

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF
THE 1980 CONVENTION**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 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	England and Wales
<i>For follow-up purposes</i>	
Name of contact person:	Miss Gay BAILEY (Contributions Editor)
Name of Authority / Office:	Ministry of Justice London
Telephone number:	+ 44 (0)20 3334 3200
E-mail address:	gay.bailey@justice.gov.uk

PART I: RECENT DEVELOPMENTS²

1. Recent developments in your State

1.1 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 abduction. Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

- No
 Yes, please specify:

\

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities³ in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

From the judiciary

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

The Court found habitual residence to be a question of fact and not a legal concept such as domicile. The test for habitual residence is that used by the Court of Justice of the European Union - a sufficient degree of integration.

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

The Supreme Court applied the concept of habitual residence as established in A v A. A return order was not made under the 1980 Convention because the child was habitually resident in England having moved here with the mother pursuant to an order of a court in Texas. The fact that that order was subsequently overturned on appeal did not affect the child's habitual residence. The Supreme Court, however, decided to make a summary return order under the English court's inherent jurisdiction (as permitted by Art 18 of the Convention).

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

² This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction and international child protection which have occurred in your State since the Sixth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior* to the 2011 / 2012 Special Commission, please provide such information here.

³ The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 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.

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

The Supreme Court decided that, when a court is determining a child's habitual residence, a relevant factor may be the child's state of mind during her period of residence there in relation to the nature and quality of that residence.

Other Supreme Court cases include:

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

The issue before the Supreme Court was whether to order the return to France of children who had been born in France, but had been living in Scotland for what had been intended to be a temporary stay. The Court found that there is no rule that one parent cannot unilaterally change the habitual residence of a child and that habitual residence had changed during this stay in Scotland. There was therefore no case of wrongful retention. See also OL v PQ [2017] CJEU C-111/17 on issue of habitual residence

Re S [2012] UKSC 10

Art 13(b): the critical question was what would happen if the child was returned with the mother. If the court concluded that, on return, the mother would suffer such anxieties that their effect on her mental health would create a situation that was intolerable for the child, the child should not be returned. It mattered not whether the mother's anxieties were reasonable or unreasonable.

Re K [2014] UKSC 29

A grandmother's status gave her rights of custody within the 1980 Convention under the category of inchoate rights which remained a valid concept under the Convention - those who might have such rights of custody are defined in paragraph 59.

Re KP [2014] EWCA 554

Concerned the issue of hearing the child and provides important guidance regarding the voice of the child within Hague proceedings. In particular the court flagged up the following points (see paragraph 53 of judgment)

a) There is a presumption that a child will be heard during Hague Convention proceedings, unless this appears inappropriate

b) In this context, 'hearing' the child involves listening to the child's point of view and hearing what they have to say

c) The means of conveying a child's views to the court must be independent of the abducting parent

d) There are three possible channels through which a child may be heard (via CAFCASS officer or other professional, face to face interview with the judge; or child being afforded full party status with legal representation); [Editor's note: CAFCASS means the Children and Family Court Advisory and Support Service, called Cafcass in England and CAFCASS Cymru in Wales]

e) In most cases an interview with the child by a specialist CAFCASS officer will suffice, but in other cases, especially where the child has asked to see the judge, it may also be necessary for the judge to meet the child. In only a few cases will legal representation be necessary

f) Where a meeting takes place it is an opportunity for the judge to hear what the child may wish to say; and for the child to hear the judge explain the nature of the process and, in particular, why, despite hearing what the child may say, the court's order may direct a different outcome

g) a meeting between judge and child may be appropriate when the child is asking to meet the judge, but there will also be cases where the judge of his or her own motion should attempt to engage the child in the process.

Re M (Ireland) 2015 EWCA Civ 26

This case dealt with a child's objections. Determining whether the terms of the Convention were satisfied was confined to a straightforward and fairly robust examination of whether the child objects (rather than a mere preference) and has attained the relevant age and maturity. This is a fairly low threshold. Other factors affecting the weight to be given to those objections were relevant at the second stage, when the court was determining whether, despite the objections, a return order should be made.

Re C [2017] EWCA Civ 980

This is a very recent decision in which the court considered the circumstances in which anticipatory retention can occur. The mother and children came to live in England for an agreed period of one year. The issue for the court was whether the mother, by her actions, had wrongfully retained the children during the course of that year. Black LJ undertook an extensive review of the jurisprudence dealing with this question from around the world. The court decided that anticipatory retention could happen in the course of the year although the judges disagreed about how this could occur - did the mother's change of mind or actions need to be communicated to the father or not. The case is being appealed to the Supreme Court.

