

ADOPTION

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**QUESTIONNAIRE ON THE PRACTICAL OPERATION
OF THE 1993 HAGUE INTERCOUNTRY ADOPTION CONVENTION**

drawn up by the Permanent Bureau

*Preliminary Document No 2 of October 2014 for the attention of the
Special Commission of June 2015 on the practical operation of the
Hague Convention of 29 May 1993 on Protection of Children and
Co-operation in Respect of Intercountry Adoption*

*Document préliminaire No 2 de octobre 2014 à l'intention de la
Commission spéciale de juin 2015 sur le fonctionnement pratique de la
Convention de La Haye du 29 mai 1993 sur la protection des enfants et
la coopération en matière d'adoption internationale*

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INTRODUCTION

This Questionnaire is the second and last to be prepared for the purposes of the upcoming meeting of the Special Commission on the practical operation of the 1993 Hague Convention.¹ The first Questionnaire (Prel. Doc. No 1 of July 2014) requested information from Contracting States concerning the impact which implementation of the 1993 Convention has had on laws and practices relating to intercountry adoption and child protection systems more generally over the past 20 years. That information was sought in order to inform the first day of the Special Commission meeting which will be dedicated to "20 years of the 1993 Convention". This second Questionnaire is the more usual questionnaire on the practical operation of the 1993 Convention. It seeks to elicit information from States concerning their current practices and any problems and / or challenges they may have faced in relation to the implementation and operation of the Convention.

This Questionnaire is addressed to Contracting States to the 1993 Convention. As a result, non-Contracting States (whether Members of the Hague Conference on Private International Law or not) should not feel bound to respond but may provide a response or any comment should they so wish. In addition, please note that questions are addressed to both States of origin and receiving States, save where a heading expressly provides otherwise.

Please send your response to this Questionnaire to secretariat@hcch.net, for the attention of Laura Martínez-Mora (Principal Legal Officer) and Hannah Baker (Senior Legal Officer) **by no later than 22 December 2014**. The Permanent Bureau will place all replies to this Questionnaire on the Hague Conference website < www.hcch.net > unless expressly asked not to do so.

Please note: if information provided by your State in response to the first Questionnaire (Prel. Doc. No 1) or your State's Country Profile for the 1993 Hague Convention assists with your answer to any question herein, please cross-refer to these other responses. There is no need to repeat information.

Thank you for your kind co-operation as the Permanent Bureau prepares for the next Special Commission meeting in June 2015.

¹ This Fourth Meeting of the Special Commission will take place in June 2015. Full title: *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, "1993 Hague Intercountry Adoption Convention", "1993 Hague Convention", "1993 Convention" or simply "the Convention").

Name of State:	Scotland
Date of entry into force of 1993	1 June 2003
Hague Convention in your State:	
<u>Information for follow-up purposes</u>	
Name and title of contact person:	Mr Pat McAuley/Mrs Karen Piaskowski
Name of Authority / Office:	The Scottish Government
Telephone number:	0131 244 0896
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I. ADOPTABLE CHILDREN, ADOPTees AND PROSPECTIVE ADOPTIVE PARENTS²

A. Adoptable children and adoptees

The profile of children in need of intercountry adoption

States of origin only

1. Please explain any *challenges* your State has encountered, and any *good practices*³ it has developed, in relation to the compilation and provision of information to receiving States regarding the:
 - (a) characteristics and needs of adoptable children in your State;⁴ and
 - (b) approximate number of children in need of intercountry adoption in your State.

Not applicable - we do not make children available for outward intercountry adoption although there may be instances where a relative living abroad would like to adopt a child living in Scotland. In these instances, regional local authorities undertake a court action which we do not have any direct involvement in.

Receiving States only

2. Please explain any challenges your State has encountered in ensuring that:
 - (a) the *nature* and *number* of applications for intercountry adoption which your State sends to States of origin appropriately match the profile of children in need of intercountry adoption in those States;⁵ and
 - (b) the information provided by States of origin concerning the characteristics, needs and number of adoptable children is adequately taken into account in the counselling and preparation of prospective adoptive parents ("PAPs").⁶

² Part I of this Questionnaire has been prepared in light of Conclusion and Recommendation No 10 from the 2010 Special Commission meeting which states: "The Special Commission recommended that the Permanent Bureau, in consultation with Contracting States and non-governmental organisations, collect information on the selection, counselling and preparation of prospective adoptive parents, with a view to the possible development of the Guide to Good Practice No 3. This may include a discussion on good practices in dealing with failed adoptions and the period of validity of the 'home study' report." Please note: hereinafter, Conclusions and Recommendations from past Special Commission meetings are referred to as "SC 20XX C&R No X". All Conclusions and Recommendations are available on the Hague Conference website < www.hcch.net > under "Intercountry Adoption Section" then "Special Commissions".

³ In this Questionnaire, "good practices" should be given a broad meaning and should be taken to include any legislative reform, procedures or practices which your State might have implemented regarding the particular topic.

⁴ See SC 2005 C&R No 12 which states: "[t]he Special Commission recognises the importance of States of origin sending information to receiving States on the needs of children to better identify prospective adoptive parents". Please note that the Country Profile for States of origin requests that States of origin provide information concerning the profile of adoptable children (at question 9) and thus it may be that your State has encountered challenges in responding to this question which you wish to describe here.

