohabiting partners can now apply for custody, or to become guardians of a child. The Act also makes it easier for grandparents and other key people in a child's life to apply for access. These reforms in family law recognise the crucial role of parents and the need for a child to maintain meaningful relationships with both parents.

Under section 11 of the Guardianship of Infants Act 1964, the guardian of a child may apply to the court for an order giving directions on any question affecting the welfare of the child, including the custody of, and access to, the child and the payment of maintenance. In relation to the guardianship, custody or upbringing of, or access to, a child section 3 of the Guardianship of Infants Act 1964 provides that the best interests of the child shall be the paramount consideration for the court in these proceedings. The Children and Family Relationships Act 2015 inserted a new Part V into the Guardianship of Infants Act 1964 which sets down the factors and circumstances that the court shall have regard to when determining what is in the best interests of the child. These factors include the benefit to the child of having a meaningful relationship with each of his or her parents. Section 25 of the 1964 Act also requires the court, as it thinks appropriate and practicable, to take into account the child's wishes in custody and access matters, having regard to the age and understanding of the child.

There has also been an amendment to family law legislation to assist parents who need to return to court because the other parent has breached a court order in relation to custody or access to a child. Section 56 of the Children and Family Relationships Act 2015 inserted a new section 18A into the Guardianship of Infants Act 1964 and this provides that where a parent or guardian of a child has been granted custody or access to the child under the 1964 Act, but he or she has been unreasonably denied such custody or access by another guardian or parent, that person may apply to court for an enforcement order.

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:
 Please insert text here

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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

- No
 Yes, please describe them and also provide a link or attach them, preferably translated into English or French:
[Please insert text here](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)

Applicable law

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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:

[PROTECTION OF CHILDREN \(HAGUE CONVENTION\) ACT, 2000](#)

[3 \(c\) A measure in respect of which an order has been made under subparagraph \(i\)\(I\) or \(ii\)\(II\) of paragraph \(b\) shall, to the extent to which recognition or enforcement of the measure is authorised by the order, be of the same force and effect as if it were an order of the District Court.](#)

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

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

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

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

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:
[Please insert text here](#)

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):
[Please insert text here](#)

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:

[Please insert text here](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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):
[Please insert text here](#)

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:
[Please insert text here](#)

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)⁴

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

⁴ 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).

- 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:
[Please insert text here](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)
- 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:
[Please insert text here](#)
- 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:
[Please insert text here](#)
- 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:
[Please insert text here](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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):
[Please insert text here](#)

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:
[Any such person or body deemed competent to do so by order of the Minister for Foreign Affairs.](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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:
[Please insert text here](#)

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:
[The Irish High Court as a matter of course seek undertakings from the applicant, such as financial undertakings. The Courts can make mirror orders.](#)

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:
[Please insert text here](#)

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?⁵

- 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

⁵ 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).

- 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:
[No Observations](#)

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:
[No Observations](#)
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:
[No Observations](#)