See also the EU coordinated reply

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

Please insert text here

2. **Issues of compliance**

2.1 Are there any States Parties to the 1980 Convention with whom you are having particular challenges in achieving successful co-operation? Please specify the challenges you have encountered and, in particular, whether the problems appear to be systemic.

- No
 Yes, please specify:

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

- No
 Yes, please specify:

Generally, there has been concern that some State Parties place too great an emphasis on welfare principles when determining a return application, rather than focusing on the purposes of the Convention and the question of summary return, so that the welfare issues can be determined by the courts of the country of habitual residence.

PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION

3. **The role and functions of Central Authorities designated under the 1980 Convention**⁴

In general

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

- No
 Yes, please specify:

See 2.1 above for details of State Parties where communication with the Central Authority is difficult and the reasons for this.

3.2 Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?

- No
 Yes, please specify:

There is a concern about how some State Parties use Article 7(d). The courts in some State Parties appear to require a welfare report either pursuant to Article 7(d) of the Convention (or under Article 55 of the BIIa Regulation) from the child protection authorities

⁴ See also Section 5 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

in the requesting State as a matter of course, rather than the requests being tailored to the specific facts of the case. This impacts on the local authorities in England and Wales both in terms of cost and time; the reports are usually required urgently. It can also lead to the Hague proceedings being delayed whilst these reports are obtained.

Further in a large percentage of cases, despite no significant child protection concerns being raised by the local authority in England and Wales, a non-return order is made. It is not always clear why an Article 13b defence has been successfully made out.

3.3 Has your Central Authority encountered any challenges with the application of any of the 1980 Convention provisions? If so, please specify.

No

Yes, please specify:

Article 11 causes difficulties:

(i) The appeal process in some State Parties can be lengthy, which is contrary to the aims of the Convention.

(ii) A statement of reasons for the delay in obtaining a decision on the application is not always received from the requested Central Authority.

Legal aid and representation

3.4 Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)-(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States you have dealt with?

No

Yes, please specify:

Incoming cases: The left behind parent applying from outside of England and Wales for the return of their child under the 1980 Hague Convention, is entitled to non-means and non-merits tested legal aid. When the ICACU refers a new incoming return application to a specialist solicitor (legal adviser), it also provides a funding letter to be sent to the Legal Aid Agency (which authorises legal aid). The solicitor is then responsible for applying for a legal aid certificate; such application is usually dealt with on an urgent basis by the Legal Aid Agency. So there is not usually a delay in the left behind parent obtaining legal aid.

Legal aid for the taking parent is subject to the normal means and merits tests. If the taking parent provides to their solicitor the information required for the legal aid application, there is usually no delay.

Ongoing cases: For applicants who live in England and Wales, delays in receiving legal aid from the requested State Party can occur especially where the legal aid is not available automatically. There can also be additional delay when the applicant in England and Wales does not speak the language of the requested State Party.

3.5 Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?⁵

No

Yes, please specify:

Incoming cases: For return applications in England and Wales, the taking parent may not be eligible for legal aid. They can choose to (i) pay privately, (ii) act as a litigant in person or (iii) find pro bono representation.

⁵ See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter referred to as the "[Conclusions and Recommendations of the 2006 Special Commission](#)") and paragraphs 32 to 34 of the [Conclusions and Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#) (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings").

A litigant in person has the right in England and Wales to have reasonable assistance from a lay person known as a McKenzie friend, although a McKenzie friend has no right to act as an advocate or to conduct the litigation for the litigant. The Personal Support Unit, an independent charity based on the Royal Courts of Justice in London, can also provide support to litigants in person, including information about how court cases are dealt with, assistance with paperwork and accompanying the litigant in person to court.

The difference in the availability of legal aid to left behind and taking parents reflects their circumstances in a child abduction case where prima facie the child has been wrongfully removed or retained away from their country of habitual residence and the left behind parent is seeking the child's return.

Taking parents can also instruct specialist solicitors. Details of these firms are provided to the taking parent when they are served with the return application and are also available on the government website at <https://www.gov.uk/find-a-legal-adviser>.

Locating the child

3.6 Has your Central Authority encountered any challenges with locating children in cases involving the 1980 Convention, either as a requesting or requested State?