⁵ See para. 553 of *Guide to Good Practice No 2 "Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice"* ("GGP No 2") which states that receiving States should respect "the requirements of States of origin regarding the profile and number of adoptable children, as well as the desired profile of prospective adoptive parents".

Please also share any good practices your State has developed in this regard.

(a) We receive a very limited number of intercountry adoption applications per year, but there has been no significant challenges with matching aside from the time this can take. It should be noted that the majority of applications are in respect of children living abroad who are related to prospective adopters who live in Scotland.

(b) No challenges are apparent in this regard.

Adoptability

Both States of origin and receiving States

3. (a) Please briefly describe any difficulties your State has encountered in relation to the decision regarding a child's adoptability, including the transparency of any such decision and the independence of the body taking this decision.⁷

None of significance

(b) Has your State encountered any particular difficulties with adoptability decisions in the context of *intra-family* intercountry adoptions? If so, please explain.

None to date

Reports on children

Both States of origin and receiving States

4. Please explain any challenges your State has encountered in preparing (States of origin) or obtaining (receiving States) full, accurate and up-to-date reports, including medical reports, on adoptable children in accordance with Article 16(1) a).⁸ Please specify any particular difficulties encountered in the case of children with "special needs".⁹

No challenges to report. It can take time for states of origin to send these to us, but this is to be expected due to how comprehensive these need to be.

Receiving States only

5. (a) If reports on children appear deficient or incomplete, what measures, if any, does your State take to remedy or ameliorate the situation?

We have not had to take any measures in this regard

(b) Please specify how, in your State's view, reports on children provided in accordance with Article 16(1) a) could be improved in general.

We find that these satisfactory as they are.

Matching

Both States of origin and receiving States

⁶ See SC 2005 C&R No 13: "[t]he Special Commission recognises that as a matter of good practice, authorities in receiving States should co-operate with authorities in States of origin in order to better understand the needs of children in States of origin", and SC 2010 C&R No 8: "States of origin may assist receiving States in establishing their criteria for the selection of prospective adoptive parents by providing information about the characteristics and needs of adoptable children. This information will also contribute to the development of preparation materials on intercountry adoption directed to prospective adoptive parents, and to the management of their expectations."

⁷ See SC 2010 C&R No 1 b).

⁸ *E.g.*, concerning children's physical and psychological health, identity or social situation.

⁹ You may wish to cross-refer to your State's Country Profile at question 13 (States of origin) and question 11 (receiving States) concerning your State's definition of children with "special needs".

6. Has your State had any experience of cases in which PAPs are declared eligible and suited to adopt a particular profile of child(ren) but are subsequently matched with a child or children with different needs? (*E.g.*, PAPs are declared eligible and suited to adopt a child under the age of 5 but are subsequently matched with siblings aged 7 and 9.) If so, please explain, in your State's experience, the reasons for this and how your State has dealt with such cases.

This would only happen through an error by the state of origin (for example in not meeting the specifications of the PAPS). It is something that is very rare in our experience.

Preparation and counselling of children

Both States of origin and receiving States

7. Please share (a) any *challenges* encountered in your State or in other Contracting States, and (b) any *good practices* implemented in your State or in other Contracting States, regarding the preparation of children for intercountry adoption, including counselling and informing children and ensuring that, having regard to their age and degree of maturity, their wishes and opinions have been adequately heard and taken into account.

As a good practice, using a translator where applicable is a good way of obtaining views from children who are unable to speak English.

B. Prospective adoptive parents ("PAPs")

Selection of PAPs: eligibility and suitability to adopt intercountry

Both States of origin and receiving States

8. Please explain any challenges your State has encountered, and any good practices it has developed, in relation to preparing (receiving States) or obtaining (States of origin) full, accurate and up-to-date reports on PAPs, as required by Article 15, including eligibility and suitability assessments of PAPs.

As good practice, all prospective adopters must be assessed as suitable to adopt by an adoption agency in Scotland. The assessment - often referred to as a 'home study' - involves in-depth interviews with a social worker, as well as medical, financial and police checks. This ensures that prospective adopters are able to provide the child with a safe, secure and stable home.

States of origin only

9. (a) If reports on PAPs appear deficient or incomplete, what measures if any does your State take to remedy or ameliorate the situation?

This is something we have not encountered

- (b) Please specify how, in your State's view, reports on PAPs provided by receiving States in accordance with Article 15 could be improved in general.

No comments to make regarding this

Counselling and preparation of PAPs

States of origin only

10. (a) Has your State encountered any difficulties resulting from inadequate counselling and preparation of PAPs by receiving States? If so, please provide examples and explain what measures your State takes to remedy or ameliorate

the situation in these cases.

No comments to make regarding this

- (b) In your State's experience, what could be done to improve the counselling and preparation of PAPS in general?

No comments to make regarding this

Receiving States only

11. What are the main challenges your State encounters when counselling and preparing PAPS for an intercountry adoption?¹⁰ Please share any good practices your State has developed to address these challenges.

The main challenge is the time the process can take which can cause obviously frustration.

12. The Special Commission has previously emphasised "the need for country specific preparation and for prospective adoptive parents to have some knowledge of the culture of the child and his or her language in order to communicate with the child from the matching stage".¹¹ How does your State ensure that this recommendation is complied with? Does your State have any good practices to recommend in this regard?

Most applications are from prospective adopters who wish to adopt a relative from the same culture. Should this not be the case, there are local support groups who have adopted children from the same country who are able to provide advice/assistance.

13. How does your State deal with the waiting time between:

- (a) the eligibility and suitability assessment of PAPS and the transmission of their application to the State of origin?

We keep the PAPS updated of the process through each step and make contact as quickly as possible should we require any further information/assistance from them.

and

- (b) the transmission of the PAPS' application to the State of origin and the receipt of the proposed match from the State of origin?¹² (*E.g.*, does your State routinely update the reports on PAPS in this period?¹³ Does your State, or the relevant adoption accredited body, engage in regular communication with the State of origin on this issue?)

We provide the tracking reference of the courier sending the papers to the country so the PAPS are aware of progress. We also occasionally contact the state of origin for an update on the application when requested by the PAPS.

¹⁰ You may wish to refer to your State's response to the Country Profile at question 15. *E.g.*, managing their expectations concerning the profile of adoptable children or waiting times, ensuring preparation materials / courses adequately prepare PAPS for the specific needs of an adoptable child.

¹¹ See SC 2010 C&R No 9.

¹² Your State may engage in a "reversal of the flow of files" with States of origin or other procedures such that waiting times are minimised: see further *Guide to Good Practice No 1 "The Implementation and Operation of the 1993 Intercountry Adoption Convention"* ("GGP No 1") at Chapter 7.3.3, para. 394.

¹³ You may wish to refer to your State's response to the Country Profile at question 17 d).

C. Intercountry adoptions involving children with special needs¹⁴

Both States of origin and receiving States

14. (a) In your State's experience, what are the most common "special needs" of children adopted intercountry?

We have only had one case and the child in question required a corrective operation.

- (b) If possible, please specify approximately what percentage of children adopted intercountry from or to your State¹⁵ have "special needs" (as defined by your State)?

We only have one from China at this time

- (c) What measures, if any, has your State taken to adapt intercountry adoption procedures in light of the needs of these children?

Not applicable.

- (d) What are the main challenges which your State encounters in relation to the intercountry adoption of children with special needs? How does your State address those challenges?

No significant challenges encountered. Local social work departments will also work with the PAP's to address any needs as required.

Receiving States only

15. In relation to the intercountry adoption of children with special needs, how does your State ensure that:

- (a) the parenting abilities of PAPs and their ability to cope with the particular special needs are appropriately assessed?

This is done through the home study process as outlined in the answer to Q8. The intercountry Adoption Centre in England also provide assistance/support for special needs cases from China.

- (b) any PAPs selected are suitably prepared for such adoptions and for the specific needs of each child?

See answer in (a)

- (c) adoptive families are provided with appropriate post-adoption support in light of the child's special needs?

See answer in (a)

D. Post-adoption services for adoptees and adoptive parents

Both States of origin and receiving States

16. How, if at all, has your State implemented the recommendation of the 2010 Special Commission meeting that States should "provide different forms of assistance and counselling for different stages of the child's development to adulthood, including preparation for origin searches and reunions of the adoptees with members of their biological families"?¹⁶

Post placement reports ensure that the child is sufficiently supported/developing together with regional adoption support provided as required.

Receiving States only

¹⁴ See note 9 above regarding your State's definition of "special needs".

¹⁵ Depending upon whether your State is a State of origin or a receiving State.

¹⁶ SC 2010 C&R No 29.

17. Please specify any challenges your State has encountered in ensuring that adequate support is in place for adoptive parents and adoptees following an intercountry adoption, including where parents have adopted a child with special needs.¹⁷ Please also share any good practices your State has developed to overcome these challenges.

Please see the answer to 15 (a)

E. Breakdown of intercountry adoptions

Both States of origin and receiving States

18. If your State has had experience of intercountry adoptions which have broken down subsequent to the adoption (sometimes referred to as “failed” or “disrupted” adoptions), please explain, in general terms:

- (a) what have been the main causes of the breakdowns in these cases (e.g., deficient reports on the child, including failure to identify specific physical or psychological health needs in the report, inadequate preparation of the child or PAPs, inadequate post-adoption support).

This would be very rare and a result of a deficient report on a child from a state of origin

- (b) how your State has *addressed* these situations. Does your State have any good practices to share in this regard?

Difficult to do as we expect the state of origin to carry out the necessary checks based on the specifications of the PAPs application.

- (c) what steps, if any, your State has taken to try to *prevent* these situations occurring in future.

Please see the answer to 18 (b)

F. Open adoption

Both States of origin and receiving States

19. Does the term “open adoption” (or similar) exist in your State’s domestic legislation or rules? If so, please explain how it is defined. If not, please explain what is understood in your State by the term “open adoption” or “openness in adoption”.

There is no mention of “open adoption” in the relevant legislation, Rules or Regulations for Scotland. It is, however, a term that can sometimes be used to describe an adoption arrangement where the plan is that there should still be some form of ongoing contact between the child and their birth parents, whether that be direct or indirect.

20. Please specify what type of openness in intercountry adoption is: (a) permitted according to your State’s domestic *legislation or rules*; and (b) promoted *in practice* in your State.¹⁸

Please see the answer to Q19

21. If possible, please specify approximately what percentage of intercountry adoptions involving your State include some element of openness. Has this number increased in recent years and, if so, what, in your State’s view, are the reasons for this? What

¹⁷ E.g., difficulties coping with an increased demand for post-adoption services or with a need for more specialised services, or difficulties in determining how services should be funded. You may wish to cross-refer to your State’s response to the Country Profile at Part IX concerning the services and support which your State provides.