- No
 Yes, please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

In incoming cases, the application for a return order can be issued without the precise whereabouts of the child being known, provided it is believed that the child is in the jurisdiction. The Court has broad powers to make orders to assist in locating the child including requiring the disclosure of information from government agencies and other third parties and obtaining the assistance of the Police, which have shown to be effective in addressing any difficulties in ascertaining the child's whereabouts.

3.7 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)?

- No
 Yes, please share any good practice on this matter:

As explained at 3.6 above, the application for a return order can be issued without the precise whereabouts of the child being known. Once the application has been issued, the court has jurisdiction to direct third parties (including government Ministries) to disclose information about the whereabouts of a child. The court can also make a location order for the police to assist in locating the child. On occasion, information from the authorities from the requesting State Party can assist in locating the child.

Information exchange, training and networking of Central Authorities

3.8 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?⁶

- No
 Yes, please specify:

The ICACU is willing to share information about practice and procedure in the spirit of co-operation and does so regularly in the context of specific cases.

Since the last Special Commission, the ICACU has hosted many visits from other State Parties including the Czech Republic, Lithuania, Japan, Poland, Sweden and the Netherlands.

⁶ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

No

Yes, please specify:

Since the last Special Commission, the ICACU has engaged in several conference calls with the US Central Authority. In May 2017, the ICACU also attended an international conference hosted by the Czech Republic Central Authority.

The ICACU finds the bilateral meetings at the EU European Civil Judicial Network in Civil and Commercial Matters (EJN) meetings a useful opportunity to meet with the Central Authorities of the Brussels IIa Regulation to discuss specific cases and share good practice.

Statistics⁷

3.10 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

The ICACU submits statistics to the Permanent Bureau by email not by INCASTAT. The ICACU uses the office IT case management system in the office of the Official Solicitor and Public Trustee (OSPT) where the ICACU is located. If INCASTAT can be modified to allow Central Authorities to upload their statistics from another data source, the ICACU would upload their statistics to INCASTAT.

Prompt handling of cases

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

No

Yes, please specify:

The ICACU has recently reviewed and updated the form and guidance notes it has produced for applicants in England and Wales to complete in order to assist them in providing all the information needed, for example, how the applicant has rights of custody. This should reduce the time taken from the ICACU receiving an application to being able to transmit it to the requested Central Authority.

Applicants are encouraged to use a central e-mail address set up specifically for new applications.

All new applications are reviewed on day of receipt and the appropriate internal target for processing them is given. The targets are 3 working days for incoming return applications, 7 working days for outgoing return applications and 15 working days for all other applications/requests. These targets are published in the automated email acknowledgement sent from the team's inbox.

Calendar reminders are set up to remind a case manager when an application is due to be processed.

File reviews are carried out on a three monthly basis.

The ICACU uses precedent correspondence to assist in the efficient processing of applications and associated correspondence.

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

Any delays in transmitting applications are primarily due to the applicant providing insufficient information, for example, a proper explanation as to how the applicant has rights of custody in accordance with domestic law or a proper explanation as to the child's habitual residence. It is hoped the revised form and guidance notes referred to at 3.11 will assist to lessen such delays.

⁷ See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*. note 5).

4. **Court proceedings & promptness**

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, concentration of jurisdiction)?⁸

- Yes
 No, please indicate if such arrangements are being contemplated:
 Cases are concentrated to be heard by High Court Judges (Family Division) only

4.2 Does your State have mechanisms in place to handle return decisions within six weeks (*e.g.*, production of summary evidence, limitation of appeals, swift enforcement)?

- No
 Yes, please explain:
 From the Judiciary
 In order to assist with complying with the six week deadline we ensure that, procedurally, all cases are determined in a reasonably summary manner. However, this can be difficult to achieve and it is not easy in practice to determine contested cases within this timescale

4.3 If your response to the previous question is No, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (*e.g.*, procedures, bench-books, guidelines, protocols)?

- No, please explain:
 Please insert text here
 Yes, please explain:
 From the Judiciary
 We are in the process of drafting Practice Guidance on case management of international child abduction proceedings to seek to assist with expedition.

4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

- From the Judiciary
 Volume of cases
 Availability of court time
 Availability of legal representation for Respondent parties
 Increase in length of hearings

4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (*e.g.*, prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

- No, please explain:
 Please insert text here
 Yes, please explain:
 From the Judiciary
 Such orders used to be made almost as a matter of course. They are now made only when demonstrated to be necessary.

4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

- Yes
 No, please explain:
 From the Judiciary
 Direct judicial communications are used to seek to establish the likely timeframe for determination of proceedings and to obtain information to assist with the determination of proceedings.