¹⁸ E.g., disclosure of identities of biological and adoptive families, post-adoption contact.

challenges have arisen as a result and how has your State sought to address these challenges?

Please see the answer to Q19

G. Discussion at the upcoming Special Commission meeting

Both States of origin and receiving States

22. Which topics / issues does your State consider are the most important to discuss at the Special Commission in relation to the counselling and preparation of children and the selection,¹⁹ counselling and preparation of PAPs for intercountry adoption?

Issues relating to countries who may have changed their eligibility requirements for PAP's recently or have long waiting lists that may frustrate potential PAP's applying to adopt from that country.

23. Does your State consider that there is any merit in developing a Guide to Good Practice on the selection, counselling and preparation of PAPs for intercountry adoption, as recommended by the last meeting of the Special Commission in 2010, and on the preparation and counselling of children?²⁰ If so, which particular issues would your State wish to see addressed in such a Guide?

This could assist. We feel that PAP's should be aware that it can take significant time and finances to adopt from abroad. In terms of the time it can take, of course this can be due to the state of origin considering the application papers or that they do not have a suitable child that meets the specifications of the PAP's.

II. SOME SPECIFIC ISSUES ARISING IN THE INTERCOUNTRY ADOPTION PROCEDURE

A. Article 17 agreements

Both States of origin and receiving States

24. Please indicate any operational difficulties which your State has experienced, either in your State or in other Contracting States, in relation to obtaining the agreements required in Article 17 and, in particular, Article 17 c).²¹

Generally we have no issues with this. Thailand is particularly good at issuing an Article 17c

B. Recognition of adoptions made in accordance with the Convention (Chapter V)²²

¹⁹ The "selection" of PAPs in this context is taken to mean the assessment of the PAPs' eligibility and suitability to adopt intercountry.

²⁰ See SC 2010 C&R No 10 (*op. cit.* note 2).

²¹ *E.g.*, lack of clarity concerning the body which should provide the Art. 17 c) agreement, breakdown of State-to-State communications concerning the agreement, lack of clarity concerning which State should provide its agreement first.

²² When answering this section, you may wish to cross-refer to your State's response to question 13 of Questionnaire No 1.

Both States of origin and receiving States

25. (a) Previous Special Commission meetings²³ have repeatedly emphasised the importance of:
- clearly designating the authorities competent to issue Article 23 certificates and keeping this information updated;
 - promptly issuing such certificates without delay following an adoption decision made in accordance with the Convention;
 - providing parents with a copy of the Article 23 certificate before they come to take the child;
 - providing a copy of the certificate to the Central Authority in the receiving State;
 - using the "Model Form for the Certificate of Conformity of Intercountry Adoption"²⁴ to promote consistent practice; and
 - where an Article 23 certificate is incomplete or defective, co-operating to regularise the situation.

Despite the above recommendations, has your State continued to experience difficulties with the issuance or receipt of certificates of conformity under Article 23?²⁵ If so, please explain the difficulties encountered, including how your State has sought to remedy or ameliorate the situation.

We have received Article 23's in good time once the required post placement reports have been submitted.

- (b) Taking into account the previous recommendations made on this topic, does your State have any novel suggestions concerning how to improve practices regarding Article 23 certificates?²⁶

These are sometimes sent only to the Central Authority via post without prior notification. Perhaps they could be scanned and submitted by e-mail too so that that family are aware that it's on it's way.

C. Delays in intercountry adoption procedures

Both States of origin and receiving States

26. Does your State have any comments on the speed with which Convention adoptions are processed?²⁷ If your State has experienced any unnecessary delays, what has caused these delays and are they at a particular stage of the intercountry adoption procedure?

The only delay is the time taken to consider an application by a state of origin although it is understood that there may be many applications which need to be considered together with waiting for a suitable child to be available which meets the PAP's requirements.

27. Does your State have any good practices to share or recommendations as to how

²³ *E.g.*, see SC 2000 C&Rs Nos 17 to 19, SC 2005 C&R No 3 and SC 2010 C&Rs Nos 15 to 17.

²⁴ See GGP No 1, Annex 7.

²⁵ *E.g.*, deficient or no certificates issued, delays in sending certificates, confusion concerning which authorities should issue the certificate, confusion concerning to whom the certificates should be sent.

²⁶ *E.g.*, how to better promote the use of the Recommended Form, ensure designations under Art. 23.

²⁷ See SC 2005 C&R No 14: "[t]he Special Commission reminds States Parties to the Convention of their obligations under Article 35 to act expeditiously in the process of adoption, and notes in particular the need to avoid unnecessary delay in finding a permanent family for the child".

delays in the intercountry adoption procedure might be minimised, whilst still ensuring that the safeguards of the Convention are respected?

None that we can think of.

D. Co-operation issues

Both States of origin and receiving States

28. In your State's experience, is the day-to-day co-operation with other Contracting States working well (e.g., sending and receiving documents,²⁸ prompt responses to enquiries and questions, openness to discussing problems and finding solutions)? Please specify any difficulties and concerns.

Yes although of course timezones have to be taken into account if there is an urgent matter to be resolved.

29. At the meeting of the Special Commission in 2000, "[t]he need for adequate resources and appropriately trained staff in Central Authorities was accepted, as well as the importance of ensuring a reasonable level of continuity in their operations."²⁹ Has your State continued to encounter difficulties in this regard, whether in your State or in other Contracting States?

No

30. Has your State made or received from other Central Authorities any "general evaluation reports" about experiences with intercountry adoption as specified in Article 9 d)?

If so, have these reports proved useful? Please explain to what use they have been put and the follow up undertaken.

If not, does your State consider that the preparation of such reports should be encouraged as helpful in promoting the regular review of practices and co-operation between States?

Not that we are aware of, but these would be helpful

III. SPECIFIC TOPICS FOR CONSIDERATION

A. The subsidiarity principle (Art. 4 b))

Both States of origin and receiving States

31. Please describe the laws, procedures and practices in your State which seek to ensure that an appropriate balance is struck between providing sufficient support to biological families to enable the family to be preserved or reunified where possible, while at the same time preventing excessive delay in declaring a child adoptable and finding a suitable alternative permanent family for the child if necessary.

The Children (Scotland) Act 1995, The Adoption and Children (Scotland) Act 2007 and the

²⁸ E.g., has your State encountered any difficulties due to other Contracting States requesting documents / information which your State is not permitted to provide according to your domestic legislation, or due to your State requesting documents / information from other Contracting States which they are not permitted to provide (such as identities of biological parents, statements of consent, judgments regarding the withdrawal of parental rights, medical reports on PAPs)?

²⁹ See SC 2000 C&R No 3.

Looked After Children (Scotland) Regulations 2009/2010.

States of origin only

32. What are the main challenges in implementing and applying the subsidiarity principle in intercountry adoption cases in your State?

Please see the answer to Q1. This is not something we have encountered.

33. In your State, is the subsidiarity principle applied in the same manner to:

- (i) *intra-family* intercountry adoptions; and
- (ii) intercountry adoptions concerning children with *special needs*?

If not, please describe any different procedures used and explain the reasons for the different procedures.

Please see the answer to Q1. This is not something we have encountered.

Receiving States only

34. (a) In accordance with the principle of co-responsibility,³⁰ what information, if any, does your State routinely request *in each intercountry adoption case* to ensure that the subsidiarity principle has been respected in the State of origin?

We expect states of origin to undertake these checks

- (b) Is it possible and / or common in your State for a proposed matching of child and PAPs to be rejected on the basis that the relevant competent authority / body is not satisfied that the subsidiarity principle has been respected in the particular case?

This is not something we have encountered before.

35. In some States of origin, the child protection infrastructure necessary to implement the subsidiarity principle does not exist or is severely deficient, making proper implementation of the Convention in this respect challenging. Does your State undertake any programmes to assist States of origin with the development of their child protection systems³¹ in order for them to better implement the subsidiarity principle either:

- (a) at State level (*e.g.*, in the form of development aid or technical assistance)?
No

and / or

- (b) through other bodies such as non-governmental organisations (which are not adoption accredited bodies)?
No

If so, please specify how it is ensured that any such programmes do not compromise the integrity of intercountry adoption procedures and / or result in a dependence upon these forms of assistance:

N/A

³⁰ See, *e.g.*, Chapter 12 of GGP No 2.

³¹ See SC 2000 C&R No 10, which stated that "[r]eceiving countries are encouraged to support efforts in countries of origin to improve national child protection services... However, this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process", as well as SC 2010 C&R No 6. See also para. 553 of GGP No 2 which states that receiving States have "an additional responsibility to assist States of origin to improve their child protection and adoption systems. This is essential if all of the Convention's safeguards are to be applied...".

B. Mobility and globalisation

Both States of origin and receiving States

36. How, if at all, does your State define “habitual residence” for the purposes of the Convention? What factors are considered when determining where persons are habitually resident for Convention purposes?

This is something we do not determine. We advise PAP's to seek their own legal advice on this matter.

37. What are the most common scenarios in which your State has encountered difficulties in determining the “habitual residence” of PAPs and / or a child?

Please see the answer to Q36.

38. Please describe any restriction that your State places on individuals' ability to adopt intercountry based on their:

- (a) nationality; and / or
- (b) immigration status (*i.e.*, permission to reside in your State).

This issue is a reserved matter for the Home Office to determine for the UK.

39. How does your State deal with situations in which PAPs, habitually resident in one State, move to another Contracting State after initiating intercountry adoption proceedings (in accordance with Art. 14) but *while the adoption process is ongoing*? Does your State's response vary if the move is instead to a non-Contracting State?

This is not a scenario we have encountered.

40. How does your State deal with situations in which PAPs are either non-nationals living in your State, or nationals of your State living in another State, and:

- (a) your State does not consider the PAPs to be habitually resident in your State and the other State also does not consider them to be habitually resident in their State (*i.e.*, the PAPs are in a situation where they cannot make an application to adopt intercountry)?

We would not determine habitual residence so this would not apply to us

or

- (b) both your State and the other State consider the PAPs to be habitually resident in their State?

We would not determine habitual residence so this would not apply to us

Example: PAPs are nationals of State A but, due to the nature of their work, have to move regularly to live in other countries for varying periods. Recently, they moved to State B for a one-year work contract. They now wish to adopt a child from State C.

- (a) State A says these PAPs are not habitually resident in State A as they are not currently living there. State B also determines that they are not habitually resident in State B since they will leave the State at the end of one year.