4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

- Yes
 No, please explain:
 Please insert text here

⁸ See, *The Judges' Newsletter* on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

4.8 Please comment upon any cases (whether your State was the requesting or requested State), in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child's safe return. What was the specific purpose of the communication? What was the outcome?

From the Judiciary

We are unable to give details of specific cases but the purpose of such communication has included to ascertain when proceedings could be listed, or what protective measures might be available in terms of orders to safeguard a parent/child after return.

5. **Ensuring the safe return of children**⁹

*Methods for ensuring the safe return of children*¹⁰

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings¹¹ regarding the safe return of children are implemented?

The ratification of the 1996 Hague Child Protection Convention by the United Kingdom has been of assistance in this area.

5.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

The ICACU and/or the returning parents will usually alert the requesting Central Authority to ensure that the child protection authorities in the requesting State are notified of any concerns raised.

It may be appropriate to make an accompanying co-operation request under Article 55 of the Brussels IIa Regulation or under the 1996 Hague Child Protection Convention.

5.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns?

From the Judiciary

In practice it can prove quite difficult to put in place such requirements or measures unless one of the parties to the case initiates this action- the court cannot initiate action on its own initiative.

Use of the 1996 Convention to ensure a safe return

5.4 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**), in providing for their recognition by operation of law (**Art. 23**), and in communicating information relevant to the protection of the child (**Art. 34**)?

No

Yes, please explain:

[Please insert text here](#)

Protection of primary carer

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, harassment, etc.) or others, has refused or has

⁹ See **Art. 7(2) h** of the 1980 Convention.

¹⁰ Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

¹¹ See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra*. note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5).at paras 39-43.

not been in a position to return with the child to the requesting State? How are such cases dealt with in your State? Please explain and provide case examples where possible.

From the Judiciary

Yes we are aware of such cases. The court will consider the availability and efficacy of protective measures (please see Re E [2011] UKSC 27). If the primary caretaking parent is not able to return with the child to the requesting state that would be a significant factor when the court decides whether to make a return order

In Re S [2012] UKSC 10, the Supreme Court considered that the critical question was what would happen to the mother if she returned with the child. That case addressed the effect on the mother's mental health of her returning. If the court decides that no protective measures are available, then the court could decline to make a return order

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

From the Judiciary

The court will frequently put in place protective measures, often by the left behind parent agreeing to certain measures (such as not to harrass or molest the returning parent or to initiate criminal proceedings) or by making orders as to what that parent must not do or otherwise regulating the parents' relationship.

In general, the court will assess what protective measures are available and whether they will provide a sufficient level of protection.

Post-return information

5.7 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

No, we do not. The UK sees no advantage in governments seeking to monitor what happens after 1980 Hague cases have concluded. If issues arise following the child's return to the country of their habitual residence, where these issues are for the court to decide they will be dealt with in domestic proceedings. It would not be practical to seek to identify separately cases where there had in the past been 1980 Hague proceedings.

5.8 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for requesting a report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

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

6. Voluntary agreements and mediation

6.1 How does your Central Authority (either directly or through any intermediary) take, or is it considering taking, appropriate steps under **Article 7-(c)** to secure the voluntary return of the child or to bring about an amicable resolution of the issues? Please explain:

In England and Wales attempts to secure a voluntary or an amicable solution normally begin after the left behind parent (the applicant) in a return case has been referred to a specialist solicitor by the ICACU. The solicitor then acts on the instructions of the left behind parent. This allows the risk of flight by the taking parent if approached to be assessed in light of the left behind parent's information. In the vast majority of cases judicial proceedings are issued although a parent may agree to a voluntary return at any stage in the proceedings. The ICACU raises the awareness of both parties of the possibility of a voluntary return. The referral letter informs the specialist solicitor of this option and includes an information sheet covering voluntary return, mediation and contact details for organisations which may be able to assist, to be provided to the taking parent when they are served with the return application.

Organisations include the charity, Reunite International, which provides a specialist mediation service. Legal aid is available for mediation in appropriate cases.

6.2 In what ways have you used the "Guide to Good Practice on Mediation"¹² for the purpose of implementing the 1980 Convention in your State? Please explain:

The ICACU has no direct involvement in mediation. It sign posts to the availability of specialist mediation services, for example, the charity, Reunite International.

¹² Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?¹³

No, please explain:

Mediation in the UK is an independent profession independently regulated. Cross-border mediation is provided as set out at 6.1 above.

Yes, please explain:

Please insert text here

7. Preventive measures

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?¹⁴

No

Yes, please describe:

Please insert text here

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

Yes

No, please explain:

Not a priority; a properly developed form with the appropriate features might be for future consideration

8. The Guide to Good Practice under the 1980 Convention

8.1 In what ways have you used the Parts of the Guide to Good Practice¹⁵ to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

a. Part I on Central Authority Practice. Please explain:

The ICACU uses the Guide for general reference. The Guide is used by judges and practitioners as an aid to the practical operation of the 1980 Convention.

b. Part II on Implementing Measures. Please explain:

Please insert text here

c. Part III on Preventive Measures. Please explain:

Used by judges and practitioners as at a.

d. Part IV on Enforcement. Please explain:

Used by judges and practitioners as at a.

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

From the Judiciary

The Guide to Good Practice is known to and used by many judges (as well as practitioners).

8.3 Do you have any other comments about any Part of the Guide to Good Practice?

Please insert text here

9. Publicity and debate concerning the 1980 Convention

9.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national parliament or its equivalent?

¹³ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

¹⁴ See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

¹⁵ All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

No

Yes, please indicate the outcome of this debate or discussion, if any:

(b) The UK Government has issued Written Statements to the UK Parliament on the UK opt-in to the EU's decisions on acceptance of accessions to the 1980 Hague Convention. From time to time questions have been raised in Parliament by Members of Parliament about individual international child abduction cases affecting their constituents.

9.2 By what methods does your State disseminate information to the public about the 1980 Convention?

[Please insert text here](#)

PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION
--

10. Transfrontier access / contact¹⁶

10.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access?

- No
 Yes, please explain:
[From the Judiciary](#)
[None that we can recall](#)

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

[Please insert text here](#)

10.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:

- a. the granting or maintaining of access rights;
[In the ICACU's experience some States Parties will not accept an Article 21 application unless:](#)
 (i) [the parent has parental responsibility for the child, or](#)
 (ii) [there is already a contact order in existence and the primary carer is not complying with the order, or](#)
 (iii) [the parent has an automatic right to contact with their child.](#)

[This approach can cause difficulties with outgoing access requests from England and Wales, as under our domestic law, parents do not automatically have a right to contact with their child. In domestic law \(i\) the welfare of the child is the paramount consideration \(section 1\(1\) Children Act 1989\) and \(ii\) there is a 'no order' principle, that is, a principle that the court shall not make an order unless it considers that doing so would be better for the child than making no order at all \(section 1\(5\) Children Act 1989\). If the parents separate or their marriage breaks down, orders will not be made regulating issues such as residence and contact unless a parent makes an application to the court, and, the court considers that making an order is better for the child than making no order at all. If divorce proceedings are issued by either parent, that will not necessarily lead to orders being made in respect of any children of the marriage.](#)

[A parent does have an automatic right to make an application to the court \(section 10\(4\)\(a\) Children Act 1989\) unless there have been earlier proceedings in which the court has made an order that no application for a further order may be made without leave of the court \(section 91\(14\)\), in which event the parent's initial application would be for leave to make an application for an order.](#)

- b. the effective exercise of rights of access; and
[There have been no particular problems.](#)
- c. the restriction or termination of access rights.
[The ICACU has limited experience of such requests. No specific problems identified.](#)

Please provide case examples where possible.

¹⁶ See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra*. note 5) at paras 1.7.1 to 1.7.3.

10.4 In what ways have you used the “General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children”¹⁷ to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

Please insert text here

11. International family relocation¹⁸

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

From the Judiciary

In *K v K (Relocation)* [2011] EWCA Civ 793 it was made clear that the only authentic principle is that the child's welfare is the court's paramount consideration

PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES

12. Non-Convention cases and non-Convention States

12.1 Are there any States that you would particularly like to see become a State Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States? Please explain:

Please see the EU coordinated reply. In addition, the judiciary are of the view that it would be beneficial for as many states as possible to become party to the Convention and to that end they would encourage the continued promotion of the Convention by means of international conferences/seminars etc.

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

Please insert text here

*The “Malta Process”*¹⁹

12.2 In relation to the “Malta Process”:

- a. Do you have any comment to make on the “Principles for the Establishment of Mediation Structures in the context of the Malta Process” and the accompanying Explanatory Memorandum?²⁰

None other than the EU coordinated reply

¹⁷ Available on the Hague Conference website at < www.hcch.net > under “Child Abduction Section” then “Guides to Good Practice”.