OR

- (b) State A says the PAPs are habitually resident in State A as they are abroad for a limited, finite period and State A is the only country in which they have the intention to reside long-term. State B also determines that these PAPs are habitually resident in State B as they are currently living in State B.

Not applicable to us.

41. How does your State deal with situations in which PAPs are nationals of your State, are habitually resident in another State and wish to adopt a child from a third State? What role, if any, does your State play in the intercountry adoption in this scenario (e.g., is your State involved in securing the nationality of your State for the child, any other role)?

We have not encountered this scenario and do not determine habitual residence.

C. Use of modern technologies³² in intercountry adoption³³

In general

Both States of origin and receiving States

42. Please briefly describe any laws, regulations or policy guidelines which exist in your State concerning the use of modern technologies in the field of adoption.³⁴ Where possible, please provide a hyperlink to these laws, regulations or guidelines or provide a copy, with a translation into English or French.

The Data Protection Act 1998 (<http://www.legislation.gov.uk/ukpga/1998/29/contents>) stipulates that bodies must protect the personal data of individuals stored by them and must not disclose this data to a third party except in exceptional circumstances. The Adoption Agency (Scotland) Regulations 2009 (<http://www.legislation.gov.uk/ssi/2009/154/contents/made>) obliges adoption agencies to create case records for children and prospective adopters and for the reports contained within these records to be treated as confidential. They must be kept in secure conditions to prevent disclosure and agencies must preserve the indexes to all its case records for at least 100 years.

43. Does your State regularly use modern technologies in the field of intercountry adoption, both generally, as well as in individual intercountry adoption cases?³⁵

If so, please describe which technologies are used, at what stage(s) of the intercountry adoption procedure and how the use of these technologies affects your daily work.

If not, please explain the reasons for this (e.g., no access to modern technologies due to resource constraints, infrastructure problems or an absence of training).

E-mail is our primary use when the PAP's application has been received by the state of origin. This is used to receive updates or share documentation. There is also a special needs database for china that we occasionally use. This includes instructions on how to login for internal staff only and is very secure.

44. In your State's experience, what (a) benefits³⁶ and (b) risks have modern technologies brought to the field of intercountry adoption? Please describe how your State attempts to manage any perceived risks.

E-mail ensures fast communication between states. We can think of no risks as long as all states are using a secure IT system/platform.

³² In this document "modern technologies" is taken to mean the Internet and modern communication methods, such as e-mail, video-conferencing and social media.

³³ If your State responded to the 2013 ISS/IRC Questionnaire on new technologies and adoption (ISS/IRC Circular No 118), you may wish to refer to this response in your answers to this section.

³⁴ E.g., legislation might concern data protection and rules concerning the online storage of data in adoption cases, the use of photo-listings, the use of the Internet in searching for origins or the use of DNA testing in adoption cases.

³⁵ E.g., Internet and websites, e-mail, video-conferencing facilities such as Skype, online posting of informational videos, social media, etc.

³⁶ E.g., websites for provision of information, fast sending of applications and reports, facilitation of contact between accredited bodies and PAPs during their stay abroad, facilitation of contact with representatives of accredited bodies, video-conferences to provide information concerning the health of children.

45. Please briefly explain any specific courses, training or information which is / are provided on the use of modern technologies in the adoption process to:

- (a) the authorities and bodies involved in intercountry adoption in your State.³⁷
Not required for using e-mail. We have instructions for using the special needs database which was provided by them.

and / or

- (b) PAPs, biological families and adoptable children (or adoptees, if the information is provided subsequent to the adoption)³⁸ – *e.g.*, are the risks of the use of these technologies part of the programmes of counselling and preparation of PAPs, adoptable children or biological families and is any post-adoption support provided in relation to these issues?³⁹

Not applicable as we communicate with other states on behalf of all parties. We do however refer interested parties to our website which provides additional information on the process.

In either case, where possible, please provide hyperlinks to or copies of any information or training material provided (*e.g.*, publications, leaflets, websites), along with a translation into English or French.

46. Does your State use and / or accept from other States scanned documents in intercountry adoption cases (*e.g.*, scanned and e-mailed Art. 17 c) agreements, Art. 23 certificates)?

Yes, but we expect the originals to follow in the post.

If so:

- (a) Please specify which documents are sent or accepted in scanned format:

Articles 16, 17c and 23

- (b) Are these scanned versions used or accepted *instead of* the original documents or *in addition to* the original versions (*i.e.*, the original documents follow later by post)?

We use these to provide an update to all parties concerned with the application, but still await the originals by post at a later date.

- (c) Is any authentication of the scanned document required (*e.g.*, legalisation or apostillisation)?⁴⁰

As a receiving state, the scanned document coming from the state of origin is satisfactory for us.

- (d) How are scanned documents stored and how is the security of the information guaranteed?

We use an electronic storage system within the Scottish Government which is on a secure IT system/platform.

If not, please explain the reasons for this:

Not applicable

Using modern technologies to assist with finding a suitable family for a child

Both States of origin and receiving States

³⁷ *E.g.*, in relation to its use by adoptees or families to search for origins, or in relation to the use of online databases of adoptable children.

³⁸ Depending upon whether your State is a receiving State or a State of origin (or both).

³⁹ *E.g.*, concerning making contact via the Internet, posting confidential information on social media websites or using social media to search for origins.

⁴⁰ See the *Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* (the "Apostille Convention", concluded 5 October 1961).

47. Does your State use, or permit others to create and use, online “photo-listings”⁴¹ of adoptable children?

Not applicable to us.

If so, please explain:

- (a) whether these listings include profiles of *all* adoptable children in your State or only certain categories of children (*e.g.*, children with special needs):
Not applicable
- (b) which authorities or bodies create / operate these online listings in your State (*i.e.*, is this under State control or the control of other adoption actors?):
Not applicable
- (c) who is permitted to access the listings:
Not applicable
- (d) what safeguards have been implemented to protect the privacy of the children concerned (*e.g.* restricted access for Central Authorities and accredited bodies only):
Not applicable
- (e) how it is ensured that the use of such listings is in conformity with the matching process set forth in the Convention (*i.e.*, matching by the competent authority in the State of origin after the suitability and eligibility of the PAPs has been determined):
-Not applicable

Using modern technologies to search for origins

Both States of origin and receiving States

48. Do the relevant competent authorities in your State use social media (*e.g.*, Facebook, Twitter) to help adoptees search for their origins? If so, are there any guidelines or good practices regarding the use of social media by authorities / bodies for this purpose?

Not that we are aware of.

49. Has your State had any cases in which PAPs / adoptees and birth families have contacted each other via social media or other modern methods of communication after an adoption and without the involvement of professionals? If so, please specify the situations which have arisen, the challenges faced and how these challenges have been overcome.

Not that we are aware of

D. Illicit practices⁴²

⁴¹ In this document, “photo-listings” means databases which include photographs and descriptions of the background and characteristics of adoptable children. They often have limited, protected access (*e.g.*, for Central Authorities and accredited bodies only) and may be used to search for families for children who are hard to place.

⁴² In this Questionnaire, the term “illicit practices” is used in the same sense as in the “Discussion Paper Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases” (October 2012), available on the specialised “Intercountry Adoption Section” of the Hague Conference website: *i.e.*, it “refers to situations where a child has been adopted without respect for the rights of the child or for the safeguards of the Hague Convention. Such situations may arise where an individual or body has, directly or indirectly, misrepresented information to the biological parents, falsified documents about the child’s origins, engaged in the abduction, sale or trafficking of a child for the purpose of intercountry adoption, or otherwise used fraudulent methods to facilitate an adoption, regardless of the benefit obtained (financial gain or other).”

In generalBoth States of origin and receiving States

50. Please describe the practices relating to the abduction, sale of or traffic in children or other illicit practices which your State has experienced most frequently in the context of intercountry adoption since the last Special Commission meeting (2010), regardless of whether these practices have taken place in your State or in another Contracting State.

None that we are aware of

51. Please provide details of any specific examples in which your State has worked either alone or in co-operation with other Contracting States in order to prevent and / or address practices relating to the abduction, sale of or traffic in children or other illicit practices in the context of intercountry adoption. Was Article 33 ever relied upon in such cases? If so, please describe what measures were taken and the outcome.

None that we are aware of

52. Has your State ever suspended or restricted its intercountry adoption programme (e.g., introducing a moratorium, refusing to work with a particular Contracting State) because of concerns about the risk of abduction, sale of or traffic in children or other illicit practices? If so, did the suspension or restriction assist with efforts to combat these practices? What challenges did your State encounter in seeking to resume intercountry adoptions or lift any restrictions once practices had been improved?

Please see the attached link which details countries on our restricted list:
<http://www.scotland.gov.uk/Topics/People/Young-People/protecting/lac/adoption/incountryadoption/icarestrictions/restrictedlist>

E. Other international placements of children which result in adoption***Kafala resulting in adoption***Receiving States only

53. Are persons, habitually resident in your State who have a child placed into their care under kafala in another State, permitted to subsequently adopt the child in your State?⁴³

Example: a child, habitually resident in State A, is placed into the care of a couple under the regime of kafala by the court in State A. The couple habitually resides in State B (your State) and the understanding is that they will return immediately to State B to live with the child. Under your State's laws, are the couple permitted to subsequently adopt the child in your State, State B?

We have not encountered this scenario - we do not determine habitual residence. We would inform those in that situation to receive independent legal advice.

If so, please explain:

(a) the reasons for this:

⁴³ **N.B. the provision of care by kafala falls within the scope 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* (the "1996 Convention") (Art. 3 e) of the 1996 Convention) and thus kafala placements benefit from its unified rules on jurisdiction, applicable law and the recognition and enforcement of measures between Contracting States. In addition, the 1996 Convention contains mandatory co-operation provisions with which Contracting States must comply when a cross-border kafala placement is contemplated between them (Art. 33 of the 1996 Convention). For further information concerning kafala and the 1996 Convention, see the [Practical Handbook on the 1996 Convention](http://www.hcch.net) available on the Hague Conference website < www.hcch.net >.**

Not applicable

- (b) the procedure, including any involvement of the State of origin:

Not applicable

and

- (c) whether this would be a "simple" or a "full" adoption:

Not applicable

Respite care abroad resulting in adoption⁴⁴

Both States of origin and receiving States

54. If your State is involved in respite care programmes⁴⁵ for children, please explain:

- (a) whether such programmes specifically aim to be a precursor to adoption for some children (*e.g.*, for children with special needs):

No

- (b) whether such programmes have, in fact, resulted in the adoption of children and, if so, approximately what percentage of children involved in the programmes are adopted:

Not applicable

and

- (c) where a child is adopted following such a programme, how it is ensured that the safeguards of the Convention have been respected (bearing in mind that it is likely that the child remains "habitually resident" in his / her State of origin and thus the adoption falls within the scope of the Convention according to Art. 2):⁴⁶

Not applicable

Foster care resulting in adoption

Both States of origin and receiving States

55. Is your State aware of cases in which a domestic foster care placement has been used in order to circumvent Convention intercountry adoption procedures? If so, please provide details, including the challenges which these cases have presented and any good practices your State has developed to deal with such cases.