¹⁸ See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5:

“1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move.

1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation.”

¹⁹ The “Malta Process” is a dialogue between certain States Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the Hague Conference website at < www.hcch.net > under “Child Abduction Section” then “Judicial Seminars on the International Protection of Children”.

²⁰ The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under “Child Abduction Section” then “Judicial Seminars on the International Protection of Children”.

b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address cross-border family disputes over children involving States that are not a Party to the 1980 and 1996 Conventions?

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

c. What is your view as to the future of the "Malta Process"?
[The judiciary strongly endorse its continuation](#)

**PART VI: TRAINING AND EDUCATION AND
 THE TOOLS, SERVICES AND SUPPORT PROVIDED
 BY THE PERMANENT BUREAU**

13. Training and education

13.1 Can you give details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had?

[From the Judiciary](#)

[There are numerous examples of such conferences/training sessions and it would not be possible to list them all here. However, examples include the family judges delivering papers at training sessions organised by the Judicial College, and a conference held in Northampton in January 2017, attended by all the judges of the High Court Family Division and the Court of Appeal Family judges. The purpose of this conference was to address a number of issues including those concerning international family justice. Such conferences are extremely influential, for example, they increase the judges' understanding and awareness of international instruments, and have led to judges contacting the International Family Justice Office directly, with any questions they may have as to the application of these instruments.](#)

14. The tools, services and support provided by the Permanent Bureau

In general

14.1 Please comment or state your reflections on the specific tools, services and support provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

a. The Country Profile available under the Child Abduction Section.

[The ICACU finds it helpful to refer other Central Authorities to the country profile when they have questions about how England and Wales operates. The ICACU also finds it helpful to refer to other States' Profiles \(where available\).](#)

[From the Judiciary](#)

[They would be very useful if kept up to date.](#)

b. INCADAT (the international child abduction database, available at < www.incadat.com >).

[The ICACU considers INCADAT a useful tool to which to refer practitioners. The judiciary consider INCADAT very useful.](#)

c. *The Judges' Newsletter* on International Child Protection - the publication of the Hague Conference on Private International Law which is available online for free;²¹

[The Judiciary consider it very useful.](#)

d. The specialised "Child Abduction Section" of the Hague Conference website (< www.hcch.net >);

[ICACU find this another useful resource and it is helpful that all the information is in one place. The judiciary find it very useful.](#)

²¹ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

- e. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);²²
[See 3.10](#)
- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.²³ Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;
[Subject to the Permanent Bureau's existing funds, the UK can see the value of such an initiative. The judiciary consider it essential.](#)
- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);²⁴
[See 12.1; the judiciary consider this essential.](#)
- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;
[ICACU consider this extremely useful, the judiciary essential.](#)
- i. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges
[From the Judiciary](#)
[Communications between and among the Hague Network Judges is invaluable. We would support the maintenance of a confidential database.](#)

Other

14.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;
[Any provision of statistics would have to be proportionate.](#)
[The judiciary consider collation and publication of statistics would be extremely useful, as would any relevant information about experience following return.](#)
- b. To assist States in meeting their Convention obligations; and
[ICACU suggests possible funding of more conferences/international meetings so that best practice can be shared;](#)
[Investigate resourcing of Central Authorities to support improved performance/greater compliance.](#)
- c. To evaluate whether serious violations of Convention obligations have occurred?
[Please insert text here](#)

PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS

15. Views on priorities and recommendations for the Special Commission

15.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

[See below for the Judiciary suggestions](#)

15.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

[Closer examination of non functioning Central Authorities without proper infrastructure/working processes.](#)

²² Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

²³ Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

²⁴ Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

16. Any other matters

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.

The Judiciary would like to raise:

1. The importance of the summary nature of proceedings and how to make them prompt but not peremptory
2. Issues in connection with Art13b, including the availability and the practical efficacy of protective measures
3. Concentration of jurisdiction
4. The manner in which children are given the opportunity to be heard
5. The way in which the courts address the issue of a child's objections - what approach the courts take to determining whether a child objects, and what impact this has on the outcome of return applications
6. Delay can be encountered in clarifying the scope of rights of custody and whether the retention/removal is wrongful. A country by country database setting out the principles in relation to issues which commonly arise would assist in expediting determinations; i.e.
 - a. Does the holder of an order giving one individual custody give them an unlimited right to relocate with the child or is any such right limited in time
 - b. Does the holder of rights of custody automatically have the right to veto the removal of a child
 - c. Does an unmarried father have rights of custody?