Example: a couple, usually resident in State A, travels to State B and applies to foster a child. They intend to apply to adopt this child in State B and to return shortly thereafter to live in State A.

None that we are aware of

F. Triangular adoptions⁴⁷

Both States of origin and receiving States

56. Does your State allow PAPs wishing to adopt intercountry to use an accredited body located in a *third* State to mediate the adoption (*i.e.*, an accredited body *not* located in the State of origin or in the receiving State)? If so, please briefly describe any

⁴⁴ See GGP No 1 at paras 561 to 563.

⁴⁵ *I.e.*, programmes in which children from certain States of origin, often children living in institutional or other non-family based alternative care, are hosted temporarily by families in other States for "holidays" to improve the child's mental and physical well-being.

⁴⁶ *E.g.*, how it is ensured that: the child is legally and psycho-socially adoptable; the subsidiarity principle is respected; the eligibility and suitability of the PAPs is appropriately assessed; the Convention requirements concerning professional "matching" are met; and the child and parents are appropriately prepared, informed and counselled for the adoption.

⁴⁷ For a definition of "triangular adoption", please see GGP No 1 at Chapter 8.8.7.

conditions imposed by your State,⁴⁸ the procedure used and any challenges encountered. Please also share any good practices your State has developed in relation to such cases.

This is something we are not involved in.

G. International surrogacy arrangements⁴⁹ and intercountry adoption⁵⁰

Both States of origin and receiving States

57. Following the recommendations of the 2010 Special Commission meeting,⁵¹ has your State experienced any cases of international surrogacy arrangements in which use of the 1993 Hague Convention has been sought in order to remedy the situation of the legal status of the child? If so, please explain the circumstances in which this occurred, how it was ensured that the safeguards of the Convention were respected, and the outcome for the child and family.

No

IV. SERVICES AND SUPPORT PROVIDED BY THE HAGUE CONFERENCE

Both States of origin and receiving States

58. Are the following documents used in your State as tools to assist with the operation of the Convention and / or to periodically review your State's intercountry adoption system and processes:
- (a) the Conclusions and Recommendations of previous Special Commission meetings:
Occasionally
 - (b) Guide to Good Practice No 1 "*The Implementation and Operation of the 1993 Intercountry Adoption Convention*":
Occasionally
 - (c) Guide to Good Practice No 2 "*Accreditation and Adoption Accredited Bodies*":
Occasionally
 - (d) the tools⁵² developed by the Experts' Group on the Financial Aspects of Intercountry Adoption:
Occasionally
 - (e) the "Discussion Paper on Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases":⁵³
Occasionally

⁴⁸ See the good practices recommended at para. 555 of GGP No 1.

⁴⁹ The term "international surrogacy arrangement" is used in this Questionnaire to mean "a surrogacy arrangement entered into by intending parent(s) resident in one State and a surrogate resident (or sometimes merely present) in a different State". (See further the Glossary attached to the "Report on the desirability and feasibility of further work on the Parentage / Surrogacy Project" (Prel. Doc. No 3B of March 2014).)

⁵⁰ Please note that the issue of international surrogacy arrangements is being studied separately by the Hague Conference in the context of its "Parentage / Surrogacy Project": for further information on this Project, please see the specialised section of the Hague Conference website, under "Parentage / Surrogacy Project". These questions therefore only relate to the use of the 1993 Convention and related bodies / authorities in these cases.

⁵¹ See SC 2010 C&R Nos 25 to 26 in which it was stated that the Special Commission "viewed as inappropriate the use of the Convention in cases of international surrogacy".

⁵² See the tools developed by the "Experts' Group on the Financial Aspects of Intercountry Adoption", available on the Intercountry Adoption Section of the Hague Conference website, under "Expert and Working Groups": *i.e.*, the harmonised Terminology adopted by the Experts' Group on the financial aspects of intercountry adoption, the Note on the financial aspects of intercountry adoption, the Summary list of good practices on the financial aspects of intercountry adoption and the Tables on the costs associated with intercountry adoption.

⁵³ Available on the Intercountry Adoption Section of the Hague Conference website, under "Expert and Working Groups".

Please explain how these tools are currently promoted in your State and how they could, in your State's view, be more effectively promoted at the regional and / or international level:

These are used internally (and more appropriately) for staff dealing with intercountry adoptions within the Scottish Government. We share these at a regional level as and when required.

59. In light of the fact that the importance of ICATAP (the "Intercountry Adoption Technical Assistance Programme" of the Hague Conference) to the proper implementation and operation of the 1993 Convention has been reiterated by Special Commission meetings and by meetings of the Council on General Affairs and Policy for many years, does your State have any suggestions as to how to secure more regular and consistent funding for this work at the Permanent Bureau, including for the key position of the ICATAP Co-ordinator?

None at this time.

Is there any other comment your State wishes to make concerning the implementation and / or operation of the 1993 Convention?

Only that it works well for us and safeguards both children and PAP's in respect of intercountry adoption.